

**ADDENDUM No. 1 To RFP**



**FAISALABAD GARMENT CITY COMPANY  
MINISTRY OF COMMERCE, GOVERNMENT OF PAKISTAN**

**IN RESPECT OF**

**DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER OF  
FGCC PROPERTIES**

**DATED: FEBRUARY 11<sup>TH</sup>, 2026**

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## IMPORTANT NOTICE

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The addendum to the RFP Document dated 11<sup>th</sup> February, 2026 (**'Addendum Document No. I'**) is in furtherance of the Tender Procedure relating to the Design, Build, Finance, Maintain and Transfer of FGCC Properties (**'Project'**), being conducted pursuant to the Request for Proposal document dated 30<sup>th</sup> November, 2025 (**'RFP Document'**) floated by the Faisalabad Garment City Company, Ministry of Commerce, Government of Pakistan (the **'Implementing Agency'**).

In case of ambiguity, discrepancy, inconsistency, and/ or contradiction between this Addendum Document No. I and the responses to prospective bidders' queries document dated 11<sup>th</sup> February, 2026 (**Response Document No. I'**), this Addendum Document No. I shall prevail.

*Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto under the RFP Document.*

This Addendum Document No. I is being circulated by the Implementing Agency in pursuance of the Clause 5.2 (*Amend of RFP*) of the RFP Document. Neither any of these entities nor their employees, personnel, consultants, advisors, or agents make any representation (expressed or implied) or warranties as to the accuracy or completeness of the information contained herein or in any other document made available to a person in connection with the Tender Procedure for the Project, and the same shall have no liability for this RFP Document or any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Proposals. Neither any of these entities nor their employees, personnel, agents, consultants, advisors, contractors, etc., will be liable to reimburse or compensate the recipient for any costs, fees, damages, or expenses incurred by the recipient in evaluating or acting upon the RFP Document or otherwise in connection with the Project as contemplated herein.

The Proposals submitted in response to the RFP Document by any of the Bidders shall be upon the full understanding and agreement of any and all terms of the RFP Document, the Addendum Document No. I, and the Response Document No. I (the **'RFP Documents'**) and such submission shall be deemed an acceptance to all the terms and conditions stated in the RFP Documents. Any Bid submitted by a Bidder in response to the RFP Documents shall be construed based on the understanding that the Bidder has done a complete and careful examination of the RFP Documents and has independently verified all the information received (whether written or verbal) from the Implementing Agency (including from its employees, personnel, agents, Consultants, advisors and contractors, etc.).

Any Proposal in response to the RFP Documents submitted by a Bidder shall be construed based on the understanding that the Bidder acknowledges that prior to the submission of the Proposal, the Bidder has, after a complete and careful examination, made an independent evaluation of the RFP Documents, scope and requirements of the Project, the applicable standards, the Project Site and all information provided by the Implementing Agency or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks, and hazards as are likely to arise or may be faced by it in the course of performance of its obligations under the instant Project's scope. The Implementing Agency (including its employees, personnel, agents, consultants, advisors, contractors, etc.) makes no representation whatsoever, express, implicit, or otherwise, regarding the accuracy, adequacy, correctness, reliability, and/ or completeness of any assessment, assumptions, statement or information provided by it and the Bidders shall have no claim whatsoever against the Implementing Agency in this regard.

The RFP Documents do not constitute a solicitation or otherwise participation in the Project, nor shall it constitute

a guarantee or commitment in any manner on the part of the Implementing Agency that the Project will be awarded. The Implementing Agency reserves its right, in its full discretion, to further modify the RFP Documents and/ or the Project at any time to the fullest extent permitted by law and shall not be liable to reimburse or compensate the recipient for any costs, taxes, expenses or damages incurred by the recipient in such an event.



**FAISALABAD GARMENT CITY COMPANY**

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**REQUEST FOR PROPOSALS**

FOR

**AWARD OF CONCESSION**

IN RESPECT OF THE

**DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN  
AND TRANSFER OF FGCC PROPERTIES**

**30<sup>TH</sup> NOVEMBER, 2025**

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**IQ CAPITAL PLUS**  
BUSINESS & FINANCIAL CONSULTING



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HUSSAIN  
SIKANDER**

BARRISTERS & ADVOCATES | CORPORATE LEGAL CONSULTANTS



**ARIF HABIB DOLMEN**  
REIT MANAGEMENT LIMITED

**GOVERNMENT OF PAKISTAN Ministry of  
Commerce**

**Faisalabad Garment City Company (FGCC)**

**REQUEST FOR PROPOSAL (RFP)**

**AWARD OF CONCESSION  
IN RESPECT OF THE  
DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND  
TRANSFER OF FGCC PROPERTIES**

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the RFP.*

The Implementing Agency is seeking to award a concession to a private party to design, build, finance, operate, maintain and transfer of the FGCC Properties on the Project Site for a period of twenty-five (25) years i.e two (02) years of construction period and twenty-three (23) years of operation and maintenance period (the “**CONCESSION**”). The Concession shall be awarded through Open Competitive Bidding in accordance with this RFP and the Applicable Laws. The subject matter and the object of the Concession, and the terms for implementation of the Concession, as well as the works and services included in the Concession, are detailed in Schedule 1 (*Scope Of Work*) of the RFP and in the PPP Agreement.

The Project shall be financed through a combination of equity and debt, to be mobilized by the Bidder/Developer, together with Minimum Revenue Guarantee Amounts and a Viability Gap Fund contribution, in the form of concessional loan to be provided by the Implementing Agency, through the Government of Pakistan, in terms of the PPP Agreement.

The Implementing Agency now invites interested parties to participate in the Tender Procedure and to submit their Technical and Financial Proposals sealed under a separate envelope for the Project in accordance with the requirements stipulated under this RFP and the Applicable Laws.

Bidders are required to submit only one (01) Proposal, comprising of one (01) original Technical Proposal and one (01) original Financial Proposal, and one (01) hard copy of each, with one (01) soft copy of each and other supporting documents (as applicable), as identified in the RFP, no later than **1400 hours dated 25-03-2026 (Wednesday)** by the Bid Submission Deadline at the submission address indicated in the Bid Data Sheet.

The Technical Proposals will be opened on the Bid Submission Deadline same day at **14:30 hours PST** in the presence of the representatives of the Bidders who may wish to attend. After completion of evaluation of the Technical Proposals, Bidders who have submitted responsive Technical Proposals in terms of the Basic Eligibility Criteria and Technical Evaluation Criteria shall be invited to attend the opening of the Financial Proposals. The date, time and location of the opening of Financial Proposals shall be advised in writing by the Implementing Agency to all technically responsive Bidders.

All Bidders are required to furnish, as part of their Technical Proposals (in a separately sealed envelope) a Bid Security, equivalent to **PKR 40,000,000/-** (Pak Rupees Forty Million only). The Bid Security shall be in the form of either pay order or deposit at call or unconditional and irrevocable bank guarantee attached as Bidding Form E (*Form of Bid Security*) under Schedule 4 (*Content of the Proposals*) of the RFP, issued in favour of the Implementing Agency as beneficiary, by an Acceptable Bank in accordance with the requirements set out in the Instructions to Bidders.

It is mandatory for the Proposals to be prepared using the standard Bidding Forms for Technical

Proposals and Financial Proposals, as provided in the RFP. Proposals that are not prepared on the prescribed Bidding Forms may not be considered by the Implementing Agency. If any information required in the prescribed Bidding Forms is found missing or written elsewhere, no credit will be given during evaluation and may lead to rejection of the Proposal.

The Implementing Agency may amend the RFP by issuing a Notice of Amendment as per the requirements specified in the RFP, at any time prior to the Bid Submission Deadline.

Subject to the provisions of this RFP and the Applicable Laws, the Implementing Agency reserves the right to cancel the Tender Procedure at any time.

The RFP shall be uploaded on the Relevant Websites (provided below). Bidders may also obtain the RFP via email by submitting a written request at the email address provided below.

**DESIGNATION:**           **Manager Projects**  
**ADDRESS:**             Faisalabad Garment City Company ,  
                                  Value Addition City, 1.5 KM, Sahianwala Road, Khurrianwala, Faisalabad.  
**PHONE NO.:**           (+92)-41-8507208-9,  
**EMAIL:**                 mehboobtabish@yahoo.com  
**WEBSITES:**           **Implementing Agency – [www.fgcc.pk](http://www.fgcc.pk)**  
                                  **PPRA - [www.ppra.org.pk](http://www.ppra.org.pk)**  
                                  **P3A - [www.p3a.gov.pk](http://www.p3a.gov.pk)**

Sincerely,

**Mehboob Hussain Tabish**  
**Manager HR/Admin-FGCC**  
**Tel: +92 41-8507208-9**

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**PART A**  
**INSTRUCTIONS TO BIDDERS**

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## 1. DEFINITIONS

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1.1. In the RFP (including the Schedules), unless the context otherwise requires, the capitalized terms have the meaning ascribed to them under the PPP Agreement (*as defined below*). In addition, the following terms shall have the following meaning, unless the context otherwise requires:

**Acceptable Bank** means a scheduled bank, or a financial institution incorporated or organised in Pakistan having a credit rating of at least AA or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody's or equivalent rating by Fitch or Standard & Poor's, as approved by the Implementing Agency;

**Affiliate** with respect to a person (being the Bidder or, where the Bidder is a Consortium, each Consortium Member), means:

- (a) any company or entity that directly or indirectly controls or is controlled by, or is under common control with such person;
- (b) any director, senior executive or manager either of such person or of any company or entity referred to in paragraph (a) above;
- (c) any consultant, agent or representative supporting such Person in connection with the Project (including the Tender Procedure for the Project); and/or
- (d) any other person with an aggregate ultimate beneficial interest in at least five percent (5%) of the share capital or ownership interest in such person (howsoever held);

**Applicable Laws** means any common or customary law, constitutional law, any statute, regulation, resolution, rules, ordinance, enactment, judgment, order, code, decree, directive, notification, clarification, guideline, policy, requirement or other governmental restriction and any decision of or determination by or interpretation of any of the foregoing (whether or not having the force of law) by any governmental authority, court or competent authority having jurisdiction over this Request For Proposal, the Project, the Project Site, the FGCC Properties and the Parties (whether at a national, regional, provincial, state or local level) now or hereafter in effect, in each case as amended, re-enacted or replaced subject to its applicability within Islamic Republic of Pakistan;

**Basic Eligibility Criteria** means the basic eligibility criteria set out in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*) of the RFP;

**Benchmark Revenues** has the meaning ascribed to it in the PPP Agreement;

**Bid Data Sheet** means the data sheet set out in Section 13 (*Bid Data Sheet*);

**Bid Price** means the bid price quoted by the Bidder for undertaking the Project, which shall be calculated as per the following formula:

$$\text{Bid Price} = (A)30\% + (B)50\% + (-C)20\%$$

Wherein:

SR. NO.	CRITERION	WEIGHT
1.	<b>A</b> = Pre-Estimated Project Cost (EPC Cost + Non-EPC Cost + Interest During Construction)	30%
2.	<b>B</b> = Present value of VGF support/concessional loan + Present Value of MRG (Positive cash flow / Cost to the GOP)	50%
3.	<b>C</b> = Present value of Implementing Agency revenue share on an annual basis offered to Implementing Agency (Negative cash flow / Earnings of the GOP)	20%

**Bid Security** means the security to be provided by the Bidder in accordance with Section 6.3 (*Bid Security*);

**Bid Security Validity Period** means the period of validity of the Bid Security specified in Section 6.3.3;

**Bid Submission Deadline** has the meaning given to it in Section 7.3 (*Bid Submission Deadline*);

**Bidder** means a person or a Consortium, interested in taking part in the Tender Procedure, or having submitted a Proposal in response to the RFP;

**Bidder's Representative** has the meaning given to it in Section 7.1.3;

**Bidding Forms** means the forms provided in Schedule 4 (*Content of the Proposals*), that are required to be submitted with the Technical Proposals and the Financial Proposals;

**FGCC Properties** mean the relevant infrastructure buildings to be constructed, developed and maintained under the Concession on the Project Site in accordance with the PPP Agreement;

**Change** has the meaning given to it in Section 4.1.4;

**Concession** has the meaning given to it in the Letter of Invitation;

**Consortium** means a Bidder comprised of up to five (05) Consortium Members, formed to submit the Proposal, in accordance with the requirements of the RFP;

**Consortium Members** means each of member(s) that are party to the Consortium, including the Lead Member;

**Consortium Agreement** means the consortium agreement to be entered into by the Consortium Members, conveying, inter alia, the intent to form a special purpose vehicle with shareholding / ownership commitment(s) further pursuant to Section 4.1 (*Rules Applicable to Consortia*) and submitted as part of the Proposal in compliance with Part A (*Technical Proposal*) of Schedule 4 (*Content of the Proposals*);

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

**Developer** means the special purpose vehicle to be incorporated and registered with the Securities and Exchange Commission of Pakistan, as a private limited company, for the purposes of entering into and executing the PPP Agreement pursuant to Section 9.5 (*Developer*);

**Decision of Award** means the decision of the Implementing Agency by which the Most Advantageous Bidder is designated as the Developer in accordance with Section 9.2 (*Decision of Award*);

**Eligible Countries** means all countries with whom Islamic Republic of Pakistan has commercial/trade relations and those which are not Sanctioned Countries;

**Entity** has the meaning give to it in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*) of the RFP;

**EPC Costs** has the meaning ascribed to it in the PPP Agreement;

**Evaluation Reports** means the technical evaluation report and the final evaluation report, as defined in the Public Procurement Rules;

**Financial Proposal** means the financial proposal to be submitted as part of the Proposal in accordance with Schedule 4 (*Content of the Proposals*) and Schedule 5 (*Proposal Evaluation and Award Criteria*);

**GoP** means the Government of the Islamic Republic of Pakistan, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the GoP;

**Independent Auditor** has the meaning ascribed to it in the PPP Agreement;

**Implementing Agency** means the Faisalabad Garment City Company ("**FGCC**"), a state owned enterprise under the authority of Ministry of Commerce, established under Section 42 of the Companies Ordinance, 1984;

**Instructions to Bidders** mean the instructions to Bidders set out in Part A (*Instructions to Bidders*) of the RFP;

**Integrity Pact** has the meaning given to it in Section 12.1 (*Integrity Pact*) of the Instructions to Bidders;

**Lead Member** means the member of the Consortium authorised pursuant to the Consortium Agreement to submit the Proposal for the Project and, in the event the Consortium is awarded the Project, to lead the Consortium throughout the Project and coordinate and liaise between the Implementing Agency and the Consortium;

**Minimum Revenue Guarantee Amounts** has the meaning ascribed to it in the PPP Agreement;

**MRG Funding Date** has the meaning ascribed to it in the PPP Agreement;

**MRG Period** has the meaning ascribed to it in the PPP Agreement;

**MRG Security Amount** has the meaning ascribed to it in the PPP Agreement;

**MRG Security Instrument** has the meaning ascribed to it in the PPP Agreement;  
**Month** means a calendar month beginning at 00:00 on the first day of the month and ending at 23:59 on the last day of the month;

**Most Advantageous Bidder** means the Bidder ranked highest by the Implementing Agency upon completion of the Tender Procedure;

**Non – EPC Costs** has the meaning ascribed to it in the PPP Agreement;

**Notice of Amendment** means a corrigendum/addendum approved by the Implementing Agency for amending the RFP in cases where this is allowed and in accordance with the Applicable Laws;

**Notice Inviting Tender** means the notice, by which the Implementing Agency has announced the start of the Tender Procedure and published as set out in Section 2.1.4;

**Notice Inviting Tender Date** means the date of publication of the Notice Inviting Tender;

**O&M Performance Security** has the meaning given to it in the PPP Agreement;

**O&M Costs** has the meaning ascribed to it in the PPP Agreement;

**O&M Period** has the meaning ascribed to it in the PPP Agreement;

**Open Competitive Bidding** means a procedure, pursuant to (without limitation) the PPP Act and the Rules 20, 21 and 36(b) of the Public Procurement Rules, in which any Bidder has the right to submit the Proposal;

**Operational Year** has the meaning ascribed to it in the PPP Agreement;

**Post MRG Period** has the meaning ascribed to it in the PPP Agreement;

**Pre-Estimated Project Cost** means the total project cost quoted by the bidder/sponsors in the Financial Model Form, which shall include, without limitation, EPC costs, Non-EPC costs, and interest during construction as may be required for the execution and implementation of the Project;

**Project** means the establishment, development and operation, maintenance and transfer of FGCC Properties under a PPP basis pursuant to the grant of Concession;

**Project Site** means the site allocated for FGCC Properties as given under Schedule 2 hereunder;

**Performance Securities** means the Construction Performance Security and the O&M Performance Security under the PPP Agreement;

**P3A** means the Public Private Partnership Authority established under Section 3 of the PPP Act;

**PKR or Pakistani Rupees** means the official currency of Pakistan;

**PPP** means public-private partnership;

**PPP Agreement** means the public private partnership agreement with its schedules to be entered into between the Implementing Agency and the Developer, a draft of which is attached as Schedule 7 (*PPP Agreement*) to the RFP;

**PPP Act** means the Public Private Partnership Authority Act, 2017, as amended or substituted from time to time;

**PPRA** means the Public Procurement Regulatory Authority established under section 3 of the PPRA Ordinance;

**PPRA Ordinance** means the Public Procurement Regulatory Authority Ordinance, 2002, as amended or substituted from time to time;

**Pre-Bid Meeting** means the meeting(s)/conference(s) relating to the queries raised and clarifications sought by the prospective Bidders held on the date specified in the Data Sheet;

**Proposal** means the Technical Proposal and the Financial Proposal to be submitted by a Bidder in this Tender Procedure, in compliance with the requirements set out in Schedule 4 (*Content of the Proposals*) and Schedule 5 (*Proposal Evaluation And Award Criteria*);

**PST** means Pakistan Standard Time;

**Public Procurement Rules** means the Public Procurement Rules, 2004, as amended or substituted from time to time;

**Publication Platforms** means the Relevant Websites and at least two (2) dailies, one (1) in English and one (1) in Urdu;

**Rating Event** has the meaning given to it in Section 6.3.6;

**Relevant Websites** means the website(s) of the Implementing Agency, PPRA and P3A, where all information in relation to the Concession and this Tender Procedure is published, including (without limitation) the RFP and the draft PPP Agreement;

**RFP** means this document and any other documents, together with all Schedules to it, as may be amended and supplemented from time to time in accordance with Section 5.3 (*Amendment of RFP*), and any other additional documents made available in the course of the Tender Procedure, which represent basis for preparing, submitting and evaluating the Proposals;

**Revenues** has the meaning ascribed to it in the PPP Agreement;

**Sanctioned Countries** means the countries sanctioned by the United Nations (or the Security Council thereof) pursuant to authority derived from Article 41 of Chapter 7 of the United Nations Charter;

**Schedules** mean the schedules to this RFP;

**SOE** has the meaning given to it in Section 5.6.1(a);

**Sovereign** has the meaning given to it in Section 5.6.1(a);

**Technical Evaluation Criteria** means the technical evaluation criteria set out in Schedule 3

*(Basic Eligibility Criteria and Technical Evaluation Criteria)* of the RFP;

**Technical Proposal** means the technical proposal, to be submitted as part of the Proposal in compliance with the requirements set out in Schedule 4 (*Content of the Proposals*) and Schedule 5 (*Proposal Evaluation and Award Criteria*);

**Tender Procedure** means the Open Procedure implemented by the Implementing Agency in order to choose a Bidder to be awarded the Concession, in accordance with the provisions of this RFP and the Applicable Laws;

**VGF** means the viability gap fund established pursuant to the P3A Act for the purpose of providing project support to the implementing agency(ies) for those project for which feasibility study has found to be economically or socially justified but are not financially viable due to lack of affordability;

**Viability Gap Financing Agreement** has the meaning ascribed to it under the PPP Agreement.

## **2. INTRODUCTION**

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### **2.1 GENERAL DESCRIPTION**

- 2.1.1. The Implementing Agency is seeking to award the Concession through Open Competitive Bidding in accordance with the requirements stipulated under this RFP and the Applicable Laws. The subject matter and the object of the Concession, and the terms for implementation of the Concession, as well as the works and services included in the Concession, are detailed in Schedule 1 (*Scope of Work*) of the RFP.
- 2.1.2. By way of background, the Implementing Agency owns sizeable portfolio of both green-field and brown-field real-estate properties at its gated premises located in the Value Addition City, 1.5 KM, Sahianwala Road, Khurrianwala, Faisalabad., and aims to utilize the Project Site with an objective providing garment manufacturers operational spaces fully equipped with state-of-the-art facilities for exports of value-added garments from Islamic Republic of Pakistan and domestic use, where they can establish their units by avoiding the lengthy process of buying land and constructing factories/buildings at their own cost.
- 2.1.3. Through such process, the Implementing Agency endeavours to ensure that the FGCC Properties on the Project Site are developed and managed efficiently, effectively, and in strict compliance with Applicable Laws and standards and that its infrastructure, equipment and installations are modernized and expanded in an orderly and transparent manner in connection with smart climate-friendly infrastructure and ancillary facilities thereto to provide state of the art facilities for garment sector allied industries. In such context, the Developer will be required to carry out (without limitation) the following activities in compliance and subject to the terms and conditions of the PPP Agreement: design, build, finance, operate, maintain and transfer of the FGCC Properties at the Project Site pursuant to grant of Concession.
- 2.1.4. The Concession shall be implemented at the Project Site, details of which are provided under Schedule 2 (*Project Site*). Any additional information of the Project Site that is necessary and required by the Bidders in the context of the Tender Procedure will be provided upon request. However, the Implementing Agency reserves the right to reject any request for such additional information in its absolute discretion.
- 2.1.5. The Implementing Agency has published the Notice Inviting Tender on 30<sup>th</sup> November, 2025 in respect to the award of the Concession through Open Competitive Bidding at the Publication Platforms.

### **2.2 DISCLAIMER**

- 2.2.1. Each Bidder shall be solely responsible for conducting at its own cost its own independent researches, due diligence activities, investigations and for seeking any other independent advice for the purposes of preparing and submitting the Proposal and, in case of award of the Concession, carrying out, as Developer, all works and services, and other activities with respect to the FGCC Properties, and perform all the obligations provided under the PPP Agreement.
- 2.2.2. No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the GoP, the Implementing Agency or their advisors, employees, consultants or agents, for the completeness, adequateness or accuracy of any data or other information contained in the RFP or provided during the Tender Procedure (including, without limitation, the Publication Platforms).

- 2.2.3. Each Bidder must rely solely on its own independent appraisal, evaluation or valuation of the Concession and its own independent verification of the information available in the RFP, and/or through the Publication Platforms, and any other investigation it may deem necessary.
- 2.2.4. All information and documents submitted in response to the RFP becomes the property of the Implementing Agency unless such Proposal are returned to the Bidders pursuant to the terms of the RFP.
- 2.2.5. In submitting any information in response to the RFP, each Bidder certifies that it understands, accepts and agrees to these disclaimers. Nothing contained in any other provision of the RFP, nor any statements made orally or in writing by any Person or party, shall have the effect of negating or superseding any of the foregoing disclaimers.

### **3. TENDER PROCEDURE**

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3.1. The procedure for awarding the Concession is Open Competitive Bidding according to (without limitation) the PPP Act and Rules 20, 21 and 36(b) of the Public Procurement Rules. Bidders shall submit a Proposal on or prior to Bid Submission Deadline pursuant to the terms and conditions set out in the RFP.

A 'Single Stage-Two Envelope' procedure is adopted pursuant to Rules 36 (b) of the Public Procurement Rules, and all bids shall be prepared in accordance with the terms provided under the RFP.

### **4. BIDDERS**

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#### **4.1 RULES APPLICABLE TO CONSORTIA**

4.1.1. A Consortium shall execute a Consortium Agreement to be signed by an authorized representative of each of the Consortium Members. The Consortium Agreement shall provide, inter alia, for the appointment of one of the Consortium Members to represent and bind all the Consortium Members in all matters related to the Tender Procedure for the Concession, including (without limitation) for purposes of submission of the Proposal on behalf of the Consortium (the "**Lead Member**") and until and including, in case of award, execution of the PPP Agreement. The Consortium Agreement shall contain the following information:

- i. each Consortium Member's binding commitment to the Consortium and to the Implementing Agency in regard to the performance of the PPP Agreement;
- ii. intent to form a special purpose vehicle to implement the Project;
- iii. the proposed shareholding of each Consortium Member in the Developer. The Lead Member shall hold a minimum shareholding of fifty percent (50%), while each of the other Consortium Members shall hold not less than ten percent (10%).
- iv. identification of the Consortium Member that will assume the role of Lead Member and will submit the Proposal on behalf of the other Consortium Members;
- v. irrevocable power for the Lead Member to represent the Consortium and bind all Consortium Members in connection with the Tender Procedure, the Proposal and the signing of the PPP Agreement;
- vi. identification of the Consortium Members;
- vii. brief description of the obligations of each of the Consortium Members for performance of the PPP Agreement;
- viii. a statement that the Consortium Members shall be bound by the shareholding change restrictions set out in the PPP Agreement;
- ix. a statement that the Consortium Members shall be jointly and severally liable in respect of their obligations in relation to the Project; and

- x. Clear delineation of roles and responsibilities, and activities to be undertaken by each Consortium Member.
- 4.1.2. Each Member of the Consortium shall fulfil the requirements as prescribed in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*).
- 4.1.3. The total Consortium Members of a Consortium shall not exceed three (03) members. The Consortium Members shall be jointly and severally liable vis-à-vis the Implementing Agency for the fulfilment of the obligations of the Consortium as specified in Section 9.4.5 of the Instructions to Bidders.
- 4.1.4. Any change in the composition of a Consortium after having submitted the Proposal shall be, unless expressly approved in writing by the Implementing Agency, in violation of the RFP and shall result in the Consortium being disqualified, not being eligible to be awarded the Concession or to sign the PPP Agreement as the case may be, pursuant to the RFP. Changes in the composition of the Consortium shall mean, with respect to the relevant provisions set out in the Consortium Agreement (a “**Change**”): (a) a change in any one of the Consortium Members, including the exclusion of a member/shareholder/partner or the addition of a member/shareholder/partner or, as the case may be, upon its incorporation, the exclusion of a Developer’s shareholder or the addition of a Developer’s shareholder; and (b) a change in the equity interest held by the Consortium Members in the Developer, being reduced below the threshold set out in Section 4.2 (*Participation Restrictions*).
- 4.1.5. Upon execution of the PPP Agreement, any Change shall be subject to and governed by the terms and conditions set out in the PPP Agreement and the Applicable Laws.
- 4.1.6. In the event the Consortium determines that it lacks the requisite expertise for the Project, it may acquire the necessary expertise by associating with other individuals or firms under a sub-contractor arrangement. Any individual or firm engaged as a sub-contractor shall be required to submit an undertaking specifying the nature of the arrangement and the scope of works and services for which it has been engaged.

## **4.2 PARTICIPATION RESTRICTIONS**

- 4.2.1. No Bidder or Consortium Member may submit the Proposal if it owns more than three percent (03%) of any shares (directly or indirectly, in terms of voting rights and/or rights to dividends) of another Bidder or Consortium Member of another Consortium-
- 4.2.2. No Bidder or Consortium Member may submit the Proposal if the relationship with another Bidder or Consortium Member of another Consortium is such that the respective Proposal can be considered as referred to the same decision-making body or Persons.
- 4.2.3. The Implementing Agency shall be entitled to remove from participation to the Tender Procedure during the Proposal opening and review pursuant to Section 8.2 (*Review of the Proposals and Compliance Examination*) any Bidder which is found in breach of the provisions under this Section 4.2 (*Participation Restrictions*) and to reject the respective Proposal.
- 4.2.4. For the purposes of confirming that a Bidder is not subject to the restrictions set out in this Section 4.2 (*Participation Restrictions*), each Bidder shall deliver, as part of the Proposal, a declaration using the Bidding Form C (*Form of Affidavit*) set out in Part A (*Technical Proposal*) of Schedule 4 (*Content of the Proposals*).

#### **4.3 ONE PROPOSAL PER BIDDER**

A Bidder is entitled to submit only one (1) Proposal. Submission by an individual Bidder or a Consortium Member of more than one (1) Proposal or participation by an individual Bidder or a Consortium Member in another Consortium shall result in rejection of all Proposals in which such party is involved (as a Bidder or as a Consortium Member).

#### **4.4 COST OF BIDDING**

The Bidder shall bear all costs associated with the preparation and submission of its Proposal and, in case of award, with the finalization of the PPP Agreement, including for the establishment of the Developer. The GoP, the Implementing Agency will be in no case responsible or liable for these costs, regardless of the conduct or outcome of the Tender Procedure.

#### **4.5 BLACKLISTING OF BIDDERS**

The GoP as per the Mechanism for Blacklisting and Debarment of Bidders and Contractors Regulations, 2024 (the “**Regulations**”) and Rule 19 of the Public Procurement Rules observes the highest standard of ethics during the procurement and execution of such contracts. In pursuance of such, the Implementing Agency follows and will follow the instructions contained therein provided that the Implementing Agency can inter alia blacklist bidders found to be indulging in corrupt and fraudulent practices, fails to perform contractual obligations, and/or fails to abide by bid security declaration.

## **5. TENDER PROCEDURE DOCUMENTATION**

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### **5.1 CLARIFICATION OF RFP**

- 5.1.1. A Bidder requiring any clarification pertaining to the RFP shall contact the Implementing Agency in writing, at the address provided in the Bid Data Sheet, through email provided in the Bid Data Sheet, or submit its queries on the EPADS portal or raise its enquiries during the Pre-Bid Meeting. The Implementing Agency will respond in writing to any request for clarification provided that such request is received no later than seven (7) Days prior to the Bid Submission Deadline. The response shall be uploaded on the Relevant Websites including a description of the inquiry but without identifying its source. Should the Implementing Agency deem it necessary to amend the RFP as a result of request for clarification, it shall do so following the procedure under Section 5.2 (*Amendment of RFP*) of the Instructions to Bidders. No markup of the RFP, the draft PPP Agreement and/or other documents/instruments attached to the RFP shall be accepted. Bidders may submit comments or seek clarifications on the RFP, which may be considered by the Implementing Agency. Bidders are advised to regularly access the Publication Platforms in order to monitor the upload of responses.
- 5.1.2. The Bidder's designated representative shall be invited to attend the Pre-Bid Meeting at the date, time and venue indicated in Bid Data Sheet. The Pre-Bid Meeting may be conducted virtually via the web link provided by the Implementing Agency to all Bidders. The purpose of the Pre-Bid Meeting will be to clarify issues and to answer questions of the Bidders on any matter relating to the RFP. Non-attendance at the Pre-Bid Meeting will not be a cause for disqualification of a Bidder. Queries to be discussed during the Pre-Bid Meeting should be submitted two (02) Days prior to the date of Pre-Bid Meeting. In addition to the queries discussed during the Pre-Bid Meeting, Bidders may submit additional queries to the Implementing Agency within the time period specified in Section 5.1.1 of the Instructions to Bidders and the Implementing Agency shall respond to such queries in writing as specified in Section 5.1.1 of the Instructions to Bidders. In addition to the Pre-Bid Meeting, on a written request of any Bidder, provided that the same are submitted seven (7) Days prior to Bid Submission Deadline, the Implementing Agency may hold discussions on the RFP separately with such Bidder on such questions and clarifications submitted in writing to the Implementing Agency. Any proposed changes or responses to such clarifications and questions shall be provided to all Bidders.

### **5.2 AMENDMENT OF RFP**

- 5.2.1. At any time prior to the Bid Submission Deadline, the Implementing Agency may, whether at its own initiative or in response to a clarification request by a Bidder, amend the RFP, and the Implementing Agency may, by virtue of a Notice of Amendment. Any Notice of Amendment shall be considered part of the RFP and shall be published on the Publication Platforms.
- 5.2.2. It will be assumed that the information contained in the amendments will have been taken into account by all Bidders in their respective Proposals.
- 5.2.3. In order to afford Bidders reasonable time in which to take the amendment into account in preparing their Proposal, the Implementing Agency may, at its discretion, extend the Bid Submission Deadline in accordance with Section 7.3.4 of the Instructions to Bidders, if it considers that as a result of issuance of any Notice of Amendment, additional time will be

required by the Bidders for preparation of their Proposals.

### **5.3 PROJECT SITE VISITS**

- 5.3.1. A Bidder is advised to visit and examine the Project Site and obtain for itself on its own responsibility all information that may be necessary for preparing the Proposal. The costs of visiting the Project Site shall be at the Bidder's own expense.
- 5.3.2. The Implementing Agency will inform the Bidders on the available dates and time for Project Site visits by publishing an announcement on the Relevant Websites. Bidders wishing to have access to the Project Site, will be required to submit a written request to the address and an electronic request to the email address specified in the Bid Data Sheet specifying the requested Day of Project Site visit(s). The Implementing Agency will endeavour to accommodate to the extent possible the requests of the Bidders and shall inform the Bidders of the Day(s) selected for the Project Site visits by sending a notice to the relevant email address. Appropriate instructions that the Bidders and any of their personnel or agents shall follow during any visit to the Project Site will be published on the Relevant Websites. The Bidders shall comply with all such instructions, including any procedure specified by the Implementing Agency for accessing the Project Site.
- 5.3.3. Where a Bidder and any of its personnel or agents have been granted permission to enter the Project Site for the purpose of such visit, the Bidder, its personnel, and agents will release and indemnify the GoP, the Implementing Agency and their personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the visit. For the avoidance of doubt, any visit to the Project Site will be conducted in the presence of a person(s) designated for that purpose by the Implementing Agency.

### **5.4 IMPLEMENTING AGENCY'S RIGHTS IN CONNECTION WITH THE TENDER PROCEDURE**

- 5.4.1. At any time during the Tender Procedure, the Implementing Agency may, to the extent permitted by Applicable Laws, decide to:
- (a) terminate the Tender Procedure at any time and reject all Proposals or decide to commence a new or a reopened Tender Procedure; and/or
  - (b) extend any time period or change any deadline (but without reducing it)

in each case, without incurring any liability to the affected Bidders.

### **5.5 NOTICES AND COMMUNICATIONS**

- 5.5.1. Each request, information and notification during the course of the Tender Procedure shall be provided to the Bidders through electronic mail, and/or the Publication Platforms (where applicable), except for the Proposal, in respect of which Section 7 (*Submission of the Proposal*) below shall apply. Following the submission of the Proposal, all information and notices shall be provided through the Publication Platforms (where applicable) and/or at the email address provided by the Bidders with the Proposal.

### **5.6 PREVENTION OF CONFLICT OF INTEREST**

- 5.6.1. The provisions of Applicable Laws shall apply for the purpose of preventing conflict of interest

during the Tender Procedure. A Bidder (including a Consortium Member) may be considered to be in a conflict of interest with one or more Bidders, if such Bidder/Consortium Member, including its subsidiaries, participates in more than one (1) Bid, either individually or as a Consortium Member. This will result in the disqualification of all Bids in which the Bidder (including a Consortium Member) is involved. A Bidder (including a Consortium Member) shall not be considered to be in a conflict of interest with another Bidder, if such Bidders (including Consortium Members) are the subsidiaries of a common parent company or one Bidder (including a Consortium Member) is the parent company of the other Bidder (including a Consortium Member); provided, that the following conditions are satisfied:

- (a) such parent company is a sovereign state ("**Sovereign**") or a sovereign state-owned enterprise (**SOE**);
- (b) the Sovereign, SOE and the relevant subsidiaries of the Sovereign and/or SOE participating in the Tender Procedure conduct their business operations on an independent basis, are independent legal Persons, have independent management and boards and are free from each other's financial obligations including independent auditing and accounting; and
- (c) such Bidder (including a Consortium Member) has provided a legal opinion duly issued by a reputable, qualified legal counsel in its jurisdiction of incorporation confirming (a) and (b) above.

5.6.2. The circumstances provided above which may constitute a conflict of interest are not exhaustive, and the Implementing Agency shall be the sole determinant of when a conflict of interest shall arise.

## **6. PREPARATION OF THE PROPOSAL**

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### **6.1 DOCUMENTS COMPRISING THE PROPOSAL**

- 6.1.1. Each Bidder shall submit, as part of the Proposal, the documents prescribed in Schedule 4 (*Content of the Proposals*) of the RFP. The Proposal shall comprise a Technical Proposal and a Financial Proposal, each submitted simultaneously in separately sealed envelopes clearly marked “**TECHNICAL PROPOSAL**” and “**FINANCIAL PROPOSAL**” respectively, in accordance with manner provided herein.
- 6.1.2. Bidders are expected to carefully examine the RFP when preparing their Proposals and use only the forms specified in Schedule 4 (*Content of the Proposals*) of the RFP. Forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. Any material deviations/omissions/reservations from the formats provided in the RFP shall not be accepted and may form basis for the rejection of the Proposal. Material deficiencies, in the sole opinion of the Implementing Agency, in providing the information requested may result in rejection of a Proposal.
- 6.1.3. In case a document required to be submitted as part of the Technical Proposal, is submitted with the Financial Proposal; or a document required to be submitted with the Financial Proposal, is submitted with the Technical Proposal, it shall not be considered for evaluation and may also form the basis of rejection of the Proposal.

### **6.2 NOT USED**

### **6.3 BID SECURITY**

- 6.3.1. Bidders' compliance with their Proposal and the RFP shall be guaranteed by a bid security equivalent to PKR 40,000,000/- (PKR Forty Million only), which shall be submitted in the form of either pay order or deposit at call or unconditional and irrevocable bank guarantee attached as Bidding Form E (*Form of Bid Security*) under Schedule 4 (*Content of the Proposals*) (the **Bid Security**), issued in favour of the Implementing Agency as beneficiary by an Acceptable Bank. Any Proposal not accompanied by an acceptable Bid Security or an amount less than that required under the RFP, shall be rejected by the Implementing Agency as being non-responsive. It is further clarified that no Bid Security in the form of insurance guarantee shall be entertained.
- 6.3.2. Bidders are required to submit with their original Technical Proposal the original Bid Security and the scanned copy of the original Bid Security in PDF format on the EPADS portal. The Implementing Agency shall reject a Proposal if a photocopy of original Bid Security is attached with the original Technical Proposal and such Technical Proposal shall not be further evaluated.
- 6.3.3. The Bid Security shall remain valid for a period of thirty (30) days following the original Bid Validity Period, as may be extended in accordance with Section 6.6.2 (the “**Bid Security Validity Period**”). If the Construction Performance Security has not been issued by the Most Advantageous Bidder 10 (ten) Days prior to the expiry of the Bid Security Validity Period, then the Most Advantageous Bidder shall extend the Bid Security Validity Period until such date as notified by the Implementing Agency.

- 6.3.4. Not used.
- 6.3.5. Without prejudice to Section 7.4.3 in relation to withdrawal of a Proposal, the Bid Security of non-winning Bidders will be returned to such Bidders within a period of fifteen (15) Days after the notification of the award of the Concession pursuant to Section 9.3.1, in accordance with the Applicable Laws.
- 6.3.6. If the issuer of the Bid Security is or becomes rated below the credit ratings set out in the definition of the terms “Acceptable Bank” (a **Rating Event**) or if the Bid Security is due to expire prior to Bid Validity Period or, in case of extension of the Bid Validity Period pursuant to this Section 6.3 (*Bid Security*) or Section 6.6 (*Bid Validity Period*), prior to the expiry of such extension, and such Bid Security has not been replaced by another security that meets the requirements of Section 6.3.1 within thirty (30) Days of the Rating Event (in case of a Rating Event) or by the date that is thirty (30) Days prior to the date of expiry (in case of early expiry) the Implementing Agency shall be entitled to claim the full face value amount of such Bid Security. Such amount shall be deposited in a ring-fenced account to be treated as cash collateral and if a new Bid Security complying with the requirements set out in this Section 6.3 (*Bid Security*) is not provided by the relevant Bidder within additional thirty (30) Days, the cash collateral shall be finally forfeited by the Implementing Agency.
- 6.3.7. The Bid Security shall be forfeited:
- (a) if the Bidder withdraws its Proposal during the Bid Validity Period as extended pursuant to Sections 6.3 (*Bid Security*) and 6.6 (*Bid Validity Period*);
  - (b) in the event the Most Advantageous Bidder fails to furnish the Performance Security in accordance with the terms of the Decision of Award;
  - (c) if the Bidder does not accept the arithmetical corrections of its Proposal in accordance with Section 8.2.6;
  - (d) if the Most Advantageous Bidder is invited by the Implementing Agency to execute the PPP Agreement pursuant to the Decision of Award and fails to execute the PPP Agreement in accordance with the terms set out therein;
  - (e) if a Bidder committed or attempted to commit a corrupt, fraudulent, collusive, coercive or obstructive practice;
  - (f) if a Bidder has made false declarations in its Proposal;
  - (g) if the Most Advantageous Bidder fails to fulfil its obligations under the RFP in terms thereof; and/or
  - (h) In the case of a Developer fails to fulfil its obligations in accordance with the PPP Agreement;

#### 6.4 **PERFORMANCE SECURITY**

The Most Advantageous Bidder shall, within thirty (30) days of issuance of the Decision of Award, furnish to the Implementing Agency the Construction Performance Security and shall maintain the same in full force and effect until the Construction Performance Security Expiry Date, in accordance with the requirements of the PPP Agreement and the RFP. Failure of the Most Advantageous Bidder to comply with the requirements of this Section 6.4 (*Performance*

*Security*) shall constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security. Following execution of the PPP Agreement, the Construction Performance Security shall be encashed in terms of the PPP Agreement.

#### **6.5 BID CURRENCY**

If applicable, all rates, prices, cost estimates and/or other money values related to equipment and services stated in the Proposal, including the Bid Security, shall be in Pakistani Rupees.

#### **6.6 LANGUAGE OF THE TENDER PROCEDURE AND THE PROPOSALS**

6.6.1. Notices, information, correspondence and communications between the Implementing Agency and the Bidders shall be made in the English language.

6.6.2. The Proposal, and documents related to the Proposal exchanged by the Bidder and the Implementing Agency and/or the Implementing Agency shall be written in English.

#### **6.7 BID VALIDITY PERIOD**

6.7.1. The Proposals shall remain valid for a period of ninety (90) days after the Bid Submission Deadline, unless extended as per the RFP.

6.7.2. Prior to expiry of the original Bid Validity Period, the Implementing Agency may request that the Bidders extend the period of validity for a specified additional period. A Bidder may refuse the request without its Bid Security being forfeited; upon such refusal, the Bidder will be disqualified from the Tender Procedure and its Bid Security returned, subject to the Bidder complying with its obligations under the Confidentiality Undertaking in all respects. A Bidder agreeing to the request shall extend the validity of its Bid Security for the period of the extension and in compliance with Section 6.3.3 in all respects.

## 7. SUBMISSION OF THE PROPOSAL

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### 7.1 FORMAT AND SIGNING OF THE PROPOSAL

- 7.1.1. The Bidder shall prepare one (01) original hard copy of the Technical Proposal and one (01) original hardcopy of the Financial Proposal comprising the Bid as described in Section 6.1 (*Documents Comprising the Proposal*) of the Instructions to Bidders, and clearly mark each as “**ORIGINAL - TECHNICAL PROPOSAL**” and “**ORIGINAL - FINANCIAL PROPOSAL**”, respectively, in addition to the marking stipulated in Section 6.1 (*Documents Comprising the Proposal*). The Bidder shall submit as “**COPY**” one (01) hard copy and one (01) printable softcopy (PDF, Microsoft Excel etc., as may be relevant) on electronic memory devices (e.g., USB flash memory, CD-ROM or DVD (the “**Electronic Memory Device**”). The Electronic Memory Device should be clearly marked “**TECHNICAL PROPOSAL**” and “**FINANCIAL PROPOSAL**” and placed in their respective envelopes containing the Technical Proposal and the Financial Proposal marked as “**ELECTRONIC COPY**”. In the event of any inconsistency or discrepancy between the original and the copies, the original shall prevail. Note that the Bid Security is required to be submitted in a sealed envelope, separately in the envelope marked as “**TECHNICAL PROPOSAL**”. In addition to the physical submission of the Proposal, each Bidder shall register itself on the e-Pak Acquisition and Disposal System (EPADS) by creating a dedicated account and submit one (01) copy of the original Technical Proposal and one (01) copy of the Financial Proposal, each in PDF format, electronically via the EPADS portal. For the avoidance of doubt, in the event of any inconsistency or discrepancy between the physical hard copy of the Proposal and the electronic copy of the Proposal submitted through the EPADS portal, the electronic submission made through the EPADS portal shall prevail.
- 7.1.2. The Electronic Memory Device under Section 7.1.1 shall contain all documents as submitted in the original hardcopy of the Technical Proposal and Financial Proposal in PDF format. The PDF of the all the documents in the Technical Proposal and Financial Proposal must be scanned in a form and manner that is clear, accurate and identical to the original hardcopy of the Technical Proposal and Financial Proposal and shall be duly certified by the electronic signature of the Bidder. Furthermore, the Electronic Memory Device containing the Financial Proposal, as well as the Financial Proposal submitted on the EPADS, shall be password-protected to ensure the confidentiality and integrity of the data. The password shall be provided to the Implementing Agency at the time of the opening of the Financial Proposal.
- 7.1.3. The original and all copies of the Proposal shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder. The power of attorney has to be substantially in the form of Power of Attorney attached hereto under Bidding Form D of Part A (*Technical Proposal*) of Schedule 4 (*Content of the Proposals*) (the “**Bidder’s Representative**”). This authorization must contain the name and position held by each person signing the authorization and name and position of the authorised signatory.
- 7.1.4. The hard copy of each Proposal should be bound in the hard book binding form to avoid the possibility of removal or insertion of page(s). All pages of the original Proposal must be signed and stamped by the Bidder’s authorized representative. All the pages must be numbered starting from the first page to the last. Any Proposal not substantially adhering to these requirements may be rejected by the Implementing Agency.
- 7.1.5. Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the authorized representative signing the Proposal.

- 7.1.6. The Implementing Agency reserves the right to reject a Proposal which does not meet the requirements in Section 7.1 (*Format and Signing of the Proposal*).

## **7.2 SEALING, MARKING AND SUBMISSION OF PROPOSALS**

- 7.2.1. In accordance with Section 7.1.1 of the Instructions to Bidders, each Proposal shall be in a separate envelope indicating the Proposal as original or copy clearly marked as “**ORIGINAL**” and “**COPY**”, as appropriate. The Technical Proposal shall be placed in a sealed envelope clearly marked “**ORIGINAL - TECHNICAL PROPOSAL**” and the Financial Proposal in the sealed envelope clearly marked “**ORIGINAL - FINANCIAL PROPOSAL**”. These two (02) envelopes, in turn, shall be sealed in an outer envelope bearing the address for Proposal submission indicated in the Bid Data Sheet. The outer envelope shall be clearly marked: “**DO NOT OPEN, EXCEPT IN PRESENCE OF THE IMPLEMENTING AGENCY**”.
- 7.2.2. The outer envelope of the Technical Proposal shall bear a warning “*Not to open the envelope before the Bid Submission Deadline*”. The outer envelope of the Financial Proposal shall bear a warning “*Not to open the envelope before the Technical Proposal has been evaluated*”. Any Bidder (including a Consortium Member) who submits or participates in more than one (01) Proposal shall be disqualified. The inner and outer envelopes of the Technical Proposal and the Financial Proposal shall bear the name of the Bidder and be addressed to the Implementing Agency and shall mention the following: name of Project i.e. “***Design, Build, Finance, Operate, Maintain And Transfer of the FGCC Properties***”.
- 7.2.3. If all the envelopes are not sealed and marked as required, the Implementing Agency shall not assume any responsibility for the misplacement or premature opening of the Proposal. In case of such misplacement or premature opening of the Proposal which results in disclosure of any direct or indirect financial information prior to the scheduled opening of the Financial Proposal, the Proposal shall be rejected by the Implementing Agency as non-responsive.
- 7.2.4. All Bidding Forms forming part of the Technical Proposal and the Financial Proposal, as specified in the RFP, are to be properly completed and signed. No alteration is to be made in the Letter of Financial Proposal, Letter of Technical Proposal or in the Bidding Forms, except in filling up the blanks as directed. If any alteration is made or if these instructions have not been fully complied with, the Proposal shall be rejected.
- 7.2.5. Proposals shall be submitted by the Bidders: (a) through courier/express mail; or (b) by hand at the address indicated in the Bid Data Sheet.

## **7.3 BID SUBMISSION DEADLINE**

- 7.3.1. Proposals must be received by the Implementing Agency at the address provided in the Bid Data Sheet not later than the Bid Submission Deadline and the same shall be submitted on the EPADS portal, electronically
- 7.3.2. No arrangements shall be made by the Implementing Agency with Bidders for collection of the Proposals from any delivery point. Bidders shall bear all expenses incurred in the preparation and delivery of the Proposals. No claims for refund of any expense shall be entertained.
- 7.3.3. Where delivery of the Proposal is by courier/express mail and Bidder wishes to receive an acknowledgment of receipt of such Proposal, the Bidder shall make a request for such acknowledgement in a separate letter attached to (but not included in) the sealed Proposal.

- 7.3.4. The Implementing Agency may, in its discretion, extend the Bid Submission Deadline by issuing an addendum in accordance with Section 5.2 (*Amendment of RFP*) of the Instructions to Bidders, in which case all rights and obligations of the Implementing Agency and the Bidders previously subject to the earlier Bid Submission Deadline shall thereafter be subject to the extended Bid Submission Deadline.
- 7.3.5. The Implementing Agency shall not consider any Proposal that arrives after the Bid Submission Deadline. Any Proposal or any document received by the Implementing Agency after the Bid Submission Deadline shall be declared late, rejected, and returned unopened to the Bidder.
- 7.3.6. Delays in the mail, delays of person(s) in transit, or delivery of a Proposal to an incorrect location, shall not be accepted as an excuse for failure to deliver a Proposal at the proper place and time. It shall be the Bidder's responsibility to determine the manner in which to deliver its Proposal in a timely manner.

#### **7.4 MODIFICATION, SUBSTITUTION AND WITHDRAWAL OF PROPOSALS**

- 7.4.1. Any Bidder may modify, substitute, or withdraw its Proposal after submission provided that written notice, duly signed by the authorised representative, for the modification, substitution or withdrawal is received by the Implementing Agency prior to the Bid Submission Deadline.
- 7.4.2. The notice for modification, substitution or withdrawal of any Proposal shall be prepared, sealed, marked and delivered in accordance with the provisions applicable to the original Bid with additional marking of "**MODIFICATION**" or "**SUBSTITUTION**" on all envelopes in case of modification or substitution, or "**WITHDRAWAL**" on the envelope containing the notice, in case of withdrawal.
- 7.4.3. Withdrawal of a Proposal during the interval between the Bid Submission Deadline and the expiration of the Bid Validity Period (or any extension thereof) shall result in forfeiture of the Bid Security pursuant to Section 6.3.7 of the Instructions to Bidders.
- 7.4.4. A Bidder having withdrawn its Proposal can collect them at the place indicated in the Bid Data Sheet for the submission of the Proposal on or prior the expiry of up to twenty (20) Days after the Bid Submission Deadline. In case of failure by the Bidder to collect the Proposal within the above deadline, the Implementing Agency shall be entitled to either destroy or keep the Proposal without incurring in any liability.
- 7.4.5. After the Bid Submission Deadline, no changes to the RFP shall be permitted other than as permitted by the Applicable Laws, if any.
- 7.4.6. Proposals submitted in response to the RFP by the Bidders shall be upon full understanding and agreement of all terms of the RFP and such submission shall be deemed as an acceptance to all the terms and conditions stated in the RFP (including the Concession Documents).

#### **7.5 NO VARIANTS TO THE PROPOSAL**

No variants and/or alternatives within the Proposal are allowed in this Tender Procedure.

## **8. PROPOSAL OPENING AND REVIEW**

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### **8.1 OPENING OF THE PROPOSALS**

- 8.1.1. The Implementing Agency shall conduct the opening of Technical Proposals on the same Day as the Bid Submission Deadline at **14:30 hours PST** at the address provided in the Bid Data Sheet, in the presence of the Bidders' designated representatives who choose to attend. Furthermore, the Implementing Agency will initiate the opening of the Proposals by downloading the PDF files of the Technical Proposal from the EPADS portal. The PDF files of the Financial Proposal will remain untouched until the date and time of the opening of the Financial Proposals. The Proposals shall be opened in chronological order of receipt (first the Proposal submitted the earliest and so on).
- 8.1.2. If the Technical Proposal and the Financial Proposal are submitted together in one envelope, other than as specified in the Instructions to Bidders, the Implementing Agency may reject the entire Proposal. If any document, required to be submitted with Technical Proposal, is submitted with the Financial Proposal, or if any document required to be submitted with the Financial Proposal is submitted with the Technical Proposal, such document shall not be considered for evaluation and may also form the basis of rejection of a Proposal.
- 8.1.3. The Financial Proposals shall remain unopened and will be held in custody of the Implementing Agency until the specified time of their opening, as communicated by the Implementing Agency to the Bidders.
- 8.1.4. First, envelopes marked "**WITHDRAWAL**" shall be opened and read out and the envelope with the corresponding Proposal shall not be opened but returned to the Bidder. No Proposal shall be withdrawn unless the corresponding withdrawal notice contains a valid authorization by the Bidder to request the withdrawal and is read out during the Proposal opening.
- 8.1.5. Second, outer envelopes marked "**SUBSTITUTION**" shall be opened. The inner envelopes containing the substitute Technical Proposal and/or substitute Financial Proposal shall be exchanged for the corresponding envelopes being substituted, which shall be returned to the Bidder unopened. Only the substituted Technical Proposal, if any, shall be opened, read out, and recorded. Substituted Financial Proposal, if any, will remain unopened in accordance with Section 8.1.3 of the Instructions to Bidders. No Proposal shall be substituted unless a valid authorization by the Bidder to request the substitution is submitted and is read out and recorded during the Proposal opening.
- 8.1.6. Next, outer envelopes marked "**MODIFICATION**" shall be opened. The original Technical Proposal shall be opened, read out, and recorded, followed by the opening, reading out and recording of the modification to the Technical Proposal. Any modification to the Financial Proposal shall remain unopened in accordance with Section 8.1.3 of the Instructions to Bidders. No Proposal shall be modified unless a valid authorization by the Bidder to request the modification is submitted and is read out and recorded during the Proposal opening.
- 8.1.7. All other envelopes holding the Technical Proposals shall be opened one at a time, and the following read out and recorded:
- (a) the name of the Bidder;
  - (b) whether there is a modification or substitution; and

- (c) Any other details as the Implementing Agency may consider appropriate.
- 8.1.8. Only Technical Proposals read out and recorded during the Proposal opening shall be considered for evaluation as per the requirements of the RFP. No Bid shall be rejected at the opening of Technical Proposals except for late Bids, in accordance with Section 7.3.5 of the Instructions to Bidders.
- 8.1.9. The Implementing Agency shall prepare a record of the Technical Proposal opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification. The Bidders' representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder's signature on the attendance sheet shall not invalidate the contents and effect of the record.
- 8.1.10. At the end of the evaluation of the Technical Proposals, the Implementing Agency shall invite Bidders who have submitted responsive Technical Proposals pursuant to the requirements of the RFP and who have been determined as technically qualified for award of Concession to attend the opening of the Financial Proposals. The date, time, and location of the opening of Financial Proposals shall be advised in writing by the Implementing Agency.
- 8.1.11. The Implementing Agency shall notify in writing at any time prior to the opening of the Financial Proposals, the Bidders who have been rejected on the grounds of their Technical Proposals not being responsive to the requirements of the RFP. Such Bidders shall be required to collect their Financial Proposal unopened from the Implementing Agency on the date notified by the Implementing Agency.
- 8.1.12. The Implementing Agency shall conduct the opening of Financial Proposals of all Bidders who have technically qualified, in the presence of Bidders' representatives who choose to attend at the address, date and time specified by the Implementing Agency. The Bidders' representatives who are present shall be requested to sign an attendance sheet evidencing their attendance.
- 8.1.13. Financial Proposals of the Bidders shall be opened one at a time, using the password provided by the Bidders at the time of the opening of the Financial Proposals and the following read out and recorded:
- (a) the name of the Bidder;
  - (b) whether there is a modification or substitution; and
  - (c) Any other details as the Implementing Agency/the Implementing Agency may consider appropriate.
- 8.1.14. Only the Financial Proposals read out and recorded during the opening of Financial Proposals shall be considered for evaluation. No Financial Proposal shall be rejected at the time of opening of Financial Proposals.
- 8.1.15. The Implementing Agency shall prepare a record of the opening of Financial Proposals that shall include the name of the Bidder. The Bidders' representatives who are present shall be requested to sign the attendance sheet. The omission of a Bidder's signature on the attendance sheet shall not invalidate the contents and effect of the record. A copy of the attendance sheet shall be distributed to all Bidders.

## **8.2 REVIEW OF THE PROPOSALS AND COMPLIANCE EXAMINATION**

- 8.2.1. In the above-mentioned session, the Implementing Agency shall firstly open and carry out a detailed examination of each Proposal in order to determine whether it is substantially compliant with the requirements set out in the RFP.
- 8.2.2. A Bidder shall be admitted to participation in the Tender Procedure after an examination carried out by the Implementing Agency to determine whether:
- (a) the Proposal is complete and does not deviate from the scope of works and services to be performed in relation to the Project;
  - (a) any computational errors have been made;
  - (b) required sureties (including Bid Security) have been furnished;
  - (c) documents have been properly signed;
  - (d) valid authorization(s) is/are present;
  - (e) the Bid is valid till the Bid Validity Period; and
  - (f) The fulfillment of any other conditions for participation set out in the RFP with respect to the Bidder.
- 8.2.3. Prior to conducting detailed evaluation of Bids pursuant to Section 8.3 (*Determination of Responsiveness of Proposals*) of the Instructions to Bidders, the Implementing Agency shall examine each Proposal as follows, and a Proposal may not be considered acceptable if:
- (a) it is unsigned; or
  - (b) Its validity is less than the Bid Validity Period.
- 8.2.4. Prior to the detailed evaluation of the Proposals pursuant to Section 8.3 (*Determination of Responsiveness of Proposals*) of the Instructions to Bidders, the Implementing Agency shall examine each Proposal as follows, and a Proposal shall not be considered acceptable if:
- (a) it is not accompanied by a Bid Security;
  - (b) it is received after the Bid Submission Deadline;
  - (c) it is submitted through fax, email, or any other form of electronic transmission unless specified;
  - (d) the Bidder refuses to accept arithmetic correction(s); or
  - (e) It materially deviates from the requirements of the RFP.
- 8.2.5. The Implementing Agency shall require arithmetical errors to be rectified. If there is a discrepancy between:
- (a) the relevant input amount and the output (i.e., total) amount in any form, due to any

error in calculation, the relevant input amount shall prevail, and the output (i.e., total) amount shall be corrected;

(b) The words and figures, the amount in words shall prevail.

8.2.6. If the Bidder does not accept the corrected amount of the Proposal, its Proposal shall be rejected, and its Bid Security shall be forfeited.

### **8.3 DETERMINATION OF RESPONSIVENESS OF PROPOSALS**

8.3.1. The Implementing Agency shall determine the responsiveness of each Proposal to the RFP. The Technical Proposals that conform to all the terms and conditions of the RFP without material deviations, reservations or omissions shall be declared responsive. A material deviation, reservation or omission is one that:

(a) if accepted, would:

(i) affect in any substantial way the scope, quality, or performance of the works and services in relation to the Project as specified in the RFP; or

(ii) Limit in any substantial way the GoP's or the Implementing Agency's rights or the Bidder's or the Developer's obligations under the RFP.

(b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Technical Proposals.

8.3.2. The Implementing Agency's determination of a Proposal's responsiveness may be based on the contents of the Proposal itself without recourse to extrinsic evidence.

8.3.3. Any minor non-conformity or irregularity in a Technical Proposal that does not constitute a material deviation, reservation or omission may be waived by the Implementing Agency or required by the Implementing Agency to be rectified, provided such waiver or rectification does not prejudice or affect unfairly the competitive position of other responsive Technical Proposals.

8.3.4. Provided that a Proposal is substantially responsive, the Implementing Agency may request the Bidder to submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the Proposal related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the Financial Proposal. Failure of the Bidder to comply with the request may result in the rejection of its Proposal.

8.3.5. If a Proposal is not substantially responsive to the requirements of the RFP, it shall be rejected by the Implementing Agency and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

8.3.6. A responsive Financial Proposal is one which meets the requirements of the RFP without any deviation, reservation or omission. No change in the Financial Proposals shall be allowed and shall be evaluated as per the information provided by the Bidders. A non-responsive Financial Proposal may not subsequently be made responsive by correction of the deviation, reservation, or omission.

- 8.3.7. If a Financial Proposal, in the opinion of the Implementing Agency, is seriously unbalanced or is seen to unfairly exploit the evaluation mechanism, the Implementing Agency may require the relevant Bidder to produce detailed price analysis for any or all items of the Proposal, to demonstrate the internal consistency of those prices. After evaluation of the price analysis, taking into consideration the terms of payments, the Implementing Agency/the Implementing Agency may require the Bidder to rationalize the costs and/or terms of payments.
- 8.3.8. During the evaluation of Bids, the following definitions apply:
- (a) “*Deviation*” is a departure from the requirements specified in the RFP;
  - (b) “*Reservation*” is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the RFP; and
  - (c) “*Omission*” is the failure to submit part, or all of the information or documentation required in the RFP.

#### **8.4 EVALUATION OF THE TECHNICAL PROPOSAL**

- 8.4.1. In addition to and subject to the requirements set out in Section 8.2 (*Review of the Proposals and Compliance Examination*) and Section 8.3 (*Determination of Responsiveness of Proposals*) each of the Instructions to Bidders, the Bidders shall be evaluated against the evaluation criteria for the Technical Proposals set out in Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP. Technical Proposals of only those Bidders shall be further evaluated who meet the Basic Eligibility Criteria.
- 8.4.2. The Technical Proposals will be evaluated based on a hundred (100) point grading system, in which the Bidder must score at least 70 (seventy) points to be considered as technically responsive to attend the opening of the Financing Proposal. A Bidder whose Technical Proposal meets the technical evaluation criteria (in the Implementing Agency’s determination) set out in Schedule 3 (*Basic Eligibility Criteria*) and Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP shall be considered as technically responsive and a Bidder whose Technical Proposal fails to meet the technical evaluation criteria (in the Implementing Agency’s determination) set out in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*), or minimum score set under Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP shall be considered as technically non-responsive.
- 8.4.3. Any Proposal that fails to meet the evaluation criteria for the Technical Proposals set out in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*), and/or minimum score set under Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP shall be rejected.

#### **8.5 EVALUATION OF THE FINANCIAL PROPOSAL**

- 8.5.1. In addition to and subject to the requirements set out in Section 8.2 (*Review of the Proposals and Compliance Examination*) and Section 8.3 (*Determination of Responsiveness of Proposals*) each of the Instructions to Bidders, the Bidders shall be evaluated against the evaluation criteria for the Financial Proposals set out in Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP.
- 8.5.2. Any Proposal that fails to meet the evaluation criteria for the Financial Proposals set out in Schedule 5 (*Proposal Evaluation and Award Criteria*) of the RFP shall be rejected.

#### **8.6 DECISION TO ACCEPT / REJECT PROPOSALS**

- 8.6.1. No Proposal shall be considered to have been accepted unless such acceptance is confirmed in writing and notified to the Most Advantageous Bidder by the Implementing Agency.
- 8.6.2. The Implementing Agency reserves the right to annul the Tender Procedure and reject all Proposals at any time prior to the issuance of the Decision of Award, without thereby incurring any liability to Bidders or providing any reason for rejection of the Proposals. In case of such annulment, all Proposals submitted and specifically, the Bid Securities shall be promptly returned to the Bidders. The decision of the Implementing Agency shall be final and binding.
- 8.6.3. The Implementing Agency shall not be responsible for, or pay for, any expenses or losses which may be incurred by any Bidder in the preparation of, or in connection with, its Proposal.
- 8.6.4. Each Bidder fully waives any and all rights to claim in respect of such expenses or losses and agrees to indemnify GoP, the Implementing Agency, its Affiliates and their advisors fully in respect of any direct or indirect losses, damages, costs or expenses of any kind incurred by any of them.

## **8.7 GENERAL PROVISIONS ON OPENING OF THE PROPOSALS**

### **8.7.1. EVALUATION TO BE CONFIDENTIAL**

Information relating to the examination, clarification, additional evidence with respect to Proposals, documents submitted in resolving identified irregularities in the Proposals, evaluation and comparison of Proposals for the award of the Concession shall not be disclosed to Bidders or any other Persons not officially concerned with such process until the award of the Concession has been officially announced. Any effort by a Bidder to influence the Implementing Agency's processing of Proposals or award decisions shall represent grounds for exclusion of the Bidder and forfeiting of its Bid Security pursuant to Section 6.3.7(e).

### **8.7.2. CLARIFICATION OF PROPOSALS**

- (a) In order to help with the examination, estimation and ranking of the Proposals, the Implementing Agency may require clarifications from the concerned Bidder relating to any aspect of its Proposal. Any such questions or request for clarifications or explanation (and the Bidders' response to the same) will be submitted in written form within the term indicated by the Implementing Agency (which may not be less than two (2) Days, but no change of the Proposals shall be required, offered or permitted).
- (b) Any clarification submitted by the Bidder with respect to its Proposal, which is not asked from the Implementing Agency, shall not be taken into consideration.

### **8.7.3. CORRUPT PRACTICE**

- (a) If a Bidder engages, directly or indirectly in any corrupt, fraudulent, collusive, coercive or obstructive practice with the Implementing Agency and/or the Implementing Agency, or their respective members, advisors, employees, consultants or agents or otherwise in relation to the Concession award; then the Bidder's Proposal and, if applicable, the said award, shall be cancelled and the Bid Security shall be forfeited, all without prejudice to any Implementing Agency's claim for ensuing damages and without prejudice to any criminal and/or administrative proceedings (or otherwise) in Pakistan.

## **9. DESIGNATION OF MOST ADVANTAGEOUS BIDDER AND CONCESSION AWARD**

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### **9.1 CRITERIA FOR MOST ADVANTAGEOUS BIDDER AND AWARD OF CONCESSION**

- 9.1.1. The criteria for selecting the Most Advantageous Bidder for the award of the Concession is set out in Schedule 5 (*Proposal Evaluation And Award Criteria*). The Bidder which upon conclusion of the procedure set out in Section 8 (*Proposal Opening and Review*) and the evaluation pursuant to the criteria set out in Schedule 3 (*Basic Eligibility Criteria and Technical Evaluation Criteria*) and Schedule 5 (*Proposal Evaluation And Award Criteria*) is ranked first, shall be designated as the Most Advantageous Bidder for award of the Concession.

### **9.2 DECISION OF AWARD**

- 9.2.1. Once the evaluation process referred to in Section 8 (*Proposal Opening and Review*) is completed, the Implementing Agency shall finalize the minutes/final evaluation report on the review and evaluation of the Proposals declare the Most Advantageous Bidder for award of the Concession.
- 9.2.2. Prior to expiry of the Bid Validity Period, the Implementing Agency shall adopt a decision on designating the Most Advantageous Bidder (the **Decision of Award**).

### **9.3 NOTIFICATION OF AWARD**

- 9.3.1. A copy of the Implementing Agency's Decision of Award as well as a copy of the minutes/final evaluation report both specified in Section 9.2 (*Decision of Award*) above shall be communicated to all Bidders.
- 9.3.2. Such notification shall include, inter alia, the indication of the ranking of the Bidders and the designation of the Most Advantageous Bidder.

### **9.4 SIGNING OF PPP AGREEMENT**

- 9.4.1. The PPP Agreement shall be entered into between the Implementing Agency and the Developer to be incorporated by the Most Advantageous Bidder, prior to the execution of the PPP Agreement pursuant to Section 9.5 (*Developer*).
- 9.4.2. The PPP Agreement shall be entered into between the Implementing Agency and the Developer within the timeframe indicated in the Decision of Award and the PPP Agreement shall be executed by the authorized persons of the relevant parties in three (3) identical copies.
- 9.4.3. During the period from the Decision of Award up to the expiry of the term set out in the Decision of Award, the Implementing Agency and the Most Advantageous Bidder shall meet regularly to finalize the PPP Agreement. Without prejudice to Section 9.4.1 above, there shall be no negotiation on the PPP Agreement and/or on financial matters, and no modifications to the PPP Agreement shall be made. It may only be allowed to cure errors, complete missing information and remove inconsistencies which can prejudice the successful completion and implementation of the Concession, and only to the extent (a) they are necessary to achieve, or do not adversely affect the achievement of, the objectives of the Implementing Agency, (b) they are necessary to ensure the coherence, functionality and clarity of the provisions of the PPP Agreement but provided that they do not alter or modify the substance of the contractual

rights and obligations of the parties, as regulated in the draft PPP Agreement, (c) they do not affect the legitimate rights and interests of the GoP and/or the Implementing Agency, and (d) they are reasonably acceptable and implementable, according to good international industry practice in similar projects. The Implementing Agency has the right to accept or reject, at its absolute discretion, any such proposed amendments.

- 9.4.4. The Most Advantageous Bidder shall ensure that its Bid Security remains in full force and effect up until the delivery of the Performance Guarantee in accordance with the PPP Agreement.

## **9.5 DEVELOPER**

The Most Advantageous Bidder shall incorporate the Developer as a special purpose vehicle in accordance with the terms of the Decision of Award. The Developer shall meet the following requirements: (a) it shall be incorporated in Pakistan in the form of a private company limited by shares; and (b) its memorandum and articles of association shall provide that it shall only be entitled to carry out the activities required to be carried out pursuant to the PPP Agreement.

## **9.6 SIGNING OF THE PPP AGREEMENT**

If the Most Advantageous Bidder fails to comply with the provisions of Section 9.4.1 in relation to the execution of the PPP Agreement, the Implementing Agency shall be entitled to forfeit the Most Advantageous Bidder's Bid Security or the Performance Security and take such other remedies as provided under the Applicable Laws.

## **9.7 VIABILITY GAP FUND SUPPORT/CONCESSIONAL LOAN**

- 9.7.1. In order to enhance the financial viability and bankability of the Project, the Implementing Agency, through the Government of Pakistan, shall provide VGF support to the Developer in the form of a concessional loan. The VGF support shall be disbursed and administered in accordance with the terms and conditions of the PPP Agreement and the Viability Gap Financing Agreement. The concessional loan shall be utilised exclusively to bridge the financing gap of the Project and to ensure its financial close and long-term sustainability.
- 9.7.2. The concessional loan shall carry a mark-up of one percent (01%) per annum during the period in which the Developer is servicing its commercial debt. Upon full repayment of the commercial debt, the mark-up rate shall increase to five percent (05%) per annum on the outstanding principal amount of the concessional loan.
- 9.7.3. The concessional loan shall be repaid by the Developer in five (05) equal annual instalments, commencing after the complete repayment of the commercial debt, in accordance with the terms and conditions set forth in the PPP Agreement and the Viability Gap Financing Agreement.

## **9.8 P3A FEES**

The Developer shall pay to the P3A a success fee equivalent to 0.15% of the Pre-Estimated Project Cost within one (01) month of the earlier of:

- (a) The financial close; or
- (b) The disbursement of the VGF support

Provided that, where Financial Close is not applicable to the Project, the success fee shall be payable within one (01) month of the signing of the PPP Agreement. In addition, the Developer shall pay to the P3A an annual fee equivalent to 0.10% of the yearly revenues (net of applicable sales tax) generated from the Project.

#### **9.9 MINIMUM REVENUE GUARANTEE AMOUNTS**

In order to enhance the financial viability of the Project, the Implementing Agency has agreed to pay the Minimum Revenue Guarantee Amounts, being the difference between the actual Revenues and the Benchmark Revenues as verified by the Independent Auditor for the respective Operational Year in the following manner:

- fifty percent (50%) for operational years 1 to 3;
- forty percent (40%) for operational year 4; and
- thirty percent (30%) for operational years 5 to 7.

The Minimum Revenue Guarantee Amounts shall be available only for the MRG Period i.e the first seven (07) operational years of the O&M Period.

All amounts to be paid under the Minimum Revenue Guarantee Amounts shall be assessed at the end of each quarter under the Operational Year, by verifying the actual Revenues against the Benchmark Revenues for the relevant period, subject to the Developer's compliance with applicable performance standards, the applicable caps and limitations and the provisions of the PPP Agreement and the relevant project agreements.

As a condition precedent, the Implementing Agency shall arrange the MRG Security Instrument equivalent to the MRG Security Amount, for the purposes of guaranteeing the first Minimum Revenue Guarantee Amounts required for the first Operational Year of the O&M Period.

## **10. APPLICABLE REGULATION AND LEGAL PROTECTION**

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### **10.1 APPLICABLE LAWS AND REGULATIONS**

- 10.1.1. The Tender Procedure is conducted in accordance with the Notice Inviting Tender, this RFP and the Applicable Laws.
- 10.1.2. When preparing their Proposals, the Bidders should take into consideration all Applicable Laws, including (without limitation), applicable legislation and regulations concerning taxes and other public duties, employment issues, employment conditions and protection of health and safety at work.
- 10.1.3. The RFP is governed by the Applicable Laws.

## **11. END OF THE TENDER PROCEDURE**

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- 11.1 The Tender Procedure shall end on the Day when the Decision of Award or decision for termination of the Tender Procedure will become final and effective in accordance with Applicable Laws of Pakistan.
- 11.2 After the Tender Procedure is completed or terminated in accordance with the RFP, the Implementing Agency will return any unopened Proposals to the relevant Bidders making them available to the Bidder for collection at the place indicated in the Bid Data Sheet for the submission of the Proposals. In case of failure by the Bidders to collect such documents within twenty (20) Days following the Decision of Award or notice of termination of the Tender Procedure the Implementing Agency shall be entitled to either destroy them or keep them without incurring in any liability.

## **12. OTHER CONSIDERATIONS**

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### **12.1 INTEGRITY PACT**

Each Bidder shall sign and stamp Bidding Form B (Integrity Pact) of the RFP (the “**Integrity Pact**”). Failure to provide such Integrity Pact may cause the Bid to be rejected by the Implementing Agency as non-responsive.

### **12.2 GRIEVANCE REDRESSAL**

Any Bidder being aggrieved by any act or decision of the Implementing Agency, may after the issuance of the RFP, lodge a written complaint to the “Grievance Redressal Committee” constituted by the Implementing Agency in accordance with the Applicable Laws. The mechanism for redressal of grievances of Bidders shall be as per the Applicable Laws.

**13. BID DATA SHEET**

The following Tender Procedure-specific data shall be part of the RFP.

1.	Concession Name	<b>DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER OF THE FGCC PROPERTIES</b>
2.	Name of the Implementing Agency	<b>FAISALABAD GARMENT CITY COMPANY, MINISTRY OF COMMERCE, GOVERNMENT OF PAKISTAN</b>
3.	Method of Procurement	OPEN COMPETITIVE BIDDING
4.	Method of Selection	SINGLE STAGE TWO ENVELOPE PROCEDURE
5.	Address and other contact information of Implementing Agency	<p><b>Address and Contact Details:</b></p> <p>Manager (Projects)</p> <p>Faisalabad Garment City Company Value Addition City, 1.5 KM, Sahianwala Road, Khurrianwala, Faisalabad.</p> <p>Tel: (+92)-41-[ 8507208-9</p> <p><b>Website:</b></p> <p><a href="http://www.fgcc.pk">www.fgcc.pk</a></p> <p><b>Email:</b></p> <p>mehboobtabish@yahoo.com</p>
6.	Contact Person at the Implementing Agency	<p><b>Contact Person:</b></p> <p>Manager (Projects)</p> <p>Tel: (+92)-41-[ 8507208-9</p> <p><b>Email:</b></p> <p>mehboobtabish@yahoo.com</p>
7.	Details of Pre-Bid Meeting	<p><b>Date:</b></p> <p>10/12/2025</p> <p><b>Time: 1300 hours PST</b></p>

		<p><b>Venue:</b></p> <p>Venue for the Pre-Bid Meeting shall be specified by the Implementing Agency in writing one (1) week prior to the Pre-Bid Meeting</p>
8.	Address for Submission, Modification, Substitution and Withdrawal of Proposals	<p><b>Address:</b> Faisalabad Garment City Company Value Addition City, 1.5 KM, Sahianwala Road, Khurrianwala, Faisalabad.</p> <p><b>Email:</b> mehboobtabish@yahoo.com</p>
9.	Relevant Websites	<p>Implementing Agency - <a href="http://www.fgcc.pk">www.fgcc.pk</a> PPRA - <a href="http://www.ppra.org.pk">www.ppra.org.pk</a> P3A - <a href="http://www.p3a.gov.pk">www.p3a.gov.pk</a></p>
10.	Language of the Tender Procedure and the Offering Documents	As per Section 6.5 ( <i>Language of the Tender Procedure and the Proposals</i> )
11.	Bid Security	Equivalent to PKR 40,000,000/- (Pak Rupees Forty Million only), which shall be submitted in the form of either pay order or deposit at call or unconditional and irrevocable bank guarantee attached as Bidding Form E ( <i>Form of Bid Security</i> ) under Schedule 4 ( <i>Content of the Proposals</i> ) (the <b>Bid Security</b> ), issued in favour of the Implementing Agency as beneficiary by an Acceptable Bank and enclosed in the Technical Proposal
12.	Performance Security	Equivalent to two percent (2%) of the Pre-Estimated Project Cost, which shall be submitted in the form of an unconditional and irrevocable bank guarantee issued in favour of the Implementing Agency as beneficiary by an Acceptable Bank
13.	Currency of Bid Security	PKR
14.	Bid Validity Period	Ninety (90) days from the Bid Submission Deadline, unless extended pursuant to the RFP
15.	Bid Security Validity Period	Twenty – Eight (28) days from the Bid Validity Period

16.	Number of Copies of Proposal	As prescribed in Section 7 ( <i>Submission of the Proposal</i> )	
17.	Bid Submission Deadline	25/03/2026 at 14:00 hours PST	
18.	Place, Date and Time of Opening of the Proposals	<p><b>Place:</b> Conference Room of Faisalabad Garment City Company</p> <p><b>Date and Time:</b></p> <p>Technical Proposal: On 25/03/2026 at 14:30 hours PST</p> <p>Financial Proposal: Please see No. 15 below.</p>	
19.	Mode of Submission	<p>The Bidder must:</p> <p>(i) <b>THROUGH EPADS</b></p> <p>(a) <b>Technical Proposal:</b> Scanned copy of the original Technical Proposal in PDF format</p> <p>(b) <b>Financial Proposal:</b> Scanned copy of the original Financial Proposal</p> <p>(ii) <b>MANUAL SUBMISSION</b></p> <p>(a) <b>Technical Proposal</b> One (01) original hard copy and one (01) copy and one (01) soft copy</p> <p>(b) <b>Financial Proposal</b> One (01) original hard copy and one (01) copy and one (01) soft copy</p> <p>In case of any discrepancy between the hardcopy of the Proposal and the copies of the Proposal uploaded on EPADS, the latter shall prevail.</p> <p><i>Note: RFP must be submitted electronically through EPADS as well as in the hard format on the address as mentioned</i></p>	
20.	Timeline of the Tender Procedure (changes to the timeline of the Tender Procedure will be notified to the Bidders pursuant to Section 5.6 ( <i>Notices and Communications</i> ))	<b>ACTION</b>	<b>DATE</b>
		Publication of the Notice Inviting Tender and launch of the Tender Procedure.	30/11/2025

of the RFP)	Pre-Bid Meeting	10/12/2025
	Last Day for submitting a request for clarifications pursuant to Section 5.2 ( <i>Clarification of RFP</i> )	17/12/2025
	Corrigendum No. 1	28/12/2025
	Corrigendum No. 2	8/02/2026
	Response Document No. 1	11/02/2026
	Addendum No. 1	11/02/2026
	Bid Submission Deadline	25/03/2026, 14:00 hours PST, see No. 17 above
	Opening of the Technical Proposal	14:30 hours PST <b>Address:</b> Faisalabad Garment City Company Value Addition City, 1.5 KM, Sahianwala Road, Khurrianwala, Faisalabad.
Opening of the Financial Proposal	The time and date communicated in terms of Section 8.1.10 of the Instructions to Bidders.	

**PART B**  
**SCOPE OF WORK, DOCUMENTARY REQUIREMENTS AND EVALUATION CRITERIA**

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## SCHEDULE 1 - SCOPE OF WORK

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This schedule provides the detailed scope of work for the development, construction, operation, and maintenance of FGCC Properties under a Public-Private Partnership model.

The FGCC Properties, comprising approximately 38.919 acres within value addition city, Faisalabad, is positioned as a purpose-built industrial estate for garment and textile SMEs, allied industries, and supporting enterprises.

The objective is to create a state-of-the-art garment manufacturing hub that reduces capital costs for SMEs by providing built-up spaces, promotes exports of value-added textiles, generates employment, and strengthens Pakistan's international competitiveness in the apparel value chain.

### **Brief Background**

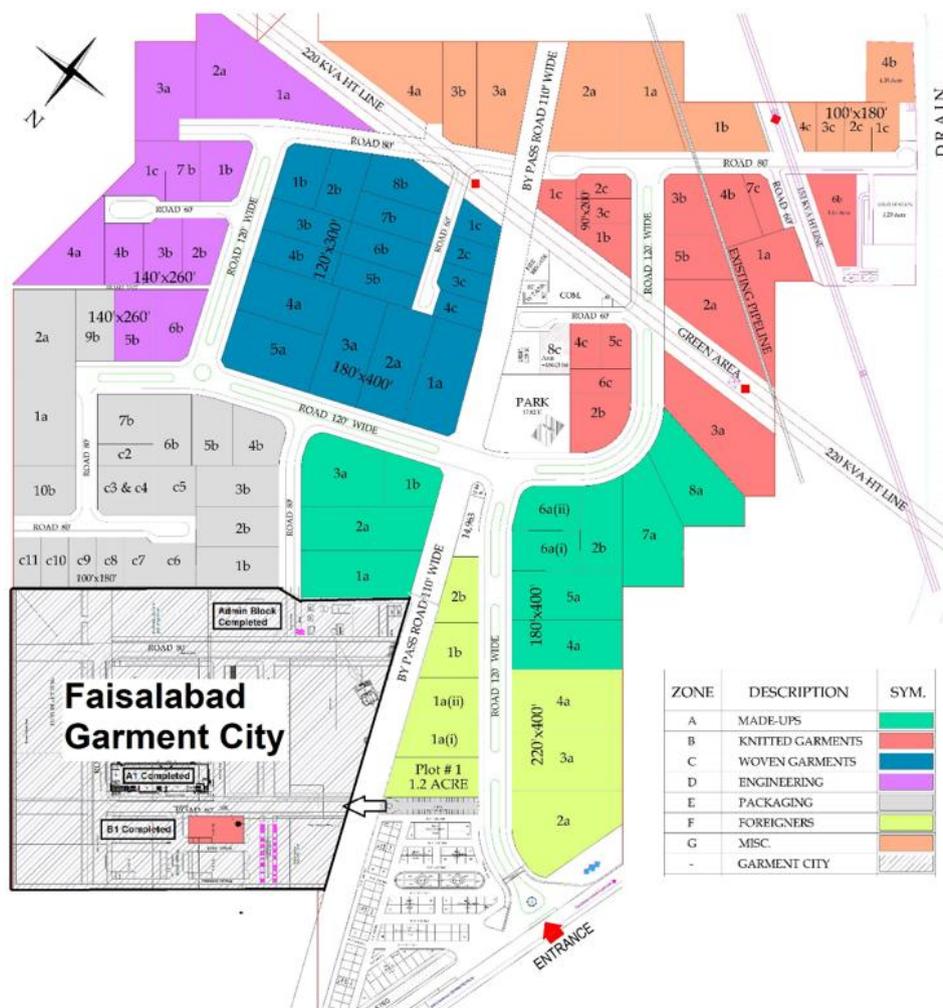
FGCC was established as a state-owned enterprise under the Ministry of Commerce to support Pakistan's garment and apparel export sector. The proposed Concession based on Public Private Partnership is aimed at ensuring long-term financial sustainability and operational efficiency of FGCC.

The project aligns with government objectives to:

- Provide affordable, pre-built factory spaces for garment SMEs.
- Facilitate value-added exports by reducing entry barriers for smaller manufacturers.
- Enable integration with the wider industrial ecosystem of value addition city developed by Faisalabad Industrial Estates Development & Management Company.
- Support employment generation and skills training in Faisalabad's textile cluster

## Site Analysis and Accessibility

### Location within Value addition city

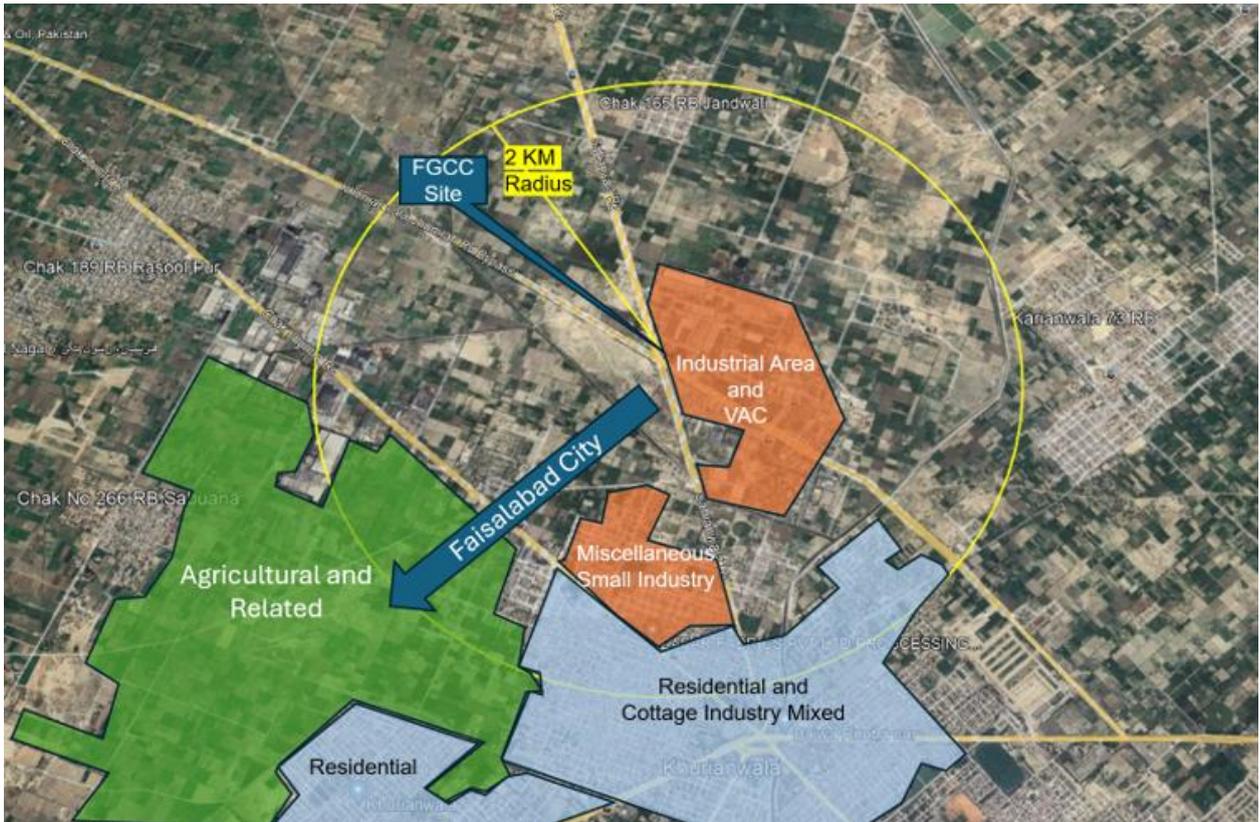


## General Information

The FGCC Properties occupies 38.919 acres of land located within value addition city, a 225-acre estate developed by Faisalabad Industrial Estates Development & Management Company.

Its location provides strategic advantages: the estate is approximately 14 kilometres from Faisalabad city center, 9.5 kilometres from the M-4 Motorway, 35 kilometres from Faisalabad International Airport, and 20 kilometres from the city's railway station. This connectivity ensures smooth logistical access for both domestic and export-oriented operations.

FGCC Properties is directly adjacent to Sadaqat Textile Mills and close to Gohar Textile Mills, both of which are large-scale textile / garment related enterprises. Its immediate surroundings are defined by an established textile and garment industry cluster, with Khurrianwala town providing a mix of housing and cottage industries.



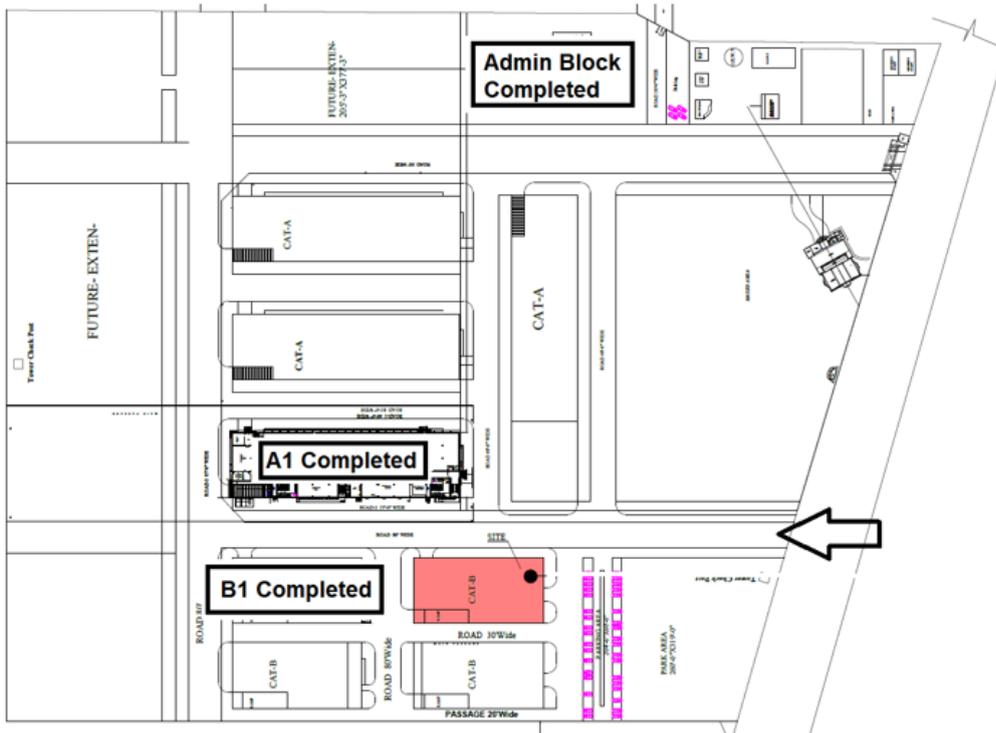
Within the FGCC Properties, three structures currently exist: the Admin Block, A1 Building, and B1 Building.

The Admin Block houses essential facilities such as an auditorium, training center, daycare, mosque, and emergency medical unit.

### **Preliminary Master Plan**

The preliminary master plan for FGCC envisions the creation of a clustered garment city with SME-focused factory shells, commercial support facilities, administrative and marketing blocks, and shared infrastructure systems. The plan is structured to allow flexibility in unit sizing, enabling smaller garment operators to occupy spaces depending on their production needs. Zoning provisions will include industrial units, commercial outlets, canteen and display centres, institutional spaces for training and research, green belts, and community amenities.

The master plan emphasizes efficient integration with the larger value addition city estate, ensuring that road networks, utility corridors, and effluent management systems are seamlessly connected. It also accounts for workforce-centric amenities, including daycare, healthcare, training facilities, and green recreational areas, which will improve the quality of life for workers and make the estate attractive for SMEs seeking compliance with international textile / garment buyer standards.



The Project is premised on the development, operation and maintenance of the following FGCC Properties on design, build, finance, operate, maintain and transfer basis:

Land Area Analysis	Land (Kanal)	Rentable Area (SFT)
<b>Buildings (Basement+Ground+4 Floors)</b>		
A-3	13.00	192,050
B-2	6.80	110,415
B-3	6.80	110,415
<b>Commercial Property Area</b>		
Bank	0.99	5,400
Pharmacy	0.17	900
Courier Service	0.66	3,600
Cafeteria	0.66	7,200
<b>Warehouse</b>		
Partial Use of Basements		41,303
<b>Total</b>		<b>471,283</b>

### Landscape of the Site

The FGCC Properties are secured by a peripheral boundary wall with round the clock security. Road network and streetlighting have been completed and the site is level with clearly demarcated development spaces.

## SCOPE OF WORK

### **1. General**

The Bidder awarded the Concession through the Public Private Partnership model will be responsible for delivering a fully integrated garment city on a design, build, finance, operate, maintain, and transfer basis. The Concession period is anticipated to be 25 years, after which the assets will be transferred back to FGCC.

The Developer's role will encompass not only the construction of physical infrastructure but also the long-term management of facilities to ensure continuous compliance with environmental, technical, and safety requirements.

### **2. Design Components**

The development of the Project Site requires a comprehensive set of surveys, investigations, and design works that will provide the technical foundation for its planning and implementation. Each stage of investigation is essential for informing the engineering, architectural, and infrastructure solutions needed to create a purpose-built industrial estate for garment and textile SMEs.

#### **2.1 Design Standards**

##### **2.1.1 Civil and Structural Works**

Civil and structural works to follow a design life of 50 years, ensuring architectural and structural integrity over the concession period.

##### **Applicable Codes and Authorities:**

- Faisalabad Development Authority (FDA) standards and by-laws
- Faisalabad Industrial Estates Development & Management Company (FIEDMC) development guidelines
- National Building Code of Pakistan (NBCP)
- National Fire Protection Association (NFPA) standards and Punjab Fire Safety Code
- National Environmental Quality Standards (NEQS) for materials and emissions
- Environmental and Social Management System (ESMS) (as notified by P3A) for compliance with environmental and social safeguards

##### **Structural Systems:**

- Reinforced concrete and steel frameworks suitable for light-to-medium industrial buildings.
- Foundations designed and detailed in accordance with outcomes of geotechnical investigations.

##### **Independent Review and Oversight:**

- Design and construction to be reviewed by an Independent Engineer (IE) for compliance with applicable technical and safety standards.

##### **2.1.2. Solar Power and Electrical Supply Systems**

The electrical and renewable energy systems for FGCC shall follow international and national standards ensuring performance, reliability, and integration of renewable energy:

- **Solar PV Systems:**

- Roof structures designed to accommodate solar photovoltaic panels for on-site renewable energy generation.
- Building orientation and envelope design to optimize solar exposure for natural daylight while minimizing heat load.
- Solar water heating systems may be integrated in canteens, daycare, and healthcare facilities.
- **System Standards:**
  - Solar design and installation to follow IEC and Pakistan Engineering Council (PEC) standards for PV systems, in line with current industry best practices.
  - Energy-efficient lighting (LED) and smart metering systems for all major electrical installations.
  - Electrical and mechanical systems designed with industrial-grade wiring, safety protections, and provision for UPS / backup generation.

### **2.1.3. Sustainable and Green Building Practices**

The design and construction of all buildings and infrastructure shall follow sustainability principles and internationally recognized environmental frameworks to promote energy efficiency, resilience, and environmental responsibility:

- Design to follow principles consistent with LEED, EDGE, or equivalent sustainable building certification systems.
- Emphasis on use of energy-efficient materials, daylight optimization, and low embodied-carbon construction practices.
- **Environmental Management:**
  - Environmental and Social Impact Assessment (ESIA) and Environmental Management and Monitoring Plan (EMMP) to follow Punjab Environmental Protection Agency (EPA), NEQS guidelines and Environmental and Social Management System (as notified by P3A).
- **Sustainable Design Features:**
  - Natural daylighting and cross-ventilation for workspaces.
  - Rainwater harvesting, water-efficient plumbing and stormwater management systems.
  - Green belts, landscaped courtyards, and shaded rest areas to improve thermal comfort and worker well-being.

### **2.1.4. Health, Safety, and Operational Integrity**

All construction, operation, and maintenance activities shall follow recognized standards for safety and operations management:

- Compliance with OSHA-equivalent workplace health and safety practices.
- Firefighting and life-safety systems designed and operated in accordance with NFPA and Punjab Fire Safety guidelines.
- Maintenance protocols to follow preventive and corrective maintenance standards ensuring durability and operational continuity.

### **3. Surveys and Investigations Compliant with Environmental and Social Management System and Public Private Partnership Resilient Infrastructure Guidelines**

#### **3.1. Topographical Survey**

The first step in preparing the Project Site is a detailed topographical survey. This survey will map the contours, elevations, gradients, and existing structures across the 38.9-acre estate.

Since the Project Site already includes built-up facilities such as the Admin Block, A1, and B1 buildings, the survey must carefully document the precise placement, condition, and alignment of these assets in addition to the undeveloped plots. The survey data will be used as the baseline for all future design and engineering works, ensuring that infrastructure and building layouts are aligned with the physical realities of the site. Advanced surveying equipment and techniques should be employed to capture high-resolution, accurate data that supports precise decision-making for subsequent planning stages.

#### **3.2. Geo-Technical Investigation**

A geo-technical investigation will follow the topographical survey to establish a clear understanding of soil and subsurface conditions at the Project Site. This investigation will analyse soil composition, density, and safe bearing capacity, along with groundwater levels and any potential subsurface hazards. The results will be critical in determining the types of foundations required for new SME factory shells, rehabilitation of existing structures, and the development of utility infrastructure such as overhead tanks and substations.

#### **3.3. Hydraulic Study**

An independent hydraulic study will be carried out to evaluate the water management requirements of the Project Site. The garment and textile industry is heavily dependent on water for various production processes, as well as for sanitation, fire safety, and worker amenities. The study will assess the availability of water supply, the flow and storage requirements, and the capacity of existing distribution networks within value addition city. It will also address stormwater drainage and flood prevention measures.

The hydraulic study will inform the design of the internal water distribution system, and sewage pipelines, ensuring environmental compliance and operational efficiency.

#### **3.4. Traffic Assessment Study**

A traffic assessment study will be conducted to analyse both current and future transport demands in and around the FGCC Properties. The Project Site is strategically located with direct connectivity to Khurrianwala Jhumra Road and the M-4 Motorway. The assessment will document existing traffic volumes, road capacity, and the types of vehicles currently using the area.

Projections of future traffic loads, considering the expected inflow of SMEs and industrial activity at FGCC, will be developed to anticipate bottlenecks and congestion points. The study will provide recommendations on road layouts, access points, and intersections, as well as provisions for heavy-duty vehicle parking and circulation. Ensuring efficient movement of goods, workers, and industrial supplies will be a critical outcome of this study.

#### **3.5. Environmental Management**

In addition to surveys, the Developer will be required to prepare a comprehensive Environmental and Social Impact Assessment (ESIA) and based on its findings, develop an Environmental Management and Monitoring Plan (EMMP). The EMMP will outline the specific mitigation measures to be implemented during both construction and operational phases, as well as monitoring systems to ensure compliance with Punjab

Environmental Protection Agency regulations, Environmental and Social Management System (as notified by P3A) and international buyer expectations.

The Developer will also provide procedures for managing unanticipated environmental impacts, such as accidental discharges or construction-related disturbances. Training programs for staff will be included to embed sustainable practices in daily operations, and a reporting mechanism will ensure transparency with stakeholders, regulators, and potential international clients concerned with compliance and sustainability.

#### **4. Architectural and Structural Requirements**

##### **4.1. Design Life**

- All buildings shall be designed for a minimum 50-year life span for structural and architectural integrity.
- Materials and construction methods must adhere to Faisalabad Development Authority, Faisalabad Industrial Estates Development & Management Company and all other applicable guidelines, as well as national building codes.

##### **4.2. General Requirements**

- Structures must incorporate reinforced concrete and steel frameworks suitable for light to medium industrial use.
- Roofs and facades should be designed for durability and low maintenance in Faisalabad's climatic conditions.
- Finishes should be functional yet cost-efficient, with provisions for industrial flooring, washable wall finishes in production areas, and fire-resistant materials in compliance with safety codes.

##### **4.3. Special Structural Elements**

- SME factory shells must be modular in design, enabling flexibility for multiple production activities such as stitching and assembly.
- Loading bays, service entries, and parking areas must be integrated into the building layouts to facilitate seamless logistics.
- Reinforced foundations designed as per geo-technical studies to handle varying soil capacity.

#### **5. Building Categories**

##### **5.1. SME Factory Shells**

- **Functionality:** To be delivered as pre-built, ready-to-occupy units for garment SMEs.
- **Size and Layout:** Modular configurations allowing subdivision or expansion.
- **Features:**
  - High ceilings with provision for mezzanine floors.
  - Clear column spacing to maximize floor usability.
  - Service corridors for utilities such as electricity and compressed air.
  - Fire-resistant doors, ventilation ducts, and integrated sprinkler systems.

##### **5.2. Administrative and Display Facilities**

- Expansion and modernization of the Admin Block to house:
  - FGCC management offices.
  - A marketing and display center for showcasing SME products to buyers.
  - Meeting and conference rooms equipped with digital connectivity.
  - Investor facilitation desks and shared facilities for tenants.

### **5.3. Training and Incubation Center**

- Dedicated spaces for skill development, incubation of SME start-ups, and R&D labs.
- Flexible classroom layouts with IT and audio-visual infrastructure.
- Integration with local universities and industry partners for capacity-building programs.

### **5.4. Worker Amenities**

- Daycare facility: Expanded and upgraded with safe indoor and outdoor play areas.
- Medical clinic: Emergency care, first-aid station, and small pharmacy to serve workers.
- Canteens: Industrial-scale kitchens and dining spaces with hygienic standards.
- Mosques: Augmentation of the FGCC mosque with appropriately designed prayer areas with ablution spaces.

## **6. Sustainable Design Features**

### **6.1. Natural Daylight and Ventilation**

- Building designs must optimize natural light through skylights, large windows, and clerestory panels.
- Natural ventilation systems, such as cross-ventilation and roof vents, shall be incorporated to reduce reliance on mechanical systems.

### **6.2. Solar Integration**

- Roof structures to be designed with solar photovoltaic (PV) panels for renewable energy generation.
- Orientation of buildings to maximize solar gain for daylight while minimizing heat load.
- Use of solar water heating where feasible in canteens, clinics, and daycare facilities.

### **6.3. Green and Worker-Friendly Features**

- Landscaped courtyards and shaded rest areas.
- Energy-efficient LED lighting in interior and exterior spaces.
- Water-efficient plumbing fixtures to reduce wastage.
- Integration of rainwater harvesting systems for non-potable uses.

## **7. Building Services and Compliance**

### **7.1. Electrical & Mechanical Systems**

- Industrial-grade electrical wiring and metering for SMEs.

- HVAC systems in administrative, training, and daycare facilities.
- Backup generators and UPS systems for uninterrupted operations.

### **7.2. Safety and Security**

- Firefighting systems, alarms, extinguishers, and suppression sprinklers in line with NFPA, Punjab Fire Safety and all other applicable codes.
- CCTV coverage, access control at key entry points, and adequate perimeter lighting.

### **7.3. Compliance Requirements**

- Approval from the Independent Engineer (IE) before construction.
- Adherence to all applicable building safety standards.
- Certification under international sustainability and compliance frameworks (such as LEED elements or equivalent, where practical) to attract international buyers

### **7.4. Operation and Maintenance Provisions**

The Developer will not only design and construct but also ensure that the building designs facilitate ease of operation and long-term maintenance. Provisions must include:

- Durable materials requiring minimal upkeep.
  - Clearly designated service corridors for utilities.
  - Accessibility for maintenance staff and equipment.
  - Tenant-friendly modifications, allowing SMEs to adapt spaces without damaging structural integrity.
8. Any deviation from or alteration to the designs/technical specifications (as required under this section) shall be subject to the prior written approval of the Implementing Agency.

## **9. Project Management and Compliance**

All phases of the project will be subject to independent oversight. An Independent Engineer (IE) will be appointed to review and approve designs, supervise construction works, and verify compliance with quality standards before commissioning. The Bidder awarded the Concession will adhere to all applicable national and provincial codes, including but not limited to Faisalabad Development Authority (FDA) regulations, National Environmental Quality Standards (NEQS), Environmental and Social Management System (as notified by P3A) and other P3A guidelines. Regular reporting will ensure transparency and accountability throughout the Concession period.

SCHEDULE 2 - PROJECT SITE

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<sup>1</sup> To be inserted

## SCHEDULE 3 - BASIC ELIGIBILITY CRITERIA

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### BASIC ELIGIBILITY CRITERIA

#### **1. GENERAL REQUIREMENTS**

- 1.1 Each Bidder must comply with the following Basic Eligibility Criteria:
- 1.1.1 The Bidder (and in case of a Consortium, each consortium member) must be an entity duly registered under the applicable laws of its jurisdiction and must submit relevant documentary evidence thereof, such as incorporation certificate, memorandum of association/articles of association, etc. In case of foreign entities, certified true copies of their constitutive documents must be provided. In case of foreign entities, Bidders submitting documents/information in a language other than English, it will need to be accompanied by an English translation (duly notarized by the Notary Public) and attested by the Pakistani Consulate in the county of origin. In case of any discrepancy, English translation shall prevail.
- 1.1.2 The Bidder (and in case of a Consortium, each consortium member) is not black listed by any government entity. An affidavit in the manner and form provided in Schedule 4 (*Contents of the Proposals*) confirming that the Bidder is not blacklisted by government entity shall be submitted with Technical Proposal (In case of Consortium, each member of such Consortium shall submit such affidavit). In case the affidavit is issued by a foreign entity, outside Pakistan, such affidavit will have to be duly notarized by the Notary Public and attested by the Pakistani Consulate in the county of origin;
- 1.1.3 The Bidder (and in case of a Consortium, each consortium member) must submit all the documents and instruments enumerated under Schedule 4 (*Content of the Proposals*) in accordance with the Instructions to Bidders;
- 1.1.4 The Bidder (and in case of a Consortium, each consortium member) must comply with the requirements set out in Section 4 (*Bidders*);
- 1.1.5 Except for foreign entities, each Bidder must possess valid registration certificate from Federal Board of Revenue and relevant Sales Tax Authority. In case of a Consortium, all members of a Consortium are required to comply with this requirement. In case of foreign entities, such Bidder should submit tax certificate of its respective country duly attested by the Pakistan Consulate in the county of origin.
- 1.1.6 The Bidder (and in case of a Consortium, each member of such Consortium) shall be an active tax payer as evidenced through the active tax payer list and shall submit valid tax returns for the last three (03) years, provided that, in the event the Bidder or any member of the Consortium is recently incorporated and does not have tax returns for the preceding three (03) years, it shall furnish the tax return(s) for such year(s) as are available, to the extent applicable;
- 1.1.7 In the event the Bidder or any member of the Consortium is a government owned or controlled enterprise, such Bidder must establish that it is legally and financially autonomous entity. For such purpose, the Bidder or the relevant member of the Consortium shall submit an affidavit in the manner and form provided in Schedule 4 (*Content Of The Proposals*), confirming that it is legally and financially autonomous body; In case of foreign entities participating, such affidavit

must be duly notarized by the Notary Public and attested by the Pakistan Consulate in the country of origin; and

- 1.1.8 Registration with Pakistan Engineering Council (“**PEC**”) and registered in Pakistan Council of Architects and Town Planning (“**PCATP**”), as applicable. In case of a Consortium, the PEC/PCATP registration of at least one member of the consortium is required. Valid PEC registration certificates to be attached.
- 1.1.9 Current Net Worth of the Bidder shall be PKR 1,500,000,000/- (Pak Rupees One Billion Five Hundred Million only) (excluding any surplus on revaluation) as presented in the most recent audited financial statements. In case the Bidder or any member of the Consortium, operates in any country other than Pakistan, the financial statements shall be translated at the rate specified in the State Bank of Pakistan interbank rate as at the date of the financial statement and the same shall be audited by a reputable audit firm, certified by home country’s relevant authority/regulator. The Bidder/each member of the Consortium shall submit audited financial statements for the last three (03) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder. In case of a Consortium, the members of the Consortium collectively as per weighted average must meet the criterion. The proposed shareholding ratios as provided in the Consortium Agreement will be used as weights in calculating the weighted average.
- 1.1.10 The Bidder shall have an average annual turnover of PKR 1,000,000,000/- (Pak Rupees One Billion only) for last three (03) years. In case the Bidder operates in any country other than Pakistan, the financial statements shall be translated at the rate specified in the State Bank of Pakistan interbank rate as at the date of the financial statement and the same shall be audited by a reputable audit firm, certified by home country’s relevant authority/regulator. In case of a Consortium, the members of the Consortium collectively as per weighted average must meet the criterion. The proposed shareholding ratios as provided in the Consortium Agreement will be used as weights in calculating the weighted average.

**TECHNICAL EVALUATION CRITERIA**

The Technical Proposal shall be evaluated on the basis of the following criteria:

For technical qualification, a Bidder must score seventy (70) or more marks and must score at least fifty percent (50%) in each of the categories i.e A, B, C and D listed below:

TECHNICAL CRITERIA	MARKS
<b>A) PROJECT DEVELOPMENT EXPERIENCE</b>	<b>MAX. 30</b>
<p><b><u>A1 – DEVELOPMENT OF BUILDINGS/CIVIL WORKS</u></b></p> <p>The Bidder (or in case of Consortium, any member) must have completed development of building/civil works either having a minimum built-up area of 350,000 square feet or a total project cost equivalent to PKR 3,000,000,000/- (Pak Rupees Three Billion or equivalent to USD 10,500,000/- US Dollars Ten Million Five Hundred Thousand only) in the last ten (10) years</p> <p>Three (03) projects      15 marks            Two (02) projects      10 marks            One (01) project      05 marks</p> <p><i>(Note: In case of foreign currency, historical exchange rate prevailing on completion of assignment/project will be used to convert foreign currency to PKR)</i></p>	15
<p><b><u>A2 – EXPERIENCE IN SOLAR SYSTEM INSTALLATION AND CAPTIVE POWER MANAGEMENT</u></b></p> <p>The Bidder (or, in case of a Consortium, any member) must have completed solar energy projects having a minimum plant size of 1 MW, involving installation, operation and maintenance of solar power systems for at least three (03) years</p> <p>Two (02) projects      05 marks            One (01) project      2.5 marks</p>	05

TECHNICAL CRITERIA	MARKS
<p><b><u>A3 – OPERATION AND MAINTENANCE EXPERIENCE FOR BUILDING PROJECTS</u></b></p> <p>The Bidder (or, in case of a Consortium, any member) must have experience in providing O&amp;M services for industrial buildings/real estate/infrastructure projects having a minimum built-up area of 100,000 square feet or a total project cost equivalent to PKR 1,000,000,000/- (Pak Rupees One Billion only or equivalent to USD 3,500,000/- US Dollar Three Million Five Hundred Thousand only) in the last ten (10) years.</p> <p>Such O&amp;M services shall include maintenance of utilities such as electricity, water, gas, telecommunication, and other essential services to tenants or project inhabitants.</p> <p>Three (03) projects      06 marks  Two (02) projects      04 marks  One (01) project      02 marks</p>	<p>6</p>

TECHNICAL CRITERIA	MARKS
<p><b>A4)</b> The Bidder (or, in case of a Consortium, any member) must have carried out solid waste management and collection and/or operations of wastewater or effluent treatment systems of industrial buildings/real estate/infrastructure projects having a minimum built-up area of 100,000 square feet or a total project cost equivalent to PKR 1 Billion (or equivalent to USD 3.5 Million) in the last ten (10) years .</p> <p>One (01) project            01 mark</p> <p>The Bidder (or, in case of a Consortium, any member) must have experience in operation and maintenance in any of the following support facilities of industrial buildings/real estate/infrastructure projects having a minimum built-up area of 100,000 square feet or a total project cost equivalent to PKR 1,000,000,000/- (Pak Rupees One Billion only or equivalent to USD 3,500,000/- US Dollar Three Million Five Hundred Thousand only) in the last ten (10) years.</p> <ul style="list-style-type: none"> <li>➤ ICT/Communications center; or</li> <li>➤ Training &amp; skills development center; or</li> <li>➤ Commuting and transportation services; or</li> <li>➤ Security center; or</li> <li>➤ Medical clinic / facility; or</li> <li>➤ Firefighting equipment and systems.</li> </ul> <p>Three (03) projects        03 marks  Two (02) projects        02 marks  One (01) project         01 mark</p> <p>The Bidder shall submit complete details of the O&amp;M activities performed on such projects</p> <p><i><u>Note: All projects submitted under Criteria A shall be presented in the manner and format prescribed under Bidding Form F (Bidder's Experience) of this RFP. Each project must be supported by documentary evidence, such as letters of award, contract agreements, and completion certificates issued by the respective employer/client on its official letterhead. The documentary evidence, as submitted, shall clearly specify the scope of work and activities undertaken by the Bidder and shall demonstrate clear alignment with the experience requirements stipulated under this criterion. Projects lacking adequate documentary evidence, whether in full or in part, shall not be considered for evaluation or scoring.</u></i></p>	<p>4</p>
<p><b>B) PROJECT TEAM EXPERIENCE</b></p>	<p><b>MAX. 25</b></p>

TECHNICAL CRITERIA	MARKS								
<p><b><u>B1 – TEAM LEADER/PROJECT MANAGER</u></b></p> <p><b>QUALIFICATION – 02 MARKS</b> Degree in Civil Engineering/Project Management/Construction Management</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in development and management of industrial / building projects / large-scale infrastructure projects involving design, construction, and O&amp;M components</p> <p><b>NO. OF YEARS</b></p> <table data-bbox="197 680 608 819"> <tr> <td>15 or more years</td> <td>02 Marks</td> </tr> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	15 or more years	02 Marks	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	04
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<p><b><u>B2 – DESIGN EXPERT</u></b></p> <p><b>QUALIFICATION – 1.5 MARKS</b> Degree in Architecture or Civil Engineering / Structural Design / Building Technology</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in architectural and structural design of industrial or commercial buildings, including layout planning, space optimization, and integration with mechanical/electrical systems</p> <p><b>NO. OF YEARS</b></p> <table data-bbox="197 1323 608 1429"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03		
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<p><b><u>B3 – CONSTRUCTION EXPERT</u></b></p> <p><b>QUALIFICATION – 1.5 MARKS</b> Degree in Civil / Construction Engineering / Construction Management</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in construction supervision and execution of multi-story buildings, industrial parks, or large-scale infrastructure projects.</p> <p><b>NO. OF YEARS</b></p> <table data-bbox="197 1861 608 1966"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03		
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TECHNICAL CRITERIA	MARKS						
<p><b><u>B4 – GREEN BUILDING EXPERT</u></b></p> <p><b>QUALIFICATION – 1.5 MARKS</b> Degree in Architecture, Civil, Environmental Engineering, Sustainable Design, or Green Building</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in design and certification of green/sustainable buildings, energy-efficient materials, and renewable integration (including solar).</p> <p><b>No. Of YEARS</b></p> <table data-bbox="199 712 606 817"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03
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<p><b><u>B5 – ELECTRICAL ENGINEERING EXPERT</u></b></p> <p><b>Qualification – 1.5 Marks</b> Degree in Electrical/Power Engineering</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in design and supervision of electrical systems, building services, and integration of solar power systems.</p> <p><b>No. Of YEARS</b></p> <table data-bbox="199 1249 606 1355"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03
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<p><b><u>B6 – MECHANICAL ENGINEERING EXPERT</u></b></p> <p><b>QUALIFICATION – 1.5 MARKS</b> Degree in Mechanical Engineering</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in design, installation, and maintenance of HVAC systems, fire protection, and other building services for large-scale industrial facilities.</p> <p><b>No. Of YEARS</b></p> <table data-bbox="199 1787 606 1892"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03
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Less than 5 years	0.5 mark						

TECHNICAL CRITERIA	MARKS						
<p><b><u>B7 – ENVIRONMENTAL EXPERT</u></b></p> <p><b>QUALIFICATION - 1.5 MARKS</b> Degree in Environmental Engineering / Environmental Management / or equivalent</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in conducting Environmental Impact Assessment (EIA), compliance monitoring and sustainability planning for industrial or infrastructure projects.</p> <p><b>No. Of YEARS</b></p> <table border="0"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03
10 to 15 years	1.5 marks						
5 to 10 years	01 mark						
Less than 5 years	0.5 mark						
<p><b><u>B8 – FINANCIAL LEAD</u></b></p> <p><b>QUALIFICATION – 1.5 MARKS</b> CA/CFA/CPA/ICMA/ACCA/MBA Finance or equivalent</p> <p><b>RELEVANT EXPERIENCE:</b> Experience in financial structuring, project finance, and lifecycle cost modelling for infrastructure or industrial development projects</p> <p><b>No. Of YEARS</b></p> <table border="0"> <tr> <td>10 to 15 years</td> <td>1.5 marks</td> </tr> <tr> <td>5 to 10 years</td> <td>01 mark</td> </tr> <tr> <td>Less than 5 years</td> <td>0.5 mark</td> </tr> </table> <p><i><u>Note: CVs of the proposed experts shall be submitted in the manner and format prescribed under Bidding Form K (Curriculum Vitae of Proposed Staff) of this RFP. The proposed experts must either be employees of the Bidder or any Consortium Member, or be formally engaged through binding contractual arrangements.</u></i></p>	10 to 15 years	1.5 marks	5 to 10 years	01 mark	Less than 5 years	0.5 mark	03
10 to 15 years	1.5 marks						
5 to 10 years	01 mark						
Less than 5 years	0.5 mark						
<b>C) BUSINESS PLAN EVALUATION</b>	<b>MAX. 15</b>						

TECHNICAL CRITERIA	MARKS
<p><b><u>C1 – CONCEPT PLAN AND DESIGN:</u></b></p> <p>The Bidder shall provide a detailed construction methodology demonstrating their approach to project execution, including phasing, sequencing, and implementation strategies. The Bidder shall also submit a comprehensive work plan outlining the schedule of activities, resource allocation, environmental and quality control measures, along with details on the technology integration, innovative design features, and safety, health and environmental considerations.</p> <p>Marks shall be awarded based on the quality of value addition proposed in the business plan, the soundness of its underlying rationale, and the demonstrated track record of the implementation team in successfully delivering similar initiatives.</p> <ul style="list-style-type: none"> <li><i>i. Comprehensive and detailed concept plan and design pertaining to the Project execution..... 60%-100% Points</i></li> <li><i>ii. Sufficiently comprehensive but not detailed concept plan and design pertaining to the Project execution ...30%-60% Points</i></li> <li><i>iii. Deficient concept plan and design pertaining to the Project execution..... 0%-30% Points</i></li> </ul> <p><u>Note: The Concept Plan and Design shall be submitted in the manner and format prescribed under Bidding Form G (Concept Plan And Design) of this Request for Proposal (RFP).</u></p>	<p>06</p>

TECHNICAL CRITERIA	MARKS
<p><b><u>C2 – MARKETING PLAN</u></b></p> <p>The Bidder shall submit a comprehensive marketing plan demonstrating a clear strategy for positioning, promoting, and managing the commercial and licensing components of the Project. The marketing plan shall outline the overall marketing strategy, rental pricing framework, and licensing approach for permissible sub-license areas, ensuring optimal occupancy and sustainable revenue generation.</p> <ul style="list-style-type: none"> <li><i>i. Comprehensive and detailed marketing plan pertaining to the Project execution..... 60%-100% Points</i></li> <li><i>ii. Sufficiently comprehensive but not detailed marketing plan pertaining to the Project execution ...30%-60% Points</i></li> <li><i>iii. Deficient marketing plan pertaining to the Project execution.... 0%-30% Points</i></li> </ul> <p><u>Note: The Marketing Plan shall be submitted in the manner and format prescribed under Bidding Form H (Marketing Plan) of this Request for Proposal (RFP).</u></p>	04
<p><b><u>C3 – O&amp;M PLAN</u></b></p> <p>The Bidder shall be required to submit an O&amp;M Plan for the project in accordance with the Scope of Work/Terms of Reference, detailing the proposed strategy for the effective operation and maintenance thereof.</p> <ul style="list-style-type: none"> <li><i>i. Comprehensive and detailed O&amp;M plan pertaining to the Project execution..... 60%-100% Points</i></li> <li><i>ii. Sufficiently comprehensive but not detailed O&amp;M plan pertaining to the Project execution ...30%-60% Points</i></li> <li><i>iii. Deficient O&amp;M plan pertaining to the Project execution.... 0%-30% Points</i></li> </ul> <p><u>Note: The Operation and Maintenance (O&amp;M) Plan shall be submitted in the manner and format prescribed under Bidding Form I (O&amp;M Plan) of this Request for Proposal (RFP).</u></p>	05
<b>D) FINANCIAL CAPABILITY</b>	<b>MAX. 30</b>

TECHNICAL CRITERIA	MARKS
<p><b><u>D1 – NET WORTH</u></b></p> <p>The Bidder (or, in case of a Consortium, the combined tangible net worth of the Consortium Members) must have a tangible net worth of at least PKR 1,500,000,000/- (Pak Rupees One Billion Five Hundred Million only). Tangible net worth shall exclude any surplus on revaluation of Property, Plant and Equipment. A tangible net worth of PKR 1,500,000,000/- (Pak Rupees One Billion Five Hundred Million only) shall be awarded nine (09) marks.</p> <p>For each additional increment of PKR 250,000,000 (Pak Rupees Two Hundred Fifty Million) above the minimum threshold, one (01) additional mark shall be awarded, up to a maximum of fifteen (15) marks.</p> <p>In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average net worth of such Consortium Members.</p> <p><i>Note: The Total Net Worth shall be demonstrated in the manner and format prescribed under Bidding Form O (Total Net worth) of this Request for Proposal (RFP).</i></p> <p><u><i>Note: In case of foreign currency, for the purpose of conversion, a rate of PKR 285 per US Dollar, or the prevailing exchange rate for other currencies as of the Bid Submission Date, shall be applied.</i></u></p>	15

TECHNICAL CRITERIA	MARKS
<p><b><u>D2 – CASH AND FUNDING LINES</u></b></p> <p>The Bidder (or, in case of a Consortium, the combined position of the Consortium Members) must demonstrate minimum available cash, short-term or liquid investments, and confirmed funding lines amounting to at least PKR 750,000,000/- (Pak Rupees Seven Hundred Fifty Million only). A minimum amount of PKR 750,000,000/- (Pak Rupees Seven Hundred Fifty Million only) shall be awarded five (05) marks.</p> <p>For each additional increment of PKR 150,000,000/- (Pak Rupees One Hundred Fifty Million only) beyond the minimum threshold, one (01) additional mark shall be awarded, up to a maximum of ten (10) marks.</p> <p>In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average of the available cash and funding lines of such Consortium Members.</p> <p><i>Note: The Cash and Funding Lines shall be demonstrated in the manner and format prescribed under Bidding Form M (Cash and Funding Lines) of this Request for Proposal (RFP).</i></p> <p><u><i>Note: In case of foreign currency, for the purpose of conversion, a rate of PKR 285 per US Dollar, or the prevailing exchange rate for other currencies as of the Bid Submission Date, shall be applied.</i></u></p>	<p>10</p>

TECHNICAL CRITERIA	MARKS
<p><b><u>D3 – AVERAGE ANNUAL TURNOVER</u></b></p> <p>The Bidder (or, in case of a Consortium, the combined financials of the Consortium Members) must have a minimum average annual turnover of PKR 1,000,000,000/- (Pak Rupees One Billion only), calculated over the last three (03) financial years. A minimum average annual turnover of PKR 1,000,000,000/- (Pak Rupees One Billion only) shall be awarded three (03) marks.</p> <p>For each additional increment of PKR 250,000,000/- (Pak Rupees Two Hundred Fifty Million only) beyond the minimum threshold, one (01) additional mark shall be awarded, up to a maximum of five (05) marks.</p> <p>In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average of the average annual turnover of such Consortium Members.</p> <p><i>Note: The Average Annual Turnover shall be demonstrated in the manner and format prescribed under Bidding Form N (Average Annual Turnover) of this Request for Proposal (RFP).</i></p> <p><u>The Bidder/each member of the Consortium shall submit audited financial statements for the last three (03) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder.</u></p> <p><u>Note: In case of foreign currency, for the purpose of conversion, a rate of PKR 285 per US Dollar, or the prevailing exchange rate for other currencies as of the Bid Submission Date, shall be applied.</u></p>	05

**SCHEDULE 4 - CONTENT OF THE PROPOSALS**

1.The Proposals shall be prepared based on the RFP and should contain all of the following documents:

<b>PART</b>	<b>DESCRIPTION</b>
<b>1</b>	<b>TECHNICAL PROPOSAL</b>
	BIDDING FORM A - Letter of Technical Proposal
	BIDDING FORM B - Form of Integrity Pact
	BIDDING FORM C - Form of Affidavit
	BIDDING FORM D - Form of Power of Attorney
	BIDDING FORM E - Form of Bid Security
	BIDDING FORM F – Bidder’s Experience
	BIDDING FORM G – Concept Plan and Design
	BIDDING FORM H – Marketing Plan
	BIDDING FORM I – O&M Plan
	BIDDING FORM J – Team Composition
	BIDDING FORM K – Curriculum Vitae (CV) of Proposed Staff
	BIDDING FORM L - Non – Historical Non - Performance And Pending Litigation
	BIDDING FORM M – Cash And Funding Lines
	BIDDING FORM N – Average Annual Turnover
	Bidding Form O – Total Net Worth
	Consortia Documents in accordance with Section 4.1 ( <i>Consortia Documents</i> ) of Part A ( <i>Technical Proposal Requirements</i> ) of the RFP
<b>2</b>	<b>FINANCIAL PROPOSAL</b>
	BIDDING FORM A - Letter of Financial Proposal
	BIDDING FORM B – Financial Proposal Standard Form
	BIDDING FORM C – Financial Model Form

**BIDDING FORM A - LETTER OF TECHNICAL PROPOSAL**

---

[INSERT DATE]

**TO: FAISALABAD GARMENT CITY COMPANY (FGCC)**  
[ • ]<sup>2</sup>

**RE: DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER OF THE FGCC PROPERTIES**

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Reference the Request for Proposals document issued on [ • ]<sup>3</sup> (the **RFP**) by the Faisalabad Garment City Company (the **Implementing Agency**) in relation to the Project.

Dear [Sir/Madam]:

We, [Name of the Bidder] hereby submit our Technical Proposal in conformity with the requirements of the RFP.

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the RFP.*

**I. Information on the Bidder or, if the Bidder is a Consortium, of all Consortium Members**

**Table 1<sup>4</sup>**

1.	<b>Name</b>	[ • ]
2.	<b>Legal organizational form</b>	[association, company, partnership , other]
3.	<b>Address</b>	[province, city, street, No, other]
4.	<b>Contact and notification data</b>	[address, telephone number, fax number, e-mail]
5.	<b>Contact Person</b>	
6.	<b>Lead Member</b>	[N/A] <sup>5</sup> /[YES]/[NO]
7.	<b>Management and representation</b>	[full names and capacity of Persons who represent the Bidder <sup>6</sup> ]
8.	<b>Persons(s) duly authorized to bind and</b>	[indicate names of the Persons authorized to

---

<sup>2</sup> To be inserted.

<sup>3</sup> To be inserted.

<sup>4</sup> To be completed by the Bidder if a single entity, in the event of a Consortium, please add additional tables for each of the Consortium Members.

<sup>5</sup> Please indicate N/A if the Bidder is not a Consortium.

<sup>6</sup> When a legal entity is a member of the management body, the data of its representatives in the respective management body shall be included.

	<b>represent the Bidder in the procedure</b>	represent the Bidder pursuant to its constitutional documents or the Power of Attorney] <sup>7</sup> /[N/A] <sup>8</sup>
9.	<b>Identification information</b>	[Incorporation registration number and NTN number
10.	<b>Other identification information</b>	[According to the legislation of the state in which the Bidder is established]
11.	<b>Activities to be performed by each Consortium Member</b>	[brief description of the scope of work that will be carried out by each Consortium Member under the PPP Agreement]

**13. Structure and participation in the capital of the Bidder, or, in case the Bidder is a Consortium, of all Consortium Members**

*[please provide the relevant information.]*

**14. The main fields of activity of the Bidder or, in case the Bidder is a Consortium, of each Consortium Member are as follows**

*[please insert the relevant information]*

**15.** When the Bidder is a Consortium, the Bidder shall specify the Lead Member, as well as the share of the Concession (the types of activities) from the scope of the Concession, which will be carried out by each of the Consortium Members upon the performance of the PPP Agreement.

**II. Acknowledgments**

We, agree, confirm, undertake and declare that:

- (a) we have examined and have no reservations to the RFP, including Addenda No(s) [ • ]/Corrigenda No(s) [ • ];<sup>9</sup>
- (b) we, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein;
- (c) as security for due performance of the undertakings and obligations of the Project, we submit unconditionally herewith a Bid Security equivalent to PKR [ • ]/-<sup>10</sup> (Pakistani Rupees [ • ] Only) drawn in your favour or made payable to you and valid for a period [ • ]<sup>11</sup> ([ • ]) Days beyond the period of validity of Bid. We confirm that the Bid Security has been issued and maintained in accordance with the requirements of the RFP;
- (d) we offer to perform and undertake the works and services in respect of the Project in conformity with the RFP without any omission, reservation and deviation; and we accept and

<sup>7</sup> To be completed by the Bidder if a single entity, in the event of a Consortium, to be completed.

<sup>8</sup> Please indicate N/A if the table refers to members of a Consortium which is not the Lead Member.

<sup>9</sup> To be inserted.

<sup>10</sup> To be inserted.

<sup>11</sup> To be inserted.

- undertake to comply with all requirements in the RFP, including the appendices/annexures attached to the RFP;
- (e) we, [including all Consortium Members], as per the requirements of the RFP, respectively:
    - (i) have nationalities of Eligible Countries; and
    - (ii) Do not have any conflict of interest.
  - (f) the Proposal consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of ninety (90) Days from the date fixed for the Bid Submission Deadline in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
  - (g) we have reviewed and accepted the form of the PPP Agreement along with the schedules attached thereto, and undertake to execute the same within the time period stipulated in Decision of Award;
  - (h) We acknowledge that the GoP and the Implementing Agency will be relying on the information provided in our Bid and the documents accompanying them to determine the Most Advantageous Bidder. We certify that all information provided in the Proposal is true and correct and that nothing has been omitted which renders such information misleading;
  - (i) we certify that in the last three (3) years, we have neither failed to perform on any contract, as evidenced by imposition of a penalty by any arbitral or judicial authority or a judicial pronouncement or arbitration award, nor have been expelled from any project or contract by any public authority, nor have had any contract terminated by any public authority for breach by us or, if we are a Consortium, by any of our Consortium Members;
  - (j) we satisfy and meet all the requirements specified in the RFP, including the qualifications requirements set out in the RFP and there has been no material event relating to us or, if we are a Consortium, to any of our Consortium Members, which would require disclosure to the GoP and the Implementing Agency or which might cause us to fail to become a Most Advantageous Bidder;
  - (k) we understand that this Proposal, together with your written acceptance thereof included in your Decision of Award, shall constitute a binding contract between us, until the PPP Agreement is executed;
  - (l) we are not participating nor is any of our Consortium Members (nor any of our Affiliates), as a Bidder in more than one Proposal in this Tender Procedure in accordance with the requirements of the RFP;
  - (m) we understand that the Implementing Agency may cancel the Tender Procedure at any time and that the Implementing Agency is not bound either to accept any Proposal that it may receive, without incurring any liability to the Bidders;
  - (n) we agree to permit the Implementing Agency, the GoP and any Persons, representatives or auditors appointed and authorized by the Implementing Agency and/or the GoP to inspect and audit our accounts, records and other documents relating to our Bid;
  - (o) all the information submitted along with the Proposal, including the enclosed forms and documents, is accurate in all respects;

- (p) we accept the right of the Implementing Agency to: (i) request additional information reasonably required to assess the Proposal; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP;
- (q) all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Implementing Agency by us or on our behalf, in connection with or arising out of the Proposal are true, complete and accurate in all respects;
- (r) we hereby declare that all the information and statements made in the Proposal are true and accept that any misrepresentation contained in it shall lead to our disqualification and/or our blacklisting by the Implementing Agency;
- (s) we, [including all Consortium Members], have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Proposal and the Project;
- (t) we undertake, if the Proposal is accepted, to furnish the Performance Securities as per the requirements of the RFP and the PPP Agreement;
- (u) we do hereby declare that the Proposal is made without any collusion, comparison of figures or arrangement with any other Person or Persons making a Proposal for the Project;
- (v) we understand that the RFP has been issued by the Implementing Agency for the Project; and undertake and confirm that if the Proposal is accepted, we and the Developer (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the PPP Agreement to the RFP and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP.

NAME .....

IN THE CAPACITY OF .....

SIGNED .....

..... (SEAL)

Duly authorized to sign the Bid for and on behalf of: (Insert Name of the Bidder/names of all Consortium Members)

DATE .....

**WITNESSES**

**WITNESS 1:**

**WITNESS 2:**

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

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

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

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

Designation: \_\_\_\_\_

Designation: \_\_\_\_\_

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

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

CNIC/Passport No.: \_\_\_\_\_

CNIC/Passport No.: \_\_\_\_\_

**BIDDING FORM B - FORM OF INTEGRITY PACT**

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**[INSERT DATE]**

[Name of Bidder] (the **Bidder**) 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, Faisalabad Garment City Company any administrative subdivision or agency thereof or any other entity owned or controlled by Government of Pakistan (collectively, the **GoP Entities**) through any corrupt business practice.

Without limiting the generality of the foregoing, [name of Bidder] 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 Entities, except that which has been expressly declared pursuant hereto.

[Name of Bidder] 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 Entities and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[Name of Bidder] 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 Entities under any law, contract or other instrument, be voidable at the option of GoP Entities.

Notwithstanding any rights and remedies exercised by GoP Entities in this regard, [Name of Bidder] agrees to indemnify GoP Entities for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to GoP Entities in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [Name of Bidder] 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 Entities.

**NAME OF EMPLOYER: FAISALABAD GARMENT CITY COMPANY**

**SIGNATURE:** .....

[SEAL]

**NAME OF BIDDER:** .....

**SIGNATURE:** .....

[SEAL]

## BIDDING FORM C - FORM OF AFFIDAVIT

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### NOTES FOR EXECUTION OF AFFIDAVIT

- *The mode of execution of the Affidavit should be in accordance with the procedure, if any, laid down under applicable laws and the same should be under common seal affixed in accordance with the required procedure.*
- *The Affidavit is to be executed on a stamp paper of PKR 200/-.*
- *Also, the Bidder/each Consortium Member should submit for verification a resolution/power of attorney in favour of the person executing this Affidavit for and on behalf of the Bidder/each Consortium Member.*
- *This Affidavit shall be notarised with the Notary Public.*
- *For an Affidavit executed and issued overseas, the document will also have to be attested by the Pakistani Consulate and notarised in the jurisdiction where the Affidavit is being issued.*
- *To be submitted by each Bidder/each Consortium Member.*
- *This Affidavit shall be witnessed by two (2) male witnesses or one (1) male and two (2) female witnesses or four (4) female witnesses.*

*Please find below the form and substance of the Affidavit.*

**TO: FAISALABAD GARMENT CITY COMPANY (FGCC)**  
[ • ]

**RE: DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER OF THE FGCC PROPERTIES**

---

Reference the Request for Proposals document issued on [ • ] (the **RFP**) by the Faisalabad Garment City Company (the **IMPLEMENTING AGENCY**) in relation to the Project.

**AFFIDAVIT**  
(THIS AFFIDAVIT)

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1. I, [*Insert Name of the Authorized Person and its Designation*] of [*Insert Name of Company*] (the **Entity**), duly organised and existing under the laws of [*Insert Country of Incorporation*] with its registered office located at [*Insert Registered Address*], do hereby solemnly affirm, declare and state that:
  - (a) the Entity is not ineligible / blacklisted to participate in the Tender Procedure or undertake any contract or project (including the Project) through any form of public tender (due to reasons, including but not limited to corrupt practices and poor performance) by any federal or provincial governmental or non- governmental department / agency in Pakistan, at the date of submission of this Affidavit;
  - (b) no action, suit or other legal proceeding or governmental investigation is pending against the Entity or any of its respective officers, directors or employees, or that any of the foregoing has received any notice thereof, which questions the validity and execution of this Affidavit or the representations provided in this Affidavit;
  - (c) the Entity has no tax liabilities or liabilities in respect of judgments awarded by any court or similar proceedings in the period of three (3) years prior to the date of this Affidavit, save in each case to the extent that it has made suitable accounting provision for such liabilities in accordance with applicable accounting regulations;
  - (d) the Entity has not directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the award of any contract, project or transaction in the period of five (5) years prior to the date of this Affidavit;
  - (e) the Entity submits the Proposal for the Project independently, without any kind of agreement with other bidders contrary to the regulation on protection of competition and in full compliance with the terms of the RFP;
  - (f) when submitting the Proposal for the Project, the Entity does not participate in competing Consortium with other Bidders to whom the Entity is associated by capital and/or ownership, or family kinship;
  - (g) the Entity (including the Affiliate) is not in bankruptcy or liquidation proceedings or receivership, or wound up, or its affairs are not being administered by a court or a judicial officer, or its business activities have not been suspended or it is not the

subject of legal proceedings of any of the foregoing and has a reasonable expectation of being able to discharge all financial liabilities as they fall due;

- (h) there is no conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect potential involvement of the Entity in the Project and to comply with the obligations set out in the RFP or with respect to the Project;
- (i) the Entity has not failed to sign a contract with any procuring agency following award and has not been engaged in any non-performance of contract within the last three (03) years of the Bid Submission Deadline;
- (j) [the Entity is legally and financially autonomous and operates under commercial law]<sup>12</sup>; and
- (k) neither the Entity, nor I have concealed any information that might hinder the Tender Procedure being conducted for the Project.

2. That whatever stated above is true and correct to the best of my knowledge and belief and nothing has been concealed thereto.

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the RFP.*

**DEPONENT**

Verified on oath at \_\_\_\_\_ on this \_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_ that the contents of the above Affidavit are true and correct to the best of my knowledge and belief.

**DEPONENT WITNESSES**

**WITNESS 1:**

**WITNESS 2:**

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

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

NAME: \_\_\_\_\_

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

\_\_\_\_\_  
CNIC No.: \_\_\_\_\_

\_\_\_\_\_  
CNIC No.: \_\_\_\_\_

\_\_\_\_\_  
<sup>12</sup> Only relevant for the government owned enterprise or institution.

**BIDDING FORM D - FORM OF POWER OF ATTORNEY**

---

**A. POWER OF ATTORNEY TO AUTHORISE A PERSON TO SIGN THE DOCUMENTS**

**NOTES FOR EXECUTION OF POWER OF ATTORNEY**

- *To be executed by each Bidder and in case the Bidder is a Consortium, by each Consortium Member, authorizing the relevant attorney to, inter alia, sign the required documents on its behalf in relation to the RFP.*
- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s).*
- *This Power of Attorney shall be on stamp paper and notarised with the Notary Public.*
- *For a Power of Attorney executed and issued overseas, the same will have to be notarized by Notary Public and attested by the Pakistani Embassy/Consulate in the country where the Power of Attorney is executed;*
- *This Power of Attorney shall be witnessed by two (2) male witnesses.*

**KNOW ALL BY THESE PRESENTS, WE,** [(name of the entity and address of the registered office)] do hereby irrevocably constitute, nominate, appoint and authorise Mr./Ms. [(Name)], son / daughter / wife of [(Name)] holding [CNIC/Passport] Number [Insert Number] and presently residing at [Insert Current Residence Details], who is presently employed with us and holding the position of [Insert Position], as our true and lawful attorney (the “**ATTORNEY**”) (with power to sub-delegate) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to the requirements of the request for proposals document issued on [ • ]<sup>13</sup> (the “**RFP**”) by the Faisalabad Garment City Company (the “**IMPLEMENTING AGENCY**”) in relation to ‘Design, Build, Finance, Operate, Maintain And Transfer of the FGCC Properties’ (the “**PROJECT**”), including (without limitation) signing and submission of all documents and providing information / responses to the Implementing Agency in respect of the RFP, representing us in all matters before the Implementing Agency, and generally dealing with the Implementing Agency (and the GoP), and / or any other governmental agencies or any Person, in all matters in connection with or relating to or arising out of our Bid and its acceptance by the Implementing Agency and for the Project.

We hereby ratify all prior and future acts, deeds and things lawfully done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) pursuant to this Power of Attorney and we hereby agree that all prior and/or future acts, deeds and things done by the Attorney in relation to the Project (including with respect to the submission of our Bid in response to the RFP) shall, and shall always be, deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_, HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

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<sup>13</sup> To be inserted.

**FOR & ON BEHALF OF:**

\_\_\_\_\_ (insert name of the entity)

BY ITS DULY AUTHORIZED SIGNATORY

.....  
(Signature)

**NAME:** \_\_\_\_\_ [insert name of the Person issuing this Power of Attorney who is authorized to issue this Power of Attorney on behalf of the entity]

**TITLE / DESIGNATION:** \_\_\_\_\_ [insert designation of the Person issuing this Power of Attorney]

**ADDRESS:** \_\_\_\_\_ [insert address of the Person issuing this Power of Attorney]

**WITNESSES:**

**WITNESS 1:**

**WITNESS 2:**

.....

.....

NAME:  
CNIC / PASSPORT NUMBER:  
ADDRESS:

NAME:  
CNIC / PASSPORT NUMBER:  
ADDRESS:

**SIGNATURE OF ATTORNEY**

.....

**NAME OF ATTORNEY:** \_\_\_\_\_

**CNIC/PASSPORT NUMBER OF ATTORNEY:** \_\_\_\_\_

**TITLE/DESIGNATION OF ATTORNEY:** \_\_\_\_\_

**ADDRESS OF ATTORNEY:** \_\_\_\_\_

**BIDDING FORM E - BID SECURITY**

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**BANK GUARANTEE**

Guarantee No. \_\_\_\_\_

(The **BANK GUARANTEE**)

Executed on \_\_\_\_\_

Expiry date \_\_\_\_\_

Name of Guarantor (Bank) with address: \_\_\_\_\_

[Name of Principal (Bidder) with address:]<sup>14</sup> \_\_\_\_\_

---

Guaranteed Amount (express in words and figures): \_\_\_\_\_

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Date of Bid \_\_\_\_\_

The above premised, we (the **GUARANTOR BANK**) hereby undertake irrevocably and unconditionally on demand to pay to the Faisalabad Garment City Company (the **IMPLEMENTING AGENCY**), without any notice, reference or recourse to the Bidder or to any other entity or without any recourse or reference to any document, agreement, instrument or deed, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

[ • ] [ • ] /- ([ • ] [ • ])<sup>15</sup>  
(The **GUARANTEED AMOUNT**)

at sight and immediately upon the receipt of the Implementing Agency's first written demand (the **DEMAND**) at the Guarantor Bank's offices located at [ • ]<sup>16</sup> or through SWIFT instructions transmitted by the Implementing Agency's bank on behalf of the Implementing Agency, to the Guarantor Bank, or through fax sent by the Implementing Agency at the Guarantor Bank's fax number i.e., [ • ]<sup>17</sup>, such Demand stating:

- (i) that the Bidder is in breach of its obligations towards the Implementing Agency; and
- (ii) The total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Implementing Agency; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by 's bank on behalf of ; or (iii) the Implementing Agency in the case of a Demand made through fax, it is made by and bears the signature of an authorised officer or other representative of the Implementing Agency.

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<sup>15</sup> To be inserted.

<sup>16</sup> To be inserted.

<sup>17</sup> To be inserted.

We, the Guarantor Bank, shall unconditionally honour a Demand hereunder made in compliance with this Bank Guarantee at sight and immediately on the date of receipt of your Demand, as stated earlier, and shall transfer the amount specified in the Demand to the bank account, as notified in the Demand, in immediately available and freely transferable funds in the currency of this Bank Guarantee, free and clear of and without any set-off or deduction for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any nature whatsoever and by whomsoever imposed.

This Guarantee shall come into force and shall become automatically effective upon its issuance.

Such demand must be received by us on or before the [ • ]<sup>18</sup> (the “EXPIRY DATE”), when this Bank Guarantee shall expire and shall be returned to us.

Upon expiry, this Bank Guarantee shall be returned to the Bidder without undue delay. Multiple Demands may be made by the Implementing Agency under this Bank Guarantee, but our aggregate liability will be restricted up to the Guaranteed Amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Implementing Agency, the Bidder or any other entity of any document, agreement, instrument or deed shall not in any way impair or affect our liabilities hereunder and maybe undertaken without notice to us and without the necessity for any additional endorsement, consent or guarantee by us.

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

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

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws and regulations, it has the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations it has undertaken under this Bank Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Pakistan.

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

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

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<sup>18</sup> To be inserted.

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

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Bank Guarantee and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Bank Guarantee shall prevail.

NAME: .....

DESIGNATION: .....

**BIDDING FORM F – BIDDER’S EXPERIENCE**

**[This form will be used for evaluation of criteria A]**

*Note: Using the format below, provide information on each assignment for which your firm, and each associate for this assignment, was legally contracted either individually or as a corporate entity or as one of the major companies within an association, for carrying out consulting services similar to the ones requested under this Request for Proposal.*

*Projects will only be evaluated for scoring if the completion certificates or a copy of contract is provided.*

<b>ASSIGNMENT NAME:</b>		<b>COUNTRY:</b>
<b>LOCATION WITHIN COUNTRY:</b>		<b>PROFESSIONAL STAFF PROVIDED BY APPLICANT FIRM:</b>
<b>NAME OF CLIENT:</b>		<b>NO. OF STAFF:</b>
<b>ADDRESS:</b>		<b>NO. OF STAFF MONTHS:</b>
<b>START DATE(MONTH/YEAR):</b>	<b>COMPLETION DATE(MONTH/YEAR):</b>	<b>APPROX. VALUE OF SERVICES (IN CURRENT USD/PKR):</b>
<b>NAME OF ASSOCIATED FIRM(S), IF ANY:</b>		<b>NO. OF MONTHS OF PROFESSIONAL STAFF PROVIDED BY ASSOCIATED FIRM(S):</b>
<b>NAME OF SENIOR STAFF (PROJECT DIRECTOR/CO-ORDINATOR, TEAM LEADER) INVOLVED AND FUNCTIONS PERFORMED:</b>		
<b>NARRATIVE DESCRIPTION OF PROJECT:</b>		
<b>DESCRIPTION OF ACTUAL SERVICES PROVIDED BY YOUR STAFF:</b>		
<b>NAME(S) OF THE CONSORTIUM MEMBER(S), IF ANY:</b>		

*Note: Documentary proof (i.e., work order and completion certificate) to be attached.*

**BIDDING FORM G – CONCEPT PLAN AND DESIGN**

***[This form will be used for evaluation of criteria C - 1]***

This form must respond to the entire scope of work for the Project described in **Schedule 1 (Scope of Work)** of the RFP.

The Bidder must outline the proposed methodology and work plan to implement the Project on a design, build, finance, operate and maintain and transfer basis. The concept plan and design and work plan should articulate what added value the Bidder will provide in achieving the stated objectives for the Project and how compliance with requirements set out in the RFP (including **Schedule 1 (SCOPE OF WORK)**) of the RFP will be achieved.

The Bidder must explain its understanding of the objectives and requirements of the Project, highlight the issues of importance, and explain the technical approach it would adopt to address such issues. The concept plan and design should explain the methodologies and technologies which are to be adopted and demonstrate the compatibility of those with the proposed approach, making it clear that only proven and reliable methodologies and technologies will be used for the implementation of the Project. The approach should also indicate how risks will be managed and what contribution will be made regarding value engineering and management.

The concept plan and design and work plan should comprehensively address the environmental, social, health and safety aspects during the term of the Project, including (but not limited to) environmental impact mitigation measures, social safeguards, occupational health and safety protocols, and compliance with relevant regulations and standards.

The concept plan and design should not exceed twenty-five (25) pages.

**BIDDING FORM H – MARKETING PLAN**

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***[This form will be used for evaluation of criteria C 2]***

Each Bidder shall submit a comprehensive marketing plan that clearly outlines its proposed strategy for positioning, promoting, and managing the commercial and licensing components of the Project. The plan must demonstrate a sound understanding of the target market, potential tenants, and revenue opportunities, supported by a well-defined rental pricing framework and licensing approach for all permissible sub-licensed areas/units. The marketing plan shall also detail how marketing activities will be synchronized with the overall development and implementation schedule to ensure timely occupancy, effective promotion, and sustained financial viability. The submission should emphasize the robustness, practicality, and innovation of the proposed marketing strategy, highlighting measures to maximize occupancy, optimize returns, and align with the Project's overall development objectives. The marketing plan shall not exceed twenty-five (25) pages.

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**BIDDING FORM I – O&M PLAN**

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***[This form will be used for evaluation of criteria C 3]***

Bidder shall submit an operations and maintenance plan for the Project. The operations and maintenance plan shall be evaluated keeping in mind various aspects including (without limitation):

- (a) General Overview;
- (b) Organizational Structure;
- (c) Maintenance Procedures;
- (d) Operational Guidelines;
- (e) Safety and Emergency Procedures;
- (f) Environmental Management;
- (g) Community Engagement;
- (h) Budget and Financial Management;
- (i) Performance Metrics;
- (j) Continuous Improvement; and
- (k) Sustainability Practices.

The Bidders shall be required to demonstrate their vision for Operation and Maintenance of FGCC Properties and how they plan to undertake the operation and maintenance of the same.

Marks would be awarded on the basis of value addition provided in the plan and the rationale behind the plan, together with demonstration of the implementation team's past record on delivering on such concepts.

Bidder may be required to present the same to the Implementing Agency (in the form of a presentation) upon request.

The operations and maintenance plan should not exceed twenty-five (25) pages.

**BIDDING FORM J – TEAM COMPOSITION**

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***[This form will be used for evaluation of criteria B]***

Bidders and each Consortium Member should provide the names of suitably qualified personnel to meet the specified requirements stated in the technical evaluation criteria.

<b>Sr. No.</b>	<b>NAME</b>	<b>PROPOSED KEY POSITION</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		

**FORM K – CURRICULUM VITAE (CV) OF PROPOSED STAFF**

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1. **Proposed Position** [*Only one candidate shall be nominated for each position*]:
2. **Name of Firm** [*Insert name of firm proposing the staff*]:
3. **Name of Staff** [*Insert full name*]:
4. **Date of Birth:** [•]
5. **Nationality:** [•]
6. **Educational Qualification:** [*Summarize college/university and other specialized education of staff member, giving names of schools, dates attended, and degrees obtained*]
7. **Membership of Professional Societies:** [•]
8. **Other Training** [*Indicate significant training since degrees under 6 – Education was obtained*]:
9. **Countries of Work Experience** [*List countries where staff has worked*]: [•]
10. **Languages** [*for each language indicate proficiency: good, fair, or poor in speaking, reading and writing*]:
11. **Employment Record:**  
[*Starting with present position, list in reversed order, every employment held by staff member since graduation, giving for each employment (see format here below): dates of employment, name of employing organization, position held*]:
12. **Detailed Tasks Assigned** [*List all tasks to be performed under this assignment*]:
13. **Work Undertaken That Best Illustrates Capability To Handle The Tasks Assigned**  
[*Among the assignments in which the staff has been involved, indicate the following information for those assignments that best illustrate staff capability to handle the tasks listed under point 12*]:  
Name of Assignment or Project: [•]  
Year: [•]  
Location: [•]  
Line Department: [•]  
Main project features: [•]  
Positions held: [•]  
Activities performed: [•]

**14. Certification:**

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes me, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

\_\_\_\_\_  
[Signature of staff member or authorized representative of the staff]

Date: \_\_\_\_\_  
Day/Month/Year

Full name of authorized representative: \_\_\_\_\_

**BIDDING FORM L – HISTORICAL NON-PERFORMANCE AND LITIGATION HISTORY**

NON-PERFORMING CONTRACTS			
<input type="checkbox"/> <b>Contract non-performance did not occur</b> within the last <b>three (03)</b> years prior to the Bid Submission Deadline based on all information on fully settled disputes or litigation <b>(Affidavit to be provided)</b>			
<input type="checkbox"/> <b>Contract non-performance during the stipulated period.</b>			
YEAR	OUTCOME AS PERCENT OF TOTAL ASSETS	CONTRACT IDENTIFICATION	TOTAL CONTRACT AMOUNT (CURRENT VALUE, PKR)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

PENDING LITIGATION			
<input type="checkbox"/> <b>No pending litigation</b> (A fully settled dispute or litigation is one that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder/Consortium Member have been exhausted) <b>(Affidavit to be provided)</b>			
<input type="checkbox"/> <b>Pending litigation</b> (All pending litigation shall in total not represent more than fifty percent (50%) of the Bidder's/Consortium Member's net worth and shall be treated as resolved against the Bidder/Consortium Member)			
YEAR	OUTCOME AS PERCENT OF TOTAL ASSETS	DETAILS	TOTAL CONTRACT AMOUNT (PKR)
		Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	

**BIDDING FORM M – CASH AND FUNDING LINES**

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***[This form will be used for evaluation of criteria D2]***

Each Bidder and every member of the Consortium must duly fill this form.

**FINANCIAL DATA FOR PREVIOUS THREE (3) YEARS**

**INFORMATION FROM BALANCE SHEET**

	YEAR 1	YEAR 2	YEAR 3
<b>CASH AND BANK BALANCES</b>			
<b>SHORT TERM INVESTMENTS</b>			
<b>FUNDING LINES</b>			
<b>TOTAL</b>			

- Proof of funding lines such as term sheets, commitment letters etc. with financial institutions (if applicable) must be attached. The Bidders must provide such proof by way of confirmation of the respective financial institution(s) which has provided such funding lines.
- In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average of the available cash and funding lines of such Consortium Members.

**BIDDING FORM N – AVERAGE ANNUAL TURNOVER**

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***[This form will be used for evaluation of criteria D3]***

Each Bidder and every member of the Consortium must duly fill this form.

**AVERAGE ANNUAL TURNOVER FOR THE PREVIOUS THREE (3) YEARS**

	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>AVERAGE ANNUAL TURNOVER OF THE PREVIOUS THREE (3) YEARS</b>
<b>TOTAL</b>				

- Proof of average annual turnover must be attached by the Bidder, or in case of a Consortium, by each Consortium Member.
- In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average of the average annual turnover of such Consortium Members.

**BIDDING FORM O – TOTAL NET WORTH**

***[This form will be used for evaluation of criteria D1]***

Each Bidder or member of a Consortium must fill in this form.

<b>FINANCIAL DATA FOR PREVIOUS 3 YEARS</b>			
<b>INFORMATION FROM BALANCE SHEET</b>			
	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>
<b>TOTAL ASSETS</b>			
<b>TOTAL LIABILITIES</b>			
<b>CURRENT ASSETS</b>			
<b>CURRENT LIABILITIES</b>			
<b>NET WORTH</b>			

- Copies of audited financial statements which shall be signed and stamped by the auditor of the Bidder/respective Consortium Members (balance sheets including all related notes, and income statements) for the last three (03) years, as indicated above, complying with the following conditions:
  - (a) all such documents reflect the financial situation of the Bidder/every Consortium Member, and not sister or parent companies;
  - (b) Historic financial statements must be audited by a Chartered Accountant duly registered with Institute of Chartered Accountants of Pakistan;
  - (c) historic financial statements must be complete, including all notes to the financial statements;
  - (d) historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted);
  - (e) national tax number certificate (or equivalent) must be attached;
  - (f) tax return filed must be provided; and
  - (g) foreign Bidders/Consortium Members should submit national tax number certificate (or equivalent) of their country duly attested by consulate of their country or apostilled under the Apostille Convention.
- The Bidder/each member of the Consortium shall submit audited financial statements for the last three (03) years. For the avoidance of doubt, the audited financial statements of the latest financial year shall be evaluated to determine the net worth of the Bidder.

- In the case of a Consortium, only those Consortium Members proposed to be shareholders of the Special Purpose Vehicle (SPV), as specified in the Consortium Agreement, shall be considered for this criterion. The evaluation shall be based on the weighted average of the total net worth of such Consortium Members.

**PART B**

**FINANCIAL PROPOSAL**

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Within the envelope marked "*FINANCIAL PROPOSAL*", each Bidder shall provide the following:

- 1. BIDDING FORMS AND OTHER DOCUMENTS**
- 1.1 **LETTER OF FINANCIAL PROPOSAL** in the form attached hereto as Bidding Form A (*Letter of Financial Proposal*).
- 1.2 **FINANCIAL PROPOSAL STANDARD FORM** in the form attached hereto as Bidding Form B (*Financial Proposal Standard Form*)
- 1.3 **FINANCIAL MODEL FORM** in the form attached hereto as Bidding Form C (*Financial Model Form*).

## BIDDING FORM A - LETTER OF FINANCIAL PROPOSAL

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[DATE]

**TO: FAISALABAD GARMENT CITY COMPANY (FGCC)**  
[ • ]<sup>19</sup>

**RE: DESIGN, BUILD, FINANCE, OPERATE, MAINTAIN AND TRANSFER OF THE FGCC PROPERTIES**

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Reference the Request for Proposals document issued on [ • ]<sup>20</sup> (the **RFP**) by the Faisalabad Garment City Company (the **IMPLEMENTING AGENCY**) in relation to the Project.

Dear [Sir/Madam]:

We, [Name of the Bidder] hereby submit our Financial Proposal in conformity with the requirements of the RFP.

*Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the RFP.*

We, agree, confirm, undertake and declare that:

- (a) we have examined and have no reservations to the RFP, including Addenda No(s) [ • ] / Corrigenda No(s) [ • ];<sup>21</sup>
- (b) we, [including all Consortium Members,] fully and completely understand and accept the terms of the RFP and hereby undertake to comply with the requirements specified therein;
- (c) the Pre - Estimated Project Cost based on our Financial Proposal (read with our Technical Proposal) is PKR [**Insert Amount in Figures**]/- (Pakistani Rupees [**Insert Amount in Words**] Only);
- (d) we offer to perform and undertake the works and services in respect of the Project in conformity with the RFP, including the Concession Documents, without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the RFP including the appendices/annexures attached to the RFP;
- (e) we, [including all Consortium Members,] and the Contractors, as per the requirements of the RFP, respectively:
  - (i) have nationalities of Eligible Countries;
  - (ii) do not have any conflict of interest; and

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<sup>19</sup> To be inserted.

<sup>20</sup> To be inserted.

<sup>21</sup> To be inserted.

- (iii) have not been declared ineligible / blacklisted by any of our employers, by any federal or provincial governmental or non-governmental department/agency in Pakistan, [or any International Organizations (e.g., UN Security Council, European Union, World Bank, Asian Development Bank, United Nations, International Monetary Fund etc.)], as at the Bid Submission Deadline.
- (f) the Proposal consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred eighty (180) Days from the date fixed for the Bid Submission Deadline in accordance with the RFP, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (g) we understand that all the volumes, appendices/annexures attached to the RFP are integral parts of the RFP;
- (h) we have reviewed and accepted the form of the PPP Agreement along with the schedules attached thereto and undertake to execute the same within the time period stipulated in Decision of Award;
- (i) we acknowledge that the Implementing Agency (and the GoP) will be relying on the information provided in the Proposal and the documents accompanying them to determine the Most Advantageous Bidder. We certify that all information provided in the Proposal is true and correct and that nothing has been omitted which renders such information misleading;
- (j) we satisfy and meet all the requirements specified in the RFP, including the qualifications requirements set out in the RFP and there has been no material event relating to us or, if we are a Consortium, to any of our Consortium Members, which would require disclosure to the Implementing Agency (and the GoP) or which might cause us to fail to become a Bidder;
- (k) we understand that this Proposal, together with your written acceptance thereof included in your Decision of Award, shall constitute a binding contract between us, until the PPP Agreement is executed;
- (l) we are not participating, as a Bidder in more than one Proposal in this Tender Procedure in accordance with the requirements of the RFP;
- (m) we understand that the Implementing Agency may cancel the Tender Procedure at any time and that the Implementing Agency is not bound either to accept any Proposal that it may receive, without incurring any liability to the Bidders;
- (n) we agree to permit the Implementing Agency, the GoP and any Persons, representatives or auditors appointed and authorized by the Implementing Agency and/or the GoP to inspect and audit our accounts, records and other documents relating to the Proposal;
- (o) all the information submitted along with the Proposal, including the enclosed forms and documents, is accurate in all respects;
- (p) we accept the right of the Implementing Agency to: (i) request additional information reasonably required to assess the Proposal; (ii) amend the procedures and requirements or make clarifications thereof; and (iii) extend or amend the timelines as stipulated in the RFP;
- (q) all information, representations and other matters of fact communicated (whether in writing or otherwise) to the Implementing Agency by us or on our behalf, in connection with or arising out of the Proposal are true, complete and accurate in all respects;

- (r) we hereby declare that all the information and statements made in this Proposal are true and accept that any misrepresentation contained in it shall lead to our disqualification, and/or our blacklisting by the Implementing Agency;
- (s) we, [including all Consortium Members,] have made our own investigations and research and have satisfied ourselves in respect of all matters (whether actual or contingent) relating to the Proposal and the Project;
- (t) we undertake, if the Proposal is accepted, to furnish the Performance Security as per the requirements of the RFP;
- (u) we do hereby declare that the Proposal is made without any collusion, comparison of figures or arrangement with any other Person or Persons making a Proposal for the Project;
- (v) we understand that the RFP has been issued by the Implementing Agency for the Project; and undertake and confirm that if the Proposal is accepted, we and the Developer (to be incorporated by us, in case the Project is awarded to us), as applicable, shall execute the PPP Agreement and all other instruments as may be required to be executed in relation to the Project as per the requirements of the RFP; and
- (w) we confirm that the financial model advisor, who has issued the certificate required in terms of Part B (*Financial Proposal Requirements*) of Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP and submitted with our Financial Proposal, meets the criteria for financial model advisor as specified in Part B (*Financial Proposal Requirements*) of Schedule 5 (*Proposal Evaluation And Award Criteria*) of the RFP.

NAME .....

IN THE CAPACITY OF .....

SIGNED .....

..... (SEAL)

Duly authorized to sign the Bid for and on behalf of: (Insert Name of the Bidder/names of all Consortium Members)

DATE .....

**WITNESSES**

**WITNESS 1:**

**WITNESS 2:**

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

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

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

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

Designation: \_\_\_\_\_

Designation: \_\_\_\_\_

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

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

CNIC/Passport No.: \_\_\_\_\_ CNIC/Passport No.: \_\_\_\_\_

**BIDDING FORM B - FINANCIAL PROPOSAL STANDARD FORM**

Bidder who quotes the lowest Bid Price based on the formulae relating to (a) lowest Pre-Estimated Project Cost, (b) lowest present value of VGF support (in the form of concessional loan) and Minimum Revenue Guarantee Amounts, and (c) highest present value of the Revenues to be shared with the Implementing Agency Post MRG Period, shall be deemed to be the **Most Advantageous Bidder**.

For the calculation of present values, a discount rate of ten percent (10%) should be used for the concession period of twenty-five (25) years. Frequency of time should be used on a quarterly basis for the first two (02) years of construction and on an annual basis for twenty-three (23) years of the operation period.

**PRE-ESTIMATED PROJECT COST & VIABILITY GAP FUND**

CONSTRUCTION YEAR	QUARTER	PRE-ESTIMATED PROJECT COST (PKR)	PRESENT VALUE OF VIABILITY GAP FUND AMOUNT (DISCOUNTED AT THE RATE OF 10%) (PKR)
CONSTRUCTION YEAR 1	Q1		
	Q2		
	Q3		
	Q4		
CONSTRUCTION YEAR 2	Q1		
	Q2		
	Q3		
	Q4		
<b>TOTAL</b>			

**NOTE:**

*Bidder who quotes the lowest Pre-Estimated Project Cost and the lowest present value ("PV") of VGF support will be awarded the highest marks.*

*The VGF support shall be capped at thirty percent (30%) of the Pre-Estimated Project Cost. Any Bidder proposing VGF support in excess of the thirty percent (30%) cap shall stand disqualified and shall not be considered for evaluation.*

*Furthermore, while preparing this section, Bidders may refer to Section 9.7 (Viability Gap Support/Concessional Loan) of this RFP.*

**IMPLEMENTING AGENCY REVENUE SHARE**

OPERATIONAL YEAR	MINIMUM REVENUE GUARANTEE AMOUNT (PKR)	PRESENT VALUE OF MINIMUM REVENUE GUARANTEE AMOUNT (DISCOUNTED AT THE RATE OF 10%) (PKR)	IMPLEMENTING AGENCY REVENUE SHARE PERCENTAGE (%)	IMPLEMENTING AGENCY REVENUE SHARE (PKR)	PRESENT VALUE OF IMPLEMENTING AGENCY REVENUE SHARE (DISCOUNTED AT THE RATE OF 10%) (PKR)
OPERATIONAL YEAR 1					
OPERATIONAL YEAR 2					
OPERATIONAL YEAR 3					
OPERATIONAL YEAR 4					
OPERATIONAL YEAR 5					
...					
OPERATIONAL YEAR 23					
<b>TOTAL</b>					

**NOTE:**

***Post MRG Period***

*In the event, if the actual Revenues generated during each subsequent Operational Year of the Post MRG Period, is equal to the Benchmark Revenues<sup>22</sup>, the Developer shall share the Revenues with Implementing Agency in accordance with the Escrow Agreement based on the Implementing Agency revenue share percentage quoted in the form above.*

*In the event, if the actual Revenues exceeds the Benchmark Revenues in any Operational Year during the Post MRG Period, such excess amounts shall be shared between Implementing Agency and the Developer in a ratio of 70:30, in accordance with the Escrow Agreement.*

*In any Operational Year during the Post MRG Period where actual Revenues are lower than the Benchmark Revenues, the Developer shall remain obligated to pay the Implementing Agency, the revenue share as quoted in the above form.*

*Bidder who quotes the highest present value (“PV”) of Implementing Agency revenue share will be awarded the highest marks.*

*Bidder who quotes the lowest PV of Minimum Revenue Guarantee Amount will be awarded the highest marks.*

<sup>22</sup> Bidders are requested to review Schedule 6 (*Benchmark Revenues*) under the RFP for referencing of Benchmark Revenues.

These PVs shall be computed at a discount rate of ten percent (10%) over a period of twenty-three (23) years.

**BID PRICE**

The Bid Price shall be calculated by the Implementing Agency for each Bidder based on the formulae relating to:

- (A) Pre-Estimated Project Cost;
- (B) Present value of the VGF and MRG (to be discounted at 10%); and
- (C) Present Value of the Implementing Agency revenue share Post MRG Period (to be discounted at 10%).

The Bid Price shall be calculated as per the following formula:

$$\text{Bid Price} = ( A ) 30\% + ( B ) 50\% + ( -C ) 20\%$$

The bidder with the **lowest Bid Price** shall be declared as the **Most Advantageous Bidder**.

Wherein:

SR. NO.	CRITERION	WEIGHT
1.	<b>A</b> = Pre-Estimated Project Cost (EPC Cost + Non-EPC Cost + Interest During Construction)	30%
2.	<b>B</b> = Present value of VGF support/concessional loan + Present Value of MRG (Positive cash flow / Cost to the GOP)	50%
3.	<b>C</b> = Present value of Revenue Share on an annual basis offered to Implementing Agency (Negative cash flow / Earnings of the GOP)	20%

**BIDDING FORM C – FINANCIAL MODEL FORM**

Financial model (to be provided in an excel workbook / spreadsheet) and should have the following below components:

YEAR	1	2	...	25
REVENUE FROM [•]*				
DEBT SERVICE COST				
OPERATIONS AND MAINTENANCE COSTS				

*\*rows to be inserted for each revenue generating activity to be carried out on each Project Site.*

**1. Project Cost breakup**

<b>ITEM</b>	<b>TOTAL</b>
<b>EPC COST</b>	<b>In PKR</b>
[Details]	
<b>NON - EPC COST</b>	<b>In PKR</b>
[Details]	
<b>INTEREST DURING CONSTRUCTION (IF APPLICABLE)</b>	<b>In PKR</b>
<b>TOTAL PRE-ESTIMATED PROJECT COST</b>	<b>In PKR</b>

**2. FUNDING / CAPITAL STRUCTURE**

<b>PROJECT COST</b>		
Private Party Equity	In %	In PKR

VGF support (concessional loan)	In %	In PKR
Commercial Lending	In %	In PKR

*Note: Bidders shall provide a breakdown of all expected costs for the Project (EPC and Non-EPC Costs), including (without limitation) construction, design/engineering costs, insurance cost, taxes, and consultancy charges (e.g. for the Independent Engineer and Independent Auditor).*

*Furthermore, the Bidder/Developer shall be required to inject a minimum equity contribution equivalent to twenty-five percent (25%) of the Pre-Estimated Project Cost. This equity commitment shall form part of the Bidder/Developer's financial obligations under the Project and shall be duly reflected in the financial model and supporting documentation. Any Bidder proposing an equity contribution of less than twenty-five percent (25%) of the Pre-Estimated Project Cost and stand disqualified from further evaluation.*

## SCHEDULE 5 - PROPOSAL EVALUATION AND AWARD CRITERIA

---

### PROPOSAL EVALUATION AND AWARD CRITERIA

The Evaluation Criteria of the Technical Proposal and Financial Proposal shall be held under the Single Stage Two Envelope Procedure. The total score of the technical and financial evaluation shall be hundred (100) marks. A Bidder who secures minimum seventy (70) marks pursuant to evaluation below shall be eligible for the evaluation of the Financial Proposal.

#### I. EVALUATION OF THE TECHNICAL PROPOSAL

- a) A public Technical Proposal opening shall be held at the time, date and venue which shall be communicated to all Bidders.
- b) The Technical Proposal will be evaluated on the basis of Single Stage Two Envelope Bidding Procedure.
- c) Technical Proposal of Bidders meeting the Basic Eligibility Criteria and Technical Evaluation Criteria shall be considered and reviewed.

The Bidders securing at least (i) fifty percent (50%) in each category of the criteria listed under the Technical Evaluation Criteria; and (ii) minimum of seventy (70) marks or more shall be ranked from highest to lowest on the basis of their technical score and shall be considered for the opening of the Financial Proposals. Bidders who fail to obtain the minimum threshold and marks specified above shall not be considered for the opening of their Financial Proposals, and their Financial Proposals shall be returned unopened without any further consideration.

#### II. EVALUATION OF THE FINANCIAL PROPOSAL

Bidder who quotes the lowest Bid Price based on the formulae relating to (a) lowest pre-estimated project cost, (b) lowest present value of VGF support (in the form of concessional loan) and MRG (to be discounted at 10%), and (c) highest present value of the Revenues to be shared with the Implementing Agency Post MRG Period, shall be deemed to be the **Most Advantageous Bidder**.

The Bid Price shall be calculated by the Implementing Agency for each Bidder based on the formulae relating to:

- (A) Pre-Estimated Project Cost
- (B) Present value of the VGF and MRG (to be discounted at 10%); and
- (C) Present Value of the Implementing Agency revenue share Post MRG Period (to be discounted at 10%)

The Bid Price shall be calculated as per the following formula:

$$\text{Bid Price} = (A) 30\% + (B) 50\% + (-C) 20\%$$

The bidder with the **lowest Bid Price** shall be declared as the **Most Advantageous Bidder**.

Wherein:

SR. NO.	CRITERION	WEIGHT
1.	<b>A</b> = Pre-Estimated Project Cost (EPC Cost + Non-EPC Cost + Interest During Construction)	30%
2.	<b>B</b> = Present value of VGF support/concessional loan + Present Value of MRG (Positive cash flow / Cost to the GOP)	50%
3.	<b>C</b> = Present value of Revenue Share on an annual basis offered to Implementing Agency (Negative cash flow / Earnings of the GOP)	20%

**SCHEDULE 6 – BENCHMARK REVENUES**

<b>OPERATIONAL YEAR</b>	<b>BENCHMARK REVENUES</b>	<b>BENCHMARK REVENUES IN MN (PKR)</b>
1	351,195,111	351.20
2	528,577,456	528.58
3	620,454,730	620.45
4	678,638,809	678.64
5	742,949,361	742.95
6	812,061,693	812.06
7	888,403,617	888.40
8	971,990,595	971.99
9	1,064,355,390	1,064.36
10	1,163,740,052	1,163.74
11	1,273,496,306	1,273.50
12	1,393,698,766	1,393.70
13	1,526,491,678	1,526.49
14	1,669,548,207	1,669.55
15	1,827,499,650	1,827.50
16	2,000,525,968	2,000.53
17	2,191,630,678	2,191.63
18	2,397,743,066	2,397.74
19	2,625,268,377	2,625.27
20	2,874,566,299	2,874.57
21	3,149,849,428	3,149.85
22	3,447,079,065	3,447.08
23	3,775,122,348	3,775.12

**SCHEDULE 7 – PPP AGREEMENT**

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[ • ]

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**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

BY AND BETWEEN

**FAISALABAD GARMENT CITY COMPANY**  
(the “FGCC”)

AND

**[•]**  
(the “DEVELOPER”)

DATED:  
**[•], 2026**

EXECUTED AT:  
**[•]**

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## PUBLIC PRIVATE PARTNERSHIP AGREEMENT

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This Public-Private Partnership Agreement (the “**AGREEMENT**”) is made at Faisalabad on the [ • ] day of [•], 2026;

### BY AND BETWEEN

**FAISALABAD GARMENT CITY COMPANY**, a wholly owned corporate entity of, Ministry of Commerce and Textile (Textile Division), Government of Pakistan, established under the laws of Pakistan and having its registered office at [ • ], Faisalabad, Pakistan through its duly authorized representative [ • ] s/o [•], holding CNIC No. [ • ] and resident of Pakistan (hereinafter referred to as "**FGCC**" which expression shall, where the context permits or requires, be deemed to mean and include its successors-in-interest and assigns)

### AND

[ • ], a company incorporated under the laws of Pakistan and having its registered office at [ • ], Pakistan, through its duly authorized representative [ • ] s/o [•], holding CNIC No. [ • ] and resident of Pakistan (hereinafter referred to as the “**DEVELOPER**”, which expression shall, where the context permits or requires, be deemed to mean and include its successors-in-interest and assigns);

(the FGCC and the Developer shall hereinafter be individually referred to as a “**PARTY**” and collectively as the “**PARTIES**”).

### RECITALS

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#### WHEREAS

- A. FGCC is desirous of developing certain infrastructure buildings, namely A3, B2, and B3 (the “**FGCC Properties**”), at the Project Site, with the objective of providing fully equipped, state-of-the-art operational spaces for garment manufacturers to facilitate the export of value-added garments from Pakistan and for domestic use. For this purpose, FGCC requires a private party to design, build, finance, operate, maintain, and transfer the FGCC Properties, including the development of all necessary infrastructure on the Project Site (the “**Project**”), to be undertaken under a public-private partnership modality.
- B. A Request for Proposal (defined below) (together with related advertisements, amendments and clarifications) was issued by the FGCC for *inter alia*, inviting submission of bids for grant of Concession of the Project and subsequently upon conclusion of the bidding process pursuant to the Request for Proposal (the “**Bidding Process**”), the Sponsors were selected and awarded the Project pursuant to the letter of award dated [ • ];
- C. The Developer was incorporated by the Sponsors, in accordance with the provisions of the Applicable Laws as required under the Request for Proposal in order to enable the Parties to enter into this Agreement and for the Developer to seek and avail the grant of rights under this Agreement for the purposes of implementation of the Project.
- D. The Developer has represented to FGCC that it has the requisite skills, resources, personnel and expertise to develop and set up the Project at the Project Site and carry out all its obligations in terms of this Agreement and to assume the risks associated therewith;
- E. The Parties have agreed that they will set up the Project by way of a public-private partnership such that FGCC will provide the Project Site for the development of the Project and the Developer will develop the Project on the Project Site in accordance with this Agreement;
- F. Based on the foregoing, the Parties have agreed to execute this Agreement for the implementation of the Project under public-private partnership mode in accordance with the terms and conditions provided herein.

**NOW THEREFORE**, in view of the foregoing and in consideration of the mutual benefits to be derived and the representation and warranties, mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the adequacy of which is hereby acknowledged by the Parties and intending to be legally bound, the Parties have agreed as under:

## 1. THE CONTRACT

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### 1.1 DEFINITIONS

In this Agreement, the following terms shall have the meanings assigned to them hereunder:

**“Abandonment” or “Abandon”** means the voluntary cessation of the construction or operation and maintenance of the Project by the Developer and/or the withdrawal of all, or substantially all, personnel by the Developer from the Project Site;

**“Acceptable Bank”** means a scheduled bank, or a financial institution incorporated or organised in Pakistan having a credit rating of at least “AA” or higher by PACRA, or AA or higher by VIS, or A3 or higher by Moody’s or equivalent rating by Fitch or Standard & Poor’s, as approved by the FGCC;

**“Affected Party”** has the meaning ascribed thereto in Section 26.1.1;

**“Agreement”** means this Public Private Partnership Agreement, including the Recitals, Main Body and all Schedules attached hereto

**“Applicable Laws”** means any common or customary law, constitutional law, any statute, regulation, resolution, rules, ordinance, enactment, judgment, order, code, decree, directive, notification, clarification, guideline, policy, requirement or other governmental restriction and any decision of or determination by or interpretation of any of the foregoing (whether or not having the force of law) by any governmental authority, court or Competent Authority having jurisdiction over this Agreement, the Works, the Project, the Project Site and the Parties (whether at a national, regional, provincial, state or local level) now or hereafter in effect, in each case as amended, re-enacted or replaced;

**“Applicable Permits”** means all clearances, authorizations, consents, permits, waivers, privileges, approvals, licenses, rulings or exemption required to be obtained or maintained by the Developer under the Applicable Laws in connection with the Developer’s obligations to be performed hereunder, as may be in effect from time to time;

**“Approved Accounting Firms”** means (i) A. F. Ferguson & Co. (a member firm of PricewaterhouseCoopers network); (ii) KPMG Taseer Hadi & Co. (a member firm of KPMG International); (iii) EY Ford Rhodes and (iv) such other accounting firms set out in Category A of the Panel of Auditors maintained by State Bank of Pakistan under Section 35 of Banking Companies Ordinance, 1962, as acceptable to FGCC;

**Base Case Financial Model** means the financial model attached herewith as Schedule 7 (*Base Case Financial Model*), as submitted by the Sponsors in its Proposal;

**“Base Funding Amount”** means collectively the sum of: (a) the GoP Funding Amount; and (b) the Sponsor Base Equity Amount, which is [●] of the Pre-Estimated Project Cost;

**“Benchmark Revenues”** means the benchmark revenues prescribed under Schedule 6 (*Benchmark Revenues*) of the RFP and Schedule 12 (*Benchmark Revenues and Revenue Sharing*) of this Agreement;

**“Bid Security”** means the bid security equivalent to PKR 40,000,000/- (Pak Rupees Forty Million only) in the form of the pay order, deposit at call, bank draft or bank guarantee issued by a Acceptable Bank operating in Pakistan or from a foreign bank duly counter guaranteed by an Acceptable Bank in Pakistan, submitted by the Sponsors in connection with its Proposal which is in effect until replaced by the Construction Performance Security for the Project;

**“Bidding Process”** has the meaning ascribed thereto in the Recitals of this Agreement.

**“Business Days”** means in relation to any Day, a Day when commercial banks and financial institutions in Karachi are open for business;

**“Certified Impediment Notice”** shall have the meaning ascribed thereto in Section 22.2;

**“Change in Law”** means, following the Signing Date, the occurrence of any of the following events:

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

**“Commencement Date”** means the date on which the CP Satisfaction Certificate has been jointly issued by the Independent Engineer and Independent Auditor to the Developer to initiate the Construction Works;

**“Competent Authority”** means any agency, legislative, judicial or executive, department, ministry, public or statutory person, whether autonomous or not, of the FGCC, GOPB or GOP or any other subdivision or instrumentality thereof;

**“Conditions Precedent”** shall mean the Developer Conditions Precedent and the FGCC Conditions Precedent;

**“Concession”** has the meaning ascribed thereto in Section 2.1.1 (*Grant of Development Right*) of this Agreement;

**“Concession Direct Agreement”** means the direct agreement that may be entered into between the Concessionaire, the FGCC and the Financiers, if required by the Financiers;

**“Confidential Information”** has the meaning ascribed thereto in Section 1.9.1;

**“Construction Performance Security”** means the performance security valid for the period commencing from the Signing Date until the Construction Performance Security Expiry Date, furnished by the Developer in the form of an irrevocable and unconditional bank guarantee issued by an Acceptable Bank, in an amount, in Pakistani Rupees, equivalent to two percent (2%) of the Pre-Estimated Project Cost, issued in accordance with Section 16.1 (*Construction Performance Security*) and in the format prescribed under Schedule 4 (*Performance Security*);

**“Construction Performance Security Expiry Date”** has the meaning ascribed thereto in Section 16.1.3;

**“Construction Period”** means the period of two (02) years commencing from the Commencement Date and ending on the Project Completion Date, unless any extension provided by the FGCC;

**“Construction Works”** means all obligations, works, services and duties to be performed by the Developer in the Construction Period in respect of the FGCC Properties including (a) preparation, completion and delivery of Drawings; (b) the engineering (including design), procurement, installation and construction of the Project Facilities (including all activities and obligations incidental thereto), each in accordance with the Project Schedule;

**“Corporate Documents”** mean certificate of incorporation, certified copies of the memorandum and articles of association of the Developer, board resolution duly passed by the board of directors of the Developer resolving that the Developer may undertake the Project and stating the name of the authorized signatory of the Developer who shall sign this Agreement, and any other agreement (to which the Developer is a party) and all other necessary documents as required and latest filings with the Securities and Exchange Commission of Pakistan;

**“Corrupt Act”** means

- (a) Offering, giving or agreeing to give to the FGCC, GOPB or GOP or any other organ of the state or to any person employed by or on behalf of FGCC or any other organ of the state any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the FGCC, GOPB or GoP or any other organ of the state; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the FGCC, GOPB or GoP or any other organ of the state;
- (b) entering into this Agreement or any other contract with the FGCC, GOPB or GOP or any other organ of the state in connection with which commission has been paid or has been agreed to be paid by the Developer or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment of such commission have been disclosed in writing to FGCC;
- (c) committing any offence:

- (I) under any law from time to time dealing with bribery, corruption or extortion;
  - (II) under any law creating offences in respect of fraudulent acts; or
  - (III) at common law, in respect of fraudulent acts in relation to this Agreement or any other contract with the GOPB or GOP or any other public body or any organ of the state; or
- (d) defrauding or attempting to defraud or conspiring to defraud the GOPB or GOP or any other public body or any organ of the state;

**“CP Closing Date”** has the meaning ascribed thereto in Section 3.1.3;

**“CP Satisfaction Certificate”** means the certificate confirming satisfaction of the Conditions Precedent (unless a Conditions Precedent is waived and/or deferred in accordance with the provision of this Agreement) issued by the Independent Engineer and the Independent Auditor in accordance with Section 3.1.3;

**“Critical Project Milestones”** means major construction milestones to be agreed by the Developer and the Independent Engineer in light of the Project Schedule;

**“Completion Conditions”** means the completion of [•] percent of the Construction Works in a manner that ensures all essential facilities (as determined by the Developer) are functional to enable the Tenants to conduct their business operations;

**“Completion Conditions Certificate”** means the certificate issued by the Independent Engineer to the Developer with a copy to FGCC confirming that Completion Conditions have been completed in accordance with this Agreement;

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

**“Cure Period for Developer”** has the meaning ascribed thereto in Section 24.1.4;

**“Cure Period for FGCC”** has the meaning ascribed thereto in Section 24.2.4;

**“Day”** means a calendar day commencing from 12.00 midnight in the Country and ending twenty-four (24) hours thereafter;

**“Defects”** means any Works (or any part thereof) that fail to conform to the (i) requirements set forth in this Agreement; and/or (ii) Prudent Utility Practices, in each case as determined by the Independent Engineer, in any manner (including (without limitation) in services, performance, materials, design, execution, engineering and/or workmanship);

**“Delay Liquidated Damages”** has the meaning ascribed thereto in Section 12.4;

**“Delay Liquidated Damages Cap”** has the meaning ascribed thereto in Section 12.4;

**“Designated Branch”** means the designated branch of the Escrow Agent that is designated as such by the Parties in respect of the Project Accounts;

**“Developer”** shall bear the meaning as ascribed thereto in the Preamble;

**“Developer Conditions Precedent”** has the meaning ascribed thereto in Section 3.1.1;

**“Developer’s Documents”** means the documents to be prepared by the Developer relating to the Project in accordance with Section 8 (*Developer’s Documents*);

**“Developer’s Equipment”** means the equipment required by the Developer necessary to complete the Works in accordance with Section 8.14 (*Developer’s Equipment*);

**“Developer Equity Funding Account”** means the account established by the Developer for the purposes of depositing the Sponsor Base Equity received from the Sponsors in accordance the Equity and VGF Funding & Utilization Agreement;

**“Developer Event of Default”** has the meaning ascribed thereto in Section 24.1.1;

**“Developer Project Account”** means the account established by the Developer for the purposes of crediting the funds received from the Escrow Account;

**“Developer’s Representative”** has the meaning ascribed thereto in Section 8.3.1(a);

**“Developer Revenue”** has the meaning ascribed thereto in Section 14.2.5;

**“Developer Termination Date”** has the meaning ascribed thereto in Section 24.2.6;

**“Drawings”** means the drawings to be prepared by the Developer or the Subcontractors in accordance with Section 9.2 and the Technical Specifications;

**“Disclosing Party”** has the meaning ascribed thereto in Section 1.9.1;

**“Earlier Notice to Terminate by Developer”** has the meaning ascribed thereto in Section 3.1.7;

**“Earlier Notice to Terminate by FGCC”** has the meaning ascribed thereto in Section 3.1.6;

**“Encumbrances”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or other obligations or restrictions and shall also include, without limitation, any designation of loss, payees or beneficiaries, or any similar arrangement under an insurance policy in respect of the Project, or any physical encumbrances or encroachments on the Project Site;

**“EPC Costs”** means the engineering, procurement and construction costs, as set out under the Base Case Financial Model;

**“Equity and VGF Funding & Utilization Agreement”** means the agreement (in a form and substance to be agreed to by the Parties) to be entered into between the FGCC, the Sponsor and the Developer, in accordance with this Agreement, for the purposes of, inter alia, funding of the Base Funding Amount and the utilization of the same, in accordance with the terms thereof;

**“Escrow Account”** means the account established by the Developer under Section 19.1 (*Project*

*Account Opening and Establishment)*

**“Escrow Agent”** means an Acceptable Bank in Pakistan acceptable to the FGCC, which is appointed for the purpose of managing the Project Accounts in terms of this Agreement and the Escrow Agreement;

**“Escrow Agreement”** means the agreement (in a form and substance to be agreed to by the Parties) to be executed *inter alia* between the Developer, the FGCC and the Escrow Agent, in accordance with this Agreement, for the purposes of, *inter alia*, requiring all the payments, and proceeds generated or received by the Developer to be immediately deposited in the Project Accounts, and the utilization or distribution of the same, in each case, in accordance with the terms thereof;

**“ESMS”** means the Environmental and Social Management System notified by the P3A;

**“Excess Amount”** has the meaning ascribed thereto in Section 14.2.5;

**“Expiry Date”** means the date falling twenty-five (25) years from the Commencement Date unless extended under Section 2.2.1;

**“Failure”** has the meaning ascribed thereto in Section 8.13.3;

**“FGCC Properties”** has the meaning ascribed thereto in the Recitals;

**“FGCC Revenue”** has the meaning ascribed thereto in Section 14.2.5;

**“Financing”** means the finance facilities, loans, advances, financial accommodation and/or arrangement, subscription and/or issuance of debentures/bonds/redeemable capital, risk participation, take out financing and/or any other financial obligation availed by the Developer from the Financiers in respect of the Project, pursuant to the Financing Documents;

**“Financial Close”** means the execution and delivery of the Financing Documents that evidence sufficient financing for the Project and achievement of construction of the Project (following the resolution of any objections raised by the FGCC and/or the Independent Auditor to the Financing Term Sheet that sets out a principal repayment schedule and the other principal terms of the Financing Documents between the Developer and the Financiers) and evidence of commitments for such equity as is required by the Developer to satisfy the requirements of the Financiers and the satisfaction of all conditions precedent for the initial availability of funds under the Financing Documents and the Developer having immediate access to the Financing;

**“Financing Documents”** means the loan/financing agreements or instruments relating to or contemplated by the Financing Term Sheets that have not been objected to or deemed not to have been objected to by the FGCC and/or the Independent Auditor pursuant to Section 28.3 (Financing Term Sheet & the Financing Amendment Term Sheets) as may be amended from time to time in accordance with the provisions of Section 28.3 (Financing Term Sheet & the Financing Amendment Term Sheets);

**“Financing Component”** means the component that relates to the repayment and servicing of Financing Due (i.e., both principal repayment and interest/mark-up payments), as set out in the Financial Model;

**“Financial Model”** means the Base Case Financial Model, as revised by the Independent Auditor in accordance with the terms of this Agreement and/or any other Agreement directly linked to this;

**“Financiers”** mean the financial institutions, banks, Islamic financiers, infrastructure investment funds, trusts or trustees of the holders of debentures or other securities their successors and assigns, that extend Financing to the Developer pursuant to the Financing Documents;

**“Financing Term Sheet”** has the meaning ascribed thereto in Section 29.2.1

**“Financing Amendment Term Sheets”** has the meaning ascribed thereto in Section 29.2.3

**“Financial Close Achievement Notice”** has the meaning ascribed thereto in Section 29.3 (*Financial Close*)

**“Financing Due”** means the aggregate of the following sums expressed in Pakistani Rupees outstanding and payable to the Financier up to the date immediately preceding the termination payment date pursuant to the Financing Documents:

- (a) the principal amount of the financing provided and disbursed by the Financiers under the Financing Documents for Financing the Project (the **Principal**) in accordance with the Financial Model and the Financing Term Sheet and Financing Amendment Term Sheets (if any) delivered to and not objected to by the Agency and the Independent Auditor in accordance with Section 27.3 (Financing Term Sheet & the Financing Amendment Term Sheets);
- (b) the interest or mark-up (or any other term connoting the return paid to the Financiers on financing) accrued on the Principal in accordance with the Financial Model and the Financing Term Sheet and the Financing Amendment Term Sheets delivered to and not objected to by the Agency and the Independent Auditor in accordance with Section 27.3 (Financing Term Sheet & the Financing Amendment Term Sheets);
- (c) only in the event of Termination due to FGCC Event of Default, penal interest or charges payable under the Financing Documents to the Financiers, provided further that in case the Developer continues to collect Revenues until the Expiry Date the Developer shall be required to make payments to the Financiers in relation to any penal interest or charges payable to the Financiers in accordance with Financial Model;

**“FGCC”** has the meaning ascribed thereto in the Preamble;

**“FGCC Conditions Precedent”** has the meaning ascribed thereto in Section 3.1.2;

**“FGCC Designated Account”** means the account established by the FGCC in accordance with this Agreement and the Escrow Agreement for the purposes of: (a) deposition of GOP Funding Amount received from the GOP; (b) repayment of GOP Funding Amount; both in accordance with this Agreement and the Viability Gap Financing Agreement; (c) deposition of Minimum Revenue Guarantee Amounts; and (d) receipt of FGCC Revenue in accordance with this Agreement and the Escrow Agreement;

**“FGCC’s Event of Default”** has the meaning ascribed thereto in Section 14.2.1;

**“FGCC’s Representative”** has the meaning ascribed thereto in Section 7.2.1 (*The FGCC Representative*);

**“FGCC Termination Date”** has the meaning ascribed thereto in Section 24.1.6;

**“Force Majeure Event”** has the meaning ascribed thereto in Section 16.1.1;

**“GOP”** means Government of Pakistan;

**“GOP Funding Amount”** means an amount not exceeding thirty percent (30) of the Pre-Estimated Project Cost, to be funded by the GOP, in the form of concessional loan to the Developer to fund the Pre Estimated Project Cost, as set out in the Base Case Financial Model and to be funded in accordance with this Agreement and Equity and VGF Funding & Utilization Agreement;

**“GOPB”** means Government of Punjab;

**“IE List”** has the meaning ascribed thereto in Section 4.1.2;

**“Imported Materials”** means equipment, machinery, apparatus, materials, articles and things of all kinds required by the Developer and imported for the Project from outside of the Country for the use of the Developer in the Works;

**“Independent Auditor”** means the firm of chartered accountants appointed, from amongst the Approved Accounting Firms, with the approval of FGCC, in accordance with Section 5 (*Independent Auditor*);

**“Independent Auditor Contract”** means the contract executed and/or to be executed, by and between, *inter alia*, FGCC, the Developer and the Independent Auditor in relation to the Project;

**“Independent Auditor Payments”** has the meaning ascribed thereto in Section 5.3.1

**“Independent Auditor Payment Account”** means the account established and maintained by the Developer for the Independent Auditor Payments;

**“Independent Auditor Term”** has the meaning ascribed thereto in Section 5.1.2;

**“Independent Engineer”** means the firm of engineers appointed, with the approval of the FGCC, in accordance with Section 4.1(*Selection*);

**“Independent Engineer Contract”** means the contract executed and/or to be executed, by and between, *inter alia*, FGCC, the Developer and the Independent Engineer in relation to the Project;

**“Independent Engineer Payments”** has the meaning ascribed thereto in Section 4.3.1;

**“Independent Engineer Payment Account”** means the account established and maintained by the Developer for the Independent Engineer Payments;

**“Independent Engineer Term”** has the meaning ascribed to in Section 4.1.5;

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

**“Key Personnel”** shall mean the personnel identified by the Sponsors and submitted as part of the Proposal;

**“Lapse of Consent”** means any Applicable Permit (a) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the Applicable Laws or, where a time period is not prescribed by the Applicable Laws, within sixty (60) Days of such Applicable Permit ceasing to be in full force and effect, or (b) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the Applicable Laws or where a time period is not prescribed by the Applicable Laws, within sixty (60) Days of proper application being made for such Applicable Permit or (c) being made subject, upon renewal or otherwise, to any terms or conditions that materially and adversely affect the Developer’s ability to perform its obligations under this Agreement, in each of the above instances despite the Developer’s compliance with the applicable procedural and substantive requirements;

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

**“Materials”** means things of all kinds to be provided and incorporated into the Works by the Developer which are to be sourced in the Country and the Imported Materials once these are in the Country;

**“Material Adverse Effect”** means the occurrence of an event which materially and adversely impairs the Developer’s ability to carry out the Works and/or perform its obligations in accordance with the terms of this Agreement, as determined by the Independent Engineer;

**“Material Adverse Impediment”** has the meaning ascribed thereto in Section 22.1;

**“Material Breach”** means a breach of the obligations, terms and conditions of this Agreement or covenants by the Developer or FGCC as the case may be, which materially and substantially affects the performance of the transactions contemplated by this Agreement and has a Material Adverse Effect;

**“Material Impediment Removal Period”** has the meaning ascribed thereto in Section 22.2;

**“Minimum Revenue Guarantee Amounts”** means the amount, that the FGCC guarantees to provide to the Developer during the MRG Period, being the difference between the actual Revenue and the Benchmark Revenues as verified by the Independent Auditor for the respective Operational Year in the following manner:

- fifty percent (50%) for Operational Years 1 to 3;
- forty percent (40%) for Operational Year 4; and
- thirty percent (30%) for Operational Years 5 to 7.

**“MRG Funding Date”** means

- (a) for the purposes of the first Operational Year, the MRG Security Date;

(b) in respect of each subsequent Operational Year, the date falling three (03) months prior to the end of such Operational Year, corresponding to the relevant MRG Payment Date, as further detailed in the Escrow Agreement;

**“MRG Payment Date”** means the relevant date(s) for each MRG Instalment Period on which the FGCC is required to make payment of each respective amount under the Minimum Revenue Guarantee Amounts directly into the Escrow Account as outlined in the Financial Model and pursuant to the terms of the Escrow Agreement;

**“MRG Instalment Period”** means each four (04) month period which:

(a) in case of first such period, commences on the Scheduled Project Completion Date and expires on the date falling immediately prior to the first four (4) monthly anniversary of the Scheduled Project Completion Date;

(b) in case of any such other period, commences on each four (4) monthly anniversary of the Scheduled Project Completion Date and ending on the date falling immediately prior to the immediately succeeding four (4) monthly anniversary of the Scheduled Project Completion Date;

**“MRG Period”** means the period commencing from the Project Completion Date and ending on the seventh (7<sup>TH</sup>) anniversary of the Project Completion Date;

**“MRG Security Amount”** means the amount of the Minimum Revenue Guarantee Amounts guaranteed by the FGCC, in the form of an MRG Security Instrument, in respect of the first Operational Year of the MRG Period;

**“MRG Security Date”** means the date falling prior to the CP Closing Date, by which FGCC shall issue and provide the MRG Security Instrument for the Operational Year of the MRG Period.

**“MRG Security Instrument”** means an unconditional, irrevocable, and first-demand standby letter of credit (SBLC), bank guarantee, or any other financial instrument from a scheduled bank acceptable to the Financiers, provided by FGCC equivalent to the MRG Security Amount.

**“New IE List”** has the meaning ascribed thereto in Section 4.1.8;

**“New O&M Performance Security”** shall bear the meaning as ascribed thereto in Section 16.2.8;

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

**“Notice of Intent to Terminate by the Developer”** has the meaning ascribed thereto in Section 24.2.2;

**“Notice of Intent to Terminate by FGCC”** has the meaning ascribed thereto in Section 24.1.2;

**“Nominee”** has the meaning ascribed thereto in Section 24.3.4;

**“Non-EPC Costs”** means all project construction costs not part of the EPC Costs, as set out under the Base Case Financial Model;

**“Non-Political Event”** has the meaning ascribed thereto in Section 26.1.1(b);

**“O&M”** means operations and maintenance;

**“O&M Costs”** means the operations and maintenance expenses, as set out in the Base Case Financial Model;

**“O&M Fee”** shall have the meaning ascribed thereto in Section 15.2.1;

**“O&M Period”** means the period during which the Developer shall carry out the O&M Works for the Project which shall commence from Project Completion Date until the expiry of the Term;

**“O&M Plan”** means the Developer’s plan regarding the O&M Works to be carried out for each Operational Year of the Term for the Project, which plan shall be prepared and submitted by the Developer for the Independent Engineer and Independent Auditor approval in accordance with Section 15 (*Operation and Maintenance*);

**“O&M Performance Security”** means the performance security furnished by the Developer from time to time to the FGCC in the form of a bank guarantee, issued by an Acceptable Bank in Pakistan acceptable to the FGCC, in an amount equivalent to five percent (5%) of the O&M Costs, issued in accordance with Section 16.2 (*O&M Performance Security*) and in the form prescribed under Schedule 4 (*Form of Performance Security*).

**“O&M Performance Security Expiry Date”** shall bear the meaning as ascribed thereto in Section 16.2.7;

**“O&M Works”** means the operations and maintenance of the Project including routine, regular, periodic and preventive maintenance in conformity with the Schedule 6 (*Operation and Maintenance*) and Prudent Utility Practices;

**“Operational Year”** means a period of one (1) year commencing on each consecutive anniversary of the Project Completion Date and ending as of the end of the day preceding the next anniversary of the Project Completion Date;

**“Party”** or **“Parties”** has the meaning ascribed to the term in the preamble of this Agreement;

**“Performance Security”** shall collectively mean the Construction Performance Security and O&M Performance Security;

**“Performance Security Amounts”** means the amount/percentages of Construction Performance Security and O&M Performance Security as prescribed under Schedule 5 (*Performance Security Amounts*);

**“Person”** means any person, firm, company, corporation, society, government, state or agency of a state, or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing;

**“Post MRG Period”** has the meaning ascribed to it in Section 14.2.7;

**“Preamble”** shall mean the preamble of this Agreement;

**“Pre-Estimated Project Cost”** means the total project cost quoted by the Sponsors in the Base Case Financial Model, which shall include, without limitation, EPC costs, Non-EPC costs, and interest during construction as may be required for the execution and implementation of the Project;

**“PKR”** or **“Pak Rupees”** means Pakistani Rupees, being the lawful currency of the Country;

**“Political Event”** has the meaning ascribed thereto in Section 26.1.1 (a);

**“Project”** has the meaning ascribed thereto in the Recitals of this Agreement;

**“Project Accounts”** has the meaning ascribed thereto in Section 19.1 (*Project Accounts Opening and Establishment*);

**“Project Accounts Standing Instructions”** has the meaning ascribed thereto in Section 19.4.1;

**“Project Facilities”** means the facilities to be constructed by the Developer, as per the terms of this Agreement, which are more fully described in the Technical Specifications;

**“Project Completion Date”** means the date on which the Independent Engineer, with a copy to the FGCC, issues the Completion Conditions Certificate, to the Developer;

**“Project Schedule”** means the Developer’s detailed schedule for performing the Works provided to FGCC pursuant to Section 8.12 (*Project Schedule*);

**“Project Site”** means the site on which the Project is to be implemented comprising of the FGCC Properties and public infrastructure such as roads, electricity, telephone connections, gas and sewage are to be constructed, built, installed, erected and/or provided by the Developer, in accordance with the terms of this Agreement as demarcated in the map attached hereto in Schedule 1 (*Project Site*);

**“Project Site License Agreement”** means the agreement of license to be entered into between FGCC and the Developer pursuant to which the FGCC shall license the land comprising the Project Site to the Developer as attached under Schedule 10 (*Project Site License Agreement*) of this Agreement;

**“PPC”** has the meaning ascribed thereto in Section 20.1;

**“Proposal”** means the technical and financial proposal submitted by the Sponsors under the Request for Proposal for the Project;

**“Proposal Submission Deadline”** means the date for submission of the Proposal as specified under the Request for Proposal;

**“Prudent Utility Practices”** means those practices, methods and procedures conforming to safety and legal requirements which are attained by exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the same or a similar type of undertaking or activity under the same or

similar circumstances and conditions to those pertaining in the Country, and satisfying the health, safety and environmental standards of reputable international companies. Prudent Utility Practices are not limited to optimum practices, methods or acts to the exclusion of all others, but rather, they are a spectrum of possible practices, methods and acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability and safety applicable with reference to infrastructure projects;

**“P3A”** means the Public Private Partnership Authority of Pakistan.

**“Quarterly Progress Report”** has the meaning ascribed thereto in Section 8.13.2;

**“Receiving Party”** has the meaning ascribed thereto in Section 1.9.1;

**“Recitals”** means the recitals of this Agreement;

**“Relief Events”** has the meaning ascribed thereto in Section 23.1;

**“Relief Order”** means a written order issued by the Independent Engineer to the Developer and FGCC pursuant to Section 16 (*Relief Order and Events*) authorising an extension of Time for Completion;

**“Relief Order Proposal”** has the meaning ascribed thereto in Section 23.5.1;

**“Relief Order Request”** has the meaning given thereto in Section 23.4.1;

**“Rent”** means the rental payments collected by the Developer from the Tenants in accordance with Section 14.2 (*Rental Payments*) in respect of the units of the FGCC Properties sub-licensed by the Developer pursuant to the Sub-License Agreement;

**“Rental Collection Account”** means the account established by the Developer in accordance with this Agreement and the Escrow Agreement for the purposes of depositing the Revenues collected by the Developer during the O&M Period;

**“Request of Proposal” or “RFP”** means the request for proposal dated [•], issued by FGCC in respect of the Project;

**“Revenues”** shall mean the Rent, the O&M Fee and any other charges or fees collected by the Developer pursuant to this Agreement;

**“Scheduled Project Completion Date”** means the date falling [•] from the Commencement Date, as may be extended due to a Relief Event and/or Force Majeure Event;

**“Specific Term Sheet Parameters”** has the meaning ascribed thereto in Section 29.2.1

**“Schedules”** mean the schedules under this Agreement;

**“Scope of Work”** mean the scope of work attached herewith as Schedule 2 (*Scope of Work and Technical Specifications*);

**“Section(s)”** means the clauses or sections of this Agreement;

**“Signing Date”** means the date of execution of this Agreement;

**“Site Regulations”** have the meaning ascribed thereto in Section 8.15.2;

**“Sponsor(s)”** mean [●]<sup>23</sup>

**“Sponsor Base Equity”** means the amount not less than [●] of the Base Funding Amount, submitted by the Sponsor in its Proposal, as set out in the Base Case Financial Model and to be funded in accordance with this Agreement and Equity and VGF Funding & Utilization Agreement;

**“Sub-License Agreement”** shall have the meaning ascribed thereto in Section 14.1.1;

**“Sub-Contract(s)”** means the sub-contract(s) granted by the Developer to the Subcontractor(s) pursuant to the Sub-Contract Agreement(s) for the performance of the Works, and shall include the sub-sub-contracts granted by the Subcontractors to sub-sub-contractors for the performance of the Works;

**“Sub-Contract Agreement”** means the legally binding agreement(s) between the Developer and the Subcontractor(s) for the performance of Works and shall include the legally binding agreement(s) between the Subcontractors and the sub-sub-contractor(s);

**“Subcontractor(s)”** means any subcontractor or any person engaged by the Developer to whom a part of the Works has been subcontracted in accordance with Section 8.5 (*Sub-Contract and Subcontractors*);

**“Tax”** or **“Taxes”** any tax, income tax, corporate tax, including sales tax, stamp duty, customs and import duties, levy, impost, octroi, duty imposed and /or levied of any nature whatsoever, whether by the GOP, the GOPB, or any local authorities, and wherever and whenever charged, levied or imposed, together with any interest and penalties in relation thereto;

**“Technical Specifications”** means the description of the scope, specification, standard and design criteria of the Works as set out in Schedule 2 (*Scope of Work and Technical Specifications*) hereto;

**“Term”** has the meaning ascribed thereto in Section 2.2;

**“Terminate(ion)”** means the termination of this Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;

**“Termination Date”** means, as the context may require, the FGCC Termination Date and/or Developer Termination Date;

**“Termination Dividend Amount”** means the aggregate return on equity for shares for each of the three (3) accounting years of the Developer falling immediately after the Termination Date, the same being an amount equal to the aggregate of Termination Equity ROE applied to the equity for each of the three (3) accounting years falling after the Termination Date; provided however, that in case the time period between the Termination Date and Expiry Date is less than three (3) accounting years, the Termination Dividend Amount shall be the aggregate of

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<sup>23</sup> To be updated based on the composition of the Most Advantageous Bidder

Termination Equity ROE applied to the equity for each of the accounting years falling after the Termination Date;

**“Termination Equity”** means, as of the Termination Date occurring due to Termination, the aggregate of the Invested Equity reduced on a straight-line basis from the Scheduled Project Completion Date through the Term of this Agreement to [to be finalized prior to bidding] of the Invested Equity;

**Termination Equity ROE”** means the post-tax return on equity, the same being twelve percent (12%), on the equity;

**“Termination Notice by Developer”** has the meaning ascribed thereto in Section 24.2.6;

**“Termination Notice by FGCC”** has the meaning ascribed thereto in Section 24.1.6;

**“Termination Notice”** means, as the context may require, the termination Notice by FGCC and/or termination Notice by Developer;

**“Time for Completion”** means the time permitted herein for achieving/completing the Construction Works and O&M Works (as applicable);

**“Viability Gap Financing Agreement”** means the agreement between the FGCC and the GOP for the purposes of providing the GOP Funding Amount by the GOP to the FGCC;

**“Works”** means works to be performed by the Developer on the Project Site for the Project during the Term as per the Scope of Work including: (i) the Construction Works during the Construction Period; and (ii) O&M Works during the O&M Period, including design, supply, construction, installation, operation and maintenance of the Project Site collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project and any other permanent, temporary or urgent works required hereunder;

**“Tenants”** means, including without limitation, any Person to whom unit(s) of the FGCC Properties has been sub-licensed pursuant to the execution of a Sub-License Agreement and who pays Rent in respect thereof;

## 1.2 **INTERPRETATION**

1.2.1 Words importing persons or parties shall include firms and corporations and any organisation having legal capacity.

1.2.2 Words importing the singular also include the plural and vice versa where the context requires.

1.2.3 Words importing one gender also include other genders.

1.2.4 The words **“herein”**, **“hereof”**, **“hereto”** and **“hereunder”** and words of similar import when used, with the required linguistic and/or grammatical derivation, in this Agreement, refer to the Agreement as a whole and not to any particular provision thereof;

- 1.2.5 The words “include”, “includes” or “including” shall mean “including, but not limited to” and “include, but not limited to”.
- 1.2.6 Reference to any contract/agreement means contract/agreement as amended and/or restated from time to time.
- 1.2.7 References to Preamble, Recitals, Sections or Schedules are, unless the context otherwise requires or unless indicated to the contrary, references to Preamble, Recitals, Sections or Schedules to this Agreement.
- 1.2.8 Preamble, Recitals or Schedules form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement.
- 1.2.9 A reference to any legislation or legislative provision includes any statutory modification, amendment, or re-enactment of or legislative provision substituted for, and any subordinate legislation/rules/regulations under that legislation or legislative provision.
- 1.2.10 Where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning.
- 1.2.11 A reference to any party to this Agreement or any other document or arrangement includes that party’s executors, administrators, successors, permitted substitutes, permitted transferees and permitted assigns;
- 1.2.12 A reference to any agreement, deed, instrument or document shall be construed as a reference to that agreement, deed, instrument or document (and, where applicable, any of its provisions) as amended, varied, supplemented, novated, restated or replaced from time to time;
- 1.2.13 The headings and sub-headings in this Agreement are inserted merely for convenience of facilitating reference and shall be ignored in the interpretation and construction of any of the provisions contained herein.
- 1.2.14 The Recitals to this Agreement shall have effect and be construed as an integral part of this Agreement. In the event of any conflict or discrepancy between any of the provisions of this Agreement and the Recitals, such conflict or discrepancy shall, for the purposes of the interpretation and enforcement of this Agreement, be resolved by giving the provisions contained in the Sections of this Agreement priority and precedence over the provisions contained in the Recitals to this Agreement.

1.3 **LAW AND LANGUAGE**

- 1.3.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Country. The language for day-to-day communications shall be English. If there are versions of any part of this Agreement that are written in more than one language, the English language version shall prevail.

1.4 **PRIORITY OF DOCUMENTS**

- 1.4.1 The following documents forming this Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the FGCC’s

Representative shall issue any necessary clarification or instruction to the Developer, and the priority of the documents shall be as follows:

- (a) this Agreement;
- (b) the Schedules; and
- (c) the Request for Proposal.

1.4.2 Subject to the provisions of Section 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Sections of this Agreement, the provisions of a Section more relevant to the issue under consideration shall prevail over those in other Section;
- (b) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
- (c) between the written description on the Drawings and the Technical Specifications, the latter shall prevail;
- (d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

## 1.5 **DOCUMENTS ON PROJECT SITE**

1.5.1 The Developer shall keep on the Project Site one complete set of the documents forming this Agreement, the Developer's Documents and any other communications given or issued under the Agreement. FGCC and FGCC's Representative shall have the right to access such Developer's Documents at all times.

1.5.2 If FGCC becomes aware of an error or defect of a technical nature in any of the Developer's Documents which was prepared for use in executing the Works, FGCC shall promptly give Notice to the Developer of such an error or defect but in any event within five (5) Business Days of becoming aware of such error or defect and that error or defect shall be remedied by mutual agreement of the Parties as soon as practicable.

## 1.6 **COMMUNICATIONS**

1.6.1 Wherever provision is made for the giving or issue of any Notice, instruction, consent, approval, certificate or determination by any person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed and shall be deemed to have been received and be effective (i) upon receipt by the Party to which the Notice is given, or (ii) five (5) Days, following mailing of such Notice, whichever occurs first.

1.6.2 Wherever provision is made for a communication to be written, or in writing, this means any hand-written, type-written or printed communication, including electronic mail.

- 1.6.3 All certificates, Notices or written orders to be given to the Developer by FGCC, and all Notices to be given to FGCC or FGCC' Representative by the Developer, shall either be delivered by hand against written acknowledgment of receipt or be sent by mail, fax or e-mail.

The addresses for the receipt of such communications shall be as follows:

**FGCC**

Attention: [Insert relevant officer's name] ([Insert relevant officer's designation])  
Address: [ • ]  
Phone: [ • ]  
Website: [www.fgcc.pk](http://www.fgcc.pk)  
E-mail: [info@fgcc.pk](mailto:info@fgcc.pk), [Insert relevant officer's email address]

**DEVELOPER**

Attention: [ • ]  
Address: [ • ]  
Phone: [ • ]  
E-mail: [ • ]

**1.7 ACCESS TO DEVELOPER'S DOCUMENTS**

- 1.7.1 The Developer's Documents shall be in the custody and care of the Developer. FGCC and FGCC's Representative shall have access to all the Developer's Documents and the Developer shall provide such number of copies of the same for FGCC's use as specified in the Schedule 2 (*Scope of Work and Technical Specifications*).

**1.8 FGCC'S USE OF THE DEVELOPER'S DOCUMENTS**

- 1.8.1 Copyright and other intellectual property rights in the Developer's Documents and other documents made by or on behalf of the Developer shall (as between the Parties) shall remain the property of the Developer. On Signing Date, the Developer shall be deemed to give to FGCC a non-terminable, transferable, non-exclusive, royalty-free license to copy, use and communicate the Developer's Documents (including making and using modifications of them) for the purposes of completing, operating, maintaining, altering, adjusting and repairing the Works for the actual or intended working life (whichever is longer) of the relevant part of the Works. In the case of Developer's Documents that are in the form of computer programmes or other software, the Developer permits their use on any computer on Project Site and other places as envisaged by the Agreement, including the use of any computers supplied by the Developer. The Developer's Documents shall not, without the Developer's consent, be used, copied or communicated to a third party by FGCC for purposes other than those set forth in this Section 1.8.1.

**1.9 CONFIDENTIAL DETAILS**

- 1.9.1 All documents, plans, Drawings, specifications, and the subject matter contained therein and any information provided by a Party hereunder (the "**Disclosing Party**") to the other Party hereunder (the "**Receiving Party**") in connection with the performance of this Agreement which is oral or in writing or communicated by any other means and is intimated by the

Disclosing Party as being proprietary, secret, or confidential, obtaining of any Applicable Permits and for the Parties to comply with any of their respective obligations under this Agreement (hereinafter "**Confidential Information**"). Confidential Information shall be held confidential by the Receiving Party and shall not be used or disclosed by the Receiving Party for any purposes other than those for which they have been prepared or supplied, unless otherwise permitted with the prior written consent of the Disclosing Party. As a condition to receiving such Confidential Information, the Receiving Party agrees to hold all such Confidential Information confidential and not to use, discuss or disclose such Confidential Information with or to third parties for a period of five [•] years following the date of disclosure by the Disclosing Party, without the prior written consent of the Disclosing Party. For purposes of this Section, the entire contents of this Agreement shall be Confidential Information.

- 1.9.2 This Section 1.9 shall not prevent the Receiving Party from disclosing such Confidential Information of the Disclosing Party pursuant to: (a) a subpoena issued by a court of competent jurisdiction, (b) other requirements of law or judicial or administrative order, or (c) activities related to the development, construction and financing of the Works; provided, however, that prior to making such a disclosure pursuant to (a) and (b), the Receiving Party will provide the Disclosing Party with timely advance written Notice of its intent to so disclose, to the extent reasonably practical, and prior to making such a disclosure pursuant to (c), the Receiving Party will obtain from those who may be receiving the Confidential Information a confidentiality agreement consistent with this Section 1.9 (*Confidential Details*).
- 1.9.3 The Receiving Party shall have no obligation hereunder with respect to any portion of the Confidential Information received by it from the Disclosing Party that: (a) has been made public, unless such Confidential Information was made public by or with the assistance of the Receiving Party in violation of this Agreement; (b) becomes part of the public domain by publication or otherwise, after disclosure to the Receiving Party, unless such Confidential Information was made public by or with assistance of the Receiving Party in violation of this Agreement; (c) shall otherwise lawfully become available to the Receiving Party on a non-confidential basis from a third party who has not received the Confidential Information directly or indirectly from the Disclosing Party; (d) was or is independently developed by the Receiving Party, and such fact can be proven by reasonable written documentation, and such Confidential Information was not acquired directly or indirectly from the Disclosing Party; or (e) was already rightfully in the Receiving Party's possession at the time it was disclosed to the Receiving Party.
- 1.9.4 As far as possible and unless needed for the proper execution of their responsibilities under the Agreement, the Parties shall keep confidential the terms of this Agreement. In addition, unless otherwise required by Applicable Laws, the Developer shall not, without the prior written consent of FGCC, issue any public statement, press release, publicity hand out, photograph or other material relating to or disclosing in any way whatsoever to any Person other than a Subcontractor or a prospective Subcontractor the award to the Developer of this Agreement or the scope, extent or value of the Works, or any details as to materials and other equipment to be used or installed by the Developer, or anything whatsoever relating to the Works or any part thereof. Without in any way restricting the generality of the foregoing, the Developer shall not invite or permit any reporter, photographer, television camera crew, commercial radio broadcaster or any other such person to enter upon the Project Site without the express prior written consent of FGCC.

1.10 **COST FOR DOCUMENTS**

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

1.11 **COMPLIANCE WITH STATUTES, REGULATIONS AND APPLICABLE LAWS**

1.11.1 The Developer shall, in all matters arising in the performance of this Agreement, comply with the provisions of Applicable Laws and Applicable Permits. Unless otherwise stated in this Agreement, the Developer shall give all Notices, pay all Taxes, duties and fees and obtain all Applicable Permits, as required by the Applicable Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Developer shall indemnify and hold FGCC harmless against and from the consequences of any failure on its part to do so. The Developer shall obtain all Applicable Permits within a reasonable time, taking into account the time for the completion of the Works. Notwithstanding the generality of the foregoing and the approval of any Subcontractors under this Agreement by FGCC, the Developer shall ensure that in the event any Imported Materials are required for undertaking the Project, such Imported Material are imported from such sources which are not banned under the Import and Export (Control) Act 1950, including any applicable import policy orders issued thereunder.

1.11.2 The Developer shall indemnify FGCC from and against all reasonable losses, damages, expenses (including legal fees and expenses), fines, penalties, claims and proceedings (of whatsoever nature) to the extent that the same arises from any breach of the Developer's obligations under Section 1 (*The Contract*).

## **2. GRANT AND TERM**

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### **2.1 GRANT OF DEVELOPMENT RIGHT**

- 2.1.1 In consideration of the Developer's obligations, contained under this Agreement and relying on the Developer's representations, warranties and covenants contained herein, the FGCC, subject to the terms of this Agreement, hereby grants to the Developer the Concession to develop, operate and maintain the Project at the Project Site for the duration of the Term (the "**Concession**") unless otherwise extended by mutual agreement between the Parties or terminated earlier than the Expiry Date in accordance with the provisions of this Agreement.
- 2.1.2 The Developer may, subject to the terms of this Agreement, enter into such agreements or appoint such Subcontractors to assist the Developer in fulfilling its obligations under this Agreement.
- 2.1.3 The Developer shall have the sole and absolute right to collect the Rent and O&M Fee from the Tenants and all Revenues generated from the Project shall be utilised in accordance with the terms of this Agreement.

### **2.2 TERM**

This Agreement shall become effective on the Signing Date, and shall remain in full force and effect until the earlier of: (i) Expiry Date unless it is extended by mutual agreement between the Parties; or (ii) terminated earlier than the Expiry Date in accordance with this Agreement (the "**Term**").

### **3. CONDITIONS PRECEDENT OF THE DEVELOPER AND FGCC**

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#### **3.1 CONDITIONS PRECEDENT**

- 3.1.1 Unless otherwise provided under this Agreement, the obligations of the Parties set out herein shall be subject to the satisfaction of the following conditions precedent, within the CP Closing Date unless expressly written otherwise, by the Developer (the “**Developer Conditions Precedent**”) or waiver/deferral thereof:
- (a) The Developer has provided copies of its Corporate Documents to FGCC (with copies to Independent Engineer and Independent Auditor) duly certified as true copies by the company secretary or director of the Developer approving the execution, delivery and performance of this Agreement and any and all other documents/agreement required to be executed pursuant to this Agreement;
  - (b) The Developer has submitted the Construction Performance Security to FGCC that remains effective and valid till the Construction Performance Security Expiry Date;
  - (c) The Developer has executed the Project Site License Agreement with the FGCC for license of the Project Site to the Developer in accordance with Section 6 (*Project Site*);
  - (d) The Developer has entered into the Independent Engineer Contract, within [•] Days of the Signing Date, for the appointment of the Independent Engineer with the counterparties to such contract;
  - (e) The Developer has entered into the Independent Auditor Contract, within [•] Days of the Signing Date, for the appointment of the Independent Auditor with the counterparties to such contract;
  - (f) The Developer has entered into the Escrow Agreement, for the appointment of the Escrow Agent;
  - (g) The Developer provided evidence to FGCC (with copies delivered to the Independent Engineer and the Independent Auditor) that the Project Accounts have been set up;
  - (h) The Developer has entered into the Equity and VGF Funding & Utilization Agreement;
  - (i) The Sponsor has funded the Developer Equity Funding Account with the Sponsor Base Equity Amount set up in accordance with this Agreement and the Equity and VGF Funding & Utilization Agreement;
  - (j) The Developer has entered into the Viability Gap Financing Agreement;
  - (k) The Developer has obtained all the Applicable Permits required prior to the commencement of the Project;
  - (l) The Developer has procured a legal opinion from its legal counsel pertaining to its authority to enter into (i) this Agreement; (ii) the Project Site License Agreement (iii) the Independent Engineer Contract; (iv) the Independent Auditor Contract; (v) Escrow Agreement; and (vi) Equity and VGF Funding & Utilization Agreement; and any other

agreement as required under this Agreement and the enforceability of the foregoing agreements within [•] Days of the Signing Date;

- (m) the Developer has prepared an Environmental Impact Assessment (EIA) report in accordance with the Applicable Laws and the same stands approved by the Punjab Environmental Protection Agency and has submitted a copy of each of the same (the report and its approval) to the FGCC (with a copy delivered to the Independent Engineer and the Independent Auditor);
- (n) the Developer has provided to FGCC, the Project Schedule duly approved by the Independent Engineer and Independent Auditor (as applicable), which shall be prepared by the Developer in accordance with the requirements set forth in in this Agreement and the Technical Specifications; and
- (o) the Developer has provided to the FGCC, the Independent Auditor and the Independent Engineer:
  - (i) a certified true copy of the duly executed Financing Term Sheet that is not objected to or deemed not to be objected to by the FGCC and the Independent Auditor in accordance with Section 32.2 (*Financing Term Sheet & Financing Amendment Term Sheet*);
  - (ii) certified true copies of the executed Financing Documents;
  - (iii) the Financial Close Achievement Notice, as issued by the Financiers (or an agent of the same);

3.1.2 Unless otherwise provided under this Agreement, the obligations of the Developer and FGCC set out herein shall be subject to the satisfaction of the following conditions precedent, within the CP Closing Date unless expressly written otherwise, by FGCC (the “**FGCC Conditions Precedent**”) or waiver/deferral thereof:

- (a) FGCC has executed the Project Site License Agreement with the Developer for license of the Project Site to the Developer in accordance with Section 6 (*Project Site*);
- (b) FGCC has granted access and delivered vacant possession of the Project Site through the execution of the Project Site License Agreement with the Developer for the purposes of undertaking the Works;
- (c) FGCC has issued and delivered to the Developer/Financiers the MRG Security Instrument equivalent to the MRG Security Amount, for the purposes of guaranteeing the first Minimum Revenue Guarantee Amounts required for the first Operational Year of the MRG Period.
- (d) FGCC has entered into the Independent Engineer Contract, within [•] Days of the Signing Date for the appointment of the Independent Engineer with the other counterparties to such contract;
- (e) FGCC has entered into the Independent Auditor Contract, within [•] Days of the Signing Date for the appointment of the Independent Auditor with the other

counterparties to such contract;

- (f) The FGCC has entered into the Escrow Agreement for the appointment of the Escrow Agent;
  - (g) The FGCC has established and provided evidence to the Developer (with copies delivered to the Independent Engineer and the Independent Auditor) that the FGCC Designated Account has been set up;
  - (h) The FGCC has entered into the Equity and VGF Funding & Utilization Agreement; and
  - (i) The FGCC has entered into the Viability Gap Financing Agreement. .
- 3.1.3 The Developer Conditions Precedent and the FGCC Conditions Precedent shall be complied with no later than [•] from the Signing Date, as may be extended by FGCC or Developer at its discretion (the “**CP Closing Date**”). Each of the Developer and FGCC shall promptly inform the other along with the Independent Engineer and the Independent Auditor in writing when the Conditions Precedent for which it is responsible have been satisfied. Upon satisfaction of the Conditions Precedents set out above, the Independent Engineer and the Independent Auditor shall promptly issue a CP Satisfaction Certificate to the Developer and FGCC.
- 3.1.4 Any of the Developer Conditions Precedent set forth in Section 3.1.1 above may be waived fully or partially by FGCC at any time in its sole discretion or FGCC may grant additional time for compliance with these conditions and the Developer shall be bound to ensure compliance within such additional time as may be specified by FGCC.
- 3.1.5 Any of the FGCC Conditions Precedent set forth in Section 3.1.2 above may be waived fully or partially by the Developer at any time in its sole discretion or the Developer may grant additional time for compliance with these conditions and FGCC shall be bound to ensure compliance within such additional time as may be specified by the Developer.
- 3.1.6 In the event the Developer Conditions Precedent are not satisfied within the CP Closing Date including any extensions thereof given under Section 3.1.4 above, this Agreement may be terminated by FGCC at its sole discretion. In the event FGCC exercises its right to terminate this Agreement, it shall issue a Notice to terminate this Agreement (“**Earlier Notice to Terminate by FGCC**”) to the Developer with a copy to the Independent Engineer (if applicable), Independent Auditor (if applicable). This Agreement shall stand terminated in accordance with the Earlier Notice to Terminate by FGCC. Upon termination of this Agreement, the Construction Performance Security or the Bid Security, as the case may be, shall be encashed by FGCC to its full value. Except as may be contemplated in the Equity and VGF Funding & Utilization Agreement and except for the encashment of the Construction Performance Security, in terms of this Section 3.1.6, each Party hereto shall have no claims against the other for costs, damages, compensation or otherwise for such termination of this Agreement.
- 3.1.7 In the event the FGCC Conditions Precedent listed in Section 3.1.2 above are not complied with by FGCC within the CP Closing Date including any extensions thereof under Section 3.1.5 above, this Agreement may be terminated by the Developer at its sole discretion. In the event the Developer exercises its right to terminate this Agreement, it shall do so by issuing a Notice to terminate (“**Earlier Notice to Terminate by Developer**”) this Agreement to FGCC with a copy to the Independent Engineer (if applicable), Independent Auditor (if applicable). This

Agreement shall stand terminated on the date provided in the Earlier Notice to Terminate by Developer. Upon termination of this Agreement, the Construction Performance Security or the Bid Security, as the case may be, shall be returned to the Developer, without any encashment, demands or claims, provided further in case the Developer has incurred any cost for obtaining the EIA approval and such works have been jointly approved by the Independent Auditor and Independent Engineer, the FGCC shall make payment for the actual cost incurred which under no circumstances shall exceed the amount of the Construction Performance Security . Except as otherwise contemplated in this Agreement and the Equity and VGF Funding & Utilization Agreement, each Party shall have no claims against the other for costs, damages, compensation or otherwise for such termination of this Agreement.

## **4. INDEPENDENT ENGINEER**

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### **4.1 SELECTION**

- 4.1.1 The Developer and FGCC shall appoint an Independent Engineer to oversee and supervise the Works for the Project including reviewing and approving the designs, specifications and documents submitted by the Developer to FGCC, the observation of the progress of the Works, the review of the progress reports and the issuance of certificates under this Agreement.
- 4.1.2 Within five (05) Days from the Signing Date, the Developer shall provide FGCC with a list of three (03) reputable firms of engineers for appointment of the Independent Engineer (the “**IE List**”).
- 4.1.3 Within ten 10 Days of the receipt by FGCC of the IE List, FGCC may select a reputed firm of engineers from the IE List and FGCC and the Developer shall appoint such firm as the Independent Engineer in terms of the Independent Engineer Contract.
- 4.1.4 In the event the firms of engineers identified by the Developer in the IE List are not acceptable to FGCC, the Developer and FGCC shall appoint such firm as the Independent Engineer as is mutually acceptable to FGCC and the Developer. Such appointment shall be in terms of the Independent Engineer Contract.
- 4.1.5 The appointment of the Independent Engineer shall be for an initial period beginning from the signing of the Independent Engineer Contract and ending in accordance with the terms of the Independent Engineer Contract (the “**Independent Engineer Term**”).
- 4.1.6 The appointment of the Independent Engineer may be terminated upon the occurrence of any of the following:
- (a) the Independent Engineer is (i) adjudged insolvent and/or bankrupt; or (ii) winding up proceedings are filed against or by the Independent Engineer; or (iii) any action for malpractice and/or misadministration is filed against the Independent Engineer in a court of law;
  - (b) under such circumstance as expressly set out in the Independent Engineer Contract; or
  - (c) by the Developer and FGCC with mutual consent including non-performance of the Independent Engineer under the Independent Engineer Contract.
- 4.1.7 Upon the occurrence of any of the events listed in Section 4.1.6, the Developer and FGCC shall have the right to terminate the Independent Engineer Contract in accordance with the terms thereof or in the event of expiry of the Independent Engineer Term, the Developer and FGCC shall appoint a new Independent Engineer in accordance with the Section 4.1.8 below.
- 4.1.8 The Developer and FGCC shall replace the appointed Independent Engineer with another consulting engineering firm or body corporate selected by the FGCC from the IE List provided by the Developer pursuant to Section 4.1.2 above; provided, however, that the termination and/or replacement of the Independent Engineer shall not have effect till such time as the

new Independent Engineer has been appointed. In the event FGCC objects to the appointment of any firm of engineers named in the IE List, then the Developer shall provide FGCC with a new list of three (03) reputable firms of engineers for appointment of the new Independent Engineer (the “**New IE List**”). Within ten (10) Days of receipt by the FGCC of the New IE List, FGCC shall either (a) select a reputable firm of engineer from the New IE List and shall cause the Developer to appoint such firm as the Independent Engineer; or reject the appointment of any of the firms provided in the New IE List, in which case, the Developer and FGCC shall appoint such firm of engineers as the new Independent Engineer as is mutually agreed by the Developer and FGCC. The provisions of this Section 4.1 (*Independent Engineer*) shall apply to any new Independent Engineer (including appointment and replacement of the same) appointed in accordance with the terms herein.

- 4.1.9 The term of appointment of the new Independent Engineer shall be the unexpired period of the Independent Engineer Appointment Term or such other term as may be mutually agreed between the Developer and FGCC.
- 4.1.10 The Developer shall ensure that all provisions of this Agreement pertaining to the Independent Engineer and its responsibilities in respect of the matters set out herein, including but not limited to Schedule 3 (*Scope of Work of the Independent Engineer*) shall be duly incorporated in the Independent Engineer Contract.
- 4.1.11 The Developer and FGCC agree that any advice, decision, instruction, direction and/or award of the Independent Engineer on any matters which require any advice, decision, instruction, direction and/or award by the Independent Engineer under this Agreement shall be binding on the Developer and FGCC unless mutually agreed otherwise by the Developer and FGCC.
- 4.1.12 The Developer shall be responsible for the payment of the fees and expenses payable to the Independent Engineer pursuant to the Independent Engineer Contract. The Developer shall make all payments required to be made to the Independent Engineer in a diligent and timely manner in accordance with the Independent Engineer Contract.
- 4.1.13 The Developer and FGCC shall as part of the Independent Engineer Contract require the Independent Engineer to designate and Notify to FGCC and the Developer of the authorized representative of the Independent Engineer. Any communication, advice, decision, instruction, direction and/or award of the Independent Engineer shall only be valid and effective if signed by such authorized representative on behalf of the Independent Engineer; provided, that the Independent Engineer may, by Notice in writing to the Developer and FGCC, substitute the authorized representative.
- 4.1.14 The Developer agrees to ensure (by way of including the necessary provisions in the agreement to be executed with the Independent Engineer or otherwise) that the Independent Engineer, while performing its functions (under the Agreement and the agreement to be executed with the Independent Engineer) in accordance with good industry practice and in an independent manner, shall endeavour to co-ordinate and co-operate with the Independent Auditor for the benefit and long term success and operation of the Project.

#### 4.2 **INDEPENDENT ENGINEER PAYMENT ACCOUNT**

- 4.2.1 The Developer shall establish the Independent Engineer Payment Account within [•] Days of the signing of the Independent Engineer Contract and maintain the Independent Engineer Payment

Account until this Agreement remains in force.

4.2.2 The Developer shall issue irrevocable standing instructions to the bank (in form and substance agreed between the Parties) in accordance with the Independent Engineer Contract.

4.2.3 The standing instructions issued by the Developer shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until this Agreement remains in force (or such other date as is mutually agreed between the Parties), and no withdrawal from the Independent Engineer Payment Account shall be made by the Developer. The standing instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.

4.3 **INDEPENDENT ENGINEER REMUNERATION**

4.3.1 The payment of the fees and expenses payable to the Independent Engineer (the “**Independent Engineer Payments**”) shall be paid pursuant to the Independent Engineer Contract, the Escrow Agreement and this Agreement, notwithstanding that the Independent Engineer shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Engineer Contract.

4.3.2 The Developer undertakes to affect the Independent Engineer Payments in a diligent and timely manner and in accordance with the Independent Auditor Contract and this Agreement.

## 5. INDEPENDENT AUDITOR

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### 5.1 SELECTION

- 5.1.1 Within five (05) Days from the Signing Date, FGCC and the Developer shall select one of the Approved Accounting Firms to act as an Independent Auditor under this Agreement.
- 5.1.2 The appointment of the Independent Auditor shall be for an initial period beginning from the signing of the Independent Auditor Contract and ending in accordance with the terms of the Independent Auditor Contract (the “**Independent Auditor Term**”).
- 5.1.3 The appointment of the Independent Auditor may be terminated upon the occurrence of any of the following:
- (a) the Independent Auditor is (i) adjudged insolvent and/or bankrupt; or (ii) winding up proceedings are filed against or by the Independent Auditor; or (iii) any action for malpractice and/or misadministration is filed against the Independent Auditor in a court of law; or
  - (b) under such circumstance as expressly set out in the Independent Auditor Contract; or
  - (c) by the Developer and FGCC with mutual agreement including for non-performance of the Independent Auditor under the Independent Auditor Agreement.
- 5.1.4 Upon the occurrence of any of the events listed in Section 5.1.3, the Developer and FGCC shall have the right to terminate the Independent Auditor Contract in accordance with the terms of the same or in the event of expiry of the Independent Auditor Term, the Developer and FGCC shall appoint a new Independent Auditor in accordance with the Section 5.1.5 below.
- 5.1.5 Upon the occurrence of any of the events listed in Section 5.1.3, the Developer and FGCC shall mutually replace the appointed Independent Auditor with another Approved Accounting Firm; provided, however, that the termination and/or replacement of the Independent Auditor shall not have effect till such time as the new Independent Auditor has been appointed.
- 5.1.6 The Developer shall ensure that all provisions of this Agreement pertaining to the Independent Auditor and its responsibilities in respect of the matters set out herein, including but not limited to Schedule 3 (*Scope of Work of the Independent Auditor*) are duly incorporated in the Independent Auditor Contract.
- 5.1.7 The Developer and FGCC agree that any advice, decision, instruction, direction and/or award of the Independent Auditor on any matters which require any advice, decision, instruction, direction and/or award by the Independent Auditor under this Agreement shall be binding on the Developer and FGCC unless mutually agreed otherwise by the Developer and FGCC.
- 5.1.8 The Developer shall be responsible for the payment of the fees and expenses payable to the Independent Auditor pursuant to the Independent Auditor Contract. The Developer shall make all payments required to be made to the Independent Auditor in a diligent and timely manner in accordance with the Independent Auditor Contract with the prior consent of FGCC.

The Developer and FGCC shall as part of the Independent Auditor Contract require the Independent Auditor to designate and Notify to FGCC and the Developer of the authorized representative of the Independent Auditor. Any communication, advice, decision, instruction, direction and/or award of the Independent Auditor shall only be valid and effective if signed by such authorized representative on behalf of the Independent Auditor; provided, that the Independent Auditor may, by Notice in writing to the Developer and FGCC, substitute the authorized representative.

- 5.1.9 The Developer agrees to ensure (by way of including the necessary provisions in the agreement to be executed with the Independent Auditor or otherwise) that the Independent Auditor, while performing its functions (under the Agreement and the agreement to be executed with the Independent Auditor) in accordance with good industry practice and in an independent manner, shall endeavour to co-ordinate and co-operate with the Independent Engineer for the benefit and long term success and operation of the Project.

## 5.2 **INDEPENDENT AUDITOR PAYMENT ACCOUNT**

- 5.2.1 The Developer shall establish the Independent Auditor Payment Account within [•] Days of the signing of the Independent Auditor Contract and maintain the Independent Auditor Payment Account until this Agreement remains in force.
- 5.2.2 The Developer shall issue irrevocable standing instructions to the bank (in form and substance agreed between the Parties) in accordance with the Independent Auditor Contract.
- 5.2.3 The standing instructions issued by the Developer shall not be unilaterally suspended, amended and/or revoked by either Party and shall remain effective, in each case, until this Agreement remains in force (or such other date as is mutually agreed between the Parties), and no withdrawal from the Independent Auditor Payment Account shall be made by the Developer. The standing instructions may be suspended, amended and/or revoked with the mutual consent of the Parties.

## 5.3 **INDEPENDENT AUDITOR REMUNERATION**

- 5.3.1 The payment of the fees and expenses payable to the Independent Auditor (the “**Independent Auditor Payments**”) shall be paid pursuant to the Independent Auditor Contract, the Escrow Agreement and this Agreement, notwithstanding that the Independent Auditor shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Auditor Contract.
- 5.3.2 The Developer undertakes to affect the Independent Auditor Payments in a diligent and timely manner and in accordance with the Independent Auditor Contract and this Agreement.

## 6. PROJECT SITE

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### 6.1 PROJECT SITE LICENSE AGREEMENT

- 6.1.1 The Parties hereby agree that the FGCC shall grant access and deliver the vacant possession of the Project Site, by way of a license, free from any and all Encumbrances. The FGCC hereby represents and warrants that it has the legal title to the Project Site. The Developer hereby acknowledges and agrees that notwithstanding anything contained in this Agreement, the Developer shall not have any ownership rights in the Project Site and the FGCC Properties and shall exclusively utilize the license provided by the FGCC for undertaking the Project strictly in accordance with the terms and conditions of this Agreement.
- 6.1.2 The Developer shall be granted license of the Project Site for the performance of the Works at all times during the Term, in accordance with this Agreement and the Project Site License Agreement.
- 6.1.3 As a condition precedent to the Commencement Date, the Developer and FGCC shall enter into a Project Site License Agreement which shall provide for the access to and vacant possession by FGCC of the Project Site to the Developer. The Project Site License Agreement shall be in the form and manner provided in Schedule 10 (*Project Site License Agreement*).
- 6.1.4 The Project Site License Agreement shall take effect on the date of its execution and shall remain valid, enforceable, and binding upon the Parties for the term specified herein, unless terminated earlier upon the termination of this Agreement or of the Project Site License Agreement, whichever occurs first. Any extension of the Term shall also extend the license and the Developer and FGCC shall enter into such addendums, extensions or modifications of the Project Site License Agreement as necessary to give effect to such extension.
- 6.1.5 All present and future federal, provincial, municipal, city district government, Taxes, duties, levies or other impositions (as applicable) arising out of and as a result of the Project Site License Agreement shall be paid by the Developer. Any payments made by FGCC on behalf of the Developer shall be reimbursed by the Developer to FGCC within [•] Days of such payment by FGCC.
- 6.1.6 The Developer hereby indemnifies FGCC from all liabilities, claims, damages, costs, penalties, fines, expenses, fees (including attorney's fees) and charges of any nature associated with any non-compliance by the Developer of its obligations contained in this Section 8.1 (*General Obligations*).
- 6.1.7 The Developer hereby undertakes that it shall not without prior written consent of the FGCC use the Project Site for any purpose other than:
- (a) For the purposes of the Project and purposes incidental thereto;
  - (b) as permitted under this Agreement;
  - (c) as may otherwise be approved by the FGCC in writing.

## **7. OBLIGATIONS OF FGCC**

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### **7.1 GENERAL OBLIGATIONS**

7.1.1 FGCC hereby undertakes that it shall at its own cost and expense:

- (a) Grant license of the Project Site to the Developer through the Project Site License Agreement in accordance with the timelines stipulated under this Agreement and the Project Site License Agreement and deliver the vacant possession of the Project Site to the Developer without any Encumbrance;
- (b) Provide reasonable support to the Developer during the Term to obtain Applicable Permits required for the purpose of carrying out its obligations under this Agreement as detailed in Section 8.2 (*Applicable Permits*) below; and
- (c) The FGCC through GOP shall fund FGCC Designated Account with the GOP Funding Account in terms of the Viability Gap Financing Agreement which shall be strictly utilized in terms of the Equity and VGF Funding &Utilization Agreement.

### **7.2 THE FGCC REPRESENTATIVE**

7.2.1 FGCC shall appoint a representative (the “**FGCC’s Representative**”), to act on its behalf under this Agreement and shall give written Notice to the Developer of the name and address of the FGCC’s Representative and the authority delegated to him.

7.2.2 The first FGCC’s Representative shall be: [ • ]

7.2.3 FGCC shall have the right to change the FGCC’s Representative at any time during the Term and shall give written Notice to the Developer of the name and address of such FGCC’s Representative.

7.2.4 The FGCC’s Representative shall carry out the duties specified in this Agreement on behalf of FGCC, provide however, the FGCC’s Representative shall have no authority to amend this Agreement. The FGCC’s Representative may exercise the authority specified in or necessarily to be implied from the Agreement.

### **7.3 FGCC’S DETERMINATION**

When FGCC is required to determine extension of time or whenever this Agreement, which for the avoidance of doubt, shall always be subject to the approval of the Independent Engineer or the Independent Auditor, as the case may be, provided that the Developer shall proceed in accordance with this Section 7.3 (*FGCC’s Determination*) to agree or determine any matter, FGCC shall consult with the Developer in an endeavour to reach an agreement. If an agreement is not achieved within thirty [•] Days, FGCC shall make a fair determination in accordance with the Agreement, taking due regard of all relevant circumstances, which for the avoidance of doubt, shall always be subject to the approval of the Independent Engineer or the Independent Auditor, as the case may be.

### **7.4 REPRESENTATIONS AND WARRANTIES**

FGCC hereby represents and warrants to the Developer that:

- (a) it has taken all necessary actions under the Applicable Laws to: (i) authorize the execution, delivery and performance of this Agreement; and (ii) validly exercise its rights and perform its obligations under this Agreement;
- (b) this Agreement and all obligations contained herein constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof; and
- (c) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected.

## **8. THE DEVELOPER**

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### **8.1 GENERAL OBLIGATIONS**

#### **8.1.1 The Developer shall:**

- (d) continuously, diligently and in accordance with the Project Schedule and the timelines set out in this Agreement, perform and execute the Works and all its obligations set out herein;
- (e) ensure that each Critical Project Milestone is completed in accordance with the timelines set out in the Project Schedule;
- (f) ensure that the Project Completion Date is achieved on or prior to the Scheduled Project Completion Date.

8.1.2 The Developer undertakes to perform the Works in accordance with Prudent Utility Practices pursuant to this Agreement at its own cost and risk.

8.1.3 The Developer shall perform all its obligations and shall execute and complete the Works that, in each case, are contemplated under this Agreement to be performed, executed and completed during the Term.

8.1.4 The Developer shall make payments to FGCC of the amounts due and payable by the Developer in accordance with the terms of this Agreement.

8.1.5 The Developer shall remedy any Defects at its own cost and risk.

8.1.6 The Developer undertakes that to an extent appropriate from time to time, it shall itself and any of its employees, agents, contractors, Subcontractors, Tenants, as deemed appropriate at sole discretion of the Developer shall, in each case, be available to attend such meetings with the FGCC at all reasonable times, as required and notified by the FGCC to the Developer in accordance with this Agreement. The Developer and FGCC agree that the Developer's costs (including the costs of its employees, contractors, Subcontractors and Tenants) for attending such meetings shall be on Developer's account.

8.1.7 The Developer shall notify FGCC without undue delay upon becoming aware of any changes in the information to be provided to the FGCC by the Developer pursuant to this Agreement.

8.1.8 The Developer shall ensure that no damage is caused to any property belonging to FGCC in the execution of the Works.

8.1.9 During the execution of the Works, the Developer shall keep the Project Site free from all unnecessary obstructions, and shall store or dispose of any its equipment or surplus materials not required for the Works, in each case, in accordance with this Agreement and Prudent Utility Practices. The Developer shall clear away and remove from the Project Site any wreckage, rubbish or temporary works no longer required for the performance of Works.

8.1.10 The Developer shall be responsible for the coordination and general management of the Works.

- 8.1.11 The Developer shall provide the FGCC such information relating to the Works and the execution and completion of the same as is reasonably requested by the FGCC from time to time.
- 8.1.12 The Developer shall allow FGCC, FGCC's Representative and the Independent Engineer (including each of their employees, representatives, nominated persons and advisors) clear access to the Project Site in order to examine the Works.
- 8.1.13 The Developer shall be solely responsible for marketing the Project for the purpose of attracting potential Tenants and shall bear all the costs associated with the marketing activity.
- 8.1.14 The Developer shall not use the Project Site for any purpose other than the purposes of establishing the Project.
- 8.1.15 The Developer shall be responsible for O&M Works in respect of the Project during the O&M Period in accordance with the O&M Plan.
- 8.1.16 The Developer shall commence the Construction Works in respect of the Project strictly in accordance with the Project Schedule and timelines set forth in this Agreement.
- 8.1.17 The Developer shall be responsible for maintaining the Project Site in good condition, fair wear and tear expected, in accordance with this Agreement and Prudent Utility Practices at no cost to the FGCC.
- 8.1.18 The Developer shall be responsible for engineering and design of the Works in accordance with this Agreement and Prudent Utility Practices. The Developer shall bear the cost for modifications or replacements of Work (including any parts thereof) that may be necessitated as a result of the Developer's deficiency in the totality and accuracy of design and engineering or which may arise due to any Defects.
- 8.1.19 The Developer shall develop the Project Site and do all such acts, deeds and things as may be necessary and expedient for performance of its obligation under this Agreement and the Developer shall:
- (a) obtain or cause its agents, contractors and Subcontractors to obtain all the Applicable Permits required to carry out the Construction Works in respect of the Project in accordance with Applicable Law;
  - (b) either itself or through contractors appointed in accordance with the terms of this Agreement, procure at its own risk all services necessary for the Works in respect of the Project; and
  - (c) provide the services and shall bear and pay the entire costs and expenses with regard to all such acts, deeds and things as stated in (a) and (b) above.

## 8.2 **APPLICABLE PERMITS**

The Developer has obtained all Applicable Permits for the performance of the Works in respect of the Project, strictly in accordance with this Agreement. FGCC shall, at the request

and cost of the Developer, provide reasonable assistance in applying for such Applicable Permits. It is the sole responsibility of the Developer to timely request such assistance and to provide all necessary documentation and other information to facilitate the provision of such assistance.

### 8.3 **DEVELOPER'S REPRESENTATIVE AND OTHER STAFF**

#### 8.3.1 DEVELOPER'S REPRESENTATIVE:

- (a) The Developer shall within [•] Days of the Signing Date, submit to FGCC the name and particulars of the person whom the Developer proposes to appoint as the developer's representative (the "**Developer's Representative**") for FGCC's approval. The Developer shall not revoke the appointment of the Developer's Representative without the prior approval of FGCC.
- (b) The Developer's Representative shall be an experienced and capable person who is a full time employee of the Developer dedicated to directing the preparation of the Developer's Documents, the execution of the Works and performing all obligations of the Developer under this Agreement. Except as otherwise stated in the Agreement, the Developer's Representative shall receive (on behalf of the Developer) all Notices, instructions, consents, approvals, certificates, determinations and other communications under this Agreement. Whenever the Developer's Representative is to be absent, a suitable replacement person shall be appointed as Developer's Representative, and FGCC shall be notified accordingly.
- (c) Subject to the prior written approval of FGCC, the Developer's Representative may delegate any of his powers, functions and authorities to any competent person, and may at any time revoke any such delegation. Any such delegation or revocation shall be in writing and shall not take effect until FGCC has given a prior written approval for such delegation or revocation. The Developer's Representative and such persons shall be fluent in the English language, written and verbal, for day-to-day communications.
- (d) The Developer shall replace the Developer's Representative with another person fulfilling the requirements set out above if requested to do so by FGCC in writing.

#### 8.3.2 OTHER STAFF:

FGCC shall have the right to approve those individuals who will hold key project positions such as project manager and construction manager. FGCC shall have the right at all times to reasonably require that any personnel (whether or not previously approved by FGCC) be removed and replaced for reasons to be stated in writing.

### 8.4 **COORDINATION OF THE WORKS**

- 8.4.1 The Developer shall be responsible for the coordination and general management of the Works. The Developer's responsibility shall include the obligation to coordinate and manage the progress of all Works on and off the Project Site and performance of all obligations during the term of this Agreement. The Developer shall be responsible for *inter alia* construction management services, such as coordination, supervision and inspection of construction, erection and civil work activities at the Project Site, coordination of the activities of the

Subcontractor(s), obtaining approval for installation of relevant equipment and components, transmission to FGCC of the progress reports and other reports, and any other services necessary to inform FGCC of the progress of the Works.

- 8.4.2 The Developer shall obtain, coordinate and submit to FGCC, the Independent Engineer and the Independent Auditor for their information all details (including details of Work to be carried out off the Project Site) from Subcontractors and suppliers, as applicable.

8.5 **SUB – CONTRACT AND SUBCONTRACTORS**

- 8.5.1 The Developer may fulfil its obligations under this Agreement to perform the Works in accordance with this Agreement by granting Sub-Contracts to the Subcontractors pursuant to the Sub-Contract Agreements.

- 8.5.2 The Developer may subcontract the whole or any part the Works to a Subcontractor or Subcontractors without seeking the prior approval of FGCC; provided however, that the appointment of any Subcontractors by the Developer shall not relieve the Developer of any of its obligations or potential liability regarding the Project or any liability whatsoever resulting from a breach of any term or conditions of this Agreement.

- 8.5.3 The Developer and FGCC agree that all Sub-Contract Agreement(s) entered into by the Developer with the Subcontractor(s) shall not be inconsistent with the terms and conditions of this Agreement, and shall terminate on or prior to the earlier of (a) termination of this Agreement; and (b) expiry of the Term.

- 8.5.4 The Developer shall be responsible for observance of all the provisions of the Sub-Contract Agreement by all Subcontractors. The Developer shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as fully as if they were the acts or defaults of the Developer, his agents or employees. Any subcontracting by the Developer of any portion of the Works shall not release or discharge the Developer of any of its responsibilities or obligations under the Agreement.

- 8.5.5 The Developer shall ensure that all Sub-Contract Agreements and purchase orders contain a provision providing for assignment of such Sub-Contracts or purchase orders to FGCC in the event of termination of this Agreement. Such assignment will be at the discretion of FGCC and at no cost to FGCC.

- 8.5.6 The Developer hereby undertakes that it shall:

- (i) ensure that the Sub-Contract(s) are granted and the Sub-Contract Agreement(s) are entered into on an arm's length basis;
- (ii) ensure that the assets created and/or constructed pursuant to the sub-contract vest in FGCC upon the earlier of (a) termination of this Agreement; and (b) expiry of the Term;
- (iii) ensure that the Subcontractor(s) performs its obligations in the same manner that the Developer is required to perform its obligations under this Agreement; and
- (iv) deliver copies of all Sub-Contract Agreement(s) to FGCC within [•] Days of its

execution.

- 8.5.7 Unless otherwise agreed to in writing by FGCC, FGCC shall not be liable for any costs, liabilities, claims, damages, costs, penalties, fines, expenses, fees and charges of any nature whatsoever in relation to the Sub-Contract Agreement(s) entered into by the Developer with Sub-Contract Agreement(s) as a result of the expiry of the Term or termination of this Agreement.
- 8.5.8 Notwithstanding anything to the contrary, the Developer shall be liable for all acts, deeds, omissions, breaches and defaults of the Subcontractor(s) and shall ensure that there is no change in the end-use by the Subcontractor(s).
- 8.5.9 Where a Developer Event of Default occurs as a result of an event of default of a Subcontractor under its Sub-Contract Agreements or as a result of non-performance of the subcontracted part of Works in accordance with the terms of this Agreement, the Developer shall have the right to remedy the default or breach or defect, as the case may be, at its own cost and without any recourse to FGCC provided however, in case such defects, defaults or breach, as the case may be, is not remedied within thirty [•] Days of the Subcontractor(s) default or breach, such event of default of the Subcontractor shall be considered as Developer's Event of Default and the provisions of Section 23 (*Termination*) shall apply.

## 8.6 **RESTRICTIONS ON THE DEVELOPER**

### 8.6.1 **RESTRICTION ON TRANSFER OF SHARES**

- 8.6.1.1 The Developer shall not undertake or permit, and hereby undertakes to procure that the Sponsors do not undertake or permit, any transfer of its shares in the Developer until the fifth (5<sup>th</sup>) anniversary of the Project Completion Date, unless such change in shareholding: (a) is required pursuant to any Applicable Law or order of a court, tribunal, or Government Authority of competent jurisdiction; or (b) is effected with the prior written approval of FGCC.
- 8.6.1.2 Following the sixth (6<sup>th</sup>) anniversary of the Project Completion Date till the tenth (10<sup>th</sup>) anniversary of the Project Completion Date, the Sponsors shall be entitled to transfer its shares in the Developer with the prior written consent of the FGCC, provided, however, that the Sponsor's shareholding in the Developer shall not fall below fifty one percent (51%) percent.
- 8.6.1.3 Following the eleventh (11<sup>th</sup>) anniversary of the Project Completion Date of the Project Completion Date, the Sponsors shall be entitled to transfer hundred percent (100%) of its shares in the Developer with the prior written consent of the FGCC.

- 8.6.1.4 Any transfer by the Sponsors or issuance of ordinary shares by the Developer in breach of this Section 8.6.1 (*Restriction on Transfer of Shares*) shall be deemed to a Material Breach.

### 8.6.2 **RESTRICTION ON CREATION OF ENCUMBRANCE**

- 8.6.2.1 The Developer shall not at any time during the term of this Agreement or the Project Site License Agreement create an Encumbrance over the Project Site.
- 8.6.2.2 Except with FGCC's written approval, the Developer shall not at any time during the Term create an Encumbrance over the assets of the Developer including any movable, immovable,

tangible or intangible assets, provided however, no Encumbrance shall be created on the Project Site.

8.6.2.3 The Developer shall provide annual audited financial statements including the auditors' report and directors' report to the FGCC and Independent Auditor within [•] Days of the close of each financial year. The financial statements of the Developer shall be audited by any one of the Approved Accounting Firms.

## 8.7 **REPRESENTATIONS, WARRANTIES AND COVENANTS**

8.7.1 The Developer hereby represents and warrants to FGCC that:

- (a) it is duly incorporated, existing and in good standing under the laws of the Country, and has all requisite power and authority to conduct its business and to execute, to deliver and to perform its obligations under this Agreement;
- (b) it has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to carry out its obligations under this Agreement;
- (d) there are no proceedings pending, or to the best of its knowledge, threatened for the liquidation of the Developer or that have a Material Adverse Effect on the performance by the Developer of its obligations or constitute a Developer Event of Default under this Agreement;
- (e) this Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid and binding obligation;
- (f) to the best of its knowledge, the execution and delivery of, and performance of its obligations under this Agreement by the Developer, subject to the granting and maintenance of the requisite Applicable Permits, does not and, subject to the granting and maintenance of the relevant additional Applicable Permits in the future, will not constitute a violation of its constitutional documents, or any Applicable Law or any agreements, understanding, judgment, order, decree or regulation or rule of any Competent Authority, court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its businesses;
- (g) it is in compliance with all the Applicable Laws including but not limited to Companies Act 2017;
- (h) no Corrupt Act has been committed by the Developer or on its behalf;
- (i) it has adequate expertise and personnel to comply with its obligations under the Agreement;
- (j) it has received all relevant information it requires and no additional information relating to the Project in order to procure and construct the Works in accordance with the Agreement is required;

- (k) it has satisfied itself in every respect prior to the Signing Date regarding the scope of work provided in this Agreement and the accuracy of any information relating to the Project Site;
- (l) it has carried out the necessary due diligence and is aware of the risks and hazards that are likely to arise or which the Developer may face in the course of the performance of its obligations hereunder; and
- (m) all statements/information provided by it are true and correct at the Signing Date.

8.7.2 The Developer hereby covenants to FGCC that:

- (a) It shall take full responsibility for the adequacy, stability and safety of all Project Site operations, of all means and methods of construction and of all the Works, irrespective of any approval or consent or the lack thereof by FGCC;
- (b) it shall perform or cause to be performed the Works (incorporating and supplying only new, good quality Materials manufactured by reputable manufacturers and which are suitable for use as part of the Project) for all phases of the Project in accordance with the terms of this Agreement, and provide all labour, Materials, equipment, machinery, tools, transportation, as may be required, during the Term), administration and other services or items required to complete the Works and otherwise in accordance with this Agreement, including the Technical Specifications, and in compliance with all Applicable Laws, Applicable Permits and Prudent Utility Practices;
- (c) it shall further design, engineer, supply, construct and execute the Works, in a manner consistent with the requirements of this Agreement;
- (d) the Works as completed by the Developer shall be wholly in accordance with the Agreement and shall include any work which is necessary to satisfy the Technical Specifications and the requirements set out in the Schedules, or is implied by the Agreement and all works which (although not mentioned in the Agreement) are necessary for the stability or for the completion, or safe and proper operation of the Works;
- (e) it shall execute and complete the Works and achieve the Project Completion Date within the Scheduled Project Completion Date;
- (f) it shall provide all superintendence, labour, plant and materials, Developer's Equipment, and all other things, whether of a temporary or permanent nature, required in and for the Project;
- (g) the Works will be carried out with all the skill and care to be expected of appropriately qualified and experienced professional developers with experience in carrying out works of a similar type, nature and complexity to the Works;
- (h) all Materials and any material used in the Works or any part thereof shall be brand new, unused, un-refurbished, undamaged and un-reconditioned; and

- (i) it shall not create any Encumbrance on the Project Site or its assets, unless expressly provided under this Agreement.

## 8.8 **PROJECT SITE DATA**

8.8.1 FGCC has made available to the Developer and the Developer acknowledges receipt of data on geo technical investigations (if any), seismic surveys (if any) and topography or under and around the Project Site (if any), and studies (if any) on environmental impact which have been obtained by FGCC as specified in Schedule 1 (*Project Site*) hereto. The Developer shall be solely responsible for interpreting all data, and FGCC makes no warranty or representation that the information described in the said schedule is complete, accurate or exhaustive. The Developer shall be deemed to have inspected and examined the Project Site, its surroundings, the above data and other available information, and to have satisfied himself prior to the Signing Date as to:

- (a) the form and nature of the Project Site, including all surface and sub-surface conditions;
- (b) all applicable geo technical investigations, seismic surveys and topography climatic conditions, including those of the Project Site and the Country;
- (c) the extent and nature of the work, labour, manpower, services, Developer's Equipment and Materials necessary for the execution and completion of the Works and implementation of the Project;
- (d) the social, political and security situation at and around the Project Site; and
- (e) the means of access to the Project Site and the accommodation required.

8.8.2 Without prejudice to Section 8.8.1, the Developer shall be deemed to have obtained all necessary information as to risks, contingencies and all other circumstances, which may influence or affect the Project.

8.8.3 The Developer warrants that it has thoroughly investigated the Project Site, including any applicable easements, water sources, access to the Project Site, transportation, international and local labour conditions, all Applicable Laws and Applicable Permits, the Technical Specifications, identified any and all above ground and below ground obstructions, and all other relevant matters or conditions that could affect execution of the Works, and, except for any express provisions of this Agreement stating otherwise, warrants that the Developer shall not be entitled to and shall make no claim for additional compensation, extension of the Scheduled Project Completion Date, for any reason relating to any of the foregoing matters or for any matter relating to conditions encountered above, below, on or at the Project Site or on the ground of any allegation or fact that incorrect or insufficient information was given to him by FGCC or any other person, whether in the employment of FGCC or otherwise including FGCC.

## 8.9 **UNFORESEEABLE SUB-SURFACE CONDITIONS**

If sub-surface conditions are encountered by the Developer which in his opinion could require the Developer to modify or revise the Works, the Developer shall, before such conditions are disturbed, give Notice to FGCC so that FGCC can inspect such conditions. The Developer shall not be entitled to and shall make no claim for additional compensation, extension of the Scheduled Project Completion Date, for any such modification or revision to the Works, the Project Schedule, or its construction means and methods which may be necessitated by any unforeseen sub-surface conditions.

#### 8.10 **ACCESS ROUTE**

8.10.1 The Developer shall be deemed to have satisfied himself as to the suitability and availability of the access routes he chooses to use. The Developer shall (as between the Developer and FGCC) be responsible for the repair of access routes damaged by the Developer.

8.10.2 The Developer shall provide any signs or directions, which it may consider necessary for the guidance of its staff, labour and others. The Developer shall obtain any Applicable Permit that may be required from any Competent Authority for the use of such routes, signs and directions.

8.10.3 The Developer acknowledges that (a) it will not have sole occupation or use of access routes to the Project Site; and (b) it will co-ordinate its use of all such access routes with other Developers engaged by FGCC so as not to hinder or delay the performance of Works by, or the access to the Project Site of such other developers.

8.11 The Developer shall, following the Project Completion Date, be permitted to generate advertisement income and other lawful ancillary revenue streams from the Project in accordance with Applicable Laws, subject to prior written approval by FGCC, which shall be granted at its sole discretion based on the suitability and intended use of the Project.

8.12 All additional revenues derived from such advertisement and ancillary revenue streams shall constitute part of the actual Revenues and shall be taken into account for the purposes of determining and offsetting any Minimum Revenue Guarantee Amounts payable by FGCC to the Developer during the MRG Period.

8.13 All Additional Revenues shall be deposited by the Developer promptly into the Rental Collection Account.

#### 8.14 **PROJECT SCHEDULE**

8.14.1 The Developer shall submit a final Project Schedule to FGCC which shall be binding on the Developer, within [•] Days from the Signing Date. Provided all relevant data, information and documents (of whatsoever nature and in whatsoever form) required by the Developer for preparing the Project Schedule have been provided to the Developer on or before the Signing Date. The Project Schedule shall be, in such detail as is reasonably acceptable to FGCC and shall be prepared in accordance with the Technical Specifications. The final Project Schedule shall be such that the Developer is able to achieve the Completion Conditions by the by the Scheduled Project Completion Date, as the case may be and shall include the following:

- (a) the order in which the Developer proposes to carry out the Works (including each phase of the setting up of the Project);

- (b) the times when submissions and approvals or consents by FGCC are required, as indicated in the Technical Specifications; and
- (c) timelines for meeting Completion Conditions.

8.14.2 The Project Schedule shall be developed using Critical Path Method (CPM) and precedence networking techniques, showing early start, late start, early finish and late finish dates. Latest versions of Primavera Professional Project Management software or MS Project shall be used and soft copies on compact discs shall be provided in compatible format to FGCC for the Project Schedule, as well as any modifications or updates to such Project Schedule.

8.14.3 The Developer shall, whenever required by FGCC or FGCC's Representative, provide in writing, for information, a general description of the arrangements and methods which the Developer proposes to adopt for the execution of the Works. No alteration to the Project Schedule, or to such arrangements and methods, shall be made without seeking a prior written approval from FGCC which approval shall not be unreasonably withheld or delayed so as not to delay the Construction Works. If the progress of the Works does not conform to the Project Schedule, FGCC may instruct the Developer to revise the Project Schedule, showing the modifications necessary to achieve Completion Conditions by the Scheduled Project Completion Date.

#### 8.15 PROGRESS REPORTS

8.15.1 The Developer shall submit a monthly report on the first Day of the succeeding month, after mobilisation at the Project Site, to FGCC, the Independent Engineer and the Independent Auditor covering all activities relating to the Works carried out in the previous month. The FGCC and the Developer along with the Independent Engineer and the Independent Auditor shall hold monthly meetings at the Project Site (or such other place as the Developer and FGCC may mutually agree) to discuss (i) the progress of the Works, (ii) the stage at which the Developer has reached, and if any activity is behind the Project Schedule, and (iii) set out the explanation of any such delays and the consequences thereto and the corrective actions being taken by the Developer to remedy the delay. Minutes of these meetings shall be prepared by the Developer and sent to FGCC for approval. These meetings will continue until the Project Completion Date.

8.15.2 The Developer shall provide a quarterly progress report ("**Quarterly Progress Report**" or "**QPR**") that provides a detailed schedule for the entire Project Schedule of Works with detailed task breakdown using such method and technique as may be acceptable to FGCC. The QPR will highlight the Works conducted in the past quarter and the Works to be conducted in the next quarter. The QPR shall contain such information, be in such format and on such media as the Developer shall prepare, subject to the approval of FGCC and shall set out, as a minimum:

- (a) actual project situation, descriptions of progress, including photo documentation;
- (b) charts showing the status of the Developer's Documents and the Project Schedule;
- (c) survey of the Developer's personnel and Developer's Equipment on Project Site;
- (d) copies of quality assurance documents;

- (e) analysis of safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (f) comparisons of actual and planned progress, with details of any aspects which may jeopardize the completion in accordance with the Project Schedule and this Agreement, and the measures being (or to be) adopted to overcome such aspects;
- (g) summary of unresolved claims or disputes that involve requests for extension to the Scheduled Project Completion Date, or adjustment to any other date or Critical Project Milestones set forth in this Agreement.
- (h) forecast of progress for the next month;
- (i) the analysis of the critical path activities should be identified;
- (j) if the progress of any activity is delayed relative to the dates indicated on the Project Schedule, an explanation of this and the likely consequences and stating the corrective action being taken to remedy the delay;
- (k) information on all critical aspects influencing the progress of the Works;
- (l) a general report on the status of the Works;
- (m) such other information as the FGCC may reasonably require from time to time; and
- (n) information and data relating to the respective time period (calendar month) and cumulated data covering the time period up to the last Day of the respective month as well as main activities forecast for the subsequent month.

8.15.3 As soon as possible and in the reasonable consideration of the Developer, the Developer shall Notify FGCC if the Developer fails, or is reasonably likely to fail, to comply with the Project Schedule or to meet a milestone in the Project Schedule (such likely or actual failure constituting a "**Failure**"), identifying the nature of the Failure and the reason for the Failure, the impact which such Failure shall have, or in the Developer's reasonable opinion, is likely to have on its ability to achieve any of the milestones set out in the Project Schedule and the steps which the Developer has taken, is taking and will take to mitigate the adverse consequences of such Failure. Nothing in this Section 8.13.3 shall relieve the Developer from complying with the Project Schedule.

#### 8.16 DEVELOPER'S EQUIPMENT

8.16.1 The Developer shall provide all Developer's Equipment necessary to complete the Construction Works within the Scheduled Project Completion Date.

8.16.2 All Developer's Equipment brought to the Project Site by the Developer shall be deemed to be intended for use exclusively for the execution of the Works and the Developer shall not remove (or permit the removal of) the same from the Project Site without FGCC's consent (acting reasonably) until such Developer's Equipment is no longer required for the execution

of the Works. Such consent shall not be required for vehicles engaged in transporting any personnel, Developer's Equipment or Materials to or from the Project Site.

- 8.16.3 For the avoidance of doubt, all such equipment including the Developer's Equipment shall be hired at the cost and expense of the Developer to the complete exclusion of FGCC.
- 8.16.4 The Developer shall be responsible for safety and maintenance of Developer's Equipment such that they at all times comply with the Applicable Laws and Prudent Utility Practices whether these vehicles or Developer's Equipment are owned, hired and operated by the Developer or not. In case of non-compliance with the Applicable Laws and Prudent Utility Practices, the Developer, at its own risk and expense and without any impact on the Project Schedule of Works, shall promptly remove such Developer's Equipment and shall replace with the ones that are compliant with the Applicable Laws and Prudent Utility Practices.
- 8.16.5 The Developer shall ensure that only those persons shall operate the Developer's Equipment as mentioned in the Agreement who have the required qualifications and experience to operate such Developer's Equipment and who have been authorised by the Developer's safety officer.

#### 8.17 **SAFETY PRECAUTIONS**

- 8.17.1 The Developer shall, during the Term, take full responsibility for the adequacy, stability and safety of the Project Site, operations and methods of construction and for the safety of all persons entitled to be on the Project Site in relation to the Works, all Developer's Equipment and temporary works and structures and shall keep the Project Site and the Works in an orderly state appropriate to the avoidance of danger to such persons.
- 8.17.2 The Developer shall, prior to the commencement of the Works at the Project Site, prepare and submit to FGCC, a comprehensive set of regulations to be implemented at the Project Site (the "**Site Regulations**"), including the relevant Project Site safety procedures, evacuation plans and protocols in connection with its Works at the Project Site, for the review and approval of FGCC, which shall be applicable to all persons on the Project Site including FGCC's employees. FGCC shall have a right to make reasonable comments on the Developer's Site Regulations, and the Developer will take reasonable account of such comments. The Developer shall comply with and shall ensure that all of its employees, agents, Subcontractor or any other officers, comply with the provisions of such Site Regulations. The Developer's on- Project Site staff shall include a safety officer dealing only with safety and accident prevention for all persons on the Project Site. This safety officer shall be appropriately qualified for this work and shall have the authority to issue instructions and take protective measures to prevent accidents. Unless otherwise permitted by FGCC, the Developer shall not be allowed to commence the Works until the Site Regulations are approved by FGCC.
- 8.17.3 The Developer shall at its own cost take all due precautions to ensure the safety of its employees, agents and Subcontractors and, in collaboration with and to the requirements of the local health authorities, to ensure that medical staff, first aid equipment and stores, sick bay and suitable ambulance services are available at the camps, housing and on the Project Site at all times throughout the period of the Agreement and that suitable arrangements are made, such standards to be not less than the requirements of the Applicable Laws and for all necessary welfare and hygiene requirements.

- 8.17.4 The Developer shall maintain records concerning safety, health and welfare of persons and damage to property, and make such reports, as are consistent with Prudent Utility Practices. The Developer shall report details of any accident to FGCC as soon as possible after its occurrence and in any event within [•] Days of the occurrence of such accident.
- 8.17.5 The Developer shall implement strict safety regulations, as approved by FGCC in the Site Regulations, throughout the Term. In the event of any injury to personnel or fatal accidents or fire at the Project Site or other material non-compliance of the Site Regulations, the Developer shall indemnify the FGCC in accordance with Section 31.9(*Indemnity*).
- 8.17.6 The Developer shall remain responsible at all times for the safety and security of the Works, Materials and the Developer's Equipment, the Developer at its own cost shall procure, construct and install temporary fence, lighting, as deemed necessary, during the Construction Period which shall comply with reasonable security standards and such fence shall be dismantled just prior to expiry of the Construction Period.
- 8.17.7 The Developer shall establish and maintain at the Project Site a primary access gate and an access policy. The Developer shall also establish and maintain at all times a reserve gate. The Developer shall be obligated and shall ensure that all Subcontractors continue the proper performance of the Works and meet all manning requirements notwithstanding the use of pickets at the reserve gate established for use by the Developer and any of the Subcontractors or at any other location or entrance at or near the Project Site. The Developer shall ensure that it's Subcontractors and all persons entering the Project Site enter and exit the gate designated for their use and will instruct all persons exiting and entering the Project Site as to the proper gates. If for any reason the Developer fails to comply with any condition contained in this Section 8.15 (*Safety Precautions*), the Developer shall be in Material Breach of its obligations under this Agreement and the Developer shall not be entitled to an adjustment in the Scheduled Project Completion Date in regard to such default.
- 8.17.8 The Developer shall conduct monthly safety meetings with all its contractors, Subcontractors, employees, agents, or other officers working on the Project Site. Discussions in such meetings shall be recorded and submitted to FGCC on a monthly basis. The Developer shall keep the record of such safety meetings and shall develop a protocol to steward and implement recommendations given by FGCC.
- 8.17.9 The Developer shall ensure that the Subcontractors understand and comply with all Site Regulations, including ensuring that all employees of the Developer, its contractors, the Subcontractor, agents or other officers wear appropriate safety helmets, eye protection, safety footwear, safety clothing and equipment is worn at all times on the Project Site.

8.18 **PROTECTION OF THE ENVIRONMENT**

- 8.18.1 The Developer shall comply with all Applicable Laws and ESMS and Applicable Permits in his access arrangements and operations on Project Site, including those pertaining to protection of the environment. During Construction Period, the Developer shall take all necessary steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of the Construction Works. The Developer shall ensure that air emissions, surface discharges and effluent from the Project Site shall not exceed the values set out in the Technical Specifications, and shall not exceed the values as prescribed by Applicable Laws and Applicable Permits.

8.18.2 The Developer shall provide properly designed storage areas which are impermeable to leakage into the surrounding soil for storage of oils, lubricants or hazardous wastes, as the case may be. Such storage will also be covered and protected from inundation and overflow by rainfall into the surrounding soil. Hazardous waste generated during completion of the Works will be properly disposed of by the Developer on completion of the Works as per the Applicable Laws and Applicable Permits.

8.19 **SECURITY OF THE PROJECT SITE**

8.19.1 The Developer shall be responsible for keeping unauthorised encroachment and/or persons off the Project Site. Any loss or damage to the Project Facilities, Material or Works as a result of a breach of security, shall be the responsibility of the Developer and for whose rectification, FGCC shall not extend the Scheduled Project Completion Date, as the case may be, nor approve any additional cost.

8.19.2 Authorised persons shall be limited to the Developer, its employees, contractors, the Subcontractors, agents or any other officers, employees of its Subcontractors and persons authorised by FGCC. Facilities to inspect the Works shall at all times be afforded by the Developer to FGCC, FGCC's Representative and any other person notified to the Developer by FGCC.

8.19.3 The Developer shall take all measures necessary or as advised in accordance with Prudent Utility Practice and all Applicable Laws to ensure safety, security and protection of the Project Site at all times during the Term of the Project. Such measures shall include posting of trained security personnel at the Project Site, providing warning signs and utilising closed/locked gates provided no such measures hampers the movement of FGCC, FGCC's Representative or any other person notified to the Developer by FGCC to the Site. Furthermore, the Developer shall, at all times during the Term, procure, install, operate and maintain all necessary security infrastructure at the Project Site and FGCC Properties to ensure adequate safety and security.

8.20 **DEVELOPER'S OPERATIONS ON PROJECT SITE**

The Developer shall confine his operations to the Project Site, and to any additional areas which may be specified by the Developer and agreed by FGCC as working areas. The Developer shall take all necessary precautions to keep his personnel, equipment and Subcontractors within the Project Site and such additional areas, and to keep and prohibit them from encroaching on any other property.

8.21 **DANGEROUS SUBSTANCES**

8.21.1 The Developer shall promptly Notify FGCC of the presence of any toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any statute or ordinance or regulations issued thereunder at the Project Site). If such conditions are not attributable to the Developer (or its employees, agents, contractors or Subcontractors) and cause an increase in the Developer's the Scheduled Project Completion Date, as the case may be, the Developer shall be entitled to an extension in the Scheduled Project Completion Date.

8.21.2 If the Developer encounters any toxic substances, hazardous substances or hazardous wastes at the Project Site, which are not attributable to the Developer (or its employees, agents,

contractors or Subcontractors), the Developer shall promptly Notify FGCC of the same and seek its instructions on how to properly remove and dispose of such substances or wastes so that the Work may safely proceed. The Developer shall properly and timely dispose of at its own cost and expense any and all toxic substances, hazardous substances or hazardous wastes produced or generated by the Developer (or its employees, agents, contractors or Subcontractors) during the course of the Term.

8.21.3 Without prejudice to Section 8.18 (*Protection of the Environment*), the Developer hereby warrants that in respect of any toxic substances, hazardous substances or hazardous wastes:

- (a) that it has not used or specified and will not use or specify such substances for use;
- (b) that it has exercised and will continue to exercise reasonable skill, care and diligence to see that they are not used;
- (c) that it is not aware and has no reason to suspect or believe that there have been or will be used; and
- (d) that it will promptly Notify FGCC in writing if it becomes aware or has reason to suspect or believe that they have been or will be used.

8.21.4 Without prejudice to Section 8.18 (*Protection of the Environment*) and Section 31.9 (*Indemnity*), the Developer shall indemnify, protect, defend and hold harmless FGCC, FGCC's Representative, FGCC's affiliates and their respective agents, from and against any and all demands, claims, suits and causes of action from third parties and any and all liabilities, costs, expenses, settlements and judgements incurred therewith (including court costs and attorney's fees incurred by FGCC, FGCC's Representative, FGCC's affiliates and their respective agents, if and only if FGCC, FGCC's Representative, FGCC's affiliates and their respective agents fails to address such claim by its own attorney having received Notice of the claim) in respect of any toxic substances, hazardous substances, hazardous wastes, manmade materials or any other substance or material likely to degrade the environment which may be brought onto the Project Site by the Developer (or its employees, agents, contractors or Subcontractors) including any such substance or material which is brought to the Project Site by the Developer (or its employees, agents, contractors or Subcontractors) and is then disposed at the Project Site by the Developer (or its employees, agents, contractors or Subcontractors).

## 8.22 **REMEDIAL WORK**

8.22.1 Notwithstanding any previous test or certification, FGCC may instruct the Developer to:

- (a) remove from the Project Site and replace any equipment (including Developer's Equipment) or Materials which are not in accordance with this Agreement; or/and
- (b) remove and re-execute any Work which is not in accordance with this Agreement; or /and
- (c) execute any work which is urgently required for the safety of the Works.

8.22.2 If the Developer fails to comply with any such instruction, FGCC shall be entitled to employ and pay other persons to carry out the Work and the Developer shall be responsible to pay

FGCC for all costs (as determined by the Independent Engineer and the Independent Auditor) arising from this failure.

8.22.3 The Developer shall be responsible for internal infrastructure linkages required for the Project including but not limited to road, electricity, supply, water supply, waste water and solid waste disposal and storm water drainage. FGCC will use reasonable efforts for the provisions with respective Competent Authority at no cost to itself and it shall be the Developer's responsibility to fulfil any monetary or other compliances as may be required by such Competent Authority.

#### 8.23 **LOCALISATION**

8.23.1 To the extent technically and commercially possible, the Developer shall, and shall cause each of its Subcontractors to, give preference to the use of Developer's Equipment and other equipment, materials and products produced and manufactured in the Country.

8.23.2 To the extent technically and commercially possible the Developer shall, and shall cause each of its contractors, Subcontractor, agents to, give preference to the use of Pakistani labour (both skilled and unskilled), Pakistani supervisory, professional and other personnel, Pakistani services and Pakistani Developers in the performance of its obligations under the Agreement.

#### 8.24 **APPROVALS**

8.24.1 The Developer shall be deemed to have itself of all Applicable Permits required for the performance of the Works and its obligation under this Agreement.

8.24.2 The Developer shall be responsible for obtaining and thereafter maintaining all Applicable Permits at its own cost, risk and expense. The Developer shall obtain all Applicable Permits on or before the Commencement Date.

8.24.3 The Developer and FGCC agree that in the event of a Lapse of Consent, the FGCC shall, upon receipt of a written request by the Developer, use reasonable efforts to assist the Developer in obtaining such Applicable Permits provided however, such assistance shall not infer any obligation under this Section or any other part of this Agreement on the FGCC to obtain the relevant Applicable Permit on behalf of the Developer. Except as otherwise provided in Section 25 (*Force Majeure*), the Developer shall neither be relieved nor absolved of any of its obligations under this Agreement as a result of Lapse of Consent and shall bear all risks and consequences relating to the same.

8.24.4 The Developer shall reimburse any costs incurred by the FGCC in providing assistance to the Developer in obtaining any Applicable Permit, as provided in Section 8.20.3 above.

8.24.5 Upon conclusion of each month following the Signing Date and until the Commencement Date, the Developer shall submit a report to FGCC detailing the Applicable Permits which have been obtained or which have been applied for the Developer but not yet issued, together with a plan for obtaining such Applicable Permit and an estimate of the time within which such Applicable Permit may be obtained.

#### 8.25 **TAXES AND SUBSIDIES**

- 8.25.1 The Developer shall be responsible to make all payments in respect of the rates, Taxes, charges, levies, assessments or equivalent Taxes levied.
- 8.25.2 The Developer may raise any objections in terms of any charges, rates, Taxes, assessment or equivalent Taxes levied on it by the Competent Authority, provided that, such objections shall be filed and pursued at the Developer's costs and the Developer shall be entitled to any benefit accruing as a result of the Developer's successful objection.
- 8.25.3 The Developer fully understands that the FGCC shall not provide any guarantee, subsidy, grant or any financial support of any nature to the Developer in respect of the Project other than as provided under this Agreement.

8.26 **NO RELIEF FROM LIABILITY**

8.26.1 Notwithstanding anything contained herein to the contrary in this Agreement, neither:

- (a) the examination of or the giving or withholding the consent or approval to any Works or any part thereof or the making of objections, representations, comments or suggestions, or failure to make the same in relation to the Works or any part thereof or any other respect of the Works; nor
- (b) any other act or omission of FGCC or of any other person acting or purporting to act on their behalf in relation to any aspect of the Works (including the issue of any order or instruction pursuant to this Agreement),

shall, in either case, relieve the Developer in whole or in part of any duty, obligation or liability undertaken by the Developer in, relation to the Works whether under this Agreement or otherwise, or diminish or vary any such duty, obligation or liability, whether by way of contribution or otherwise.

## 9. DEVELOPER'S DOCUMENTS

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### 9.1 DEVELOPER'S DOCUMENTS

- 9.1.1 The Developer's Documents, including such documents set forth in the Technical Specifications are to be submitted to FGCC for review and comments (if any) and for information in accordance with the Developer's Document in accordance with Sections 9.1.6 – 9.1.9.
- 9.1.2 FGCC shall only comment or raise any query on any Developer's Document submitted for review if:
- (a) the Developer's Document is not in accordance with this Agreement;
  - (b) the Developer's Document do not comply with Prudent Utility Practice; and
  - (c) the Developer has not established to the reasonable satisfaction of FGCC that:
    - (i) any comments made by FGCC on any prior submission are not comments of which the Developer is required to take account under this Agreement; or
    - (ii) any Developer's Document upon which FGCC has raised a query is in accordance with this Agreement and complies with Prudent Utility Practice.
- 9.1.3 The Developer shall correct, at its own cost, any discrepancy, error, omission in any document prepared by the Developer or on its behalf (whether such document has been reviewed by or on behalf of FGCC) and shall Notify FGCC promptly of any such correction.
- 9.1.4 The Developer's Documents shall comprise the technical documents specified in this Agreement, documents required to satisfy all Applicable Permits, and such other documents as are required or described under this Agreement and the Schedules hereto. The Developer's Documents shall be written in English.
- 9.1.5 The Developer shall prepare all Developer's Documents, and shall also prepare any other documents as may be reasonably required by the FGCC in respect of the Project.
- 9.1.6 The Developer's Documents that are to be submitted to FGCC for review pursuant to the terms of this Agreement shall be submitted accordingly, together with a Notice as described below.
- 9.1.7 In the following provisions of this Section, "**review period**" means the period required by FGCC for review, "**Developer's Documents**" exclude any documents which are not specified as being required to be submitted for review, without derogating from the scope of the expression "**Developer's Documents**" as used elsewhere in the Agreement.
- 9.1.8 Unless otherwise stated in this Agreement, each review period shall not exceed fourteen (14) Days, calculated from the date on which FGCC receives a Developer's Document in accordance with this Section 8 (*Developer's Documents*) and the Developer's Notice. This Notice shall state that the Developer's Document in question is considered ready, both for review in accordance with this Section 8 (*Developer Documents*) and for use. The Notice shall also state that the

Developer's Document complies with this Agreement, or shall state the extent to which it does not so comply.

- 9.1.9 FGCC may, within the review period, give Notice to the Developer that a Developer's Document fails (to the extent stated) to comply with the Agreement. If a Developer's Document so fails to comply FGCC shall return, comment or raise queries on the Developer's Documents, and such Developer Document shall be rectified, resubmitted and reviewed in accordance with this Section 9 (*Developer Documents*), at the Developer's cost.
- 9.1.10 For each part of the Works, and except to the extent that the Developer and FGCC otherwise agree:
- (a) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Developer's Documents which are relevant to its execution;
  - (b) execution of such part of the Works shall be in accordance with these Developer's Documents, as submitted for review; and
  - (c) if the Developer wishes to modify any design or document which has previously been submitted for review, the Developer shall immediately give Notice to FGCC. Thereafter, the Developer shall submit revised documents to FGCC in accordance with the above procedure.
- 9.1.11 Any such agreement (under the preceding paragraph of this Section 9.1 or any review under this Section 9.1 or otherwise) shall not relieve the Developer from any obligation or responsibility under this Agreement.

## 9.2 **DRAWINGS AND DOCUMENTS**

- 9.2.1 In principle, all requirements defined for drawings in this Agreement shall also be applied for documents as applicable, and vice versa. The Developer shall prepare all necessary Drawings, layout Drawings, assembly Drawings, and detail Drawings and provide FGCC with hard copies and soft copies (prepared on AutoCAD or any other software acceptable to FGCC), giving full and complete information about the Project to enable FGCC to properly review the Works.
- 9.2.2 The sequence of submission of Drawings shall be such that general/basic information is provided for review/approval before any detail information is sent to FGCC to enable to review/approve of these drawings without additional need for further information and background. FGCC shall have the right to get access and to review all drawings of any portion of the Works at any reasonable time in the offices or factories of the Developer, agents, contractors, Subcontractors
- 9.2.3 The Developer shall submit all Drawings in accordance with the Technical Specifications. No such deviation shall be permitted except with the prior written approval of the FGCC.
- 9.2.4 Subcontractor drawings shall follow the same structuring process and be incorporated into the documentation structure of the Developer. The Subcontractor's drawings shall be submitted to FGCC by the Developer. The Developer shall, prior to submission to FGCC, carefully review such drawings regarding all details and regarding conformance with the requirements contained in the Technical Specifications and the intent of all other provisions

of the Technical Specifications. Upon such review, the Developer shall place thereon the signature and date of his approval. Any drawing without the approval note of the Developer shall be rejected by FGCC. Drawings found to be inaccurate, incomplete, not in compliance with this Agreement and/or Developer's overall design shall be returned to the Subcontractor for correction, before submission to FGCC.

9.2.5 Submissions of Drawings and Documents: The Developer shall submit Drawings, within the stated periods, schedules, manuals, etc. to FGCC, as listed in this Technical Specifications. Items marked with (A) shall be for approval and with (I) for information.

9.2.6 As-Built Documents:

(a) The Developer shall prepare, and keep up-to-date, a complete set of "as-built" records of the execution of the Construction Works, showing the exact as-built locations, sizes and details of the Construction Work as executed. These records shall be kept on the Project Site and shall be used exclusively for the purposes of this Section 9.2 (*Drawings and Documents*).

(b) The Developer shall supply as-built documents to FGCC for review as prepared in accordance with this Section 9.2(*Drawings and Documents*). The Developer shall obtain the consent of FGCC as to their size, the referencing system, and other relevant details.

(c) The Developer shall submit the final as-built documents within [•] Days from the Project Completion Date in accordance with this Section 9.2 (*Drawings and Documents*).

### 9.3 **DEVELOPER NOT TO DEPART**

The Developer shall execute the Works and shall ensure that all Works are in accordance with the Developer's Documents reviewed and approved by FGCC and all other requirements of this Agreement. The Developer shall not depart from any Developer's Document previously submitted to FGCC unless it has first submitted an amended Developer's Document to FGCC and, in the case of Developer's Documents originally submitted for approval, obtained approval therefor or, in the case of other Developer's Documents, FGCC has made no adverse comment thereon.

### 9.4 **FGCC'S RIGHT TO EXAMINE DOCUMENTS**

FGCC after giving reasonable prior Notice has the right, during business hours, to examine any Developer's Document, which has been or is being prepared by the Developer agents, contractors, Subcontractors for the purposes of this Agreement provided that proprietary knowledge which is confidential to FGCC may be excluded.

### 9.5 **EFFECTS OF FGCC'S REVIEW AND COMMENTS**

Neither the submission of any document nor its review, nor its approval, the making of comments or the raising of queries thereon, nor suggestions or recommendations on the same by FGCC shall prejudice or affect any of the Developer's obligations with respect to the Works. Before acting on them, the Developer shall check and verify that any such comments

or queries, suggestions and recommendations are proper and correct and shall not give rise to a breach of this Agreement and any review and approval of FGCC shall not absolve the Developer from any liability in respect of the Works, including design. If the Developer reasonably determines that any suggestion or recommendation of FGCC is in breach of this Agreement, the Developer shall Notify FGCC of the same and proceed according to this Agreement.

9.6 **SUBCONTRACTS**

The provisions of this Section 8 (*Developer Documents*) shall also apply to all documents prepared by any agents, contractors or Subcontractors. The Developer shall check such documents submitted by agents, contractors or Subcontractors as soon as practicable following receipt thereof.

9.7 **REMEDIAL WORK FOLLOWING DEFECTIVE & INADEQUATE INFORMATION**

9.7.1 The Developer shall at its own expense carry out any alterations or remedial work to the Works necessitated by any discrepancies, errors or omissions of the Developer referred to in Section 9 (*Developer's Documents*).

9.7.2 If the Developer fails to commence and proceed properly and expeditiously with the carrying out of such alterations or remedial work within a reasonable time, FGCC may engage its own employees or other person or any other third parties to carry out such work, and the Developer shall be liable for all costs and charges incurred by FGCC.

9.7.3 The Developer shall reimburse FGCC for any cost or expense which FGCC may have incurred as a result of FGCC's reliance on any Developer's Document which, pursuant to this Section 9 (*Developer's Documents*), the Developer is to correct at its own expense where and to the extent that such cost would not have been incurred if the Developer had originally supplied the corrected Developer's Document. Such cost shall include the cost of removing work previously installed.

## **10. STAFF AND LABOUR**

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### **10.1 ENGAGEMENT OF STAFF AND LABOUR**

The Developer shall make its own arrangements for the engagement of all its employees, staff and labour, local or otherwise, and for their payment, housing, food and transport.

### **10.2 PERSONS IN THE SERVICE OF FGCC**

The Developer shall not recruit, or attempt to recruit, its staff and labour from amongst persons in the service of FGCC.

### **10.3 LABOUR LAWS**

10.3.1 The Developer shall comply, and shall cause its agents, contractors, Subcontractors to comply, with all the relevant labour laws applying to their employees, and shall duly pay and afford to them all their legal rights under Applicable Laws and Applicable Permits. The Developer shall require all such employees and agents, contractors, Subcontractors to obey all Applicable Laws and regulations concerning safety at work.

10.3.2 The Developer shall be responsible for making all payments/contributions to its workers (including those employed indirectly through its subcontractors) in accordance with the Applicable Laws and Applicable Permits. The Developer shall immediately upon payment of such contributions provide copies of receipts issued by the concerned Competent Authority to FGCC.

### **10.4 WORKING HOURS**

10.4.1 The Developer shall be permitted to work at the Project Site at any time or hour, as permitted by Applicable Laws and Applicable Permits. The Developer's Representative or a qualified supervisor shall be present during all periods, including overtime and second and third shifts, when work is in progress at the Project Site.

10.4.2 The Developer shall in dealings with his staff and labour have due regard to all recognised festivals, days of rest and religious or other customs observed by his staff and labour and in the Country.

### **10.5 FACILITIES FOR STAFF AND LABOUR**

The Developer shall provide and maintain all necessary accommodation and facilities for his agents, contractors, Subcontractors, staff and labour, as may be required under Applicable Laws and Applicable Permits. The Developer shall also provide the facilities for FGCC's personnel as acceptable to FGCC. The Developer shall not permit any of his employees or any of the employees of its agents, contractors, Subcontractors to maintain any temporary or permanent living quarters within the structures forming part of the Works.

### **10.6 DEVELOPER'S SUPERINTENDENCE**

The Developer shall provide all necessary superintendence during the execution of the Works, and as long thereafter as FGCC may consider necessary for the proper fulfilling of the

Developer's obligations under this Agreement. Such superintendence shall be given by sufficient and suitably qualified persons having adequate knowledge and experience of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory and safe execution of the Works.

#### 10.7 **DEVELOPER'S PERSONNEL**

10.7.1 The Developer shall provide and maintain sufficiently experienced and qualified personnel to execute and carry out the Works and to perform other functions in a manner and on a schedule that will facilitate and support timely completion of the Works by the Developer in accordance with this Agreement.

10.7.2 The Developer shall supervise, select and employ at its own cost, all such personnel required by the Developer for the performance of the Works hereunder and where required by the Applicable Laws and/or Applicable Permits. The Developer shall exercise diligence in ensuring that individuals selected are experienced and well qualified to perform the work in respect of which each such personnel is employed.

10.7.3 The Developer shall promptly replace any of his staff personnel (including the Developer's Representative and Key Personnel) and procure the replacement of any of its agents, contractors, or Subcontractors whom FGCC reasonably determines and notifies the Developer in writing is incompetent, negligent or misconducts himself or commits a serious breach of Applicable Laws or Applicable Permits. Any such replacement shall be to the reasonable satisfaction of FGCC. The Developer shall not replace Key Personnel or substantially reduce or otherwise change any of their responsibilities without the prior written consent of FGCC.

#### 10.8 **REPORTS ON DEVELOPER'S STAFF**

10.8.1 The Developer shall, as required by FGCC, send to FGCC a detailed statement of the supervisory staff and the numbers of labour in different categories from time to time employed by the Developer, agents, contractors, or Subcontractors on the Project Site. The statement shall be provided in such form and with such frequency as FGCC may reasonably require.

10.8.2 The Developer shall, within [•] Days from the Signing Date and as and when required by FGCC during the Project execution, provide the manpower histogram for the entire Project which shall include, but not be limited to, deployment plan consistent with the Works.

#### 10.9 **KEY PERSONNEL**

10.9.1 The Developer shall ensure that the Key Personnel remains engaged on permanent basis till the Expiry Date.

10.9.2 The Developer shall not change or demobilise any Key Personnel without the prior written consent of FGCC which shall not be unreasonably withheld. Any replacement of Key Personnel proposed by the Developer shall have equal or greater experience than the personnel being replaced.

10.9.3 The Key Personnel (including any substitute or replacement Key Personnel) must be permanent senior staff of the Developer and must be fully skilled, competent, qualified and experienced in the field and position.

10.10 **DISORDERLY CONDUCT**

The Developer shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst his staff and labour and the staff and labour of his agents, contractors, or Subcontractors and to preserve peace and protection of persons and property in the area of the Works and Project Site against such conduct.

## **11. CONSTRUCTION OF WORKS**

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### **11.1 CONSTRUCTION**

11.1.1 Upon the occurrence of the Commencement Date, the Developer shall immediately proceed with the Construction Works for the FGCC Properties in accordance with this Agreement and the Technical Specifications and Prudent Utility Practices and meet the Completion Conditions on or before the Project Completion Date.

11.1.2 On the completion of Completion Conditions, the Developer shall apply to the Independent Engineer to confirm that the Completion Conditions have been satisfied. The application by the Developer shall be supported by relevant documentation and the Independent Engineer shall be entitled to request further documentation, if so required. The Independent Engineer shall, within [•] Days from the receipt of the application made by the Developer under this Section 11.1.2:

- (a) Issue the Completion Conditions Certificate (with a copy to FGCC and the Independent Auditor) confirming that the Completion Conditions have been satisfied by the Developer in accordance with this Agreement; or
- (b) Inform the Developer (with a copy to FGCC and Independent Auditor) that the Completion Conditions have not been completed to his satisfaction and inform the Developer the steps required to be undertaken by the Developer to complete the Completion Conditions.

Following the satisfaction of the Completion Conditions in accordance with Section 11.1.2(b) (if applicable), the Developer shall be entitled to apply to the Independent Engineer in accordance with Section 11.1.4.

11.1.3 The Developer shall meet all Critical Project Milestones in accordance with the requirements and timelines set forth under this Agreement, the Technical Specifications and the Project Schedule.

11.1.4 The Developer shall strictly adhere to all timelines prescribed under this Agreement. In the event of any delay attributable to the Developer in meeting such timelines which results in cost overruns, the Developer shall bear all such costs and expenses solely and exclusively at its own risk and account, without recourse to FGCC. Such increase in costs shall not result in any increase in the Sponsor Base Equity Amount.

## **12. COMMENCEMENT AND DELAYS**

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### **12.1 TIME FOR COMPLETION**

12.1.1 The Developer shall meet the Completion Condition and shall achieve the Project Completion Date on or before the Scheduled Project Completion Date.

### **12.2 EXTENSION OF TIME**

12.2.1 The Developer may apply for an extension in Time for Completion of the Scheduled Project Completion Date, if it is being delayed due to occurrence of a Relief Event and/or Force Majeure Event, as the case maybe.

12.2.2 The Developer is expressly excluded from any extension of the Scheduled Project Completion Date, as the case may be, due to:

- (a) delays in obtaining labour or delivery of goods or services from any agents, contractors or Subcontractors;
- (b) physical conditions at the Project Site of any kind or nature unless such conditions are caused by Relief Event or Force Majeure Event (as the case maybe);
- (c) actions/inactions of Competent Authority of the Country, unless such action or inaction by a Competent Authority directly results in delay or disrupts the Developer's work and that such delay or disruption was not reasonably foreseeable by the Developer and provided that the Developer had diligently and timely followed the procedures laid down by such Competent Authority in the Country; and
- (d) any delay arising from the Developer's act or omission.

12.2.3 The Developer shall be entitled to an extension of Time for Completion under this Section 12.2 (*Extension of Time*) for such period as may be approved by FGCC and certified by the Independent Engineer, in accordance with Section 12.2.4 and Section 12.2.5 below.

12.2.4 The Developer is further required to submit to FGCC (with a copy to the Independent Engineer), as part of its request for an extension of the Time for Completion under this Section 12.2 (*Extension of Time*), an acceleration schedule to demonstrate how such delay can be eliminated and whether any steps can be taken to minimise the effects of the delay. The Developer shall keep such contemporary records as may be necessary to substantiate any application for an extension in the Scheduled Project Completion Date, as the case may be, on the Project Site and such other records as may be reasonably requested by FGCC. The Developer shall permit FGCC to inspect all such records and shall provide FGCC (with a copy to the Independent Engineer) with copies as required before allowing any extension in Time for Completion for the Scheduled Project Completion Date to the Developer.

12.2.5 FGCC shall proceed in accordance with Section 7.3 (*FGCC's Determination*) to agree or determine either prospectively or retrospectively such extension of the Scheduled Project Completion Date, as may be due with a prior approval of the Independent Engineer. FGCC shall Notify the Developer accordingly. When determining each extension of Time for

Completion, FGCC shall review his previous determinations and may revise, but shall not decrease the total extension of time.

- 12.2.6 Any extension of Time for Completion granted by FGCC in consultation with the Independent Engineer to the Developer shall, except as provided elsewhere in this Agreement, be the Developer's sole remedy in respect of any matter or thing in connection with which such extension shall have been granted. This does not in any manner preclude the Developer from disputing the decision of FGCC in arbitration or any other dispute resolution process.
- 12.2.7 A failure by FGCC to grant the Developer an extension for Time for Completion under this Section 12.2 (*Extension of Time*), promptly shall not be a deemed assessment and direction for an extension of the time as claimed.

12.3 **RATE OF PROGRESS**

- 12.3.1 If at any time the Developer's actual progress falls behind the Project Schedule or fails to meet the Critical Project Milestone in accordance with this Agreement as adjusted for extensions to the Scheduled Project Completion Date, as the case may be, due to a Relief Event or Force Majeure Event (as the case may be), or it becomes apparent that it will so fall behind schedule, the Developer shall no later than [•] Days submit to FGCC a revised Project Schedule taking into account the prevailing circumstances for its approval with a copy to the Independent Engineer. The Developer shall, at the same time, Notify FGCC of the steps being taken to expedite progress, so as to achieve completion within the Scheduled Project Completion Date. FGCC shall review the revised Project Schedule provided by the Developer in accordance with this Section 12.3.1 and approve the same in its sole discretion. Except in the case of a Relief Event or Force Majeure Event, in the event FGCC does not approve the revised Project Schedule, the Developer shall be obliged to comply with the Project Schedule provided under Section 8.12 (*Project Schedule*). For the avoidance of doubt, the costs of implementing such steps or of revising the Project Schedule shall be solely for the Developer's account.
- 12.3.2 To the extent any steps taken by the Developer in meeting his obligations under this Section 12.3 (*Rate of Progress*) due to delays attributable to the Developer, cause FGCC to incur additional costs, such costs shall be recoverable from the Developer by FGCC, subject to proper documentation and proof, and may be deducted by FGCC from any monies due, or to become due, to the Developer including payments to be made by the Escrow Agent to the Developer in accordance with this Agreement.
- 12.3.3 If the Developer falls behind Critical Project Milestone so as to delay the Scheduled Project Completion Date, except to the extent the Developer is entitled hereunder to an extension of the Scheduled Project Completion Date, the Developer shall, upon written Notice by FGCC and at no additional cost to FGCC, develop a recovery schedule and work such hours (including night shifts, weekends and holidays) and furnish such additional labour and equipment as necessary to eliminate such delay.
- 12.3.4 If the Developer fails to comply with its obligations under this Section 12.3 (*Rate of Progress*), FGCC may engage additional resources (including engaging additional personnel and third party developers) as it considers necessary to expedite the performance of the Works and ensure compliance with the Project Schedule and the Critical Project Milestone. All such additional costs incurred by FGCC shall be recoverable from the Developer and may be deducted by FGCC from any monies due, or to become due, to the Developer including

payments to be under by the Escrow Agent to the Developer in accordance with this Agreement.

#### 12.4 **LIQUIDATED DAMAGES FOR DELAY**

If the Project Completion Date is not achieved by the Scheduled Project Completion Date, unless caused by Relief Event or Force Majeure Event, then the Developer acknowledges that FGCC will suffer substantial damages which are difficult to accurately specify and ascertain. In such event, the Developer shall be liable to pay FGCC, Delay Liquidated Damages in such amounts set out in Schedule 9 (*Liquidated Damages*) for each Day that the Project Completion Date extends beyond the Scheduled Project Completion Date (“**Delay Liquidated Damages**”), as the case may be. The maximum amount of liquidated damages payable to FGCC by the Developer shall be subject to a maximum of the amount of the Construction Performance Security (“**Delay Liquidated Damages Cap**”).

#### 12.5 **NO FURTHER LIABILITY TO PAY LIQUIDATED DAMAGES FOR DELAY**

Once the Developer has paid all applicable Delay Liquidated Damages to FGCC for delay pursuant to Section 12.4 (*Liquidated Damages for Delay*), the Developer shall be relieved of any further liability in respect of such delay (other than any liability arising from FGCC terminating the Agreement in accordance with Section 13 (*Termination*)).

#### 12.6 **PAYMENT OF LIQUIDATED DAMAGES FOR DELAY**

12.6.1 FGCC shall, subject to first seeking payment of the Delay Liquidated Damages payable pursuant to this Section 12 (*Commencement and Delays*) from the Developer and his failure to make the payment within [•] Days on a demand made by FGCC, be entitled to recover the amount of the Delay Liquidated Damages mentioned in this Section 12 (*Commencement and Delays*) from the Construction Performance Security in accordance with the Agreement.

12.6.2 The Developer and FGCC agree that the Delay Liquidated Damages provided herein are a reasonable estimate and forecast of the actual costs, losses and expenses FGCC will incur as a result of events listed above and do not constitute a penalty. The Developer and FGCC, having bargained in good faith for such specific damages, are estopped from contesting the adequacy, validity or enforceability of such damages.

12.6.3 The payment or deduction of such Delay Liquidated Damages shall only relieve the Developer from its failure to achieve the Scheduled Project Completion Date, as the case maybe, but not its other obligations to complete the Construction Works, remedy any defects or from any other of his duties, obligations or responsibilities under the Agreement.

12.6.4 Any Delay Liquidated Damages payable to FGCC by the Developer shall be first determined/certified by the Independent Engineer and/or the Independent Auditor, as the case may be.

## **13. MATERIAL AND WORKS**

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### **13.1 MANNER OF EXECUTION**

All Works shall be executed in the manner set out in this Agreement. The Works shall be executed in a proper, workmanlike and careful manner with properly equipped facilities and non-hazardous materials, in accordance with recognised good practice and Prudent Utility Practices.

### **13.2 MANNER OF EXECUTION AND DELIVERY TO PROJECT SITE**

The Developer shall be responsible for procurement, transport, receiving, unloading and safe keeping of all Materials, Developer's Equipment and other things required for the completion of the Works. From the time of the applicable Materials' delivery, the Developer shall be responsible for its receipt, transportation (to Project Site), unloading and safe keeping of all Materials at Project Site.

### **13.3 INSPECTION**

FGCC (including FGCC's Representative) shall be entitled, at any places where Work is being carried out, to inspect, examine and test the Materials and workmanship, and to check the progress of all Works to be performed under the Agreement. The Developer shall provide full opportunity for FGCC (including FGCC's Representative) to inspect, examine, measure and test any Materials (as and when it is received on the Project Site) and Works performed on Project Site (from time to time). All charges toward inspection and/or testing of the Materials by the FGCC (including FGCC's Representative) shall be borne by the Developer. Testing of the Works and the Project Facilities will be carried out in the manner set out in the Technical Specifications.

## **14. SUB-LICENSE AGREEMENT**

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### **14.1 SUB-LICENSE AGREEMENT**

14.1.1 The Parties agree that the units comprising the FGCC Properties shall be sub-licensed by the Developer to Tenants. The Developer shall enter into a sub-license agreement with each Tenant in the form and manner approved by FGCC (each, a “**Sub-License Agreement**”) and shall charge Rent in accordance with Section 14.2 (*Rental Payments*). The term of the Sub-License Agreement shall in any event not exceed the term of the license specified in the Sub-License Agreement.

14.1.2 Not used.

14.1.3 The Developer shall ensure that the Sub-License Agreement(s) executed by it in favour of the Tenant is duly maintained under its record. Further, the Developer shall provide FGCC relevant details of Sub-License Agreements (together with certified (as being true and correct copies) executed Sub-License Agreements within thirty [•] Days of execution of each such Sub-License Agreements.

14.1.4 The Developer undertakes that all Sub-License Agreements shall be in conformity with the terms and conditions of this Agreement and the Project Site License Agreement and shall include provisions to the effect that in the event of a conflict (direct or indirect) between the provisions of this Agreement or the Project Site License Agreement and the Sub-License Agreement, the provisions of this Agreement or the Project Site License Agreement (as the case may be) shall prevail and such Sub-License Agreement shall stand modified to that extent.

### **14.2 RENTAL PAYMENTS**

14.2.1 Upon the Project Completion Date, the Developer shall, pursuant to and in accordance with the Sub-License Agreement, grant sub-licenses in respect of the relevant units comprising the FGCC Properties to such Tenants, in accordance with this Agreement or the Sub – License Agreement, as may be applicable. Pursuant to the Sub-License Agreement, each Tenant shall be liable to pay the Rent and any other charges in respect of its sub-licensed unit(s), and the Developer shall be responsible for invoicing, collecting, and receiving the Rent and such other charges from time to time in accordance with the timelines and at the rates set under the Sub-License Agreement.

14.2.2 Not used.

14.2.3 For the avoidance of doubt, FGCC hereby agrees and expressly authorizes the Developer to determine, charge, invoice, and collect all amounts under the Rent and any other charges payable by the Tenants in respect of the sub-licensed units of the FGCC Properties. All such Rent and charges collected from the Tenants shall be deposited into the Rental Collection Account in accordance with the provisions of the Escrow Agreement.

14.2.4 The Developer shall at all times, ensure, that the Revenue collected from the FGCC Properties shall not be less than the Benchmark Revenues for the relevant Operational Year of the Term, as detailed under Schedule 12 (*Benchmark Revenue and Revenue Sharing*). In the event, the Revenues collected by the Developer is less than the Benchmark Revenues, the Developer

shall be obligated to meet the shortfall from its own resources to maintain operations in accordance with the terms of this Agreement.

- 14.2.5 In the event that, during the MRG Period, the actual Revenues exceed the Benchmark Revenues (the “**Excess Amount**”), the Excess Amount shall be credited to the Escrow Account. The Excess Amount shall be applied towards funding of the Minimum Revenue Guarantee Amounts for the subsequent Operational Year under the MRG Period, as may be required and in accordance with the Escrow Agreement. Without prejudice to the foregoing, any credit balance available in the Escrow Account may be applied to set off, on a rupee-for-rupee basis, against the MRG Security Instrument for the immediately succeeding Operational Year, such that the required MRG Security Instrument shall stand reduced to the extent of such available balance.
- 14.2.6 Upon the expiry of the MRG Period, any balance with respect to the Excess Amount in the Escrow Account (together with any accrued markup thereon) shall be distributed between FGCC and the Developer in the ratio of seventy percent (70%) to FGCC and thirty percent (30%) to the Developer in accordance with the Escrow Agreement.
- 14.2.7 Following the expiry of the MRG Period, if the actual Revenues generated during any Operational Year thereafter (the “**Post MRG Period**”) are equal to the Benchmark Revenues, such additional Revenues shall be shared between the Parties in accordance with the revenue sharing percentages specified in Schedule 12 (*Revenue Sharing and Benchmark Revenues*), in accordance with the Escrow Agreement.
- 14.2.8 In the event that, during any Operational Year under the Post MRG Period, the actual Revenues exceed the Benchmark Revenues, such excess Revenues shall be shared between FGCC and the Developer in the ratio of seventy percent (70%) to FGCC and thirty percent (30%) to the Developer, in accordance with the Escrow Agreement.
- 14.2.9 In any Operational Year during the Post MRG Period where actual Revenues are lower than the Benchmark Revenues, the Developer shall remain obligated to pay the FGCC, the revenue share as stipulated under Schedule 12 (*Benchmark Revenues and Revenue Sharing*).

## **15. OPERATION AND MAINTENANCE**

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### **15.1 O&M WORKS**

15.1.1 The Developer shall carry out the O&M Works for the Project during the O&M Period in accordance with the O&M Plan.

15.1.2 Not used.

15.1.3 Not used.

15.1.4 Not used.

15.1.5 Not used.

15.1.6 Prior to [•] Days of the Scheduled Project Completion Date, the Developer shall submit to the Independent Engineer and the Independent Auditor (with a copy to the FGCC), the O&M Plan for the FGCC Properties prepared in accordance with this Agreement, the Applicable Laws and Prudent Utility Practices.

15.1.7 Within [•] Days of receipt of the O&M Plan for FGCC Properties, the Independent Engineer and Independent Auditor shall either

(i) approve the O&M Plan; or

(ii) reject the O&M Plan and convey its comments/observations (if any) to the Developer.

15.1.8 The Developer shall (at its own cost and expense) resubmit the revised O&M Plan for FGCC Properties no later than [•] Days from receipt of the rejection and/or comments/observations under Section 15.1.7(b), and the approval process under this Section 15.1.7 shall be repeated.

15.1.9 The Developer shall procure approval of the O&M Plan for FGCC Properties prior to or on the Scheduled Project Completion Date. Upon receipt of approval of the O&M Plan for FGCC Properties, the Developer shall commence the O&M Works of the FGCC Properties in accordance with the O&M Plan from the Project Completion Date.

15.1.10 The O&M Plan for FGCC Properties shall be binding upon the Developer.

15.1.11 The O&M Plan may be amended from time to time through mutual agreement between the Parties, the Independent Engineer and the Independent Auditor.

15.1.12 Any errors, omissions, ambiguities, inconsistencies, inadequacies, defects or deficiencies in the O&M Plan or arising therefrom, including those caused due to non-compliance with Section 15.1.6, shall be rectified by the Developer at its own cost and expense.

15.1.13 The FGCC (along with the Independent Auditor and Independent Engineer) and GOP, may use the O&M Plan for such purposes it may require for the implementation of the Project.

### **15.2 O&M FEE**

- 15.2.1 The Developer shall be entitled to charge the Tenants a fee for the O&M Works carried out in respect of the FGCC Properties as mutually agreed between the Developer and FGCC ("**O&M Fee**").
- 15.2.2 Such O&M Fee shall be collected by the Developer on a monthly or quarterly basis as mutually agreed between the Parties. Any and all amounts collected by the Developer on account of O&M Fee for the O&M Works shall be deposited in the Rental Collection Account in accordance with the terms and conditions of this Agreement and Escrow Agreement.

## **16. CONSTRUCTION PERFORMANCE SECURITY AND O&M PERFORMANCE SECURITY**

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### **16.1 CONSTRUCTION PERFORMANCE SECURITY**

16.1.1 The FGCC hereby acknowledges and confirms on the Signing Date, that the Developer has provided and delivered to the FGCC, the Construction Performance Security. The Construction Performance Security:

- (a) has been issued and maintained without any recourse on the Developer, its assets or properties; and
- (b) has not been secured through any assets and no Encumbrance of any nature has been created on the assets and properties of the Developer in respect of the same. All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Construction Performance Security are solely on account of the Sponsor.

16.1.2 The Construction Performance Security shall secure:

- (a) all of the Developer's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement;
- (b) and all of the Developer's obligations, liabilities, payments, Delay Liquidated Damages, indemnities, representations, guarantees, warranties and responsibilities under this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement, including the integrity and quality of the Developer's and its Sub-Contractors' workmanship, the timely and continuous performance of the Works, the quality and quantity of any equipment, materials, items and components supplied, the performance of Works by the Developer and compliance of the same with the applicable standards and all other works and services to be provided by the Developer under the this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement.

16.1.3 The Construction Performance Security shall be valid for an initial period beginning from the Signing Date and ending on ninety (90) Days from the Project Completion Date ("**Construction Performance Security Expiry Date**"). In the event the Construction Performance Security expires prior to the Construction Performance Security Expiry Date, the Developer shall extend the validity of the Construction Performance Security, at least fifteen (15) Business Days prior to its expiry, so as to keep it valid and enforceable until the Construction Performance Security Expiry Date. In the event of failure by the Developer to keep valid or extend the validity of the Construction Performance Security in accordance with this Section 16.1.3, the FGCC shall have the right to encash the Construction Performance Security at any time to its full outstanding value.

### **16.2 O&M PERFORMANCE SECURITY**

16.2.1 The Developer hereby undertakes to procure issuance and delivery to the FGCC of the Performance Security from time to time in accordance with this Section 16.2 (*O&M Performance Security*).

16.2.2 Not used.

16.2.3 Within [•] Days prior to the Scheduled Project Completion Date, the Developer shall deliver the O&M Performance Security. Following the Project Completion Date, and until the Expiry Date, the Developer shall replace the O&M Performance Security in accordance with Section 16.2.7. Each O&M Performance Security shall become effective simultaneously upon issuance.

16.2.4 The O&M Performance Security:

- (a) shall be issued and maintained without any recourse on the Developer, its assets or properties; and
- (b) shall not be secured through any assets and no Encumbrance of any nature shall be created on the assets and properties of the Developer in respect of the same.

All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the O&M Performance Security are solely on account of the Sponsors.

16.2.5 The O&M Performance Security shall secure:

- (a) all of the Developer's obligations, liabilities, payments, indemnities, representations, guarantees, warranties and responsibilities under this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement;
- (b) and all of the Developer's obligations, liabilities, payments, Delay Liquidated Damages, indemnities, representations, guarantees, warranties and responsibilities under this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement, including the integrity and quality of the Developer's and its Sub-Contractors' workmanship, the timely and continuous performance of the Works, the quality and quantity of any equipment, materials, items and components supplied, the performance of Works by the Developer and compliance of the same with the applicable standards and all other works and services to be provided by the Developer under the this Agreement and any other agreements directly relevant to the Developer's duties and obligations under this Agreement.

16.2.6 The O&M Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the FGCC's first written demand without any prior notice, reference or recourse to the Developer, the Sponsors or any other entity.

16.2.7 The O&M Performance Security provided by the Developer in respect of an Operational Year shall remain in force and effect until the date that falls on the expiry of such Operational Year subject to receipt by the FGCC of a fully valid and effective O&M Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the "**O&M Performance Security Expiry Date**"). In the event an O&M Performance

Security is to expire prior to the O&M Performance Security Expiry Date, the Developer shall extend the validity of the O&M Performance Security, at least fifteen (15) Days prior to its expiry, so as to keep it valid and enforceable until the O&M Performance Security Expiry Date. In the event of failure by the Developer to keep valid or extend the validity of any O&M Performance Security in accordance with this Section 16.2.7, the FGCC shall have the right to encash such O&M Performance Security at any time prior to its expiry to its full outstanding value.

16.2.8 Upon the delivery and commencement of a O&M Performance Security for an Operational Year (the "**New O&M Performance Security**") to the FGCC by the Developer in accordance with this Section 16.2 (*O&M O&M Performance Security*) on or prior to the commencement of such Operational Year, the previous O&M Performance Security issued for the previous Operational Year shall be null and void and shall be returned to the Developer by the FGCC simultaneously with the provision of the New O&M Performance Security.

16.2.9 Notwithstanding anything to the contrary, the Developer hereby undertakes and agrees that the O&M Performance Security shall remain valid:

- (a) in case of Termination, at least for one (01) year after the Termination Notice has been issued; and/or
- (b) in case of expiry of this Agreement on the Expiry Date, one (01) year after the Expiry Date.

## **17. VIABILITY GAP FINANCING AGREEMENT AND P3A FEES**

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### **17.1 VIABILITY GAP FINANCING AGREEMENT**

- 17.1.1 The Parties agree that they shall enter into a Viability Gap Financing Agreement with the GOP for the purposes of receiving the GOP Funding Amount from the GOP. The GOP Funding Amount shall be deposited in the FGCC Designated Account in accordance with the terms and conditions contained herein and the Equity and VGF Funding & Utilization Agreement.
- 17.1.2 The GOP Funding Amount shall carry a mark-up of one percent (01%) per annum during the period in which the Developer is servicing its commercial debt. Upon full repayment of the commercial debt, the mark-up rate shall increase to five percent (05%) per annum on the outstanding principal amount of the GOP Funding Amount.
- 17.1.3 The GOP Funding Amount shall be repaid by the Developer in five (05) equal annual instalments, commencing after the complete repayment of the Financing Due, in accordance with the terms and conditions set forth in this Agreement and the Viability Gap Financing Agreement.
- 17.1.4 The repayment of the GOP Funding Amount shall be made by the Developer from the Rental Collection Account and credited to the FGCC Designated Account in accordance with this Agreement and the Escrow Agreement.

### **17.2 P3A FEES**

- 17.2.1 The Developer shall pay to the P3A a success fee equivalent to 0.15% of the Pre-Estimated Project Cost within one (01) month of the earlier of:
- (i) The Financial Close; or
  - (ii) The disbursement of the GOP Funding Amount

Provided that, where Financial Close is not applicable to the Project, the success fee shall be payable within one (01) month of the signing of the Agreement. In addition, the Developer shall pay to the P3A an annual fee equivalent to 0.10% of the yearly Revenues (net of applicable sales tax) generated from the Project.

## **18. INJECTION OF EQUITY AND FUNDING AND UTILIZATION**

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- 18.1 The Parties hereby agree to fund from time to time the Sponsor Base Equity Amount or the GOP Funding Amount, as applicable, in accordance with the Equity and VGF Funding & Utilization Agreement. The Sponsor Base Equity Amount and the GOP Funding Amount shall be funded and utilized from time to time in accordance with the Equity and VGF Funding & Utilization Agreement. Further equity will be invested by the shareholders/sponsors of the Developer at the time and in such amounts determined by the board of directors of the Developer.
- 18.2 The Parties hereby agree to establish the Developer Equity Funding Account and FGCC Designated Account which shall be maintained and operated in accordance with the terms of the Equity and VGF Funding & Utilization Agreement and this Agreement.
- 18.3 All the funds required for the Project including the Sponsor Base Equity Amount and the GOP Funding Amount shall be credited to the Developer Equity Funding Account and FGCC Designated Account, as the case may be in accordance with the Applicable Laws and laws of the jurisdiction from where the funds are being transferred and in accordance with the terms of the Equity and VGF Funding & Utilization Agreement and this Agreement.
- 18.4 All the funds deposited in the Developer Equity Funding Account and FGCC Designated Account shall be utilized exclusively for the purposes of the Project in accordance with the terms of the Equity and VGF Funding & Utilization Agreement and this Agreement.

## **19. PROJECT ACCOUNT AND ESCROW AGREEMENT**

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### **19.1 PROJECT ACCOUNTS ESTABLISHMENT AND OPENING**

19.1.1 The Parties represents and warrants that they shall establish and maintain the following requisite accounts at the Designated Branch of the Escrow Agent:

- (a) Developer Equity Funding Account;
- (b) FGCC Designated Account;
- (c) Escrow Account;
- (d) Developer Project Account; and
- (e) Rental Collection Account

(collectively, the “**Project Accounts**”)

19.1.2 Other than the Project Accounts, the Parties shall not establish and/or maintain any bank, deposit, savings or other account or sub-account except as permitted (a) in this Agreement; (b) the Escrow Agreement; and/or (c) in case of the Developer, in writing by the FGCC.

### **19.2 MAINTENANCE OF THE PROJECT ACCOUNTS**

19.2.1 The Parties shall maintain, at all times up to and including the Expiry Date, the Project Accounts established in terms of Section 19.1 (*Project Accounts Establishment And Opening*) above.

19.2.2 The Parties undertake and warrant that they shall not open, hold, maintain or permit any account, other than the Project Accounts, with any Person, bank or financial institution, till the Expiry Date, without the prior written consent of each other.

### **19.3 PROJECT ACCOUNTS’ COVENANTS**

19.3.1 If any sum of money which is required to be deposited in a particular Project Account is deposited into a different Project Account, the Parties shall, promptly on becoming aware of the same, procure or irrevocably instruct the Escrow Agent to transfer such sum of money to the relevant Project Account.

19.3.2 The Parties represents, warrants and undertakes that each Project Account is and shall be denominated in PKR.

### **19.4 PROJECT ACCOUNTS STANDING INSTRUCTIONS**

19.4.1 The Parties shall issue the standing instructions (the **Project Accounts Standing Instructions**) in relation to the Project Accounts to the Escrow Agent within [•] Days of the [•] and the same shall be confirmed and acknowledged by the Escrow Agent.

- 19.4.2 The Project Accounts shall be operated and maintained in accordance with this Agreement and the Escrow Agreement through the Project Accounts Standing Instructions.
- 19.4.3 The Project Accounts Standing Instructions shall be irrevocable and shall remain effective, in each case, until such time that the same (or any part thereof) are revoked pursuant to a written revocation notice duly executed and confirmed by the authorized representatives of the Parties and subsequently duly issued by the relevant Party (as the case maybe) to the Escrow Agent instructing revocation of the Project Accounts Standing Instructions (or any part thereof).
- 19.4.4 The Project Accounts Standing Instructions may be amended at any time pursuant to a written notice duly executed and confirmed by the authorized representatives of the FGCC and the Developer and subsequently duly issued and acknowledged by the Developer to the Escrow Agent instructing amendment of the Project Accounts Standing Instructions (or any part thereof).
- 19.4.5 The Parties shall, jointly procure that the Escrow Agent acts on the Project Accounts Standing Instructions from time to time in accordance with the terms of this Agreement and the Escrow Agreement.

19.5 **OPERATION OF PROJECT ACCOUNTS**

The Parties hereby agree that all funds generated in relation to the Project shall be deposited into the Project Accounts strictly in accordance with the terms of this Agreement and the Escrow Agreement, and all such proceeds shall be applied and utilised solely in accordance with the provisions of this Agreement and the Escrow Agreement.

19.6 **BANK CHARGES**

The Developer shall pay to the Escrow Agent such transaction charges and fees (if any) as the Developer may from time to time agree with the Escrow Agent.

19.7 **NOT USED**

19.8 **ESCROW AGENT TO ACT AS TRUSTEE**

The Parties shall ensure that the Escrow Agent acts as fiduciary of the FGCC and the Developer, in connection herewith and shall authorize the Escrow Agent to exercise such rights, powers and authorities and discretions as are specifically delegated to the Escrow Agent in terms of this Agreement and the Escrow Agreement.

19.9 **ACCEPTANCE OF THE ESCROW AGENT**

The Parties shall ensure that the Escrow Agent acts as such and accepts all payments and other amounts to be delivered and held by the Escrow Agent pursuant to the terms of this Agreement and the Escrow Agreement. The Parties shall ensure that the Escrow Agent holds and safeguards the Project Accounts during the term of this Agreement and treats the amount in the Project Account as monies deposited by the Developer with the Escrow Agent, as agent for the benefit of the Parties.

## **20. CAPTIVE POWER PLANT**

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### **20.1 ENGAGEMENT OF POWER PRODUCING COMPANY**

20.1.1 The Developer shall, at its sole cost, risk, and responsibility, procure and maintain a contractual arrangement with a reputable, duly licensed, and technically competent power producing company (“PPC”) for the design, engineering, procurement, installation, testing, commissioning, operation and maintenance of a captive power plant within the area designated by FGCC at the Project Site. The Developer shall ensure that such captive power plant, as installed by the PPC is fully operational on or before the Scheduled Project Completion Date.

20.1.2 Such engagement shall be undertaken strictly in accordance with all Applicable Laws, rules, regulations and standards, as well as the terms and conditions of this Agreement and the power supply agreement to be executed between the Developer and the PPC. The Developer shall ensure that the PPC holds all requisite governmental and regulatory approvals, licenses and certifications necessary to generate and supply electrical power to the Project Site.

### **20.2 SUPPLY OF POWER TO FGCC PROPERTIES**

20.2.1 The PPC shall be responsible for ensuring a continuous, reliable, and dedicated supply of electrical power to the FGCC Properties at a tariff that is lower than the prevailing tariff charged by the Faisalabad Electric Supply Company (“FESCO”) or any successor distribution company having jurisdiction over the Project Site.

20.2.2 The PPC shall adhere to agreed service-level standards, including voltage stability, outage response times, redundancy systems, and performance metrics, to ensure uninterrupted operations of the FGCC Properties.

### **20.3 POWER SUPPLY TO TENANTS AND DEVELOPER’S MARGIN**

20.3.1 The Developer shall permit the PPC to supply captive power to the Tenants of the FGCC Properties and the Developer shall be entitled to levy an additional charge of PKR 9 per kilowatt-hour (PKR 9/kWh) over and above the PPC’s actual cost of power generation and supply, subject to actualization, provided that the total charge per kilowatt-hour shall be less or equal to the prevailing tariff charged by FESCO or any successor distribution company.

20.3.2 Such additional charge shall accrue exclusively to the Developer and shall be deposited by the Developer into the Rental Collection Account maintained for the Project. The Developer shall maintain accurate and verifiable records of all power generation, distribution, metering, billing, collections, and disbursements and shall furnish quarterly statements of account to FGCC reflecting such transactions.

### **20.4 MINIMUM REQUIREMENTS OF THE PPC AGREEMENT**

20.4.1 The Developer shall ensure that the power supply agreement executed between the Developer and the PPC incorporates provisions that are satisfactory to FGCC and that adequately safeguard FGCC’s and the Tenants’ interests, including, without limitation, the following:

- (a) Uninterrupted and dedicated power supply obligations, including redundancy measures, backup arrangements and service continuity protocols;
- (b) Service performance standards and measurable key performance indicators relating to efficiency, reliability and response times;
- (c) Tariff determination and adjustment mechanisms, including escalation, review and indexation procedures;
- (d) Metering, monitoring and billing systems compliant with international standards and equipped for independent verification;
- (e) Health, safety and environmental (HSE) standards consistent with Applicable Laws and FGCC's internal safety policies;
- (f) Compliance with all Applicable Laws, rules, and regulations, including those issued by the National Electric Power Regulatory Authority, FESCO and any successor authorities; and
- (g) Provisions for termination, default, force majeure and dispute resolution ensuring the continued and uninterrupted supply of electrical power to the FGCC Properties notwithstanding any dispute or change in circumstances between the Developer and the PPC.

## **21. PAYMENT OF MINIMUM GUARANTEE AMOUNTS**

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- 21.1 Following Scheduled Project Completion Date, the FGCC shall, in order to assist the Developer in terms of the Revenues, ensure that the Developer receives minimum payments equivalent to the Minimum Revenue Guarantee Amounts, on each MRG Payment Date into the Escrow Account in accordance with the terms of the Escrow Agreement.
- 21.2 Subject to and in accordance with the provisions of this Agreement and the relevant project agreement, the respective amounts under the Minimum Revenue Guarantee Amounts shall be payable by FGCC to the Developer in respect of each MRG Instalment Period during the MRG Period, subject to the terms and conditions set forth in this Agreement and the relevant project agreement.
- 21.3 All amounts to be paid under the Minimum Revenue Guarantee Amount shall be verified by the Independent Auditor, where following the end of each quarter under the Operational Year, the Independent Auditor shall review and verify the actual Revenues against the Benchmark Revenue for the relevant period, subject to the Developer's compliance with applicable performance standards, the applicable caps and limitations and the provisions of this Agreement and the relevant project agreements (as applicable).
- 21.4 The MRG Security Instrument shall remain valid and enforceable throughout the MRG Period and shall secure the due and punctual performance of the FGCC's obligations in respect of the Minimum Revenue Guarantee Amounts for each Operational Year. For avoidance of any doubt, payments with respect to Minimum Revenue Guarantee Amounts shall be made from the Escrow Account. In the event, where funds in the Escrow Account are insufficient to fund the Minimum Revenue Guarantee Amounts as certified by the Independent Auditor, the MRG Security Instrument to the extent of such shortfall may be utilised by the Developer.
- 21.5 Prior to the commencement of each subsequent Operational Year during the MRG Period, the amount secured under the MRG Security Instrument shall be reviewed, and to the extent that the amount secured thereunder is less than the Minimum Revenue Guarantee Amount applicable to such ensuing Operational Year (after taking into account any amounts already applied or credited, including amounts standing to the credit of the Escrow Account, if applicable), the FGCC shall, not later than [●] days of the commencement of such Operational Year, procure a top-up or enhancement of the MRG Security Instrument so that the aggregate secured amount equals the applicable Minimum Revenue Guarantee Amount for that Operational Year.
- 21.6 For the avoidance of doubt, where the amount secured under the existing MRG Security Instrument is equal to or greater than the Minimum Revenue Guarantee Amount applicable to any Operational Year, no additional security or top-up shall be required for that Operational Year.

### **21.A COMMITTEE**

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- 21.1.A Thirty (30) Days prior to the Scheduled Project Completion Date, the FGCC shall constitute a committee comprising one (01) member of FGCC, one (01) member of the P3A and one (01) member of Developer, and such other advisor(s) as FGCC may designate from time to time) ("**Committee**").

- 21.2.A The Committee shall be established for the purposes of discussing, reviewing and assessing matters related to O&M at the FGCC Properties during the Term. Without limitation to the generality of the foregoing, the Committee shall:
- (a) oversee matters related operational coordination of shared infrastructure and services, including utilities, O&M arrangements, and user charges, to ensure fair and non-discriminatory treatment of the Developer;
  - (b) perform such other functions as may be delegated to it by FGCC or as may be mutually agreed among the members of the Committee for the effective implementation of its purpose under this Agreement.
- 21.3A The Committee shall meet on a quarterly basis and/or at such other instances as may be reasonably required for the performance of its functions.
- 21.4A The meetings of the Committee shall be convened subject to seven (07) Days' prior written notice to all members, specifying the agenda and matters to be discussed.
- 21.5A The decisions of the Committee made in accordance with this Section 21.A (*Committee*) shall be final and binding on the Parties and shall be implemented by the Developer in accordance with this Agreement.
- 21.6A The Committee shall maintain written minutes of its meetings, including decisions taken, and shall provide copies of such minutes to FGCC and the Developer within ten (10) Days of each meeting. The Committee shall also furnish such reports, data, and recommendations as may be reasonably requested by FGCC from time to time.

## 22. MATERIAL ADVERSE IMPEDIMENT

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22.1 FGCC shall be responsible for removal of impediments on the Project Site, whether physical or legal, to perform the Works which impediments may include, impediments arising from, *inter alia*, (i) any geological and archaeological finds on the Project Site; (ii) any litigation or disputes pertaining to the Project Site; or (iii) defect in FGCC's title to the Project Site:

- (a) compromise access to the Project Site; or
- (b) compromise possession of the Project Site

(each a "**Material Adverse Impediment**")

provided, however, that the Developer shall Notify FGCC of a Material Adverse Impediment, whether physical or legal, to Works in respect of the Project which:

- (a) causes a Material Adverse Effect; and
- (b) is not attributable to the Developer.

22.2 Any Notice issued by the Developer pursuant to Section 22.1 shall be duly verified and certified by the Independent Engineer prior to submission to the FGCC and the Independent Engineer shall, prior to delivery of such Notice to FGCC, duly certify in the Notice, *inter alia*, the occurrence and subsistence of the Material Adverse Impediment and the time period required for removal of the same (the "**Material Impediment Removal Period**"). Upon receipt by FGCC of the Notice duly verified and certified by the Independent Engineer (the "**Certified Impediment Notice**"), FGCC shall act so as to remove such Material Adverse Impediment within the Material Impediment Removal Period. In the event the Developer suffers delays in the performance of its obligations as a direct result of the Material Adverse Impediment, the same shall entitle the Developer to issuance of a Relief Order Request and in such case, the provisions of Section 23 (*Relief Order And Events*) shall apply.

## 23. RELIEF ORDER AND EVENTS

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- 23.1 The Developer shall be only entitled to initiate a request to the Independent Engineer for issuance by the same of a Relief Order, as applicable, an extension of the Time for Completion for completion of Works, as applicable in the event of occurrence of any of the following event as certified by the Independent Engineer and circumstances (the “**Relief Events**”):
- (a) a Material Adverse Impediment, provided, that the Developer shall be entitled to only an extension in the Time for Completion for any delays that, directly result from the Material Adverse Impediment and as are determined by the Independent Engineer in the Relief Order;
  - (b) a Political Event, provided, that the Developer shall be entitled to only an extension in Time for Completion for any delays that, directly result from the Political Event and as are determined by the Independent Engineer in the Relief Order;
  - (c) a Non-Political Event, provided, that the Developer shall be entitled to only an extension in the Time for Completion for any delays that directly result from the Non-Political Event and as are determined by the Independent Engineer in the Relief Order;
  - (d) a Change in Law, provided, that the Developer shall be entitled to only an extension in the Time for Completion for any delays that directly result from the Change in Law and as are determined by the Independent Engineer in the Relief Order; and
  - (e) any other event which entitles the Developer to an extension in Time for Completion in accordance with this Agreement.
- 23.2 If due to the occurrence of a Relief Event, the Developer is entitled to initiate a Relief Order Request, the Developer shall prepare and deliver to the Independent Engineer (with a copy to the FGCC) a Relief Order Request, together with the Relief Order Proposal that is prepared in accordance with and is subject to Section 23.5 (*Relief Order Procedure*) and, and shall specifically set out in detail the events and circumstances constituting the Relief Event, together with all supporting satisfactory documentary evidence relating thereto.
- 23.3 Following submission to the Independent Engineer of a Relief Order Request pursuant to Section 23.4 (*Relief Order*), the Independent Engineer shall proceed in accordance with Section 23.5 (*Relief Order Procedure*).
- 23.4 **RELIEF ORDER**
- 23.4.1 The Developer shall be only entitled to initiate a request to the Independent Engineer (the “**Relief Order Request**”) for issuance by the same of a Relief Order relating to, as applicable, an extension of the Time for Completion by the FGCC in the event of occurrence of a Relief Event.
- 23.4.2 The Developer shall prepare and deliver to the Independent Engineer (with a copy to the FGCC) a Relief Order Request, together with the Relief Order Proposal that is prepared in accordance with and is subject to Section 23.5 (*Relief Order Procedure*). Each Relief Order Request prepared in accordance with Section 23.5 (*Relief Order Procedure*) shall specifically

set out in detail the events and circumstances constituting the Relief Event, together with all supporting satisfactory documentary evidence relating thereto.

23.4.3 Following submission to the Independent Engineer of a Relief Order Request pursuant to Section 23.4 (*Relief Order*), the Independent Engineer shall proceed in accordance with Section 23.5 (*Relief Order Procedure*).

## 23.5 RELIEF ORDER PROCEDURE

23.5.1 In case the Developer submits a Relief Order Request to the Independent Engineer (with a copy to the FGCC) pursuant to Section 23.4 (*Relief Order*) then prior to Independent Engineer issuing a Relief Order, the Developer shall prepare and submit to the Independent Engineer (with a copy to the FGCC), as soon as practicable, a detailed proposal (the "**Relief Order Proposal**") containing:

- (a) a description of the proposed work to be performed and a detailed program for its execution;
- (b) the Developer's proposal any adjustments to Time for Completion, accompanied by detailed pricing and documentary evidence;
- (c) a statement whether and the extent to which, in Developer's opinion, the proposed proposals contained in the Relief Order Proposal would, notwithstanding the exercise of all due skill and care, prevent the Developer from performing its obligations under the Agreement; and
- (d) any proposals, including any reasonable alternative means for performance

provided, however, in the event of submission of any Relief Order Request and Relief Order Proposal, the Developer shall provide such additional information as the FGCC, and the Independent Engineer may reasonably request.

23.5.2 The Developer and FGCC agree that compliance by the Developer with the provisions of this Section 23 (*Relief Order and Events*) shall be a condition precedent to the Independent Engineer's issuance of a Relief Order, unless waived in writing by the FGCC. Further, notwithstanding anything to the contrary contained herein:

- (a) if the Works (or any part thereof) are not in accordance with this Agreement, any rectification in that respect undertaken by the Developer shall not entitle the Developer to issuance of a Relief Order;
- (b) the Developer is expressly precluded from any extension of the Time for Completion due to delays resulting from any act or omission of the Developer;
- (c) the Developer shall not be entitled to any extensions of the Time for Completion for any delays or failure to perform and hence shall not be entitled to initiate Relief Order Request for issuance of a Relief Order to the extent the Developer is, in any case, in delay of performance of its obligations under the Agreement.

23.5.3 Following receipt by the Independent Engineer from the Developer of the Relief Order

Proposal and the Relief Order Request, the Independent Engineer shall review the Developer's proposals contained in the Relief Order Proposal and the Relief Order Request, for the purpose of determining:

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

23.5.4 Following the Independent Engineer's determination of matters (together with any other matters relating to their evaluation for issuance for Relief Order), the Independent Engineer shall either amend, approve or disapprove in writing the Developer's submitted proposals contained in the Relief Order Proposal and the Relief Order Request within [•] Days following receipt by the Independent Engineer from the Developer of the Relief Order Proposal and the Relief Order Request. If the Independent Engineer amend, modify or reject the Relief Order Proposal and the Relief Order Request, in each case, submitted by the Developer, the Developer shall submit a revised Relief Order Proposal and Relief Order Request taking into account the amendments, modifications and comments on the same made by the Independent Engineer, which shall be subject to approval by the Independent Engineer within [•] Days of submission of the revised Relief Order Proposal and the Relief Order Request. In the event of the Independent Engineer's approval of the Relief Order Proposal and the Relief Order Request or, if applicable, a revision of the same approved by the Independent Engineer, it is agreed that the Independent Engineer shall issue a written order of Relief Order to FGCC and the Developer simultaneously. All extensions in Time For Completion, as applicable, shall be expressly set out in the Relief Order binding on the Developer and FGCC; provided, however, that such extensions in Time For Completion set in the Relief Order shall not be in excess of the Developer's request under the Relief Order Proposal and the Relief Order Request.

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

## 24. TERMINATION

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### 24.1 DEFAULT OF THE DEVELOPER

24.1.1 If the Developer performs any of the acts set out below, the same shall constitute an event of default of the Developer (the “**Developer Event of Default**”), unless such act or event occurs due to an FGCC Event of Default or default or breach by the FGCC of any of the ancillary agreement executed by the FGCC or Developer in relation to the Project:

- (a) the Developer Abandons or repudiates this Agreement;
- (b) the Developer without reasonable excuse, fails to commence the Works, proceed with the Works or to demonstrate that sufficient capability is employed in the performance of the Works to achieve completion of the Completion Conditions by the by the Scheduled Project Completion Date;
- (c) Not used;
- (d) the Developer fails to achieve the Completion Conditions by the Scheduled Project Completion Date;
- (e) the Developer fails to pay any and all payments, required to be made to FGCC in accordance with this Agreement;
- (f) the Developer fails to meet any of the Critical Project Milestone in accordance with this Agreement;
- (g) the Developer fails to comply with any of the requirements of any Applicable Laws and Applicable Permits and after being so required to apply, does not rectify its default within a reasonable period of time;
- (h) the Developer creates an Encumbrance on the Project Site;
- (i) the Developer commits a breach of Section 8.6.1 (Restriction on Transfer of Shares);
- (j) the Developer fails to carry out the O&M Works in accordance with the requirements of Schedule 6 (*Operation and Maintenance*);
- (k) the Developer does not renew, replenish, replace or provide the Performance Security in accordance with this Agreement;
- (l) a court makes an order that the Developer be wound up or a resolution for a voluntary winding-up of the Developer is passed;
- (m) any receiver or manager in respect of the Developer is appointed or possession is taken by or on behalf of any creditor of any property that is owned by the Developer;
- (n) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved in respect of the Developer;

- (o) the Developer becomes bankrupt or insolvent, goes into liquidation, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under Applicable Laws) has a similar effect to any of these acts or events;
- (p) any statement, representation or warranty made by the Developer in this Agreement proves to have been incorrect, in any material respect, when made and such incorrect statement, representation or warranty has a Material Adverse Effect on the Developer's ability to perform its obligations under this Agreement and/or on the Project or has a Material Adverse Effect on the rights and/or obligations of FGCC under this Agreement; and
- (q) the exercise by the Financiers of their remedies under the Financing Documents with respect to either the assets comprising the Project Site under the Financing Documents such that the Developer or its management are removed by the Financiers from control of the Project or of the Developer, and/or (ii) the failure by the Financiers (or the agent of the same) to comply with the Concession Direct Agreement;
- (r) the Developer fails to fulfil its obligations under Section 8.1 (*General Obligations*);
- (s) a Corrupt Act has been committed by the Developer or on its behalf; or
- (t) is otherwise in Material Breach of any obligation under this Agreement.

24.1.2 If a Developer Event of Default has occurred and FGCC wishes to terminate this Agreement, it shall serve a Notice of termination (the "**Notice of Intent to Terminate by FGCC**") on the Developer, except for (o), (p) (q) and (s), in which case the Agreement will be terminated immediately by such Notice of Intent to Terminate by FGCC.

24.1.3 The Notice of Intent to Terminate by FGCC shall specify the type and nature of the event of default that has occurred.

24.1.4 In case of any Developer Event of Default arising under Section 24.1.1, the cure period for the Developer shall be [•] Days (the "**Cure Period for Developer**") from the Notice of Intent to Terminate by FGCC.

24.1.5 In the event the Developer rectifies the Developer Event of Default prior to the expiry of the Cure Period for Developer, such Notice of Intent to Terminate by FGCC shall be deemed to be revoked and this Agreement shall continue in accordance with the terms and conditions hereof.

24.1.6 In the event the Developer fails to rectify the event of default prior to the expiry of the Cure Period for Developer, FGCC may terminate this Agreement by serving a Notice of termination (the "**Termination Notice by FGCC**") to the Developer. This Agreement shall terminate on the date specified in the Termination Notice (the "**FGCC Termination Date**") and the provisions of Section 24.3 (*Consequences of Termination*) shall apply.

## 24.2 **DEFAULT OF FGCC**

24.2.1 If FGCC performs any of the acts set out below, the same shall be an event of default of the Authority (the “**FGCC Event of Default**”), unless such act or event occurs due to a Force Majeure Event, a Developer Event of Default [or breach by the Developer of any of the ancillary agreement executed by the FGCC or Developer in relation to the Project:

- (a) If the FGCC:
  - (i) Fails to execute the Project Site License Agreement in accordance with Section 6.1 (*Project Site License Agreement*) above;
  - (ii) Fails to fulfil its obligations under Section 7.1 (*General Obligations*); or
  - (iii) Is otherwise in Material Breach of any obligation under this Agreement;
- (b) the expropriation, compulsory acquisition, or nationalization by the FGCC or any government authority of: (i) any shares in the Developer; or (ii) of any assets of the Project or rights of the Developer;
- (c) any termination, cancellation, resumption or revocation of the Developer’s interest established under the Project Site License Agreement in respect of the Project Site;
- (d) Not used;
- (e) a Change in Law having the effect of making:
  - (i) unlawful, unenforceable, invalid, or void any material undertaking of the FGCC under this Agreement; or
  - (ii) Not used;
  - (iii) any such payment, the performance of any such material obligation or the enjoyment or enforcement of any such material right becoming unenforceable, invalid or void as a result of any such Change in Law;

which in the case of (i), (ii) or (iii) above, has a continuing effect for more than one [•] Days without an arrangement being provided to exempt the affected party from the effect of such Change in Law;

- (f) a Lapse of Consent that shall have existed for a period of [•] consecutive Days;

24.2.2 If a FGCC Event of Default has occurred and the Developer wishes to terminate this Agreement, it shall serve a Notice of termination (the “**Notice of Intent to Terminate by the Developer**”) on FGCC.

24.2.3 The Notice of Intent to Terminate by the Developer shall specify the type and nature of the event of default that has occurred.

24.2.4 In case of any FGCC Event of Default arising under Section 24.2.1, the cure period for the FGCC shall be [•] Days (the “**Cure Period for FGCC**”) from the Notice of Intent to Terminate by Developer.

24.2.5 In the event FGCC rectifies the FGCC Event of Default prior to the expiry of the Cure Period for FGCC, such Notice of Intent to Terminate by the Developer shall be deemed to have been revoked and this Agreement shall continue in accordance with the terms and conditions hereof.

24.2.6 In the event FGCC fails to rectify the FGCC Event of Default prior to the expiry of the relevant Cure Period for FGCC, the Developer may Terminate this Agreement by serving a Notice of termination (the “**Termination Notice by Developer**”) to FGCC. This Agreement shall terminate on the date specified in the Termination Notice by Developer (the “**Developer Termination Date**”) and the provisions of Section 24.3 (*Consequences of Termination*) shall apply.

### 24.3 CONSEQUENCES OF TERMINATION

24.3.1 Upon termination of this Agreement prior to Project Completion Date due to Developer’s Event of Default:

(a) FGCC or its designee shall either (i) acquire the Developer by way of purchase of Ordinary Share Capital or (ii) purchase the Developer’s rights and interests in respect of the assets owned by the Developer, in consideration of payment compensation as provided in Schedule 13 (*Termination Compensation*). In such case, the following shall take place:

- (i) any amounts standing to the credit of the Project Accounts on the FGCC Termination Date shall be transferred by the Escrow Agent to FGCC, as duly approved and certified by the Independent Auditor;
- (ii) the Performance Security shall be encashed by FGCC; and
- (iii) the Developer will hand over any and all documents pertaining to the Project, including the master plan, Developer’s Documents and any other related documents required by FGCC within [•] Days of the FGCC Termination Date.

24.3.2 Upon termination of this Agreement after the Project Completion Date due to Developer’s Event of Default:

(a) FGCC or its designee shall either (i) acquire the Developer by way of purchase of shares or (ii) purchase the Developer’s rights and interests in respect of the assets owned by the Developer, in consideration of payment compensation as provided in Schedule 13 (*Termination Compensation*). In such case, the following shall take place:

- (i) any amounts standing to the credit of the Project Accounts on the FGCC Termination Date shall be transferred by the Escrow Agent to FGCC, as duly approved and certified by the Independent Auditor;
- (ii) the Performance Security shall be encashed by FGCC;
- (iii) the Developer will hand over any and all documents pertaining to the Project, including the master plan, Developer’s Documents and any other

related documents required by FGCC within five (5) Days of the FGCC Termination Date; and

- (iv) the Developer shall continue to perform the O&M Works and shall remain entitled to collect the O&M Fee from the Tenants until such time that FGCC appoints a suitable Person to operate and maintain the Project.

24.3.3 Upon termination of this Agreement prior to or after the Project Completion Date due to an FGCC Event of Default:

- (a) FGCC or its designee shall be required to either (i) acquire the Developer by way of purchase of Ordinary Share Capital or (ii) purchase the Developer's rights and interests in respect of the assets owned by the Developer, in consideration of payment compensation as provided in Schedule 13 (*Termination Compensation*). In such case, the following shall take place:

- (i) any amounts standing to the credit of the Project Accounts on the Developer Termination Date shall be transferred by the Escrow Agent to the FGCC, as duly approved and certified by the Independent Auditor;
- (ii) the Performance Security shall be returned by FGCC to the Developer within [•] Days within the Developer Termination date;
- (iii) the Developer will hand over any and all documents pertaining to the Project, including the master plan, Developer's Documents and any other related documents required by FGCC.

24.3.4 Notwithstanding anything contained herein, upon termination of this Agreement in accordance with this Section 24.3.1 and 24.3.2, FGCC shall be entitled to appoint a new developer (the "**Nominee**") to undertake the Works and all other obligations of the Developer hereunder. The Developer shall assist and facilitate the Nominee to the extent required by FGCC.

## **25. INSURANCE**

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The Developer shall at its sole risk and expense, ensure that all insurance covers required under Applicable Law or Applicable Permits, including insurance covers as listed in Schedule 11 (*Insurance*) hereto, are obtained and maintained by the Developer during the term of this Agreement.

## 26. FORCE MAJEURE

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### 26.1 DEFINITION OF FORCE MAJEURE

26.1.1 "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Signing Date, materially and adversely affects the performance by such affected Party (the "**Affected Party**") of its obligations under or pursuant to this Agreement; provided, however, that such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the Works, the Project Site and the Project from a casualty or other event; that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Force Majeure Event hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the above requirements:

- (a) The following political events that occur inside or directly involve Pakistan (each a "**Political Event**"):
  - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage;
  - (ii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated and is widespread or nationwide;
  - (iii) Lapse of Consent that shall have existed for a period of thirty (30) consecutive Days; or
  - (iv) Change in Law.
- (b) The following non-political events that occur inside or directly involve Pakistan (each a "**Non- Political Event**"):
  - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado;
  - (ii) fire, explosion, chemical contamination, radioactive contamination, or ionising radiation;
  - (iii) pandemic, epidemic or plague (including Covid 19); or
  - (iv) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated and is not widespread or nationwide.

provided, that each of the Political Events and Non-Political Events shall only be considered as a Force Majeure Event if: (a) such event has existed for a consecutive period of [•] Days or more, or its effects have lasted for a period of consecutive [•] Days or more; and (b) it has affected the Works envisioned under this Agreement for

a period of consecutive [•] Days.

## 26.2 **EFFECT OF FORCE MAJEURE**

Neither FGCC nor the Developer shall be considered in default or in contractual breach to the extent that performance of obligations is prevented by a Force Majeure Event, provided that no Force Majeure Event shall relieve either Party from its payment obligations under this Agreement.

## 26.3 **DEVELOPER'S RESPONSIBILITY**

26.3.1 Upon occurrence of an event considered by the Developer to constitute Force Majeure Event and which may affect performance of the Developer's obligations including the Works, the Developer shall promptly Notify FGCC of such Force Majeure Event as soon as practicable, but in any event not later than twenty-four (24) hours (with a copy to the Independent Engineer) after it becomes aware of the occurrence of the circumstances giving rise to a Force Majeure Event. Thereafter, the Developer shall give FGCC (with a copy to the Independent Engineer) a second Notice, describing the Force Majeure Events in detail, to the extent which can be reasonably determined at the time of such Notice, providing a preliminary evaluation of obligations affected, a preliminary estimate of the period of time that the Developer shall be unable to perform such obligations and other relevant matters as soon as practicable, but in any event, not later than [•] Days after the initial Notice of the occurrence of the Force Majeure Event. The Developer shall continue to perform its obligations as far as reasonably practicable. The Developer shall also Notify the FGCC (with a copy to the Independent Engineer) of any proposals with the objectives of completing the Works and mitigating any increased costs to the FGCC and the Developer.

26.3.2 Notwithstanding the above, the Developer shall Notify FGCC for an extension in the Scheduled Project Completion Date in accordance with the provisions of Section 12.2 (*Extension of time*) and shall continue to perform his obligations as far as reasonably practicable. The Developer shall also Notify when appropriate and requested by FGCC to provide further Notices (with a copy to the Independent Engineer) more fully describing the Force Majeure Event and its causes and providing up to date information relating to the efforts made by the Developer to avoid and/or mitigate the effects thereof and estimates, to the extent practicable, of the time that it expects it shall be unable to perform its obligations under the Agreement. Furthermore, the Developer shall include in its Notices of any proposals, including any reasonable alternative means for performance, but shall not affect any proposals without the consent of FGCC and the Independent Engineer.

## 26.4 **FGCC'S RESPONSIBILITY**

Upon occurrence of an act considered by FGCC to constitute Force Majeure Event and which may affect performance of FGCC's obligations, FGCC shall promptly Notify the Developer (with a copy to the Independent Engineer) soon as practicable, but in any event not later than twenty-four (24) hours after it becomes aware of the circumstances giving rise to a Force Majeure Event. Thereafter, FGCC shall give the Developer a second Notice (with a copy to the Independent Engineer), describing the Force Majeure Event in reasonable detail and, to the extent which can be reasonably determined at the time of such Notice, providing a preliminary evaluation of the obligations affected, a preliminary estimate of the period of time that it shall be unable to perform such obligations and other relevant matters as soon as practicable, but

in any event, not later than [•] Days after the initial Notice. FGCC shall continue to perform his obligations as far as reasonably practicable. FGCC shall also Notify the Developer (with a copy to the Independent Engineer) of any proposals with the objectives of completing the Works and mitigating any increased costs to FGCC and Developer.

#### 26.5 **DUTY TO MINIMISE DELAY AND MITIGATE**

26.5.1 Each of the Developer and FGCC shall at all times use all reasonable efforts to minimise any delay in the performance of the Agreement as a result of Force Majeure Event and mitigate the effects of such Force Majeure Event.

26.5.2 The Developer shall endeavour to continue the performance of its obligations under the Agreement insofar as reasonably practicable and Notify FGCC (with a copy to the Independent Engineer) of the steps it proposes to take including any reasonable alternative means for performance which are not prevented by the Force Majeure Event. The Developer shall take such steps unless and to the extent FGCC directs the Developer not to do so.

26.5.3 A Party shall give Notice to the other Party when it ceases to be affected by the Force Majeure Event and mitigate any loss suffered by either Party as a result of the Force Majeure Event.

#### 26.6 **OPTIONAL TERMINATION AND RELEASE**

26.6.1 If a Force Majeure Event occurs which prevents the whole of the Works or substantially the whole of the Works and its effect continue for a period of [•] consecutive Days, either FGCC or the Developer may give to the other a Notice of its intention to terminate.

26.6.2 Within [•] Days of the date of such Notice, the senior executives of each of the Developer and FGCC shall meet to negotiate in good faith and with the aim of prevent the termination of the Agreement and achieving a resolution satisfactory to both Developer and FGCC. If, within [•] Days of the date of the initial Notice of the Developer and FGCC's intention to terminate, the senior executives of each of the Developer and FGCC are unable to agree on a resolution satisfactory to both Developer and FGCC, either Party may give to the other a Notice of termination, which shall take effect on a date specified in such Notice.

26.6.3 In the event this Agreement is terminated in accordance with this Section 26.6 (*Optional Termination and Release*), the provisions of Section 24.3 (*Consequences of Termination*) will apply.

#### 26.7 **REMEDIES FOR FORCE MAJEURE EVENT**

26.7.1 The Affected Party must at all times since the occurrence of the Force Majeure Event comply with the obligations of mitigation as provided above and shall continue to comply, for which the Affected Party shall be entitled to the following relief:

- (a) the obligations of the Affected Party (excluding payment obligations) to the extent they are affected by the Force Majeure Event shall be suspended for the period of the Force Majeure Event;
- (b) the time period for the performance of obligations of the Affected Party to the extent they are affected by the Force Majeure Event shall be extended on a day for day basis

for the period of Force Majeure Event provided, however, that no relief, including extension of performance deadlines, shall be granted to the Affected Party pursuant to this Section 26.7.1(b) to the extent that such failure to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred; and

- (c) the term of this Agreement shall be extended on a day for day basis for the period of the Force Majeure Event.

26.7.2 Other than for breaches of this Agreement by the other Party (i.e. the Party not affected by Force Majeure Event), the other Party shall not bear any liability for any loss or expense suffered by the Affected Party as a result of a Force Majeure Event.

## **27. HANDOVER AND EXPIRY OF THE PROJECT**

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### **27.1 HANDOVER**

Upon the expiry of the Term of this Agreement on the Expiry Date or its earlier termination (whichever occurs first), the Developer shall, at its sole cost and expense, remove all of its personnel, assets, Materials and Developer's Equipment from the Project Site and shall hand back the Project Site, together with the FGCC Properties, to the FGCC, subject only to reasonable wear and tear resulting from normal operation over the Term in accordance with the Schedule 8 (*Handing Over Criteria*).

### **27.2 EXPIRY OF THE AGREEMENT**

27.2.1 Upon the expiry of the Term of this Agreement on the Expiry Date or its earlier termination (whichever occurs first), the Developer shall be transferred to FGCC at a nominal value of PKR 1/- (Pak Rupees One only) In such case, the following shall take place:

- (a) any amounts standing to the credit of the Project Accounts shall be transferred by the Escrow Agent to FGCC, as duly approved and certified by the Independent Auditor;
- (b) the Developer will hand over any and all documents pertaining to the Project, including but not limited to the master plan, Developer's Documents and any other related documents required by FGCC; and
- (c) hand over the Project Site along with the FGCC Properties in accordance with Schedule 8 (*Handing Over Criteria*).

## **28. DISPUTE RESOLUTION**

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### **28.1 NEGOTIATION BETWEEN SENIOR EXECUTIVES**

FGCC and the Developer will attempt in good faith to resolve any dispute promptly by negotiation between senior executives of the Developer and FGCC who have authority to settle the Dispute. If the Developer and FGCC intends to invoke such negotiation process, it shall give the other Party written Notice of such intent and specify in writing the specific nature of the dispute. Within [•] Days of receipt of said Notice, the receiving Party shall submit to the other a written response. The executives representing the Developer and FGCC shall meet at a mutually acceptable time and place within thirty [•] Days of the receiving Party's Notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If such dispute is not resolved within [•] Days from their first meeting (or within such longer period of time as the Developer and FGCC may mutually agree), the Developer and FGCC shall proceed to mediation in accordance with Section 28.2 (*Mediation*). The Notices called for within this Section shall not be deemed a substitute for any other Notice requirement set forth in this Agreement.

### **28.2 MEDIATION**

If the Developer and FGCC are unable to resolve any dispute through the procedures set forth in Section 28.1 (*Negotiation between Senior Executives*) above, the Parties shall endeavour to settle the dispute in an amicable manner by mediation administered by an independent and impartial person, appointed by the Public-Private Partnership Policy Board established under the Public Private Partnership Act, 2017. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled in accordance with Section 28.3 (*Arbitration*).

### **28.3 ARBITRATION**

28.3.1 Any dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Sections 28.1(*Negotiation between Senior Executives*) and 18.2 (*Mediation*) shall be settled by arbitration in accordance with the Arbitration Act, 1940. The number of arbitrators shall be determined in accordance with the said act. The arbitration proceedings shall be conducted and the award shall be rendered, in the English language.

28.3.2 The arbitration shall be conducted in [•], Pakistan.

28.3.3 Any arbitral award under this Section 28.3 shall be final and binding upon the Parties, and each Party undertakes to comply with and to carry out any such arbitral award or procedural order, fully and without delay.

## **29. ASSIGNMENT AND CHARGES**

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### **29.1 RESTRICTION ON ASSIGNMENT AND CHARGES**

This Agreement shall not be assigned by the Developer to any person, save and except with the prior consent in writing of the FGCC, which consent the FGCC shall be entitled to decline without assigning any reason.

### **29.2 FINANCING TERM SHEET & FINANCING AMENDMENT TERM SHEETS**

29.2.1 Prior to Financial Close, the Developer shall deliver to the FGCC and the Independent Auditor a schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment schedule that provides for debt repayment that is not greater than the aggregate of the Financing Component set out in the Financial Model (calculated in present value terms) using the assumptions of the Financial Model, together with the maximum principal amounts and interest (or markup) rate or rates and any schedules or formulae that shall be included in the Financing Documents for the computation of principal and interest (or markup), fees and charges payable to the Financiers upon the winding up for early termination of the Financing under the Financing Documents, and shall also identify the equity commitments, individually and in total, of the Sponsors (the “**Specific Term Sheet Parameters**”). The FGCC and the Independent Auditor shall evaluate the Specific Term Sheet Parameters to ensure that the principal financial terms are not greater than the aggregate of the Financing Component set out in the Financial Model using the assumptions of the Financial Model, and to evaluate the impact on the FGCC’s obligations upon any termination of this Agreement. If FGCC and/or the Independent Auditor has any objections to the terms specified in such term sheet or schedule, it shall inform the Developer thereof within [•] Days of its receipt thereof; otherwise, the FGCC and the Independent Auditor shall be deemed not to have objected to those terms (the “**Financing Term Sheet**”) and the Developer shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment schedule of the specified term or a shorter term without further notice to or approval by FGCC and/or the Independent Auditor. The Developer shall provide the FGCC, the Independent Engineer and the Independent Auditor with a copy of the Financing Documents no later than [•] Business Days of its execution (provided that, to the extent that the commercial terms of these executed Financing Documents do not materially deviate from the Financing Term Sheet, the FGCC and the Independent Auditor shall have no further right to raise any objection in respect of these Financing Documents).

29.2.2 Following Financial Close, the Developer shall deliver to the FGCC and the Independent Auditor, copies of all amendments to the executed Financing Documents within [•] Business Days after the execution of each such document. The Developer shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the FGCC and the Independent Auditor, no less than [•] Business Days prior to execution of such amendment or modification to the loan documents or new loan agreements, a schedule or term sheet setting forth the proposed revised principal repayment schedule and the other key financial terms or material modifications related thereto.

29.2.3 The FGCC and the Independent Auditor shall notify the Developer of any objections to the term sheet or schedule related to the proposed modification to the principal repayment

schedule as soon as reasonably possible, and in any case within [•] Days of receipt of the term sheet or schedule. In case no objection has been received by the Developer on or before the expiry of the [•] Days after receipt of the term sheet or schedule related to the proposed modification, the FGCC and the Independent Auditor shall be deemed not to object to those amendments or terms (the “**Financing Amendment Term Sheets**”). At the request of the FGCC and the Independent Auditor, prior to the execution of such amendments or modifications to the Financing Documents or new Financing Documents, the Developer shall deliver to FGCC and the Independent Auditor, in a form satisfactory to FGCC, assurances, undertakings or agreements that no alteration or enhancement as a result of such refinancing or new or additional debt financing shall increase in any respect the financial obligations of the FGCC hereunder or any other agreement, directly linked to this Agreement.

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

### 29.3 **FINANCIAL CLOSE**

Upon achievement of Financial Close, the Developer shall procure issuance by the Financiers (or an agent of the same) of a Notice issued to the FGCC (with a copy to the Independent Auditor and the Independent Engineer) certifying the achievement of Financial Close (the “**Financial Close Achievement Notice**”).

### 29.4 **ASSIGNMENT BY THE FGCC**

Notwithstanding anything to the contrary contained in this Agreement or any other agreement directly linked to this Agreement, the FGCC shall not assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement or any agreement directly linked to this Agreement to an assignee or any Person without the consent of the Developer.

### 29.5 **SPECIFIC FINANCING TERMS**

The Parties agree that the Financing shall be arranged by the Developer. The Developer agrees that the tenor of the Financing shall not exceed a period of more than [•] from the Scheduled Project Completion Date; provided, that the Developer may, at least [•] Days prior to the Financial Close, seek written approval from the FGCC and the Independent Auditor for grant of an extension in the tenor of the Financing. Upon receipt of a written request from the Developer, the FGCC and the Independent Auditor may approve or disapprove the extension within [•] Days of receipt of such request.

### 29.6 **EXERCISE OF STEP IN RIGHTS**

In the event, of any default, material breach, insolvency, or termination event by the Developer under the Financing Documents, the Financiers shall have:

- (a) the right step in directly to cure the default or perform the Developer’s obligations under this Agreement; or

(b) appoint a substitute entity to assume the Developer's rights and obligations.

The Financiers shall provide written notice to the FGCC of their intention to exercise their step-in rights and may, at their discretion, require FGCC to cooperate in facilitating such step-in or substitution.

29.7 **ALLOCATION OF FINANCING**

The Project shall be financed through a combination of the Sponsor Base Equity Amount, the GOP Funding Amount and the Financing in accordance with this Agreement.

## 30. DISCLAIMER

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- 30.1 Subject to the terms of this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has, after a complete and careful examination, made an independent evaluation of the RFP, scope of the Project, project requirements, the Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the FGCC or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder and on the basis of such examination and determinations is entering into this Agreement for the purpose of accepting the Concession for the implementation of the Project in accordance with the terms and conditions of this Agreement. Except as expressly provided in this Agreement, the FGCC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Developer confirms that it shall have no claim whatsoever against the FGCC in this regard.
- 30.2 Subject to the terms of Agreement, the Developer acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Section 31.1 and hereby acknowledges and agrees that the FGCC shall not be liable for the same in any manner whatsoever to the Developer, the Sponsors and their associates or any person claiming through or under any of them.
- 30.3 Any mistake or error in or relating to any of the matters set forth in Section 31.1 shall not vitiate this Agreement or render it voidable.
- 30.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in sub-section 31.1 of Section 31 (*Disclaimer*) above, such Party shall immediately Notify the other Party, specifying the mistake or error; provided, however, it is expressly agreed between the Parties that any such failure on part of the FGCC to give any notice pursuant to this sub-section 31.4 of Section 31 (*Disclaimer*) shall not prejudice the disclaimer of the FGCC contained in sub-section 31.1 of this Section 31 (*Disclaimer*) and shall not in any manner shift to the FGCC any risks assumed by the Developer pursuant to this Agreement.
- 30.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Developer and the FGCC shall not be liable in any manner for such risks or the consequences thereof.

## **31. MISCELLANEOUS**

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### **31.1 VALIDITY AND ENFORCEABILITY**

The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid by any authority having jurisdiction thereof, the Developer and FGCC shall immediately renegotiate in good faith such term or provision of this Agreement to eliminate such invalidity.

### **31.2 WAIVER**

31.2.1 No waiver by either Party of any default or defaults by the other Party in the performance of any of the provisions of this Agreement:

31.2.2 shall operate or be construed as a waiver of any other or further default or defaults whether of a like or different character; or

31.2.3 be effective unless in writing duly executed by a duly authorised representative of such Party.

31.2.4 Such waiver shall not affect the validity or enforceability of this Agreement in any manner.

31.2.5 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement nor time or other indulgence granted by one Party to the other shall act as a waiver of such breach or acceptance of any variation or the relinquishment of any such right or any other right hereunder, which shall remain in full force and effect.

### **31.3 THIRD-PARTY BENEFICIARIES**

The provisions of this Agreement are intended for the sole benefit of the Sponsors, FGCC and the Developer, and there are no third-party beneficiaries other than assignees contemplated by the terms herein and to such extent no person who is not party of this Agreement has any rights under this Agreement to enforce any term of this Agreement.

### **31.4 COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by each of the Parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

### **31.5 ENTIRE AGREEMENT**

This Agreement sets forth the full and complete understanding of the Parties relating to the subject matter hereof as of the date first above stated, and supersedes any and all negotiations, agreements and representations made or dated prior thereto. Subsequent to the Signing Date, this Agreement may be supplemented, modified or otherwise amended by

mutual agreement or only in accordance with the terms of this Agreement; provided that any such supplements, modifications and amendments to this Agreement, if any, must be in the form of a written amendment to this Agreement, and signed by authorised representatives of both Parties to this Agreement.

**31.6 CONFLICTING PROVISIONS**

Either Party, upon becoming aware of any conflict or inconsistency among any of the components of this Agreement shall promptly Notify the other Party in writing of such conflict or inconsistency.

**31.7 JOINT RESPONSIBILITY FOR DRAFTING**

This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each of the Developer and FGCC; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

**31.8 RELATIONSHIP OF THE PARTIES**

This Agreement shall not be interpreted or construed to create an association, joint venture, agency or partnership between the Parties or to impose any partnership or agency obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as, or be an agent or representative of, or to otherwise bind, the other Party.

**31.9 INDEMNITY**

The Developer shall defend, indemnify and hold harmless FGCC and the FGCC's Representative and their respective contractors, agents and employees from and against all claims, damages (including any environmental damages), losses and expenses possibly arising out of or resulting from (i) the Works, including professional services provided by the Developer, as a consequence of the Developer's breach of its obligations under this Agreement or any other act or omission of the Developer and (ii) damage to third party property or personal injury or death of any person arising out of the execution and completion of the Works or any other act or omission of the Developer or its employees, agents, contractors or Subcontractors.

## **32. GOVERNING LAW & JURISDICTION**

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This Agreement shall be governed by and construed in accordance with the laws of the Country and the courts at [•] shall exercise e non-exclusive jurisdiction to hear and decide all disputes arising under or in connection with this Agreement.

**1. FOR & ON BEHALF OF FAISALABAD GARMENT CITY COMPANY (FGCC)**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**Witness 1**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**Witness 2**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**2. FOR & ON BEHALF OF [INSERT DEVELOPER'S NAME]**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**Witness 1**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**Witness 2**

.....  
NAME: [ • ]  
DESIGNATION: [ • ]  
DATED: [ • ]

**SCHEDULE 1 – PROJECT SITE**

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*[Schedule [ • ] of the RFP to the extent of the Project Site will be added here at the time of execution of this Agreement]*

**SCHEDULE 2 – SCOPE OF WORK AND TECHNICAL SPECIFICATIONS**

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*[Schedule [ • ] of the RFP to the extent of the Project Site will be added here at the time of execution of this Agreement]*

**SCHEDULE 3 – SCOPE OF WORK OF INDEPENDENT ENGINEER AND SCOPE OF WORK OF INDEPENDENT AUDITOR**

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[ • ]

**SCHEDULE 4 – PERFORMANCE SECURITY**

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**To:**  
**CEO**  
**FAISALABAD GARMENT CITY COMPANY**  
**[INSERT ADDRESS]**

GUARANTEE NO. .... (hereinafter referred to as the “**GUARANTEE**”)

Dated: .....

[INSERT NAME OF BANK], being the Guarantor issuing bank (hereinafter referred to as the “**GUARANTOR BANK**”) understands that the following parties have entered into an agreement entitled the “**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**” dated [insert date] (hereinafter referred to as the “**AGREEMENT**”) to establish, develop, construct, operate and maintenance an industrial park by the name of “**FGCC Properties**” in Faisalabad under the public private partnership mode:

- (a) **FAISALABAD GARMENT CITY COMPANY**, having its office at 1-1/2 Khurrianwala, Sahianwala Road, Khurrianwala, Faisalabad, Punjab, Pakistan (hereinafter referred to as the “**FGCC**”); and
- (b) [*insert name of the Developer*], a company incorporated under the laws of Islamic Republic of Pakistan, having its registered office located at [insert address] (hereinafter referred to as the “**DEVELOPER**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Agreement, the Developer is required to provide the FGCC with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS] (Pakistani Rupees [INSERT AMOUNT IN WORDS] Only).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the FGCC, without any Notice, reference or recourse to the Developer or to any other entity or without any recourse or reference to the Agreement, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [insert amount in numbers]/- (Pakistani Rupees [insert amounts in words] Only)  
(hereinafter referred to as the “**GUARANTEED AMOUNT**”)

immediately, however not later than within [five (5) Business Days] from the date of the Guarantor Bank’s receipt of the FGCC’s first written demand (hereinafter referred to as the “**DEMAND**”) at the Guarantor Bank’s offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND SHALL BE MADE], such Demand stating:

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

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the FGCC.

The Guarantor Bank shall unconditionally honour a Demand hereunder made in compliance with this Guarantee immediately (however not later than [five (5) Business Days] of its receipt of the FGCC's Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account.

This Guarantee shall come into force and shall become automatically effective upon its issuance.

After having come into force, this Guarantee and the Guarantor Bank's obligations hereunder shall expire on [INSERT DATE AND TIME] (the "**GUARANTEE EXPIRY DATE**") irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, in the event that the FGCC issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Date, the Guarantor Bank shall honour such Demand.

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

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

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

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

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

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

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

The Guarantor Bank hereby declares and confirms that under its constitution and applicable laws of Islamic Republic of Pakistan, it has the necessary power and authority to:

- (a) enter into, execute and deliver this Guarantee; and

(b) perform the obligations it has undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against the Guarantor Bank under the laws of Islamic Republic of Pakistan.

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

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

**EXECUTED & ISSUED  
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....  
NAME:  
DESIGNATION:  
DATED:

**WITNESSES**

**WITNESS I**

**WITNESS II**

.....  
NAME: [ • ]  
CNIC No.: [ • ]

.....  
NAME: [ • ]  
CNIC No.: [ • ]

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**SCHEDULE 5 – PERFORMANCE SECURITY AMOUNTS**

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Construction Performance Security – to be submitted by the Developer at the time of signing of the PPP Agreement for an amount equal to two percent (2%) of the Pre-Estimated Project Cost.

O&M Performance Security – to be submitted by the Developer for an amount equal to five percent (5%) of the O&M Costs for each Operational Year.

**SCHEDULE 6 – OPERATION AND MAINTENANCE**

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*[Operation and maintenance scope will be added here at the execution of this Agreement]. O&M to be prepared in accordance with the Scope of O&M.*

**SCHEDULE 7 – BASE CASE FINANCIAL MODEL**

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[ • ]

**SCHEDULE 8 – HANDING OVER CRITERIA**

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[ • ]

**SCHEDULE 9 – LIQUIDATED DAMAGES**

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[ • ]

**SCHEDULE 10 – LICENSE AGREEMENT**

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[•]

**SCHEDULE 11 – INSURANCE**

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**PART I – CONSTRUCTION PERIOD INSURANCES**

- i. Developer’s All Risks Policy (in relation to development and construction activities)**  
Minimum sum to be insured: .....
- ii. Comprehensive Third Party Liability**  
Minimum sum to be insured: .....
- iii. Workmen’s compensation insurance as required under the Laws of Pakistan**  
Minimum sum to be insured: .....
- iv. Force Majeure Events**  
Minimum sum to be insured: .....

**PART II – OPERATIONS PERIOD INSURANCES**

- i. Project Assets** (Comprehensive insurance for Project Assets for their full market value or replacement cost (including fire, burglary, standard and special peril);  
Minimum sum to be insured: .....
- ii. Comprehensive Third Party Liability**  
Minimum sum to be insured: .....
- iii. Workmen’s compensation insurance as required under the Laws of Pakistan**  
Minimum sum to be insured: .....
- iv. Force Majeure Events**  
Minimum sum to be insured: .....

Any other insurance that may be necessary to protect the Developer, the persons claiming through or under it, its employees and its assets (against loss, damage or destruction at replacement value) including all Force Majeure Events that are insurable.

**SCHEDULE 12 – BENCHMARK REVENUE AND REVENUE SHARING**

<b>OPERATIONAL YEAR</b>	<b>BENCHMARK REVENUES</b>	<b>BENCHMARK REVENUES IN MN (PKR)</b>
1	351,195,111	351.20
2	528,577,456	528.58
3	620,454,730	620.45
4	678,638,809	678.64
5	742,949,361	742.95
6	812,061,693	812.06
7	888,403,617	888.40
8	971,990,595	971.99
9	1,064,355,390	1,064.36
10	1,163,740,052	1,163.74
11	1,273,496,306	1,273.50
12	1,393,698,766	1,393.70
13	1,526,491,678	1,526.49
14	1,669,548,207	1,669.55
15	1,827,499,650	1,827.50
16	2,000,525,968	2,000.53
17	2,191,630,678	2,191.63
18	2,397,743,066	2,397.74
19	2,625,268,377	2,625.27
20	2,874,566,299	2,874.57
21	3,149,849,428	3,149.85
22	3,447,079,065	3,447.08
23	3,775,122,348	3,775.12

**IMPLEMENTING AGENCY/FGCC REVENUE SHARE**

<b>OPERATIONAL YEAR</b>	<b>MINIMUM REVENUE GUARANTEE AMOUNT (PKR)</b>	<b>PRESENT VALUE OF MINIMUM REVENUE GUARANTEE AMOUNT (DISCOUNTED AT THE RATE OF 10%) (PKR)</b>	<b>IMPLEMENTING AGENCY REVENUE SHARE PERCENTAGE (%)</b>	<b>IMPLEMENTING AGENCY REVENUE SHARE (PKR)</b>	<b>PRESENT VALUE OF IMPLEMENTING AGENCY REVENUE SHARE (DISCOUNTED AT THE RATE OF 10%) (PKR)</b>
OPERATIONAL YEAR 1					
OPERATIONAL YEAR 2					
OPERATIONAL YEAR 3					
OPERATIONAL YEAR 4					
OPERATIONAL YEAR 5					

...					
<b>OPERATIONAL YEAR 23</b>					
<b>TOTAL</b>					

**Post MRG Period**

*In the event, if the actual Revenues generated during each subsequent Operational Year of the Post MRG Period, is equal to the Benchmark Revenues, the Developer shall share the Revenues with Implementing Agency in accordance with the Escrow Agreement based on the Implementing Agency/FGCC revenue share percentage quoted in the form above.*

*In the event, if the actual Revenues exceeds the Benchmark Revenues in any year during the Post MRG Period, such excess amounts shall be shared between Implementing Agency/FGCC and the Developer in a ratio of 70:30, in accordance with the Escrow Agreement.*

*In any Operational Year during the Post MRG Period where actual Revenues are lower than the Benchmark Revenues, the Developer shall remain obligated to pay the Implementing Agency/FGCC, the revenue share as quoted in the above form.*

*These PVs shall be computed at a discount rate of ten percent (10%) over a period of twenty-three (23) years*

**SCHEDULE 13 – TERMINATION COMPENSATION**

<b>Sr. No.</b>	<b>TERMINATION PAYMENT AMOUNT</b>	<b>COMPENSATION PAYABLE BY FGCC</b>
1.	Non-Political Event Termination Amount	a. the Termination Equity; plus b. Financing Due
2.	Political Event Termination Amount	a. the Termination Equity; plus b. the Termination Dividend Amount; plus c. Financing Due
3.	Developer Default Termination Amount	a. Financing Due
4.	FGCC Default Termination Amount	a. the Termination Equity; plus b. the Termination Dividend Amount; plus c. Financing Due