

- of the nature of the Relief Event, the date of occurrence and its likely duration;
- (ii) within ten (10) Days of receipt by the Independent Engineer of the notice referred to in Section 18.2.2 (b)(i), give full details of the relief claimed; and
 - (iii) demonstrate to the reasonable satisfaction of the Independent Engineer, as the case may be, that:
 - (A) the Concessionaire and its Contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken;
 - (B) the Relief Event directly caused the delay to the Service Commencement Date or the need for relief from other obligations under this Agreement;
 - (C) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Concessionaire acting in accordance with Good Industry Practice; and/or
 - (D) the Concessionaire is using reasonable endeavours to perform its obligations under this Agreement.
- (c) In the event that the Concessionaire has complied with its obligations under Section 18.2.2 (b), then:
- (i) the Service Commencement Date shall be postponed by the Delay Duration or such longer period of time as shall be reasonable, in the opinion of the Independent Engineer, as the case may be, for such a Relief Event, taking into account the likely effect of delay; and/or
 - (ii) PKHA shall not be entitled to exercise its rights to Terminate this Agreement under Section 21 [Termination].
- (d) The Concessionaire shall notify the Independent Engineer, with a copy to PKHA, if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- (e) In the event of a Relief Event stipulated in Section 18.2.1 that continues for a period in excess of six (6) Months, the Parties shall meet in order to find a mutually satisfactory solution for dealing with such prolonged Relief Event.
- (f) If the Parties cannot agree on the extent of the relief required, or PKHA disagrees that a Relief Event has occurred or that the Concessionaire is entitled to any extension of the Service Commencement Date and/or other relief from its



obligations under this Agreement, the Parties shall resolve the matter through Fast-Track Dispute Resolution in accordance with Section 24.2



19. SUBSIDY, EQUITY, SUBORDINATE FINANCING AND RELATED MATTERS

19.1 SUBSIDY AND EQUITY FUNDING AND UTILIZATION

19.1.1 The Parties hereby acknowledge and agree that:

- (a) PKHA shall fund the PKHA Funding Amount in the Class B Equity Subscription Account in accordance with the terms of this Agreement and the EFU Agreement to fund the Estimated Project Cost;
- (b) PKHA shall fund the Initial PKHA Funding Amount in the Class B Equity Subscription Account on the Effective Date;
- (c) PKHA shall fund the Balance PKHA Funding Amount in the Class B Equity Subscription Account on the Balance PKHA Funding Amount Funding Date in accordance with the terms of the EFU Agreement;
- (d) the Sponsor shall fund the Equity in accordance with the terms of the EFU Agreement; and
- (e) the Initial PKHA Funding Amount, the Balance PKHA Funding Amount, the Subordinate Financing and the Equity shall, in each case, be Utilized by the Concessionaire in accordance with the terms of the EFU Agreement.

19.1.2 The PKHA Funding Amount and the Subordinate Financing (each, a "Specific Payment") shall be paid by PKHA:

- (a) free of any restriction or condition (except the restriction that the Specific Payment shall be used for the Project in terms of the Agreement, the PKHA Agreements and the Financing Agreements);
- (b) free and clear of and (except to the extent required by Applicable Law) without any deduction or withholding on account of any Tax; and
- (c) without deduction or withholding (except to the extent required by Applicable Law).

19.1.3 If (a) GoKPK and/or PKHA (or any other person) (the "Obligor") is required by Applicable Law to make any deduction or withholding on account of any Tax or other amount from any Specific Payment; or (b) the Obligor (or any Person on its behalf) is required by Applicable law to make any deduction or withholding from, or any payment on or calculated by reference to a Specific Payment:

- (a) the Obligor shall notify the Concessionaire of any such requirement or any change in any such requirement as soon as it becomes aware of it;
- (b) the Obligor shall pay any such Tax or other amount before the date on which penalties attach thereto, such payment to be made (if the liability is imposed on the Concessionaire and/or the Sponsor) on behalf of and in the name of that party; and



- (c) the Specific Payment payable by the Obligor in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, that party receives on the due date and retains (free from any liability in respect of any such deduction, withholding or payment) a net sum equal to what it would have received and so retained had no such deduction withholding or payment been required or made.

19.2 BALANCE PKHA FUNDING AMOUNT FINANCIAL INSTRUMENT

19.2.1 ISSUANCE

- (a) PKHA hereby agrees and undertakes to provide a standby letter of credit in the form and manner set out in Sections 19.2.1(b) to (d) (to be issued by the Balance PKHA Funding Amount Financial Instrument Issuing Bank) for the Balance PKHA Funding Amount (the "**Balance PKHA Funding Amount Financial Instrument**") and hereby agrees to maintain the same in accordance with the terms of this Agreement.
- (b) PKHA hereby agrees and undertakes that the Balance PKHA Funding Amount Financial Instrument shall be issued on its behalf. The Balance PKHA Funding Amount Financial Instrument issued on behalf of PKHA shall be fully secured by PKHA as a principal debtor and not as surety without any recourse to the Concessionaire, its assets or properties. All costs, expenses, fees and other charges of any nature associated with the issuance, maintenance and encashment of the Balance PKHA Funding Amount Financial Instrument shall be borne solely by PKHA.
- (c) The Balance PKHA Funding Amount Financial Instrument shall be issued in the form and substance acceptable to the Concessionaire and the Financiers and the Balance PKHA Funding Amount Financial Instrument Issuing Bank shall be acceptable to the Concessionaire and the Financiers.
- (d) The Balance PKHA Funding Amount Financial Instrument shall be unconditional, irrevocable, encashable in accordance with the terms thereof and shall be payable on first written demand without any prior notice, reference or recourse to PKHA or any other entity. PKHA hereby agrees to the terms of encashment of the Balance PKHA Funding Amount Financial Instrument issued on its behalf, as set out in this Section 19.2.2 [*Encashment*] and in the Balance PKHA Funding Amount Financial Instrument.

19.2.2 ENCASHMENT

- (a) Without prejudice to or in any way limiting any other provisions of this Agreement, the Balance PKHA Funding Amount Financial Instrument may be encashed in accordance with this Agreement in the following circumstances:
- (i) pursuant to Section 19.2.3(b);
- (ii) pursuant to Section 19.2.3(c); and



(iii) pursuant to Section 19.2.4(a).

19.2.3 AMOUNT, VALIDITY PERIOD AND RELATED MATTERS

- (a) The Parties acknowledge and agree that PKHA shall issue the Balance PKHA Funding Amount Financial Instrument on the Effective Date.
- (b) The Parties acknowledge and agree that the Balance PKHA Funding Amount Financial Instrument shall be established and maintained and shall be valid, at the time of issuance, until the date falling six (6) months following the Balance PKHA Funding Amount Funding Date (the "**Balance PKHA Funding Amount Financial Instrument Expiry Date**"). In the event the Balance PKHA Funding Amount Financial Instrument expires prior to the Balance PKHA Funding Amount Financial Instrument Expiry Date, PKHA shall extend the validity of the Balance PKHA Funding Amount Financial Instrument, at least ninety (90) days prior to its expiry, so as to keep it valid and enforceable until the Balance PKHA Funding Amount Financial Instrument Expiry Date. In the event of failure by PKHA to extend the validity of the Balance PKHA Funding Amount Financial Instrument in accordance with this Section 19.2.3(b), the Concessionaire shall have the right, upon issuance of the first written demand to encash the Balance PKHA Funding Amount Financial Instrument to its full outstanding value. All proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument pursuant to this Section 19.2.3(b) shall be credited to the Class B Equity Subscription Account and shall be Utilized in terms of the EFU Agreement.
- (c) In the event of failure by PKHA to fund the Balance PKHA Funding Amount in the Class B Equity Subscription Account by the Balance PKHA Funding Amount Funding Date in accordance with the terms of this Agreement and the EFU Agreement, the Concessionaire shall have the right, upon issuance of the first written demand to encash the Balance PKHA Funding Amount Financial Instrument to its full outstanding value. All proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument pursuant to this Section 19.2.3 (c) shall be credited to the Class B Equity Subscription Account and shall be Utilized in terms of the EFU Agreement.

19.2.4 PAYMENT OF TERMINATION PAYMENT BY ENCASHMENT OF BALANCE PKHA FUNDING AMOUNT FINANCIAL INSTRUMENT

- (a) In the event of Termination of this Agreement and to the extent the Termination Payment (or any part thereof) remains due, payable and outstanding on the Required Termination Payment Date (the "**Outstanding Termination Payment**"), the Concessionaire shall be entitled to encash the Balance PKHA Funding Amount Financial Instrument in accordance with Section 21.6 [*Compensation on Termination*] below.

19.3 SUBORDINATE FINANCING

19.3.1 The Parties hereby acknowledge and agree that:

- (a) PKHA shall disburse the Subordinate Financing in the Subordinate Financing Account on the Effective Date to fund the Estimated Project Cost.



- (b) the terms and conditions of the Subordinate Financing shall be governed by the Subordinate Financing Agreement;
- (c) the Subordinate Financing shall, in each case, be Utilized by the Concessionaire in accordance with the terms of the EFU Agreement.



20. CHANGE IN LAW

20.1 INTERPRETATION

20.1.1 For purposes of this Agreement, Change in Law shall be construed as the occurrence or coming into force of any of the following, on or after the Effective Date:

- (a) the adoption, promulgation, modification or reinterpretation on or after the Effective Date by any Public Sector Entity of any of the Applicable Laws (including a decision of a Public Sector Entity on or after the Effective Date which amends or conflicts with the Applicable Laws established or in effect prior to the Effective Date);
- (b) any Lapse of Consent including (without limitation) the imposition by any Public Sector Entity of any condition in connection with the issuance, renewal, extension, replacement or modification of any Consent on or after the Effective Date, that establishes requirements for development, designing, engineering, financing, supply, construction, Testing, Commissioning, management, insuring, operation, maintenance or transfer of the Project Assets that are materially more restrictive or onerous than the most restrictive or onerous requirements (i) in effect prior to the Effective Date; (ii) specified in any application, or other documents filed in connection with such applications for any Consent filed by the Concessionaire; or (iii) agreed to by the Concessionaire in the Financing Agreements;
- (c) the repeal, modification or re-enactment of any of the Applicable Laws;
- (d) a change in the interpretation or application of any of the Applicable Laws by a Court; and
- (e) any change in the rates of any of the Taxes.

20.1.2 Change in Law shall not include:

- (a) the coming into effect, on or after the Effective Date, of any provision of a statute which is already in place prior to the Effective Date; or
- (b) any new legislation or any change in the existing legislation under the active consideration of or in the contemplation of any Public Sector Entity prior to the Effective Date, which is a matter of public knowledge.

20.1.3 Subject to the terms of this Agreement, the Parties agree that the matters set out in **SCHEDULE J** [*FINANCIAL MODEL*] in respect of the Financial Model, are to the best of their knowledge the present interpretation or application of the Applicable Laws, and any change in the interpretation or application thereof shall be construed as a Change in Law for purposes of this Agreement.

20.2 NEGATIVE IMPACT OF CHANGE IN LAW

20.2.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs, reduction in net after Tax return or other financial burden, the aggregate financial effect of which



exceeds Rupees Ten Million (PKR 10,000,000/-) in any Accounting Year, the Concessionaire may notify PKHA and the Independent Auditor of the following:

- (a) the nature and the impact of the Change in Law on the Project;
- (b) in sufficient detail, the estimate of the Incremental and Consequential Costs likely to be incurred by the Concessionaire on account of the Change in Law;
- (c) proposed amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in an increase in costs, reduction in net after Tax return or other financial burden as aforesaid; and
- (d) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of the Change in Law, including, in particular, minimizing the Incremental and Consequential Costs.

20.2.2 The Independent Auditor shall review the notification of the Concessionaire, and issue a determination and/or certification as to the (a) increase in costs, reduction in net after Tax return or other financial burden to be suffered by the Concessionaire on account of the Change in Law and the Incremental and Consequential Costs, and (b) proposed amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such increased cost, reduction in return or other financial burden as aforesaid.

20.2.3 Upon the determination and/or certification of the Independent Auditor as aforesaid, the Parties shall meet as soon as reasonably practicable and either agree on the amendments to this Agreement proposed by the Independent Auditor or on alternative arrangements to implement the foregoing; provided, that if no agreement is reached as aforesaid between the Parties within ninety (90) Days of the meeting pursuant to this Section 20.2.3, the Concessionaire may by notice in writing require PKHA to pay the Incremental and Consequential Costs certified by the Independent Auditor pursuant to Section 20.2.2 that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such increased cost, reduction in return or other financial burden as aforesaid. PKHA shall make such payment within fifteen (15) Days of receiving such notice. If PKHA shall Dispute such claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Procedure.

20.3 POSITIVE IMPACT OF CHANGE IN LAW

20.3.1 If as a result of Change in Law, the Concessionaire enjoys a reduction in costs, increase in net after Tax return or other financial benefit, the aggregate financial effect of which exceeds Rupees Ten Million (PKR 10,000,000/-) in any Accounting Year, the Concessionaire shall share such information with PKHA within ninety (90) Days of the close of the Accounting Year, and PKHA may notify the Concessionaire and the Independent Auditor of the following:

- (a) the nature and the impact of the Change in Law on the Project;



- (b) in sufficient detail, the estimate of the likely reduction in costs, increase in net after Tax return or other financial benefit to be enjoyed by the Concessionaire on account of the Change in Law; and
- (c) proposed amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid.

20.3.2 The Independent Auditor shall review the notification of PKHA, and issue a determination and/or certification as to the (a) reduction in costs, increase in net after Tax return or other financial benefit to be enjoyed by the Concessionaire on account of the Change in Law, and (b) proposed amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid.

20.3.3 Upon the determination and/or certification of the Independent Auditor as aforesaid, the Parties shall meet as soon as reasonably practicable and either agree on the amendments to this Agreement proposed by the Independent Auditor or on alternative arrangements to implement the foregoing; provided, that if no agreement is reached as aforesaid between the Parties within ninety (90) Days of the meeting pursuant to this Section 20.3.3, PKHA may by notice in writing require the Concessionaire to pay the amount certified by the Independent Auditor pursuant to Section 20.3.2 that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. The Concessionaire shall make such payment within fifteen (15) Days of receiving such notice. If the Concessionaire shall Dispute such claim of PKHA, the same shall be finally settled in accordance with the Dispute Resolution Procedure



21. TERMINATION

21.1 PKHA EVENT OF DEFAULT

21.1.1 "PKHA Event of Default" means any of the following events:

- (a) a Material Breach by PKHA of any PKHA Agreement;
- (b) a failure by PKHA to make payment of any amount or amounts that are due and payable by PKHA under this Agreement (which amount or amounts are not in Dispute) and such failure continues for fifteen (15) Business Days from the date on which such amount or amounts became due and payable in accordance with the terms of this Agreement;
- (c) subject to the terms of this Agreement, PKHA is in breach of any of its obligations under this Agreement, and PKHA has failed to cure such breach within thirty (30) Days of receipt of notice thereof issued by the Concessionaire;
- (d) any representations made or warranties given by PKHA under this Agreement have been found to be false or misleading in a material aspect;
- (e) PKHA takes any action, administrative, political or legislative in nature, that is in derogation of the terms of this Agreement and has the consequence of suspending or Terminating or changing the terms of this Agreement to the detriment of the Concessionaire;
- (f) PKHA obstructs the Concessionaire from undertaking any of its obligations or exercising any of its rights pursuant to this Agreement;
- (g) default has occurred under any of the Financing Agreements, which default is occasioned by non-performance, default, or breach by PKHA of its obligations under this Agreement and/or any PKHA Agreement;
- (h) PKHA fails to relocate the Public Utilities and/or make available or cause to be made available to the Concessionaire the Vacant Possession of the Concession Area, and if required, the Additional Land, free from any Encumbrance, together with the Ancillary Rights within the time period stipulated in this Agreement;
- (i) PKHA interrupts, interferes, suspends or takes over the right of the Concessionaire to operate the Project Assets, including, the right to collect the Toll Revenue, the Expressway Service Areas Revenue and/or the Other Revenue during the Concession Period, except in accordance with the terms of this Agreement;
- (j) PKHA fails to facilitate the Concessionaire to adjust the Tolls as per the Toll escalation procedures set out in **SCHEDULE B [TOLL STRUCTURE]** or otherwise under the terms of this Agreement, including in accordance with Sections 11.1.2, 15.1.4 and 29.21.2; or
- (k) PKHA has repudiated or has otherwise expressed an intention not to be bound by this Agreement.



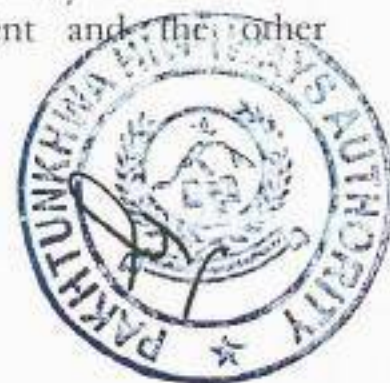
21.1.2 TERMINATION FOR PKHA EVENT OF DEFAULT

- (a) Upon the occurrence of an PKHA Event of Default, or within seven (7) Business Days after the Concessionaire becomes aware of same, the Concessionaire may serve a Default Notice on PKHA declaring an PKHA Event of Default and giving PKHA a period of fifteen (15) Business Days within which to initiate the relevant action to remedy the breach and a further reasonable period of not less than thirty (30) Business Days to complete the said action to the satisfaction of the Concessionaire. If no satisfactory action is initiated by PKHA within fifteen (15) Business Days of the issuance of the Default Notice, or despite the initiation of such satisfactory action, the relevant PKHA Event of Default has not been remedied or rectified within the further period of at least thirty (30) Business Days, then the Concessionaire may Terminate this Agreement, and to this end may issue a Termination Notice to PKHA indicating the effective Termination Date (which shall in no case be earlier than two (2) Months from the date of the Termination Notice).
- (b) The issuance of the Default Notice or the Termination Notice by the Concessionaire occasioned by an PKHA Event of Default shall not prejudice any other right or remedy that the Concessionaire may have against PKHA under this Agreement or by law, including, on account of any antecedent breach of any obligation of PKHA.
- (c) If, upon the occurrence of an PKHA Event of Default, the Concessionaire decides not to issue the Default Notice or (after having issued the Default Notice) the Concessionaire decides not to issue the Termination Notice, the Concessionaire shall notify PKHA of its decision, but the same shall not prejudice any of the Concessionaire's rights to any remedy that it may have under this Agreement, the law and/or equity nor prejudice its right to re-issue a Default Notice at a later date if it so decides in its sole and absolute discretion, in which case this Section 21 [Termination] shall apply *mutatis mutandis*.
- (d) The Concessionaire shall not exercise or purport to exercise any rights to Terminate this Agreement, except as expressly set out in this Agreement.

21.2 CONCESSIONAIRE EVENT OF DEFAULT

21.2.1 "Concessionaire Event of Default" means any of the following events:

- (a) a Material Breach by the Concessionaire of any PKHA Agreement;
- (b) a resolution has been passed or a petition for winding-up of the Concessionaire has been admitted and a liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by a Court (except for the purpose of amalgamation or reconstruction with the prior Approval of PKHA as a consequence of which the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the other agreements entered into pursuant hereto);



- (c) the Concessionaire fails to achieve Financial Close within the time period specified in Section 10.4.1;
- (d) subject to the terms of this Agreement, after achieving Financial Close, the Concessionaire has not commenced the Works for a continuous period exceeding ninety (90) Days, save where such failure is caused by a Permitted Event;
- (e) there has been an Abandonment by the Concessionaire;
- (f) any representations made or warranties given by the Concessionaire under this Agreement are found to be false or misleading in a material aspect;
- (g) continuing, persistent or repeated Material Breach by the Concessionaire of any of its obligations under this Agreement;
- (h) failure by the Concessionaire to make any payment to PKHA in accordance with **SCHEDULE B [PAYMENT SCHEDULE]** to the Subordinate Financing Agreement, which failure is not cured within forty five (45) Days of a written notice from PKHA;
- (i) a change occurs in the ownership structure of the Concessionaire without the prior Approval of PKHA which results in a Change in Control;
- (j) the Concessionaire ceases to provide all or a substantial part of the Services in accordance with this Agreement (other than as a consequence of a breach by PKHA of its obligations under this Agreement, because of a Force Majeure Event, a Compensation Event, a Relief Event or any other Permitted Event);
- (k) a failure by the Concessionaire to make payment of any amount or amounts that are due and payable by the Concessionaire under this Agreement (which amount or amounts are not in Dispute) and such failure continues for fifteen (15) Business Days from the date on which such amount or amounts became due and payable in accordance with the terms of this Agreement;
- (l) the Concessionaire fails to procure and maintain the insurance cover as required in terms of Section 16 [Insurance];
- (m) the Concessionaire has defaulted under any of the Financing Agreements;
- (n) any arrangement, composition or compromise with or for the benefit of creditors being entered into by or in relation to the Concessionaire;
- (o) the Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement; or
- (p) the Concessionaire has suffered an attachment levied on any of its assets which results in a Material Adverse Effect on the Project and such attachment has continued for a period exceeding six (6) Months.



21.2.2 TERMINATION FOR CONCESSIONAIRE EVENT OF DEFAULT

- (a) Upon the occurrence of a Concessionaire Event of Default, or within seven (7) Business Days after PKHA becomes aware of same, PKHA may serve a Default Notice on the Concessionaire declaring a Concessionaire Event of Default and giving the Concessionaire a period of thirty (30) Business Days within which to initiate the relevant action to remedy the breach and a further reasonable period of not less than sixty (60) Business Days to complete the said action to the satisfaction of PKHA. If no satisfactory action is initiated by the Concessionaire within thirty (30) Business Days of the issuance of the Default Notice, or despite the initiation of such satisfactory action, the relevant Concessionaire Event of Default has not been remedied or rectified within the further period of at least sixty (60) Business Days, then PKHA may Terminate this Agreement, and to this end may issue a Termination Notice to the Concessionaire indicating the effective Termination Date (which shall in no case be earlier than three (3) Months from the date of the Termination Notice).
- (b) The issuance of the Default Notice or the Termination Notice by PKHA occasioned by a Concessionaire Event of Default shall not prejudice any other right or remedy that PKHA may have against the Concessionaire under this Agreement or by law, including, on account of any antecedent breach of any obligation of the Concessionaire.
- (c) If, upon the occurrence of a Concessionaire Event of Default, PKHA decides not to issue the Default Notice or (after having issued the Default Notice) PKHA decides not to issue the Termination Notice, PKHA shall notify the Concessionaire of its decision, but the same shall not prejudice any of PKHA's rights to any remedy that it may have under this Agreement, the law and/or equity nor prejudice its right to re-issue a Default Notice at a later date if it so decides in its sole and absolute discretion, in which case this Section 21 [Termination] shall apply *mutatis mutandis*.
- (d) PKHA shall not exercise or purport to exercise any rights to Terminate this Agreement, except as expressly set out in this Agreement.

21.3 WITHDRAWAL OF DEFAULT NOTICE

- 21.3.1 Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Default Notice subsequently cures the underlying Event of Default within the time period specified herein or within such other time period as specified by the Party serving the Default Notice, to the satisfaction of the Party who issued the Default Notice, the Default Notice shall be withdrawn by the Party which had issued the same; provided, however, that the Party in breach shall compensate the other Party for any direct costs or consequences occasioned by the underlying Event of Default which caused the issue of the Default Notice, which shall be determined by the Independent Engineer and Independent Auditor jointly.

21.4 TERMINATION FOR A FORCE MAJEURE EVENT

- 21.4.1 Either Party shall be entitled to Terminate this Agreement due to a Force Majeure Event in accordance with Section 17.6 [Termination Occasioned by Force Majeure].



21.5 EFFECTS OF TERMINATION

21.5.1 TERMINATION

Notwithstanding any term of this Agreement, on service of a Termination Notice, this Agreement shall only Terminate in accordance with the terms of this Section 21 [Termination].

21.5.2 CONTINUED EFFECT - NO WAIVER

Notwithstanding any breach of this Agreement by either Party, and without prejudice to any other rights which the other Party may have in relation to it, the other Party may elect to continue to treat this Agreement as being in full force and effect and to enforce its rights under this Agreement. The failure of either Party to exercise any right under this Agreement, including, any right to Terminate this Agreement and any right to claim damages, shall not be deemed a waiver of such right for any continuing or subsequent breach.

21.5.3 CONTINUED PERFORMANCE

Subject to the terms of this Agreement, the Parties shall continue to perform their respective obligations under this Agreement, notwithstanding the giving of any Default Notice or Termination Notice, until the Termination of this Agreement becomes effective in accordance with the terms of this Agreement.

21.5.4 TRANSFERS TO PKHA ON TERMINATION

- (a) Subject to the terms of this Agreement, upon the issuance of the Termination Notice, the Parties shall promptly take all such steps which are necessary or required to enable:
- (i) the Parties to discharge their respective obligations to the fullest extent possible, so as to maintain the continuity of service to the users of the Expressway Section and/or the Expressway, or any part thereof, as the case may be, until the Termination Date;
 - (ii) the Termination Payment and all other amounts payable by PKHA to the Concessionaire, pursuant to the terms of this Agreement, to be paid by the Required Termination Payment Date; and
 - (iii) Subject to the receipt of the Termination Payment by the Concessionaire, the Project to be handed over to PKHA on the Transfer Date, free from any Encumbrance.
- (b) On the Transfer Date following the Termination Date, the Concessionaire shall:
- (i) if the Concessionaire is undertaking Toll collection operations at the Toll Plazas (A) to the extent permissible, transfer to PKHA all staff and employees engaged in the Toll collection operations, at the option of PKHA, subject to the said personnel agreeing to such transfer, (B) hand over and transfer ownership to PKHA of such of the Concessionaire's



- Intellectual Property, and (C) hand-over the Toll collection operations to PKHA; or
- (ii) if the Termination Date is prior to Financial Close, (A) transfer all its rights and interests in the Detailed Design, batches of the Detailed Design already submitted to PKHA or the Approved Detailed Design, as the case may be, (B) hand over and transfer ownership to PKHA of such of the Concessionaire's Intellectual Property, and (C) vacate the Concession Area completely; or
 - (iii) if the Termination Date is after Financial Close and prior to the Expressway Section Completion Date, (A) transfer all of its rights and interests in the Approved Detailed Design and the Works to PKHA, (B) cease all Works in or at the Concession Area, remove from the Concession Area all its workmen, employees, servants, agents, and Contractors, (C) hand over and transfer ownership to PKHA of such of the Concessionaire's Intellectual Property, and (D) vacate the Concession Area completely; or
 - (iv) if the Termination Date is after the Expressway Section Completion Date but prior to the Project Completion Date, (A) cease the activities relating to the operations and maintenance of the Project Assets (including the Toll collection operations at the Toll Plazas), (B) remove from the Concession Area all its workmen, employees, servants, agents and Contractors, (C) hand-over physical possession of the Concession Area to PKHA, (D) vest with PKHA all assets, rights and entitlements which have been transferred or conveyed by PKHA to the Concessionaire, (E) hand over and transfer ownership to PKHA of such of the Concessionaire's Intellectual Property, and (F) vacate the Concession Area completely; or
 - (v) if the Termination Date is after the Project Completion Date, (A) transfer all of its rights and interests in the Approved Detailed Design to PKHA, (B) ensure that the Project Assets are in the state required in accordance with Section 22 [Handback], and (C) transfer the ownership rights to the Project Assets, including such of the Concessionaire's Intellectual Property, to PKHA at its own cost and expense, free from any Encumbrance; and
 - (vi) hand-over to PKHA the Concession Area;
- (c) Upon effective Termination of this Agreement and subject to payment of Termination Payment by PKHA to the Concessionaire, PKHA shall, have the power and authority to:
- (i) enter upon and take possession and control of the Concession Area and/or the Project Assets forthwith;
 - (ii) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon the Concession Area and/or dealing with the Concession Area;



- (iii) step-in and succeed upon election by PKHA without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the agreements/contracts entered into pursuant to this Agreement, as PKHA may in its discretion deem appropriate with effect from the date of communication of such election to the other counterparty to the relative agreement/contract entered into pursuant hereto; provided, however, that any sums claimed by such counterparty as being due and owing for work and services performed or accruing on account of any act, omission, or event prior to such date of election shall and shall always constitute Financing between the Concessionaire and such counterparty and PKHA shall in no way or manner be liable or responsible for such sums. The Concessionaire shall ensure that the agreements/contracts entered into pursuant hereto contain terms necessary to give effect to the terms of this Section 21.5.4(c);
- (d) Notwithstanding anything contained in this Agreement and subject to mutual agreement of PKHA and the Concessionaire, PKHA shall not, as a consequence of Termination, have any obligation whatsoever to compensate for a loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any Person in the employment of or engaged by the Concessionaire in connection with the Project.
- (e) In the event the Termination Payment, or any part thereof, are not received by the Concessionaire, by the Required Termination Payment Date, all costs, including, interest (including capitalized and accrued interest), mark-up, penalty charges and financing/funding costs shall continue to accrue against PKHA until full and final settlement of the Termination Payment.
- (f) Notwithstanding anything to the contrary set out in this Agreement (i) the occurrence and achievement of the Termination Date and the Transfer Date, (ii) the Termination of this Agreement and that of all rights, titles and interests of the Concessionaire, and (iii) the vacation of any Encumbrance created in favour of the Financiers in terms of the Financing Agreements; shall be, in each case, subject to receipt of the Termination Payment by the Concessionaire.

21.5.5 TRANSFERS TO PKHA ON EXPIRY

- (a) This Agreement shall, unless otherwise Terminated prior to the Expiry Date, stand concluded on the Day following the Expiry Date. On the Day following the Expiry Date, the Concessionaire shall:
- (i) (A) to the extent permissible, transfer to PKHA all staff and employees engaged in the Toll collection operations, at the option of PKHA, subject to the said personnel agreeing to such transfer, and (B) hand-over the Toll collection operations of the Toll Plazas to PKHA;
- (ii) (A) transfer all of its rights and interests in the Approved Detailed Design to PKHA, (B) ensure that the Project Assets are in the state required in accordance with Section 22 [*Handback*], and (C) transfer the ownership rights to the Project Assets, including the Concessionaire's Intellectual



Property, to PKHA at its own cost and expense, free from any Encumbrance, for a nominal consideration of PKR 1;

- (iii) vacate and hand-over to PKHA the Concession Area;
- (iv) (A) cease the activities relating to the operations and maintenance of the Project Assets (including the Toll collection operations at the Toll Plazas), (B) remove from the Concession Area all its workmen, employees, servants, agents and Contractors, and (C) vest with PKHA all other assets, rights and entitlements which have been transferred or conveyed by PKHA to the Concessionaire;
- (v) deliver to PKHA (as far as not already delivered to PKHA) one complete set of:
 - (A) "as-built" drawings and final right of way drawings;
 - (B) maintenance, operation and training manuals for the Facilities to the extent that they exist or the Concessionaire has an obligation in terms of this Agreement to acquire or prepare them; and
 - (C) the historical operating data and plans of the Facilities, its furniture, fittings and equipment;
- (vi) use all reasonable endeavours to procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant and equipment used or made available by the Concessionaire under this Agreement and included in the Project Assets are assigned, or otherwise transferred, to PKHA;
- (vii) ensure, to the extent practicable, that provision is made in all relevant contracts of any description whatsoever to which the Concessionaire or any Contractor is a party in respect of the Project to ensure that PKHA shall be in a position to exercise its rights, and the Concessionaire shall be in a position to comply with its obligations, under this Section 21.5.5;
- (viii) remove from the Concession Area all property not required by PKHA pursuant to this Section 21.5.5 and if it has not done so within fifteen (15) Business Days after any notice from PKHA requiring it to do so, PKHA may (without being responsible for any loss, damage, costs or expenses) remove and sell any such property and shall disburse any proceeds less all documented and verifiable costs incurred to the Concessionaire; and
- (ix) deliver, or cause to be delivered, to PKHA:
 - (A) subject to Section 21.5.5(a)(ix)(B), any keys, remote access apparatus and computer access cards to the Facilities; and
 - (B) any copyright licences for any computer programmes (or licenses to use the same) necessary for the operation of the Facilities, if required by PKHA, at such charge and on such terms and conditions as agreed upon between PKHA and the owner of the



relevant computer programmes, to enable PKHA and its respective employees, agents, contractors, subcontractors and other nominees to access and otherwise use such data for the purposes set out in this Agreement (but excluding computer programmes that have been acquired by the Concessionaire for its own use and not solely for the purpose of provision of any of the Services at the Facilities or the assignment or transfer of which is otherwise restricted).

- (b) If there remain any sums payable by PKHA to the Concessionaire, the Concessionaire shall submit any such claims (together with relevant supporting evidence thereof) to PKHA and the Independent Auditor within fifteen (15) Days from the Expiry Date, and subject to the presentment of such claims and the verification thereof by the Independent Auditor, PKHA shall make payment of such claims within seven (7) Days thereafter.

21.5.6 TRANSITIONAL ARRANGEMENTS

- (a) For a period of three (3) Months both before and after the Expiry Date or in the case of any early Termination for the period from the service of the Termination Notice to three (3) Months after the Termination Date, the Concessionaire shall have the following obligations (on such terms and subject to payment of such compensation as agreed between the Parties, in case of assistance provided by the Concessionaire after the Expiry Date or the Termination Date, as the case may be):

- (i) the Concessionaire shall co-operate fully with PKHA and any successor providing services to PKHA in the nature of any of the Services or any part of the Services in order to achieve a smooth transfer of the manner in which PKHA obtains services in the nature of the Services and to avoid or mitigate, in so far as reasonably practicable, any inconvenience or any risk to the health and safety of the employees of PKHA and members of the public;

- (ii) If PKHA wishes to conduct a tender process with a view to entering into a contract for the provision of services (which may or may not be the same as, or similar to, the Services or any of them) following the expiry or early Termination of this Agreement, the Concessionaire shall co-operate with PKHA fully in such tender process including by:

- (A) providing any information which PKHA may reasonably require to conduct such tender excluding any information which is commercially sensitive to the Concessionaire (and, for the purpose of this Section, commercially sensitive shall mean information which would if disclosed to a competitor of the Concessionaire or Contractor give that competitor a competitive advantage over the Concessionaire, the Sponsor, its Affiliates, or Contractor and thereby prejudice the business of the Concessionaire, the Sponsor, its Affiliate, or Contractor); and

- (B) before the Transfer Date, assisting PKHA by providing any participants in such tender process with access, on reasonable



notice and at reasonable times, to the Concession Area and the Project Assets subject to the reasonable requirements of the Concessionaire and its safety rules and regulations.

21.5.7 SURVIVAL AND CONTINUING OBLIGATIONS

- (a) Save as otherwise expressly provided in this Agreement:
- (i) Termination of this Agreement shall be without prejudice to any accrued rights and obligations under this Agreement as at the Termination Date; and
 - (ii) Termination of this Agreement shall not affect the accrued and continuing rights and obligations of the Concessionaire and PKHA under any term of this Agreement including those expressed to survive Termination or which is required to give effect to such Termination or the consequences of such Termination.

21.6 COMPENSATION ON TERMINATION

21.6.1 COMPENSATION IN THE EVENT OF TERMINATION PRIOR TO FINANCIAL CLOSE

The Parties hereby agree as follows:

- (a) In the event the Conditions Precedents are not satisfied, waived and/or deferred within six (6) Months of the Effective Date (including the extended time, if any) due to reasons attributable to the Concessionaire and/or occurrence of a Concessionaire Event of Default, prior to Financial Close, then PKHA shall have the right (to be exercised in its sole and absolute discretion) to Terminate this Agreement by issuance of a Termination Notice (without prejudice to the PKHA's rights under the Concession Agreement). In such case:
- (i) PKHA shall be entitled to immediately encash the Financial Close Bond to its full value;
 - (ii) PKHA shall pay the (A) Equity Compensation; (B) Shareholder Loans; and (C) Due and Payable Costs less the Deductible Amounts (other than the Non-Utilized PKHA Amount) (the "**Pre-FC Termination Payment**") to the Concessionaire by the Required Termination Payment Date;
 - (iii) the Concessionaire undertakes to pay (or cause to be paid) (after setting-off the Pre-FC Termination Payment against the Non-Utilized PKHA Amount and/or the proceeds of the Balance PKHA Funding Amount Financial Instrument, if the Pre-FC Termination Payment is not paid by PKHA) to PKHA by the Required Termination Payment Date:
 - (A) an amount equal to the total aggregate amounts funded by PKHA pursuant to the EFU Agreement and the Subordinate Financing Agreement less the amounts Utilized by the Concessionaire in accordance with the terms of the EFU Agreement until the Required Termination Payment Date; and



- (B) an amount equal to the total aggregate amounts funded by PKHA pursuant to the EFU Agreement and the Subordinate Financing Agreement and Utilized but not expended on the Project until the Required Termination Payment Date,

in each case, as determined jointly by the Independent Auditor and the Independent Engineer and set out in the Termination Payment Certificate.

((A) and (B) above are collectively referred to as the (the "Non-Utilized PKHA Amount"));

- (iv) the Concessionaire shall (A) return to PKHA the Balance PKHA Funding Amount Financial Instrument, or (B) pay to PKHA the proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument remaining after the set-off in terms of sub-section 21.6.1(a)(iii), as applicable;
- (b) In the event the Conditions Precedents are not satisfied, waived and/or deferred within six (6) Months of the Effective Date (including the extended time, if any) due to reasons attributable to the PKHA, occurrence of a PKHA Event of Default or a Force Majeure Event prior to Financial Close, then the Concessionaire shall have the right (to be exercised in its sole and absolute discretion) to Terminate the Concession Agreement by issuance of a Termination Notice (without prejudice to the Concessionaire's rights under the Concession Agreement). In such case:
- (i) PKHA shall immediately return the Financial Close Bond to the Concessionaire;
- (ii) PKHA shall pay the Pre-FC Termination Payment to the Concessionaire by the Required Termination Payment Date;
- (iii) the Concessionaire undertakes to pay (or cause to be paid) to PKHA the Non-Utilized PKHA Amount (after setting-off the Pre-FC Termination Payment against the Non-Utilized PKHA Amount and/or the proceeds of the Balance PKHA Funding Amount Financial Instrument, if the Pre-FC Termination Payment is not paid by PKHA) by the Required Termination Payment Date; and
- (iv) the Concessionaire shall (A) return to PKHA the Balance PKHA Funding Amount Financial Instrument, or (B) pay to PKHA the proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument remaining after the set-off in terms of sub-section 21.6.1(b)(iii), as applicable.



21.6.2 COMPENSATION IN THE EVENT OF TERMINATION POST FINANCIAL CLOSE

The Parties hereby agree as follows:

- (a) In the event of Termination of this Agreement due to a Concessionaire Event of Default, after Financial Close, then PKHA shall have the right (to be exercised in its sole and absolute discretion) to Terminate this Agreement by issuance of a Termination Notice (without prejudice to the PKHA's rights under the Concession Agreement). In such case:
- (i) PKHA shall be entitled to immediately encash the Construction Performance Bond or the Operations Bond (as applicable) to its full value;
 - (ii) PKHA shall pay the (A) Financing Due; (B) Equity Compensation; (C) Shareholder Loans; and (D) Due and Payable Costs less the Deductible Amounts (other than the Non-Utilized PKHA Amount) (the "**Post-FC Termination Payment**") to the Concessionaire by the Required Termination Payment Date;
 - (iii) the Concessionaire undertakes to pay (or cause to be paid) to PKHA the Non-Utilized PKHA Amount (after setting-off the Post-FC Termination Payment against the Non-Utilized PKHA Amount and/or the proceeds of the Balance PKHA Funding Amount Financial Instrument, if the Post-FC Termination Payment is not paid by PKHA) by the Required Termination Payment Date;
 - (iv) the Concessionaire shall (A) return to PKHA the Balance PKHA Funding Amount Financial Instrument, or (B) pay to PKHA the proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument remaining after the set-off in terms of sub-section 21.6.2(a)(iii), as applicable.
- (c) In the event of Termination of this Agreement due to a PKHA Event of Default or a Force Majeure Event after Financial Close, then the Concessionaire shall have the right (to be exercised in its sole and absolute discretion) to Terminate the Concession Agreement by issuance of a Termination Notice (without prejudice to the Concessionaire's rights under the Concession Agreement). In such case:
- (i) PKHA shall immediately return the Construction Performance Bond or the Operations Bond (as applicable) to the Concessionaire;
 - (ii) PKHA shall pay the Post-FC Termination Payment to the Concessionaire by the Required Termination Payment Date;
 - (iii) the Concessionaire undertakes to pay (or cause to be paid) to PKHA the Non-Utilized PKHA Amount (after setting-off the Post-FC Termination Payment against the Non-Utilized PKHA Amount and/or the proceeds of the Balance PKHA Funding Amount Financial Instrument, if the Post-FC Termination Payment is not paid by PKHA) by the Required Termination Payment Date;



- (iv) the Concessionaire shall (A) return to PKHA the Balance PKHA Funding Amount Financial Instrument, or (B) pay to PKHA the proceeds from encashment of the Balance PKHA Funding Amount Financial Instrument remaining after the set-off in terms of sub-section 21.6.2(c)(iii), as applicable.

21.6.3 COMPUTATION OF TERMINATION PAYMENT

For purposes of ascertaining the components of the Termination Payment, the Concessionaire shall submit supporting evidence of such relevant costs and expenses (including a computation of the Financing Due by the Financiers) to the Independent Auditor and the Independent Engineer who shall jointly verify the amount payable to the Concessionaire. The verified amount(s) shall (save for any manifest error) be adopted for purposes of the determination of the Termination Payment due. The Independent Auditor and the Independent Engineer shall jointly certify the same within seven (7) Days thereof, and the certified amount shall (save for any manifest error) constitute the Termination Payment payable by PKHA to the Concessionaire and shall be binding on both the Parties (the "**Termination Payment Certificate**"). In addition, the Termination Payment Certificate shall also set out (a) the Non-Utilized PKHA Amount, (b) the value of the Balance PKHA Funding Amount Financial Instrument, and (c) the Outstanding Termination Payment, the Balance Termination Payment Amount and the Residual Balance Termination Payment Amount, on the assumption that PKHA does not pay the Termination Payment on the Required Termination Payment Date. The certified Termination Payment shall be paid by PKHA to the Concessionaire by the Required Termination Payment Date.

21.6.4 NON-PAYMENT BY THE REQUIRED TERMINATION PAYMENT DATE

In the event of Termination of this Agreement and to the extent on the Termination Payment remains due, payable and outstanding on the Required Termination Payment Date, the Outstanding Termination Payment shall be paid to the Concessionaire in the following manner on the Required Termination Payment Date (without prejudice to its other rights under this Agreement, the Financing Agreements and the PKHA Agreements):

- (a) the Concessionaire shall be entitled to set-off the Non-Utilized PKHA Amount in accordance with Sections 21.6.1 and 21.6.2 above;
- (b) the Concessionaire shall be entitled to encash the Balance PKHA Funding Amount Financial Instrument in an amount equal to such part of the Outstanding Termination Payment (if any) as is due and payable despite exercise of the right set out in Section 21.6.4(a) above (the "**Balance Termination Payment Amount**");
- (c) in the event the Outstanding Termination Payment is not paid in full despite exercise of the set-off in accordance with Section 21.6.4(a) and encashment of the Balance PKHA Funding Amount Financial Instrument in accordance with Section 21.6.4(b), PKHA shall pay the unpaid portion of the Termination Payment (the "**Residual Balance Termination Payment Amount**") to the Concessionaire by credit of the Outstanding Termination Payment to the Designated Account.



21.6.5 In the event PKHA fails to pay the Post-FC Termination Payment to the Concessionaire in full by the Required Termination Payment Date, despite exercise of the rights by the Concessionaire set out in Sections 21.6.4(a) to (c) above, PKHA shall pay the Residual Balance Termination Payment Amount to the Designated Account and the Financing Agreements Default Funding Amounts in respect of such Residual Balance Termination Payment Amount to the Concessionaire, as certified by the Independent Auditor.

21.6.6 **INSURANCE PROCEEDS**

In the event the Concessionaire receives any insurance proceeds (to the extent the same are not already applied to rectify or to make good any of the Project Assets in accordance with this Agreement), the Concessionaire shall hold the sum thereof for the account of PKHA, and apply the same towards part payment of the Termination Payment on the Termination Date. In the event the said proceeds (after any application thereof in accordance with this Agreement) are in excess of the Termination Payment, the Concessionaire shall retain such excess sum.

21.7 **DISPUTED TERMINATION**

21.7.1 Notwithstanding anything to the contrary in this Agreement, where either the Concessionaire or PKHA has given a Termination Notice, the other Party may, within fourteen (14) Days of receipt of such Termination Notice, refer the question of whether or not the purported termination is wrongful for amicable resolution by a committee comprising of the Director General of the Sponsor, Additional Chief Secretary P&D Department, GoKPK, and a reputed Person with the necessary expertise relevant to the subject matter of the Dispute, mutually appointed by the two (2) within seven (7) Days of the reference.

21.7.2 Upon appointment of the reputed Person pursuant to Section 21.7.1, the aforesaid committee shall meet at their earliest mutual convenience and in any event within thirty (30) Days of the reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within fifteen (15) Days of the aforesaid meeting or if the committee has not met during the time specified in this Section 21.7.2, either Party may refer the Dispute to arbitration in accordance with Section 24.3.

21.7.3 Termination of this Agreement shall not take effect pursuant to the aforesaid Termination Notice unless and until it is agreed by the Parties or finally determined in accordance with the Dispute Resolution Procedure that such Termination is not wrongful.



22. HANDBACK**22.1 HANDBACK REQUIREMENTS**

22.1.1 The Concessionaire shall ensure that, on the Transfer Date, each element of the Project Assets shall comply with the Handback Requirements set out in **SCHEDULE L [HANDBACK REQUIREMENTS]**.

22.2 TRANSFER BOND

22.2.1 Six (6) Months prior to the Expiry Date, the Concessionaire shall submit to PKHA the Transfer Bond with a face amount equivalent to two percent (2%) of the Estimated Project Cost. The Transfer Bond may be in the form of (a) cash, (b) a bank draft confirmed by a scheduled commercial bank, or (c) an unconditional, irrevocable and without recourse letter of credit from a scheduled commercial bank.

22.2.2 The Transfer Bond shall remain in full force and effect from the date of its issuance until the Expiry Date. PKHA shall return the Transfer Bond to the Concessionaire by the Expiry Date, failing which it shall be deemed to have been cancelled.

22.2.3 The Concessionaire shall be entitled to assign all its rights, title and interests under the Transfer Bond to the Financiers as security for the Financing raised pursuant to the Financing Agreements.

22.3 HANDBACK

22.3.1 Immediately upon its appointment, the Independent Consultant shall verify, in the presence of the Concessionaire Representative and the PKHA Representative, compliance by the Concessionaire with the Handback Requirements set out in **SCHEDULE L [HANDBACK REQUIREMENTS]** in relation to the Project Assets and, if required, cause appropriate tests to be carried out at for determining the compliance therewith, the cost thereof to be shared jointly by PKHA and the Concessionaire. If any shortcomings in the Handback Requirements are found by the Independent Consultant, the Independent Consultant shall, within fifteen (15) Days of such inspection, prepare and furnish to the Concessionaire a list of works, if any, to be carried out. The Concessionaire shall immediately thereafter, at its own cost and expense, undertake and complete such works at least two (2) Months prior to the Expiry Date, or in the event of early Termination of this Agreement, by the Termination Date, and also ensure that the Project Assets continue to meet the Handback Requirements until the same are transferred to PKHA.

22.3.2 Upon the Concessionaire conforming to all the Handback Requirements and handing over actual or constructive possession of the Project Assets to PKHA, the Independent Consultant shall issue the Handback Certificate to the Concessionaire in the form attached hereto as **SCHEDULE K [FORM OF HANDBACK CERTIFICATE]**, certifying that the Project Assets comply with the Handback Requirements, which shall have the effect of constituting evidence of divestment of all rights and title in the Project Assets by the Concessionaire and vesting thereof in PKHA. Issuance of the Handback Certificate shall not be unreasonably withheld or delayed by the Independent Consultant.



22.3.3 PKHA shall be entitled to encash the Transfer Bond if the Concessionaire fails to ensure that the Project Assets comply with the Handback Requirements in accordance with the terms of this Agreement; provided, that any excess amount after defraying the costs and expenses to ensure that the Project Assets comply with the Handback Requirements shall be refunded by PKHA to the Concessionaire forthwith.



23. STEP-IN

23.1 STEP-IN BY FINANCIERS

23.1.1 If so required by the Financiers, the Parties shall enter into the Direct Agreement. The Direct Agreement shall be entered into for, *inter alia*, (a) recognition of (i) the assignment of the Concessionaire's rights and interests under, *inter alia*, this Agreement to the Financiers, and (ii) the security interests of the Financiers in respect of the Project, (b) delineation of the step-in rights of the Financiers, and (c) recognition of PKHA's obligation to assume and discharge the Termination Payment by the Required Termination Payment Date in the event of Termination of this Agreement.

23.1.2 Notwithstanding Section 23.1.1 and any other terms of this Contract, and subject to the terms of the Direct Agreement:

- (a) the Financiers shall be provided at least one hundred and eighty (180) Days to exercise their step-in rights under the Direct Agreement;
- (b) for the appointment of a substitute by the Financiers as a result of exercise of their step-in rights, an objective criteria shall be employed and set forth in the Direct Agreement to evaluate any substitute. Such evaluation shall be undertaken by the Independent Engineer, and PKHA's decision to grant or withhold its consent in relation to appointment of a substitute shall be based on the evaluation of the Independent Engineer.



fifteen (15) Days of the date of appointment of the second Expert, keeping the criteria at Section 24.2.1(a) in mind;

- (c) in the event the two (2) Experts duly appointed by the Concessionaire Representative and the PKHA Representative are unable to appoint the third Expert within the prescribed period, the Independent Auditor shall appoint such Expert within fifteen (15) Days of any application for such appointment by either the PKHA Representative or the Concessionaire Representative;
- (d) in the event either the PKHA Representative or the Concessionaire Representative fails or refuses to appoint an Expert pursuant to Section 24.2.1(b), then the appointed Expert shall appoint the two (2) remaining Experts within thirty (30) Days of the appointment thereof, keeping the criteria at Section 24.2.1(a) in mind, after consultation with the representative failing to appoint an Expert;
- (e) if any Expert on the Panel of Experts resigns or is otherwise unable to continue as such during the Concession Period, a replacement Expert shall be appointed jointly by the PKHA Representative and the Concessionaire Representative as soon as practicable, and in any event within thirty (30) Days of the Day on which the Expert discontinues his membership on the Panel of Experts. In the event the PKHA Representative and the Concessionaire Representative are not able to agree and jointly appoint the replacement Expert, then the remaining Experts on the Panel of Experts shall consult with each other and promptly appoint the third Expert, keeping the criteria at Section 24.2.1(a) in mind; provided, that in the event the two (2) remaining Experts are not able to appoint the third Expert, the Independent Auditor shall appoint such Expert within thirty (30) Days of any application for such appointment by either the PKHA Representative or the Concessionaire Representative.

24.2.2 Either Party may refer the resolution of the Dispute to the Panel of Experts by issuing a notice to that effect (the "**Expert Reference Notice**").

24.2.3 Within fifteen (15) Days of receipt of the Expert Reference Notice, each of the disputing Parties shall submit their respective arguments in respect of the Dispute to the Panel of Experts in writing. The Panel of Experts shall, in its absolute direction, consider whether a hearing is necessary in order to resolve the Dispute. The Panel of Experts shall in any event provide to both the disputing Parties with its written decision on the Dispute within thirty (30) Days of Expert Reference Notice (or such longer period as mutually agreed upon by the disputing Parties in writing). The Panel of Experts shall state the reasons for its decision, and the disputing Parties shall forthwith give effect to the decision.

24.2.4 Each disputing Party shall bear its own costs arising out of the reference, including, legal costs and the costs and expenses of any witnesses, while the Panel of Experts' costs shall be borne as the Panel of Experts shall specify.

24.2.5 If within thirty (30) Days of the Panel of Experts' decision, or where the Panel of Experts fails to give decision within the prescribed time period, within thirty (30) Days of the expiry of the prescribed time period, a disputing Party is not satisfied with the decision of the Panel of Experts or the failure of the Panel of Experts to give decision,



that disputing Party may, after due consultation with the PKHA Representative and the Concessionaire Representative, refer the Dispute to arbitration in accordance with Section 24.3 below.

24.3 ARBITRATION

- 24.3.1 Subject to the terms of Section 24.1, any Dispute which is not resolved amicably or any Dispute upon which the Panel of Experts has given its decision in accordance with Section 24.2 with which a disputing Party is not satisfied, or any Dispute upon which the Panel of Experts fails to give decision within the prescribed time period, and is accordingly referred to arbitration, shall be finally settled by binding arbitration. The language of the arbitration shall be in English. Arbitration as aforesaid shall be a condition precedent to any other action under law.
- 24.3.2 The arbitration shall be conducted by three (3) arbitrators. The Concessionaire and PKHA shall appoint one (1) arbitrator each within three (3) Weeks of reference of the Dispute to arbitration, whilst the third (3rd) arbitrator shall be appointed by the two (2) appointed arbitrators within a period of a further three (3) Weeks, and in the event the two (2) arbitrators are unable to agree on the third (3rd) arbitrator, then the same will be appointed in accordance with the Arbitration Act. In the event either the Concessionaire or PKHA fails to appoint an arbitrator within the prescribed period, the appointed arbitrator shall appoint the arbitrator not appointed by the Concessionaire or PKHA, as the case may be. Appointment of the arbitrators in terms of this Section 24.3.2 shall be binding on both the Parties.
- 24.3.3 The arbitration shall be conducted in accordance with the Arbitration Act, as amended or substituted from time to time and the venue for arbitration shall be Islamabad, Pakistan.
- 24.3.4 The decision of the arbitrators shall be final and binding. Unless otherwise provided herein and except as awarded by the arbitrators, each Party shall be responsible for its own costs incurred by it in connection with an arbitral proceeding hereunder.
- 24.3.5 Pending the submission of and/or decision on a Dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.



25. INDEMNITIES**25.1 NO WAIVER OF INDEMNITY**

25.1.1 Except as provided in Section 25.2 [*Indemnity*], neither Party shall be liable to the other Party in contract, tort, warranty, strict liability or any other legal theory for any indirect, consequential, incidental, punitive, or exemplary damages. Neither Party shall have any liability to the other Party except pursuant to, or for breach of, this Agreement; provided, however, that this provision is not intended to constitute a waiver of any rights of one Party against the other with regard to matters unrelated to this Agreement or to any activity not contemplated by this Agreement.

25.2 INDEMNITY**25.2.1 INDEMNITY BY THE CONCESSIONAIRE**

The Concessionaire shall expeditiously defend and indemnify PKHA and its officers and employees against and hold PKHA and its officers and employees harmless, at all times after the Effective Date, from any and all losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, PKHA and its officers or employees for breach of this Agreement and personal injury or death to natural Persons or damage to property arising out of the negligent or intentional act or omission of the Concessionaire in connection with this Agreement.

25.2.2 INDEMNITY BY PKHA

PKHA shall expeditiously defend and indemnify the Concessionaire and its directors, officers and employees against, and hold the Concessionaire and its directors, officers and employees harmless at all times after the Effective Date, from any and all losses incurred, suffered, sustained, or required to be paid, directly or indirectly, by, or sought to be imposed upon, the Concessionaire and its respective directors, officers and employees and the Sponsor and its directors, officers and employees for breach of this Agreement and personal injury or death to natural Persons or damage to property arising out of the negligent or intentional act or omission of PKHA in connection with this Agreement.

25.2.3 THIRD PARTY CLAIM

In the event that either Party receives a claim from a third party, including the Financiers, in respect of which it is entitled to the benefit of any indemnity under this Section 25.2 [*Indemnity*] (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within fourteen (14) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of Indemnifying Party; provided, however, that such approval shall not be unreasonably withheld, conditioned or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved to its reasonable satisfaction.



25.2.4 DEFENCE OF CLAIM

- (a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and its reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Person indemnified in respect of loss to the full extent provided by this Section 25.2 [Indemnity], the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or other proceedings, liabilities, payments and obligations, at its expense and through counsel of its choice; provided, it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable costs and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- (b) If the Indemnifying Party has exercised its rights under Section 25.2.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).
- (c) If the Indemnifying Party exercises its rights under Section 25.2.3, then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party when and as incurred, unless:
- (i) the employment of counsel by such Party has been authorized in writing by the Indemnifying Party;
 - (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (iii) the Indemnifying Party shall not in fact have employed independent counsel reasonably satisfactory to the Indemnified Party to assume the defence of such action, and shall have been so notified by the Indemnified Party; or
 - (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:



- (A) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (B) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement.
- (d) provided that if Sections 25.2.4(c) (ii), (iii) or (iv) shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fee and disbursements of such counsel shall constitute legal or other expenses reimbursable by the Indemnifying Party to the Indemnified Party under this Agreement.

25.2.5 OTHER INDEMNITY

- (a) Without limiting the generality of Section 25.2 [*Indemnity*], the Concessionaire shall fully indemnify, save harmless and defend PKHA including its officers and employees from and against any and all loss and damages arising out of or with respect to failure of the Concessionaire to (i) comply with the Applicable Laws, (ii) make payments of Taxes relating to the Concessionaire's, Contractors', suppliers' and representatives' income or other Taxes required to be paid by the Concessionaire without reimbursement hereunder, or (iii) pay amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (b) Without limiting the generality of Section 25.2 [*Indemnity*], the Concessionaire shall fully indemnify, save harmless and defend PKHA from and against any and all damages which PKHA may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If, in any such suit, claim or proceedings, a temporary restraint order or temporary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or the restraint order. If, in any suit, claim or proceedings, the Project or any part thereof comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for PKHA a licence, at no cost to PKHA, authorizing the continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own cost and expense and without impairing the requirements and standards under this Agreement, either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.
- (c) Without limiting the generality of Section 25.2 [*Indemnity*], PKHA shall fully indemnify, save harmless and defend the Concessionaire and the Sponsor including their respective directors, officers and employees from and against any



and all loss and damages arising out of or with respect to failure of PKHA to comply with the Applicable Laws.



26. RIGHTS AND TITLE OVER THE CONCESSION AREA AND THE PROJECT ASSETS

26.1 CONCESSIONAIRE'S RIGHT TO THE CONCESSION AREA

26.1.1 For the purpose of this Agreement, the Concessionaire shall, in accordance with the terms of this Agreement, be entitled to Vacant Possession of the Concession Area and the Additional Land, if required and provided, and have the right to the use the Concession Area and the Additional Land, if provided, as the sole and exclusive licensee, of PKHA subject to and in accordance with the terms of this Agreement, and to this end, it may regulate the entry and use of the Concession Area, the Additional Land if provided, by any Person in accordance with and subject to the terms of this Agreement; provided, that the Concessionaire shall have no other right, title or ownership to the Concession Area, which shall vest in PKHA; provided, further that, during the Concession Period, PKHA shall create no Encumbrance whatsoever on, in or with respect to the Concession Area or any part thereof.

26.2 TITLE TO THE PROJECT ASSETS

26.2.1 The Concessionaire shall retain all rights and claims on the Works, or any part thereof, and shall remain the legal and beneficial owner of the Works from the date as and when the ownership rights accrue thereto until the issuance of the Completion Certificate (including the Works in respect of the Administrative Office and any other Project Assets).

26.2.2 Upon the issuance of the Premises Completion Certificate, the ownership rights of the Administrative Office shall be vested in the Concessionaire and the Concessionaire shall retain ownership rights thereto until the Expiry Date (or the Termination Date, if earlier).

26.2.3 Upon the issuance of a Section Completion Certificate, the Concessionaire shall retain ownership and claims on the completed Works constituting that relevant Section, till the issuance of the Completion Certificate.

26.2.4 Upon the issuance of the Substantial Completion Certificate or the Completion Certificate, as the case may be, the Substantially Completed Works or the completed Works, respectively, constituting the Project Assets shall be vested in the Concessionaire and the Concessionaire shall retain ownership rights thereto during the balance of the Concession Period until the Expiry Date (or the Termination Date, if earlier). In the event of issuance of the Substantial Completion Certificate, the ownership rights of the Works or items forming part of the Works specified in the Incomplete Works List shall accrue to the Concessionaire once they are completed in accordance with the terms of this Agreement.

26.2.5 On the Transfer Date, the Concessionaire shall transfer the ownership rights to the Project Assets to PKHA in accordance with the terms of this Agreement.

26.3 PROPERTY TAXES

26.3.1 The Concessionaire shall not be liable to pay any property Taxes in respect of the Concession Area.



26.4 RESTRICTION ON SUB-LETTING

26.4.1 The Concessionaire shall not sub-license or sub-let the whole or any part of the Concession Area to any Person, save and except as otherwise provided in this Agreement.



27. REDRESSAL OF PUBLIC GRIEVANCES**27.1 COMPLAINTS REGISTER**

- 27.1.1 The Concessionaire shall maintain a public complaints register (the "**Complaints Register**") at an appropriate location at the Concession Area which shall be open to public access at all times for recording of complaints by any Person (the "**Complainant**"). The availability of Complaints Register shall be published conspicuously at appropriate locations at the Concession Area in such a manner so as to bring it to the attention of all users of the Expressway or the Expressway Section, as the case may be.
- 27.1.2 The Complaints Register shall be securely bound and kept in proper custody at such administrative office at the Concession Area, as deemed appropriate by the Concessionaire. Each page of the Complaints Register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered, the Complainant shall be given a receipt by such office stating the date and complaint number, which the Complainant may refer to in any subsequent correspondence or claim. The Complaints Register shall have appropriate columns, including, the complaint number and date, name and address of the Complainant, the complaint and the action taken by the Concessionaire thereon.
- 27.1.3 Without prejudice to the above, the Concessionaire shall, in its absolute discretion, develop a web portal for registration of complaints and their resolution. The web address of the web portal shall be displayed conspicuously at an appropriate location at the Concession Area for general public information.

27.2 REDRESSAL OF COMPLAINTS

- 27.2.1 The Concessionaire shall inspect the Complaints Register at reasonable intervals and take prompt steps for redressal of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the Complaints Register and a suitable reply shall also be sent to the Complainant by post under a certificate of posting.
- 27.2.2 Within one (1) Week following the close of each Month, the Concessionaire shall send to PKHA a true photocopy of such pages of the Complaints Register on which any entries have been recorded of any complaint during the course of such Month. PKHA may, in its discretion, direct the Concessionaire to take such further reasonable action as PKHA may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice, take the necessary action as it deems fit and promptly inform PKHA of the action taken by it in furtherance of the direction of PKHA.

27.3 ROUTING OF COMPLAINTS BY PKHA

- 27.3.1 In the event a Complainant registers a complaint directly with PKHA, the same shall be routed by PKHA to the Concessionaire; whereafter the Concessionaire shall take such action for the redressal of the complaint as stipulated in this Section 27 [*Redressal of Public Grievances*].



28. PROVISION OF DOCUMENTS

28.1 DOCUMENTS

28.1.1 The Concessionaire shall submit to PKHA, such number of copies as specified in this Agreement, of the following documents on or before the dates specified herein:

- (a) all components of the Detailed Design, no later than five (5) Months from the Effective Date;
- (b) the Financing Agreements within two (2) Weeks after the execution of the same by the Concessionaire and upon receipt of the same from the Financiers, and in respect of the Equity financing of the Concessionaire, the name of each Shareholder holding more than five percent (5%) of the paid-up capital of the Concessionaire and the total shares held or subscribed, as the case may be, by such Shareholder, within fifteen (15) Days of the Appointed Date;
- (c) at least fifteen (15) Days before the Appointed Date (i) the EPC Contract(s) or other form of contract(s) as executed for the Project, together with all amendments thereto executed on or before the Appointed Date and all schedules thereto, and (ii) a complete set of signed and scale final plans and specifications for the construction and equipping of the Expressway;
- (d) as soon as available but in no event later than the Service Commencement Date, the proposed schedule for the manufacture and supply of traffic control, Toll collection and communications equipment for the Project;
- (e) on or before the Works Commencement Date, the contractor's all risks policy pursuant to Section 16.1.1(a);
- (f) at least ninety (90) days prior to the Expressway Section Service Commencement Date, three (3) hardbound sets of the O&M Manual;
- (g) from the Works Commencement Date till the Project Completion Date, quarterly progress reports as specified in Section 12.17 in the format mutually agreed upon between the Concessionaire and PKHA; and
- (h) all other insurance policies specified in Section 16 [Insurance] within the time period specified therein.

28.2 COPIES OF DRAWINGS

28.2.1 The Concessionaire shall ensure that PKHA is provided with a complete set of as-built drawings and final right of way drawings and one (1) soft copy in compact disk form with the Approved as-built drawings within three (3) Months from the Service Commencement Date. Such drawings shall become the property of PKHA.

28.2.2 All costs incurred in the preparation of the as-built drawings and final right of way drawings shall be borne by the Concessionaire.



29. MISCELLANEOUS

29.1 VARIATIONS IN WRITING

29.1.1 This Agreement may be varied or amended only by the mutual consent of the Parties. All such variations and amendments shall be binding only if they are in writing and are signed by duly authorized representatives of the Parties.

29.2 COMPLIANCE WITH GOVERNMENT RULES AND REGULATIONS

29.2.1 Except as expressly provided in this Agreement, the Concessionaire shall, during the Concession Period, strictly comply with the Applicable Laws, and the same shall be read into and made an integral part of this Agreement.

29.3 HEADINGS; GRAMMATICAL USAGE; NAMES

29.3.1 Words in the singular number are deemed to include the plural, if the context so requires, and the plural shall similarly include the singular. Where the Public Sector Entity or any of them are named in this Agreement, the name used is deemed to include any successor entity in the event the name is changed or the relevant functions are transferred to the successor entity.

29.4 MUTUAL TRUST

29.4.1 In entering into this Agreement, the Parties recognize that it is impracticable to make provision for every contingency that may arise in the course of performance hereof. Accordingly, the Parties hereby declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interest of either of them. If in the course of performance of this Agreement, a particular circumstance or event occurs which is not otherwise covered by this Agreement, then the Parties shall use their best endeavors to agree upon such action as may be necessary and equitable to address the same.

29.5 NON-RELINQUISHMENT OR NON-WAIVER OF RIGHT

29.5.1 The failure of any Party to this Agreement to insist upon strict performance of any of the terms, conditions and covenants hereof shall not be deemed a relinquishment or waiver of any right or remedy that either Party may have, nor shall it be construed as a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained, which shall be deemed to be in full force and effect. No waiver of any right by either Party shall be deemed to have been made unless expressed in writing and signed by both the Parties.

29.6 TIME AND INDULGENCE

29.6.1 Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations under this Agreement or to remedy any breach hereof shall not be, and shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights under this Agreement, except to the extent of such time or indulgence.



29.7 SEVERABILITY

29.7.1 If for any reason whatsoever, any term of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any Court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining terms shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more terms which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to the original term (which may include revision of the Financial Model).

29.8 CONSULTATION ON MODIFICATIONS TO THIS AGREEMENT

29.8.1 If the Concessionaire advises PKHA that any amendments, modifications or revisions to this Agreement are necessary or desirable to satisfy requirements of the Financiers or the Shareholders of the Concessionaire, PKHA and the Concessionaire shall promptly consult as to any mutually acceptable action necessary or desirable under the circumstances and negotiate in good faith with a view toward amending, modifying and revising this Agreement in a mutually satisfactory manner.

29.9 SPECIAL WARRANTY

29.9.1 The Concessionaire hereby warrants that it has not given or promised any consideration to any official of PKHA or any other Public Sector Entity in order to obtain award of the Project and execution of this Agreement, and that the execution of this Agreement shall not result, directly or indirectly, in violation of the anti-corruption Applicable Laws.

29.10 INSPECTION

29.10.1 The Concessionaire shall maintain detailed and accurate records of its Toll collection operations and shall make copies of such records available to PKHA at no cost, upon being given a five (5) Business Days' notice by PKHA.

29.11 INTELLECTUAL PROPERTY

29.11.1 DESIGN AND OTHER DATA

Subject to the terms of this Agreement, the Concessionaire shall make available to PKHA all materials, documents and data of any nature (including the Approved Detailed Design and the O&M Manual) acquired or brought into existence in any manner whatsoever by the Concessionaire for the purposes of the design or construction of the Works, and/or the operation, maintenance, rehabilitation or improvement of the Project Assets and the Concession Area, which might reasonably be required by PKHA for the purposes of exercising rights or carrying out duties under this Agreement or carrying out any statutory or other duty or function.

29.11.2 LICENCES

(a) Subject to the terms of this Agreement, the Concessionaire shall grant to PKHA a perpetual, unrestricted, transferable and assignable, non-exclusive, worldwide, irrevocable and non-terminable royalty-free licence to use for any purpose relating to the design or construction of the Works and/or the operation.



maintenance, rehabilitation or improvement of the Project Assets and the Concession Area, all and any Intellectual Property which is or becomes vested in the Concessionaire during the Concession Period for any purpose relating to the design or construction of the Works and/or the operation, maintenance, rehabilitation or improvement of the Project Assets and the Concession Area and to make any alterations, adaptations or additions to the Approved Detailed Design and the O&M Manual which is or becomes vested in the Concessionaire.

- (b) Subject to the terms of this Agreement, PKHA shall grant to the Concessionaire a non-transferable, nonexclusive, royalty-free licence to use (during the Concession Period only) all and any Intellectual Property which is or becomes vested in PKHA for any purpose relating to the design or construction of the Works and/or the operation, maintenance, rehabilitation or improvement of the Project Assets and the Concession Area.
- (c) PKHA shall, acting reasonably, upon receipt of a written request from the Concessionaire grant to the Concessionaire a non-transferable, non-exclusive, royalty-free licence to use the designated name, logo, trademarks and official marks of PKHA during the Concession Period only. PKHA may at any time by notice to the Concessionaire add any name, logo, trademark or official mark to those already in effect at the relevant time during the Concession Period; whereafter the Concessionaire shall have a non-transferable, non-exclusive, royalty-free licence to use the same.

29.11.3 COMPUTERIZED DATA

To the extent that any of the data, materials and documents referred to in Section 29.11.1 are generated by or maintained on a computer or in any other machine readable format, the Concessionaire shall use its best endeavours to obtain for the benefit of PKHA the grant of a licence or sub-licence for and/or supply of any relevant software or database, if required by PKHA, at such charge and on such terms and conditions as agreed upon between PKHA and the owner of the relevant software or database, to enable PKHA and its respective employees, agents, contractors, subcontractors and other nominees to access and otherwise use such data for the purposes set out in this Agreement or, following its Termination, for the purposes of the design or construction of the Works and/or the operation, maintenance, rehabilitation or improvement of the Project Assets and the Concession Area.

29.12 ENVIRONMENT

29.12.1 The Concessionaire shall keep the Concession Area in a safe condition and in compliance with the environmental requirements and mitigation measures specified in the environmental compliance certificate issued in respect of the Project, if any, and otherwise in accordance with the Applicable Laws.

29.13 CONFIDENTIALITY

29.13.1 Each Party undertakes that it shall not:

- (a) use Confidential Information of the other Party;



- (b) disclose such Confidential Information to any Person;
- (c) allow or make it possible for any Person to observe Confidential Information; or
- (d) disclose the terms of this Agreement to any Person who is not a Party hereto;

except for the purpose for which the Confidential Information was given to the Disclosing Party, with the prior approval of the Party whose Confidential Information it is, or as permitted by this Section 29.13.

29.13.2 Subject to Section 29.13.3, a Party (each such Party, a "**Disclosing Party**") may disclose Confidential Information of another Party:

- (a) to an Affiliate of the Disclosing Party if necessary for the reporting purposes;
- (b) to employees, officers and agents of the Disclosing Party whose duties in relation to the Disclosing Party require the disclosure;
- (c) to the Financiers (and the professional advisers thereof) in connection with any Financing or other financial accommodation sought to be arranged by the Disclosing Party or an Affiliate thereof;
- (d) to professional advisers (including legal advisers) and consultants of the Disclosing Party whose duties in relation to the Disclosing Party require the disclosure; and
- (e) if and to the extent required by the Applicable Laws, but only after the Disclosing Party has consulted with the other Party and has taken all practical legal steps to prevent the need to make the disclosure.

provided, that the Disclosing Party shall ensure that the Persons mentioned in Section 29.13.2(c) and 29.13.2(d) above are under an obligation, substantially the same as set forth in this Section 29.13, not to disclose the Confidential Information disclosed thereto. Any breach by such Persons of any obligation with regard to Confidential Information shall be deemed to be a breach of this Section 29.13 by the Disclosing Party that disclosed such Confidential Information.

29.13.3 Each Disclosing Party shall use its best endeavors to procure that each entity under its control and each of its employees, officers or agents to whom Confidential Information is or has been disclosed or by whom that Confidential Information has been observed (each of whom is referred to as a "**Controlled Party Disclosee**") shall not improperly disclose or improperly use any of that Confidential Information contrary to the requirements of this Section 29.13, either during or after the termination of the Controlled Party Disclosee's employment, office or agency with the Disclosing Party or, in case of a legal entity, after such legal entity ceases to be controlled by the Disclosing Party. Any breach by a Controlled Party Disclosee of any obligation with regard to Confidential Information shall be deemed to be a breach of this Section 29.13 by the Disclosing Party that disclosed such Confidential Information.



29.14 LANGUAGE

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

29.15 CONFLICT

29.15.1 Subject to the terms of this Agreement, in case of a conflict between any provision of this Agreement and any provision of any document or instrument relating to the Project, the provision hereof shall prevail.

29.16 FURTHER ASSURANCES

29.16.1 The Parties shall at all times and from time to time do all such further acts and execute all such further deeds, documents and instruments as may be necessary or desirable in order to give full effect to and carry out the terms of this Agreement.

29.17 SURVIVAL

29.17.1 Termination of this Agreement (a) shall not relieve the Concessionaire or PKHA of any obligation already incurred hereunder which expressly or by implication survives Termination hereof, and (b) except as otherwise provided in any term of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligation or liability for loss or damage to the other Party arising out of or caused by any act or omission of such Party prior to the effectiveness of such Termination or arising out of such Termination.

29.18 ASSIGNMENT AND CHARGES

29.18.1 Unless otherwise expressly provided in this Agreement, neither Party shall assign this Agreement or the rights and benefits hereto nor shall any of the Parties novate the obligations herein save and except with the prior consent of the other Party in writing.

29.18.2 Notwithstanding Section 29.18.1, the Concessionaire may assign to the Financiers any, partial or all its rights, title and interests whatsoever in, through and/or under this Agreement (to the exclusion of any liabilities therein) or otherwise assign or create a Encumbrance over its interest in the Project for the purpose of financing the Project, including, the Equity and the Toll Revenue; provided, however, that the assignment or creation of a Encumbrance or its endorsement does not impair the obligations of the Concessionaire under this Agreement, or prevent it directly or indirectly from complying with the said obligations or deprive the public of the appropriate use of the Expressway or the Expressway Section, as the case may be, during the Concession Period. Any such Encumbrance shall be duly intimated to PKHA by due notification to PKHA prior to its creation and duly recorded in the appropriate register of deeds of the relevant Public Sector Entity.

29.18.3 In furtherance of Section 29.18.2, PKHA shall undertake to sign and/or endorse any Direct Agreement as required by the Concessionaire and/or the Financiers in connection therewith.



29.19 LISTING AND TRADING OF SHARES

29.19.1 The Parties hereby agree that, to the extent permitted by the Applicable Laws, the Concessionaire may, at an appropriate stage during the Concession Period, make an application to the stock exchanges of Pakistan, or any of them, or to one or more foreign stock exchange, for the listing and trading of the shares of the Concessionaire thereon, and to this end, undertake all necessary acts and things whatsoever, including, converting the status of the Concessionaire from a private limited company to a public limited company.

29.19.2 Prior to making any such application, the Parties shall agree to any amendments to this Agreement as may be required by the Concessionaire or the relevant stock exchange(s) and shall make public any relevant information as may be required by the relevant stock exchange(s).

29.19.3 Notwithstanding Sections 29.19.1 and 29.19.2, for as long as any financing and other payments under the Financing Agreements remain outstanding to the Financiers, the Concessionaire shall ensure that a change shall not occur in its ownership structure without the prior Approval of PKHA which results in a Change of Control.

29.20 LATE PAYMENT AND RIGHT OF SET-OFF

29.20.1 If any sum which becomes payable under any term of this Agreement by one Party to the other Party is not paid within the time allowed for payment thereof, the Party responsible for payment thereof shall together with such delayed payment also pay an additional amount on such sum of two per cent (2%) per annum above the six (6) month Karachi Interbank Offered Rate as at the due date for payment calculated from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. The said additional amount shall be deemed to be the agreed reasonable compensation payable for such delayed receipt by the relevant Party under this Agreement, and shall be without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law or equity.

29.20.2 The stipulation regarding additional amounts payable in respect of delayed payments contained in Section 29.20.1 shall not be construed nor be deemed to authorize any delay in payment of any amount due to a Party nor be construed or deemed to be a waiver of the underlying breach of payment obligations.

29.20.3 If there are any duly certified and undisputed payments that a Party has agreed to make to the other Party under the terms of this Agreement, it shall do so within the time period specified in this Agreement. In case a Party fails to make any such payments within a period of sixty (60) Days from the due date of payment, the other Party shall have a right to set-off any and all such payments (including interest payments under Section 29.20.1), against any payments that it is obliged to make to the Party that has failed to make such duly certified and undisputed payments pursuant to the terms of this Agreement.

29.20.4 A Party's right of set-off shall trigger immediately upon the expiry of the sixty (60) Days' period specified in the preceding sub-Section.



29.20.5 In exercise its right of set-off, a Party shall communicate its intent to exercise such right to the other Party through a written notice in which it shall clearly indicate (a) the quantum of the set-off, and (b) the source from where it intends to set-off. A Party shall not send such notice to the other Party earlier than sixty (60) Days after the expiry of the original due date for payment, subject to any extensions for such payment pursuant to the terms of this Agreement.

29.20.6 To the extent a Party, after service of the notice mentioned in Section 29.20.5, does not exercise its right of set-off; the payment due by the other Party shall remain due and payable unless cleared by the other Party.

29.20.7 In case a Party clears its dues to the other Party before the exercise of the right of set-off pursuant to this Section 29.20, the right of the other Party to set-off shall automatically extinguish to the extent of the dues cleared by the Party that has cleared its dues, partly or wholly, as the case may be.

29.21 RECOVERY OF DUE AND PAYABLE SUMS

29.21.1 In the event, in an Operational Year, any sum becomes due and payable by PKHA to the Concessionaire, under any term of this Agreement, subject to the other rights and remedies available to the Concessionaire under this Agreement (including the rights related to late payment and Set-Off under Section 29.20) the Concessionaire may recover the said sums, or part thereof, through an appropriate upward adjustment of the Toll Structure for the following Operational Year.

29.21.2 The Concessionaire shall, when it intends to claim recovery of due and payable sums under this Section 29.21, notify PKHA in writing at least one (1) Month in advance of the close of the relevant Operational Year, detailing the amount of the sums sought to be recovered and the adjustment required to the Toll Structure for the following Operational Year to allow the Concessionaire to recover the said sums. PKHA shall, subject to the sums claimed by the Concessionaire under this Section 29.21 being duly certified, not later than two (2) Weeks prior to the date of the scheduled date of imposition of the Toll Structure for the following Operational Year issue the Toll Notification of the revised Toll Structure incorporating the upward adjustment.

29.22 GOVERNING LAW AND JURISDICTION

29.22.1 This Agreement shall be governed by the Applicable Laws. The Courts at Peshawar, Pakistan shall have jurisdiction over all matters arising out of or relating to this Agreement and the Parties submit to the exclusive jurisdiction of such Courts.

29.23 NO PARTNERSHIP

29.23.1 Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. No Party shall have any authority to bind the other Party in any manner whatsoever, unless otherwise specified in this Agreement.

29.24 ENTIRE AGREEMENT

29.24.1 This Agreement, the Schedules hereto and the other documents and agreements referred to hereon shall constitute the entire agreement of the Parties with respect to the subject matter



hereof. This Agreement supersedes all earlier agreements/representations or understandings of the Parties (whether written or oral, including, any previous correspondence between the Parties) with respect to their subject matter.

29.25 SCHEDULES TO THIS AGREEMENT

29.25.1 This Agreement and the Schedules hereto together constitute a complete and exclusive understanding of the terms of the arrangement between the Parties on the subject matter hereof and no amendment or modification of any of the Schedules hereto shall be valid and effective unless agreed to and evidenced in writing by the Parties.

29.26 COUNTERPARTS

29.26.1 This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and the same Agreement.

29.27 NOTICES

29.27.1 Unless otherwise stated, all notices, requests, demands, claims and other communications hereunder, including, a notice of waiver of any term, breach of any term of this Agreement and Termination of this Agreement, shall be in writing and shall be delivered by hand, by facsimile providing a transmission receipt or delivered by a nationally recognized overnight delivery service, and addressed as described below. Notices sent by hand shall be deemed effective upon receipt or refusal of delivery. Notices sent by facsimile shall be deemed effective upon receipt or, if sent after 5:30 PM or on other than a Business Day, on the next Business Day after transmission; provided that notices by facsimile shall also be confirmed by a copy of such notices being delivered by hand or a nationally recognized overnight delivery service, but failure to so confirm shall not void or invalidate the effectiveness of the original notice if it is in fact received. Notices sent by a nationally recognized overnight delivery service shall be deemed effective on the next Business Day after deposit with such service prior to the deadline for delivery on such Business Day.

(a) if to PKHA

For the attention of the Managing Director of PKHA at:

Address: Pakhtunkhwa Highways Authority
Government of Khyber Pakhtunkhwa
Khyber Road, Peshawar, Pakistan
Telephone number: +92-91-9213272
Facsimile number: +92-91-9210434



(b) if to the Concessionaire

For the attention of the Chief Executive Officer at:

Address: 509, Kashmir Road, R.A. Bazar, Rawalpindi, Pakistan
Telephone number: +92-51-9271317
Facsimile number: +92-51-9271323



SCHEDULES

CONCESSION AGREEMENT

RELATING TO

THE PROJECT FOR CONSTRUCTION OF THE SWAT EXPRESSWAY ON A
BUILD, OPERATE AND TRANSFER (BOT) BASIS

BETWEEN

THE PAKHTUNKHWA HIGHWAYS AUTHORITY

AND

SWAT EXPRESSWAY PLANNING CONSTRUCTION AND OPERATIONS (PRIVATE)
LIMITED

DATED: OCTOBER 7, 2016



LIST OF SCHEDULES

SR. NO.	SCHEDULE LETTER	SCHEDULE NAME
1	A	APPROVALS AND CONSENTS
2	B	TOLL STRUCTURE
3	C	COMMISSIONING PROCEDURES
4	D	FORM OF COMPLETION CERTIFICATE
5	E	CONCESSION AREA AND ROW
6	F	ESTIMATED PROJECT COST
7	G	FORM OF CONSTRUCTION PERFORMANCE BOND
8	H	CONSTRUCTION PERFORMANCE STANDARDS
9	I	FORM OF FINANCIAL CLOSE BOND
10	J	FINANCIAL MODEL
11	K	FORM OF HANDBACK CERTIFICATE
12	L	HANDBACK REQUIREMENTS
13	M	INTERCHANGES
14	N	TORS OF THE INDEPENDENT AUDITOR
15	O	TOLL PLAZAS
16	P	DESCRIPTION OF THE PROJECT AND SCOPE OF WORK
17	Q	NOT USED
18	R	O&M REQUIREMENTS
19	S	FORM OF OPERATIONS BOND
20	T	PROJECT COMPLETION SCHEDULE
21	U	LIST OF PROJECT DOCUMENTS
22	V	TORS OF THE INDEPENDENT ENGINEER
23	W	FORM OF SECTION COMPLETION CERTIFICATE
24	X	FORM OF SUBSTANTIAL COMPLETION CERTIFICATE
25	Y	TRAFFIC MANAGEMENT PLAN
26	Z	FORM OF TRANSFER BOND
27	AA	CORPORATE DETAILS OF THE CONCESSIONAIRE
28	AB	NOT USED
29	AC	NOT USED
30	AD	DETAILED DESIGN MODULES
31	AE	O&M MANUAL
32	AF	INSURANCE COVER



**SCHEDULE A
APPROVALS AND CONSENTS**

PART 1: APPROVALS REQUIRED PRIOR TO FINANCIAL CLOSE

SR. No.	APPROVALS	FROM
1	Grant of the necessary access and rights to the Concession Area (including the Partial Concession Area)	PKHA
2	PKHA will take the necessary NOC/development rights from NHA regarding remodeling of Kernel Sher Khan Interchange at the M-1, and the interchange at the junction of N-45 and N-95	PKHA
3	Certificate for transfer to the Concessionaire of Vacant Possession of the Concession Area, free from any Encumbrance	PKHA
4	Approval of the Detailed Design	PKHA
5	Authority to regulate traffic on the Concession Area, as is necessary during the Construction Period, in accordance with the Traffic Management Plan	PKHA
	All other Approvals required to be granted by PKHA under this Agreement or any PKHA Agreement, if any	PKHA

PART 2: CONSENTS REQUIRED PRIOR TO FINANCIAL CLOSE

SR. No.	CONSENTS	FROM
1	All licenses, permissions and exemptions to be acquired from the Pakistan Engineering Council under the Pakistan Engineering Council Act, 1975, if required	PEC
2	All Consents for the Project under the Pakistan Environmental Protection Act 1997 and/or the Khyber Pakhtunkhwa Environmental Protection Act, 2014, as applicable, and the approval of the Environmental Impact Assessment	PEPA/KPEPA
3	All other Consents that may be necessary for achievement of Financial Close and commencement of the Works and any other Consents pertaining to the Financial Close Period	Public Sector Entities



PART 3: APPROVALS AND CONSENTS REQUIRED POST FINANCIAL CLOSE

SR. No.	APPROVALS AND CONSENTS	FROM
1	Any Approvals and/or Consents required in respect of implementation of the Project, or any part thereof, post Financial Close	PKHA and the relevant Public Sector Entities

Key:

- KPEPA: Khyber Pakhtunkhwa Environmental Protection Agency
- PEC: Pakistan Engineering Council
- PEPA: Pakistan Environmental Protection Agency



**SCHEDULE B
TOLL STRUCTURE**

1. HANDING OVER OF TOLLING RIGHTS

- (a) The Toll Revenue collected during the Construction Period shall be utilized by the Concessionaire exclusively for undertaking the Project and in accordance with the terms of the PKHA Agreements.
- (b) The Toll collected under Part I and Part II of this **SCHEDULE B [TOLL STRUCTURE]** shall be collected under a closed Tolling system.
- (c) Any commuter plying in either direction on the Expressway, the Expressway Section and/or any Section added thereto shall be charged Toll on a per kilometre basis for the total distance travelled as per Table A below. The distances between the Sections for purposes of charging Tolls on an a per kilometre basis are as follows:

TABLE A

SR. No.	SECTIONS	CENTRE TO CENTRE DISTANCE (KM)
1	Kernal Sher Khan Interchange on the Islamabad-Peshawar Motorway (M-1) to Dobian Interchange (Mardan-Dobian-Yar Hussain Road)	9.70 Km
2	Dobian Interchange (Mardam-Dobian-Yar Hussain Road) to Mardan-Swabi Road Interchange (Ismaila-Baghicha Dheri)	8.80 Km
3	Mardan-Swabi Road Interchange (Ismaila-Baghicha Dheri) to Bakhshali-Mardan Road Interchange	9.75 Km
4	Bakhshali-Mardan Road Interchange to Mardan-Katlang Road Interchange	22.00 Km
5	Mardan-Katlang Road Interchange to Dargai-Palai Road Interchange	10.75 Km
6	Dargai-Palai Road Interchange to Chakdara Interchange	20 Km*

*While the actual length of this Section is subject to variation, the Toll in respect of this Section shall be charged on the basis that the length thereof is 20 Km.



2. TOLL STRUCTURE

PART I

(a) TOLL RATES DURING THE CONSTRUCTION PERIOD

- (i) A closed Toll system shall be applied during the Construction Period on the Expressway Section and any Section added to the Expressway Section. The users shall pay Toll at the relevant Toll Plazas according to the distance travelled as per Table A above (the Toll rates shall depend on the type of vehicle plying the Expressway Section, or any Section added to the Expressway Section, as the case may be).
- (ii) The following Toll rates shall be applicable during the Construction Period:

SR. No.	VEHICLE TYPE	TOLL RATE (RUPEES/KM)	
		CONSTRUCTION YEAR 1	CONSTRUCTION YEAR 2
1	Class 1: Cars/Jeeps/Taxis	1.71	1.84
2	Class 2: Wagons	2.84	3.06
3	Class 3: Coasters	3.97	4.29
4	Class 4: Buses	5.67	6.12
5	Class 5: Trucks (2 and 3 Axle)	7.36	7.94
6	Class 6: Articulated Trucks	9.06	9.79

PART II

(b) TOLL RATES AND TOLL ESCALATION DURING THE OPERATIONS PERIOD

- (i) A closed Toll system shall be applied during the Operations Period on the Expressway. The users shall pay Toll at the relevant Toll Plazas according to the distance travelled as per Table A above (the Toll rates shall depend on the type of vehicle plying the Expressway Section, or any Section added to the Expressway Section, as the case may be).
- (ii) The following Base Toll Rates shall be applicable on the Service Commencement Date:

