

**STANDARD FORM OF BIDDING DOCUMENTS FOR  
PROCUREMENT OF WORKS ON B.O.T. BASIS**

***TWO STAGE  
BIDDING PROCEDURE***

**(First Edition)**

**April 2010**



**PAKISTAN ENGINEERING COUNCIL  
ISLAMABAD**

## **A C K N O W L E D G M E N T**

Pakistan Engineering Council extends deep appreciations and acknowledges the tremendous contribution in developing and finalizing this document by the following members of the Pakistan Engineering Council (PEC):-

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## **P R E F A C E**

Pakistan Engineering Council (PEC) being the statutory regulatory body entrusted to regulate the engineering profession in Pakistan, has undertaken the standardization of "Country specific" documents to regulate and streamline the hiring of engineering consultancy services and procurement of works. Among other standard Bidding Documents, Standard Form of Bidding Documents for Procurement of Works on BOT Basis is one such document which has been prepared by a team of experts comprising Employers, Constructors and Consultants. This document is a frame work document. Use of this document will provide an equitable and just basis of Concession Agreement for procurement of Works on BOT basis in line with the international practices and relevant PEC Bye-Laws.

While preparing this Bidding Document, the bidding documents prepared by National Highway Authority for highway projects on BOT basis, Public Procurement Rules 2004, Public Procurement Regulations 2007 and guideline provided by UNIDO were consulted. This document is primarily aimed at procurement under Two Stage bidding procedure. However, it may be tailored for adopting in case of Single Stage-Two Envelope bidding procedure (rare situation where technical proposals by all the bidders must confirm with specifications, design and drawings already completed and provided by the Employer). Likewise, it may be tailored for adopting in case of Two Stage-Two Envelope bidding procedure (likely situations where revised technical proposals of all the bidders, after discussion of their original technical proposals with the Employer, are to be considered for which the bidders may tie their original price proposals with supplementary price proposals. This document is intended to be used for large projects with estimated value of more than Rupees 25 Million.

Any suggestions for the improvement shall be appreciated which may please be addressed to:

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Pakistan Engineering Council  
Ataturk Avenue (East)  
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Tel # 92-51-2276225  
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E-mail: registrar @ pec.org.pk



**INSTRUCTIONS TO  
USERS OF THIS  
DOCUMENT**

## **INSTRUCTIONS TO USERS OF THIS DOCUMENT**

This document is basically meant for inviting proposals from the Private Sector in respect of a Concession for the construction and operation of projects through Build, Operate and Transfer (BOT) arrangement. The Employer should prepare the estimated construction cost of the project based on the General Design Criteria & Operation/Maintenance Requirements in order to enable himself for comparing the Financial Bid Offers by the Bidders.

While preparing this BOT bidding document, provision has been made to bid and award on Two Stage bidding procedure. However, if it is to be bided under Single Stage–Two Envelope or Two Stage – Two Envelope bidding procedure, relevant provisions in Instructions to Bidders (ITB), Bidding Data, Annexures to ITB, should necessarily be amended in accordance with Clause 27.1 of the Bidding Data. Additionally, in case of Single Stage-Two Envelope bidding procedure the documents must contain specifications, detailed design and drawings to be completed and final in all respect.

This bidding document is framed out for Employer in the Public Sector and BOT Company / Bidder from the Private Sector. However, if the Employer is other than entity in Public Sector and Company / Bidder is other than the Private Sector then necessary amendments to the relevant provisions may be made accordingly.

In BOT Document Concession Contract is provided between the Employer and the Company / Contractor / Successful Bidder. However in case a construction contract is to be made between the Company and his proposed Contractor, PEC Standard Form of construction contract may be used.

However, definitions of BOT and some other forms are given below for appropriate amendment, if required, as per Employer's requirements.

### **Build-Operate-and-Transfer**

A Contractual arrangement whereby the project proponent undertakes the construction including financing for a given infrastructure facility and its operation and maintenance thereof. The project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment and operating and, maintenance expenses in the project. The project proponent transfers the facility to the Government agency or local Government unit concerned at the end of the fixed term.

The build operate and transfer shall include a supply and operate situation which is a contractual arrangement whereby the supplier of equipment and machinery for a given infrastructure facility, if the interest of the Government so requires, operates the facility providing in the process technology transfer and training to Pakistani nationals or the Personnel of Executing Agency.

### **Build-and-Transfer**

A contractual arrangement whereby the project proponent undertakes the financing and construction of a given infrastructure or development facility and after its completion turns it over to the Government agency or local Government unit concerned, which shall pay the proponent on an agreed schedule its total

investments expended on the project, plus a reasonable rate of return thereon. This arrangement may be employed in the construction of any infrastructure or development project, including critical facilities which for security or strategic reasons, must be operated directly by the Government or Executing Agency.

#### **Build-Own-and-Operate**

A contractual arrangement whereby a project proponent is authorized to finance, construct, own, operate and maintain an infrastructure or development facility from which the proponent is allowed to recover its total investment, operating and maintenance costs plus a reasonable return thereon by collecting tolls, fees, rentals or other charges from facility users.

#### **Build-Lease-and-Transfer**

A contractual arrangement whereby a project proponent is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the Government agency or local Government unit concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the Government Agency.

#### **Build-Transfer-and-Operate**

A contractual arrangement whereby the public sector contracts out the building of an infrastructure facility to a private entity such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risks.

Once the facility is commissioned satisfactorily, title is transferred to the implementing agency. The private entity however, operates the facility on behalf of the implementing agency under an agreement.

#### **Contract-Add-and-Operate**

A contractual arrangement whereby the project proponent adds to an existing infrastructure facility which it is renting from the Government (or Executing) Agency. It operates the expanded project over an agreed franchise period. There may, or may not be a transfer arrangement in regard to the facility.

#### **Develop-Operate-and-Transfer**

A contractual arrangement whereby favorable conditions external to a new infrastructure project which is to be built by a private project proponent are integrated into the arrangement by giving that entity the right to develop adjoining property and thus, enjoy some of the benefits the investment creates such a higher property or rent values.

#### **Rehabilitate-Operate-and-Transfer**

A contractual arrangement whereby an existing facility is turned over to the private sector to rehabilitate/refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is turned over to the Government. The term is also used to describe the purchase of an existing facility from abroad, importing, refurbishing, erecting and consuming it within the host country.

## **Rehabilitate-Own-and- Operate**

A contractual arrangement whereby an existing facility is turned over to the private sector to rehabilitate/refurbish and operate with no time limitation imposed on ownership. As long as the operator is not in violation of its franchise, it can continue to operate the facility in perpetuity.

This Standard Form of Bidding Documents, in addition to Expression of Interest, includes the following:

1. Instructions to Bidders
2. Bidding Data
3. General Conditions of Concession Contract
4. Particular Conditions of Concession Contract
5. Specifications-Special Provisions
6. Specifications-Technical Provisions
7. Annexures to Instructions to Bidder
8. Appendices to Concession Contract
9. Form of Bid Security
10. Form of Concession Contract Agreement
11. Form of Performance Security for Construction Phase
12. Form of Performance Security for Operation Phase
13. Form of Performance Security for Transfer of the Project
14. Design/Drawings

### **A. Notice for Expression of Interest**

1. Notice for Expression of Interest provides guide lines to the Employer for inviting interested prospective bidders for prequalification or short listing as well as for calling of Bids. The Employer may modify as per specific conditions and requirements of the project.
2. The notice is meant for publication in the national/ international newspapers, as well as on PEC Website & PPRA Website in case of Federal Govt. procuring agencies and for other additional distribution to be decided by the Employer as notice for calling of Bids. All the blank spaces are to be filled in by the Employer.
3. The eligible bidders are defined in Clause IB.3 of Instructions to Bidders.
4. The notice should be published so as to give the prospective bidders sufficient time for preparation and submission of bids which may be up to 154 days depending on the size of the Works.
5. For the sale of Bidding Documents Price should be nominal so as to cover reproduction and mailing costs and to ensure that only bonafide bidders will apply.



6. The amount of Bid Security should be a lump sum figure ranging from 1% to 3% of the likely cost of the Works and should be the same as given at Sub Clause IB 20.1 of Instructions to Bidders.
7. Bid Reference Number should be the same everywhere as given in Notice for Expression of Interest and letters of Technical and Price Proposals.
8. The venue and time of receipt of bids and the venue and time of opening of bids are to be entered in the last paragraph of the Notice for Expression of Interest. However, date for the receipt and opening of bids shall be same.

**B. Instructions to Bidders**

1. Instructions to Bidders provide the general introduction, details of the Project, guide lines for preparation of Bids, other relevant details on Concession, Bidding Procedure, Assessment of Bidders and information that will be required to be provided by the Bidders etc. Any amendment in the text shall be made through Bidding Data wherein instructions to be followed have been inserted in italic which shall be deleted by the users after completing the Bidding Data. However, the users may modify/elaborate the contents of Clauses IB 42 to 44 only for making them the project specific.
2. Special Instructions to Bidders should be project specific with modifications and adaptations to Instructions to Bidders as appropriate.
3. The Employer shall prepare the documents listed at Serial Nos. 2, 4 to 8 and 14 of Sub-Clause IB 9.1 of Instructions to Bidders and incorporate the same for completion of the documents comprising the Bid.
4. For completion of documents at Serial No. 7 and 8 of Sub-Clause IB 9.1, detailed instructions are given at Para C below.

**C. Form of Bid and Annexures /Appendices**

**PREQUALIFICATION INFORMATION FORMS**

*[TO BE COMPLETED BY THE EMPLOYER TO MENTION THE MINIMUM CRITERIA TO BE MET BY THE PROSPECTIVE BIDDERS WHICH ARE TO BE FILLED BY THE BIDDER]*

**Annexures to Instructions to Bidder**

*[These Annexures shall not be the part of Concession Contract]*

Annexure-1	General Information
Annexure-2	General Experience Record
Annexure-3	Joint Venture Summary
Annexure-4	Details of Contracts of Similar Nature and Complexity

Annexure-5	Summary Sheet: Current Contract Commitments/Works in progress
Annexure-6	Personal Capabilities
Annexure-7	Candidate Summary
Annexure-8	Equipment Capabilities
Annexure-9	Financial Capabilities
Annexure-10	Litigation History

## **PROJECT INFORMATION**

*[TO BE PROVIDED BY THE EMPLOYEE]*

### **Appendices to Concession Contract**

*[These Appendices shall be the part of Concession Contract]*

Appendix-01	Project Location Map
Appendix-02	General Design Criteria & Maintenance Requirements
Appendix-03	Ancillary Facilities
Appendix-04	Proposed Project Implementation Schedule and Checking /Commissioning Procedures:
Appendix-05	BOI Investment Policies /Employer's Package of incentives
Appendix-06	Maintenance and Monitoring

## **TECHNICAL PROPOSAL**

*[TO BE COMPLETED BY THE BIDDERS]*

### **Appendices to Concession Contract**

*[These Appendices shall be the part of Concession Contract]*

Appendix-07	Project Conceptual Design, Design Criteria & Technical Details and Implementation Schedule
Appendix-08	Method of Performing the Works
Appendix-09	Construction Camps and Housing Facilities
Appendix-10	List of Proposed Contractors/Subcontractors
Appendix-11 and Labour	Organization Chart for the Supervisory Staff
Appendix-12	Operation and Toll/Benefit/Fee Collection
Appendix-13	Operation and Maintenance Methods
Appendix-14	Funding/Financial Arrangements
Appendix-15	Integrity Pact

## **FORMS**

Form-01	Letters of Technical and Financial Proposals
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Form-02	Concession Agreement
Form-03	Bid Security
Form-04	Performance Security for Construction Phase
Form-05	Performance Security for Operation Phase
Form-06	Performance Security for Transfer of the Project

**D. Particular Conditions of Contract**

Instructions are provided, as needed, in italics which should be filled in or added or modified as required meeting the project specific requirements by the Employer before issuance of the Bidding Documents.

**E. Specifications-Special Provisions**

To be prepared and incorporated by the Employer. Inclusion of the Conditions of Contract in Special Provisions should be avoided.

**F. Specifications-Technical Provisions**

To be prepared and incorporated by the Employer.

Precise and clear Specifications are prerequisite for bidders to respond realistically and competitively to the requirements of the Employer without qualifying or conditioning their bids. In the context of both national and international competitive bidding, the Specifications must be drafted to permit the widest possible competition and, at the same time, present a clear statement of the required standards of materials, Plant, other supplies, and workmanship to be provided. Only if this is done will the objectives of economy, efficiency, and equality in procurement be realized, responsiveness of bids be ensured, and the subsequent task of bid evaluation facilitated. The Specifications should require that all materials, Plant, and other supplies to be incorporated in the Works are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. A clause setting out the scope of the Works is often included at the beginning of the Specifications, and it is customary to give a list of the Drawings. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.

Specifications shall be generic and shall not include references to brand names, model numbers, catalogue numbers or similar classifications. However if the Employer is convinced that the use of or a reference to a brand name or catalogue number is essential to complete an otherwise incomplete specification, such use or reference shall be qualified with the words "or equivalent".

Care must be taken in drafting Specifications to ensure that they are not restrictive. In the specification of standards for materials, Plant, other supplies, and workmanship, recognized international standards should be used as much as possible. The specifications shall consider all site conditions but not limited to seismic conditions, weather conditions and

environmental impact. Where other particular standards are used, whether national standards or other standards, the Specifications should state that materials, Plant, other supplies, and workmanship meeting other authoritative standards, and which ensure equal performance, as the standards mentioned, will also be acceptable.)

**G. Conceptual Design/Drawings**

To be prepared and incorporated by the Employer.

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**NOTICE  
FOR  
EXPRESSION OF INTEREST**

## **NOTICE FOR EXPRESSION OF INTEREST**

1. The Employer [*name of the Employer*] wishes to expand investment through the participation of the Private Sector on its own or in partnership with the Employer.
2. As part of this ongoing process, the Employer hereby invites Expression of Interest from the Private Sector for submitting proposals in respect of a Concession for the design, construction and operation of [*name and brief description of project*] on Build, Operate and Transfer (BOT) arrangement. The Project forms part of the [*Sector*]. The Project shall be located at [*location and brief whereabouts of the project*], which would involve construction of [*brief description of major project components*].
3. The Concession is offered, and shall be negotiated and granted in accordance with the Government's policy to optimize Private Sector participation in construction and operation of various projects in infrastructure, energy and other sectors in line with Board of Investment (BoI)/ Employer's Investment Policies.
4. Construction of the Project will include all components of the project in accordance with Specifications and quality control standards conforming to the standards of design, construction, maintenance and operation as laid down by the Employer.
5. The Employer, on behalf of [*Government of Pakistan*], envisages granting a concession to design, finance and implement the scope of work and to operate and maintain the Project. The Concession will include the right to collect tolls/fees/charges to generate income from approved ancillary facilities.
6. Key features of Concession Agreement will be as follows:
  - a) The concession shall be for a fixed period of [*concession period*];
  - b) The Concessionary's (Concession Company's) minimum equity investment is to be [*Concessionary's minimum investment share*];
  - c) Employer will require a minimum of [*minimum percent share in percentage*] share annually from the gross revenue during the Concession Term commencing from positive cash - flow year;
  - d) At the end of the Concession Period, the facility is to be returned to the Employer in a properly maintained and operational condition, at no cost to the Employer; and
  - e) Any other item.
7. All the requirements, terms and conditions of the Concession Agreement will be agreed during clarification with the technical responsive/qualified bidders.
8. The prospective bidders, while submitting their Expression of Interest, should inter-alia, give details duly supported by documentary evidence, pertaining to the following;

- a) Capability Statement
- b) Technical Competency
- c) Constitution or Legal Status
- d) Corporate Structure
- e) Relevant Experience
- f) Organizational Structure
- g) Key Project Personnel
- h) Audited Accounts
- i) Shareholders
- j) Project Appreciation Statement
- k) Statement of Capital and Operating Costs \*
- l) Statement of Revenue \*
- m) Financial Analysis of the Project \*
- n) Proposed Financial Package, etc \*
- o) Any other item as required by the Employer

*[\*These documents being part of financial proposal, shall be provided only when complete bids are invited, in which case these shall be provided in a separate sealed envelope marked as “ Financial Proposal” in addition to another sealed envelope containing the other documents, also meeting the requirements of Instructions to Bidders including Bid Security and marked as “Technical Proposal”]*

9. Bidders may obtain further information, inspect and acquire the Bidding Documents from the office of the Employer at *[Employer’s complete address]*

A complete set of Bidding Documents may be purchased by an interested bidder on submission of a written application to the above office and upon payment of a non-refundable fee of Rs. \_\_\_\_\_.

*(Insert Amount)*

10. All bids must be accompanied by a Bid Security in the amount of Rs \_\_\_\_\_ (*Rupees \_\_\_\_\_*) or an equivalent amount in a freely convertible currency, and must be delivered to \_\_\_\_\_

*[Indicate Address and Exact Location]*

at or before \_\_\_\_\_ hours, on \_\_\_\_\_ (*Date*). Bids will be opened at \_\_\_\_\_ hours on the same day, in the presence of bidder’s representatives who choose to attend at the same address. (*Indicate Address and Exact Location if it differs*).

*[Note: the bids shall be opened at least thirty minutes after the deadline for submission of bids]*

**INSTRUCTIONS  
TO  
BIDDERS**

## **INSTRUCTIONS TO BIDDERS**

### **A. GENERAL**

#### **IB.1 INTRODUCTION**

- 1.1 To ensure an adequate supply of Infrastructure / Facility; as described in the Bidding Data; and to support the development programme of the country, the Government of Pakistan (GoP) wishes to expand investment in the provision of infrastructures, and other likely facilities through the participation of the private sector, on its own or in partnership with the Government.
- 1.2 The Employer hereby invites the private sector to submit their proposals in respect of a Concession for the construction and operation of the Project which is proposed to be constructed on Build, Operate and Transfer (BOT) arrangement. The Project Location Map and other relevant details are depicted as Appendices to Bid
- 1.3 Concession is offered and will be negotiated and granted, in accordance with the Employer's policy to optimise private sector participation in the construction and operation of the Project. Government of Pakistan Investment Policies are attached as Appendices to Bid.

#### **IB.2 PURPOSE OF PROJECT BRIEF AND BIDDING INSTRUCTIONS**

- 2.1 This document together with the Annexures/Appendices referred to herein and any future additions and amendments to this document constitute the Bidding Documents, the purposes of which are as under:
  - a) To explain the Employer's general requirements in respect of the Project and the Concession, and to provide other information that may be relevant to Bidders;
  - b) To provide guidance in the preparation of Bids, and to explain the criteria and procedures by which the Bids will be assessed; and
  - c) To set out, in outline form, the Government's design and construction requirements in respect of the Project, and the Government's operational, maintenance and other requirements in connection with the Concession.
- 2.2 Nature of project, location of project, all related major/minor structures and the standards shall conform to the standards of design, construction, maintenance and operation requirements as described in the Bidding Data.
- 2.3 Operations and maintenance of facilities such as tolls/fees/benefits, operating centres, electrical and mechanical installations, buildings and other requirements needed for smooth operations shall be provided by the Concessionaire/Company.

### **IB.3 ELIGIBLE BIDDERS**

3.1 This Invitation for Expression of Interest is open to all the Bidders meeting the following requirements in case of contracting firms or the contracting firms proposed by the Bidding Company:

- a) Constructors/Operators duly licensed by the Pakistan Engineering Council (PEC) in the category relevant to the value of the Works.
- b) Firms duly prequalified / shortlisted by the Employer.

To be eligible for award of the Concession, Bidders shall provide evidence satisfactory to the Employer of their capability and adequacy of resources to fulfil all obligations under this Concession Contract Agreement.

### **IB.4 THE CONCESSION**

4.1 The Employer, on behalf of the Government of Pakistan, envisages granting a Concession to design, finance and implement the scope of work as described in Clauses IB 1 & 2 and to operate and maintain the Project. The Concession will include the right to collect tolls /fees/benefits by using the Project and to generate income from approved Ancillary Facilities (if any) provided that such concessions are the part of the Policy of Govt. of Pakistan.

4.2 Other key features of the Concession Contract Agreement are as follows:

- a) The Concession will be for a fixed period as stated in the Bidding Data;
- b) The Concession Company's minimum equity investment is to be as stated in the Bidding Data;
- c) ROW will be made available by the Employer. Any additional land required for various facilities shall be paid for by the Company. The same shall become part of ROW from the same date;
- d) Employer will require a minimum share annually from the gross revenue during the Concession Term commencing from positive cash flow year as stated in the Bidding Data;
- e) At the end of the Concession Period the facility is to be returned to the Employer in a properly maintained and operational condition, at no cost to Employer; and
- f) The level of benefits/tolls/fees/charges shall be as follows for the first year of operation. The escalation of benefits/tolls/fees/charges will be allowed only as per the formula provided in the Bidding Data. The rates of benefits/tolls/fees/charges for the first operating year shall be submitted by the bidders in the form given in the Appendices to Bid.

4.3 Full requirements, terms and conditions of the Concession will be agreed during clarification with the technical responsive bidders. The form and

content of the negotiated Concession are expected to conform closely to the draft Concession Contract Agreement as included in these Bidding Documents. Bidders will be expected to address all of the aspects of the General Conditions of Concession Contract in their submissions.

#### **IB.5 PROGRAMME**

- 5.1 The Employer will, however, give favourable consideration to proposals that achieve an earlier Availability Date.
- 5.2 Bidders should note that the Concession Contract specifies Key Dates to be achieved throughout the Construction Phase and penalties to be imposed for delayed completion.

#### **IB.6 DISCLAIMER**

- 6.1 All information, assumptions and projections contained in these Bidding Documents are indicative only and are provided solely to assist in a preliminary assessment of the Project. Nothing in the Bidding Documents or elsewhere shall create any contractual relationship between the Employer and any Bidder, nor shall it commit the Employer to any policy described in the Bidding Documents or elsewhere and neither the Employer nor any of its consultants or advisers will have any liability or responsibility if the information, assumptions and projections contained herein or otherwise in respect of the Project prove to be incorrect. It is the responsibility of the Bidder to verify the information, assumptions and projections contained in the Bidding Documents or otherwise.

#### **IB.7 CONFIDENTIALITY**

- 7.1 The Bidder shall treat the Bidding Documents and, if successful, the subsequent Concession Contract Agreement, and everything contained therein as private and confidential. In particular, the successful Bidder shall not publish any information, drawings or photographs concerning the Project or any Ancillary Facilities, without the express permission of the Employer.

#### **IB.8 BRIBERY AND COLLUSION/INTEGRITY PACT**

- 8.1 The Employer shall be entitled to terminate the Concession and recover from the successful Bidder the amount of any loss resulting from such termination if the successful Bidder shall have offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, any action in relation to obtaining, or in the execution of the Concession or any other contract with the Employer, or for showing favour to any person in relation to the Concession or any other contract with the Employer, or if any of the like acts shall have been done by any person employed by the successful Bidder or acting on its behalf (whether with or without the knowledge of the successful Bidder), or if the successful Bidder shall have come to any agreement with another Bidder or number of Bidders whereby an agreed quotation or estimate shall be offered as a Bid to the Employer by one or more Bidders.

- 8.2 In addition, in case of GOP financing, the Bidder shall sign an Integrity Pact (Appendix-15 of this document) to remain liable for its undertaking given therein.

## **B. BIDDING PROCEDURES**

### **IB.9 Contents of Bidding Documents**

- 9.1 This Standard Bidding Documents, in addition to Expression of Interest, includes the following:
1. Instructions to Bidders
  2. Bidding Data
  3. General Conditions of Concession Contract
  4. Particular Conditions of Concession Contract
  5. Specifications-Special Provisions
  6. Specifications-Technical Provisions
  7. Annexures to Instructions to Bidder
  8. Appendices to Concession Contract
  9. Form of Bid Security
  10. Form of Concession Contract Agreement
  11. Form of Performance Security for Construction Phase
  12. Form of Performance Security for Operation Phase
  13. Form of Performance Security for Transfer of the Project
  14. Design/Drawings

### **IB.10 Qualifications Requirements**

The Contractor's authorised representative and his other professional engineers working at site shall register themselves with the Pakistan Engineering Council. The Contractor's authorised representative at site shall be authorised to exercise adequate administrative and financial powers on behalf of the Contractor so as to achieve completion of the works as per the Contract.

A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the English language. If the Contractor's superintending staff are not fluent in English language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

### **IB.11 Cost of Bidding**

- 11.1 The Bidder shall be responsible for all fees, costs and expenses incurred in preparing and negotiating any proposal submitted by it, and the Employer shall under no circumstances become liable to reimburse any Bidder for any such fees, costs or expenses regardless of the conduct or outcome of the



bidding process.

**IB.12 Site Visit**

12.1 The Bidders are advised to visit and examine the site of the Works and its surroundings and to obtain for itself on its own responsibility, all information that may be necessary for preparing the Bid and entering into a Concession Contract Agreement. The costs incurred in visiting the site shall be at the Bidder's own expense.

**IB.13 Acceptability of Bid**

13.1 The Bidder is expected to examine carefully all instructions, conditions, forms, terms, specifications and requirements of bid submission. Bids will be at the Bidder's own risk. Bids that are not substantially responsive to the requirements of the Bidding Documents will be rejected, except as provided for under Clause IB 24.

**IB.14 Clarification of Bidding Documents**

14.1 A prospective Bidder requiring any clarification of the Bidding Documents may notify the Employer in writing or by telex, cable or facsimile at the Employer's address given in the Bidding Data

14.2 The Employer will respond in writing to any requests for clarification that it receives earlier than 21 days prior to the Bid Submission Date. Written copies of the Employer's response (including an explanation of the query but without identifying the source of the inquiry) will be sent to all prospective Bidders who have received the Bidding Documents.

**IB.15 Amendment of Bidding Documents**

15.1 At any time prior to the Bid Submission Date, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Bidding Documents by amendment.

15.2 The amendment will be notified in writing or by telex, cable or facsimile to all prospective Bidders who have received the Bidding Documents, and will be binding upon them.

15.3 In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, the Employer may, at its discretion, extend the deadline for the submission of Bids.

**C PREPARATION OF BID**

**IB.16 Documents Comprising the Bid**

16.1 The Bid to be prepared by the Bidder shall comprise two stages as follows:

**Part-1 Submission of Technical Proposal:**

- a) Bid Security;
- b) Bidder's Qualification Information and Technical Proposal as required under the Bidding Documents along with Letter of Technical Proposal;
- c) Project Appreciation Statement;
- d) Statement of Land Requirements;
- e) Statement of Bid Conformity;
- f) Any Other Information as Required by the Employer as mentioned in the Bidding Data.

**Part-2 Submission of Financial Proposal:**

- a) Statement of Capital and Operating Costs;
- b) Statement of Revenues;
- c) Financial Analysis of the Project;
- d) Proposed Financial Package along with the Letter of Financial Proposal
- e) Any Other Information as Required by the Employer as mentioned in the Bidding Data.

16.2 The Bidding Documents shall themselves be deemed to be part of the Bid.

16.3 General guidance relating to the information to be provided by Bidders are given in the Annexures/Appendices.

**IB.17 Language of Bid**

17.1 The Bid prepared by the Bidder, and all correspondence and documents relating to the Bid exchanged by the Bidder and the Employer, shall be written in English. Supporting documents and printed literature furnished by the Bidder with the Bid may be in Urdu or other languages, provided they are accompanied by an appropriate translation of pertinent passages in the above stated language. For the purpose of interpretation of the Bid, the English language shall prevail.

**IB.18 Currency of Bid**

18.1 All monetary values quoted in the Bid shall be in the equivalent Pakistan Rupees.

**IB.19 Bid Validity**

19.1 The Bid shall remain valid and open for acceptance for a period as stated in the Bidding Data from the Bid Submission Date. In exceptional

circumstances, prior to expiry of the original bid validity period, the Employer may request Bidders to grant a specified extension in the period of validity. However, the period of extension should not exceed the original period of bid validity. The request and the responses thereto shall be made in writing or by cable, electronic mail or facsimile. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder agreeing to the request will not be required nor permitted to modify its bid, but will be required to extend the validity of its Bid Security correspondingly.

## **IB.20 Bid Security**

- 20.1 The Bid shall be accompanied by a Bid Security for a fixed amount as stated in the Bidding Data.
- 20.2 The Bid Security shall be denominated in the currency of the bid, or in US Dollars, and shall be in the form of a cash deposit, a certified cheque, a bank draft, an irrevocable letter of credit or a guarantee from a schedule bank in the Islamic Republic of Pakistan or a bank of a country abroad acceptable to the Employer.
- 20.3 The format of the bank guarantee shall be in accordance with the Sample Bid Security included in these Bidding Documents. No other formats shall be accepted.
- 20.4 Any Bid not accompanied by the required Bid Security, or accompanied by a Bid Security in an amount less than that required, will be rejected by the Employer as non-responsive.
- 20.5 The Bid Securities of all participating Bidders will be discharged/returned as promptly as possible after the successful Bidder has signed the Concession Agreement and has provided the required performance security for Construction Phase as per Bidding Data in favour of the Employer.
- 20.6 The Bid Security may be forfeited:
- a) If a Bidder withdraws its Bid during the period of bid validity: or
  - b) In the case of a successful Bidder, if it fails within the specified times to
    - i. Furnish the necessary Performance Security for Construction Phase
    - ii. Sign the Concession Contract Agreement; or
    - iii. Achieve Financial Close.
  - c) In case of default as expressed in Clause IB 3.

## **IB.21 Pre-bid Meeting**

- 21.1 The Bidders or their authorised representatives are advised to attend a pre-bid meeting.

- 21.2 The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage. The Bidders are requested to submit any substantive questions in writing or by cable, telex or facsimile to reach the Employer not later than one week before the meeting.
- 21.3 Minutes of the meeting, including copies of the questions raised and responses given, will be furnished expeditiously to all those attending the meeting (and to other prospective Bidders on request), and shall form an integral part of the Bidding Documents, in the form of Addenda.

#### **IB.22 Conformity with the Bidding Documents**

- 22.1 The Bidder must submit a Conforming (Bona Fide) Bid that conforms in all respects with the requirements of the Bidding Documents. In addition, the Bidder may submit one or more Alternative Conforming (Bona Fide) Bids and/or one or more Non-Conforming Bids, if it so wishes.

#### **IB.23 Conforming (Bona Fide) Bids**

- 23.1 A Conforming Bid is a bid that conforms in full, both in engineering and operational terms with the Employer's Conforming Scheme, and in financial, organisational and obligation terms with the General Conditions of Concession Contract, except for minor departures that do not materially affect the design, construction method or operational characteristics of the Project or the financial, organisational or obligation regime under which the Concession will be conducted. All such minor departures, if they exist, must be clearly identified and fully described in the Bid, and in particular the financial, programming and any other practical implications of a departure must be explained. If the Bid contains no deviations from the Conforming Scheme a positive statement to this effect must be made.
- 23.2 The Employer shall determine whether a Bid is a Conforming (Bona Fide) Bid. However, the Employer's decision may be reviewed and bidder's grievances/complaints, that may occur prior to the entry into force of the procurement contract, shall be addressed by the committee constituted by the Employer comprising odd number of persons with proper powers and authorizations.
- 23.3 If more than one Conforming (Bona Fide) Bid (e.g. involving different financial and commercial terms) is to be submitted, each must be clearly numbered according to the Bidder's preference.

#### **IB.24 Non-Conforming Bids**

- 24.1 Alternative designs and alternative proposals in relation to financial, organisational and obligation aspects, which differ in whole or part from the requirements of the Bidding Documents, may be considered by the Employer, at its own discretion. Such Bids will only be considered if they are accompanied by a Conforming (Bona Fide) Bid.
- 24.2 In addition, Non-Conforming Bids will only be eligible for consideration if

they:

- a) are on the basis of design, build, operate and transfer arrangements;  
and
- b) do not involve any significant delay in the execution of the Works.

24.3 If a Non-Conforming Bid is submitted, it must be clearly identified as such and, in cases where more than one Non-Conforming Bid is to be submitted, each must be clearly numbered according to the Bidder's preference.

24.4 For the Employer to examine a Non-Conforming Bid the Bidder must demonstrate with full supporting evidence that the proposal is well researched and is technically feasible, that the proposed Work Programme is well researched and that there are engineering, financial, programming and/or operational advantages over the proposals set out in the Bidding Documents.

## **IB.25 Format and Signing of Bids**

25.1 The Bidder shall prepare, in separate volumes, five (5) copies of the documents comprising Part 1 and Part 2 of the Bid, as described in Clause IB 16.1, clearly marked and numbered 'Part 1' and 'Part 2' and 'Original Bid' and 'First (to Fifth) Copy of Bid' as appropriate. In the event of any discrepancy between them, the original shall govern.

25.2 The original and copies of the Bid shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to bind the Bidder to the offer. Proof of authorisation shall be furnished in the form of a written Power-of-Attorney, which shall accompany the Bid. All pages of the Bid, except for un-amended printed material, shall be initialled by the person or persons signing the Bid.

25.3 The complete Bid shall be without alterations, interlineations or erasures, except as necessary to correct errors made by the Bidder, in which case such corrections shall be initialled by the person or persons signing the Bid.

## **D SUBMISSION AND OPENING OF BIDS**

### **IB.26 Sealing and Marking of Bids**

- 26.1 The Bidder shall seal the Technical Proposal and Financial Proposal, in pursuant to Clauses IB 16.1 and 25.1 in separate envelopes, which must bear the signature of the Bidder's authorised representative.
- 26.2 The original and 5 (five) copies of Part-1 of the Bid shall be sealed into an envelope and shall be:
- a) addressed to the Employer; and
  - b) bear the following identification:
    - i. PART-1 (TECHNICAL PROPOSAL)
    - ii. BID FOR *[mention name of the Project]*
    - iii. REF. No *[mention the same number as on Notice for Expression of Interest]*
    - iv. The Words "DO NOT OPEN BEFORE *[mention date and time of Bid Opening for Technical Proposal]*"
- 26.3 The original and 5 (five) copies of Part-2 Financial Proposal of the Bid shall be sealed into an envelope and shall:
- a) be addressed to the Employer; and
  - b) bear the following identification:
    - i. PART 2 (FINANCIAL PROPOSAL)
    - ii. BID FOR *[mention name of the Project]*
    - iii. REF. No *[mention the same number as on Notice for Expression of Interest]*
    - iv. The Words "DO NOT OPEN BEFORE *[mention date and time of Bid Opening for Financial Proposal]*"
- 26.4 The envelopes shall also indicate the name and address of the Bidder to enable the Bid to be returned unopened in case it is declared 'late'.
- 26.5 If the envelope is not sealed and marked as instructed above, the Employer will assume no responsibility for the misplacement or premature opening of the Bid. Any Bid that is opened prematurely will be rejected by the Employer and returned to the Bidder.

### **IB.27 Bid Submission Date**

- 27.1 Bids for Part-1 and Part-2 for Technical and Financial Proposals, must be received by the Employer at the address specified in the Bidding Data not later than the date (s) and time (s) specified in the Bidding Data in accordance with type of Bidding procedure as mentioned in the Bidding Data.

27.2 The Employer may, at its discretion, extend the deadline for the submission of Bids through the issue of an Amendment in accordance with Clause 15, in which case all rights and obligations of the Employer and the Bidders previously subject to the deadline will thereafter be subjected to the deadline as extended.

**IB.28 Late Bids**

28.1 Any Bid received by the Employer after the specified Bid Submission Date and Time will be returned unopened to the Bidder.

**IB.29 Modifications and Withdrawal of Bids**

29.1 The Bidder may modify and withdraw its Bid after submission, provided that written notice of the modification or withdrawal is received by the Employer prior to the prescribed deadline for submission of Bids.

29.2 The Bidder's modification or withdrawal notice shall be prepared, sealed, marked and dispatched in accordance with the provision for the submission of Bids. A withdrawal notice may also be sent by telex, cable or facsimile but followed by a signed confirmation copy, postmarked not later than the deadline for submission of Bids.

29.3 No Bid may be modified subsequent to the deadline for submission of Bids.

29.4 No Bid may be withdrawn in the interval between the Bid Submission Date and the expiration of the period of Bid Validity. Withdrawal of a Bid during this interval may result in the forfeiture of the Bid Security.

29.5 Subsequent to the expiration of the period of validity of Bids prescribed by the Employer, a Bidder that has not been notified by the Employer of the award of a Concession may withdraw its Bid without penalty.

**IB.30 Opening of Bids**

30.1 The Employer will open the Bids in two stages, Stage-1 Technical Proposal and Stage-2 Financial Proposal in the presence of Bidders' representatives. The Bidders' representatives who are present shall sign a register evidencing their attendance.

30.2 The Employer will examine the Bids to determine whether they are complete, whether the requisite Bid Securities have been furnished, whether the documents have been properly signed, and whether the Bids are generally in order.

30.3 The Bidder's names, bid modifications or withdrawals (if any), the presence of the requisite Bid Security and such other details as the Employer at its discretion may consider appropriate, will be announced at the Bid Opening.

30.4 The Employer shall prepare minutes of the Bid Opening for its own records.

**IB.31 Confidentiality**

- 31.1 After the Bid Opening, information relating to the examination, clarification, evaluation and comparison of Bids and recommendations concerning the award of a Concession shall not be disclosed to Bidders, or other persons not officially concerned with such process, until the award of the Concession is announced.
- 31.2 Any effort by a Bidder to influence the Employer in the process of examination, clarification, comparison and evaluation of Bids, or decisions concerning award of a Concession, may result in the rejection of that Bidder's Bid(s).

**E. ASSESSMENT OF BIDS**

**IB.32 Determination of Conformity**

- 32.1 Prior to the detailed evaluation of Bids, the Employer will determine whether each Conforming (Bona Fide) Bid is substantially responsive to the requirements of the Bidding Documents.
- 32.2 For the purpose of this Clause, a substantially responsive Bid is one that conforms to all the terms, conditions and specifications of the Bidding Documents without material deviation or reservation. A material deviation or reservation is one that affects in any substantial way, relative to the requirements of the Bidding Documents, the:
  - a) form, scope, quality, completion or timing of the Construction Phase of the proposed Concession; or
  - b) administration, maintenance and operating regime for the Operation Phase of the proposed Concession; or
  - c) financial regime within which the proposed Concession will be carried out or that limits in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Concession, or that would affect unfairly the competitive position of other Bidders who have presented Conforming Bids.
- 32.3 A Conforming (Bona Fide) Bid determined to be substantially non-responsive will be rejected by the Employer and may not subsequently be made responsive by the Bidder by correction of the non-conformity.
- 32.4 The Employer may accept any non-material deviation or reservation provided that the acceptance thereof does not prejudice or affect the relative ranking order of any Bidder in the evaluation of Bids.

**IB.33 Consideration of Non-Conforming Bids**

- 33.1 The Employer may, at its discretion, take forward any Non-Conforming Bid for evaluation, provided that such Bids are determined by the Employer to satisfy all the requirements of Clause IB 24.



#### **IB.34 Clarification of Bids**

- 34.1 To assist in the examination, evaluation and comparison of Bids, the Employer may ask Bidders individually for clarification of any element of their Bid(s). The request for clarification and the response shall be in writing or cable, telex or facsimile, but no change in the financial aspects or substance of the Bid shall be sought, offered or permitted except as required to confirm the correction of arithmetical errors discovered by the Employer during the evaluation of the Bids.
- 34.2 Bidders will be obliged to respond promptly to all requests for clarification and to provide all clarifications requested within the period mentioned in the requests failing which the Bid may be rejected.

#### **IB.35 Correction of Arithmetical Errors**

- 35.1 Bids determined to be substantially responsive and, subject to the discretion of the Employer, Non-Conforming Bids that are determined to satisfy the requirements of Clause 24 will be checked by the Employer for any arithmetical errors in computation and summation.
- 35.2 Errors will be corrected by the Employer as follows:
- a) Where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and
  - b) Where there is a discrepancy between the unit monetary values and the total amount derived from either summation or through the multiplication of the unit monetary value by a factoring value, the unit monetary value as quoted will normally govern unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit monetary value, in which event the total amount as quoted will govern.
- 35.3 If a Bidder does not accept the correction of errors as above, its Bid will be rejected.

#### **IB.36 Presentation by the Bidders**

- 36.1 To assist the evaluation of Bids, each Bidder will be required to present its Technical Proposals to the Employer in a meeting to be arranged at time and date as stated in Bidding Data. These meetings must be attended by the Bidder and its engineers/consultants. The main purpose of these meetings will be:
- a) to provide the Bidder with the opportunity to present the details and merits of the technical and operational aspects of its Bid to the Employer; and
  - b) to allow the Employer to seek clarification on any technical and operational matters.

- 36.3 No commercial aspects of the Bid will be discussed at these presentations and no negotiations will take place.
- 36.4 The Technical Scope of the Project will be discussed and Updated during the course of meeting.

## **F DETAILED BID EVALUATION**

### **IB.37 Two Stages Process**

- 37.1 The detailed evaluation of the Bids will be carried out as a Two-Stage process with scores being assigned to each Bid during each Stage of the evaluation. Those Bids that, in the view of the Employer, fail to satisfy minimum requirements during the Stage-1 of the evaluation will not be taken forward to Stage-2 of the evaluation process.

### **IB.38 Stage- 1 - Bidder's Capability and Technical Proposal**

- 38.1 The aim of the Stage-1 evaluation will be to determine the ability of the Bidder to finance, construct and manage the Project, and to evaluate the level of competence shown by the Bidder, in terms of its understanding of the engineering, operational and maintenance aspects of the Project.
- 38.2 The assessment will consider the Bidder's previous experience in projects of this complexity and magnitude. Particular credit will be given to those Bidders who have in-house experience in the engineering design, financing, construction and management of public sector infrastructure projects, and particular emphasis will be placed on the robustness of the proposed Works Programme, the Project Appreciation Statement and the appropriateness of the proposed operating and maintenance regimes that will be employed during the Concession Period.
- 38.3 Also of importance will be the financial strength of the Bidder and its shareholders, together with their potential ability to arrange an appropriate financing package in support of the Project.
- 38.4 In the case of Non-Conforming Bids subject to Sub Clause IB 24.1 the relative technical advantages and disadvantages of any non-conformity will be assessed separately, to be used to off-set any financial disadvantage or advantage that may be gained by the Bidder in the evaluation of the Part- 2 submission.
- 38.5 The Technical Proposals are opened at the date and time specified in the Bidding Data. The Technical Proposals shall be evaluated and discussed with the Bidders.

Any deficiencies, extraneous provisions and unsatisfactory technical features shall be pointed out to the Bidders whose comments are carefully evaluated during a post bid meeting at the date and time set by the Employer. The Bidders shall be allowed to revise or adjust their Technical Proposals to meet the requirements of the Employer so that all Technical Proposals conform to the same acceptable technical standard and meet the technical solution

required by the Employer. Bids of the Bidders who are unable or unwilling to bring their bids to conform to the acceptable technical standard shall be rejected as non conforming bids.

After the evaluation of Technical Proposals as above, the second stage is to invite Bidders to submit Financial Proposals and Revised Technical Proposals in compliance with the acceptable technical standard. The Revised Technical Proposals and Price Proposals are opened in public at date and time informed by the Employer.

#### **IB.39 Stage- 2 - The Financial Proposal**

39.1 The Revised Technical Proposals and Financial Proposals are opened at the date and time informed by the Employer. *[In setting the date the Employer should allow sufficient time for Bidders to incorporate the changes involved in the Technical Proposals and prepare Financial Proposals.]*

The Financial Proposals and Revised Technical Proposals are evaluated by the Employer and its advisers in strict confidence. Subject to Sub-Clause 31.1, the Employer will not provide the assessment results or reasons in support of its assessments to any Bidders or third party.

39.2 In the case of Non-Conforming Bids, subject to Sub-Clauses IB 24.1 and 38.4, any additional financial benefit that results from non-conformity will be balanced against any consequent financial, economic, environmental or other disadvantage to the Employer or the community as a whole. Any technical implications of non-conformity will also be considered in this adjustment process.

#### **IB.40 Assessment Process**

40.1 The assessment process will be carried out by the Employer and its advisers in strict confidence. Subject to Sub-Clause IB 31.1, the Employer will not provide the assessment results or reasons in support of its assessments to any Bidder or third party.

40.2 Bidders should note that the Employer is not bound to accept any Bid and may at any time, by notice in writing to any Bidders, terminate the bidding and assessment process in relation to their Bids or any proposals contained therein.

#### **IB.41 Award of Concession Contract**

41.1 Subsequent to the detailed evaluation of the Financial Proposals and Revised Technical Proposals, the Employer will award the Concession Contract to the successful Bidder, on the basis of being most beneficial to the Employer.

41.2 Upon selection by the Employer the successful Bidder will be required, within a period of 45 (forty five) days or as stated in the Bidding Data, to enter into a Concession Contract Agreement with the Employer, having previously secured a Performance Security for Construction Phase to the value of 15 percent, or as stated in the Bidding Data, of the value of the

construction costs. The successful Bidder will be required to achieve Financial Close within a period of 90 (ninety) days, or as stated in the Bidding Data, from the Effective Date of the Concession Agreement.

- 41.3 Failure to fulfil any of the above requirements within the specified time will, unless otherwise agreed by both parties, result in the forfeiture of the Bidder's Bid Security.
- 41.4 In the event of the successful Bidder forfeiting its Bid Security the Employer may, at its discretion, either invite another Bidder to negotiate or terminate the bidding process.

## **G. INFORMATION TO BE PROVIDED BY BIDDERS**

### **IB.42 Information to be Provided by the Bidders**

- 42.1 This section sets out, for the information and guidance of Bidders, the Employer's minimum requirements in terms of the contents of the Bid. It is emphasised that these are minimum requirements that may be supplemented by more detailed information, as deemed necessary by the Bidder.
- 42.2 Bidders should note that the information and guidance provided in this Section has been prepared to assist them in completing their submissions. The Employer reserves the right to request any further information and clarification that it may deem necessary to carry out the detailed evaluation of Bids.
- 42.3 The Bid shall be presented in two parts, namely Part-1 and Part-2. The minimum contents of each Part are to be as follows:

### **IB.43 Part-1 Submission**

#### **43.1 General**

The Part-1 submission should be divided into sections, which should set out the minimum information indicated in the following sections.

#### **43.2 Bid Security**

The Bid Security should comply with the requirements of Clauses IB 20.

#### **43.3 Bidder's Capability Statement**

The Bidder's Capability Statement will set out minimum information concerning the financial and corporate structure, experience and financial standing of the Bidder's organisation or consortium as given in the following paragraphs.

#### **43.4 Constitution or Legal Status**

Copies of original documents defining the constitution or legal status and place of registration of the company or firm or, in the case of a joint venture, of each party thereto constituting the Bidder will be submitted.

#### **43.5 Corporate Structure**

Where the Bidder is a joint venture of two or more companies or firms, a statement signed by all parties to the joint venture of the proposed administrative arrangements for the management and execution of the Concession, the duties, responsibilities and share of each party, the authorised representative of the joint venture, and an undertaking that the parties are jointly and severally liable to the Employer for the performance of the Concession.

#### **43.6 Relevant Experience**

Details of the experience and past performance of the Bidder (or of each party to a joint venture) on projects of a similar nature within the past five years, and details of current projects in hand and other contractual commitments have to be submitted.

#### **43.7 Organisational Structure**

A chart indicating the basic organisational structure(s) of the Bidder specifying the responsibilities of each organisational unit of the proposed Concession Company is required.

#### **43.8 Key Project Personnel**

The qualifications and experience of the key personnel proposed for administration and execution of the Concession, during the design, construction and operating phases of the Concession.

#### **43.9 Audited Accounts**

43.9.1 Bidders shall provide audited accounts for a minimum of the latest 5 years, together with the most recently published interim accounts (if available), an estimated financial projection for the next two years, and an authority from the Bidder (or authorised representative of a joint venture) to seek references from the Bidder's bankers for the:

- a) Proposed Concession Company (where available);
- b) Each proposed shareholder of the proposed Concession Company;
- c) The parent (and, if any, ultimate parent) company of each proposed shareholder of the proposed Concession Company;
- d) Proposed consultants; and
- e) Proposed contractors

together with a statement giving details of any off-balance sheet liabilities including contingent liabilities.

43.9.2 In the absence of audited accounts, a statement detailing the financial strength of the institutions and/or individuals involved should be provided.

#### **43.10 Shareholders**

43.10.1 Bidders shall provide in each Bid details of shareholders, their respective shareholdings, their respective capital contributions and the proposed capital structure of the Concession Company.

43.10.2 Bidders should note that where subsequent changes are proposed in shareholding prior to the award of the Concession, the Employer's consent must be sought. It should also be noted that, following award of the Concession, the Employer may place restrictions upon changes to and transfers of the shareholding in the Concession Company.

#### **43.11 Project Appreciation Statement**

43.11.1 Specifications and drawings describing the design and layout of the Employer's Conforming Scheme are included within these Bidding Documents. These are provided for the Bidders' guidance and information.

43.11.2 In considering these proposals the Bidder should note that the Employer, its Consultants and its advisers will take no responsibility for the accuracy or practicality of the proposals, and that it is the Bidders' responsibility to verify or replace the information, assumptions and projections that are contained within these Bidding Documents and elsewhere; In the event that errors or omissions are found, to correct and supplement data as appropriate.

43.11.3 In order to demonstrate their understanding of the form, scope and complexity of the Project, Bidders shall prepare a 'Project Appreciation Statement' setting out the construction, operation and maintenance philosophy that is to be adopted for each significant element of the Project. This statement will include, but not be limited to, details of:

- a) The construction method and operations management and maintenance of the project;
- b) The construction methods to be adopted in the construction of all major components of the Infrastructure/Facility.
- c) The construction material requirements of the Project and their availability, the location of borrow pits and spoil areas and the implications of importing any raw or finished materials;
- d) The machinery, Plant and labour needs of the Project and the requirement for associated working and accommodation areas;
- e) Any particular problems that might be experienced during construction and the measures to be taken to overcome these; such problems might include poor soil conditions, contaminated land and flood susceptibility during the monsoon season;
- f) The operational methodology to be adopted; including

tolls/fees/charges collection procedures, monitoring procedures and other service provision; and

- g) The proposed maintenance regime including the organisational system that will be adopted for routine maintenance and repair, longer-term inspection, monitoring and rectification of identified defects and normal deterioration of Infrastructure/Facility.

#### **43.12 Statement of Proposed Technical Changes to the Conforming Scheme**

43.12.1 In the event that the Bidder shall conclude, as a result of its 'Project Appreciation Statement', or otherwise, that it wishes to modify the proposals contained in the Conforming Scheme, either materially or otherwise, the Bidder shall provide supporting drawings and calculations to justify the proposed deviations from the Conforming Scheme.

43.12.2 Such deviations shall be designed and evaluated, by the Bidder, in sufficient detail as to indicate, as a minimum:

- a) Any changes in the layout, line and level for the Infrastructure/Facility or its ancillary features;
- b) Any changes in the land requirements for the proposal;
- c) Any changes in the choice of materials; and
- d) Any consequential changes in terms of the design life, operational characteristics and maintenance needs of the facility.

43.12.3 The results of these studies shall be included, by the Bidder, in a 'Statement of Proposed Technical Changes to the Conforming Scheme'.

43.12.4 In the event that the Bidder should decide to adopt the Conforming Scheme, without amendment, a statement to this effect should be given.

#### **43.13 Statement of Land Requirements**

The Bidder shall provide statement of additional land requirements (if any). All cost relating to land requirements, shifting of utilities, resettlement issues etc. shall be borne by the Bidder. Employer shall however provide all possible assistance in this regard except financial.

#### **43.14 Work Programme**

43.14.1 The Bidder shall provide a detailed Work Programme, showing in quarterly intervals the anticipated start-up and construction schedule to achieve the Availability Date specified in Clause IB 5.

43.14.2 In preparing this Work Programme, Bidders are advised that it will be a condition of the Concession Agreement that specified sections of the Project are completed and available for use at specified times. Failure to meet these specified targets will result in the imposition of penalties on the Concession Company.

#### **43.15 Statement of Bid Conformity**

- 43.15.1 The Bidder shall submit a Statement of Bid Conformity, stating whether or not the Bid conforms to all the requirements of the Bidding Documents. The requirements for bid conformity are set out in Clauses IB 32.1 and 32.2. This statement shall include a list of all non-material departures from the Bidding Documents together with any areas of significant non-conformity.
- 43.15.2 Bidders should note when preparing their submissions that all deviations from the Bidding Documents should be listed. Such deviations may include, but not be limited to:
- a) Any changes to the layout, form or scope of the Conforming Scheme;
  - b) Any changes to the Land Requirements Plan; and
  - c) Any proposed changes to the Form of Concession Contract Agreement.

#### **IB.44 Part-2 Submission**

##### **44.1 General**

The Part-2 Submission should be divided into sections as set out below and each section should provide, as a minimum, the information indicated in the following sections:

##### **44.2 Statement of Capital and Operating Costs**

The Bidder's Statement of Capital and Operating Costs should provide the following minimum information, set out in the format indicated below.

##### **44.3 Capital Costs**

- 44.3.1 A Breakdown of capital/construction costs on a quarterly basis, divided into the appropriate sections is to be provided by the Bidder for each section of the Project.
- 44.3.2 In addition, information should be provided regarding design, consultancy and project management fees, contingency costs and insurance costs.
- 44.3.3 The construction costs set out in the Bidder's submission should not include financing costs (such as capitalised interest, etc.).
- 44.3.4 All capital cost estimates should make due allowance for any incentives that may be available to the Concession Company.

##### **44.4 Operation and Maintenance Costs**

- 44.4.1 The Bidder shall provide details of estimated Operation and Maintenance Costs during the first and each subsequent year of operation. The following minimum information should be provided:
- a) Tolls/benefits/fees etc. collection costs;



- b) Routine monitoring, and allied service costs;
- c) Other administration costs;
- d) Costs associated with routine inspection and maintenance programmes; and
- e) The anticipated cost of periodic maintenance programmes.

General Design Criteria, Operational & Maintenance Requirements are attached at **Appendices to Bid**.

44.4.2 All operation and maintenance costs should make due allowance for any incentives that may be available to the Concession Company.

44.4.3 All operation and maintenance costs should be quoted at both *[month and year to be mentioned if needed]* prices and money of the day prices. All assumptions regarding future inflation and the applicable method used for such calculations must be clearly stated.

#### **44.5 Statement of Revenues**

The Statement of Revenues shall include, but not be limited to, information regarding each of the following.

#### **44.6 Operating Capacity**

The Bidder is to state in detail the operational capacity (such as traffic activity, power generation, building services etc).

#### **44.7 Levels of Tolls/Benefits/Fees etc**

The Bidder shall state in its Bid the approved rates for levels of tolls/benefits/fees etc. that will be adopted during the first year of operation. These will then form the basis for the application of future escalation.

#### **44.8 Revenues**

The Bidder shall set out in tabular form the expected revenues, on a yearly basis throughout the period of the Concession. The submission should clearly indicate the expected revenue from the generation sources, and should be accompanied by sufficient supporting documentation to allow the Employer to verify the viability of the overall financial proposal.

#### **44.9 Financial Analysis of the Project**

The Bidder shall provide a detailed forecast annual balance sheet, as well as profit and loss and cash flow projections for the Project for the duration of the Concession Period. In presenting this information the Bidder shall clearly set out each of the following:

#### **44.10 The Proposed Financial Package**

44.10.1 Each element of the financial package shall be clearly identified. The information provided shall include, but not be limited to:

- a) The proposed level of equity to be provided, the source of such equity, the proposed 'draw-down profile' for this equity and the rate of return that is required on this equity; and
- b) The level of senior debt that will be sought, and the source(s), form(s), anticipated interest rate(s) and repayment profile(s) for such loan(s).

44.10.2 Particular merit will be given, during the evaluation process to those Bidders whose submissions minimise the need for public sector financing.

#### **44.11 Taxation**

The Concession Company's obligations to taxation and any taxation allowances are clearly identified in the Concession Contract Agreement. The Bidder should state its acceptance of these obligations and should show the extent and timing of its tax provision and the proposed tax depreciation policy that will be adopted for each category of asset. (It should be assumed for taxation purposes that the residual value of all assets at the end of the Concession Period will be zero).

#### **44.12 Profit Sharing with the Employer**

The Bid will be based on the condition that the Employer will receive a minimum of %age share of gross revenue, as stated in the Bidding Data, accruing to the Project in any year, once the project achieves positive cash flow. The anticipated payments to the Employer under this profit sharing provision shall be clearly indicated in the Bid. The year of Revenue Sharing with the GOP will be clearly stated.

#### **44.13 Other Information**

Any other information that is needed to provide a clear understanding of the Bidder's financial analysis should be included in this section of the submission.

#### **44.14 Letter of Financial Proposal**

A definitive summary of the key elements of the Bid shall be provided by the Bidder. This statement shall include the following information:

- a) The Concession Company's equity commitment;
- b) Schedule of public sector grant requirements, showing amounts required and dates on which payments will be due;
- c) Schedule of first year toll/benefits/fees etc. rates
- d) Schedule of amendments that will be sought prior to the signing of a Concession Agreement (if any);
- e) Schedule of land requirements (if any) that are envisaged; and

- f) Schedule of any other conditions that are attached to the Bid (if any).

## **H. MISCELLANEOUS**

### **IB.45 Bidders to be Careful**

- 45.1 Bidder should take care of local Laws, statutes, regulations, Government investment policies in order to make the bids complying with Country regulation.
- 45.2 Employer shall not assume any responsibility and shall stand indemnified against any or all information provided in the Bidding Documents as far as the Project data and figures are concerned. The Bidders are instructed to carry out their own detailed studies to confirm the Project viability and submit the bids accordingly. The Project documents merely provide information which is deemed useful by Employer for the Bidders to initiate study of the Project. It may be further understood that Employer is providing this information with best of intents and has tried its best to provide as correct as possible information.
- 45.3 If there arises any further need of addition to the existing Bidding Documents, the same shall be attended through addendum. All such addenda shall form part of the Bidding Documents.
- 45.4 The documents as mentioned in this Bidding Documents shall form the integral part of the overall Agreement and all the conditions contained shall prevail, unless specifically amended or changed or added or deleted through mutual agreement of the Employer and the successful Bidder.

# **BIDDING DATA**

**[NOTES ON BIDDING DATA**

This Section is intended to assist the Employer in providing the specific information in relation to corresponding clauses in Instructions to Bidders and should be prepared to suit each individual Project.

The Employer should provide in the Bidding Data information and requirements specific to the circumstances of the Employer, the processing of the Bid, the applicable rules, and the Bid evaluation criteria that will apply to the Bids. In preparing this section, the following aspects should be checked:

- (a) Information that specifies and complements the provisions of section; Instruction to Bidders must be incorporated.
- (b) Amendments and/or supplements, if any, to the provisions of Instructions to Bidders, necessitated by the circumstances of each individual contract, can be introduced only in this section since Instructions to Bidders will remain unchanged. However, Clauses 42 to 44 may be modified/elaborated by the Employer for making them Project specific.]

## BIDDING DATA

(This section should be filled in by the Employer before issuance of the Bidding Documents.)  
The following specific data for the Works to be bidden shall complement, amend, or supplement the provisions in the Instructions to Bidders. Wherever there is a conflict, the provisions herein shall prevail over those in the Instructions to Bidders.

*[Instructions are provided, as needed, in italics.]*

Instructions to Bidders

Clause Reference

### **1.1 Introduction:**

*[Employer has to explain in more detail the Scope of the Project to the private sectors for submission of their proposals constructed on basis of Build, Operate and Transfer]*

### **2.2 The Project Brief**

*[Employer to describe the nature of project, location of project, all related major/minor Structures and reference to the standards of design, construction, maintenance and operation requirements]*

## **2 The Concession**

- (a) *[Employer to mention the concession period]*
- (b) *[Employer to mention the minimum figure in %age for equity investment]*
- (c) *[Employer to mention the requirement of %age share, if any, otherwise delete this clause]*
- (d) *[Employer to provide the Formula for calculating the escalation of benefits/tolls/fees/charges]*

### **14.1 Clarification of Bidding Documents**

*[Employer's full mailing address and other contact details]*

### **16.1 Part-1 Submission of Technical Proposal**

- f. Other Information as Required by the Employer  
*[Employer may state or otherwise write "Not Applicable"]*

### **16.1 Part-2 Submission of Financial Proposal**

- e. Other Information as Required by the Employer  
*[Employer may state or otherwise write "Not Applicable"]*

### **19.1 Bid Validity**

*[Employer to mention the period in days keeping in mind the type and complexity of the Project, time required for obtaining references, clarifications, clearances, approvals and for notification of the award]*

## 20.1 Bid Security

*[This amount should be mentioned by the Employer. It should be the same as also quoted in the Expression of Interest. To avoid disclosure of bidders' prices originating in the financial institution issuing the security, a fixed sum should be specified, in preference to a percentage of the Bid Price.]*

## 20.5 Performance Security for Construction Phase

*[The successful Bidder/Company shall prior to the Effective Date, provide the Employer with an unconditional, irrevocable and without recourse Performance Security in a form acceptable to the Employer and from a scheduled bank or an international prime bank approved by the Employer ('the Bank'). Such Performance Security shall be in the amount equivalent to five percent (5%) of the Project cost, as adjusted from time to time, to secure all the Concession Company's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under the Concession Contract for this Project including the integrity and quality of the Concession Company's workmanship, the erection work/activities performed by the Concession Company and for equipment procured and provided by the Concession Company and all other works and services to be provided by the Concession Company under this Agreement]*

## 26.2 Sealing and Marking of Bids

*[Mention name of the Project]*

*[Mention the same Reference number as on Notice for Expression of Interest]*

*[Mention date and time of Bid Opening, Date should be the same as that given for the dead line for submission of Bids (Clause IB27)]*

## 27.1 Bid Submission

*[Mention Employer's address for the purpose of Bid submission which should match the receiving address as provided in the Notice for Expression of Interest]*

### **Bidding Procedure to be followed wherein:**

- (i) The date and time for submission of Part-I along with Part-II shall be the same i.e *[mention the date and time as on Notice for Expression of Interest]*; or
- (ii) The date and time for submission of part I only shall be *[mention date & time as per Notice for Expression of Interest]* whereas the date & time for submission of revised Part I along with Part II shall be informed in due course of time; or
- (iii) The date and time for submission of part I and part II shall be *[mention date & time as per Notice for Expression of Interest]* whereas the date & time for submission of revised Part I and supplementary Part II shall be informed in due course of time.

*[Employer to strike out two of the above three options and keep the one which is most appropriate for the project. These instructions to Bidders have been drafted for option (ii) and thus need amendments essentially in case of option (i) or (iii) above]*

**BD-4**

**36.1 Presentation by the Bidders**

*[Time and date to be mentioned by the Employer].*

**44.4.3 Operation and Maintenance Costs**

*[month and year to be mentioned by the Bidder if needed]*

**44.12 Profit Sharing with the Employer**

*[Employer to mention %age share]*



## SPECIAL STIPULATIONS

- Project: \_\_\_\_\_
  
- Promoters / Sponsors / Developers: \_\_\_\_\_
  
- Proposed Promoter/Developer: \_\_\_\_\_
  
- Cost of the Project
  - (i) Construction Cost: \_\_\_\_\_
  - (ii) Engineering Cost: \_\_\_\_\_
  - (iii) Other Costs: \_\_\_\_\_
  
- Construction Period: \_\_\_\_\_
  
- Financial Arrangements:
  - (i) Equity: \_\_\_\_\_
  - (ii) Debt: \_\_\_\_\_
  
- Concession Period: \_\_\_\_\_ years including construction period (from effective date as specified)
  
- Toll Levels/Benefits/Fees: \_\_\_\_\_
  
- Revenue Sharing with GOP consequent to principal debt servicing: Minimum Gross Revenue sharing \_\_\_% is established.  
Proposed Gross Revenue sharing is \_\_\_% with GOP  
The sharing will commence from the year \_\_\_\_\_.

**ANNEXURES  
TO  
INSTRUCTIONS TO BIDDERS**

## Annexure-1

**General Information**

All individual firms and each partner of a joint venture are requested to complete the information in this form. Nationality information should be provided for all owners or applicants who are partnerships or individually-owned firms.

1.	Name of firm	
2.	Head office address	
3.	Telephone	Contact
4.	Fax	Telex
5.	Place of incorporation / registration	Year of incorporation / registration

<i>Nationality of owners<sup>1</sup></i>		
	<i>Name</i>	<i>Nationality</i>
1.		
2.		
3.		
4.		
5.		

---

<sup>1</sup> To be completed by all owners of partnerships or individually-owned firms.

## Annexure-2

**General Experience Record**

Name of Bidder or partner of a joint venture
--

All individual firms and all partners of a joint venture are requested to complete the information in this form. The information supplied should be the annual turnover of the Applicant (or each member of a joint venture), in terms of the amounts billed to clients for each year for work in progress or completed, in Rs. Million.

Use a separate sheet for each partner of a joint venture.

Annual turnover data (construction only)		
Year	Turnover (Rs. Million)	Remarks
1.		
2.		
3.		
4.		
5.		

- Note:
- 1) Certified copies of Audit report from a Chartered Accountant or Income Tax Department should be enclosed.
  - 2) Testimonials, Certificates and publicity material should not be enclosed; they will not be taken into account in the evaluation of qualification and will be discarded.

## Annexure-3

**Joint Venture Summary**

<i>Names of all partners of a joint venture</i>
1. Lead partner
2. Partner
3. Partner
4. Partner
5. Partner
6. Partner

<i>Annual turnover data (construction only; Rs. Million)</i>						
<i>Partner</i>	<i>For</i>	Year 1	Year 2	Year 3	Year 4	Year 5
<i>1. Lead partner</i>						
<i>2. Partner</i>						
<i>3. Partner</i>						
<i>4. Partner</i>						
<i>5. Partner</i>						
<i>6. Partner</i>						

## Annexure-4

**Details of Contracts of Similar Nature and Complexity**

Name of Bidder or partner of a joint venture
--

Use a separate sheet for each contract.

1.	Number of contract	
	Name of contract	
	Country	
2.	Name of Employer	
3.	Employer address	
4.	Nature of works and special features relevant to the contract for which the Bidder wishes to bid	
5.	Contract role (check one) Sole contractor      Management Contractor      Subcontractor      Partner in a joint venture	
6.	Value in specified currencies at completion, or at date of award for current contracts,	
	* Total Contract Amount: _____ (Rs. Million)	
	* Sub-Contract Amount (if the role was sub contractor): _____ (Rs. Million)	
	* Responsible Contract Amount (if the role was partner in a joint venture): _____ (Rs. Million)      _____ (percentage of share)%	
7.	Rs. Million	
8.	Date of award	
9.	Date of completion	
10.	Contract/subcontract duration (years and months) _____ years      _____ months	
11.	Specified requirements <sup>2</sup>	

<sup>2</sup> The Applicant should insert any specific contractual criteria required for particular operations, such as annual volume of earthmoving, underground excavation, or placing concrete.

## Annexure-5

**Summary Sheet****Current Contract Commitments / Works in Progress**

Name of Bidder or partner of a joint venture

Bidders and each partner of a joint venture should provide information on their current commitments on all contents that have been awarded or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

<i>Name of contract</i>	<i>Value of Total/outstanding work (Rs. Million)</i>	<i>Estimated completion date</i>
1.		
2.		
3.		
4.		
5.		
6.		

## Annexure -6

**Personnel Capabilities**

Name of Bidder
----------------

For specific positions essential to contract implementation, Bidders should provide the names of at least two candidates. The data on their experience should be supplied in separate sheets using one Form (7) for each candidate.

1.	Title of position
	Name of prime candidate
	Name of alternate candidate
2.	Title of position
	Name of prime candidate
	Name of alternate candidate
3.	Title of position
	Name of prime candidate
	Name of alternate candidate
4.	Title of position
	Name of prime candidate
	Name of alternate candidate



## Annexure-7

# Candidate Summary

Name of Bidder
----------------

Position	Candidate Prime                      Alternate	
<i>Candidate information</i>	1. Name of candidate	
	2. Date of birth	
3. Professional qualifications		
<i>Present employment</i>	4. Name of Employer	
	Address of Employer	
	Telephone	Contact (manager / personnel officer)
	Fax	Telex
	Job title of candidate	Years with present Employer

*Summarize professional experience over the last 10 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the Project.*

From	To	Company / Project / Position / Relevant technical and management experience

## Annexure-8

**Equipment Capabilities**

Name of Bidder
----------------

<i>The Bidder shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for each and all items of equipment required to perform the works.</i>
--

Item of equipment		
<i>Equipment information</i>	1. Name of manufacturer	2. Model and power rating
	3. Capacity	4. Year of manufacture
<i>Current status</i>	5. Current location	
	6. Details of current commitments	
<i>Source</i>	7. Indicate source of the equipment Owned          Rented          Leased          Specially manufactured	

<i>Omit the following information for equipment owned by the Applicant or partner.</i>
--

<i>Owner</i>	8. Name of owner	
	9. Address of owner	
	Telephone	Contact name and title
	Fax	Telex
<i>Agreements</i>	Details of rental / lease / manufacture agreements specific to the Project	

## Annexure-9 Financial Capability

Name of Applicant or partner of a joint venture

*Bidders, including each partner of a joint venture, should provide financial information to demonstrate that they meet the requirements of the proposed project. Each Bidder or partner of a joint venture must fill in this form. If necessary, use separate sheets to provide complete banker information. A copy of the audited balance sheets and statement of profit and losses should be attached.*

<b>Banker</b>	Name of banker		
	Address of banker		
	Telephone	Contact name and title	
	Fax	e mail	

*Summarize actual assets and liabilities in Rs. Million equivalent (at the rates of exchange current at the end of each year) for the previous five years.*

Financial information in Rs. Million	Actual: previous five years				
	1.	2.	3.	4.	5.
1. Total assets					
2. Current assets					
3. Total liabilities					
4. Current liabilities					
5. Sales					
6. Ordinary Profits					
7. Profits before taxes					
8. Profits after taxes					

*Specify proposed sources of financing to meet the cash flow demands of the Project, net of current commitments for other contracts.*

Source of financing	Amount (Rs. Million)
1.	
2.	
3.	
4.	

Attach audited financial statements for the last five years (for the individual Bidders or each partner of a joint venture). Firms owned by individuals, and partnerships, may submit their balance sheets certified by a registered accountant, and supported by copies of tax returns, if audits are not required by the laws of their countries of origin.

## Annexure-10

### Litigation History

Name of Bidder or partner of a joint venture

*Bidders, including each of the partners of a joint venture, should provide information on any history of litigation or arbitration resulting from contracts executed in the last 5 years or currently under execution. A separate sheet should be used for each partner of a joint venture.*

Year	Award FOR or AGAINST Applicant	Name of client, cause of litigation, and matter in dispute	Disputed amount (current value, Rs. Million)

**PROJECT INFORMATION**  
**APPENDICES TO CONCESSION CONTRACT**

Appendix-01

**Project Location Map**

*[To be provided by the Employer]*

Appendix-02

**General Design Criteria & Maintenance Requirements**

*[To be provided by the Employer]*

Appendix-03

**Ancillary Facilities**

*[To be provided by the Employer]*



Appendix-04

**Proposed Project Implementation Schedule and  
Checking/Commissioning Procedures**

*[To be provided by the Employer]*

Appendix-05

**BOI Investment Policies /Employer's Package of Incentives**

*[To be provided by the Employer]*

Appendix-06

**Maintenance and Monitoring Requirements**

*[To be provided by the Employer]*

**TECHNICAL PROPOSAL**  
APPENDICES TO CONCESSION CONTRACT

Appendix-07

**Project Conceptual Design, Design Criteria & Technical  
Details and Implementation Schedule**

*[To be completed by the Bidder]*

Appendix-08

**Method of Performing the Work**

*[To be completed by the Bidder]*

Appendix-09

## **Construction Camps and Housing Facilities**

*[To be completed by the Bidder]*

Appendix-10

**List of Proposed Contractors/Subcontractors**

*[To be completed by the Bidder]*



Appendix-11

**Organization Chart for the Supervisory Staff & Labour**

*[To be completed by the Bidder]*

Appendix-12

**Operation and Toll/Benefit/Fee Collection**

*[To be completed by the Bidder]*

Appendix-13

**Operation and Maintenance Methods**

*[To be completed by the Bidder]*

Appendix-14

**Funding/Financial Arrangements**

*[To be completed by the Bidder]*

## Appendix-15

### Integrity Pact

*[To be filled and signed by the Bidder]*

**DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC.  
PAYABLE BY THE SUPPLIERS OF GOODS, SERVICES & WORKS IN  
CONTRACTS WORTH RS. 10.00 MILLION OR MORE**

Contract No. \_\_\_\_\_ Dated \_\_\_\_\_

Contract Value: \_\_\_\_\_

Contract Title: \_\_\_\_\_

..... [Name of Supplier] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Pakistan (GoP) or any administrative subdivision or agency thereof or any other entity owned or controlled by GoP through any corrupt business practice.

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

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

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

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

Name of Buyer: .....

Name of Seller/Supplier: .....

Signature: .....

Signature: .....

[Seal]

[Seal]

# FORMS

Form-01(a)  
**Letter of Technical Proposal**

Bid Reference No: \_\_\_\_\_  
*[should be same as mentioned on Notice for Expression of Interest]*

Name of Project/Infrastructure/Facility: \_\_\_\_\_  
*[mention name of the Project/Infrastructure/Facility]*

To: \_\_\_\_\_  
*[Bidder to insert name and address of the Employer]*  
\_\_\_\_\_  
\_\_\_\_\_

Gentleman,

1. Having examined the Bidding Documents including Instructions to Bidders, Bidding Data, Conditions of Contract, general design criteria, operation/maintenance requirements and Addenda Nos. \_\_\_\_\_ (if any) for designing, execution and operation/maintenance of the above-named Works, we, the undersigned, offer our Technical Proposal to design, execute, complete and operate/maintain such Works in conformity with the Conditions of Contract, general design criteria, operation/maintenance requirements and Addenda (if any).
2. We understand that all the Annexures/Appendices attached hereto form part of this Financial Proposal.
3. As security for due performance of the undertakings and obligations of this Bid, we submit herewith a Bid Security in the amount of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) drawn in your favour or made payable to you and valid for a period of \_\_\_\_\_ days beginning from the date Bids are opened.
4. We agree to abide by this Bid for the period of \_\_\_\_\_ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period or any extended period as per Bidding Documents.
5. Unless and until a formal Agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
6. Unless and until a formal Agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
7. We do hereby declare that the Technical Proposal is made without any collusion, comparison of figures or arrangement with any other bidder for the Works.
8. We understand that you are not bound to accept the Technical Proposals you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature: \_\_\_\_\_

in the capacity of \_\_\_\_\_ duly authorized to sign Bids for and on behalf of

\_\_\_\_\_  
(Name of Bidder in Block Capitals)  
(Seal)

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Witness:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address. \_\_\_\_\_  
\_\_\_\_\_

Occupation \_\_\_\_\_



Form-01(b)

**Letter of Financial Proposal**

Bid Reference No: \_\_\_\_\_  
*[should be same as mentioned on Notice for Expression of Interest]*

Name of Project/Infrastructure/Facility: \_\_\_\_\_  
*[mention name of the Project/Infrastructure/Facility]*

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Gentleman,

1. Having examined the Bidding Documents including Instructions to Bidders, Bidding Data, Conditions of Contract, general design criteria, operation/maintenance requirements, our Technical Proposal and Addenda Nos. \_\_\_\_\_(if any) for designing, execution and operation/maintenance of the above-named Works, we, the undersigned, offer our Financial Proposal to design, execute, complete and operate/maintain such Works in conformity with the Conditions of Contract, general design criteria, operation/maintenance requirements, our Technical proposal and Addenda (if any), for the sum of Rs. \_\_\_\_\_ (Rupees \_\_\_\_\_) or such other sum as may be ascertained in accordance with the said conditions.
2. We understand that all the Annexures/Appendices attached hereto form part of this Bid.
3. As security for due performance of the undertakings and obligations of this Bid, we submit herewith a Bid Security in the amount of Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_) drawn in your favour or made payable to you and valid for a period of \_\_\_\_\_ days beginning from the date Bids are opened.
4. We undertake, if our Bid is accepted, to commence the Works and to complete the whole of the Works comprised in the Contract within the time stated in Appendix-A to Bid.
5. We agree to abide by this Bid for the period of \_\_\_\_\_ days from the date fixed for receiving the same and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
6. Unless and until a formal Agreement is prepared and executed, this Bid, together with your written acceptance thereof, shall constitute a binding contract between us.
7. We do hereby declare that the Financial Proposal is made without any collusion, comparison of figures or arrangement with any other bidder for the Works.

8. We understand that you are not bound to accept the lowest or any Financial Proposal you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signature: \_\_\_\_\_

in the capacity of \_\_\_\_\_ duly authorized to sign Bids for and on behalf of

\_\_\_\_\_

(Name of Bidder in Block Capitals)

(Seal)

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Witness:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address. \_\_\_\_\_

\_\_\_\_\_

Occupation \_\_\_\_\_

## Form-02

# CONCESSION AGREEMENT

THIS AGREEMENT (hereinafter called the “Concession Agreement”) is made this ..... day of *[insert month and year]* between *[insert the name and address of Employer]* (hereinafter called the “Employer”) which expression shall include its successors in interest and assigns) and *[insert the name of Company]* a company incorporated in *[insert Company year of incorporation]* and having its registered office at *[insert the address of Company]* (hereinafter referred to as “the Company”).

### WHEREAS:

- (a) The Employer is desirous of privatizing the design, financing, construction, commissioning, management, operation and maintenance of the *[insert name of the Project]* (hereinafter called the “Project”);
- (b) The Company has submitted a proposal to the Employer to design, finance, construct, commission, manage, operate and maintain the Project; and
- (c) The Employer has agreed to award the Concession to the Company on terms and conditions appearing in this Agreement.

NOW this Agreement witnesseth as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents after incorporating addenda, if any, except those parts relating to Instructions to Bidders shall be deemed to form and be read and construed as part of this Agreement, viz:
  1. The Concession Agreement (if completed);
  2. The Letter of Intent (LoI);
  3. Summary of the Financial Proposal;
  4. Final Summary of the Project;
  5. Employer’s Manual of Rules and Regulations;
  6. The Particular Conditions of Contract – Part II;
  7. The General Conditions of Contract – Part I;
  8. The completed Appendices to Bid (1 to 15) and the Forms
  9. The Drawings;
  10. The Specifications (Special Provisions and Technical Provisions); and
  11. Any other document

IN WITNESS whereof the Parties, acting through their duly authorized representatives, have caused this Agreement in duplicate to be signed in their respective names in *[insert City name]*, Pakistan, on the date written opposite each Party’s name;

**Signature of the Company**

**Signature of Employer**

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
(Seal)

Signed, Sealed and Delivered in the presence of:

Witness:

Witness:

\_\_\_\_\_

\_\_\_\_\_

(Name, Title and Address)

(Name, Title and Address)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Form 03

**BID SECURITY**  
**(Bank Guarantee)**

Security Executed on \_\_\_\_\_  
[Date]

Valid upto \_\_\_\_\_  
[Date]

Name of Surety (Bank) with Address: \_\_\_\_\_  
[Scheduled Bank in Pakistan]

Name and Address of Principal (Bidder) \_\_\_\_\_

Penal Sum of Security Rupees \_\_\_\_\_ (Rs. \_\_\_\_\_)  
[Amount in words] [Amount in figures]

Bid Reference No. \_\_\_\_\_  
[should be same as mentioned on Notice for Expression of Interest]

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bid and at the request of the said Principal (Bidder) we, the Surety above named, are held and firmly bound unto [mention name and address of the Employer] (hereinafter called the 'Employer') in the sum stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Bidder has submitted the accompanying Bid dated \_\_\_\_\_ for Bid Reference No. \_\_\_\_\_ for \_\_\_\_\_ [mention Particulars of Bid] to the said Employer; and

WHEREAS, the Employer has required as a condition for considering said Bid that the Bidder furnishes a Bid Security in the above said sum from a Scheduled Bank in Pakistan or from a foreign bank duly counter-guaranteed by a Scheduled Bank in Pakistan, to the Employer, conditioned as under:

- (1) that the Bid Security shall remain in force up to and including the date 28 days after the deadline for validity of bids as stated in the Instructions to Bidders or as it may be extended by the Employer, notice of which extension(s) to the Surety is hereby waived;
- (2) that the Bid Security of unsuccessful Bidders will be returned by the Employer after expiry of its validity or upon signing of the Contract Agreement by the successful Bidder and providing the Performance Security; and
- (3) that in the event of failure of the successful Bidder to execute the proposed Contract Agreement for such work and furnish the required Performance Security, the entire said sum be paid immediately to the said Employer pursuant to Clause 20.6 of the Instruction to Bidders for the successful Bidder's failure to perform.

- (4) that in the event of a Bidder withdraws its bid during the period of bid validity, the entire said sum be paid immediately to the said Employer pursuant to Clause 20.6 of the Instruction to Bidders.

NOW THEREFORE, if the successful Bidder shall, within the period specified therefore, on the prescribed form presented to him for signature enter into a formal Contract with the said Employer in accordance with his Bid as accepted and furnish within *[insert period for furnishing the Performance Security]* days of being requested to do so, a Performance Security with good and sufficient surety, as may be required, upon the form prescribed by the said Employer for the faithful performance and proper fulfilment of the said Contract or in the event of non-withdrawal of the said Bid within the time specified for its validity then this obligation shall be void and of no effect, but otherwise to remain in full force and effect.

PROVIDED THAT the Surety shall forthwith pay the Employer the said sum upon first written demand of the Employer (without cavil or argument) and without requiring the Employer to prove or to show grounds or reasons for such demand, notice of which shall be sent by the Employer by registered post duly addressed to the Surety at its address given above.

PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal (Bidder) has duly performed his obligations to sign the Contract Agreement and to furnish the requisite Performance Security within the time stated above, or has defaulted in fulfilling said requirements and the Surety shall pay without objection the said sum upon demand from the Employer forthwith and without any reference to the Principal (Bidder) or any other person.

IN WITNESS WHEREOF, the above bounden Surety has executed the instrument under its seal on the date indicated above, the name and seal of the Surety being hereto affixed and these presents duly signed by its undersigned representative pursuant to authority of its governing body.

SURETY (Bank)

WITNESS:

Signature \_\_\_\_\_

1. \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

Title \_\_\_\_\_

Corporate Secretary (Seal)

Corporate Guarantor (Seal)

2. \_\_\_\_\_

\_\_\_\_\_

Name, Title & Address

Form-04

**Performance Security for Construction Phase  
(Bank Guarantee)**

Guarantee No. \_\_\_\_\_  
Executed on \_\_\_\_\_  
Expiry date \_\_\_\_\_

[Letter by the Guarantor to the Employer]

Name of Guarantor (Bank) with address: \_\_\_\_\_  
[Scheduled Bank in Pakistan]

Name of Principal (Company) with address: \_\_\_\_\_  
\_\_\_\_\_

Penal Sum of Security [to be express in words and figures] \_\_\_\_\_

Letter of Acceptance No. \_\_\_\_\_ Dated \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that in pursuance of the terms of the Bidding Documents and above said Letter of Acceptance (hereinafter called the Documents) and at the request of the said Principal we, the Guarantor above named, are held and firmly bound unto the \_\_\_\_\_ (hereinafter called the Employer) in the penal sum of the amount stated above for the payment of which sum well and truly to be made to the said Employer, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has accepted the Employer's above said Letter of Acceptance for [name and number of the Contract] for the [name of the Project].

NOW THEREFORE, if the Principal (Company) shall well and truly perform and fulfill all the undertakings, covenants, terms and conditions of the said Documents during the original terms of the said Documents and any extensions thereof that may be granted by the Employer, with or without notice to the Guarantor, which notice is, hereby, waived and shall also well and truly perform and fulfill all the undertakings, covenants terms and conditions of the Contract and of any and all modifications of said Documents that may hereafter be made, notice of which modifications to the Guarantor being hereby waived, then, this obligation to be void; otherwise to remain in full force and virtue till all requirements of relevant Clauses of Conditions of Contract are fulfilled.

Our total liability under this Guarantee is limited to the sum stated above and it is a condition of any liability attaching to us under this Guarantee that the claim for payment in writing shall be received by us within the validity period of this Guarantee, failing which we shall be discharged of our liability, if any, under this Guarantee.

We, \_\_\_\_\_ (the Guarantor), waiving all objections and defenses under the Contract, do hereby irrevocably and independently guarantee to pay to the Employer without delay upon the Employer's first written demand without cavil or arguments and without requiring the Employer to prove or to show grounds or reasons for such demand any sum or sums up to the amount stated above, against the Employer's written declaration that the Principal has refused or failed to perform the obligations under the Contract which payment will be effected by the Guarantor to Employer's designated Bank & Account Number.

PROVIDED ALSO THAT the Employer shall be the sole and final judge for deciding whether the Principal (Company) has duly performed his obligations under the Contract or has defaulted in fulfilling said obligations and the Guarantor shall pay without objection any sum or sums up to the amount stated above upon first written demand from the Employer forthwith and without any reference to the Principal or any other person.

IN WITNESS WHEREOF, the above-bounden Guarantor has executed this Instrument under its seal on the date indicated above, the name and corporate seal of the Guarantor being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

	_____ Guarantor (Bank)
Witness:	
1. _____	Signature _____
_____	Name _____
Corporate Secretary (Seal)	Title _____
3. _____	
_____	_____
Name, Title & Address	Corporate Guarantor (Seal)



Form-05

## **Performance Security for Operation Phase**

*[Performance Security Form for Construction Phase may be used with necessary modifications  
in respect of validity of Performance Security for Operation Phase]*

Form-06

## **Performance Security for Transfer of the Project**

*[Performance Security Form for Construction Phase may be used with necessary modifications in respect of validity of Performance Security for Transfer of the Project]*

**PART-I**

**GENERAL CONDITIONS  
OF  
CONCESSION CONTRACT**

**PART I - GENERAL CONDITIONS OF CONCESSION  
CONTRACT**

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# 1 Definitions

1.1 Under these General Conditions of Contract for Concession Agreement the following words and expressions shall have the meanings ascribed to them below except where the context otherwise requires:

<b>Agreement</b>	the Concession Agreement;
<b>Ancillary Facilities</b>	those facilities listed in Appendix to Bid and any other commercial facilities which the Company shall erect or carry out upon the Concession Area;
<b>Availability Date</b>	the date, occurring not later than construction completion period (in months) after the Effective Date, in respect of any completed section of construction works or in respect of the entire Project, when the facility is available for use, as determined in accordance with Clause 11.7;
<b>Base Year Revenue</b>	the Revenue rate in Rupees in the year as stated in the Particular Conditions of Concession Agreement (for each vehicle category or other units as the case may be), to be used as the basis for determining future year Revenue, all as further specified in Appendix to Bid;
<b>Building Line</b>	the line notified by the Employer between which and the ROW according to the Employer Manual it shall not be lawful to carry out any form of construction or excavation without consent in writing of the Employer;
<b>Certificate of Completion</b>	the sectional certificate or final certificate issued by the Employer in accordance with Clause 11.7;
<b>Change in Law</b>	(a) the adoption, promulgation, modification or reinterpretation after the date of this Agreement by any Public Sector Entity of any Law of Pakistan, or (b) the imposition by a Public Sector Entity of any material condition in connection with the issuance, renewal, extension, replacement or modification of any Consent after the date of Concession Agreement, that in either case establishes requirements for the construction, operation or maintenance of the Project that are materially more restrictive than the most restrictive requirements (i) in effect as of the date of Concession Agreement, (ii) specified in any applications, or other documents filed in connection with such applications, for any Consent filed by the Company on or before the Construction Completion Date, or (iii) agreed to by the Company in any agreement in the Security Package;
<b>Commissioned</b>	grammatical variations, means the commissioning of the Project in accordance with the procedures as are approved by the Employer

	from time to time;
<b>Company</b>	a public limited Company incorporated and having its registered office and its successors and permitted assigns;
<b>Company Auditor</b>	the certified public accountant(s) appointed by the Company pursuant to Clause 8;
<b>Concession Year</b>	each period of one calendar year ending on the anniversary of the Effective Date, throughout the Concession Period;
<b>Concession Period</b>	the period specified in Clause 2.2 during which the Company holds the Concession;
<b>Concession Area</b>	the area as specified in Appendix to Bid, as well as all other land required by the Company obtained for the Company by the Employer for the purpose of the Concession;
<b>Concession</b>	the concession granted to the Company by the Employer under Clause 2 of Concession Agreement;
<b>Consents</b>	all such approvals, consents, authorisations, notifications, concessions, acknowledgements, agreements, licences, permits, decisions or similar item required to be obtained from any Relevant Authority for the Concession;
<b>Construction Completion Date</b>	the date occurring not later than construction completion period (in months) after the Effective Date as evidenced by the issuance of the Certificate of Completion;
<b>Construction Contractor</b>	Contractor appointed by the company for construction and any successor thereto appointed by the Company and approved pursuant to these Conditions;
<b>Construction Phase</b>	the period commencing on the Effective Date and ending on the final Construction Completion Date;
<b>Construction, Procurement and Erection Contracts</b>	the approved agreements to be entered into between the Company and the Construction Contractor for the design, engineering, construction, supply and erection of works and equipment, completion and testing of the Project;
<b>Continuing Contracts</b>	contracts/agreements signed by the Company with business, trade, employees and labour which included periods after the Expiry date;
<b>Contractors</b>	the Construction Contractor and O & M Contractor and any of their direct sub-contractors integrally involved in the construction, operation and maintenance of the Project;

<b>Customs Duties</b>	customs duty levied under the Customs Act, 1969, as amended from time to time;
<b>Design</b>	the Outline Design and Detailed Design;
<b>Detailed Design</b>	the technical specifications, construction drawings and other information relevant to the design of the Works, as provided in the Appendix to Bid ;
<b>Effective Date</b>	being the date of execution of the Concession Agreement;
<b>Employer Auditor</b>	the person or persons appointed by the Employer pursuant to Clause 8;
<b>Employer Manual</b>	the current version of the ‘Employer Manual of Rules and Regulations for Management and Control of the Employer System’, as Notified in the Official Gazette of Pakistan, or as supplied to the Company on date as mentioned in the Concession Agreement;
<b>Employer Representative</b>	the person appointed by the Employer pursuant to Clause 3.3;
<b>Exchange Risk Insurance</b>	the insurance to be effected with the National Bank of Pakistan (NBP) or any other bank as approved by the Employer in respect of the insurance of exchange risks for foreign loans to be obtained by the Company;
<b>Expiry Date</b>	the last day of the Concession Period or any extension thereof pursuant to this Agreement;
<b>Financial Close</b>	the signing of the Financial Agreements for the Project (following resolution with the Employer of any objections of the Employer to the terms and conditions of the Financing Agreements), the fulfilment of all conditions precedent to the first disbursement of funds there under (except for this Agreement having become unconditional and fully effective, if that is a condition precedent thereto) and the receipt of commitments for such equity as is required by the Company in order to satisfy the requirements of the Lenders;
<b>Financing Agreements</b>	the agreement or agreements to be entered into between the Company and certain local and foreign financial institutions for the purpose of providing the funds necessary to carry out the Project, including any and all agreements providing for security for such financing;
<b>Gazette</b>	the Official Gazette of Pakistan;

<b>GoP</b>	the Government of the Islamic Republic of Pakistan;
<b>Initial Sponsors</b>	being those shareholders of the Company on the Effective Date;
<b>Investors</b>	means the shareholders of the Company from time to time;
<b>Key Date</b>	a date by which specified works are to be completed or obligations fulfilled, pursuant to the penalties defined in Clause 11.10;
<b>Land Rights</b>	the rights in, under and over the Concession Area;
<b>Laws of Pakistan</b>	all Federal, Provincial and Local laws of Pakistan and all orders, rules, regulations, statutory regulatory orders (SROs), executive orders, decrees, policies, judicial decisions, notifications or other similar directives made pursuant thereto issued by any competent executive or administrative, legislative or judicial authority or any one or more of them and which may be amended from time to time;
<b>Lenders</b>	all persons for the time being providing, raising or making available, directly or indirectly, finance or refinance (and for the avoidance of doubt 'finance' and 'refinance' shall not include amounts subscribed for equity share capital by the shareholders of the Company) for the performance of the Works, their respective successors in title and assigns;
<b>Lien</b>	any encumbrance, lien, charge, mortgage, lease hire charge or security interest upon or in the Project;
<b>Loss</b>	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);
<b>Maximum Toll (For Roads)</b>	in relation to any Concession Year, the maximum toll which can be charged for a particular class of vehicle;
<b>O &amp; M Agreement</b>	the Approved Agreement, between the Company and the O & M Contractor for the operation and maintenance of the Project, as amended or superseded from time to time;
<b>O &amp; M Contractor</b>	O&M Contractor and any successor appointed by the Company and approved by the Employer in accordance with these Conditions;
<b>O &amp; M Manager</b>	the operations consultant or team of in-house professionals responsible for managing the Operations Phase of the Works appointed pursuant to Clause 3.6;
<b>Operations Auditors</b>	the Employer Auditor and the Company Auditor;

<b>Operations Phase</b>	the period commencing on the Availability Date and ending on the Expiry Date;
<b>Ordinary Share Capital</b>	any shares of the Company and any securities of the Company that are convertible into such shares at the option of the holder;
<b>Outline Design</b>	the characteristics and performance specifications of the Works as set out in Appendix to Bid;
<b>Pakistan</b>	means the Islamic Republic of Pakistan;
<b>Party/Parties</b>	either the Employer or the Company or both, as the case may be;
<b>Prescribed Fee</b>	with respect to any particular Consent, the charge or fee, if any, prescribed by the Laws of Pakistan;
<b>Prescribed Form</b>	with respect to a particular Consent, the form, if any (including all information and details) prescribed by the Laws of Pakistan for the application for, or renewal of, such Consent;
<b>Project</b>	Infrastructure/Facility works that are covered by the Concession, and such equipment thereon which is covered by the Concession;
<b>Project Engineer</b>	the Approved consulting engineers appointed pursuant to Clause 3.5;
<b>Project Escrow Account</b>	the primary bank account in the name of Company with a bank or other financial institution into which all amounts received by the Company in relation to the Concession shall be credited and out of which all amounts due to the Company's creditors in relation to the Concession shall be paid;
<b>Project Manager</b>	the company or team of professionals appointed pursuant to Clause 3.4;
<b>Project</b>	the Project and Ancillary Facilities;
<b>Prudent Practice</b>	at any particular time, the practices, methods or acts which, an experienced tolled Project operator in light of the facts and in the exercise of reasonable judgement, would observe in international practice in designing, constructing, operating and maintaining tolled Projects comparable in capacity, type and demand of trade to the Project to accomplish the desired result at reasonable cost consistent with reliability, safety and expedition and all applicable laws and regulations;
<b>Public Sector Entity</b>	GoP, any Provincial Government, or authority, instrumentality, corporation, company, subdivision, agency, court or tribunal of or established by GoP or any Provincial Government or any local

	authority;
<b>Public Utility</b>	water supply, electricity supply, telecommunication system, sewerage system, petroleum gas supply and other utilities and amenities for the benefit of the public;
<b>Rehabilitation Escrow Account</b>	the primary bank account in the name of Company with a bank or other financial institution into which annual sums shall be credited pursuant to Clause 15.3;
<b>Relevant Authority</b>	the department, authority or agency from which a Consent is to be obtained, and any authority or other person having jurisdiction under the Laws of Pakistan with respect to the Company and the financing, design, construction, operation or maintenance of the Project;
<b>Right of Way (ROW)</b>	land acquired for the purpose of construction, operation and maintenance of the Project;
<b>Security Package</b>	all the following documents: <ul style="list-style-type: none"> <li>a) The Concession Agreement;</li> <li>b) GoP undertakings pursuant to these Conditions;</li> <li>c) the Construction, Procurement and Erection Contract;</li> <li>d) the Exchange Risk Insurance;</li> <li>e) the Financing Agreements;</li> <li>f) the O &amp; M Agreement;</li> <li>g) the Shareholder's Agreement;</li> <li>h) the Memorandum and Articles of Association of the Company;</li> <li>i) the policies of insurance specified in Clause 17.</li> </ul>
<b>Shareholder's Agreement</b>	the Agreement between the Initial Sponsors containing provisions for the management of the Company and certain restrictions on the transfer of Ordinary Share Capital by the Initial Sponsors in accordance with the terms of this Agreement;
<b>Standards</b>	the codes and standards to be applied by the Company to design, construct, manufacture, procure, operate and maintain the Project as are more particularly described in Appendix to Bid;
<b>Substituted Entity</b>	that entity appointed by the Lenders to be substituted for the Company pursuant to Clause 20.3;
<b>Target Internal Rate of Return</b>	the internal rate of return on equity to be achieved, after which net returns are shared between the Company and the Employer in

accordance with Clause 22.3;

<b>Termination Date</b>	the date of termination of this Concession Agreement pursuant to early termination as defined in Article 25;
<b>Toll Escalation Rules</b>	the rules, as defined in Appendix to bid, whereby the Maximum Tolls to be charged in any year are calculated from the Base Year Toll; and
<b>Works</b>	the construction, improvement, reconstruction etc. of the Project, and the supply and installation of tolling and other equipment, and the operation and maintenance of the Project as specified in this Agreement.

## **2 Concession**

### **2.1 GRANT OF CONCESSION**

2.1.1 The Employer hereby grants to the Company, subject to the terms and conditions of the Agreement, the exclusive right and authority:

- (a) to design and construct the Project designated in Appendix to Bid, including the modification and/or completion of on-going works and the design and construction of further works as also designated under these Conditions;
- (b) to supply and install tolling and other equipment at toll plazas or other at other facilities, and to manage, operate and maintain the same;
- (c) for the Concession Period, to levy, demand, collect and retain toll revenues in a Project Escrow Account, the monies in which account to be assigned in accordance with Clause 22 of these Conditions;
- (d) subject to all prevailing relevant laws in respect thereof, to design, finance, construct, manage, operate and maintain the Ancillary Facilities, revenues from which accrue to the Project Escrow Account; and
- (e) to operate and maintain the Project.

2.1.2 The Company has inspected and examined the Right of Way, and all other land, airways, spaces and areas on which the Project is to be built and operated and has fully satisfied itself before signing this Agreement as to the nature, location, physical conditions and suitability thereof, the general and local conditions all applicable thereto, including but not limited to existing usage of envisaged Infrastructure/Facility and quality and quantities of climatic conditions, rainfall, water, electrical power, utilities (including, without limitation, those utilities which are to be relocated in connection with the implementation and operation of the Project), the topographic, geotechnical and seismic features of the Right of Way and the Concession Area and all existing utility line surveys and information.

2.1.3 Subject to and in accordance with the terms and conditions of the Agreement, the Company hereby accepts the Concession.

2.1.4 The Concession Agreement shall come into full force and effect on the Effective Date and shall continue in full force and effect unless or until it is terminated pursuant to the provisions of this Agreement or until the Expiry Date, whichever is earlier.

## **2.2 CONCESSION PERIOD**

2.2.1 The Concession Period shall be a period in number of years, as stated in the Particular Conditions of Contract, from the Effective Date.

## **2.3 APPLICATION**

2.3.1 The Agreement constitutes the entire Agreement with respect to the subject matter hereof and hereby cancels and supersedes any and all prior oral or written agreements, correspondence or understandings between the parties or the terms contained in the Bidding Documents (if any) submitted in respect of the Project. However, the terms of the Bidding Documents (if any) may be read to further elucidate or clarify any matter or thing referred to in this Agreement, provided the same requires any such elucidation or clarification.

## **3 Management and Supervision**

### **3.1 THE EMPLOYER**

3.1.1 The Employer, under the direction of the GoP has the responsibility for coordinating and managing all Infrastructure/Facility financing/construction/operation concessions awarded to the private sector.

### **3.2 EMPLOYER MANUAL OF RULES AND REGULATIONS**

3.2.1 The rules, regulations, rights and responsibilities of the Employer as specified in the Employer Manual shall continue to be in force in respect of the Project, except in so far as they are removed or amended, explicitly or implicitly, by this Agreement which in all respects shall take precedence.

3.2.2 The Company shall only enjoy such rights privileges benefits, fees and tolls of the Employer as are granted pursuant to these Conditions. The Company shall only have such obligations and responsibilities of the Employer with regard to third parties, as mentioned in this Agreement.

### **3.3 EMPLOYER REPRESENTATIVE**

3.3.1 The Employer shall appoint at its own expense a representative - the Employer Representative - to act as the contact with the Company, and shall ensure that such a person continues to be appointed throughout the Concession Period. The Company shall similarly nominate representatives to liaise with the Employer Representative on all matters pursuant to this Agreement and to ensure on a day-to-day basis the efficient and safe operation of the Project.

3.3.2 The functions of the Employer Representative shall be, but not limited to:

- (a) Protecting the interests of the Employer by ensuring that construction works are carried out according to standard rules and practice, that they conform to



the approved design and standards and that the Project and related facilities are maintained in good condition and by reviewing users volume data as provided for in the Concession Agreement;

- (b) Ensuring that the Company complies with user safety requirements;
- (c) Coordinating and organizing services to be provided by other Agencies including Public Utilities, emergency services and traffic police, etc during the construction and operation of the Project; and
- (d) Clarifying and resolving, with the representatives of the Company, any difficulties and disputes arising pursuant to the Concession, and any complaints by or against third parties.

### **3.4 PROJECT MANAGER**

3.4.1 The Company shall appoint at its own expense a project management company or a team of in-house professionals as Project Manager to manage the Construction Phase of the Works. The Project Manager shall for the purposes of such appointment:

- (a) Advise the Company on design criteria, detailed design, terms of construction contracts and contract procedures;
- (b) Monitor the Works carried out by Construction Contractors to ensure that they conform to the relevant specifications and Standards and to the approved design; and
- (c) Ensure that the design and construction are being carried out within the relevant cost projections and in conformity with the requirements of the operations.

3.4.2 The Company shall at all time be responsible for the Concession and all acts of the Project Manager shall constitute acts of the Company, and the Company shall assume all liabilities and obligations in connection with the carrying out of the construction works under the Concession.

### **3.5 PROJECT ENGINEER**

3.5.1 The Company shall appoint at its own expense one or more consulting engineering firms as Project Engineer to prepare the detailed design, to supervise the Works on a full time basis and in particular to ensure that the construction of the Works is in accordance with the Agreement and with the relevant statutory requirements. The Project Engineer shall certify when construction works have been satisfactorily completed and shall issue certificates of payments to the contractors.

### **3.6 OPERATIONS AND MAINTENANCE MANAGER**

3.6.1 The Company shall appoint at its own expense an operations consultant or a team of in-house professionals as O & M Manager to manage the Operations Phase of the Works.

3.6.2 The O & M Manager shall design a cost effective management procedure to ensure that the Project is operated and maintained effectively, and shall monitor the performance of the O & M Contractor and compliance with the O & M Agreement.

- 3.6.3 The acts of the O & M Manager shall constitute acts of the Company, and the Company shall assume all liabilities and obligations in connection with the operation and maintenance of the Project.

## **4 Company Representations and Covenants**

### **4.1 COMPANY REPRESENTATIONS**

4.1.1 The Company represents and warrants to the Employer that as of the date of the Agreement:

- (a) the Company is duly incorporated, is existing and in good standing and has all requisite power and authority to conduct its business and to own its properties;
- (b) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Company or that could materially or adversely affect the performance by the Company of its obligations under this Agreement and any other documents comprising the Security Package;
- (c) the Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding obligation of it; and
- (d) as far as it is aware, the execution, delivery and performance of its obligations under these Conditions by the Company, subject to the granting and maintenance of the Consents, does not, and, subject to the granting and maintaining of any further Consents as may be required in the future, will not, constitute a violation of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business.

### **4.2 COMPANY COVENANTS**

4.2.1 The Company hereby covenants as follows:

- (a) the Company shall prior to the Effective Date and throughout the Concession Period maintain a minimum paid-up capital as stated in the Particular Conditions of Contract;
- (b) The Company shall make appropriate provisions in its Articles of Association to ensure compliance with these Conditions;
- (c) whenever called upon to do so the Company shall disclose to the Employer the complete list of its shareholders and the Company shall ensure that shares are not transferred to the name of any enemy aliens of Pakistan, or such aliens designated by the Employer in writing. In this regard, if there is any doubt the Company shall seek the prior written consent of the Employer. All instructions given by the Employer in this regard shall apply from the date such instructions were given;
- (d) the Company shall:
  - (i) at all times, maintain its corporate existence in compliance with the Laws of Pakistan;
  - (ii) at all times hereunder comply with all Laws of Pakistan applicable to the Company;

- (iii) procure and maintain all Consents necessary for its performance under these Conditions, give all required notices and allow all required inspection under all Consents obtained or applied for by it in connection with the Project; and
  - (iv) pay all Prescribed Fees in connection with such Consents;
- (e) the Company shall design, engineer, finance, construct, equip, insure, operate, maintain and transfer the Project in accordance with:
  - (i) these Conditions;
  - (ii) the Pakistan environmental guidelines and occupational health and safety standards as may be specified by the Employer from time to time;
  - (iii) all applicable Laws of Pakistan and Consents;
  - (iv) internationally acceptable engineering and construction practices, and Prudent Practice;
  - (v) the Standards; and
  - (vi) the Security Package;

and shall ensure that the components comprising the Project are Commissioned on or before the dates specified in the Particular Conditions of Contract;

- (f) beginning on the Availability Date, the Company shall operate the Project in accordance with the requirements of these Conditions;
- (g) beginning on the Construction Completion Date, the Company shall at all times maintain, service and repair the Project in accordance with Prudent Practice, using such equipment and facilities as may be necessary for the efficient operation of the Project;
- (h) the Company shall replace equipment and facilities that from time to time fail to function, or become worn beyond use, destroyed, damaged beyond repair, lost, confiscated, stolen and seized for any reason whatsoever to keep the Project in good operating condition at its design capacity;
- (i) the Company shall, upon request of the Employer, deliver or cause to be delivered from time to time to the Employer certifications of its officers, accountants, engineers or agents as to the performance of its obligations under this Agreement and as to such matters as the Employer may reasonably request; and
- (j) the Company shall keep proper books of record and accounts in which all correct entries shall be made of all dealings or transactions of or in relation to its business and affairs in accordance with generally accepted accounting principles and standards in Pakistan consistently applied. The Company shall furnish the following to the Employer as long as its Agreement is in effect;

**Periodic Reports:** As soon as available but in any event within sixty (60) days of filing, two copies of all documents filed in compliance with the requirements of the Companies Ordinance, 1984 as amended or as may be superseded from time to time;

**Other Reports:** As soon as available, a report of any factors materially or adversely affecting or that might materially and adversely affect the Project or the Company's business and operations or its financial conditions;

**Data:** With reasonable promptness, such other data and information pertaining to the Project as may be agreed between the Parties;

**Examination:** Without limiting the foregoing, the Company shall permit the Employer (or its nominated representative) to examine all relevant books, records, reports and other papers of the Company for the purpose of verifying, upon the occurrence of a default by the Company, compliance with the Company's financial obligations under the Financing Agreements. The Company shall keep such books, records, reports and other papers in sufficient detail to permit the Employer to calculate and evaluate such matters. In connection with such examination, the Company shall permit the Employer to make copies and extracts of such books, records, reports and other papers and to discuss such matters with the Company's officers and employees. If after discussion of such matters with the Company's officers and employees, the Employer wishes to review such matters with the Company's accountants, the Company shall direct such accountants (whose fees and expenses shall be for the account of the Company) to communicate directly with the Employer concerning such matters.

## **5 Employer Representations and Covenants**

### **5.1 EMPLOYER REPRESENTATIONS**

5.1.1 The Employer hereby represents and warrants to the Company that as of the date of the Agreement:

- (a) it is duly created pursuant to an Ordinance/Act of the GOP (year as stated in the Particular Conditions of Contract), is existing and, so far as is material to the Company, has complied fully with all other applicable Laws of Pakistan, and that there are no proceedings pending or to the best of its knowledge, threatened for the dissolution of the Employer including a withdrawal or revocation of its powers under the said Ordinance/Act.
- (b) the Project has been gazette in accordance with the procedures required by the said Ordinance/Act and its amendments;
- (c) this Agreement has been duly authorized, executed and delivered by it and constitutes the legal, valid and binding obligation of it; and
- (d) this Agreement has the approval of the competent authority and as far as it is aware, the execution, delivery and performance of this Agreement does not and will not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its business.

### **5.2 EMPLOYER COVENANTS**

5.2.1 The Employer has all necessary powers to build and operate Project and in respect of all other matters which are the subject of these Conditions and has the right to

transfer such of those powers to the Company as may be required to uphold the terms and obligations of these Conditions.

5.2.2 The Employer undertakes that it will not initiate any new or amending legislation or change in the interpretation of existing legislation or changes in standards affecting the design or execution of the construction works during the period of construction of the Project without giving Notice to the Company, excepting any matter relating to the safety of the public. The Employer undertakes to consider compensation for any increase in cost and/or loss of revenue to the Company which is attributable to Change in Law.

5.2.3 The Employer hereby covenants as follows:

- (a) the Employer will not, and will procure that no Government Agency will:
  - i. in any way amend or obstruct the design, construction, management or operation of the Project or any part thereof - excepting as provided for in these Conditions and the reasonable inspection of the Project as specified in Sub Clause 5.3 - save on the grounds of national security;
  - ii. do any act or be party to any omission which would cause, or be likely to cause, damage to any part of the Project or be otherwise inconsistent with the terms of this Agreement;
- (b) the Employer will exercise its powers under the said Ordinance/Act and amendments made thereto in a manner that is consistent with this Agreement;
- (c) the Employer will, at the request of the Company, make available or cause to be made available to the Company the Concession Area including the Right of Way required for the construction/improvement of the Project as more particularly described and shown in Clause 9;
- (d) the Employer will ensure that access to the Concession Area is not closed or restricted in any way;
- (e) the Employer will support and use all reasonable efforts to expedite the consideration of the Company's applications for the Consents and the timely issuance thereof by the Relevant Authorities;
- (f) the Employer will, upon reasonable request by the Company, use its good offices to support the Company's performance of its obligations to design, finance, insure, construct, operate and maintain the Project, but without assuming any liability or obligation in this regard;
- (g) as soon as practicable but not later than fifteen (15) days, or as stated in the Particular Conditions of Contract, after any section of the Project has been satisfactorily tested and inspected in accordance with the commissioning procedure specified in Appendix 4, the Employer will issue a sectional Certificate of Completion to certify the date that the relevant section of the Project is capable of serving the users or the intended purpose (s) in accordance with these Conditions. Upon satisfactory testing and inspection of all sections of the Project covered by the Concession the final Certificate of Completion shall be issued;

- (h) the Employer will expeditiously grant or procure the granting of applications for work permits, employment passes, visas and other permits, as necessary for the Company, its directors employees contractors and other individuals involved in the Project;
- (i) the Employer will provide all such reasonable assistance as the Company may request to support the obtaining of immigration and employment permits for foreign contractors and project consultants engaged by the Company or otherwise required for the purpose of the Project;
- (j) the Employer will provide all such reasonable assistance as the Company may request to support the obtaining of licences for the import of any goods or material of foreign origin or with foreign content which are required by the Company for the purposes of the Project;
- (k) the Employer will endeavor to render such assistance, by coordinating with the relevant Government Departments, as may necessarily be required by the Company to ensure smooth and proper operation of adjacent existing facilities during construction of the Works and, in particular, in respect of any diversions that may be necessary; and
- (l) the Employer undertakes to restrict ribbon development along the Project, to control development and remove unauthorized buildings between the Building Line and the Project and to remove all encroachments within the Concession Area.

5.2.4 Whenever there is reference under these Conditions to an act by or obligation of the Employer, such act or obligation is authorized by and on behalf of the GoP.

5.2.5 Under these Conditions where there is reference to an act by any Federal, Provincial or local authority, it shall mean that the Employer shall procure such authority to perform such act but any obligations of those authorities shall not constitute obligations of the Employer under these Conditions.

### **5.3 EMPLOYER INSPECTION**

5.3.1 The Employer shall monitor the construction of the Works and carry out tests from time to time in accordance with accepted engineering practices.

5.3.2 During the progress of the Works the Employer shall have the power to order in writing from time to time:

- (a) the removal from the Works, within such time or times as may be specified in the order, of any materials which in the reasonable opinion of Employer are not in accordance with these Conditions and for its substitution with proper and suitable materials; and
- (b) the removal and proper re-execution of any work in respect of materials or workmanship which in the opinion of the Employer is not in accordance with these Conditions.

## **6 Licences and Consents**

### **6.1 APPLICATIONS TO BE MADE BY THE COMPANY**

6.1.1 The Company shall make or cause to be made, in a timely manner, all applications (whether initial or renewal applications) for the Consents in Prescribed Form and with Prescribed Fee to the appropriate Relevant Authorities and shall diligently pursue all such applications with a view to obtaining the relevant consent as expeditiously as is practicable. The information supplied in the applications shall be complete and accurate and shall satisfy the substantive and procedural requirements of the applicable Laws of Pakistan.

### **6.2 SUPPORT OF EMPLOYER**

6.2.1 The Employer shall support and recommend all such applications so as to expedite the consideration thereof by the Relevant Authorities and shall provide all reasonable help to the Company to acquire the required Consents.

### **6.3 EMPLOYER APPROVALS**

6.3.1 Provided that the Company shall have complied with all requirements the Employer shall promptly issue, or cause to be issued, all permits, consents and approvals within its power and jurisdiction necessary for the Company to construct, equip, operate and maintain the Project in accordance with these Conditions.

## **7 Treatment of Ongoing Contracts**

### **7.1 ASSIGNMENT OF AGREEMENTS**

7.1.1 With regard to construction contracts, maintenance contracts, supply agreements, service agreements, employment agreements and toll collection concessions previously entered into by the GoP or by any provincial government or local authority relating to any matter covered by this Agreement, the Employer, if required to do so by written notice from the Company, will assign or cause the assignment of such agreements to the Company.

7.1.2 Any of the aforesaid agreements which are not assigned to the Company shall be terminated or be deemed to be so terminated without the Company being liable for any termination costs.

### **7.2 TRANSFER OF LIABILITIES AND OBLIGATIONS**

7.2.1 The taking over of the operation and maintenance of any Infrastructure or Facility covered under these Conditions shall not render the Company liable for any claims, liabilities and obligations of the GoP, the Employer or other party arising out of or in connection with contracts of whatever nature or description existing before the taking over except where expressly agreed to by the Company.

## **8 The Employer Auditor and Company Auditor**

### **8.1 APPOINTMENT**

8.1.1 The Employer shall appoint at its own expense a person or persons as the Employer Auditor to provide the joint certificates and other services referred to in this

Agreement and shall ensure that at least one person continues to be so appointed throughout the Concession Period.

- 8.1.2 The Company shall appoint at its own expense a person(s) or firm as Company Auditor to provide the joint certificates and other services referred to in these Conditions. The Company may terminate the appointment of any Company Auditor subject to the appointment of a replacement.

## **8.2 JOINT CERTIFICATE**

- 8.2.1 The Employer shall require that the Employer Auditor shall, and the Company shall require that the Company Auditor shall, jointly provide the certificates and the other services referred to in these Conditions as are required to be provided by the Operations Auditors.

- 8.2.2 Any joint certificate provided by the Operations Auditors shall, in the absence of error, be conclusive as to the matters set out therein and binding on the Parties hereto.

## **8.3 SETTLEMENT BY EXPERT OR ARBITRATOR**

- 8.3.1 If the Employer Auditor and the Company Auditor are unable to agree to any matter required to be set out in any joint certificate to be provided by the Operations Auditors, the Company shall, upon being notified of such inability to agree upon such matter, refer such matter to an expert agreed upon by the Parties for settlement. The decision of such nominated expert shall be binding on the Operations Auditors. The fees and expenses of the nominated expert shall be borne by the Company.

## **8.4 DISPUTE IN PAYMENT**

- 8.4.1 Notwithstanding the foregoing, if the matter upon which the Employer Auditor and the Company Auditor are unable to agree relates to the payment of money, any amounts which are agreed and the lower of any amounts which are not agreed but for which each of the Employer Auditor and Company Auditor have determined an amount, shall be the subject of a joint certificate to be provided pursuant to Sub Clause 8.2 and shall become payable in accordance with this Agreement. Following the settlement of the matter the balance (if any) of the payment or any overpayment shall become payable or repayable in accordance with the provisions of these Conditions.

## **8.5 DELIVERY OF CERTIFICATE**

- 8.5.1 Any joint certificate to be provided by the Operations Auditors shall be delivered to the Employer and the Company simultaneously to the addresses referred to in Clause 32 and in the manner set out therein.

## **8.6 TIME PERIODS**

- 8.6.1 All time periods referred to in these Conditions relating to receipt of a joint certificate from the Operations Auditors shall:



- (a) in the case of a joint certificate provided pursuant to Sub Clause 8.2, commence on the date mentioned thereon; and
- (b) in the case of a determination by a nominated expert pursuant to Sub Clause 8.3 (which shall be deemed to be the joint certificate of the Operations Auditors) commence on the date of that determination.

## **9 Land**

### **9.1 GRANT OF RIGHT AND LICENCE**

- 9.1.1 The Employer shall grant to the Company throughout the Concession Period the exclusive right and license to enter upon and to occupy the existing Right of Way but all additional land required by the Company in relation to the Concession, as specified in Appendix to Bid. Any land so required shall be made available to the Company with payment for rent, taxes or other costs, expenses and charges throughout the Concession Period.
- 9.1.2 The Employer shall make available the land so required not later than a period of three (3) months, or as stated in the Particular Conditions of Contract, before the date for commencement of construction Works subject to fulfillment of the procedural and financial obligations of the Company.
- 9.1.3 For the avoidance of doubt, it is agreed and declared that the land shall be made available free of encumbrances and without any owners, tenants, lessees, licenses, squatters or other occupiers.

### **9.2 COST AND EXPENSES**

- 9.2.1 All costs, expenses or charges incurred in making available the land referred to in Sub Clause 9.1 including any compensation required to be paid for the acquisition thereof or for the removal or resettling of any owners, tenants, lessees, licenses, squatters or other occupiers on such land shall be borne and paid for by the Employer without recourse to the Company for any contribution or reimbursement. It may be otherwise too that GOP to have its Equity in the form of land to retain its title ultimately.

### **9.3 DELAYS IN OBTAINING LAND RIGHTS**

- 9.3.1 If as a result of any delay by the Employer in obtaining the Land Rights, delay is caused to the Works, the Employer will negotiate with the Company with the object of providing the Company with such remedy or relief as will adequately compensate the Company for the consequences to it of such delay. Such remedy may include, but is not limited to, an extension of the Concession Period, an extension of the period for commencement or completion of any part of the Works and or any other form of compensation or relief to enable the Company to meet any Loss, cost or expense incurred or suffered by the Company as a consequence of such delay. The amount of any compensation, if agreed by the parties to be provided, shall be determined by the Operations Auditors.

## **9.4 LIMIT OF RIGHTS**

- 9.4.1 The rights given under these Conditions to the Company in respect of the land made available to it pursuant to Sub Clause 9.1 do not confer upon the Company any proprietary right, title or interest on or over such land.

## **10 Public Utilities and Third Party Access**

### **10.1 LIMIT OF EMPLOYER OBLIGATION**

- 10.1.1 The Employer shall be responsible for providing the Company, in a timely manner so as not to interfere with the regular progress of the Works, with such information as it holds or is available in respect of Public Utilities in, under or through the Concession Area.

- 10.1.2 The Employer shall not be liable to reimburse to the Company any loss, damage or expense incurred by the Company as a result of inaccurate or late information being provided by the Employer.

### **10.2 DIVERSION OF EXISTING FACILITIES**

- 10.2.1 The Company shall be responsible for all costs and expenses associated with the removal or diversion of existing Public Utilities and services ancillary thereto such as electricity, water, sewerage and telecommunication facilities required for the Works save that the Company shall not be responsible for any cost or expenses associated with the strengthening, replacing or upgrading of existing Public Utilities and services.

- 10.2.2 The Employer will use its best endeavors to assist the Company to arrange, and achieve the timely completion of, any necessary removal or relocation of Public Utility services.

### **10.3 APPLICATION FOR SUPPLY**

- 10.3.1 In relation to the supply of Public Utilities and services required by the Company for the Works, all applications in respect thereof to the relevant Public Utility authorities or companies or other undertakings charged with the responsibility for the same shall be made by the Company and all costs and expenses incurred thereby shall be borne and paid for by the Company.

- 10.3.2 The Employer will render such assistance as may be necessary to support the Company in relation to any such applications to the relevant public authorities or companies or other undertakings provided that the Company has complied with all statutory and other legal requirements necessary for such applications.

### **10.4 COORDINATION OF WORKS**

- 10.4.1 The Company shall not be responsible for the costs and expenses of any works that may be carried out by the relevant public authorities and companies in the Concession Area which are not required for the Works. The Employer and the relevant authorities shall agree with the Company as to the phasing of such works to ensure that the Works are not delayed or interrupted.

## **10.5 AGREEMENT REQUIRED FOR WORKS BY PUBLIC UTILITIES**

10.5.1 To the extent that a Public Utility provider must seek approval from the Employer to carry out works on the Concession Area the Employer shall not grant any such approval, whether conditional or otherwise, until it obtains the prior written agreement of the Company together with the Company's reasonable requirements as to any restrictions or conditions to be imposed on the timing and execution of the works by the Public Utility provider, and shall take such reasonable requirements into consideration including where applicable the imposition of conditions when granting any approval to the Public Utility provider.

## **10.6 ACCESS TO CONCESSION AREA FOR PUBLIC UTILITIES**

10.6.1 Subject to Sub Clause 10.5 and all such reasonable conditions or requirements (including any condition as to indemnity against loss, damage, cost or expenses suffered or incurred by the Company as a result of allowing such access) as the Company thinks fit, the Company shall permit at any time during the Concession Period the authorized personnel of a Public Utility provider to have access to the Concession Area for the purpose of:

- (a) routine maintenance of any Public Utility already located within the Concession Area; or
- (b) the strengthening, replacing or upgrading of any Public Utility already located within the Concession Area; or
- (c) reinstating any foundations, structures, building, pavements, cabling and the like which may be disturbed or affected by reason of such works undertaken by a Public Utility provider; or
- (d) any other work including, but without limitation, the installation of any new additional services of the Public Utility provider within the Concession Area.

## **10.7 ACCESS ROAD CONNECTION BY THIRD PARTY**

10.7.1 The Employer may issue a written order to the Company, after consultation with the Company, to allow access road connection to the Concession Area to any other parties for the purpose of connecting their developments to the Project. Such access by the other party shall comply with the Standards and be so designed and implemented that it does not in any way or manner adversely affect the flow users or create hazardous operating conditions.

10.7.2 If the proposed access would adversely affect the users through a toll plaza (and, consequently, the toll revenues of the Company) the Employer shall as a condition of any order (if the Employer decides to make such order) ensure that the Company is adequately compensated or indemnified by such other party seeking access and/or by the Employer against any loss, cost or expenses which may be suffered or incurred by the Company as a consequence of such order.

## **11 Design and Construction**

## **11.1 OUTLINE DESIGN**

11.1.1 The Outline Design as approved by the Employer is defined in terms of the project description and design criteria set out in Appendix to Bid.

## **11.2 DESIGN PROPOSAL AND DETAILED DESIGN**

11.2.1 Within four (4) weeks, or as stated in the Particular Conditions of Contract, after the Effective Date the Company shall submit the Design Proposal of the Works to the Employer for approval (which approval shall not be unreasonably withheld).

11.2.2 The Design Proposal will present the Company's design proposals and specifications whereby the Outline Design can be carried forward to Detailed Design. The Design Proposal will also include details of all temporary works, including arrangements for diversion and control of traffic along, and public access across, any existing roads which are affected by the construction works.

11.2.3 Unless the Company receives written objections thereto from the Employer within four weeks after the date of submission, the Design Proposal shall be deemed approved and the Company shall carry out the Detailed Design according to the Standards.

11.2.4 The Company shall subsequently submit the Detailed Design including the design of temporary works to the Employer for approval (which approval shall not be unreasonably withheld) within 3 months, or as stated in the Particular Conditions of Contract, after the Effective Date. Unless the Company receives written objections thereto from the Employer within four weeks after the date of receipt of such submission, the Detailed Design shall be deemed approved. The Employer shall similarly have four weeks in which to object to any resubmitted Detailed Design.

## **11.3 APPROVAL**

11.3.1 Approval of the Design Proposal and Detailed Design shall not be withheld if the design complies with the Outline Design and statutory requirements. The Company shall not make any variations to the Detailed Design which would be in conflict with the approved Design Proposal without the prior approval of the Employer, which approval shall not be unreasonably withheld.

11.3.2 Approval of the Detailed Design shall not be construed as a warranty by the Employer of the safety, durability or reliability of the Project.

## **11.4 CHANGES**

11.4.1 Subject to the provisions of Sub Clause 11.8, the Employer may request design changes and/or additional or extra work, or the omission of some parts of the design, in accordance with the procedures set out in Appendix to Bid.

## **11.5 QUALIFIED ENGINEERS**

11.5.1 The Detailed Design shall be carried out at the Company's expense by appropriately qualified design engineers.

## **11.6 COMMENCEMENT OF WORKS AND CONSTRUCTION SCHEDULE**

- 11.6.1 The Company shall commence the construction Works within 6 weeks, or as stated in Particular Conditions of Contract, after the Detailed Design for the relevant works has been approved, or deemed to have been approved, by the Employer in accordance with Sub Clause 11.3. The commencement of civil construction shall be evidenced by a joint certificate issued by the Operations Auditors.
- 11.6.2 Subject to the provisions under these Conditions, the Works shall proceed in accordance with the schedule specified in Appendix to Bid.

## **11.7 COMPLETION OF CONSTRUCTION OF THE WORKS**

- 11.7.1 The Company shall complete the Works within the period as mentioned in the Particular Conditions of Contract after the Effective Date or within such extended period as may be granted by the Employer. Failure to complete within the agreed period shall be deemed a material breach in the Company's obligations under these Conditions.
- 11.7.2 The completion of a section of the Project or the whole shall be certified by the Employer through the issue of a sectional or final Certificate of Completion in accordance with Sub Clause 5.2.3(g). The date of this certificate is the Construction Completion Date for the designated section. Where the completed section is properly linked to the existing system such that it is suitable for public use, the date of the certificate is also the Availability Date for that section. Otherwise the Available Date is such later date on which the section is so properly linked.
- 11.7.3 Upon completion of the construction of the Works, the Company shall clear away and remove all construction plant, surplus materials, rubbish and temporary work of every description and shall leave the site clean and in a condition satisfactory to the Employer provided that the Company shall be permitted to maintain and have access to offices and maintenance yards for the purposes of the Concession on sites in the Concession Area to be agreed with the Employer and the Employer shall be entitled to have access to such offices and yards.

## **11.8 COMPENSATION**

- 11.8.1 The Employer hereby undertakes to consider claims from the Company arising from any losses, costs or expenses which the Company may incur as a result of any changes to the Outline Design, Design Proposal or Detailed Design requested by the Employer pursuant to Sub Clause 11.4.
- 11.8.2 If as a result of undertaking any additional works requested by the Employer there is a delay caused to the completion of the Project or the commencement of the collection of revenue, the Employer will negotiate with the Company to decide and agree whether:
- (a) the Concession Period and the period for commencement and/or completion of any part of the Works shall be extended; and/or
  - (b) any other forms of compensation or relief shall be provided to the Company to enable the Company to meet any loss, cost or expense incurred or

suffered as is necessary to compensate the Company for the consequences of such delay.

## **11.9 JOINT CERTIFICATE**

11.9.1 Any claim by the Company which it is agreed shall be compensated by the Employer pursuant to Sub Clause 11.8 shall be accompanied by a joint certificate from the Operations Auditors setting out the amount payable and including detailed calculations of the same. The amounts so certified shall be paid to the Company by the Employer within 60 days, or as stated in the Particular Conditions of Contract, after the date of receipt of the joint certificate from the Operations Auditors by the Employer.

## **11.10 PENALTIES**

11.10.1 The Company if it fails to achieve a Key Date, as specified in Appendix to Bid shall pay to the Employer an amount as stated in the Particular Conditions of Contract for every day of delay on account of the Company's default.

## **11.11 NON-INTERFERENCE TO THE PUBLIC AND ROAD USERS**

11.11.1 All operations necessary for the execution of the Works shall, in so far as compliance with the requirements of these Conditions permit and in conformity with its intent, be carried on so as not to unnecessarily impede the flow of traffic on existing highways, nor the public access to and from the use and occupation of public and private roads and footpaths to or from properties whether in the possession of the Employer or of any other person.

## **11.12 SAFETY**

11.12.1 The Company will undertake the construction Works, and the organization and implementation of temporary traffic diversions and controls in such a manner as to ensure proper levels of safety for the road users, the public in general and those engaged on the Works themselves.

## **11.13 OTHER WORKS**

11.13.1 The Employer reserves the right to carry out other works within the Concession Area which the Company is not obliged to do under this Agreement by using other contractors as it may from time to time appoint. The Employer shall notify the Company prior to the commencement of such works and the Company shall give its full cooperation to such contractors in the carrying out of such works. Provided always however that such other works shall not obstruct or hinder the flow of traffic or the undertaking of the Works by the Company or impinge or effect or in any way detract from the rights enjoyed by the Company under the Concession.

11.13.2 The Employer shall compensate the Company for any loss, cost or expense incurred or suffered by the Company by reason of such other works. In addition to such loss, cost and expense, if as a result of other works undertaken by the Employer there is a delay caused to the construction of the Project or the commencement of the collection of revenue, the Company shall be entitled adequate compensation for the consequences of such delay which may include but which need not be limited to the Concession Period being extended.

## **12 Operations**

### **12.1 COMMENCEMENT OF OPERATIONS**

12.1.1 The Company shall be deemed to have commenced operations of the Project on the Availability Date of the first usable section of the Project.

### **12.2 REGULATION**

12.2.1 All regulations, rules and orders made or issued under the Laws of Pakistan which are applicable to Projects shall be applicable to the Project and shall be enforced by the Employer or the Company as the case may be and stipulated for in this Agreement.

12.2.2 The Employer shall ensure that at all times there are adequate police services for the operation of the Project and the protection and safety of the public, at no cost to the Company.

12.2.3 The Employer shall ensure, and shall procure that other authorities ensure, that in enforcing the law on the Project the police will follow proper practice and will not themselves impose any fee charge or toll other than the imposition of any fine or penalty specified in law.

12.2.4 The Employer shall ensure that the police shall not hamper or hinder the Company or the users of the Project.

### **12.3 OPERATING PRACTICE**

12.3.1 Standards of operating practice that must be met at all times by the Company are set out in Appendix to Bid. The Company shall prepare an Operations Manual, to be approved by the Employer, setting out procedures whereby these Standards - or higher performance standards as may be agreed upon - are to be met.

12.3.2 Where a road facility or major bridge forms part of the Project, the Company is authorized:

- (a) to prohibit pedestrian access within the Right of Way of the Project except as expressly provided for;
- (b) to prohibit vehicular access except at the interchanges and junctions at the locations as provided in the Particular Conditions of Contract;
- (c) to limit the use of the Project to those categories of vehicle or other units as provided in the Particular Conditions of Contract; and
- (d) to refuse entry to vehicles in respect whereof no toll has been paid.

Such necessary provisions relevant to specific sector of the Projects may be incorporated in the Particular Conditions of Contract.

12.3.3 Where a major bridge forms part of the Project the Employer may require that facilities be provided so that motorcycles, scooters, rickshaws, non-motorized vehicles and other such vehicles as may be generally banned from the Project are able to use the bridge. In such circumstances the facilities shall be so designed and operated to ensure complete segregation between these vehicle types and other vehicles on the Project.

- 12.3.4 The Company shall have the right to weigh vehicles and inspect vehicles and their load in circumstances where there is any doubt about the vehicles compliance with regulations, rules and orders applying to the Project.
- 12.3.5 The Company shall be authorized to prohibit specific vehicles from using the Project where the gross vehicle weight or any axle load exceeds the limits specified in Appendix to Bid or where the mechanical condition of the vehicle or the condition or type of its load or the ability of its driver is deemed to represent a safety hazard to road users.

#### **12.4 SERVICES AND AIDS**

- 12.4.1 The Company shall provide at its own cost and expense the following services and aids to the users, required by the Employer;
- (a) emergency telephone services at places to be agreed with the Employer;
  - (b) breakdown/patrol services to provide assistance to motorists in distress or during emergency, to be agreed with the Employer;
  - (c) wash rooms for the users to be agreed with the Employer.

### **13 Tolls/Fees/Benefits**

#### **13.1 REVENUE COLLECTION BY THE COMPANY**

- 13.1.1 Subject to the provisions of these Conditions, the Employer hereby authorizes the Company to levy, demand, collect and retain toll/Fees/benefits for its own revenue generation from users of the Project.
- 13.1.2 Fee/Toll collection by the Company shall be permitted as planned, built and equipped for the purpose, in accordance with the project description and design criteria specified in Appendix to Bid.
- 13.1.4 Fee/Toll collection may commence on the Availability Date.
- 13.1.5 All revenues shall be credited to the Project Escrow Account.

#### **13.2 REVENUE COLLECTION POLICY**

- 13.2.1 Subject to the terms and conditions of the Agreement the Base Year Tolls/fees as stated in the Particular Conditions of Contract.
- 13.2.2 The Company has the right, but not the obligation, to offer and negotiate toll concession packages with regular users of the Project (individuals, companies, government authorities and other bodies).

#### **13.3 TAX COLLECTION**

- 13.3.1 The Employer will not, and will procure that Federal, Provincial and local authorities will not, allow the collection of any taxes and dues - local, Provincial or Federal - on the Project, or in any manner which causes congestion or hazard on the Project.



## **13.4 NO GUARANTEE OF REVENUE OR LOANS**

- 13.4.1 Nothing contained herein or in any other document shall be construed as providing:
- (a) any guarantee by the GoP/Employer of operational capacity, revenue levels; or
  - (b) any guarantee by the GoP/Employer of the availability of funding for the Project.

## **14 Ancillary Facilities**

### **14.1 PROVISION AND OPERATION**

- 14.1.1 The Company shall subject to all prevailing relevant laws in respect thereof design, construct, manage, operate and maintain the Ancillary Facilities as set out in Appendix to Bid in accordance with the provisions of these Conditions with the assistance of such agents, contractors or suppliers as the Company may select. The Company may enter into such licensing, concession or other contractual arrangements as the Company shall deem appropriate for the design, construction, management, operation and maintenance of the Ancillary Facilities.

### **14.2 RECEIPTS**

- 14.2.1 Subject to the terms of any such contractual arrangements, the Company shall retain all monies received from the operations, if any, of the Ancillary Facilities, such revenue to be credited to the Project Escrow Account.

## **15 Maintenance**

### **15.1 LIMIT OF MAINTENANCE**

- 15.1.1 The Company shall maintain the Project in good repair and condition and in accordance with these Conditions and Prudent Practice, including normal periodic maintenance, heavy repairs and structural rehabilitation, and the refurbishment and replacement of equipment.
- 15.1.2 The Company shall also undertake routine maintenance.
- 15.1.3 The maintenance works to be carried out by the Company shall be as described in Appendix 5.

### **15.2 MAINTENANCE PROGRAMME**

- 15.2.1 The Company shall prepare and undertake a maintenance programmed with the objectives of ensuring that the Project can be operated efficiently throughout the Concession Period and satisfies the condition criteria at transfer pursuant to Sub Clauses 26.2 and 27.4.

### **15.3 REHABILITATION ESCROW ACCOUNT**

- 15.3.1 Throughout the Concession Period a sum Rs 50 million (Rupees fifty million only) or 10% of gross annual revenue, or as stated in the Particular Conditions of Contract shall be set aside annually in a Rehabilitation Escrow Account, to provide funds to be used for the maintenance of the Project in accordance with Sub Clause 15.1.1,

including any heavy repair as may be required over and above programmed structural overlay.

## **15.4 FAILURE TO MAINTAIN**

- 15.4.1 If, in the opinion of the Employer, the Company fails to perform its maintenance (of any type/magnitude) or structural rehabilitation obligations in accordance with this Agreement, the Employer may give notice to the Company of the failure setting out in detail the obligation which the Employer considers has not been performed, and the Company shall respond within a period of four weeks and shall either agree to perform the maintenance or structural rehabilitation or give a justification for not carrying out the maintenance or structural rehabilitation to the Employer.
- 15.4.2 If the Company agrees to perform the maintenance or structural rehabilitation or if its justification for not carrying out the maintenance or structural rehabilitation is rejected by the Employer and in either case the Company fails to proceed within a further four (4) Weeks, the Employer shall give notice to the Company that it will carry out that maintenance or structural rehabilitation. The costs of carrying out that maintenance or structural rehabilitation shall be borne by the Company and, without prejudice to the foregoing, the Employer may obtain payment out of the Rehabilitation Escrow Account in the first instance, and then out of the Operations Phase Security.

## **16 Indemnities**

### **16.1 WAIVER OF INDEMNITY**

- 16.1.1 Except as provided in Sub Clause 16.2, neither Party shall be liable to the other Party in contract, tort, warranty, strict liability, or any legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this 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 these Conditions or to any activity not contemplated by under these Conditions.

### **16.2 INDEMNITY**

- 16.2.1 The Employer shall defend and indemnify the Company and its directors, officers and employees against, and hold the Company and its directors, officers and employees harmless at all times after the date hereof, from any and all Losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Company and its directors, officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the Employer in connection with these Conditions.
- 16.2.2 The Company shall defend and indemnify the Employer and its officers and employees against, and hold the Employer and its officers and employees harmless at all times after the date hereof, from any and all Losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Employer and its officers and employees for personal injury or death to persons or damage to property arising out of the negligent or intentional act or omission of the Company in connection with these Conditions.

16.2.3 In the event that any Loss results from the joint or concurrent negligent or intentional acts or omission of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

16.2.4 The provisions of Sub Clause 16.2 shall survive for a period of five (5) years following the Termination Date of the Agreement.

### **16.3 FINES AND PENALTIES**

16.3.1 Any fines or other penalties incurred by the Company for non-compliance with applicable Laws of Pakistan or other governmental actions taken pursuant thereto or the Consents shall not be reimbursed by the Employer but shall be the sole responsibility of the Company.

### **16.4 NOTICE OF LOSS**

16.4.1 Each Party shall promptly notify the other Party of any Loss or proceeding in request of which it is or may be entitled to indemnification under Sub Clause 16.2. Such notice shall be given as soon as reasonably practicable after the relevant Party becomes aware of the Loss or proceeding.

## **17 Insurance**

The Company is allowed to carry out insurance in accordance with the requirement of Lenders.

### **17.1 INSURANCE COVERAGE**

17.1.1 The Company, at its sole cost and expense, shall obtain and maintain during the term of the Agreement insurance set forth below at least in the amounts set forth herein and during the periods mentioned herein, provided, however, that such amounts may be reduced from time to time with the approval of the Employer. The Employer acknowledges that the Lenders may require to be designated as the loss payees, beneficiaries or additional insures under such policies, as the case may be.

### **17.2 AMOUNT OF INSURANCE**

17.2.1 The insurance required by this Clause 17 shall be taken out with any insurer, local or international, that is acceptable to the Lenders. He is

### **17.3 INSURANCE OF THE WORKS DURING THE CONSTRUCTION PHASE**

17.3.1 The Company will effect and maintain or cause to be effected and maintained insurance for the Works until the Availability Date on the following basis:

- (a) a contractors all risks policy to include cover for all goods, for construction of the Works including when they are in transit to the Concession Area; and
- (b) a policy against any liability including third party liability for each incident ( the number of incidents to be unlimited) which may arise in connection with the construction of the Works.

## **17.4 INSURANCE DURING THE OPERATIONS PHASE**

17.4.1 In respect of the Works after the Availability Date and throughout the Concession Period the Company shall cause to be affected and maintained insurance:

- (a) for the infrastructure/facility toll plazas, signs, guardrails and other installations comprising the Project against loss, break-down, damage or destruction from such risk as shall be prudent to insure against having regard to the practice of the industry, such policy also to cover any property of the Employer, if any, in the Concession Area;
- (b) against injury or death of its employees as required by law; and
- (c) For third party liability for each incident (the number of incidents to be unlimited).

## **17.5 JOINT NAMES**

17.5.1 All policies to be taken out pursuant to this Clause are to be taken out in the joint names of the Company and the Employer.

## **17.6 COPIES**

17.6.1 Duplicate or certified copies of the policies and all renewal certificates and endorsement slips shall be lodged by the Company with the Employer.

## **17.7 PREMIUMS**

17.7.1 The Company shall pay or cause to be paid all premiums and other money payable in respect of any policy of insurance to be effected hereunder as the same shall become due and payable and will in respect of any such policy of insurance produce to the Employer the policy of insurance and the receipts for the payment of each premium payable there under (or other proof of payment to the Employer's satisfaction) upon the Employer's request to the Company so to do.

17.7.2 If the Company shall fail to procure or maintain any insurance required pursuant to this Clause 17 and such insurance is not procured or maintained by the Lenders or any other party, the Employer shall have the right to procure such insurance at the cost of the Company in accordance with the requirements of this Clause 17.

## **17.8 DESTRUCTION**

17.8.1 If the Works or any part thereof or any of the temporary works, construction plant, materials or other things in the Concession Area is damaged or lost by any risk insured against pursuant to this clause, the Company shall use the insurance money available (and to the extent that the same may be insufficient, use its own funds) to repair, replace and make good damage or loss.

## **18 Customs Duties and Import Controls**

### **18.1 CUSTOMS DUTIES AND TAXES**

18.1.1 The Employer encourages the Company and its contractors to incorporate as much locally produced material, equipment, and supplies as possible in the construction and operation of the Project.

- 18.1.2 In accordance with existing GoP undertakings, subject to any revision before Financial Close, the Company has the right to import plant and equipment required for the construction and operation of the Project, without payment of customs duties, sales tax, or any other form of tax, levy or surcharge, provided that such plant and equipment is to be re-exported.

## **18.2 RE-EXPORT**

- 18.2.1 The Employer may, as provided by the Laws of Pakistan, at any time require the Company to re-export any items or equipment used in the construction of the Project that are not reasonably required for the Company to operate and maintain the Project, unless the company agrees promptly to pay the normal customs duties for those items and equipment. The Company shall be afforded three (3) months, or as stated in Particular Conditions of Contract, following notification by the Employer, to re-export any such items or equipment required to be re-exported by the Employer.

## **18.3 EXPORT AND RE-IMPORT**

- 18.3.1 The Company shall be entitled to export without restriction all items of plant and machinery imported by it for permanent installation in the Project for the purpose of repair or refurbishment outside Pakistan and to re-import the same without restriction and without payment of customs duties, and the Employer shall, at the request of the Company, expedite the issuance of any Consent required for the export of such plant and machinery.

# **19 Foreign Exchange and Transfer of Funds**

## **19.1 FOREIGN EXCHANGE REGULATION**

- 19.1.1 Foreign currency exchange and transfer abroad of all funds related to the Project shall be governed by the Foreign Exchange Regulation Act 1947 of Pakistan in conjunction with the Protection of Economic Reforms Act of 1992 of Pakistan both as amended from time to time.

## **19.2 USE OF PAKISTAN BANK ACCOUNT; EXCEPTIONS**

- 19.2.1 All of the Company's transactions related to the Project that require foreign exchange, including debt servicing and repatriation of earnings, will be initiated through bank accounts in Pakistan, provided, however, that foreign exchange provided by foreign Lenders, liquidated damages paid by foreign contractors or vendors, proceeds of insurance and reinsurance by foreign insurers, and any other foreign sources that are used to pay foreign contractors, vendors, insurers, reinsurer or Lenders may be paid directly to such persons and not conducted through bank accounts in Pakistan.

## **19.3 CONSENT TO FOREIGN CURRENCY ACCOUNTS**

- 19.3.1 The Company shall obtain the Consent of the State Bank of Pakistan for the Company and its contractors to open, operate, and retain earnings of foreign currency bank accounts inside Pakistan (including, without limitation, the payment of all foreign exchange received by the Concession Company into such accounts and withdrawals there from).

19.3.2 The Company shall obtain the Consent of the State Bank of Pakistan to maintain bank accounts outside Pakistan and transfer such funds from its accounts in Pakistan to its accounts maintained outside Pakistan as are necessary to implement and carry out the Project in accordance with these Conditions.

#### **19.4 FREE TRANSFER OF NECESSARY FUNDS**

19.4.1 In accordance with existing GoP undertakings the Company shall be permitted the free transfer of all funds and financial settlements necessary to implement and carry out the Project or the implementation of this Agreement or any other relevant agreement.

#### **19.5 EXCHANGE RISK INSURANCE**

19.5.1 If required, the Employer will assist the Company to obtain Foreign Exchange Risk Insurance from the National Bank of Pakistan, upon proper application by the Company in the Prescribed Form and payment by the Company of the Prescribed Fees.

### **20 Assignment, Subcontracting and Substitution**

#### **20.1 ASSIGNMENT**

20.1.1 No assignment, transfer or substitution by either Party of this Agreement or such Party's rights or obligations hereunder shall be effective without the prior written consent of the other Party.

#### **20.2 SUBCONTRACTING**

20.2.1 The Company is permitted to enter into contracts with third parties both local and international for the carrying out of the Works.

#### **20.3 SUBSTITUTION**

20.3.1 Notwithstanding the provisions of Sub Clause 20.1, the Employer acknowledges and agrees that the Company may grant to the Lenders securities with regard to the financing of the Concession (including construction costs, operation and maintenance costs, and cash flow requirements) and that such securities may include, but not be limited to, the right for the Lenders (and/or any entity appointed by the Lenders, such entity being hereafter called the Substituted Entity) to be substituted for the Company in the event of a continuing default by the Company to meet its obligations under the Concession Agreement and/or any of the Agreements entered into by the Company to ensure the financing of the Concession.

20.3.2 The Employer agrees that in the event that the Substituted Entity is substituted for the Company, the Substituted Entity shall automatically be substituted to all rights, benefits and securities of the Company under the Concession Agreement, and the Employer undertakes to give or procure all consents and/or approvals as may be required to ensure the effectiveness of such substitution.

20.3.3 In respect of the provisions of Sub Clause 20.3.1, the Employer also agrees that the Project Escrow Account may be placed under Lien by a Lender or Lenders, if required.

## **21 Provisions Relating to Lenders and Investors**

### **21.1 SECURITY PACKAGE**

21.1.1 The Employer shall not take any discriminatory action which materially and adversely affects the interests of the Lenders or the Investors under the Security Package.

### **21.2 ENJOYMENT OF RIGHTS**

21.2.1 The Employer shall not take any discriminatory action which materially and adversely affects the Project or the performance of the Company's obligations or enjoyment of the Company's rights under the Security Package or except as hereinafter provided seek the expropriation or compulsory acquisition of the Project or the Company, whether in whole or in part. If a non-discriminatory action of the Employer or the GOP shall cause any such material and adverse effect, the Employer shall, at the request of the Company, use its endeavors or recommend to the GoP, as the case may be, to mitigate such effect.

### **21.3 ACQUISITION OF SHARES OR ASSETS**

21.3.1 The Employer undertakes that it will not expropriate, compulsorily acquire or nationalize the Company or any shares in, or assets of, the Company prior to the termination of this Agreement or the transfer of the Project in accordance with these Conditions and will endeavor to ensure that the Company, its shares and assets are not so expropriated, compulsorily acquired or nationalized by any Federal, Provincial or local authority or any other public sector entity.

### **21.4 RESTRICTION OF TRANSFER OF SHARES**

21.4.1 The Company shall ensure that no Initial Sponsor shall transfer any Ordinary Share Capital owned by it at any time prior to the Construction Completion Date or for a period of six (6) years after the Construction Completion Date, except for:

- (a) a transfer to another Initial Sponsor; or
- (b) subject to the national security interests of Pakistan as such interests shall be determined in the sole discretion of the Employer, a transfer to an affiliate corporation of any Initial Sponsor; or
- (c) a transfer required by any Laws of Pakistan or by the operation of the Laws of Pakistan or by order of a court, tribunal, or governmental authority or agency with appropriate jurisdiction; or
- (d) a transfer resulting from the creation or enforcement of a security interest in or over any Ordinary Share Capital in accordance with the Security Package; or
- (e) a transfer to which the Employer has given its approval; or
- (f) a transfer as part of a public offering; provided, that the Initial Sponsors retain more than fifty-one (51%) percent of the outstanding Ordinary Share Capital.

21.4.2 The Company shall ensure that no Initial Sponsors shall transfer any Ordinary Share Capital after the expiry of a period of six (6) years from the Construction

Completion Date except with prior written approval of the Employer; provided however, the Employer hereby agrees that such approval shall be granted unless the Employer determines in its sole discretion that such a transfer would be prejudicial to the national security interests of Pakistan.

## **21.5 CONSULTATION ON MODIFICATION TO THIS AGREEMENT**

21.5.1 If the Company advises the Employer that any amendments, modifications or revisions to the Agreement are necessary or desirable to satisfy requirements of the Lenders and investors, the Employer and the Company shall promptly consult as to any mutually acceptable action necessary or desirable under the circumstances and negotiate in good faith with a view toward amending, modifying and revising the Agreement in a mutually satisfactory manner.

## **22 Finance**

### **22.1 COMPANY TO OBTAIN FINANCE**

22.1.1 The Company shall be responsible for obtaining all the finance, both debt and equity, necessary to construct, operate and maintain the Project. The Employer/GoP will not provide any sovereign guarantee of repayment.

22.1.2 The Company shall achieve Financial Close within 4 months, or as stated in Particular Conditions of Contract, after the Effective Date.

22.1.3 The Company shall from the outset and at all times maintain an equity in the Project of at least 30 percent or as stated in Particular Conditions of Contract.

22.1.4 Employer encourages participation of local investors in the Project, the Company shall be obliged to associate with local partners where equity holding of local partners shall not be less than 40%, or as stated in the Particular Conditions of Contract.

### **22.2 FINANCIAL RECORDS AND STATEMENTS**

22.2.1 The Company shall carry out its business and affairs with due diligence and efficiency and in accordance with sound financial and commercial standards and practices and shall keep full and particular accounts of its business and affairs and cause the same to be properly posted up to date.

22.2.2 The Company shall permit any person authorized in writing to that effect by the Employer to have access to or to examine or to inspect any accounts, books, records, documents.

22.2.3 The Company shall furnish yearly to the Employer a copy of its annual report together with the related financial statement and auditor's reports.

### **22.3 SHARING OF NET RETURN OF PROJECT**

22.3.1 The Company will share a %age, as mentioned in Particular Conditions of Contract, of the Gross Revenue with GOP initially for number of years as mentioned in Particular Conditions of Contract. The annual sharing of Gross Revenue thereafter is given in Appendix to Bid.



22.3.2 The Parties shall be paid the due amounts as determined by the Operations Auditors in each subsequent year from the Project Escrow Account upon receipt of the appropriate joint certificate of the Operations Auditors.

## **23 Taxes and Fiscal Concession**

### **23.1 TAXES AND DUTIES**

23.1.1 All present and future federal, provincial, municipal or other lawful income and other taxes, duties, levies, or other impositions applicable to the Company, the Project, the Company employees, and the Company's other assets shall be paid by the Company in accordance with the requirement of the Laws of Pakistan. The Employer will not assume any tax liability whatsoever on behalf of the Company.

23.1.2 Notwithstanding Sub Clause 23.1.1, the Company shall enjoy the specific concessions on customs duties and taxes applying to the importation of materials and equipment as has already been provided for by the GoP as specified in Clause 18.

### **23.2 TAXATION OF LENDERS**

23.2.1 In accordance with existing GoP undertakings, for the duration of the Concession Period and any extension thereof, the non-resident Lenders shall not be subject to taxation in Pakistan regarding their income from interest, mark-up, fees, or other payments arising from loans extended to the Company for the purposes of the design and construction of the Project and the financing provided to the Company for the Project, subject, however, to fulfillment of all applicable conditions specified in the relevant bilateral tax treaty applicable to each Lender's country.

### **23.3 TAXATION OF FOREIGN INVESTORS**

23.3.1 Foreign investors will be governed by the bilateral tax treaties with their respective countries. If there is no bilateral tax treaty between Pakistan and any foreign investor's country of residence, the foreign investor will be taxed in accordance with the Laws of Pakistan.

## **24 Force Majeure**

### **24.1 GENERAL**

24.1.1 Neither the Employer nor the Company shall be in breach of its obligations under these Conditions if it is unable to perform or fulfill any of its obligations hereunder as a result of the occurrence of an event of force majeure. The expression 'Force Majeure' means an event or circumstance or combination of events or circumstances that is beyond the reasonable control of a Party, and the adverse effect of which could not have been prevented, overcome or remedied in whole or part by the affected Party through the exercise of diligence and reasonable care. Force Majeure shall include but not be limited to:

- (a) war, hostilities (whether declared or not), invasion, act of foreign enemies, rebellion, revolution, insurrection, military or usurped power, civil war, terrorism, civil commotion or sabotage;

- (b) nuclear explosion, radioactive or chemical contamination, ionising radiation;
- (c) strikes, works to rule or go-slows that extend beyond the Project, are widespread or nationwide, or that are of a political nature, such as, by way of example and not limitation, labor actions associated with or directed against a Pakistan political party, or those that are directed against the Company (or its contractors) as part of a broader pattern of labor actions against companies or facilities with foreign ownership or management; and
- (d) natural catastrophe including but not limited to earthquakes, floods, subsidence, lightning and exceptionally inclement weather.

## **24.2 NOTIFICATION OF FORCE MAJEURE**

- 24.2.1 If an event of force majeure occurs the Company shall immediately notify the Employer in writing of the occurrence of such event and of the cessation of such event.

## **24.3 TERMINATION BY FORCE MAJEURE**

- 24.3.1 If a Party considers the event of force majeure to be of such severity or to be continuing for such a period of time that either Party is unable to perform any of its obligations hereunder, the Agreement may be terminated by that Party giving notice in writing to the other Party.

## **25 Expiry, Extension, Replacement and Termination**

### **25.1 EXPIRY DATE**

- 25.1.1 The Agreement shall be terminated on the Expiry Date, unless terminated earlier pursuant to Sub Clause 25.4 or Sub Clause 25.5 or extended pursuant to Sub Clause 25.2.

### **25.2 EXTENSION OF CONCESSION PERIOD**

- 25.2.1 The Concession Period may be extended by mutual written agreement between the Parties hereto in accordance with the provisions of these Conditions.

- 25.2.2 The Concession Period may, with mutual written agreement, be extended to compensate for:

- (a) any delay attributable to any change in the Design or the Works required by the Employer, pursuant to Sub Clause 11.8.2, or attributable to a change in legislation or regulation after the Effective Date, pursuant to Sub Clause 5.2.2;
- (b) any delay in obtaining land rights, pursuant to Sub Clause 9.3;
- (c) any disruption of a type referred to in Sub Clause 10 caused by works carried out by Public Utility companies;
- (d) any disruption caused by other works, pursuant to Sub Clause 11.13.2; and
- (e) any delay caused by an event of Force Majeure (as defined in Clause 24).

### **25.3 REPLACEMENT OF CONCESSION AGREEMENT**

25.3.1 During the period at least nine (9) months and not more than twenty four (24) months before the Expiry Date, or as stated in the Particular Conditions of Contract, either Party may require the other to negotiate with a view to replacing the Concession on the Expiry Date on mutually acceptable terms with an operating and maintenance contract.

25.3.2 In the event mutual agreement on terms and conditions for an operating and maintenance contract is not reached eight (8) months before the Expiry Date, the Employer may invite competitive bids for the operation and maintenance of the Project or any part thereof from other pre-qualified parties. Not later than three (3) months before the Expiry Date the Employer shall advise the Company of its decision regarding the operation of the Project following the Expiry Date. If the Employer decides to invite competitive bids, the Company shall have the right **(a)** to participate in such competitive bidding, and **(b)** match the best of the offers receive by the Employer in response to its invitation for bids, and if so matched, shall be awarded the operating and maintenance contract.

### **25.4 TERMINATION ON DEFAULT OF THE COMPANY**

25.4.1 Save as otherwise provided in these Conditions if:

- (a) the Company fails to achieve Financial Close within 4 months, or a period as stated in Particular Conditions of Contract, after the Effective Date; or
- (b) the Company without reasonable cause fails to commence the construction of the Works within the period specified or fails thereafter to show satisfactory progress in the construction of the same; or
- (c) the Company is persistently or flagrantly in breach of any material obligations under these Conditions; or
- (d) an order is made or a resolution is passed for winding up of the Company (except for the purpose of reconstruction or amalgamation not involving the realization of assets in which the interests of creditors are protected); or
- (e) the Company goes into liquidation or a receiver is appointed of the assets of the Company or the Company makes an assignment for the benefit of or enters into arrangement or composition with its creditors or stops payment or is unable to pay its debts; or
- (f) execution is levied against a substantial portion of the Company's assets, unless it has instituted proceedings in good faith to set aside such execution;

The Employer shall give notice in writing to the Company specifying the default and requiring the Company to remedy the said default within three (3) months, or as stated in Particular Conditions of Contract after the date of the notice or such further period as the Employer and the Company may mutually agree on. If the Company fails to remedy such default within the stipulated period the Employer may terminate this Agreement by serving upon the Company written notice to this effect.

### **25.5 TERMINATION ON DEFAULT OF THE EMPLOYER**

25.5.1 If the Employer without reasonable cause fails to perform or fulfill any of its obligations hereunder which adversely affect the right and authority of the

Company to collect and retain tolls or results in a nonpayment of any amount payable to the Company by the Employer under this Agreement, the Company may give notice in writing to the Employer specifying the default and requiring the Employer to remedy the said default within three (3) months, or as stated in Particular Conditions of Contract, after the date of the notice or such further period as the Company and the Employer may mutually agree on. If the Employer fails to remedy such default within the stipulated period the Company may terminate this Agreement by serving on the Employer a written notice to this effect.

## **25.6 EXPROPRIATION OR NATIONALISATION**

25.6.1 If the GoP expropriates or nationalizes the Company or otherwise takes over effective control, the Concession Agreement shall forthwith terminate and the Company shall have no further obligations to the Employer under these Conditions.

## **26 Transfer Upon Expiry**

### **26.1 SCOPE OF TRANSFER**

26.1.1 The scope of transfer covers:

- (a) all the physical assets comprising the Project procured or added from time to time in accordance with this Agreement. The transfer will take place on the Expiry Date from the Company to the Employer or its nominee(s); and
- (b) contracts/agreements signed by the Company with business, trade, employees and labor which include periods after the Expiry Date (the 'Continuing Contracts'), but only to the extent that the Company's obligations and liabilities there under will become due and payable on or after the Expiry Date. The Company shall be responsible for all obligations and liabilities in respect of the Continuing Contracts not covered by this Clause.

### **26.2 TRANSFER PROCEDURE**

26.2.1 The Company has the obligation to hand over the Project to the Employer in a properly maintained and operational condition and thereafter shall cease to have any liability for maintenance of the same.

26.2.2 The Company shall, not later than nine (9) months, or as stated in Particular Conditions of Contract, prior to the expiry of the Concession, provide to the Employer an inventory of all its equipments and materials and fixtures on the Project and shall not remove such equipments and materials or fixtures there from without the prior approval of the Employer but, subject thereto, shall remove there from such equipments and materials and fixtures as the Employer may then specify.

26.2.3 Ninety (90) days, or a period as mentioned in Particular Conditions of Contract, before the Expiry Date, the Employer shall, at its sole cost and expense, appoint an independent engineer to inspect the physical assets of the Company including all civil works, installations, equipment and facilities. The engineer together with the Operations Auditors shall make a joint inspection of the Project and all its assets.

- 26.2.4 The Operations Auditors shall issue a joint Certificate of Transfer confirming the acceptable condition of the Project or otherwise specifying what obligations of the Company are to be covered by the Transfer Security.
- 26.2.5 The Project shall be deemed to be in an acceptable condition only if the independent engineer is satisfied that all elements of the Project are of an adequate condition such that, in his professional opinion:
- (a) no heavy repairs to major components of the Project or structural overlay to the pavement will be required within 5 years, or as stated in Particular Conditions of Contract, from transfer;
  - (b) no major replacement or rehabilitation of major plant/equipment such as toll collection, lighting or traffic management equipment, generators etc will be required within 5 years, or as stated in Particular Conditions of Contract, from transfer; and
  - (c) no heavy repairs to structures will be required within 10 years, or as stated in Particular Conditions of Contract, from transfer.

Such necessary provisions relevant to specific sector of the Projects may be incorporated in the Particular Conditions of Contract.

- 26.2.6 The Company shall ensure that all the physical assets of the Company as on the Expiry Date are free of all Liens, (other than Liens under the security package and such other liens that may have been approved by the Employer) and the assets shall be transferred free of all Liens (except as aforesaid).
- 26.2.7 The Company shall obtain prior approval of the Employer for all Continuing Contracts before entering into such contracts/agreements, and shall be responsible for clearing all liabilities and payments concerning the Continuing Contracts that have become due and payable on or before the Expiry Date.
- 26.2.8 The Company shall on the Expiry Date cease to operate and maintain the Project and shall remove from the Project all its workmen, employees, servants, agents and contractors and vacate the Project completely within two (2) weeks, or period as stated in Particular Conditions of Contract, after the Expiry Date.

### **26.3 REVERTING OF ASSETS**

- 26.3.1 Upon the expiry of the Concession and without prejudice to any claims which either Party may have against the other Party prior to the Expiry Date all rights and entitlement of the Company in respect of the Concession and the Concession Area shall revert to, vest in or remain vested in the Employer (as the case may be).

## **27 Transfer Upon Early Termination**

### **27.1 PAYMENTS TO LENDERS**

- 27.1.1 If:
- (a) the Concession is terminated by the Company pursuant to Sub Clause 25.5; or
  - (b) the GoP expropriates or nationalizes the Company pursuant to Sub Clause 25.6;

the Employer shall pay to the Lenders within six months, or as stated in Particular Conditions of Contract, after the Termination Date or the date of expropriation (as the case may be) an amount equal to the aggregate amount owing to the Lenders at the date of payment (having taken into account the value of any security, including any tolls, at that time, held by the Lenders) or shall otherwise assume the liabilities and obligations of the Company to the Lenders within such period as aforesaid.

## **27.2 PAYMENT TO THE COMPANY**

27.2.1 If the Concession is terminated by the Company pursuant to Sub Clause 25.5, or if the GoP expropriates or nationalizes the Company pursuant to Sub Clause 25.6, the Employer shall pay to the Company within six months after the Termination Date:

- (a) the amount (if any) by which the Value of the Completed Works exceeds the aggregate of the amounts paid or the liabilities and obligations pursuant to Sub Clause 27.1 and all amounts as at the Termination Date owing to the Employer by the Company under these Conditions; and
- (b) an amount equal to the amount of interest which would have occurred on the moneys invested in the Company by the shareholders of the Company as if interest had occurred on such amounts from the relevant dates of payment to the date of payment by the Employer on an annual basis at a rate of 12 percent per annum or as mentioned in the Particular Conditions of Contract, less any net dividends or interest received by the shareholders of the Company. Such amount to be determined as aforesaid by the Operations Auditors and to be agreed between the parties hereto or, in the absence of such agreement, referred to arbitration pursuant to Clause 29.

27.2.2 For the purpose of this Clause the Value of the Completed Works shall mean the amount jointly certified by the Operations Auditors to be the aggregate as at the Termination Date of:

- (a) the value of the completed construction works and uncompleted works (including all materials supplied) at the Termination Date as certified by the Project Engineer appointed pursuant to Sub Clause 3.5;
- (b) all amounts the Company is legally liable to pay under any contract for the Works and the construction implementation of the Project including but not limited to:
  - (i) civil works;
  - (ii) materials; and
  - (iii) construction works;
- (c) all design, management and consulting costs and fees for professional services incurred by the Company in relation to the Concession; and
- (d) all interest and capitalized interest and other financing costs and expenses incurred by the Company in connection with the financing of the Concession.

## **27.3 OBLIGATIONS OF THE COMPANY**

27.3.1 In the case of termination of the Concession prior to the completion of the Project, the Company shall cease all construction works and remove from the site of the construction works all its workmen, employees, servants, agents and contractors

and vacate the site of the construction works completely within two (2) weeks after the Termination Date.

27.3.2 If the Company is operating and maintaining the Project, the Company shall forthwith cease to operate and maintain the Project and the Company shall remove from the Project all its workmen, employees, servants, agents and contractors and vacate the Project completely within two (2) weeks, or as stated in Particular Conditions of Contract, after the Termination Date.

27.3.3 Except as expressly agreed to by the Employer all construction contracts, maintenance contracts and contractors relating to the Project entered into by the Company and then subsisting shall be determined and the Employer shall not be liable for any termination costs arising thereby and shall be indemnified and held harmless by the Company in respect of the same.

## **27.4 TRANSFER PROCEDURE**

27.4.1 The Employer shall, at its sole cost and expense, appoint an independent engineer to inspect the physical assets of the Company including all civil works, installations, equipment and facilities. The engineer together with the Operations Auditors shall make a joint inspection of the Project and all its assets. The condition of the Project shall be determined in accordance with the criteria specified in Sub Clause 26.2.5.

27.4.2 The Operations Auditors shall issue a joint Certificate of Transfer confirming the acceptable condition of the Project or otherwise specifying what obligations of the Company are to be covered by the Transfer Security.

## **27.5 REVERTING OF ASSETS**

27.5.1 Upon the early termination of the Concession, and where such early termination is pursuant to Sub Clauses 25.5 or 25.6 also upon payment of all sums payable under this Clause 27 by the Employer, and without prejudice to any claims which either party hereto may have against the other prior to the Termination Date all rights and entitlement of the Company in respect of the Concession and the Concession Area shall revert to, vest in or remain vested in the Employer (as the case may be).

## **28 Provisions Applicable to Transfers Generally**

### **28.1 LENDERS' SECURITY UNAFFECTED BY TRANSFER**

28.1.1 Notwithstanding anything to the contrary to these Conditions, the transfer to the Employer of the assets, movable and immovable, comprised in the Project, whenever occurring, will only take place subject to all rights that the Lenders may then have under the Financing Agreement or any security for the Company's indebtedness there under that the Lenders may have in respect of the Project.

### **28.2 TRANSFER COSTS AND EXPENSES**

28.2.1 The Company shall be responsible to bear all costs and expenses of transfer, including stamp duties, legal, appraisal and other charges and fees.

## **28.3 SPECIAL INDEMNIFICATION**

- 28.3.1 The Company shall indemnify the Employer from any or all claims, liabilities and charges resulting from any act or omission by the Company in connection with the construction, operation and transfer of the Project before or till the transfer (other than claims, liabilities or charges resulting from the Employer's acts or omissions) and defend all suits and legal proceedings by third parties in respect thereof.
- 28.3.2 The Employer shall indemnify the Company from any or all claims, liabilities and charges resulting from any act or omission by the Employer in connection with the transfer or operation of the Project on or after the transfer (other than claims, liabilities or charges resulting from the Company's acts or omissions) and defend all suits and legal proceedings by third parties in respect thereof.

## **29 Resolution of Disputes**

### **29.1 AMICABLE SETTLEMENT**

- 29.1.1 If any dispute or difference of any kind whatsoever shall arise between the Employer and the Company in connection with or arising out of this Agreement, the Parties shall attempt to settle such dispute in the first instance within thirty (30) days, or as specified in Particular Conditions of Contract, by mutual discussion between the Company and the Employer.
- 29.1.2 If the dispute cannot be settled by mutual discussion, the dispute shall be dealt with in accordance with this Clause.

### **29.2 EXPERT DETERMINATION**

- 29.2.1 If the dispute is, or relates to, whether:
- (a) (but only where the Employer and the Company have agreed that this Clause shall apply to such dispute) the Company is undertaking the Works in a proper and workmanlike manner, using good quality materials, plant and equipment or in accordance with the requirements of these Conditions; or
  - (b) (but only where the Employer and the Company have agreed that this Clause shall apply to the dispute) the Outline Design, Design Proposal or Detailed Design diverge from statutory requirements; or
  - (c) to any other dispute which the parties agree should be dealt with under this Clause; the dispute shall be determined by one independent expert in the relevant field or by an independent expert in each of the relevant fields (if there is more than one field) as agreed upon and appointed jointly by the Parties. In the event that the Parties hereto cannot agree on such appointment, upon the application of either party the independent expert(s) shall be appointed by [*Pakistan Engineering Council* ].
- 29.2.2 The decision of the independent expert shall be made as an expert and not as an arbitrator and shall be final and binding on the Parties and the Company and the Employer shall share equally the costs incurred by any such expert in making the determination unless otherwise awarded by the expert.



## **29.3 ARBITRATION AND GOVERNING LAW**

29.3.1 If any dispute or difference shall arise between the Parties hereto touching any Clause, matter or thing whatsoever herein contained or the operation or construction thereof or any matter or thing in any way connected with this Agreement or the rights duties or liabilities of either of the Parties under or in connection with this Agreement and such dispute or difference cannot be settled through mutual discussion or expert determination then, and in every such case, the dispute or difference shall be referred to arbitration under the following provisions:

- (a) The rights and obligations of the Parties under or pursuant to these Conditions shall be governed and construed according to the Laws of Pakistan.
- (b) The dispute shall be referred to arbitration and finally settled in Islamabad in accordance with the Pakistan Arbitration Act, 1940, and any amendment or substitution thereof. If the Parties cannot agree to the appointment of a sole arbitrator each Party shall appoint an arbitrator and the arbitrators shall, before entering upon the reference, jointly appoint an umpire. The decision of the arbitrator(s) shall be final and shall not be challenged or assailed in any court on any ground whatsoever.
- (c) Notwithstanding any provision under (a) and (b) above, (i) the Company undertakes to continue the construction, development, operation, maintenance and transfer of the Project and (ii) the Employer undertakes to continue to perform its services and obligations under this Agreement, in either case without any stoppages/impediments during the discussions between the Parties and pending any arbitration proceeding pursuant to this Clause 29.
- (d) To the extent that the Employer may be entitled in any jurisdiction to claim for itself or its assets immunity in respect of its obligations under this Agreement from any suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process or to the extent that in any jurisdiction there may be attributed to itself of its assets such immunity (whether or not claimed), the Employer unconditionally and irrevocably agrees not to claim, and hereby expressly waives, such immunity to the fullest extent permitted by the laws of such jurisdiction.

## **30 Securities**

### **30.1 PERFORMANCE SECURITY FOR CONSTRUCTION PHASE**

30.1.1 The Company has, prior to the Effective Date, provided the Employer with an unconditional, irrevocable and without recourse performance security in a form acceptable to the Employer and from a scheduled bank or an international prime bank approved by the Employer ('the Bank'). Such performance security shall be in the amount equivalent to five percent (5%) of the Project cost or as stated in the Particular Conditions of Contract, as adjusted from time to time, to secure all the Company's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement for this Project including the integrity and quality of the Company's workmanship, the erection work/activities performed by the Company and for equipment procured and provided by the

Company and all other works and services to be provided by the Company under the Agreement.

### **30.2 PERFORMANCE SECURITY FOR OPERATIONS PHASE**

30.2.1 The Company shall provide the Employer with an unconditional, irrevocable and without recourse performance security in a form acceptable to the Employer from the Bank. Such performance security shall be fully valid from the Availability Date and shall be in the amount equivalent to the amount as stated in the Particular Conditions of Contract to secure all the obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement of the Company and its contractors in relation to the operation and maintenance of the Project and all other works and services to be provided under this Agreement during the Operations Phase.

### **30.3 PERFORMANCE SECURITY FOR TRANSFER OF THE PROJECT**

30.3.1 The Company shall provide the Employer with an unconditional, irrevocable and without recourse performance security in a form acceptable to the Employer from the Bank. Such performance Security shall be fully valid from the Effective Date and shall be in the amount as stated in Particular Conditions of Contract to secure the Company's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement in relation to the transfer of the Project in accordance with this Agreement.

### **30.4 FURTHER PROCUREMENT OF PERFORMANCE SECURITIES**

30.4.1 The Company hereby undertakes that, if a demand is made under any Construction Phase security with a result that the amount (if any) available under that performance Security is less than five percent (5%) of the contract value of the works at that time remaining to be performed, the Company will ensure that a further performance Security will be issued to the Employer in accordance with this Clause 30 before continuing with further construction of the work to the intent that the Employer then holds a performance Security or Securities having an aggregate value of not less than five percent (5%), or as stated in Particular Conditions of Contract, of the contract value of the construction works at that time remaining to be performed.

30.4.2 The Company hereby undertakes that, if a payment is made under any Operations Phase security a further security in the form of a performance Security in an amount not less than the amount so paid shall be issued to the Employer within four (4) weeks, or as stated in Particular Conditions of Contract, of the date of such payment.

### **30.5 ASSIGNMENT OF SECURITIES**

30.5.1 The Employer recognizes that the Securities mentioned in this Clause may be regarded by Lenders as part of an overall Security Package. The Employer will therefore allow such Securities to be assigned to Lenders, if so required. The Employer will ensure to obtain the performance security for operation phase before the release of performance security for construction phase and security for transfer of Project must be obtained before release of the performance security for operation phase.

## **31 Provision of Documents**

### **31.1 DOCUMENTS TO BE SUBMITTED TO THE EMPLOYER**

31.1.1 The Company shall submit to the Employer for approval the following documents in five copies on or before the dates specified:

- (a) All designs and specifications of civil works, services relocation, and equipment as specified in Appendix to Bid for approval by the Employer before construction/procurement in accordance with the implementation schedule given in Appendix to Bid;
- (b) At least sixty (60) Days, or as stated in Particular Conditions of Contract, before Financial Close, **(i)** the Financing Agreements **(ii)** in respect of the equity financing of the Company, the name of each Investor holding more than five percent (5%) of the paid-up capital of the Company and the total shares held or subscribed, as the case may be, by such Investor;
- (c) At least Sixty (60) Days, or as stated in Particular Conditions of Contract, before Financial Close, copies of **(i)** the Construction, Procurement and Effective Contracts as executed for the Project, plus all amendments executed on or before Financial Close, including all schedules thereto, and **(ii)** a complete set of signed and scale final plans and specifications for the construction and equipping of the Project and **(iii)** the Financial Plan;
- (d) As soon as available but in no event later than the commencement of the civil works, the proposed schedule for the manufacture and supply, system control, toll collection and communications equipment for the Project;
- (e) On or before the commencement of the civil works, a copy of the contractors all risks insurance policies pursuant to Sub Clause 17.3;
- (f) Beginning within thirty (30) Days of the Effective Date and ending on the Construction Completion Date, monthly progress reports in the format approved by the Employer; and
- (g) On or before the first Availability Date, a copy of the insurance policies pursuant to Sub Clause 17.4.

### **31.2 COPY DRAWINGS**

31.2.1 The Company shall ensure that the Employer is provided with a complete set of “as built” drawings and final Right of Way drawings. Such drawings shall become the property of the Employer.

31.2.2 All costs incurred in the preparation of the “as built” drawings and final Right of Way drawings shall be borne by the Company.

## **32 Notices**

32.1 Any notice, approval, consent, request or other communication required or permitted to be given or made under these Conditions of Contract shall be in writing in the English language and delivered to the address or sent to the facsimile number of the Employer or the Company, as the case may be, as mentioned in the Concession Agreement, or facsimile number as either party may have notified the

sender and shall be deemed to be duly given or made when delivered to the recipient at such address or facsimile number which is duly acknowledged.

to the Employer : Name/Address

to the Company : Name/Address

### **33 Miscellaneous Provisions**

#### **33.1 VARIATIONS IN WRITING**

33.1.1 These Conditions of Contract under Concession Agreement may be varied or amended only by the mutual consent of the Parties. All such variations and amendments shall be binding only if they are in writing and are signed by duly authorized representatives of the Parties.

#### **33.2 WAIVERS**

33.2.1 Failure by either party to enforce, at any time, any provision of these Conditions shall not be construed as a waiver of its right to enforce the breach of such provision or any other provision under these Conditions or as a waiver of any continuing, succeeding or subsequent breach of any provision or other provision of these Conditions.

#### **33.3 APPLICABLE LAW**

33.3.1 The Concession Agreement shall be governed by and construed in accordance with the Laws of Pakistan.

33.3.2 The Parties bind themselves and acknowledge and accept as final in all respects any decision or award of an arbitration.

33.3.3 In the event of a conflict of provincial and Federal Law, the Federal Law shall prevail for purposes of interpretation of these Conditions of Contract under Concession Agreement, unless such conflict shall be expressly waived by the Parties in writing.

33.3.4 If any provision of these Conditions is held to be illegal or invalid under present or future laws or regulations effective and applicable during the currency of the Agreement, such provision shall be fully severable and the Concession Agreement shall be construed as if such illegal or invalid provision had never comprised a part of the Concession Agreement and the remaining provisions of these Conditions shall remain in full force and shall not be affected by the illegal or invalid provision or by its severance from these Conditions.

33.3.5 The Company shall save harmless and indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights, in respect of any equipment, machine, work or material used for or in connection with the Concession and from and against all claims, proceedings damage, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

### **33.4 LANGUAGE**

- 33.4.1 All communication between the parties shall be conducted in the English language and all notices if in any other language shall be accompanied by a translation in English. In the event of a conflict between the English text and the text in any other language, the English text shall prevail.

### **33.5 CONFIDENTIALITY**

- 33.5.1 The Agreement and all matters pertaining hereto shall be considered a confidential matter and shall not be disclosed to any third party without prior mutual agreement. (Save as required by Law or appropriate regulatory authorities or to prospective Lenders or Investors or professional advisers of the Parties hereto).

### **33.6 BRIBERY AND COLLUSION/INTEGRITY PACT**

- 33.6.1 The Employer shall be entitled to terminate the Concession Agreement and recover from the Company the amount of any loss resulting from such termination if the Company shall have offered or given to any person any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, any action in relation to obtaining, or in the execution of the Concession or any other contract with the Employer, or for showing favor to any person in relation to the Concession or any other contract with the Employer, or if any of the like acts shall have been done by any person employed by the Company or acting on its behalf (whether with or without the knowledge of the Company), or if the Company shall have come to any agreement with another Bidder or number of Bidders whereby an agreed quotation or estimate has been offered as a Bid to the Employer by one or more Bidders.
- 33.6.2 In addition, in case of GOP financing, the company shall remain liable for its undertaking given in the Appendix to Bid for Integrity Pact.

**PART- II**  
**PARTICULAR CONDITIONS**  
**OF**  
**CONTRACT**

## **PART II - PARTICULAR CONDITIONS OF CONTRACT**

*(Instructions are provided, as needed, in italics which should be filled in or added or modified as required meeting the project specific requirements by the Employer before issuance of the Bidding Documents.)*

### **General Conditions of Contract**

#### **Clause Reference**

## **1 DEFINITIONS**

The Employer is *[insert name and complete address of the Employer]*.

“Bidder or Tenderer” means any person or persons, company, corporation, firm or joint venture submitting a Bid or Tender.

The word “Tender” is synonymous with “Bid” and the word “Tender Documents” with “Bidding Documents”.

## **2 CONCESSION**

2.2.1 The Concession Period shall be a period of *[insert No. of years]* from the Effective Date.

Add the following Sub Clause;

### **2.4 Priority of Contract Documents**

1. The Concession Agreement (if completed);
2. The Letter of Intent (LoI);
3. Summary of the Financial Bid Offer;
4. Final Summary of the Project;
5. Employer’s Manual of Rules and Regulations;
6. The Particular Conditions of Contract – Part II;
7. The General Conditions of Contract – Part I;
8. The completed Appendices to Bid (1 to 15) and the Forms
9. The Drawings;
10. The Specifications(Special Provisions and Technical Provisions); and
11. Any other document

## **3 MANAGEMENT AND SUPERVISION**

Add the following Sub Clauses;

3.4.3 The Project Manager and Contractor’s authorised representative and his other professional engineers working at Site shall register themselves with the Pakistan Engineering Council.

The Contractor's authorized representative at Site shall be authorized to exercise adequate administrative and financial powers on behalf of the Contractor so as to achieve completion of the Works as per the Contract.

#### 3.4.4 Language Ability of Contractor's Representative

The Contractor's authorized representative shall be fluent in the English language. Alternately an interpreter with ability of English language shall be provided by the Contractor on full time basis.

#### 3.4.5 Language Ability of Superintending Staff of Contractor

A reasonable proportion of the Contractor's superintending staff shall have a working knowledge of the English language. If the Contractor's superintending staff is not fluent in English language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Project Engineer.

#### 3.4.6 Employment of Local Personnel

The Company is encouraged, to the extent practicable and reasonable, to employ staff and labour from sources within Pakistan.

#### 3.4.7 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages and observe conditions of labour not less favourable than those established for the trade or industry where the work is carried out. In the absence of any rates of wages or conditions of labour so established, the Contractor shall pay rates of wages and observe conditions of labour which are not less favourable than the general level of wages and conditions observed by other Employers whose general circumstances in the trade or in industry in which the Contractor is engaged are similar.

#### 3.4.8 Employment of Persons in the Service of Others

The Contractor shall not recruit his staff and labour from amongst the persons in the services of the Employer or the Project Engineer; except with the prior written consent of the Employer or the Project Engineer, as the case may be.

#### 3.4.9 Housing for Labour

Save insofar as the Contract otherwise provides, the Contractor shall provide and maintain such housing accommodation and amenities as he may consider necessary for all his supervisory staff and labour, employed for the purposes of or in connection with the Contract including all fencing, electricity supply, sanitation, cookhouses, fire prevention, water supply and other requirements in connection with such housing accommodation or amenities. On completion of the Contract, these facilities shall be handed over to the Employer or if the Employer so desires, the temporary camps or housing provided by the Contractor shall be removed and the Site reinstated to its original condition, all to the approval of the Employer.

#### 3.4.10 Health and Safety



Due precautions shall be taken by the Contractor, and at his own cost, to ensure the safety of his staff and labour at all times throughout the period of the Contract. The Contractor shall further ensure that suitable arrangements are made for the prevention of epidemics and for all necessary welfare and hygiene requirements.

#### 3.4.11 Epidemics

In the event of any outbreak of illness of an epidemic nature, the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, or the local medical or sanitary authorities, for purpose of dealing with and overcoming the same.

#### 3.4.12 Supply of Water

The Contractor shall, so far as is reasonably practicable, having regard to local conditions, provide on the Site, to the satisfaction of the Employer or his representative, adequate supply of drinking and other water for the use of his staff and labour.

#### 3.4.13 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Statutes, Ordinances and Government Regulations or Orders for the time being in force, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or suffer any such importation, sale, gift, barter or disposal by his Subcontractors, agents, staff or labour.

#### 3.4.14 Arms and Ammunition

The Contractor shall not give, or otherwise dispose of to any person or persons, any arms or ammunition of any kind or permit or suffer the same as aforesaid.

### **4 COMPANY REPRESENTATIONS AND COVENANTS**

#### 4.2.1

- (a) the Company shall prior to the Effective Date and throughout the Concession Period maintain a minimum paid-up capital of *[insert amount both in figures and words]*

### **5 EMPLOYER REPRESENTATIONS AND COVENANTS**

#### 5.1.1

- (a) it is duly created pursuant to the GOP Ordinance/Act of *[insert year]*

#### 5.2.3

- (a) as soon as practicable but not later than *[insert fifteen (15) or as deemed appropriate]* days after any .....

### **9 LAND**

- 9.1.2 The Employer shall make available the land so required not later than a period of *[insert three(3) or as deemed appropriate]* months before the (continued)

## 11 DESIGN AND CONSTRUCTION

- 11.2.1 Within *[insert four (4) or as deemed appropriate]* weeks after the Effective Date the Company shall submit the Design Proposal of the Works to the Employer for approval
- 11.2.4 The Company shall subsequently submit the Detailed Design including the design of temporary works to the Employer for approval (which approval shall not be unreasonably withheld) within *[insert three(3) or as deemed appropriate]* months after the Effective Date.
- 11.6.1 The Company shall commence the construction works within *[insert six(6) or as deemed appropriate]* weeks after approval of the detailed design.

Add the following Sub Clause:

### 11.6.3 Construction Schedule and Monthly Progress Report

- (a) For purposes of Sub Clause 11.6, the Company shall submit to the Employer a detailed construction schedule for the following:
- i. Execution of Works;
  - ii. Labour Employment;
  - iii. Local Material Procurement;
  - iv. Material Imports, if any; and
  - v. Other details as required by the Employer's Representative
- (b) During the Construction Phase, the Company shall submit to the Employer's Representative not later than the 8<sup>th</sup> day of the following month, 10 copies each of monthly Progress Reports covering:
- i. A Construction Schedule indicating the monthly progress in percentage;
  - ii. Description of all work carried out since the last report;
  - iii. Description of the work planned for the next *56 days* sufficiently detailed to enable the Project Engineer to determine his programme of inspection and testing;
  - iv. Monthly summary of daily job record;
  - v. Photographs to illustrate progress ; and
  - vi. Information about problems and difficulties encountered, if any, and proposals to overcome the same.
- (c) During the construction phase, the Company shall keep a daily record of the work progress, which shall be made available to the Project Engineer as and when requested. The daily record shall include particulars of weather conditions, number of men working, deliveries of materials, quantity, location and assignment of Contractor's equipment.
- 11.7.1 The Company shall complete the works within *[Insert construction completion period]* months after the Effective Date or (continued)

11.9.1 Any claim by the Company which it is agreed shall be compensated by the Employer pursuant to Clause 11.8 shall be accompanied by a joint certificate from the Operations Auditors setting out the amount payable and including detailed calculations of the same. The amounts so certified shall be paid to the Company by the Employer within *[Insert sixty (60) or as deemed appropriate]* days after the date of receipt of the joint certificate from the Operations Auditors by the Employer

11.10.1 The Company, if it fails to achieve a Key Date, shall pay to the Employer an amount of *[insert amount both in figures and words]* for every day of delay on account of the Company's default.

Add the following Sub Clauses;

#### 11.14 Shop Drawings

The Company shall submit to the Employer for review 3 copies of all shop and erection drawings applicable to Construction of Works.

Review and approval by the Employer shall not be construed as a complete check but will indicate only that the general method of construction and detailing is satisfactory and that the Employer's review or approval shall not relieve the Company of any of his responsibilities under the Contract.

#### 11.15 Safety Precautions

In order to provide for the safety, health and welfare of persons, and for prevention of damage of any kind, all operations for the purposes of or in connection with the Contract shall be carried out in compliance with the Safety Requirements of the Government of Pakistan with such modifications thereto as the Project Engineer may authorise or direct and the Company shall take or cause to be taken such further measures and comply with such further requirements as the Employer may determine to be reasonably necessary for such purpose.

The Company shall make, maintain and submit reports to the Project Engineer concerning safety, health and welfare of persons and damage to property, as the Employer may from time to time prescribe.

#### 11.16 Lighting Work at Night

In the event of work being carried out at night, the Company shall at his own cost, provide and maintain such good and sufficient light as will enable the work to proceed satisfactorily and without danger. The approaches to the Site and the Works where the night-work is being carried out shall be sufficiently lighted. All arrangement adopted for such lighting shall be to the satisfaction of the Employer's Representative.

#### 11.17 Festivals and Religious Customs

The Company shall in all dealings with his staff and labor have due regard to all recognized festivals, days of rest and religious and other customs.

#### 11.18 Disorderly Conduct

The Company shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst staff and labour and for the preservation of peace and protection of persons and property in the neighbourhood of the Works against the same.

#### 11.19 Records of Safety and Health

The Company shall maintain such records and make such reports concerning safety, health and welfare of persons and damage to property as the Employer may from time to time prescribe.

#### 11.20 Reporting of Accidents

The Company shall report to the Employer details of any accident as soon as possible after its occurrence. In the case of any fatality or serious accident, the Company shall, in addition, notify the Project Engineer immediately by the quickest available means.

### 12.3 OPERATING PRACTICES

*Employer may modify these Sub-Clauses by incorporating necessary provisions relevant to the specific sector of the Project.*

### 13.2 REVENUE COLLECTION POLICY

13.2.1 Subject to the terms and conditions of the Agreement the Base Year for Tolls/fees shall be *[insert Base Year]*.

13.2.2 The Company has the right, but not the obligation, to offer and negotiate toll concession packages with regular users of the Project (individuals, companies, government authorities and other bodies).

## 15 MAINTENANCE

15.3.1 Throughout the Concession Period an amount equivalent to *[10% or as deemed appropriate]* of gross annual revenue shall be set aside annually in a Rehabilitation Escrow Account, to provide funds to be used for the maintenance of the Project in accordance with Clause 15.1.1, including any heavy repair as may be required over and above programmed structural overlay or any other requirement.

## 18 CUSTOM DUTIES AND IMPORT CONTROLS

18.2.1 The Employer may, as provided by the Laws of Pakistan, at any time require the Company to re-export any items or equipment used in the construction of the Project that are not reasonably required for the Company to operate and maintain the Project, unless the company agrees promptly to pay the normal customs duties for those items and equipment. The Company shall be afforded *[Insert three(3) or as deemed appropriate]* months following notification by the Employer, to re-export any such items or equipment required to be re-exported by the Employer.

## 22 FINANCE

- 22.1.2 The Company shall achieve Financial Close within *[Employer to insert period in months as appropriate]* months after the Effective Date.
- 22.1.3 The Company shall from the outset and at all times maintain an equity in the Project of at least *[Insert thirty (30) or as deemed appropriate]* percent.
- 22.1.4 Employer encourages participation of local investors in the Project, the Company shall be obliged to associate with local partners where equity holding of local partners shall not be less than *[Insert forty (40) or as deemed appropriate]* percent.
- 22.3.1 The Company will share *[Employer to insert figure]* percent of the Gross Revenue with Employer for initial years. The annual sharing of Gross Revenue thereafter shall be *[Employer to insert figure]* percent.
- 25.3.1 During the period at least *[Employer to insert period]* months and not more than *[Employer to insert period]* months before the Expiry Date, either Party may require the other to negotiate with a view to replacing the Concession on the Expiry Date on mutually acceptable terms with an operating and maintenance contract.
- 25.4.1 Save as otherwise provided in this Agreement if:
- (a) the Company fails to achieve Financial Close within *[Employer to insert period]* months after the Effective Date;
- 25.5.1 If the Employer without reasonable cause fails to perform or fulfill any of its obligations hereunder which adversely affect the right and authority of the Company to collect and retain tolls or results in a nonpayment of any amount payable to the Company by the Employer under this Agreement, the Company may give notice in writing to the Employer specifying the default and requiring the Employer to remedy the said default within *[Insert three (3) or as deemed appropriate]* months after the date of the notice or such further period as the Company and the Employer may mutually agree on. If the Employer fails to remedy such default within the stipulated period the Company may terminate this Agreement by serving on the Employer a written notice to this effect.

## **26 TRANSFER UPON EXPIRY**

- 26.2.2 The Company shall, not later than *[Insert one (1) or as deemed appropriate]* months prior to the expiry of the Concession, provide to the Employer an inventory of all its equipments and materials and fixtures on the Project and shall not remove such equipments and materials or fixtures there from without the prior approval of the Employer but, subject thereto, shall remove there from such equipments and materials and fixtures as the Employer may then specify. *[Insert nine (9) or as deemed appropriate]*
- 26.2.3 *[Insert sixty (60) or as deemed appropriate]* days before the Expiry Date, the Employer shall, at its sole cost and expense, appoint an independent engineer to inspect the physical assets of the Company including all civil works, installations, equipment and facilities. The engineer together with the Operations Auditors shall make a joint inspection of the Project and all its assets.
- 26.2.5 The Project shall be deemed to be in an acceptable condition only if the independent engineer is satisfied that all elements of the Project are of an adequate condition such that,

in his professional opinion: *[Employer may amend the following sub paragraphs (a),(b) and (c) to suit the specific sector of the project]*

- (a) no heavy repairs to major components of the Project or structural overlay to the pavement will be required within *[5 years or as deemed appropriate]* from transfer;
- (b) no major replacement or rehabilitation of major plant/equipment such as toll collection, lighting or traffic management equipment, generators etc will be required within *[5 years or deemed appropriate]* from transfer;
- (c) no heavy repairs to structures will be required within *[10 years or as deemed appropriate]* from transfer; and
- (d) *[Any other requirement]*

26.2.8 The Company shall on the Expiry Date cease to operate and maintain the Project and shall remove from the Project all its workmen, employees, servants, agents and contractors and vacate the Project completely within *[Insert three (3) or as deemed appropriate]* weeks after the Expiry Date.

## **27 TRANSFER UPON EARLY TERMINATION**

27.1.1 If:

- (a) the Concession is terminated by the Company pursuant to Sub Clause 25.5;
- (b) the GoP expropriates or nationalizes the Company pursuant to Sub-Clause 25.6;

the Employer shall pay to the Lenders *[Insert six (6) or as deemed appropriate]* months after the Termination Date or the date of expropriation (as the case may be) an amount equal to the aggregate amount owing to the Lenders at the date of payment (having taken into account the value of any security, including any tolls, at that time, held by the Lenders) or shall otherwise assume the liabilities and obligations of the Company to the Lenders within such period as aforesaid.

27.2.1 an amount equal to the amount of interest which would have occurred on the moneys invested in the Company by the shareholders of the Company as if interest had occurred on such amounts from the relevant dates of payment to the date of payment by the Employer on an annual basis at a rate of *[Insert twelve (12) or as deemed appropriate]* percent per annum less any net dividends or interest received by the shareholders of the Company. Such amount to be determined as aforesaid by the Operations Auditors and to be agreed between the parties hereto or, in the absence of such agreement, referred to arbitration pursuant to Clause 29.

27.2.2 27.3.1 In the case of termination of the Concession prior to the completion of the Project, the Company shall cease all construction works and remove from the site of the construction works all its workmen, employees, servants, agents and contractors and vacate the site of the construction works completely within *[Insert two (2) or as deemed appropriate]* weeks after the Termination Date.

27.2.3 27.3.2 If the Company is operating and maintaining the Project, the Company shall forthwith cease to operate and maintain the Project and the Company shall remove from the Project all its workmen, employees, servants, agents and

contractors and vacate the Project completely within *[Insert two (2) or as deemed appropriate]* weeks after the Termination Date.

## **29 RESOLUTION OF DISPUTES**

29.1.1 If any dispute or difference of any kind whatsoever shall arise between the Employer and the Company in connection with or arising out of this Agreement, the Parties shall attempt to settle such dispute in the first instance within *[Insert thirty (30) or as deemed appropriate]* days by mutual discussion between the Company and the Employer.

## **30 SECURITY**

27.2.4 30.1.1 The Company has, prior to the Effective Date, provided the Employer with an unconditional, irrevocable and without recourse performance Security in a form acceptable to the Employer and from a scheduled bank or an international prime bank approved by the Employer ('the Bank'). Such performance Security shall be in the amount equivalent to *[Insert five (5) or as deemed appropriate]* percent of the Project cost, as adjusted from time to time, to secure all the Company's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement for this Project including the integrity and quality of the Company's workmanship, the erection work/activities performed by the Company and for equipment procured and provided by the Company and all other works and services to be provided by the Company under this Agreement.

30.2.1 The Company shall provide the Employer with an unconditional, irrevocable and without recourse performance Security in a form acceptable to the Employer from the Bank. Such performance Security shall be fully valid from the Availability Date and shall be in the amount of *[insert amount both in figures and words]* to secure all the obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement of the Company and its contractors in relation to the operation and maintenance of the Project and all other works and services to be provided under this Agreement during the Operations Phase.

30.3.1 The Company shall provide the Employer with an unconditional, irrevocable and without recourse performance Security in a form acceptable to the Employer from the Bank. Such performance Security shall be fully valid from the Effective Date and shall be in the amount of *[insert amount both in figures and words]* to secure the Company's obligations, liabilities, warranties, indemnities, representations, guarantees and responsibilities under this Agreement in relation to the transfer of the Project in accordance with this Agreement.

27.2.5 30.4.1 The Company hereby undertakes that, if a demand is made under any Construction Phase Security with a result that the amount (if any) available under that performance Security is less than *[Insert five (5) or as deemed appropriate, but same value at both the places]* percent of the contract value of the works at that time remaining to be performed, the Company will ensure that a further performance Security will be issued to the Employer in accordance with this Article 30 before continuing with further construction of the work to the intent that the Employer then holds a performance Security or Security having an aggregate value

of not less than *[Insert five (5) or as deemed appropriate, but same value at both the places]* percent of the contract value of the construction works at that time remaining to be performed.

27.2.6 30.4.2 The Company hereby undertakes that, if a payment is made under any Operations Phase Security a further security in the form of a performance Security in an amount not less than the amount so paid shall be issued to the Employer within *[Insert four (4) or as deemed appropriate]* weeks of the date of such payment.

## 32 NOTICES

32.1

For the purposes of this Sub-Clause, the respective address are:

a) The Employer :

*(to be filled in by the Employer as appropriate)*

b) The Company:

*(to be filled in by the Company as appropriate)*

## 33 MISCELLANEOUS PROVISIONS

The following Sub-Clause 33.7 is added:

33.7 Use of Pakistani Materials and Services

The Contractor shall , so far as may be consistent with the Contract, make the maximum use of materials, supplies, plant and equipment indigenous to or produced or fabricated in Pakistan and services, available in Pakistan provided such materials, supplies, plant, equipment and services shall be of required standard.



**SPECIFICATIONS**  
**SPECIAL PROVISIONS**

*[To be prepared and incorporated by the Company and approved by the  
Employer]*

**SPECIFICATIONS**  
**TECHNICAL PROVISIONS**

*[To be prepared and incorporated by the Company and approved by the  
Employer]*

## **DESIGN/DRAWINGS**

*[To be prepared and incorporated by the Company and approved by the Employer]*

## LIST OF PEC CONTRACT DOCUMENTS

<b><u>Sr. No.</u></b>	<b><u>Name of the Document</u></b>	<b><u>Status</u></b>
(1)	Standard Form of Bidding Documents (Civil Works) <i>(to be used for estimated value of more than Rs. 25 Millions)</i>	Completed
(2)	Standard Form of Bidding Documents for Procurement of Works (E&M) <i>(to be used for estimated value of more than Rs. 25 Millions)</i>	Completed
(3)	Standard Form of Bidding Documents for Procurement of Works (For Smaller Contracts) <i>(to be used for all type of procurement for estimated value of not more than Rs. 25 Millions)</i>	Completed
(4)	Standard Form of Contract for Engineering Consultancy Services (For Large Projects) – Time Based Assignments <i>(to be used for consultancy fee over Rs. 2 Millions)</i>	Completed
(5)	Standard Form of Contract for Engineering Consultancy Services (For Large Projects) – Lump Sum Assignments <i>(to be used for consultancy fee over Rs. 2 Millions)</i>	Completed
(6)	Standard Form of Contract For Engineering Consultancy Services (For Smaller Projects) <i>(to be used for consultancy fee not more than Rs. 2 Millions)</i>	Completed
(7)	Standard Procedure for Pre-qualifications of Constructors	Completed
(8)	Standard Procedure for Evaluation of Bids for Procurement of Works	Completed
(9)	Standard Procedure for Pre-qualifications of Consultants	Completed
(10)	Standard Procedure for Evaluation Proposals for Procurement of Engineering Services	Completed
(11)	Standard Procedure and Formula for Price Adjustment	Completed
(12)	PEC Rules of Conciliation and Arbitration	Completed
(13)	Standard Form of Bidding Documents for Procurement of Works on BOT Basis	Completed
(14)	Standard Form of Bidding Documents for Procurement of Works on Design and Build Basis	Completed
(15)	Standard Form of Bidding Documents for Procurement of Civil Works (Single Stage Two Envelopes-SSTE)	Completed
(16)	Standard Form of Joint Venture/Consortium Agreements and Memorandum of Understandings	Completed