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## SWAT EXPRESSWAY EXPRESSION OF INTEREST (EOI)

### For Construction of Swat Expressway, 81 Kilometer UNDER PUBLIC PRIVATE PARTNERSHIP

The Government of Khyber Pakhtunkhwa intends to undertake the construction of Swat Expressway ("The Project"), a new 81 km long limited access high speed corridor through Pakhtunkhwa Highways Authority ("PKHA") under Public-Private Partnership (PPP) mode of financing. Swat Expressway will start from Captain Kemal Sher Khan Interchange on Islamabad-Peshawar Motorway (M-1) falling in Nowshera District approximately at Km 92 from Islamabad. The project will include a Highway Tunnel in Malakand Mountains Range of approximately 2 KM length. It will connect remote regions along its proposed alignment in the Khyber Pakhtunkhwa traversing through districts of Nowshera, Swabi, Mandera and Malakand. The main villages spread across the four (04) districts include Haryan, Gumbat, Daulat Nazar, Israila, Goryala, Shahbaz Garhi, Bakshali, Jamal Garhi, Kotlang, Aio, Palai, Zulam Kot, Afah Dand and Chaidara. The alignment corridor would provide these isolated communities direct access to National Highways and Motorway Network.

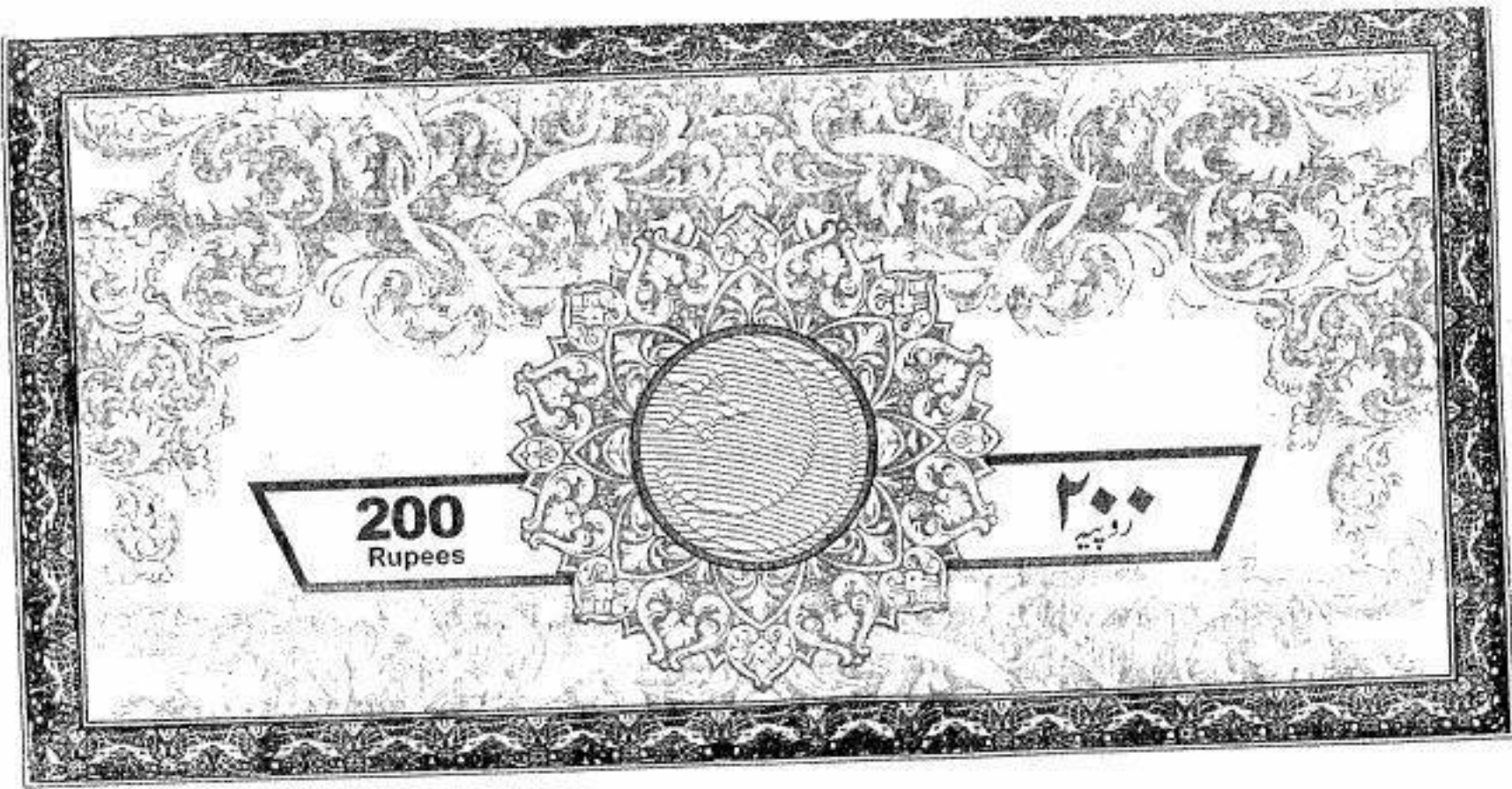
2. PKHA intends to undertake the Project under Public-Private Partnership (PPP) arrangement.
3. Expression of interest ("EOI") is solicited from eligible well reputed domestic as well as foreign firms, joint ventures and consortia for implementation of the project.
4. PKHA shall provide land for the Project free of encumbrances and may consider financial support, if necessary.
5. Interested parties may obtain the Pre-Qualification ("PQ") documents from office of the undersigned during office hours, or may download from PKHA website ([www.pkha.gov.pk](http://www.pkha.gov.pk))
6. Last date for submission of EOI is **January 21, 2016 till 15:30 hours.**
7. PKHA shall issue Request for Proposal ("RFP") of the Project to the pre-qualified Firms only. The RFP shall contain, interalia, instructions to bidder, detailed scope of work, draft concession agreement etc.
8. Further information / clarifications may be obtained from the office of the undersigned on any working day during working hours.

INF/P/5651

**ANNEX – II**

Copy of Bid Security





### BANK GUARANTEE

Guarantee No : RWP/0006/033/2016  
Date of Issue : 10-05-2016 (10<sup>th</sup> May Two  
Thousand and Sixteen)  
Date of Expiry : 04-01-2017 (04<sup>th</sup> Jan Two  
Thousand and Seventeen)

Name of the Customer : **M/s Frontier Works Organization (FWO) 509 Kashmir  
Road, RA Bazar, Rawalpindi.**  
Name of Guarantor : **Bank AL Habib Ltd, 40/3 Jhanzeb Centre, Bank Road  
Rawalpindi Cantt.**  
Amount of Guarantee : **Rs. 150,000,000/- (Rupees One Hundred Fifty Million Only)**

To,

The Engr. Barkatullah Project Director Pakhtunkhwa Highways Authority  
Government of Khyber Pakhtunkhwa Khyber Road, Peshawar, Pakistan.

### Bid Security for "Const of Swat Expressway on BOT Basis.

WHEREAS M/s Frontier Works Organization (FWO) 509- Kashmir Road R.A Bazar Rawalpindi (hereinafter referred to as the Bidder) has submitted his/ its bid dated 13-05-2016 for granting of a Concession to design, finance, construct, install, erect, commission, develop, manage, operate, maintain, insure and transfer, at the end of the Concession Period, the Swat Expressway on a Build, Operate, Transfer basis (hereinafter referred to as the "Bid"), a requirement of which is that the Bidder shall submit a bid security in the amount of **PKR.150,000,000/- (Rupees One Hundred Fifty Millions only)**

AND WHEREAS to satisfy the aforesaid stated requirement, this Deed of Bid Security Guarantee hereinafter referred to as the "Guarantee") is made on this 10 day of May, 2016 by Bank Al Habib Limited (name of the bank) a banking company lawfully undertaking business in the Islamic Republic of Pakistan having its registered office at 40/3 Jahanzeb Centre Bank Road Rawalpindi Cantt (hereinafter referred to as the "Bank" which expression shall, wherever the context so admit, include its executors, administrators and successors in interest) in favor of the Pakhtunkhwa Highways Authority, a statutory body established 2001 by Government of the Pakhtunkhwa (hereinafter referred to as PKHA").



NOW THEREFORE in consideration of PKHA accepting the Bank's obligations contained in the following paragraphs for the due discharge of the Bidder's obligation to provide a Bid Security, THE BANK, by THIS GUARANTEE AGREES TO THE FOLLOWING:-

1. The Bank hereby undertakes and guarantees that it shall, on the first written demand of PKHA, without any caveat, demur, protest or contest and without reference or recourse to the Bidder or any other person, organization or authority, pay PKHA within three (3) working days, in clear funds, without any deduction or withholding on any account whatsoever, a sum of Rs. 150,000,000/- (Rupees One Hundred Fifty Million Only).
2. The obligation of the bank to PKHA to pay the sum specified in paragraph 1 above within the time and in the manner specified therein shall be that of principal debtor in the first instance without PKHA proceedings against the bidder and notwithstanding any security or other guarantee PKHA may have in relation to the bidder's liabilities.
3. Any demand specified in paragraph 1 above, made by PKHA on the bank will be conclusive and binding between PKHA and the bank notwithstanding any dispute or difference between PKHA and the bidder or any dispute pending before any tribunal, arbitrator or any other judicial, quasi-judicial or other authority. The Bank hereby affirms that it shall pay PKHA the amount specified in paragraph 1 above within the time and in the manner specified therein without PKHA needing to prove or show ground or reasons for PKHA's demand. The Bank further affirms that it shall support and uphold the right of PKHA to make a demand specified in paragraph 1 above and be paid the sum specified therein, if a dispute relating to the same is raised by the Bidder before any court, tribunal, arbitrator or any other judicial, quasi-judicial or other authority.
4. The Bank hereby waives, to the fullest extent possible by law, any defense whether or equity that may be raised to prevent or delay PKHA from making a demand specified paragraph 1 above or being paid the sum specified therein.
5. PKHA shall be at liberty, without affecting the Bank's obligations to PKHA contained in this Guarantee, to postpone for any time or from time to time, the enforcement of any rights accruing to PKHA against the Bank or the Bidder and to enforce the same at any time and in any manner and to enforce or forbear to enforce any remedies available to PKHA against the Bank or the Bidder. The Bank accepts that it shall not be released of its obligations to PKHA contained in this Guarantee by any exercise by PKHA of its liberty in relation to the aforesaid matters or any of them or by time or other indulgence including the granting of any waiver to either the bank or the Bidder or by any variation in this Guarantee or by any other act or omission whatsoever which, under law or equity, but for this provision would have the effect of releasing the bank of its obligations under this Guarantee notwithstanding that any such postponement, forbearance, extension of time or other indulgence, waiver, variation or any other thing was granted made give happened with out the consents or knowledge of the Bank.
6. The Bank hereby undertakes not to revoke this Guarantee during its currency without the prior written approval of PKHA and agrees that the obligations of the Bank under this Guarantee are continuous obligations and shall remain in full force and effect and enforceable against the Bank notwithstanding any change, in the constitution, legal status or Organization of the bank, the bidder or PKHA until all dues of PKHA under or by virtue of this guarantee have been paid by the Bank in full or until PKHA discharges this Guarantee in writing.
7. The Bank hereby affirms that it has the power and authority under its Memorandum and Articles of Association and all necessary consents and authorizations, including without limitation, those required from its board of directors, regulator or other relevant governmental body, to enter into, execute, deliver and perform the Bank's obligations under this Guarantee in favor of PKHA and that the signatory(ies) hereto has/have the capacity and power to sign and bind the bank to the Bank's obligations contained herein under.(power of Attorney / Board Resolution dated \_\_\_\_\_

N-V-D  
B-960  
Munir F. Qureshi



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8. Notwithstanding any thing contained in paragraphs 1 to 7 above, the bank's liability to PKHA under this guarantee is restricted to and to shall remain enforce upto and including 10 Day of May 2016 and shall be extended for such period as may be desired by the Bidder.

9. The guarantee shall be governed by and construed in accordance with the laws of the Islamic Republic of Pakistan.

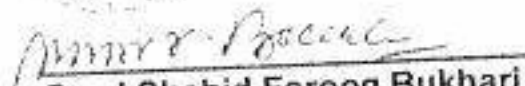
IN WITNESS WHEREOF the Bank, through duly and lawfully authorised representative(s), has executed this Guarantee on the date first written above in the presence of the witnesses mentioned below.


FOR AND ON BEHALF OF  
BANK AL HABIB LIMITED  
40/3 JAHANZEB CENTRE, BANK ROAD  
RAWALPINDI CANTT.



Javed Ashraf  
Assistant Manager  
Attorney # : B-960



  
Syed Shahid Farooq Bukhari  
Chief Manager  
PA #: A-258

  
Bilal Hasnain  
Operations Manager  
Attorney # : B-2225

WITNESS:

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

\_\_\_\_\_

\_\_\_\_\_

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

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**ANNEX – III**

A copy of Bidder's Comments on RFP



**COMMENTS ON RFP & DRAFT**  
**CONCESSION AGREEMENT**





## PRELIMINARY KEY COMMENTS

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**Construction Subsidy** - Any construction subsidy should be funded by PKHA prior to Financial Close in an equity account under the lien of the Lenders. Funds from such account will be utilized pro-rata with the equity of the sponsors and the financing raised from the Lenders.

**Province Support Agreement** - The Government of Khyber Pakhtunkhwa, Finance Department should be a signatory to the concession agreement/minimum revenue guarantee agreement/equity funding and utilization agreement and other project agreements which envisage financial support of the KPK government.

**Project Agreements** - Depending on the final structure of the transaction, it is likely that, in addition to the concession agreement, the Parties (along with relevant departments of the KPK government) will need to enter into various agreements such as any guarantee agreement/equity funding and utilization agreement/security agreements. The transaction structure will be finalized in consultation with the Lenders.

**Bid Security** - In terms of the RFP, the quantum of the Bid Security is PKR 150,000,000/-, whereas the draft concession agreement states that the same shall be PKR 200,000,000/-. Conflict needs to be resolved.

**Change in control** - PKHA's consent for Change of Control needs to be regulated through an objective criteria.

**Change in Law** - The concept of Change in Law should be pegged with the date of bid submission as opposed to the date of signing of the Concession Agreement.

**Comparable Expressway and Competing Route** - The concept should be extended to other transport facilities (such as trains etc.). Also, retention of such concept is tied with the overall transaction structure (particularly, minimum revenue guarantee and its backstop).

**Concession Area** - Parameters of Construction Corridor to be set in stone at the outset and status of land acquisition to be appraised upfront.

**Deductible Amounts** - Deductible Amounts should only be actual funds standing to the credit of the Concessionaire's bank accounts as of the Termination Date.

**Incremental and Consequential Costs** - Definition needs to be simplified and perhaps linked with Compensation Events/Permitted Events.

**Permitted Events** - Concept of Permitted Events needs to be added, which are events that will entitle the Concessionaire to an extension of time and/or monetary compensation (such as PKHA Event of Default, Force Majeure, Relief Event, Change in Law etc.). Concept to be used throughout the Concession Agreement in relevant Sections.

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**SUBSTANTIAL COMPLETION** - The concept should exclude completion of facilities such as service areas, commercial facilities etc.

**FINANCIAL CLOSE** - Achievement of Financial Close to be certified by Joint Auditor.

**SECTION 3.2.2** - The compensation payable to the Concessionaire in the event of delayed delivery of land should include any increase in cost (construction and/or operational), loss of revenue or other adverse financial impact on the Concessionaire as a direct result of PKHA's default.

**SECTION 6.2 - CONDITIONS PRECEDENT** - The Conditions Precedent of PKHA to be revisited in light of overall transaction structure (such as construction subsidy, minimum revenue guarantee etc.).

**SECTION 8.2.4 - VARIATION** - In case of a Variation, the cost for the variation should be placed in an escrow account upfront, a mobilization advance of 30% should be released to the Concessionaire and milestone payments released to the Concessionaire against certification of milestones by the Quality Assurance Inspector.

**SECTION 9.4** - Comment in paragraph 1.16 above is reiterated.

**SECTION 13.4 - OPERATIONS BOND** - Concept of Operations Bond should be done away with.

**SECTION 14.23 - TEMPORARY TAKE-OVER** - Provision to be simplified. Take-over should only be in cases of emergencies that cannot be managed by the Concessionaire and should be triggered upon the Concessionaire's request.

**SECTION 15.2 - COMPETING ROUTE** - Compensation to be paid on a monthly/quarterly basis.

**SECTION 15.4 - REDUCTION IN TOLL RATES** - Compensation to be paid on a monthly/quarterly basis.

**SECTION 17 - FORCE MAJEURE** - An allocation of costs provision needs to be added in Section 17 whereby the Party in which a specific Force Majeure risk vests should be under an obligation to bear all Incremental and Consequential Costs during and caused by a Force Majeure Period.

**SECTION 18.1 - COMPENSATION EVENTS** - To be revisited in light of final transaction structure.

**SECTION 21.6 - COMPENSATION ON TERMINATION** - As part of the Termination Payments, the Concessionaire should also be paid any amounts paid by the Concessionaire/Sponsors for funding the Debt Due (which has to be discharged by PKHA) after the date the same are required to be certified in terms of the Concession Agreement.

**DISPUTED TERMINATION** - To ensure safeguard against wrongful termination of the Concession Agreement, a mechanism needs to be built in the Concession Agreement whereby any wrongful termination may be challenged and effective termination of the Concession Agreement shall be subject to determination of whether such termination was wrongful or otherwise.

PKHA will provide all types of facilities for taking necessary consent for Borrow Areas



**ANNEX – IV**

A copy of Bidder's Statement of Proposed  
Technical Changes to the Conforming Scheme

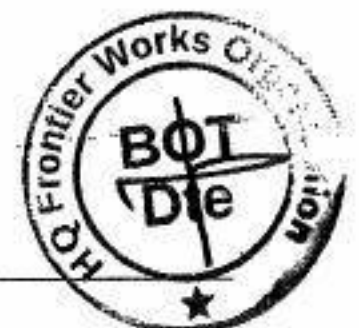




**STATEMENT OF PROPOSED TECHNICAL CHANGES TO THE  
CONFORMING SCHEME**

It is certified that our bid for "Construction of Swat Expressway on Build-Operate-transfer (BOT) Basis Project" Conforms to all requirements of the Request For Proposal (RFP) and *there are no proposed modifications.*

  
Salman Qaisrani  
Director BOT





**STATEMENT OF PROPOSED TECHNICAL CHANGES TO THE  
CONFORMING SCHEME**

It is certified that our bid for "Construction of Swat Expressway on Build-Operate-transfer (BOT) Basis Project" Conforms to all requirements of the Request for Proposal (RFP). Comments on RFP & Draft Concession Agreement is attached in Annexure in BID (Comment on RFP),

  
Salman Qaisrani  
Director BOT







**PAKHTUNKHWA HIGHWAYS AUTHORITY**  
Government of Khyber Pakhtunkhwa

**FINANCIAL EVALUATION REPORT**

*for*

**Construction of Swat Expressway**  
Under Public Private Partnership  
On Build-Operate-Transfer Basis

**June 2016**

**PAVRON**



**PAVRON**

Consulting Engineers, Planning, Designing,  
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## ACRONYMS

AADT	Annual Average Daily Traffic
BOT	Build-Operate-Transfer
CAPEX	Capital Expenditure
EBIT	Earnings Before Interest and Tax
EBITDA	Earnings before Interest, Taxes, Depreciation and Amortization
EOI	Expression of Interest
EPC	Engineering Procurement Construction
FA	Fixed Assets
IDC	Interest During Construction
KPK	Khyber Pakhtunkhwa
LLCR	Loan Life Coverage Ratio
LOI	Letter of Invitation
OPEX	Operating Expense / Operational Expenditure
PKHA	Pakhtunkhwa Highways Authority
PKR	Pakistani Rupee
PPP	Public Private Partnership
RFP	Request for Proposal
SRO	Supplementary Regulatory Order
VGf	Viability Gap Fund
WACC	Weighted Average Cost of Capital

# **FINANCIAL EVALUATION REPORT**

## CONSTRUCTION OF SWAT EXPRESSWAY ON BOT BASIS

### *Table of Contents*

<b>1.</b>	<b>PREAMBLE</b> .....	<b>1</b>
1.1	Site Location .....	1
1.2	Procurement Process .....	2
<b>2.</b>	<b>FINANCIAL PROPOSAL</b> .....	<b>2</b>
2.1	Minimum Financial Information Required in RFP and Bidder's Compliance .....	2
<b>3.</b>	<b>ASSUMPTIONS OF FINANCIAL MODEL</b> .....	<b>4</b>
3.1	Capital Structure .....	4
3.2	CAPEX Assumptions .....	6
3.3	Income Statement Assumptions .....	7
3.3.1	Revenue Assumptions .....	7
3.3.2	Toll Rates .....	10
3.3.3	Toll Collection Losses .....	11
3.3.4	Service Area & Other Sources of Revenue .....	11
3.4	OPEX .....	11
3.4.1	Other Operating Costs .....	11
3.4.2	Main Carriageway Routine Maintenance Cost .....	11
3.4.3	Service Lanes Routine Maintenance Cost .....	12
3.4.4	SPVC Cost .....	12
3.4.5	Insurance .....	12
3.4.6	Funding Cost .....	12
3.4.7	Periodic Maintenance .....	12
3.4.8	Service Areas Cost .....	12
3.5	Construction Cost and Mobilization Advance .....	12
3.5.1	Construction Cost Phases and Payments .....	12
3.5.2	Non-EPC Costs .....	13
3.5.3	Total-EPC Costs .....	13
3.6	Viability Gap Funding .....	13
3.7	Taxation .....	14
3.7.1	Current Tax .....	14
3.7.2	Alternate Corporate Tax .....	15
<b>4.</b>	<b>VALUATION AND RATIOS</b> .....	<b>15</b>
4.1	Free Cash Flows to the Firm .....	15
4.1.1	Net Present Value .....	15
4.1.2	Project IRR .....	15
4.1.3	Payback Period .....	15
4.2	Free Cash Flows to Equity .....	15
4.2.1	Net Present Value .....	15
4.2.2	Equity IRR .....	16
4.2.3	Cost of Equity .....	16



4.3	Ratios.....	16
4.3.1	Debt Service Coverage Ratio .....	16
4.3.2	Net Profit Margins .....	16
4.3.3	Loan Life Coverage Ratio .....	17
4.3.4	Project Life Coverage Ratio.....	17
<b>5.</b>	<b>BIDDER’S FINANCIAL STRENGTH AND FINANCIAL STATEMENT ANALYSIS .....</b>	<b>17</b>
5.1	Current Assets, Non-Current Assets and Total Assets .....	18
5.2	Current and Non-Current Liabilities .....	18
5.3	Profitability Ratios .....	18
5.4	Return of Assets .....	19
5.5	Liquidity Ratios.....	20
5.6	Payables and Receivables Period .....	21
5.7	Long Term liabilities to Equity Funds Ratio.....	21
<b>6.</b>	<b>PROJECT FININCIAL STATEMENTS.....</b>	<b>22</b>
6.1	Income Statement.....	22
6.2	Balance Sheet.....	22
6.3	Cash Flow Statement .....	23
<b>7.</b>	<b>FINANCIAL BID EVALUATION RESULTS .....</b>	<b>23</b>
<b>8.</b>	<b>CRITICAL OBSERVATIONS .....</b>	<b>24</b>
<b>9.</b>	<b>RECOMMENDATIONS.....</b>	<b>25</b>

# **FINANCIAL EVALUATION REPORT**

## CONSTRUCTION OF SWAT EXPRESSWAY ON BOT BASIS

### 1. PREAMBLE

The Government of Khyber Pakhtunkhwa through Pakhtunkhwa Highways Authority (PKHA), has planned undertaking the construction of “Swat Expressway”, an 81 kilometers long, high speed, fenced, 4-lane Expressway (**the Project**).

The Government of Khyber Pakhtunkhwa has decided that Swat Expressway may, presently, be constructed as 4-lane (2x2), controlled access facility, with extendable provision of converting into 6-lanes (3x3) Expressway to cater for future transportation needs. It was further decided that the project shall be implemented under Public Private Partnership (**PPP**) on Build-Operate-Transfer (**BOT**) basis.

#### 1.1 Site Location

The planned Swat Expressway forms part of trade corridor commencing from Kernal Sher Khan Interchange at M-1 Motorway and terminating at Chakdara Intersection at National Highway N-45 (Malakand Agency). The proposed Expressway will provide alternate route for District Swat, Dir Lower, Dir Upper, Shangla, Malakand Agency, Bajour Agency and other parts of Malakand region promoting interconnectivity with developed regions of the country. It will attract most of the through traffic of Swat, Dir and other upper areas, thus, will reduce traffic congestions and road accidents on the existing National Highway N-45 that passes through built-up towns of Rashakai, Mardan, Takhtbai, Shergah, Sakhakot, Dargai and Batkhela. The proposed alignment, with its start and end points, is shown in the following map.



## 1.2 Procurement Process

Procurement process, for implementing the Project on BOT basis, was initiated by release of an advertisement in the print media for inviting Expression of Interest (EOI) from the local as well as international private entrepreneurs. Following activities have already been completed.

SI #	Activity	Date
1	Advertisement for Expression of Interest	19-12-2015
2	Receiving Expression of Interest	21-01-2016
3	Issuance of Request for Proposal	29-03-2016
4	Pre-Bid Conference	15-04-2016
5	Bid Received	30-05-2016
6	Opening of Technical Proposal	30-05-2016
7	Opening of Financial Proposal	08-06-2016

This Financial Evaluation Report incorporates a detailed evaluation of the Financial Proposal and concludes recommendations towards implementation of the Project. The report is entirely based upon the information, data, financial model and other written material provided by PKHA to the transaction advisors in connection with the procurement process of Swat Expressway Project.

## 2. FINANCIAL PROPOSAL

### 2.1 Minimum Financial Information Required in RFP and Bidder's Compliance

The minimum financial information the PKHA requires each Bidder to submit in its Financial Proposal as a mandatory requirement to be considered responsive is:

- a. Estimated Total Construction Cost of the Project in a Work Breakdown Structure (WBS); a breakdown of Project's capital/construction costs, covering the scope of work as mentioned Appendix-1 of the RFP.

➤ *The same has been duly provided in the Financial Proposal.*

#### b. Financing Structure:

- i. Total amount of loan(s) to finance the Project, as well as its operation and maintenance; including type, sources, term, grace period, interest and any other relevant factors.

➤ *The same has been duly incorporated in the Financial Proposal.*

- ii. The total amount of Bidder's equity to be committed to finance the Project. (The PKHA requires each Bidder to commit to equity financing a minimum of



thirty percent (30%) of the total Construction cost. Bidders proposing less than the minimum equity shall be declared non-responsive.)

- *The bidder has committed 35% equity amount of project cost (after deducting VGF amount).*
- iii. Cash flow projections during the Concession Period;
- *Cash Flow Projections have been duly provided in the Report Section of Financial Model and the same has been provided as part of the Bid*
- iv. Minimum amount of subsidy, if any, required by the Bidder from PKHA, in terms of Net Present Value;
- *A minimum amount of Subsidy in terms of Viability Gap Funding has been demanded in the Financial Proposal:*
    - (a) *Subsidy during construction phase in two years: PKR 13.426 Billion*
    - (b) *Subsidy during operation phase (3<sup>rd</sup> to 10<sup>th</sup> concession year): Total PKR 14.600 Billion (@ PKR 1.825 Billion/annum)*
    - (c) *Total subsidy demanded in first 10 Years: PKR 28.026 Billion, whose Present Value of minimum amount of Subsidy has been calculated at PKR 18.839 Billion by the bidder @ 10% discount rate (Upfront Construction + Operational Subsidy).*
- a. Maximum amount of PKHA Revenue Share, if any, offered by the bidder.
- *The bidder has not allocated any Revenue share for the PKHA during the whole Concession Period of 25 years.*
- (d) **Financial Model:** Detailed Revenue Analysis/Projection, Expenditure Analysis/Projection, Debt Servicing Analysis, Cash Flows, Return on Investment Analysis.
- *A Detailed Financial Model incorporating all Financial Aspects of the Project has been provided.*
- (e) Project Balance Sheet, Project Income Statement and Project Profit & Loss Statement.
- *Projected Balance Sheet, Projected Income Statement and Cash Flows Statement have been provided in Bid.*
- (f) Toll Charge computation and traffic computation with rationale; including minimum base toll rates (as has been provided) and escalations/projections (as has been provided) in toll rates.
- *Toll Charge Computation has been provided in the Financial Bid.*

- f. **PKHA Revenue Share:** PKHA Revenue Share, if offered, may clearly be reflected in the Financial Model.
- *Bidder has proposed that No Revenue Sharing shall be offered to PKHA during the Concession Period.*
- g. The Bidder's audited financial statements (Balance Sheet, Income Statement, and Profit& Loss Statement) for the last 3 years and in case of firm's bank statements for the last 3 years.
- *Audited Financial Statements have been provided in the Financial Bid however, latest Financial Statement has not been provided in the Bid. Financial Statements for Year ended 2014-13, 2013-12 and 2012-11 have been provided. Bidder has also provided Management Information for 2015, but they have not been considered being non audited financial statements.*
- h. Intent(s) of bank(s) / financial institution(s) for project debt financing support.
- *Letter of Intents from National Bank of Pakistan, United Bank Limited and Habib Bank Limited have been attached with the Financial Proposal, as a proof for required debt financing.*

## Currency

Bidders were required to express all financial calculations in Pakistan Rupees.

- *The Financial bid is provided in the Local Currency, i.e. Pakistan Rupees.*

## 3. ASSUMPTIONS OF FINANCIAL MODEL

Following assumptions have been taken by the Bidder in its Financial Proposal for preparing Financial Model of the Project.

### 3.1 Capital Structure

The technical and financial assumptions serve as the drivers for the construction of financial model. The information contained herein is hard-coded in to the MS Excel Financial Model to project the output of the financial model through proper linkages. The objective of review of this sheet is to ensure completeness of key inputs and correctness of linkages to their direct outputs.

The financial model and the financial bid under review relates to the Bid submitted to Pakhtunkhwa Highways Authority (PKHA) for undertaking **Construction of Swat Expressway, 81 Kilometres, 4-Lane divided Expressway** (the Project) on a limited recourse basis under Public Private Partnership (PPP) on Build-Operate-Transfer (BOT) basis.

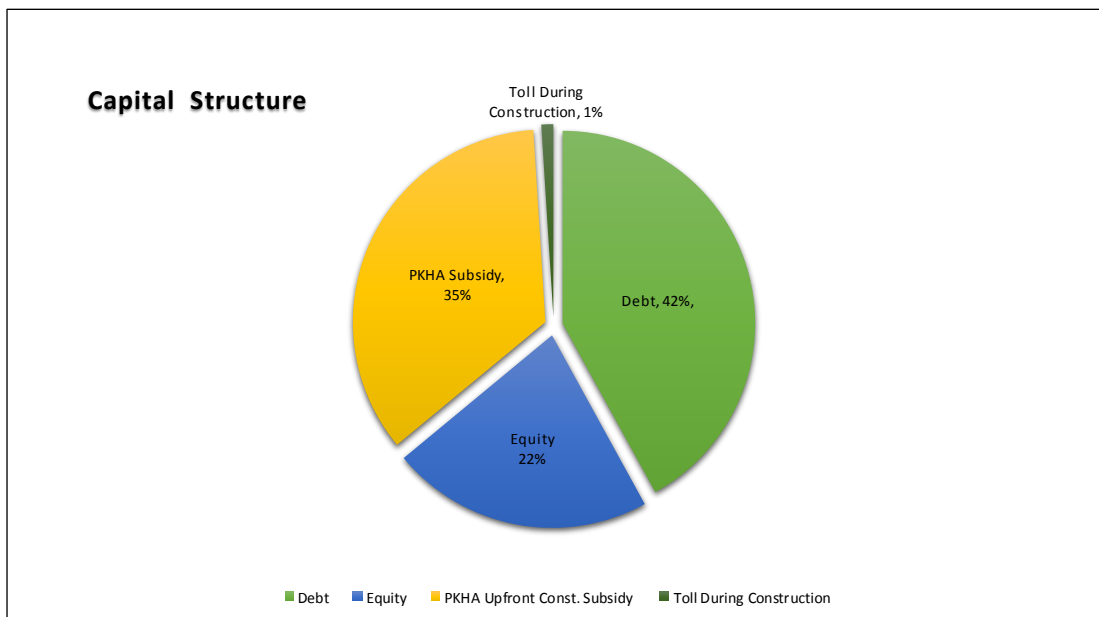
The construction of Swat Expressway is proposed to be funded through a mix of

Equity, Debt and a Viability Gap Funding (VGF) from the Khyber-Pakhtunkhwa Government. However, the Debt Equity Mix of the project has been assumed at 35% Equity and 65% Debt after subtracting the VGF amount.

The Capital Expenditure (CAPEX) shall be sponsored by Equity, Debt and VGF drawdowns during the two (2) year project’s Construction period. The terms of Debt include tenor of ten (10) years with two (2) years grace period to be repaid semi-annually @ 10% - 13.50% (6-month KIBOR with 3% Base Spread). The table given below portrays the capital structure proposed for the project.

<b>Capital Structure</b>				
<b>Debt:Equity Mix</b>		<b>Percentage</b>		
Debt		<b>65%</b>		
Equity		<b>35%</b>		
		<b>100% (64% of Total Project Cost)</b>		
<b>Capital Structure with Upfront VGF</b>	<b>%age</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Total (Rs Billion)</b>
Debt	42%	9.165	7.043	16.208
Equity	22%	4.935	3.792	8.727
PKHA Upfront Const. Subsidy	35%	7.592	5.834	13.426
Toll During Construction	1%	0.075	0.462	0.537
<b>Total Project Cost</b>	<b>100%</b>			<b>38.898</b>

A graphical presentation of the Financing sources perceived by the bidder to finance the project is presented below:





## 3.2 CAPEX Assumptions

This sheet comprises of two parts. First part depicts the Engineering, Procurement and Construction (EPC) costs including:

- Earthwork and Allied Activities
- Sub-base and Base
- Surface courses and Pavement
- Major Structures
- Minor Structures
- Tunnel Works
- Drainage Works
- Ancillary Works
- Electrical Works
- Allied Facilities
- Intelligent Transport System
- O&M Equipment
- General Items
- Horticultural Activities

The above mentioned Bill of Quantities comprise major portion of the Project Cost. Among this the Earth work and Allied Activities, Sub-base, Surface courses and Pavements, Structures and Tunnel works cover major portion of the Project Cost. Non-EPC costs have been computed by allocating percentages to total engineering procurement and construction costs. Design, Management & Consultancy, Contingencies, and Construction Cost Escalation for two (2) years are the items covered under Non-EPC costs. Miscellaneous expenses pertain to company expenses which are to be incorporated for development of project including insurance cost, SPVC cost and Upfront financing fees. Construction Cost Escalation for first phase has been charged @ 6% on 50% Cost of Civil Works i.e. PKR 15,688 Million for first year. In the second phase, Construction Cost Escalation rate of 6% has been compounded to reach 12% on remaining Project Cost of PKR 15,688 Million.

<b>Construction Cost</b>		
Earth Work and Allied Activities	PKR	6,849,780,914
Sub-Base and Base Course	PKR	4,046,403,684
Surface courses and Pavement	PKR	2,259,819,107
Major Structures	PKR	3,000,772,656
Minor Structures	PKR	728,092,500
Tunnel Works	PKR	6,755,000,000
Drainage Works	PKR	254,813,819
Ancillary Works	PKR	2,367,470,578
Electrical Works	PKR	331,515,425
Allied Facilities	PKR	2,332,657,984
Intelligent Transport System	PKR	530,138,190
O & M Equipment	PKR	759,763,800
General Items	PKR	580,344,254
Horticultural Activities	PKR	580,344,254
<b>Cost of Civil Works</b>	<b>PKR</b>	<b>31,376,917,166</b>
Add: Escalation	PKR	2,880,400,996
Add: Contingencies	PKR	941,307,515
<b>Total Construction Cost</b>	<b>PKR</b>	<b>35,198,625,677</b>

<b>Non-EPC Costs</b>			
Design, Management & Consultancy	%	3	941,307,515
Contingencies	%	3	941,307,515
Construction Cost Escalation for 2 years	%	6	2,880,400,996
<b>Miscellaneous expenses</b>			
SPVC Cost	PKR	PKR	180,000,000
Insurance	%	1	351,986,257
Upfront Financing Fee	%	2	347,000,000

### 3.3 Income Statement Assumptions

Income statement assumptions comprised of Revenue, OPEX, Periodic Overlays, Depreciation, Weighted Average Cost of Capital (WACC), and Tax assumptions.

#### 3.3.1 Revenue Assumptions

In order to compute the total revenue for Swat Expressway, bidder has based its estimations on the following factors:

- Traffic growth rates



- Toll Rates
- Toll Escalation
- Collection losses
- Service Area Revenues
- Other Revenues

For traffic growth rates assumption, concession period is divided in to two phases on the basis of operational years in terms of type of vehicles and growth rates. Toll rates per vehicle per kilometer used in these calculations are derived from the RFP Document of PKHA. Total length of Swat Expressway is taken as 81 kilometers and divided into four (04) lanes and their lengths in kilometers. Service Area revenues and other income has been assumed at 2% and 1% of toll revenue respectively. Table appended below provides for the growth rate assumptions and division of road into 6 phases and the length in kilometers in each phase between respective interchanges. An amount to the tune of PKR 181,259 Million has been recorded as Gross Revenue for the whole period, i.e. 25 years of the Project by the bidder. However, Total Net Revenue of the Project estimated by the bidder comes to PKR 177,739 Million.

<b>Traffic Growth Assumptions</b>		
<b>Type of Vehicle</b>	<b>Phase-1 (Year 1 to 7)</b>	<b>Phase-2 (Year 8 to 25)</b>
Car/Jeep/Taxi	5%	2%
Wagon	5%	2%
Coaster	5%	2%
Buses	5%	2%
Trucks	5%	2%
Articulated trucks	5%	2%

<b>Interchange Distances for Revenue</b>		
Kernel Sher Khan – Dobian	KM	9.70
Dobian – Mardan-Swabi	KM	8.80
Mardan-Swabi – Bakhshalay	KM	9.75
Bakhshalay – Katlang	KM	22.00
Katlang – Plai	KM	10.75
Palai – Chakdara	KM	20.00
<b>Total Length of the Road:</b>	<b>KM</b>	<b>81.00</b>

Sectional tolling assumption depicts that revenue generation will start from certain phases of expressway which will be completed in 2017 and 2018, the second year of construction. It has been assumed that construction of Expressway stretching between Kernel Sher Khan – Dobian, and Dobian – Mardan–Swabi

interchanges shall be able to generate revenues for 6 months in later half of 2017. Whereas, road stretching from Mardan–Swabi – Bakhshalay and Katlang – Palai interchanges shall be able to generate tolling revenues for 12 months in 2018. Expressway stretching from Bakhshalay – Katlang and Katlang – Palai interchanges will generate revenue from July, 2018. However, Palai to Chakdara interchange shall be able to generate tolling revenues during the operational period i.e. starting from January, 2019.

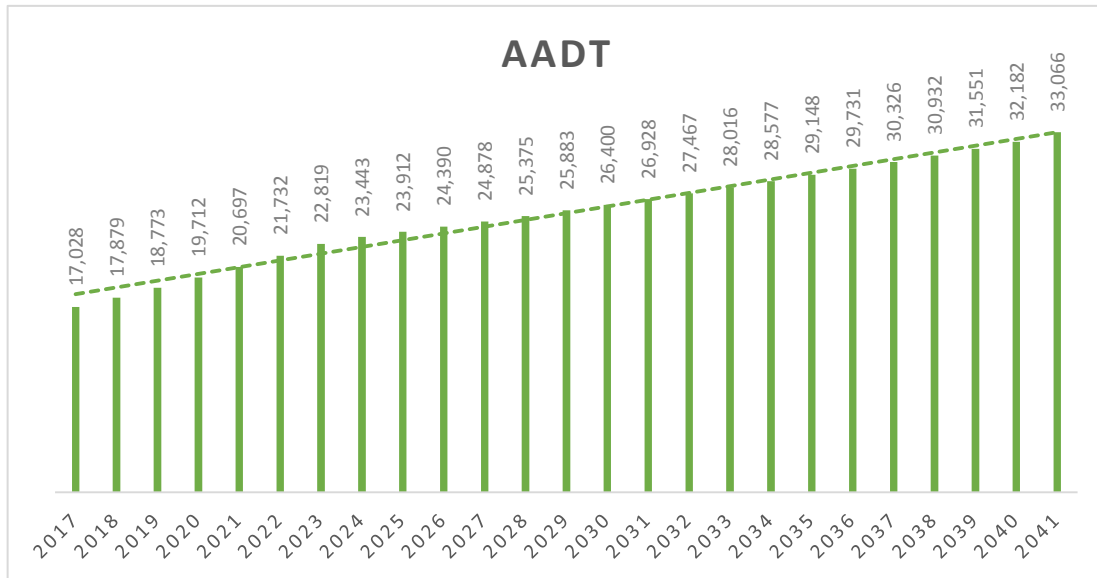
<b>Sectional Completion</b>		
Kernel Sher Khan – Dobian	w.e.f	01-07-2017
Dobian – Mardan-Swabi	w.e.f	01-07-2017
Mardan-Swabi – Bakhshalay	w.e.f	01-01-2018
Katlang – Plai	w.e.f	01-01-2018
Bakhshalay – Katlang	w.e.f	01-07-2018
Palai – Chakdara	w.e.f	01-01-2019

Three phases have been used for recognizing traffic growth. First phase, comprised of seven years (07) starting from January, 2017 to December, 2023 during which traffic growth rate at 5% per annum has been assumed. Second phase started from January, 2024 till June, 2041 wherein traffic growth rate at 2% has been employed. A growth rate of 5% has again been used for the last six (6) months of the Concession Agreement. Periodic growth rates of 0.41% has been used i.e. Monthly basis during the first two years of construction followed by 2.47% Semi-Annual basis for next five years has been used. From the year 2024, traffic growth rate at 1% on a Semi-Annual basis has been applied till first half of the year 2041. For the second half of 2041, 2.47% traffic growth rate has been applied.

Following table has been generated from the financial model which exhibits the average annual daily traffic (AADT) for the Swat Expressway (the Project) estimated by the bidder over the complete Currency of the Project i.e. Construction and Operations period both included. The traffic numbers from the start to end point and between interchanges has been estimated on monthly, semiannually and annual basis.

<b>Years</b>	<b>AADT</b>	<b>Years</b>	<b>AADT</b>	<b>Years</b>	<b>AADT</b>
2017	17,028	2025	23,912	2033	28,016
2018	17,879	2026	24,390	2034	28,577
2019	18,773	2027	24,878	2035	29,148
2020	19,712	2028	25,375	2036	29,731
2021	20,697	2029	25,883	2037	30,326
2022	21,732	2030	26,400	2038	30,932
2023	22,819	2031	26,928	2039	31,551
2024	23,443	2032	27,467	2040	32,182
				2041	33,066

A graphic representation of the trend in traffic during the whole currency of the project is placed below for the consumption of PKHA.



### 3.3.2 Toll Rates

For implementation of efficient tolling system on the Swat Expressway, traffic has been assumed to be divided in six (06) categories. The Base Operational Year Toll Rates are given in the Assumption sheet. These Toll Rates have been presumed to be escalated at a uniform rate of 8% per annum on all the categories of Traffic starting from Commercial Operations Date (COD) till 2041, i.e. last year of the Concession Period. The base toll rates taken by the bidder in the Assumption sheet compared to the Base toll rates authorized by the PKHA for the Project are reproduced below:

Vehicle Category	Base Toll Rate (Rs/Km) as per RFP	Base Operational Year Toll Rates taken by Bidder
Class 1: Car/Jeep/Taxi	1.99	1.71
Class 2: Wagon	3.31	2.84
Class 3: Coaster	4.63	3.97
Class 4: Buses	6.61	5.67
Class 5: Trucks (2 & 3 Axle)	8.58	7.36
Class 6: Articulated Truck	10.57	9.06

The bidder has also opted for sectional completion offered by PKHA in the bidding documents to support the bidder's cash flow requirements during the construction period by de-escalating the base toll rates as per RFP by the toll escalation at 8%.



Following schedule enumerates the sectional completion opted by bidder during construction period:

i. First Sectional Completion	:	07 <sup>th</sup> Month of First Year Construction (18.5 km stretch of Expressway)
ii. Second Sectional Completion	:	01 <sup>st</sup> Month of Second Year Construction (42.5 km stretch of Expressway)

### 3.3.3 Toll Collection Losses

The bidder has assumed Toll Collection Losses equals to a rate of 2% of Gross Revenue collected during a particular period. This loss has been considered from the day one when first rupee of revenue is generated by the Project. In other words, one can say that the bidder has assumed 98% of Toll collection efficiency in a given period of time. Total Toll Collection Losses amounts to PKR 3,520 Million during the whole currency of the Project.

### 3.3.4 Service Area & Other Sources of Revenue

The bidder has planned only one Service Area on the complete stretch of 81 Km of Swat Expressway. The revenue from this Service Area has been added from January, 2019 till 2041. A uniform rate of 2% has been applied to the Toll Revenue of the given particular time period to get the Revenue from Service area. An amount to the tune of PKR 3,520 Million has been estimated from this source of revenue.

Similarly, Other Sources of Revenue estimated at 1% of the Toll Revenue in a particular given time period. Again, during the whole currency of the Project Revenue stream from Other Sources has been estimated at a uniform rate. Total amount of revenue expected to be generated from this Revenue Stream amounts to PKR 1,760 Million starting from the year 2019.

## 3.4 OPEX

The Operating Expenditure of the Project comprised of:

### 3.4.1 Other Operating Costs

A fixed amount of PKR 312 Million has been allocated as Other Operating Cost during the whole Concession Period. The same has been increased at a constant growth rate of 10% per annum.

### 3.4.2 Main Carriageway Routine Maintenance Cost

The bidder has estimated annual cost of PKR 0.150 Million per lane/km to be applied during the Operations period of 23 years starting from 2019. The maintenance cost has been increased at a constant growth rate of 7% per annum.

### **3.4.3 Service Lanes Routine Maintenance Cost**

The bidder has estimated annual cost of PKR 0.075 Million per lane/km to be applied during the Operations period of 23 years starting from 2019. Growth rate of 7% per annum in the maintenance of Service lanes has been applied by the bidder.

### **3.4.4 SPVC Cost**

An SPVC Cost of PKR 60.00 Million has been estimated by the bidder during the Operations period. This cost is also increased at the same rate of maintenance rate, i.e. 7% per annum.

### **3.4.5 Insurance**

Every Project has to get its Assets insured from a reputable insurance company to subside risk. Following the principal, bidder has incurred insurance cost at the rate of 2% to the recorded as Operational expenditure.

### **3.4.6 Funding Cost**

The bidder has assumed an amount of PKR 347.00 Million as funding cost of the project.

### **3.4.7 Periodic Maintenance**

Two episodes of Periodic maintenance have been conceived by the bidder during the life time of the Project. The first periodic maintenance presumed to be carried out in the year 2027 and 2028 by incurring an expenditure of PKR 4,246.91 Million, whereas, second Periodic maintenance is planned to be implemented in 2034 and 2035 by incurring an expenditure of PKR 13,041.87 Million.

### **3.4.8 Service Areas Cost**

In the OPEX sheet included in the Financial Proposal, Service Areas Cost has been taken as lump sum expenditure to the tune of PKR 1,554 Million incurred in the second half of year 2024.

## **3.5 Construction Cost and Mobilization Advance**

### **3.5.1 Construction Cost Phases and Payments**

Construction of Swat Expressway has been planned to be completed in two years' time. Finance cost during the construction has been apportioned on monthly basis over construction period. Within the project cost the amount of SPVC Establishment Cost to the tune of PKR 180.00 Million has been made part of Development cost amounting to PKR 1,473.00 Million and charged in the first month of Construction period as a onetime charge. Construction Cost has been distributed in two phases during the Construction period of two (20) years i.e. 50% to each phase. Every singly phase comprised of a complete one year is further divided in twelve (12) months. Projected Construction Cost of PKR 31,679 Million

has been equally apportioned to the Construction period on a monthly basis @ PKR 1320 Million. Mobilization Advance to the tune of PKR 3,520 Million, 10% of the Construction Cost has been attributed as a onetime charge in the first month of Construction period. We found all calculations with appropriate links to their inputs.

### **3.5.2 Non-EPC Costs**

Up-front Fee calculated as the sum of facility arrangement fee amounting to PKR 347 Million has been treated during the Construction period. The amounts of Upfront Financing Fee are hard coded figures in the Sources and Uses of Funds sheet, whereas, 2% for Upfront fee has been assumed in the Assumption sheet. The validity and veracity of the figures cannot be checked and commented on appropriately. Similarly, SPVC establishment cost amounting to PKR 180 Million has been hard coded in the model, validity and veracity of which cannot be ascertained. Insurance cost at the rate of 1% of Construction Cost has been assumed. Design, Management & Consultancy has been concluded at a rate of 3% of the cost of Civil works i.e. PKR 31,377 Million. Contingencies have also been added at a rate of 3% of the cost of Civil Works.

### **3.5.3 Total-EPC Costs**

Within the EPC costs, Cost of Civil Works and Mobilization Advance amounting to PKR 31,679 Million and PKR 3,520 Million have been assumed to be incurred with the start of construction phase. 50% of total EPC costs other than Up Front costs and Mobilization Advance have been assumed to incur in 2017, while remaining 50% in 2018. Total Mobilization advance of PKR 3,520 Million has been scheduled for construction. This amount is based on 10% of EPC cost and will be netted-off against construction payments. A pre-paid expense has also been provided in the project financial statements for the years 2017 and 2018.

## **3.6 Viability Gap Funding**

The construction of Swat Expressway is a project of public interest. For mega green field infrastructure projects of such nature which are delivered as a part of relief and welfare to general public requires heavy investments, with high project costs and the accompanying revenue in operational periods are low, earned from the charges levied on utilization of these facilities from the general public. Most Governments now invite private parties with the requisite expertise to undertake development of projects, allowing the Government to focus on its core areas rather than partake in development projects. To be able to sub-contract project development to private investors and parties, a scheme of public private partnership is used whereby an investor develops the construction of the project and operates for a given period of time. In this case the concession period has been assumed at 25 years.

Most of the Public sector projects, especially Greenfield projects, are not financially feasible because their inflows/revenues are low and as such are not able to pay off the debt component of the Project Cost, since these inflows are heavily dependent on a result of charges levied on general public for utilization of such projects. These projects are sometimes neither feasible nor bankable. The construction of Swat Expressway is a project of such nature. For making the project bankable and financially feasible, the government shall provide subsidy for enabling the investors



to undertake the project construction and operations. The subsidy to be provided shall be in the form of viability gap funding provided by the Government of KPK. As per document issued by Pakhtunkhwa Highway Authority, project will be awarded to the contractor whose viability gap funding requirements are the lowest.

An initial investment to the tune of PKR 38.89 Billion is required to complete the construction of Swat Expressway. The financing structure proposed by the bidder comprises of equity, debt and an upfront viability gap funding. The bidder has calculated a viability gap funding at 35% of initial investment as an upfront payment which shall be paid at the start of the two construction years. Of this, PKR 7.592 Billion VGF is required to be paid in first year of construction whilst, PKR 5.834 Billion in second year. The Total amount for VGF required during the construction periods has been calculated to be PKR 13.426 Billion for the two years. Amounts presented in total initial investment head under viability gap funding portion have been derived from Source & Use MS-Excel sheet in financial model. For calculation of mobilization advance, construction and other project related costs have been calculated on a monthly basis and the monthly costs have been divided into equity, debt and viability gap funding requirement with their respect percentages. During Construction period, total amount of upfront viability gap funding proposed by Bidder is PKR 13.426 Billion approximately for successful development of Swat Expressway project.

The viability gap funding has been proposed during the period of construction as an Upfront Subsidy and during the debt servicing period as an Operational Subsidy in the form of fixed Annuity payments.

Annual viability gap funding requirement has also been incorporated in projected financial statements to fund annual expenses from 2019 to 2026. Total Annual viability gap funding is PKR 14.600 Billion approximately demanded in the form an Annuity payment of PKR 1.825 Billion from 2019 to 2026.

### **3.7 Taxation**

The Tax Sheet within the Financial Model for calculation of Tax has been found to be appropriately scheduled under the Income Tax Rules applicable in Pakistan. The calculations for Taxation are appended below.

#### **3.7.1 Current Tax**

Current tax has been calculated by using the Profit & Loss figures during the year and by adding back Non-Cash expenses such as Accounting Depreciation & Amortization, Provisions and any Accounting Losses and netting of the amounts with Exempt Income for e.g. Viability Gap Funding from Khyber Pakhtunkhwa Government and allowed expenses namely Tax depreciation to avoid accelerated depreciation of assets for allowing lower corporation taxes to be paid, tax on disposal of fixed assets. The amounts attained after these adjustments have been treated as business losses and carried forward to future taxable income if any. Any amounts left after adjusting carried forward losses have been charged corporate tax of 32%. As per the Tax Laws of Pakistan, a Minimum Tax on Revenues has also been calculated at 1% on Sales Revenue.

### **3.7.2 Alternate Corporate Tax**

Accounting Profit before Taxation has been used to calculate the Alternate Corporate Tax and Subsidy from Federal Government has been netted-off against the Accounting Profit based on the fact that the Subsidy is an Exempt Income. A 17% Alternate Corporate Tax has been charged.

The Tax payable during each Tax year is the higher of, Corporate Tax and Alternate Corporate Tax.

## **4. VALUATION AND RATIOS**

### **4.1 Free Cash Flows to the Firm**

#### **4.1.1 Net Present Value**

Cash flows from operating activities have been used and added with after tax interest paid and netted-off with CAPEX to calculate the free cash flows to the firm. The calculations are found to be accurate and Net Present Value of Accumulated cash flows at 10% Discount Rate provided by Khyber Pakhtunkhwa Highway Authority has been provided at PKR 25,690 Million.

#### **4.1.2 Project IRR**

The Project Internal Rate of Return has been calculated adequately by using Free Cash Flows to the Firm and using an estimated rate equal to discount rate of 10%. The Project IRR is calculated at 12.51%.

#### **4.1.3 Payback Period**

The Payback Period has been calculated accurately till the time when the total investment shall be recovered. Within the Financial Model the Payback Period has calculated to be 10<sup>th</sup> Years.

The calculation used for Net Present Value of Free Cash Flows to the Firm, Project IRR and Payback Period is arithmetically correct.

### **4.2 Free Cash Flows to Equity**

#### **4.2.1 Net Present Value**

Net Present Value for Free Cash Flows to Equity has been accurately calculated by using Cash Flows from Operating Activities and by adding up net borrowings and subtracting Capital Expenditure. The values calculated are then discounted by using a 10% Discount Factor. The Net Present Value for Free Cash Flows to Equity has been calculated at PKR 6,834 Million.

## 4.2.2 Equity IRR

Equity IRR has been calculated using Free Cash Flows to Equity and using a guesstimate of 10% as a discount factor. Equity IRR for the project is 14.81%.

## 4.2.3 Cost of Equity

Cost of Equity has been calculated using a Risk Free Rate and then adding up a Market Premium with a Levered Value for the project in concern.

Cost of Equity		
Risk Free Rate	%	7.0%
Market premium	%	6.0%
Beta	%	0.05
<b>Cost of Equity</b>	<b>%</b>	<b>10.0%</b>

## 4.3 Ratios

### 4.3.1 Debt Service Coverage Ratio

DSCR has been calculated during the Operations phase of the Concession Period. The items and the formulae used for calculating DSCR are appended below for reference. There shall be no DSCR in the construction phase based on the fact that the bidder shall be made available a grace period of 8 quarters before the actual repayment starts from the first year of operations period.

The Average DSCR Ratio starting from first year of Operations till Eighth year of Operations is 1.15:

$$\frac{\text{Cash Flow Available for Debt Service}}{\text{Debt Due}}$$

### 4.3.2 Net Profit Margins

The results for Net Profit margins emanates from the year 2019 primarily base on the fact that the toll revenues for some phases of the Expressway will start generating from the year 2019. Calculations appended below for calculating net profit margins are derived from the financial bid.

The average net profit margins during the concession period is 24.61%

$$\frac{\text{Profit After Tax}}{\text{Revenue}} \times 100$$

### 4.3.3 Loan Life Coverage Ratio

Loan Life Coverage Ratio has been calculated from the start of Operations period i.e. 2019 till the first half of Year 2026. The relevant calculation used in the financial bid is provided below: The average result of this ratio is 1.56. The formula used for driving the required ratio is given below:

$$\text{LLCR} = \frac{\text{Net Present Value of Cash flow Available for Debt Service}}{\text{Outstanding Debt Balance}}$$

### 4.3.4 Project Life Coverage Ratio

Project Live Coverage Ratio is one of the most important ratios in the Project Evaluation Analysis. Unlike the Loan Life Coverage Ratio, where the cash flow available for debt service (CFADS) is calculated over the scheduled life of the loan, the cash flow for Project Life Coverage Ratio is calculated over the Project Life.

$$\text{LLCR} = \frac{\text{Net Present Value of Cash flow Available for Debt Service}}{\text{Outstanding Debt Balance}}$$

The values of the ratio starting from the Operations year, i.e. 2019 starts from 2.35 and ending on a value of 21.73 in the year 2026.

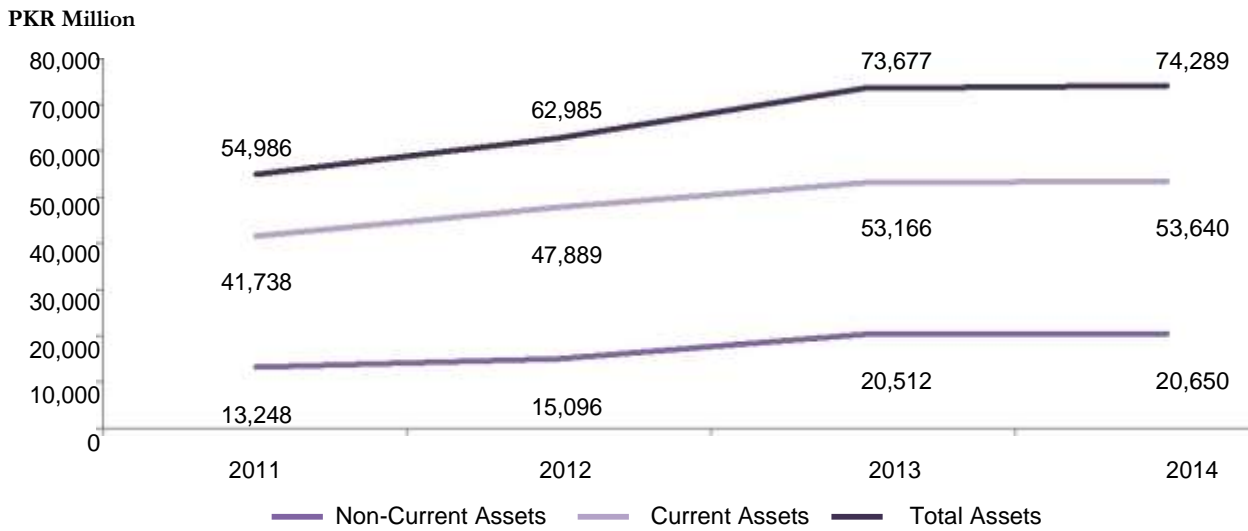
## 5. BIDDER'S FINANCIAL STRENGTH AND FINANCIAL STATEMENT ANALYSIS

The bidder has submitted its Audited Financial Statements for the last three years as per requirement of the RFP. Ratio Analysis has been conducted by using relevant information from financial statements submitted by the bidder along with the financial bid, covering the past three years to ascertain its financial strength and standing. These ratios analysis shall inform the decision makers about bidder's capacity to undertake this project of public interest. Since the financial statements are audited by a Category A chartered accountants firm, no comments shall be made on the completeness, integrity and compilation of the said statements and the audit report issued thereof.

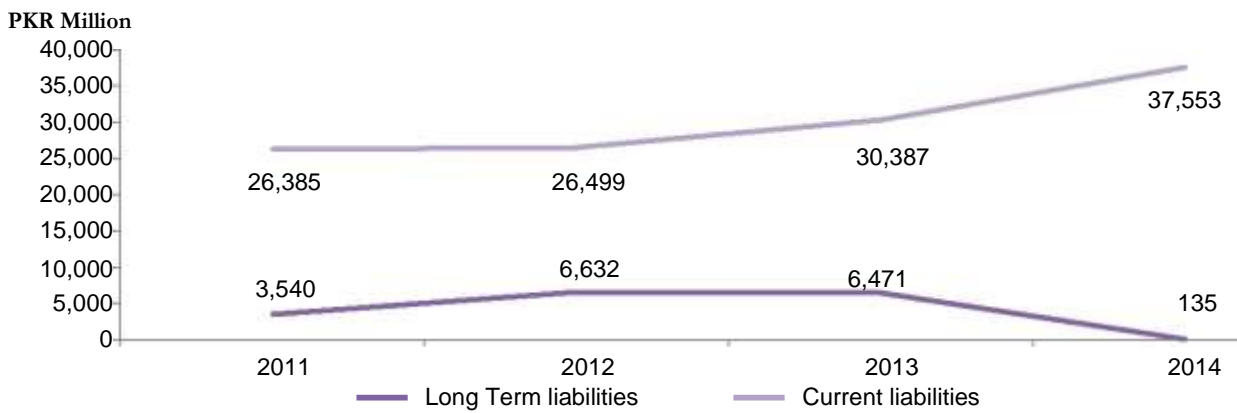
For this purpose, profitability, liquidity and all other ratios necessary to be reviewed in the circumstances have been calculated based on the figures derived from the financial statements provided by the bidder. Summary at the end encompasses any key findings pertaining to any liability or provision created by the bidder, having negative affect on the project at hand.



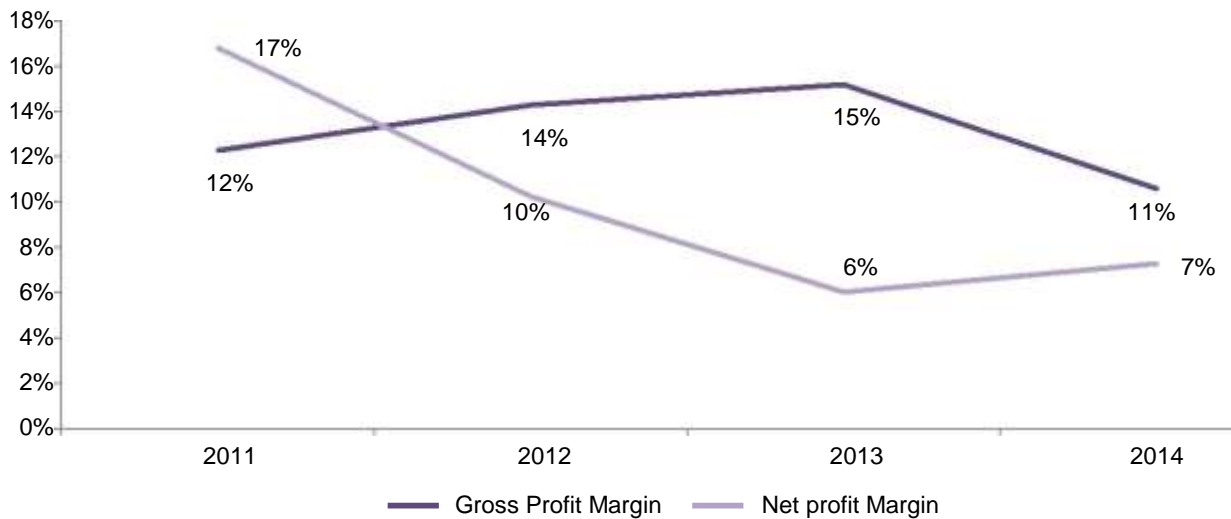
### 5.1 Current Assets, Non-Current Assets and Total Assets



### 5.2 Current and Non-Current Liabilities



### 5.3 Profitability Ratios

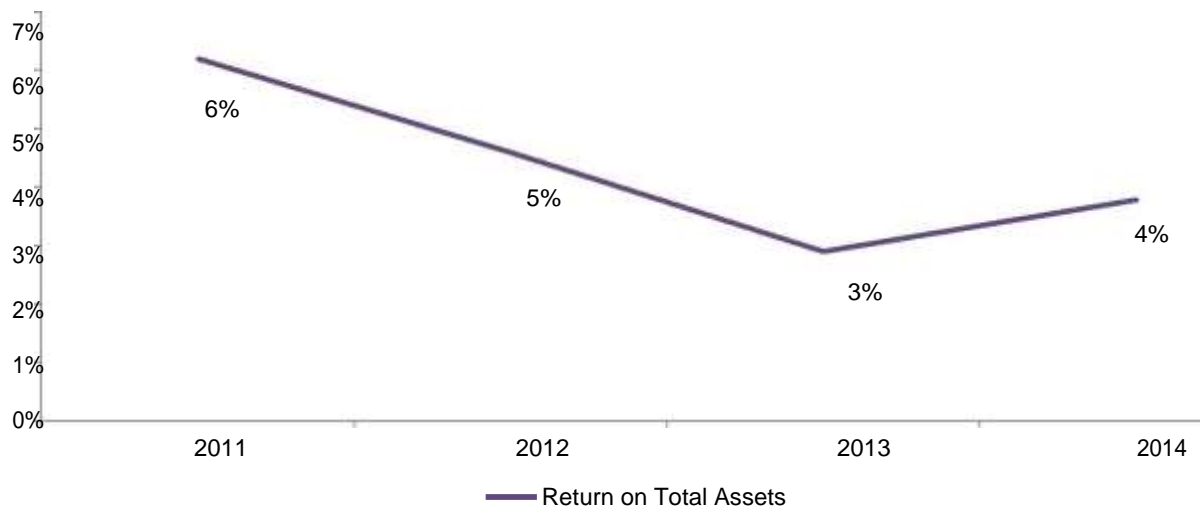


From the chart provided above, the gross profit margin has increased in the years from 2012 to 2013, however, the same has declined in 2014. The net profit margin has decreased from year 2011 up till 2013 which then increased in 2014. The revenues of the company have increased continuously, but could not contribute in increase of gross profit in a constant manner. From the further analysis, we have observed revenue of company is not increasing with a constant growth rate and has been reduced to 9% at year-end 2014. We have also observed company's direct cost is not following constant trend and giving indication that company is not managing its cost of sales appropriately to enhance profitability and shareholders' wealth.

Other income has been contributing to company every year which enables it to convert the operating losses into net profits at year end. It is observed after analysis of financial information that Net profit of the company is at 7% of revenue in 2014.

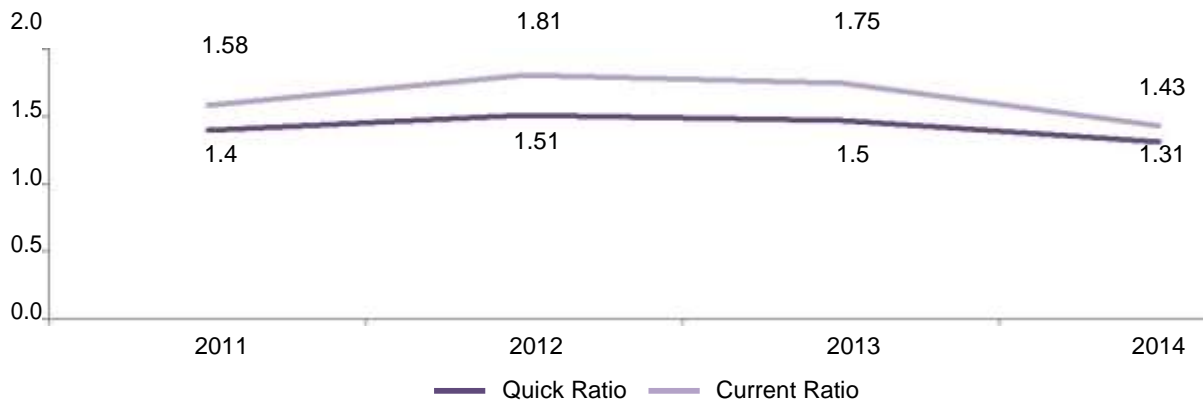
Return on Assets shows how much company is earning profits by utilizing its Assets. We have observed company return on asset ratio have been decreased from 2011 to 2014. We have observed company's total assets have also been increased from 2011 to 2014, but increase in total assets doesn't contribute in increase of company's total return per year with same ratio.

#### 5.4 Return of Assets

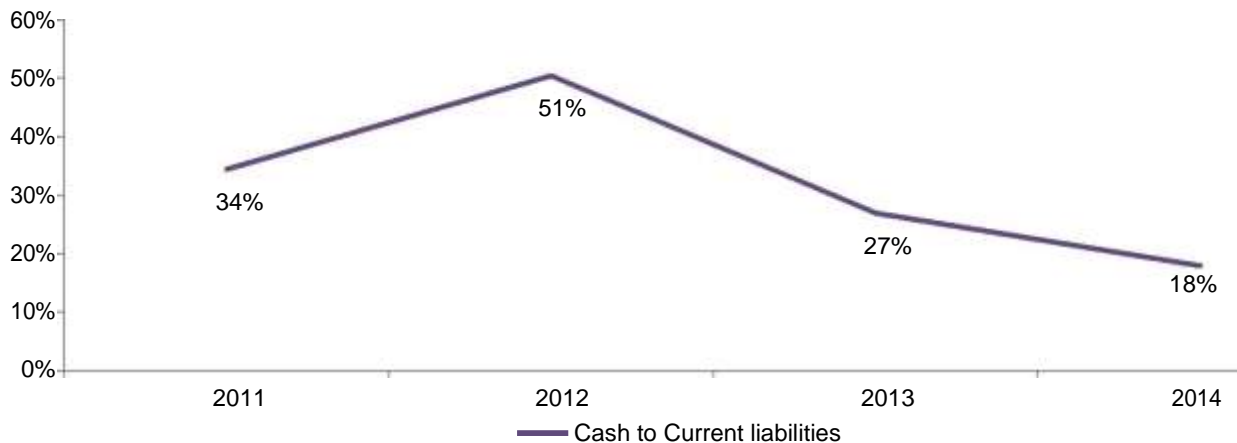


Return on assets has decreased in the years 2011, 2012 and 2013. However, the figure has increased in 2014 primarily based on the fact that the profit after tax has increased in 2014.

## 5.5 Liquidity Ratios

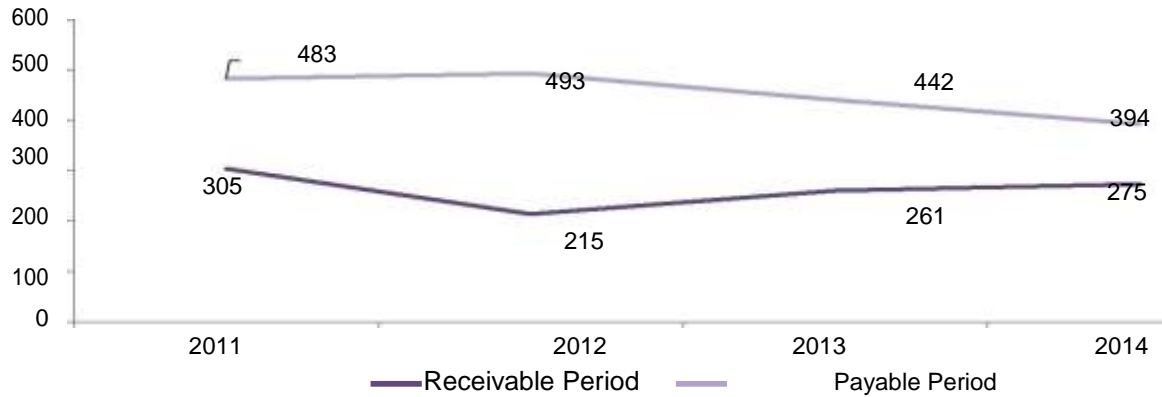


Liquidity position shows that the current ratio has observed a downward trend from 2011 to 2014 and quick ratio has also observed downward trend. This shows that the current assets of the company are becoming low to cater for increasing current liabilities.



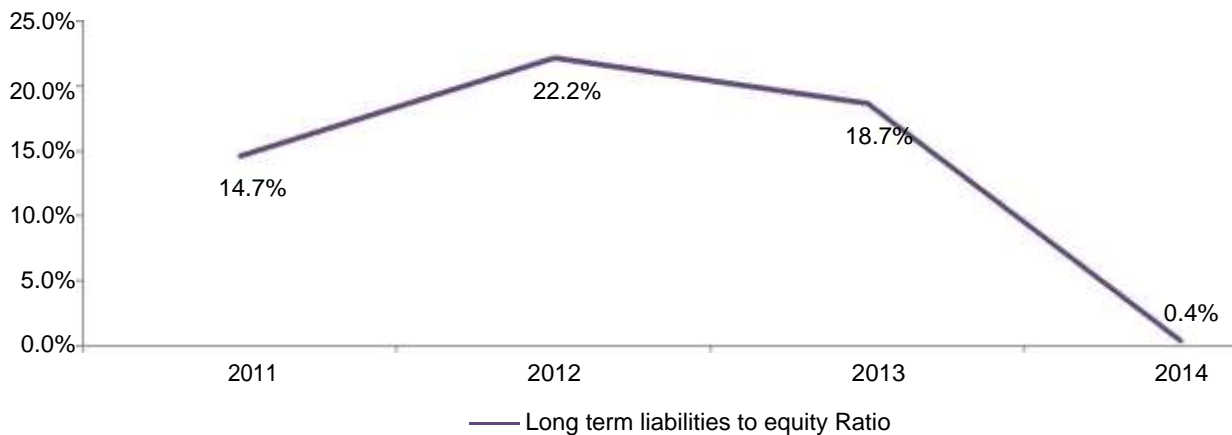
Current ratio of company remains greater than 1 in past four years, which is a good sign and represents current assets are more than current liability. This means company has enough current assets to settle its current liabilities in every year of operation and there is no need of looking at other financing options to settle its current liabilities. It is pertinent to mention here that some components of current assets are not liquid assets and for the calculation of acid test ratio, we have excluded some assets and included only liquid assets. Acid test ratio is relation between liquid assets and current liabilities which is also greater than 1 and cash to current liability ratio have been reduced in past four years. We have found after analysis of liquidity ratio, company have enough resources to settle its current liabilities.

## 5.6 Payables and Receivables Period



Receivables period has been increased over the years which shows that more cash has been stuck up in the working capital while the payables period have decreased over the years. These ratios show that more finance of the company has been stuck in the working capital.

## 5.7 Long Term liabilities to Equity Funds Ratio



Long term liabilities comprise of mobilization advances from customers, finance lease against assets and deferred liabilities. Deferred liability include only employees benefit scheme. Mobilization advance is largest portion of long term liability section and mobilization advance have been reduced to zero in 2014. In 2014 only finance lease payments and employees benefit scheme are left in long term liabilities.

Equity funds contain sinking, self-sustainability and overseas projects operations funds and these funds are created for fixed asset maintenance. This ratio has been reducing and reached at 0.4% in 2014 year.

Our conclusion on the bidder's financial strength is based on the audited financial statements and the analytical reviews of the financial trends carried out on the financial results of the statements. However, during the review of the liabilities and provision we have not found any contingent liability or provision in the notes to the accounts and within the balance sheet that might impact the solvency or impose



any financial strains to complete Swat Expressway project.

Revenue of FWO has decreased but other income has provided positive impact on profitability of company. Hence the results obtained from the analyses provide reasonable grounds to believe the financial capability of the bidder to carry a project of similar nature.

## **6. PROJECT FINANCIAL STATEMENTS**

### **6.1 Income Statement**

For purposes of presentation, Income Statement has been reported on an annual basis. It is pertinent to mention that the amounts presented in the Income Statement are derived from the relevant sheets of the financial model namely Revenue, Debt, FA (Fixed Assets), OPEX (Operational Expenditure), and Taxation. The amounts are properly linked and presented in the Income Statement. However, the said sheets were reviewed for arithmetic accuracy and logical construction of formulae.

The Revenue figure in the Income Statement comprises of Revenues expected to be generated from the Inter City travel by vehicles and multiplied with their respective toll rates. Bidder has proposed no Revenue Sharing for Khyber Pakhtunkhwa Highway Authority during the Concession Period.

The Revenues figures derived have been net with Operating and Management Expenses calculated in the OPEX Sheet to provide the EBITDA. The expenditures include Operational Costs, SPVC Costs, Main Carriageway Routine Maintenance Costs, Service Lanes Routine Maintenance Costs, Periodic Maintenance Costs, Service Areas Costs, and Insurance. The amount for EBITDA has then been adjusted for the provision Depreciation, Depreciation on IDC, and Amortization of Fees to calculate EBIT. Finance cost has then been subtracted from the EBIT to calculate the amount for profit subject to taxation for the year. Accumulated Retained Earnings is the resulting figure in the Income Statement depicting the amounts available for distribution to the shareholders of the company.

### **6.2 Balance Sheet**

Balance Sheet has been prepared in accordance with the appropriate accounting principles. All the items are properly classified into their correct heads. The balance sheet is complete and correct in all accounting related aspects and concepts.

The class of items shown in the balance sheet are derived from the Fixed Asset Schedule i.e. FA sheet. Net Facility, IDC Facility, and Unamortized Fees are provided in the Non-Current Assets.

Mobilization Advance, Major Maintenance Reserve Account, and Cash & Bank Balances are classified as Current Assets.

Liabilities are properly classified into their respective heads of Current and Long

Term Liabilities. Provision for Periodic Resurfacing Obligation, Long Term Debt. Only Debt portion payable within a year time period is classified as Current Liability.

Equities is composite of Share capital and Retained Earnings, PKHA Upfront Subsidy derived from Sources & Uses Sheet and Toll during Construction.

Accounting Depreciation rates used for calculation of depreciation expense for the years in accounting years are appended below:

- a. 4.4% for Intangible Asset
- b. 4.4% for Roads
- c. 4.4% for Buildings
- d. Furniture and Fixtures at 7.7%
- e. Official Vehicles at 12.5%
- &
- f. Rescue and Operating Vehicles at 4.4%

### **6.3 Cash Flow Statement**

Cash Flow Statement has been prepared using both the Direct Method and Indirect Method. The cash flows statement shows a zero cash balance at the end of concession period.

## **7. FINANCIAL BID EVALUATION RESULTS**

The Financial Bid Evaluation results are based on the evaluation criteria as developed by Pakhtunkhwa Highway Authority as issued as part of RFP.

The RFP stipulates that the bidder who demands minimum NPV of VGF shall be awarded the highest marks. However, there is only one bid submitted against the RFP, the evaluation has been carried out solely on the basis of the responsiveness of the bid and completeness and compilation covering all the financial information and financial aspects.

Key aspect of financial bid evaluation is to analyze the amount of Viability Gap Funding (VGF) proposed by the bidder to be provided by Khyber Pakhtunkhwa Government both at the time of project development / Construction as well as during the operational phase of the project. Since, the bidder is the sole bidder and its financial bid cannot be compared with any other bid, therefore, allocation of marks as per given criteria cannot be awarded.

In current scenario, where only one bid has been received from M/s Frontier Works Organization, whole evaluation of the bid is centric to the minimum amount of VGF that PKHA shall be willing to provide. The bidder has demanded Viability Gap Funding requirements with Net Present Value of PKR 18.839 Billion; which shall be utilized in initial ten years of concession period, i.e. during the project construction phase and during the debt service period of operations phase.

The essence of the report pertains to the appetite of the Khyber Pakhtunkhwa

Government to provide the total Viability Gap Funding during the Construction period and the Debt Service Period against the Gap funding requirements as proposed by the bidder.

## 8. CRITICAL OBSERVATIONS

During scrutiny of the Financial Proposal following have been observed, which demand due consideration to finalize the Concession Contract for implementing the Project.

- a. **KIBOR Rate:** KIBOR Rate has been taken with upward fluctuating rate, ranging from 7% to 10.50%, whereas, practically KIBOR Rate is showing downward trend in recent years. *It needs to be rationalized.*
- b. **Project Cost Escalation:** Project Cost has been escalated for construction year 1 @ 6%, followed by another increase of 12% in the second construction year (i.e. compounding impact of 6% increase). It is suggested that the bidder may be asked to justify cost escalation @ 6% in the first year, followed by compound increase @ 6% in the second construction year – as it has direct impact on the requirement of upfront VGF from PKHA. *It needs to be rationalized.*
- c. **Traffic Growth:** The bidder has taken a traffic growth rate at 5% during first 07 Years and thereafter taken uniform rate of 2% in subsequent years. No cogent explanation can be found in the financial bid and attributed to this traffic growth rate assumption. *It needs to be rationalized.*
- d. **SPVC Cost:** SPVC cost has been taken twice. Once in the Project Cost Assumptions and then in the OPEX Assumptions along with uniform increase in SPVC cost during operations phase at a specified growth rate. *The bidder should rationalize this cost.*
- e. **Other Operating Costs:** Under the head of Other Operating Cost, a fixed amount of PKR 312 Million has been allocated under OPEX Assumptions to be distributed over the Operations Period. At the same time, Operating Cost @ 20% of Construction Cost is also shown under the Project Cost Assumption. *This needs to be justified / rationalized.*
- f. **Funding Cost:** Funding cost should be and is part of Capital Cost as depicted in the Project Cost sheet and to be amortized accordingly. *The bidder may justify apportionment of funding cost during operations phase.*
- g. **Service Area Cost:** Service Area Cost in the OPEX Sheet has been taken as PKR 1,554 Million, whereas, the Assumption Sheet depicts its cost as 850 Million. This 850 Million has been increased to PKR 1,554 because of growth rate of 1.83 times. *This needs to be justified / rationalized by the bidder.*
- h. **Drainage Works:** The cost of Ancillary Works (including Drainage Works) to the tune of PKR 2,367 Million has been taken as part of Civil Works.

- Again the Drainage Works are taken as a separate cost item to the tune of PKR 254 Million. *It needs to be clarified / rationalized.*
- i. **Service Road:** The Financial Proposal suggests that Service Road construction accounts for only thirty percent (30%) of total road length, i.e. 81 km, whereas, the RFP stipulates that it should be provided throughout the road length except for hilly terrain, river nullahs exceeding 25 meters and or along barren land (Refer RFP Appendix-1, "Scope of Work", paras 5-6). *It needs to be incorporated in the final offer / firmed-up proposal.*
  - j. **Project Length:** The project length taken in Plan and Profile Drawings, attached as part of Technical Proposal is 78.373 KM, whereas, the Financial Proposal is based on the construction of the 81 KM length. *The Financial Proposal needs to be amended, accordingly.*
  - k. **Training:** There is no mention of arranging training of PKHA officials, as per requirement of RFP. *It needs to be mentioned, accordingly.*
  - l. Following anomalies have been noted in the Financial Proposal, which need to be rectified:
    - i. **Construction Period** has been taken as 3 years in the main assumption sheet, whereas, in Financial Model for all the calculations and projections the Construction Period is taken as 02 years (1 ½ years for Expressway and 02 years for tunnel). *This anomaly needs to be removed in the Financial Model.*
    - ii. **Base Operational Year Toll Rates** taken in the assumption sheet are different than what is authorized in the RFP. However, in main Financial Model the base year toll rates have been taken as per RFP, so *assumption sheet needs to be corrected.*
    - iii. Under the **Financing Assumptions** 1% Toll During Construction is missing, whereas Equity 23% has been increased by 1%. But in the Sources & Uses of Funds Sheet, correct percentages have been employed. *The assumption sheet of the model needs to be corrected, accordingly.*
    - iv. In the Assumptions Sheet under Financing Assumptions 6-Month KIBOR has been used for calculating the rate of interest on the Amount payable. In the Debt sheet, 3 month KIBOR has been written. *This anomaly needs to be removed in the Financial Model.*
    - v. Attribution of upfront financing fee amounting to PKR 347 Million in January 2017 (324 M), in June 2017 (10 M), in Dec. 2017 (7 M), June 2018 (4 M), Dec. 2018 (2 M) has been hard coded in the Model, no proper linkages can be found. *This needs to be justified by the Bidder.*
    - vi. The contracting authority's name may be rectified, as PKHA, where necessary.



## 9. RECOMMENDATIONS

Subsequent to detailed evaluation of the bidder's submission, following recommendations are concluded.

- a. Being the only Bid, the Bid submitted by M/s Frontier Works Organization may be declared as a first ranked bid.
- b. Letter of Invitation (LOI) may be issued to M/s Frontier Works Organization for negotiation of Concession Contract. This LOI should not be construed as award of project or acceptance of the bid.
- c. The critical observations, as recorded under Section 8 of this Financial Evaluation Report, may be shared with the Bidder for rationalization of each aspect, with an objective to lower the subsidy amount demanded by the Bidder and introduce revenue share of PKHA, if possible.

\* \* \* \* \*



PKHA



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## CONCESSION AGREEMENT

Between

**Pakhtunkhwa Highways Authority**

And

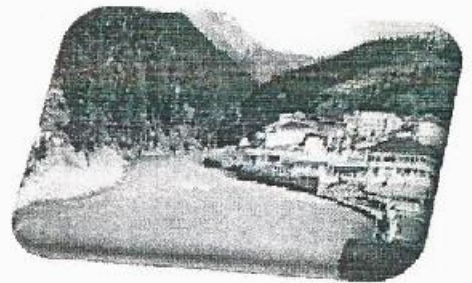
**Swat Expressway Planning Construction  
and Operations (Private) Limited**

For

**CONSTRUCTION OF SWAT MOTORWAY  
On Build-Operate-Transfer Basis**

October 07, 2016

**Pakhtunkhwa Highways Authority**  
Communication & Works Department  
Peshawar, Pakistan



**TABLE OF CONTENTS**

1. DEFINITIONS AND INTERPRETATION.....	3
1.1 DEFINITIONS.....	4
1.2 INTERPRETATION.....	36
1.3 LANGUAGE.....	37
1.4 PRIORITY OF DOCUMENTS.....	38
2. PROJECT DELIVERABLES, PROJECT IMPLEMENTATION STRUCTURE AND PROJECT RISKS.....	39
2.1 PROJECT DELIVERABLES.....	39
2.2 PROJECT IMPLEMENTATION STRUCTURE.....	39
2.3 PROJECT RISKS.....	41
3. CONCESSION AREA, ADDITIONAL LAND AND ANCILLARY RIGHTS.....	43
3.1 CONVEYANCE OF CONCESSION AREA, ADDITIONAL LANDS AND GRANT OF ANCILLARY RIGHTS.....	43
3.2 INCREMENTAL AND CONSEQUENTIAL COSTS FOR DELAY.....	44
3.3 COMPLIANCE WITH TITLE DEEDS.....	45
3.4 RIGHTS TO USE.....	46
3.5 PEACEFUL POSSESSION.....	46
3.6 COSTS AND EXPENSES.....	47
3.7 AFFIRMATIONS.....	47
3.8 HANDBACK OF CONCESSION AREA TO PKHA.....	48
4. REPRESENTATIONS, WARRANTIES, OBLIGATIONS AND COVENANTS OF THE PARTIES.....	49
4.1 REPRESENTATIONS AND WARRANTIES OF THE CONCESSIONAIRE.....	49
4.2 REPRESENTATIONS AND WARRANTIES OF PKHA.....	51
4.3 COVENANTS TO ACHIEVE FINANCIAL CLOSE.....	53
4.4 OBLIGATIONS AND COVENANTS OF THE CONCESSIONAIRE.....	54
4.5 OBLIGATIONS RELATING TO THE PROJECT AGREEMENTS.....	56
4.6 OBLIGATIONS RELATING TO CHANGE IN CONTROL.....	56
4.7 OBLIGATIONS AND COVENANTS OF PKHA.....	56
4.8 OBLIGATION TO NOTIFY CHANGE.....	58
4.9 RIGHTS OF THE CONCESSIONAIRE FOR IMPLEMENTING THE PROJECT.....	58
4.10 COMPLIANCE.....	58
4.11 DISCLAIMER.....	58
4.12 DISCLOSURE.....	59
4.13 EXCLUSION OF IMPLIED WARRANTIES.....	59
4.14 SURVIVAL.....	59
5. APPOINTMENTS.....	60
5.1 PKHA REPRESENTATIVE.....	60
5.2 CONCESSIONAIRE REPRESENTATIVE.....	61
5.3 INDEPENDENT ENGINEER.....	61
5.4 PROJECT MANAGER.....	63
5.5 O&M MANAGER.....	63
5.6 INDEPENDENT AUDITOR.....	64
5.7 INDEPENDENT CONSULTANT.....	65
5.8 EMPLOYMENT OF TRAINED PERSONNEL.....	66
6. EFFECTIVENESS OF THIS AGREEMENT, CONDITIONS PRECEDENT AND DATES AND DURATION...67	
6.1 EFFECTIVENESS.....	
CONDITIONS PRECEDENT FOR FINANCIAL CLOSE.....	





6.3	NON-FULFILLMENT OF THE CONDITIONS PRECEDENT .....	68
6.4	DELAY IN ACHIEVEMENT OF FINANCIAL CLOSE AND WORKS COMMENCEMENT DATE .....	70
6.5	DATES AND DURATION .....	70
7.	GRANT OF CONCESSION .....	74
7.1	GRANT OF CONCESSION .....	74
7.2	CONCESSION PERIOD .....	74
7.3	SCOPE OF CONCESSION .....	74
7.4	ACCEPTANCE OF THE GRANT OF CONCESSION .....	74
7.5	EXCLUSIVITY AND DEVELOPMENT RIGHTS .....	74
7.6	SOLE PURPOSE OF THE CONCESSIONAIRE .....	76
8.	PROJECT IMPLEMENTATION PROGRAMME AND DESIGN .....	77
8.1	PROJECT IMPLEMENTATION PROGRAMME AND KEY TARGET DATES .....	77
8.2	DESIGN .....	78
9.	PUBLIC UTILITIES .....	83
9.2	REMOVAL, RELOCATION AND DIVERSION OF PUBLIC UTILITIES .....	83
9.3	DELAYED COMPLETION .....	83
9.4	INCREMENTAL AND CONSEQUENTIAL COSTS FOR DELAYED COMPLETION RELATING TO RELOCATION ETC. OF PUBLIC UTILITIES .....	84
9.5	PUBLIC UTILITIES REQUIRED FOR THE WORKS .....	85
9.6	WORKS UNDERTAKEN BY PUBLIC UTILITIES .....	85
10.	FINANCES FOR THE PROJECT .....	87
10.1	CONCESSIONAIRE TO OBTAIN FINANCES FOR THE PROJECT .....	87
10.2	FINANCIAL CLOSE BOND .....	88
10.3	FINANCIAL MODEL AND FINANCING TERM SHEET .....	88
10.4	PERIOD TO ACHIEVE FINANCIAL CLOSE .....	88
10.5	FINANCING AGREEMENTS .....	89
10.6	FINANCIAL CLOSE ACHIEVEMENT NOTICE AND FINANCIAL CLOSE ACHIEVEMENT CERTIFICATE .....	89
11.	TOLLING DURING CONSTRUCTION .....	90
11.1	TOLL COLLECTION OPERATIONS AT THE TOLL PLAZAS .....	90
11.2	CONTRACTORS .....	90
11.3	BREACH .....	90
11.4	UTILIZATION OF THE TOLL REVENUE DURING THE CONSTRUCTION PERIOD .....	90
12.	CONSTRUCTION PERIOD .....	91
12.1	COMMENCEMENT OF THE WORKS .....	91
12.2	CONSTRUCTION PERFORMANCE BOND .....	91
12.3	VALIDITY OF CONSTRUCTION PERFORMANCE BOND .....	92
12.4	PRINCIPLES GOVERNING THE CONSTRUCTION PERIOD .....	92
12.5	GENERAL CONSTRUCTION OBLIGATIONS .....	93
12.6	CONSTRUCTION INITIATION .....	94
12.7	REVISION OF PROJECT IMPLEMENTATION PROGRAMME .....	94
12.8	PROVISION OF SITE OFFICES, HUMAN RESOURCE AND RELATED FACILITIES .....	95
12.9	HANDING OVER OF CONCESSION AREA .....	95
12.10	PROTECTION OF CONCESSION AREA FROM ENCROACHMENTS .....	95
12.11	SPECIAL/TEMPORARY RIGHT OF WAY .....	96
12.12	CONSTRUCTION OF THE PROJECT ASSETS .....	96
12.13	INTERCHANGES AND NEW TOLL PLAZAS AND CONNECTIVITY OF SERVICE ROAD .....	97
12.14	PRELIMINARY WORKS .....	99
12.15	PROJECT COMPLETION .....	99
12.16	MONITORING AND INSPECTION OF CONSTRUCTION .....	99
12.17	QUARTERLY PROGRESS REPORTS .....	99
12.18	EXTENSION OF CONSTRUCTION PERIOD .....	99





13.	COMPLETION OF THE PROJECT.....	102
13.1	MECHANICS OF COMPLETION.....	102
13.2	REQUIREMENT OF TESTS.....	104
13.3	ENTRY INTO COMMERCIAL OPERATIONS.....	104
13.4	OPERATIONS BOND.....	105
14.	OPERATIONS AND MAINTENANCE.....	107
14.1	COMMISSIONING OF THE PROJECT.....	107
14.2	OPERATIONS AND MAINTENANCE.....	107
14.3	PERSONNEL MANAGEMENT.....	108
14.4	OPERATIONS AND MAINTENANCE OBLIGATIONS OF CONCESSIONAIRE.....	109
14.5	O&M MANUAL.....	110
14.6	MAINTENANCE.....	110
14.7	VISITS.....	111
14.9	SAFETY, VEHICLE BREAKDOWNS AND ACCIDENTS.....	111
14.10	CATALOGUES CONCERNING SPARE PARTS FOR TOLLING AND SAFETY EQUIPMENT.....	112
14.11	SUBMISSION OF OPERATION, MAINTENANCE AND REPAIR INSTRUCTIONS.....	112
14.12	INVENTORY MANAGEMENT.....	112
14.13	REGULATIONS.....	112
14.14	OPERATING PRACTICE.....	113
14.15	ALARM SYSTEM.....	113
14.16	SERVICES AND AIDS.....	113
14.17	MANAGEMENT STRUCTURE.....	113
14.18	COMMUNICATION.....	113
14.19	LABOUR.....	113
14.20	CLEANLINESS.....	114
14.21	BARRIERS.....	114
14.22	EXCUSE FROM PERFORMANCE OF OBLIGATIONS.....	114
14.23	TEMPORARY TAKE-OVER OF OPERATIONS BY PKHA.....	114
15.	TOLLS, REVENUES AND ACCOUNTS.....	116
15.1	TOLLS AND REVENUES.....	116
15.2	UTILIZATION OF THE REVENUES DURING THE OPERATIONS PERIOD.....	117
15.3	COMPETING ROUTES.....	117
15.4	TAXES.....	118
15.5	REDUCTION IN TOLL RATES.....	118
15.6	RECORDS.....	119
15.7	PROJECT ACCOUNTS.....	119
15.8	ENCUMBRANCE OVER BANK ACCOUNTS.....	120
16.	INSURANCE.....	121
16.1	TAKAFUL OR INSURANCE DURING THE CONSTRUCTION PERIOD.....	121
16.2	TAKAFUL OR INSURANCE DURING THE OPERATIONS PERIOD.....	121
16.3	GENERAL PROVISIONS.....	122
16.4	VALIDITY OF INSURANCE.....	122
16.5	APPLICATION OF INSURANCE PROCEEDS.....	123
16.6	UNINSURABLE RISKS.....	123
16.7	WAIVERS/EXEMPTIONS.....	124
16.8	SUBORDINATION OF RIGHTS TO INSURANCE.....	124
16.9	SAVINGS.....	124
17.	FORCE MAJEURE.....	125
17.1	INTERPRETATION.....	125
17.2	MITIGATION MEASURES.....	126
17.3	OBLIGATION TO NOTIFY.....	126
17.4	PERFORMANCE OF OBLIGATIONS.....	126
	ALLOCATION OF COSTS.....	126





17.6	TERMINATION OCCASIONED BY FORCE MAJEURE.....	128
18.	COMPENSATION EVENTS AND RELIEF EVENTS.....	129
18.1	COMPENSATION EVENTS.....	129
18.2	RELIEF EVENTS.....	130
19.	SUBSIDY, EQUITY, SUBORDINATE FINANCING AND RELATED MATTERS.....	133
20.	CHANGE IN LAW.....	137
20.1	INTERPRETATION.....	137
20.2	NEGATIVE IMPACT OF CHANGE IN LAW.....	137
20.3	POSITIVE IMPACT OF CHANGE IN LAW.....	138
21.	TERMINATION.....	140
21.1	PKHA EVENT OF DEFAULT.....	140
21.2	CONCESSIONAIRE EVENT OF DEFAULT.....	141
21.3	WITHDRAWAL OF DEFAULT NOTICE.....	143
21.4	TERMINATION FOR A FORCE MAJEURE EVENT.....	143
21.5	EFFECTS OF TERMINATION.....	144
21.6	COMPENSATION ON TERMINATION.....	149
21.7	DISPUTED TERMINATION.....	153
22.	HANDBACK.....	154
22.1	HANDBACK REQUIREMENTS.....	154
22.2	TRANSFER BOND.....	154
22.3	HANDBACK.....	154
23.	STEP-IN.....	156
23.1	STEP-IN BY FINANCIERS.....	156
24.	DISPUTE RESOLUTION PROCEDURE.....	157
24.1	AMICABLE RESOLUTION.....	157
24.2	FAST-TRACK DISPUTE RESOLUTION.....	157
24.3	ARBITRATION.....	159
25.	INDEMNITIES.....	160
25.1	NO WAIVER OF INDEMNITY.....	160
25.2	INDEMNITY.....	160
26.	RIGHTS AND TITLE OVER THE CONCESSION AREA AND THE PROJECT ASSETS.....	164
26.1	CONCESSIONAIRE'S RIGHT TO THE CONCESSION AREA.....	164
26.2	TITLE TO THE PROJECT ASSETS.....	164
26.3	PROPERTY TAXES.....	164
26.4	RESTRICTION ON SUB-LETTING.....	165
27.	REDRESSAL OF PUBLIC GRIEVANCES.....	166
27.1	COMPLAINTS REGISTER.....	166
27.2	REDRESSAL OF COMPLAINTS.....	166
27.3	ROUTING OF COMPLAINTS BY PKHA.....	166
28.	PROVISION OF DOCUMENTS.....	167
28.1	DOCUMENTS.....	167
28.2	COPIES OF DRAWINGS.....	167
29.	MISCELLANEOUS.....	168
29.1	VARIATIONS IN WRITING.....	168
29.2	COMPLIANCE WITH GOVERNMENT RULES AND REGULATIONS.....	168
29.3	HEADINGS; GRAMMATICAL USAGE; NAMES.....	168
29.4	MUTUAL TRUST.....	168
	NON-RELINQUISHMENT OR NON-WAIVER OF RIGHT.....	168



29.6	TIME AND INDULGENCE.....	168
29.7	SEVERABILITY.....	169
29.8	CONSULTATION ON MODIFICATIONS TO THIS AGREEMENT.....	169
29.9	SPECIAL WARRANTY.....	169
29.10	INSPECTION.....	169
29.11	INTELLECTUAL PROPERTY.....	169
29.12	ENVIRONMENT.....	170
29.13	CONFIDENTIALITY.....	170
29.14	LANGUAGE.....	172
29.15	CONFLICT.....	172
29.16	FURTHER ASSURANCES.....	172
29.17	SURVIVAL.....	172
29.18	ASSIGNMENT AND CHARGES.....	172
29.19	LISTING AND TRADING OF SHARES.....	173
29.20	LATE PAYMENT AND RIGHT OF SET-OFF.....	173
29.21	RECOVERY OF DUE AND PAYABLE SUMS.....	174
29.22	GOVERNING LAW AND JURISDICTION.....	174
29.23	NO PARTNERSHIP.....	174
29.24	ENTIRE AGREEMENT.....	174
29.25	SCHEDULES TO THIS AGREEMENT.....	175
29.26	COUNTERPARTS.....	175
29.27	NOTICES.....	175
29.28	COSTS AND EXPENSES.....	176
	SCHEDULES.....	178
	SIGNATURE.....	
	PAGES.....	







### CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (this "**Agreement**") is entered into at Peshawar, Pakistan on this 7<sup>th</sup> Day of October, 2016 (the "**Effective Date**") by and between:

**PAKHTUNKHWA HIGHWAYS AUTHORITY**, a statutory body corporate established pursuant to the NWFP Ordinance, with its place of business at Khyber Road, Peshawar, Pakistan ("**PKHA**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) **OF THE FIRST PART;**

AND

**SWAT EXPRESSWAY PLANNING CONSTRUCTION AND OPERATIONS (PRIVATE) LIMITED**, a private limited company, duly incorporated, registered and existing under the Applicable Laws, with its registered office at 509, Kashmir Road, R. A. Bazat, Rawalpindi, Pakistan (the "**Concessionaire**", which expression shall include, where the context so permits, its successors-in-interest and permitted assigns) **OF THE OTHER PART.**

PKHA and the Concessionaire are hereinafter also individually referred to as a "**Party**" and collectively as the "**Parties**".

#### RECITALS:

##### WHEREAS:

- A. PKHA intends to undertake and implement the Project;
- B. Prior to execution of this Agreement, PKHA:
  - (i) determined that the Project was suitable for private sector participation through the BOT mode;
  - (ii) determined that an entity would be competitively selected to undertake the Project;
  - (iii) prepared the selection criteria and bidding documents required to competitively procure the services of an entity to undertake the Project; and
  - (iv) prepared, in respect of the Project, request for proposals (the "**RFP**") for dissemination;

PKHA thereafter caused the publication in Pakistani newspapers of general circulation, on December 19, 2015, inviting interested parties to submit their respective expression of interest for the Project;

In response to the advertisement, PKHA received expression of interest from various parties and pre-qualified several of these parties on the basis of their expression of interest. The RFP was circulated to these pre-qualified parties including the Sponsor;





- E. In response to the RFP, the Sponsor also submitted its technical and financial proposal to undertake the Project on BOT basis on May 30, 2016 (the "Proposal");
- F. PKHA issued to the Sponsor a letter of invitation bearing number 4216/50-PKHA dated June 28, 2016;
- G. After fulfilling the requirements of due process, PKHA issued a letter of support to the Sponsor bearing reference number 4357-50/PKHA dated July 25, 2016 to support the efforts of the Sponsor to seek the award of the Project and implement it thereafter and for furtherance of the process leading to the negotiation and finalization of this Agreement;
- H. Thereafter, PKHA issued a letter of award to the Sponsor bearing number \_\_\_\_\_ dated \_\_\_\_\_;
- I. The Sponsor duly promoted and incorporated the Concessionaire as a private limited company to enter into this Agreement, undertake the Project and fulfill and perform the obligations and exercise the rights under this Agreement; and
- J. PKHA and the Concessionaire have now agreed to implement the Project subject to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements of the Parties herein expressed and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) the Parties hereby covenant and agree as follows:



**1. DEFINITIONS AND INTERPRETATION**

**1.1 DEFINITIONS**

Whenever used in this Agreement or in the Recitals, the following terms shall have the meaning ascribed to them as follows:

**1.1.1 "Abandonment"**

in the opinion of the Independent Engineer, the following: by virtue of the withdrawal of all, or substantially all, personnel by the Concessionaire from the Concession Area (a) during the Construction Period, the failure of the Concessionaire to carry out the Works or the failure of the Concessionaire to undertake such other material obligations the failure to undertake which amounts to a Material Breach, for at least ninety (90) consecutive Days; or (b) during the Operations Period, the failure of the Concessionaire to undertake such material obligations the failure to undertake which amounts to a Material Breach for at least ninety (90) consecutive Days, save where, in each case, such failure is caused by a Permitted Event;

**1.1.2 "Acceptable Contractor"**

a Contractor that has no derogatory record that would adversely reflect on its capability to undertake the Works in accordance with the Construction Performance Standards or perform the Services, and that has not been blacklisted by the GoKPK or PKHA nor been found to deliver unsatisfactory quality of work or unsatisfactory performance of its obligations due to fault or negligence, upon verification of its performance in any ongoing or past government or private project in which the Contractor is or was involved;

**1.1.3 "Accounting Year"**

the financial year commencing from the 1<sup>st</sup> Day of July of any Year and ending on the 30<sup>th</sup> Day of June of the next Year;

**1.1.4 "Additional Land"**

the land additional to the Concession Area as of the Effective Date as determined in the Approved Detailed Design or a Variation, as the case may be, required for the construction or improvement of the Works or to meet the requirements of the Approved Detailed Design or a Variation, such land to be procured by PKHA, at its own efforts free from any Encumbrance, and together with the Ancillary Rights, either at its own cost and expense, or that of the Concessionaire, as the case may be, pursuant to Section 8 [Project Implementation Programme and Design] and upon procurement, such additional land shall form part of the Concession Area;

**1.1.5 "Administrative Office"**

an office building to be built by the Concessionaire for the operation, management and maintenance of the Expressway, which office building shall be built at such location within the Concession Area set out in the Approved Detailed Design;





1.1.6 "Affected Party"

the Party claiming to be affected by a Force Majeure Event;

1.1.7 "Affiliate"

a Person that controls or is controlled by the Sponsor. As used in this definition, the expression "control" means with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares of such Person, and with respect to a Person which is not a corporation, the power to direct the management and policies of such Person, whether by operation of law or by contract or otherwise;

1.1.8 "Agent"

the agent of the Financiers under the Financing Agreements;

1.1.9 "Agreement"

this concession agreement, including, the Schedules to this concession agreement, and includes any amendment hereto or hereof executed by the authorized signatories of the Parties after the Effective Date;

1.1.10 "Ancillary Facilities"

any facilities and installations, including, hotels, restaurants, fuel stations, warehouses, truck terminals and other commercial and non-commercial facilities which the Concessionaire may erect, install, develop or make available at the Concession Area pursuant to the terms of this Agreement;

1.1.11 "Ancillary Rights"

the rights of passage over, and of access to and egress, from the Concession Area, right of way, easements, licenses and all other permissions necessary to grant full access to and egress, from the Concession Area and all such other ancillary rights as may reasonably be required for undertaking the Project or any part thereof;

1.1.12 "Appointed Date"

subject to the terms of this Agreement, the date on which Financial Close is achieved by the Concessionaire in accordance with Section 10 [*Finances for the Project*];

1.1.13 "Approval"

all authorizations, consents, clearances, exemptions, registrations, permits and approvals from or with PKHA under or pursuant to the Applicable Laws or the terms of this Agreement, that are required to be given and maintained for the purposes of implementing the Project in accordance with the terms of this Agreement including the prior written agreement of PKHA or the PKHA Representative to a proposed action by the Concessionaire, which shall not be withheld, conditioned or delayed unreasonably; provided, that in each of the above instances, PKHA shall be obliged to



Approval to the extent the Concessionaire has complied with all procedural and substantive requirements for the procurement of such Approval, if any. The words "Approve", "Approved" and other grammatical variations of the word "Approval" shall be construed accordingly. A non-exhaustive list of the Approvals is set out in SCHEDULE A [APPROVALS AND CONSENTS];

1.1.14 "Approved Detailed Design"

the Detailed Design of one or more parts of the Works, as Approved or deemed Approved by PKHA pursuant to Section 8.2.2;

1.1.15 "Arbitration Act"

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

1.1.16 "BOT"

build, operate and transfer;

1.1.17 "Balance PKHA Funding Amount"

the amount equal to PKR 5,500,000,000/- (Pakistani Rupees Five Billion and Five Hundred Million only), to be funded by PKHA to the Concessionaire to fund the Estimated Project Cost, in accordance with the terms of this Agreement and the EFU Agreement;

1.1.18 "Balance PKHA Funding Amount Financial Instrument"

shall have the meaning attributed thereto in Section 19.2.1(a);

1.1.19 "Balance PKHA Funding Amount Financial Instrument Expiry Date"

shall have the meaning attributed thereto in Section 19.2.3(b);

1.1.20 "Balance PKHA Funding Amount Financial Instrument Issuing Bank"

any of the Financiers or a scheduled bank having a long-term credit rating of at least 'AA' as rated by JCR VIS or PACRA in Pakistan; provided, that such bank is not controlled by a Provincial Government and/or Federal Government. For the purposes of this definition, a scheduled bank shall be construed as being controlled by a Provincial Government and/or Federal Government if the Provincial Government and/or Federal Government: (a) owns, directly or indirectly, legally or beneficially, more than half of the issued share capital of the scheduled bank; or (b) has the power, directly or indirectly, (whether by way of ownership of shares, proxy, contract, agency or otherwise) to: (i) cast or control casting of more than 51% of the maximum number of votes that might be cast at a general meeting of such scheduled bank; or (ii) appoint or remove all, or the majority, of the directors or other equivalent officers of such scheduled bank; or (iii) is able to direct the management and policies of that scheduled bank;





1.1.21 "Balance PKHA Funding Amount Funding Date"

September 30, 2017;

1.1.22 "Balance Termination Payment Amount"

shall have the meaning attributed thereto in Section 21.6.4(b);

1.1.23 "Base Case Equity IRR"

the post tax internal rate of return (expressed as percentage) on the Equity of Class A Shares, as expressly set out in the Financial Model;

1.1.24 "Base Funding Amount"

collectively the sum of:

(a) the PKHA Funding Amount; and

(b) the Sponsor Funding Amount;

1.1.25 "Base Toll Rate"

the per kilometre Toll rates to be levied for vehicular usage of the Expressway on the Service Commencement Date, based on the Toll Structure set out in Part II of SCHEDULE B [TOLL STRUCTURE];

1.1.26 "Bid Security"

the bid security of Rupees Two Hundred Million (PKR 200,000,000/-) furnished by the Sponsor to PKHA in accordance with the RFP, which shall be kept valid until such time that it is replaced by the Financial Close Bond;

1.1.27 "Building Line"

the line notified or to be notified under the Applicable Laws, between which and the ROW it is unlawful to carry out any form of construction or excavation except in compliance with the Applicable Laws;

1.1.28 "Business Day"

any Day on which banks are legally permitted to be open in Pakistan for the transaction of business and remittances;

1.1.29 "Change in Law"

shall have the meaning attributed thereto in Section 20 [Change in Law];

1.1.30 "Change in Control"

a change in the shareholding interest in the Concessionaire resulting in:



- (a) the aggregate shareholding of the Sponsor and/or its Affiliates in the Concessionaire becoming less than fifty percent (50%) plus one (1) Class A Share;
- (b) the Sponsor and/or its Affiliates losing its/their right, directly or indirectly, to exercise voting rights in respect of fifty percent (50%) plus one (1) Class A Shares in the Concessionaire; or
- (c) the Sponsor and/or its Affiliates losing the power (to the extent prescribed by the Applicable Laws) to direct the management, policies and decisions, in each case, of the Concessionaire;

1.1.31 "Class A Share(s)"

the share capital issued to the shareholders of the Concessionaire (excluding PKHA) from time to time and shall be the main recipient of Base Case Equity IRR in accordance with this Agreement. Moreover, these shares shall be recipients of the Termination Payment;

1.1.32 "Class B Equity Subscription Account"

the non-checking bank account to be established by the Concessionaire and notified to PKHA in writing, in which PKHA shall fund the PKHA Funding Amount;

1.1.33 "Class B Share(s)"

the share capital issued to PKHA (in case the PKHA Funding Amount (or any part thereof) is funded as equity pursuant to EFU Agreement) which shall not be liable for non-performance by the Concessionaire under any circumstances whatsoever and for which the Base Case Equity IRR shall not be paid, accrued and/or applied;

1.1.34 "Commercial Activities Agreements"

collectively, refers to the lease or licence agreements or other contractual arrangements which the Concessionaire may enter into with third parties in respect of the Ancillary Facilities, the Expressway Service Areas, booths, advertising or other commercial activities or spaces within the Concession Area and/or the Expressway Service Areas or on the identified areas of the Concession Area and/or the Expressway Service Areas, including, agreements which the Concessionaire may enter into with third parties with respect to sales to be made or services to be rendered therein;

1.1.35 "Commissioning"

the commissioning of the Expressway Section, any Section added to the Expressway Section or the Expressway, as the case may be, in accordance with the procedures set out in SCHEDULE C [COMMISSIONING PROCEDURES]. The words "Commission", "Commissioned" and other grammatical variations of the word "Commissioning" shall be construed accordingly;





1.1.36 "Commissioning Notice"

each of the notifications issued by the Concessionaire in accordance with Sections 14.1.1 to 14.1.3 that the Expressway Section, any Section added to the Expressway Section or the Expressway, as the case may be, may be commissioned in accordance with the commissioning procedures set out in **SCHEDULE C [COMMISSIONING PROCEDURES]**;

1.1.37 "Comparable Road"

a divided four (4) or more lanes controlled access Expressway the quality and level of service whereof is at least equivalent to the Expressway;

1.1.38 "Compensation Event"

shall have the meaning attributed thereto in Section 18.1.1;

1.1.39 "Competing Route"

any existing road materially improved whereby it becomes a Comparable Road or a newly constructed Comparable Road, which is so materially improved or constructed by or on behalf of PKHA or a Public Sector Entity during the Concession Period and is in competition with the Expressway in respect of the traffic plying on the Expressway;

1.1.40 "Completion Certificate"

the certificate to be issued by the Independent Engineer in the form attached hereto as **SCHEDULE D [FORM OF COMPLETION CERTIFICATE]**, certifying the completion and Commissioning of the Works in accordance with the terms of this Agreement;

1.1.41 "Compliance Representation"

shall have the meaning attributed thereto in Section 12.13.2;

1.1.42 "Concession"

the concession granted to the Concessionaire by PKHA pursuant to Section 7.1 of this Agreement;

1.1.43 "Concession Area"

the land made available by PKHA to the Concessionaire on which the Project shall be undertaken and includes the ROW and the land required for the Administrative Office as more particularly described in **SCHEDULE E [CONCESSION AREA AND ROW]** as well as the Additional Land and any other land subsequently acquired by PKHA and made part of the Concession Area in accordance with the terms of this Agreement;

1.1.44 "Concession Period"

shall have the meaning attributed thereto in Section 7.2, and shall be a period of, unless extended otherwise in accordance with the terms of this Agreement, twenty five (25) years.





years commencing from the Effective Date, and ending on the Expiry Date (or the Termination Date, if earlier);

1.1.45 **“Concessionaire”**

SWAT EXPRESSWAY PLANNING CONSTRUCTION AND OPERATIONS (PRIVATE) LIMITED;

1.1.46 **“Concessionaire Event of Default”**

shall have the meaning attributed thereto in Section 21.2.1;

1.1.47 **“Concessionaire Representative”**

the representative of the Concessionaire appointed from time to time by the Concessionaire pursuant to Section 5.2;

1.1.48 **“Conccssionaire’s Intellectual Property”**

the Intellectual Property of the Concessionaire;

1.1.49 **“Conditions Precedent”**

shall have the meaning attributed thereto in Section 6.2;

1.1.50 **“Conditions Precedent Certificate”**

shall have the meaning attributed thereto in Section 6.3.3;

1.1.51 **“Confidential Information”**

the terms of this Agreement and all information of a Party including information relating to technology, processes, products, specifications, know-how, expertise, inventions or designs used or developed by such Party, trade secrets and information of a commercially sensitive nature, marketing information and such information that is specified by such Party as confidential or that by its nature a reasonable Person would consider confidential. Confidential Information does not include information that (a) at the time of the first disclosure to or observation by another Party, was already in the lawful possession of such other Party; (b) is in or comes into the public domain otherwise than by disclosure in breach of this Agreement; or (c) becomes available to such other Party from any other source; provided, that it was not acquired directly or indirectly from a Party in violation of an obligation of confidentiality pursuant to this Agreement;

1.1.52 **“Consents”**

all authorizations, consents, clearances, exemptions, registrations, permits and approvals from or with any Public Sector Entity, other than PKHA, under or pursuant to the Applicable Laws or the terms of this Agreement, that are required to be obtained and maintained for the purposes of implementing the Project in accordance with the terms of this Agreement. A non-exhaustive list of Consents is set out in SCHEDULE A [APPROVALS AND CONSENTS];



1.1.53 "Construction Contractor"

the Acceptable Contractor, with whom the Concessionaire has, or may enter into, the EPC Contract or other form of contract(s) for purposes of undertaking any or all of the Works;

1.1.54 "Construction Costs"

the projected construction costs of the Works, including cost of contingencies and escalations, as provided in **SCHEDULE F [ESTIMATED PROJECT COST]**;

1.1.55 "Construction Performance Bond"

the bond to be submitted or assigned by the Concessionaire to PKHA pursuant to Section 12.2.1, in the form and content as provided in **SCHEDULE G [FORM OF CONSTRUCTION PERFORMANCE BOND]**;

1.1.56 "Construction Performance Standards"

the standards and specifications which have been agreed to between the Parties for the implementation of the Works, as more particularly set out in **SCHEDULE H [CONSTRUCTION PERFORMANCE STANDARDS]**;

1.1.57 "Construction Period"

the period required for undertaking the Works, commencing on the Works Commencement Date and having a duration of twenty four (24) Months or such extended duration as may be determined pursuant to the terms of this Agreement;

1.1.58 "Contractor"

the Construction Contractor, the O&M Contractor and any Acceptable Contractor with whom the Concessionaire has, or may enter into, any agreement/contract for purposes of undertaking any or all of the Works, or performing any or all of the Services;

1.1.59 "Court"

any court of competent jurisdiction;

1.1.60 "Day"

a day according to the Gregorian calendar;

1.1.61 "Deductible Amounts"

to the extent it is a positive amount, the aggregate, as at the Required Termination Payment Date, of:

- (a) all credit balances in the bank accounts of the Concessionaire (including any insurance proceeds (save where such credit balances are to be paid to PKHA) and/or to be applied in rehabilitation, rectification and/or reinstatement)





Pakhtunkhwa Highways Authority  
Communication & Works Department  
Peshawar, Pakistan

October 07, 2016

**CONSTRUCTION OF SWAT MOTORWAY  
On Build-Operate-Transfer Basis**

For

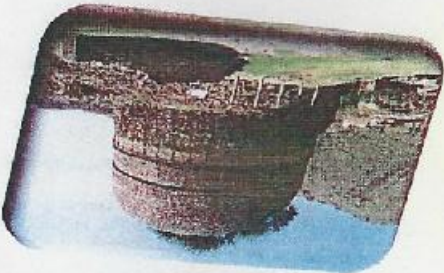
**Swat Expressway Planning Construction  
and Operations (Private) Limited**

And

**Pakhtunkhwa Highways Authority**

Between

**CONCESSION AGREEMENT**



PKHA



FWO



- (b) if applicable, all amounts payable by the Financiers (or the counter-parties to the interest rate or exchange rate hedging arrangements provided for in the Financing Agreements) to the Concessionaire in connection with early termination of such hedging arrangements as a result of prepayment of amounts outstanding under the Financing Agreements;

1.1.62 "Default Notice"

the written notice issued either by (a) the Concessionaire declaring the occurrence of an PKHA Event of Default; or (b) PKHA declaring the occurrence of a Concessionaire Event of Default;

1.1.63 "Delay Duration"

the period of delay caused by a Permitted Event or any other event expressly stated in this Agreement as being the cause of the Delay Duration;

1.1.64 "Designated Account"

the bank account to be established by the Concessionaire and notified to PKHA in writing, in which PKHA shall pay the Termination Payment;

1.1.65 "Detailed Design"

the technical specifications, construction drawings, construction methodology, quality assurance procedures and other documents prepared by the Concessionaire pursuant to Section 8.2.2;

1.1.66 "Development Cost"

all costs incurred by the Sponsor and/or the Concessionaire from the Effective Date until and including the Appointed Date in respect of the Project including the Financier Cost;

1.1.67 "Development Rights"

all the rights and privileges accruing to the Concessionaire pursuant to this Agreement for commercial exploitation and carrying out of all types of commercial activities on, at or within the Concession Area, including the establishment of the Ancillary Facilities;

1.1.68 "Direct Agreement"

the agreement, by whatsoever nomenclature referred, between the Financiers, the Concessionaire and PKHA, entered into pursuant to this Agreement, if so required by the Financiers;

1.1.69 "Disclosing Party"

shall have the meaning attributed thereto in Section 29.13.2;





1.1.70 "Dispute"

shall have the meaning attributed thereto in Section 24.1.1;

1.1.71 "Dispute Resolution Procedure"

the procedure for settlement and resolution of a Dispute, as detailed in Section 24 [Dispute Resolution Procedure] of this Agreement;

1.1.72 "Due and Payable Costs"

all amounts properly due and payable under any contracts entered into by the Concessionaire in connection with the Project, for the purpose of exercising its rights and/or discharging its obligations under this Agreement, as at the Required Termination Payment Date (including amounts arising as a result of such Termination) excluding any accrued payments due and payable to, or redundancy payments for, employees of the Concessionaire not transferring to PKHA under the terms of this Agreement;

1.1.73 "EFU Agreement"

the agreement (in the form agreed between the Parties and the Sponsor) to be entered into between *inter alios* PKHA, the Sponsor and the Concessionaire for the purposes of, *inter alia*, PKHA's/GoKPK's and the Sponsor's contribution towards the Class B Shares (to the extent the PKHA Funding Amount (or any part thereof) is to be funded as equity) and Equity (Class A Shares) respectively and utilization of the same, in each case, in accordance with the terms thereof;

1.1.74 "EPC Contract"

the contract or contracts, if any, entered into by the Concessionaire with one or more Construction Contractor, *inter alia*, for the purpose of designing, engineering, procurement of equipment and materials, construction, completion, Tests and Commissioning of the Project Assets in accordance with the terms of this Agreement;

1.1.75 "Effective Date"

the date of signing of this Agreement by the Parties as stated first hereinabove;

1.1.76 "Encumbrance"

any mortgage, charge, pledge, lien, hypothecation, assignment, privilege, security interest or priority of any kind having the effect of security or other similar obligation and shall include encroachment and any other physical hindrances, right of entry, use of way, easement, restrictive covenants, licenses and/or leases or any form of physical encumbrances whatsoever, whether licences and/or leases have been granted or not, or any interest, claim or arrangement impinging on unrestricted use of the Concession Area or any part thereof, or any put or call option or a first right of refusal, or an agreement to grant, create, allow or register any of the foregoing, whether registered or unregistered, and whether statutory, legal or equitable;





1.1.77 "Equity"

means the share capital of the Concessionaire, represented in PKR, subscribed to by any of the Concessionaire's shareholders for meeting the equity component of the Total Project Cost and it shall consist of two classes of shares i.e. Class A Shares and Class B Shares; provided, that Equity shall also include funding made available by the Sponsor for the Development Cost; provided, however, that for purposes of computing Termination Payment under this Agreement, Equity shall be reckoned as an amount that is actually invested in respect of the Project up to the Required Termination Payment Date pursuant to the terms of this Agreement as determined by the Independent Engineer and the Independent Auditor jointly as part of their certification of the Termination Payment.

1.1.78 "Equity Compensation"

the amount which, when taken together with all amounts already paid in respect of Equity of Class A Shares (by way of dividends and other distributions) and taking into account the actual timing of all such payments, provides the Shareholders (other than PKHA) with the Target Equity IRR;

1.1.79 "Estimated Project Cost"

the estimated cost of the Project of Rupees Thirty Four Billion One Hundred Sixty Five Million One Hundred Forty Seven Thousand Four Hundred and Forty Four only (PKR 34,165,147,444/-), as specified in the Financial Model;

1.1.80 "Event of Default"

either a Concessionaire Event of Default or an PKHA Event of Default, or both, as the context may admit or require;

1.1.81 "Exempted Vehicles"

vehicles, or a class of vehicles, exempted from the payment of the Tolls, as enumerated in SCHEDULE B [TOLL STRUCTURE];

1.1.82 "Expert"

a member of the Panel of Experts nominated to consider a Dispute under Section 24.2.1;

1.1.83 "Expert Reference Notice"

the notice pursuant to Section 24.2.2 issued by a disputing Party referring a Dispute for Fast-Track Dispute Resolution;

1.1.84 "Expiry Date"

the date of expiry of the Concession Period which shall be the twenty fifth (25<sup>th</sup>) anniversary date of the Effective Date;



**1.1.117 "Incomplete Works List"**

the list prepared or to be prepared by the Independent Engineer of the Works or things forming part of the Works, which have not been completed or are outstanding on the relevant date;

**1.1.118 "Incremental and Consequential Costs"**

the additional costs and expenses, including, additional capital expenditure, additional operating cost and/or additional taxes, lost Revenue, additional overhead costs, interest (including interest payable, capitalized interest and accumulated interest), penalty charges, charity amounts, mark-up, other financing/funding costs and increase in the Estimated Project Cost which have been incurred or suffered, pursuant to the terms of this Agreement, including as a consequence of an amendment or Variation to the Approved Detailed Design, at the request of PKHA, delayed delivery of the Concession Area, interference with peaceful possession thereof, the delayed completion of the Works due to delay in the removal, relocation, diversion or reinstatement of Public Utilities, or a Compensation Event or any other costs and expenses payable by PKHA to the Concessionaire pursuant to the terms of this Agreement; provided, that all costs incurred in relation to the Project that are in excess of the Estimated Project Cost as specified in the Financial Model shall not form part of the Estimated Project Cost; provided, however, that any increase at any time in the Estimated Project Cost with the Approval of PKHA shall be included in the Estimated Project Cost;

**1.1.119 "Indemnified Party"**

shall have the meaning attributed thereto in Section 25.2.3;

**1.1.120 "Indemnifying Party"**

shall have the meaning attributed thereto in Section 25.2.3;

**1.1.121 "Independent Auditor"**

an independent firm of chartered accountants appointed pursuant to Section 5.6 and specifically assigned with the functions and duties as set out in SCHEDULE N [TORs OF THE INDEPENDENT AUDITOR];

**1.1.122 "Independent Consultant"**

a Person of repute appointed in accordance with Section 5.7, and specifically assigned with the functions and duties as set out in Section 22 [Handback];

**1.1.123 "Independent Engineer"**

a Person of repute appointed in accordance with Section 5.3 and specifically assigned with the functions and duties as set out in SCHEDULE V [TORs OF THE INDEPENDENT ENGINEER];





1.1.124 "Indirect Political Event"

shall have the meaning attributed thereto in Section 17.1.4;

1.1.125 "Initial PKHA Funding Amount"

the amount equal to PKR 6,000,000,000/- (Pakistani Rupees Six Billion only), to be funded by PKHA to the Concessionaire to fund the Estimated Project Cost, in accordance with the terms of the EFU Agreement and this Agreement;

1.1.126 "Intellectual Property"

all current and future legal and equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility marks, applications for any of the foregoing, copyrights, unauthorized extraction and/or re-utilization rights, unregistered designs, inventions, confidential information, know-how or other intellectual property rights of the Parties arising in connection with or relating in any way to this Agreement and/or the Project;

1.1.127 "Interchanges"

the interchanges to be established by the Concessionaire at designated locations as per SCHEDULE M [INTERCHANGES], subject to the Approved Detailed Design;

1.1.128 "KPK"

the province of Khyber Pakhtunkhwa;

1.1.129 "Lapse of Consent"

any Consent:

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

provided, that in the event any of (a) to (c) is caused by an act or omission of the Concessionaire, the same shall not be deemed a Lapse of Consent;



1.1.130 "Laws of Pakistan and/or Khyber Pakhtunkhwa" or "Applicable Laws"

all federal, provincial and local laws of Pakistan and/or the laws of Khyber Pakhtunkhwa and all orders, rules, regulations, bye-laws, ordinances, statutory notifications or orders, executive orders, decrees, policies, judicial decisions, notifications or other similar lawful directives made pursuant thereto issued by any executive, administrative, legislative or judicial authority or any one or more of them, as may be amended or substituted from time to time;

1.1.131 "Main Carriageway"

shall have the meaning attributed thereto in **SCHEDULE P** [DESCRIPTION OF THE PROJECT AND SCOPE OF WORK];

1.1.132 "Material Adverse Effect"

the material adverse effect of any act, event, matter or circumstance on (a) the ability of a Party to exercise any of its rights, or perform/discharge any of its duties/obligations under and in accordance with the terms of this Agreement, or (b) the legality, validity, binding nature or enforceability of this Agreement against the Parties or any of them, including an act, event, matter or circumstance that causes a material financial burden or loss to a Party;

1.1.133 "Material Breach"

a breach by either Party or GoKPK of any of its obligations under any PKHA Agreement which has or is likely to have a Material Adverse Effect, upon the occurrence whereof Section 21 [Termination] shall apply;

1.1.134 "Month"

a period starting on one Day in a calendar month and ending on the numerically corresponding Day in the next calendar month, save that where any such period would otherwise end on a Day which is a public holiday in Pakistan, it shall end on the next Day, unless that Day falls in the calendar month succeeding that in which it would otherwise have ended, in which case it shall end on the preceding Day; provided, however, that if a period starts on the last Day in the month in which that period ends, that period shall end on the last Day in that later month, and references to "Months" shall be construed accordingly;

1.1.135 "NWFP Ordinance"

NWFP Ordinance No. XIX of August 29, 2001 (as amended or substituted from time to time);

1.1.136 "New Toll Plazas"

any toll plazas (other than the Toll Plazas to be established by the Concessionaire as part of the Works) created, or caused to be created, after the Effective Date in accordance with the terms of this Agreement for the collection of the Tolls and/or management of Tolling operations and the related management of the Expressway;





1.1.146 "Operations Bond"

the bond to be provided by the Concessionaire pursuant to Section 13.4, in the form and content as provided in SCHEDULE S [FORM OF OPERATIONS BOND];

1.1.147 "Operations Period"

the period from the Service Commencement Date to the Expiry Date (or the Termination Date, if earlier);

1.1.148 "Other Revenue"

all revenue derived by the Concessionaire from the Project Assets and/or the Development Rights, other than the Toll Revenue and the Motorway Service Areas Revenue;

1.1.149 "Outstanding Termination Payment"

shall have the meaning attributed thereto in Section 19.2.4(a);

1.1.150 "PEPA"

the Pakistan Environmental Protection Agency, a statutory body corporate established pursuant to the Pakistan Environmental Protection Act, 1997;

1.1.151 "PKHA"

the Pakhtunkhwa Highways Authority, a statutory body corporate established pursuant to the NWFP Ordinance;

1.1.152 "PKHA Agreements"

means:

- (a) this Agreement;
- (b) the Provincial Support Agreement;
- (c) the EFU Agreement;
- (d) the Subordinate Financing Agreement;
- (e) the Direct Agreement; and
- (f) any other agreement if entered into in respect of the Project between the:
  - (i) GoKPK and/or PKHA; and





- (ii) Concessionaire and/or the Financiers and/or the Sponsor in respect of the Project and designated as a "PKHA Agreement";

1.1.153 "PKHA Event of Default"

shall have the meaning attributed thereto in Section 21.1.1;

1.1.154 "PKHA Funding Amount"

collectively, the Initial PKHA Funding Amount and the Balance PKHA Funding Amount;

1.1.155 "PKHA Representative"

the Person appointed in writing by PKHA pursuant to Section 5.1 to act on its behalf under this Agreement;

1.1.156 "PPP"

public-private partnership;

1.1.157 "PPP Act"

the Khyber Pakhtunkhwa Public Private Partnership Act, 2014, (Khyber Pakhtunkhwa Act No. XX of 2014) (as amended or substituted from time to time);

1.1.158 "Pakistan"

the Islamic Republic of Pakistan;

1.1.159 "Panel of Experts"

the panel of Experts constituted for purpose of resolution of a Dispute by way of Fast-Track Dispute Resolution, as more particularly set out in Section 24.2;

1.1.160 "Partial Concession Area"

twenty five percent (25%) of the Concession Area, as more particularly described in SCHEDULE E [CONCESSION AREA AND ROI];

1.1.161 "Parties"

shall have the meaning attributed thereto first hereinabove;

1.1.162 "Party"

shall have the meaning attributed thereto first hereinabove;



1.1.163 "Person"

any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity (whether or not having a separate legal personality);

1.1.164 "Permitted Event"

any of the following:

- (a) a Force Majeure Event;
- (b) a PKHA Event of Default;
- (c) a Compensation Event;
- (d) a Relief Event;
- (e) a Change in Law causing a delay in the performance of the Concessionaire's obligations under this Agreement;
- (f) a Variation proposed by PKHA causing a delay in the performance of the Concessionaire's obligations under this Agreement;
- (g) any breach of the terms and conditions of this Agreement by PKHA directly affecting the performance by the Concessionaire of its obligations under this Agreement;
- (h) the closure of access to the Concession Area or any part thereof during the Construction Period with the concurrence of the Independent Engineer, or the Concessionaire's inability to remove any accident debris due to non-completion of any police/insurance related inquiry/survey despite prompt steps having been taken by the Concessionaire in that regard; or
- (i) an obstruction by any Person claiming any right, title or interest in or over the Concession Area or the Additional Land;

1.1.165 "Permitted Investor"

all Persons desirous of, acquiring the Sponsor Shares (or any of them), or being issued further share capital of the Concessionaire (otherwise than rights), other than the following:

- (a) any Person of a nationality that is specifically proscribed by the Applicable Laws;
- (b) any Person who or whose Affiliates are subject to international trade sanctions or an embargo;
- (c) any Person who has been blacklisted by a Public Sector Entity;



- (d) any Person who or whose Affiliates have been declared as a terrorist organization or who has been declared to have links to a terrorist organization by any Public Sector Entity; and
- (c) any Person who has been rated by JCR VIS Credit Rating Co. Ltd. or Pakistan Credit Rating Agency Limited in Pakistan and has a credit rating below A-. For sake of clarity, if a Person has not been rated by JCR VIS Credit Rating Co. Ltd. or Pakistan Credit Rating Agency Limited in Pakistan, this condition will not apply to such Person;

**1.1.166 "Police Fines"**

finest, penalties and charges (other than Weigh Fines) from users of the Expressway (or any part thereof) pursuant to the Applicable Laws for (without limitation) traffic violations;

**1.1.167 "Political Event"**

shall have the meaning attributed thereto in Section 17.1.3;

**1.1.168 "Post-FC Termination Payment"**

shall have the meaning attributed thereto in Section 21.6.2(a)(ii);

**1.1.169 "Pre-FC Termination Payment"**

shall have the meaning attributed thereto in Section 21.6.1(a)(ii);

**1.1.170 "Preliminary Design"**

the preliminary design, which shall be prepared by the Concessionaire in accordance with Section 8.2.1;

**1.1.171 "Preliminary Works"**

such of the Works as mutually agreed between the Parties and/or forming part of the Approved Detailed Design and as more particularly set out in Section 12.14 [*Preliminary Works*];

**1.1.172 "Preliminary Works Commencement Date"**

the date of handing over of the Partial Concession Area by PKHA to the Concessionaire in accordance with the terms of this Agreement;

**1.1.173 "Preliminary Works Scheduled Completion Date"**

the date occurring twenty four (24) Months from the Works Commencement Date or such later date as may be determined pursuant to the terms of this Agreement;





1.1.174 "Premises Completion Certificate"

the certificate issued or to be issued by the Independent Engineer in accordance with Section 13.1.2, certifying that the Works in respect of the Administrative Office have been completed;

1.1.175 "Premises Completion Notice"

the notice issued by the Concessionaire pursuant to Section 13.1.2, notifying that the Concessionaire has completed the Works in respect of the Administrative Office;

1.1.176 "Preventive and Scheduled Maintenance Plan"

shall have the meaning attributed thereto in Section 14.6.1(a);

1.1.177 "Project"

the development, designing, engineering, financing, construction, Testing, Commissioning, insurance and, on the Transfer Date, transfer, of the Project Assets under a BOT arrangement, provision of the Services and during the Concession Period, collecting, receiving and earning the Revenues, generated in accordance with this Agreement as more particularly described in **SCHEDULE P** [DESCRIPTION OF THE PROJECT AND SCOPE OF WORK];

1.1.178 "Project Agreements"

the EPC Contract, if any, the O&M Contract, if any, and all other contracts executed between the Concessionaire and the Acceptable Contractors in connection with the performance of any of the Project Deliverables;

1.1.179 "Project Assets"

subject to the terms of this Agreement, all physical assets created by the Works in connection with the Project, including (a) the Section, the Expressway Section and the Expressway, (b) the Facilities, (c) the Ancillary Facilities, (d) the Interchanges, (e) civil works such as the foundation, embankments, pavements, roads' surface, ramps, tunnel(s), bridges, drainage works, river training works, lighting facilities, traffic signals, sign boards, milestones, equipment relating to regulation of traffic, electronic Toll collection system, emergency services systems, electrical works, telephone and other communication systems and equipment for the Project, (f) the Service Road, and (g) the permanent works created pursuant to exercise of the Development Rights under Section 7.5.3;

1.1.180 "Project Completion Date"

the date on which the Substantial Completion Certificate or the Completion Certificate, as the case may be, is issued in accordance with Section 13.1.5;



1.1.190 "Recitals"

the formal statement so entitled appearing at the beginning of this Agreement that declares and explains the background facts of the transaction envisaged hereunder;

1.1.191 "Relief Event"

shall have the meaning attributed thereto in Section 18.2.1;

1.1.192 "Representative"

either the PKHA Representative or the Concessionaire Representative, or both, as the context may admit and require;

1.1.193 "Required Termination Payment Date"

the date occurring one (1) Day before the date of termination specified in the Termination Notice;

1.1.194 "Residual Balance Termination Payment Amount"

shall have the meaning attributed thereto in Section 21.6.4(c);

1.1.195 "Revenues"

the Toll Revenue, the Expressway Service Areas Revenue and the Other Revenue;

1.1.196 "Right of Way" or "ROW"

the land forming part of the Concession Area to be acquired and owned by PKHA (if not already so acquired and owned), which shall be handed over to the Concessionaire for the purpose of implementation of the Project or part thereof, in accordance with the terms of this Agreement, as more particularly described in **SCHEDULE E [CONCESSION AREA AND ROW]**;

1.1.197 "Rupees" or "PKR"

the lawful currency of Pakistan;

1.1.198 "Section"

a stretch of the Expressway between two (2) consecutive Interchanges formed by completed Sections as confirmed by the Section Completion Certificate issued by the Independent Engineer pursuant to Section 13.3.1 or 13.3.2, as applicable;

1.1.199 "Section Completion Certificate"

the certificate issued or to be issued in accordance with Section 13.1.3 by the Independent Engineer certifying that a Section has been completed in the form attached hereto as **SCHEDULE W [FORM OF SECTION COMPLETION CERTIFICATE]**;





1.1.200 "Section Completion Date"

the date of completion of a Section of the Expressway as notified by the Independent Engineer in accordance with the provisions of this Contract;

1.1.201 "Section Completion Notice"

the notice issued or to be issued in accordance with Section 13.1.3 by the Concessionaire notifying that a Section has been completed;

1.1.202 "Service Commencement Date"

the date of commencement of the Services in respect of the Expressway, which shall be the Day immediately following the Project Completion Date;

1.1.203 "Service Road"

the non-continuous and non-tolled service road, comprising 3.65 meter wide carriageway with 1 meter shoulder on either side, constructed adjacent to the Concession Area, to facilitate traffic from the adjacent settlements to the relevant part of the Concession Area, as more particularly detailed in SCHEDULE P [DESCRIPTION OF THE PROJECT AND SCOPE OF WORK] and to be established in accordance with the Approved Detailed Design;

1.1.204 "Services"

the operational, management and maintenance services to be provided by the Concessionaire from the Expressway Section Service Commencement Date in accordance with the terms of this Agreement) till the Expiry Date (or the Termination Date, if earlier), in accordance with the O&M Manual and the applicable terms of this Agreement;

1.1.205 "Shareholder Loans"

at any date, in relation to any financing (other than the Equity), funds made available for the Project by the Shareholders to the Concessionaire;

1.1.206 "Shareholders"

members, as such term is defined in the Companies Ordinance, 1984, of the Concessionaire;

1.1.207 "Shareholders' Agreement"

the post-incorporation agreement, if any, between the Shareholders and the Concessionaire in respect of, *inter alia*, the Equity;

1.1.208 "Specific Activity"

shall have the meaning attributed thereto in Section 12.13.1;





1.1.181 "Project Completion Schedule"

the progressive project milestones set forth in **SCHEDULE T** [*PROJECT COMPLETION SCHEDULE*];

1.1.182 "Project Documents"

the Financing Agreements, the Shareholders' Agreement, if any, the Project Agreements and all other contracts described in **SCHEDULE U** [*LIST OF PROJECT DOCUMENTS*] relating to the performance of the Project;

1.1.183 "Project Implementation Programme"

shall have the meaning attributed thereto in Section 8.1.1;

1.1.184 "Project Manager"

a Person of repute appointed by the Concessionaire in accordance with Section 5.4 for purposes of, *inter alia*, supervision and monitoring of the execution of the Works;

1.1.185 "Proposal"

shall have the meaning attributed thereto in **Recital E**;

1.1.186 "Provincial Support Agreement"

the agreement to be entered into between *inter alios* the GoKPK (through Secretary Finance, Government of Khyber Pakhtunkhwa), PKHA and the Concessionaire for the purposes of providing various financial and administrative supports in relation to the Project;

1.1.187 "Public Sector Entity"

the GoP, GoKPK or any federal, provincial, district or local government, ministry, department, commission, board, body, bureau, agency, authority, instrumentality, Court or other statutory, regulatory, judicial or administrative body, having jurisdiction over the Concessionaire, the Concession Area, the ROW, the Works, the Project Assets, the Ancillary Facilities, the Expressway or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

1.1.188 "Public Utilities"

utilities provided by the relevant Public Sector Entities, including, water supply, electricity supply, telecommunication system, sewerage system, gas supply and other utilities and amenities for the public;

1.1.189 "RFP"

shall have the meaning attributed thereto in **Recital B**;



1.1.209 "Specific Payment"

shall have the meaning attributed thereto in Section 19.1.2;

1.1.210 "Sponsor"

Frontier Works Organization, with its headquarters at 509, Kashmir Road, R. A. Bazar, Rawalpindi, Pakistan;

1.1.211 "Sponsor Funding Amount"

the total amount of PKR 8,329,447,000/- (Pakistani (Pakistani Rupees Eight Billion and Three Twenty Nine Million Four Hundred and Forty Seven Thousand only) to be funded from time to time by the Sponsor to finance the Estimated Project Cost in accordance with the terms of the EFU Agreement;

1.1.212 "Sponsor Shares"

at any time, the Class A Shares owned and/or held (legally and/or beneficially) by the Sponsor;

1.1.213 "Subordinate Financing"

means the financing of the Subordinate Financing Amount pursuant to this Agreement and the Subordinate Financing Agreement;

1.1.214 "Subordinate Financing Account"

the non-checking bank account to be established by the Concessionaire and notified to PKHA in writing, in which PKHA shall fund the Subordinate Financing;

1.1.215 "Subordinate Financing Agreement"

the agreement (in the form agreed between the Parties) to be entered into between *inter alios* PKHA and the Concessionaire for the purposes of, *inter alia*, (a) the PKHA's contribution of the Subordinate Financing and utilization of the same in respect of the Project;

1.1.216 "Subordinate Financing Amount"

the amount equal to PKR 5,500,000,000/- (Pakistani Rupees Five Billion and Five Hundred Million only), to be disbursed by PKHA to the Concessionaire to fund the Estimated Project Cost, in accordance with the terms of the Subordinate Financing Agreement and this Agreement;

1.1.217 "Substantial Completion"

the satisfactory completion, as confirmed by the issue of Substantial Completion Certificate, of the Works in respect of the Expressway in accordance with the Construction Performance Standards and all other applicable standards and specifications referred to or set out in this Agreement to such extent as is





permit the safe, reliable, uninterrupted and unobstructed public use of the Expressway, notwithstanding that certain Works or things forming part thereof specified in the Incomplete Works List are not yet complete. The words "Substantially Completed", "Substantially Complete" and other grammatical variations of the word "Substantial Completion" shall be construed accordingly;

1.1.218 "Substantial Completion Certificate"

the certificate issued or to be issued by the Independent Engineer in the form attached hereto as **SCHEDULE X** [FORM OF SUBSTANTIAL COMPLETION CERTIFICATE] certifying that the Works are Substantially Complete;

1.1.219 "Substantial Completion Notice"

shall have the meaning attributed thereto in Section 13.1.5;

1.1.220 "Take-Over Date"

the date when the Vacant Possession of the Concession Area (other than the Partial Concession Area) shall be handed over to the Concessionaire and the Concessionaire shall be entitled to exercise its rights and discharge its obligations set forth in this Agreement, which shall be the Day immediately following the Appointed Date;

1.1.221 "Target Equity IRR"

the return on the Equity (Class A Shares) that the Concessionaire shall be entitled to receive from PKHA in the event of a Termination of this Agreement. The Target Equity IRR, which shall vary depending on the cause of Termination, shall be as follows:

- (a) Non-Political Event: 7.25%;
- (b) Political Event: 14.1%;
- (c) Indirect Political Event: 10%;
- (d) Concessionaire Event of Default: 0%; and
- (e) PKHA Event of Default: 14.1%;

1.1.222 "Taxes"

any taxes, including, income tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether federal or provincial), charged, levied, imposed or otherwise payable by PKHA or the Concessionaire pursuant to the Applicable Laws, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

1.1.223 "Termination"

early termination of this Agreement pursuant to a Termination Notice or otherwise, in accordance with the terms of this Agreement, but shall not, unless the context or otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course of events.





The words "Terminate", "Terminated" and other grammatical variations of the word "Termination" shall be construed accordingly;

1.1.224 "Termination Date"

the effective date of early Termination of this Agreement, in accordance with its terms, which shall only be achieved subject to payment of the Termination Payment;

1.1.225 "Termination Notice"

the written communication issued in accordance with the terms of this Agreement by one Party to the other Party, terminating this Agreement;

1.1.226 "Termination Payment"

the Pre-FC Termination Payment and the Post-FC Termination Payment; provided, that for purposes of determining Termination Payment to be made under this Agreement, the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Estimated Project Cost and the liability of PKHA to make such Termination Payment relating to Financing, Shareholder Loans, Equity Compensation, Due and Payable Costs or any other component of the Termination Payment shall be determined as if such capital cost was restricted to the Estimated Project Cost; provided, that for the purposes of determining Termination Payments to be made under this Agreement, the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Estimated Project Cost and the liability of PKHA to make such Termination Payments relating to Financing, Shareholder Loans, Equity Compensation, Due and Payable Costs or any other component of the Termination Payment shall be determined as if such capital cost was restricted to the Estimated Project Cost;

1.1.227 "Termination Payment Certificate"

shall have the meaning attributed thereto in Section 21.6.3;

1.1.228 "Tests"

the tests to be conducted by the Concessionaire in accordance with the terms of this Agreement to ensure that the Works conform with the Construction Performance Standards and Good Industry Practice. The words "Test", "Testing", "Tested" and other grammatical variations of the word "Tests" shall be construed accordingly;

1.1.229 "Toll"

the fees to be levied by the Concessionaire at the Toll Plazas to vehicular traffic set forth in SCHEDULE B [TOLL STRUCTURE]. The words "Toll", "Tolling", "Tolled" and other grammatical variations of the word "Tolls" shall be construed accordingly;

1.1.230 "Toll Notification"

the notification for implementation of the Toll Structure to the public, through the official gazette of the GoKPK, and/or newspapers of general circulation, to be made as issued by PKHA at such time and in such manner as stated in this Agreement;



1.1.231 "Toll Operator"

the Contractor, if any, with whom the Concessionaire has entered or shall enter into an agreement for purposes of the Concessionaire's operations for collection and handling of the Tolls under this Agreement;

1.1.232 "Toll Plazas"

the toll plazas to be established by the Concessionaire at each of the Interchanges, all more particularly described in SCHEDULE O [TOLL PLAZAS], and any other toll plazas created, or caused to be created, by PKHA after the Effective Date in accordance with the terms of this Agreement for the collection of the Tolls and/or management of Tolling operations and the related management of the Expressway;

1.1.233 "Toll Revenue"

all revenue derived by the Concessionaire from the Project from collection of the Tolls;

1.1.234 "Toll Structure"

the Toll rates and structure set out in SCHEDULE B [TOLL STRUCTURE] which shall be levied by the Concessionaire at the Toll Plazas;

1.1.235 "Total Project Cost"

the actual cost of the Project upon completion of the Project, as certified by the Independent Auditor; provided, that the same shall not include (unless otherwise agreed with PKHA) the Incremental and Consequential Costs;

1.1.236 "Transfer Bond"

the bond to be submitted by the Concessionaire pursuant to Section 22.2, in the form and content as provided in SCHEDULE Z [FORM OF TRANSFER BOND];

1.1.237 "Transfer Date"

the Day immediately following the Expiry Date or the Termination Date, as applicable;

1.1.238 "Uninsurable"

in relation to a risk, either that:

- (a) insurance is no longer available from reputable insurers in the worldwide insurance market; or
- (b) even if insurance is available from reputable insurers in the worldwide insurance market, the insurance premium payable for insuring that risk has increased to such a level that the risk is no longer being insured against in the Pakistani insurance market;





1.1.239 "Utilized"

shall have the meaning attributed thereto in the EFU Agreement;

1.1.240 "Vacant Possession"

in relation to any part of the Concession Area, means the right to and delivery of exclusive possession thereof, free from any Encumbrance, and the grant of all Ancillary Rights and other rights appurtenant thereto so that the Concessionaire enjoys complete, uninterrupted and quiet possession of the Concession Area subject to the terms of this Agreement, in each case, to implement the Project in accordance with the terms of this Agreement;

1.1.241 "Variation"

a variation in the design, quality or quantity of the Works and may include amendments, additions, substitutions or alterations in the Approved Detailed Design;

1.1.242 "Variation Notice"

the notice issued by PKHA to the Concessionaire through the Independent Engineer pursuant to Section 8.2.4 requesting it to make a Variation to the Approved Detailed Design;

1.1.243 "Week"

a week according to the Gregorian calendar;

1.1.244 "Weigh Fines"

finest, penalties and charges from users of the Expressway (or any part thereof) pursuant to the Applicable Laws for (without limitation) weight limit violations;

1.1.245 "Works"

all works at the Concession Area undertaken or required to be undertaken by the Concessionaire during the Construction Period pursuant to the terms of this Agreement and in accordance with the Approved Detailed Design, as more particularly described in SCHEDULE P [DESCRIPTION OF THE PROJECT AND SCOPE OF WORK];

1.1.246 "Works Commencement Date"

subject to the terms of this Agreement, the date for the commencement of the Works falling no later than thirty (30) Days from the Appointed Date;

1.1.247 "Year"

a year according to the Gregorian calendar.





1.2 **INTERPRETATION**

1.2.1 In this Agreement, unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as is from time to time modified, re-enacted or consolidated so far as such modification, re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder, unless otherwise specified;
- (b) references to the Applicable Laws shall include all federal, provincial and local Applicable Laws and all orders, rules, regulations, bye-laws, ordinances, statutory notifications or orders, executive orders, decrees, judicial decisions, notifications or other similar lawful directives made pursuant thereto issued by any executive, administrative, legislative or judicial authority or any one or more of them having the force of law in Pakistan, as may be amended from time to time;
- (c) in the event of any conflict between the Applicable Laws (including the PPP Act) and this Agreement, the former shall prevail;
- (d) the words importing singular shall include plural and vice versa, and words denoting Persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality);
- (e) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (f) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (g) where PKHA is required to "facilitate" or "provide facilitation" to the Concessionaire in fulfilling the Concessionaire's obligations (or any of them) pursuant to the terms of this Agreement, PKHA shall do so without assuming any binding obligation in relation to such obligation of the Concessionaire;
- (h) references to "construction", where the context so permits, include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, Tests, Commissioning and other activities incidental to construction;
- (i) any reference to any period of time shall mean a reference to that according to Pakistan Standard Time;
- (j) any reference to "Day" shall mean a reference to a calendar day in Pakistan (and reference to "Days" shall be construed accordingly);
- (k) if an act prescribed under this Agreement to be done by a Party on or by a given Day is done after 5.30 p.m. on that Day, it is to be taken to be done on the following Business Day;



- (l) unless otherwise stated, any reference to any period commencing "from" a specified Day or date and "till" or "until" a specified Day or date, shall include both such Days or dates;
- (m) whenever there shall appear any reference to a time within which an act should be done or agreement reached or consent given, such reference shall be deemed to be read as including the expression, "or any other period agreed between the Parties from time to time";
- (n) if any provision in Section 1 [*Definitions and Interpretation*] is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement;
- (o) the rule of construction, if any, that a contract should be interpreted against the party responsible for the drafting and preparation thereof, shall not apply;
- (p) the Schedules to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (q) reference to Recitals, Sections, and Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals and Sections of and Schedules to this Agreement;
- (r) any reference at any time to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or document as amended, varied, supplemented, modified or suspended at the time of such reference, unless otherwise specified;
- (s) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer, the Independent Auditor and/or the Independent Consultant shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer, the Independent Auditor and/or the Independent Consultant, as the case may be, in this behalf and not otherwise;
- (t) in carrying out its obligations and duties under this Agreement, each Party shall be obliged to act in good faith.

### 1.3 LANGUAGE

- 1.3.1 The language of this Agreement shall be English. Except where specifically provided in this Agreement or otherwise required by the Applicable Laws, all correspondence, communication, drawings, design data, test reports, certificates, specifications, information and other written matter in respect of the Project shall be entirely in English. Instructions and notices to the public and the staff shall be available in English and Urdu, if reasonably required by PKHA. To the extent that any written matter in respect of the Project is in any other language, it 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.

