

MANAGEMENT CONTRACT

BETWEEN

**HEALTH DEPARTMENT
GOVERNMENT OF SINDH, PAKISTAN**

AND

[●]

DATED [●], 2016

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION.....	5
2.	CONDITIONS PRECEDENT	111
3.	GRANT OF MANAGEMENT CONTRACT	133
4.	GENERAL COVENANTS	14
5.	PERFORMANCE SECURITY	15
6.	OBLIGATIONS OF PARTIES.....	16
7.	SERVICES PERIOD.....	211
8.	ALLOCATED BUDGET AND MANAGEMENT FEE	24
9.	INDEMNITY.....	25
10.	FORCE MAJEURE.....	26
11.	EVENTS OF DEFAULT.....	28
12.	REMEDY OF DEFAULTS.....	30
13.	COMPENSATION ON TERMINATION.....	32
14.	DISPUTE RESOLUTION	33
15.	REPRESENTATIONS AND WARRANTIES.....	35
16.	MISCELLANEOUS PROVISIONS	36

LIST OF ANNEXES

ANNEX-A I	KPI'S REPORTING FORMAT
ANNEX-A II	KPIS PERFORMANCE SCORE CARD
ANNEX-A III	TARGETS, CRITERIA AND FORMULAS.....
ANNEX-B	APPOINTMENT OF INDEPENDENT EXPERT
ANNEX-C	FORM OF PERFORMANCE SECURITY
ANNEX-D	HANDING OVER CRITERIA.....
ANNEX-E	TAKING OVER CRITERIA.....
ANNEX-F	DETAILS OF FACILITIES

MANAGEMENT CONTRACT

THIS MANAGEMENT CONTRACT is made on [●] [●], 2016 at [●], Pakistan:

BY & BETWEEN

HEALTH DEPARTMENT, GOVERNMENT OF SINDH ACTING THROUGH SECRETARY HEALTH, GOVERNMENT OF SINDH, [●] (hereinafter referred to as the "**Authority**", which expression shall include its successors and assigns),

AND

□ ● □, (hereinafter referred to as the "**Operator**", which expression shall include its successors-in-interest and permitted assigns),

(the Authority and the Operator shall collectively be referred to as the "**Parties**" and individually as a "**Party**").

RECITALS

- A. The GoS, acting through the Authority, is seeking to improve the quality of health services by collaborating with the private sector and outsourcing the operation and management of District Headquarter (DHQ) Hospital of Shikarpur (the "Project") to the private sector under and pursuant to a management and services contract.
- B. The Authority has decided to implement the Project by engaging the Operator for *inter alia* managing and operating the Facilities in accordance with the KPIs and Good Industry Practice, such that the Facilities are equipped with appropriate facilities, infrastructure and other services that are generally required for their smooth operation.
- C. The Authority had invited competitive bids for the Project by issuing, to bidders a request for proposal dated [●], 2016 (the "**RFP**").
- D. Pursuant to the terms of the RFP, the Operator submitted its bid for the Project pursuant to the terms of the RFP (the "**Bid**"), which Bid has been accepted by the Authority.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Management Contract are set out below:

1. DEFINITIONS AND INTERPRETATION

1.1 DEFINITION

1.1.1 In this Contract, unless the context otherwise requires, the following terms shall have the following meanings:

"Affected Party" has the meaning given in Article 10.1.1.

"Affiliate" means, in relation to any Person, any other Person which, directly or indirectly, controls or is controlled by or is under common control with such Person. For purposes of this definition, "control" (including "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Contract" or **"Management Contract"** means this contract as of date hereof together with the Annexes hereto.

"Management Contract Year" shall mean a period of twelve (12) consecutive months commencing on each consecutive anniversary of the Effective Date and ending as of the end of the day preceding the next anniversary of the Effective Date, except for the first Management Contract Year which shall start on the Effective Date.

"Applicable Laws" means any laws, promulgated or brought into force and effect by the GoP, the GoS or any local government having jurisdiction over the Project, as well as rules, regulations, orders and notifications made pursuant to such laws, as well as, inter alia, judgments, decrees, injunctions, writs and orders of any Pakistan court, as may be applicable.

"Applicable Permits" means any permissions, clearances, concessions, authorizations, consents, licenses, permits, waiver, privileges, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, lodgments or registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Contract in accordance with the Applicable Laws, including those set-out in **Error! Reference source not found. - Error! Reference source not found..**

"Arbitration" has the meaning given in Article 14.2.1.

"Arbitration Act" means the Pakistan Arbitration Act, 1940.

"Arbitrator" has the meaning given in Article 14.2.1.

"Authority" means the Government of Sindh of the Islamic Republic of Pakistan, represented by the Provincial Health Department, and its legal successors and assigns.

"Authority's Employees" means the employees of the Authority handed over to the Operator pursuant to this Contract (in particular the Handing Over Criteria), including any replacements thereof, which employees are to be employed by the Operator at the

Facilities in accordance with the Handing Over Criteria or as may be determined by the Authority in consultation with the Operator.

"Authority Event(s) of Default" means any or all of the events that are listed at Article 11.2.

"Award" has the meaning given in Article 14.2.4.

"Bid" has the meaning given in Recital D.

"Bid Due Date" means [●] being the date on which the bidders were required to submit their bids for the Project in accordance with the RFP.

"Bid Security" means the demand draft for an amount constituting [one percent (1%)] of the Management Fee submitted by the Consortium / Operator to the Authority along with the Bid.

"Contract Period" means the period commencing from the Effective Date and ending on the date falling on the earlier of:

- i). 10 years following the Effective Date; or
- ii). termination of the Management Contract.

"Conditions Precedent" means the obligations of the Operator that are set out at Article 2.2.2.

"Consortium" has the meaning given in Recital D.

"Consortium Member" has the meaning given in Recital D.

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.

"Collusive Practice" means collusion between two or more parties for the purpose of bid rigging or simulating competition, in connection with the Bid and/or the award of this Concession to the Operator.

"Day" means a 24 (Twenty Four) hour period beginning and ending at 12:00 midnight Pakistan Standard Time.

"DHIS" means District Health Information System. The system that gathers and collates information from different health care levels, including primary and secondary. It provides baseline data for district planning, implementation & monitoring on major indicators of disease patterns, preventive services and physical resources. This refers to a provincially standardized system of data collections, analysis and feedback.

"Dispute" has the meaning given in Article 14.1.

"Effective Date" means the date notified by the Authority to the Operator as being the date on which the Conditions Precedents are satisfied or waived.

"Emergency" means a condition or situation that requires intervention by the Authority to prevent harm, damage, danger or public unrest, or to maintain safe, adequate and continuous services, at the Facilities.

“**EPHS**” means the Essential Package of Health Services which is the standardized health service package for primary health care facilities and secondary care facilities, as further described in the annexure to this Contract to be agreed between the Parties.

“**EPI**” means the Extended Program on Immunization, which is being run to immunize children against childhood diseases.

"**Event of Default**" means an Operator Event of Default or an Authority Event of Default or both as the context may admit or require.

"**Expiry Date**" means the last day of the Services Period.

"**Facilities**" means *Civil Hospital Shikarpur*.

"**Financial Year**" means the financial year of the Operator.

"**Force Majeure Event**" has the meaning given in Article 10.1.1.

"**Force Majeure Notice**" has the meaning given in Article 10.1.1.

"**Force Majeure Period**" means the period commencing from, subject to Article 10.2, the date of occurrence of a Force Majeure Event and ending on the earlier of: (a) the date on which the Affected Party resumes or should have resumed such of its obligations the performance of which it was excused in terms of Article 101; or (b) the Termination Date of the Management Contract; as applicable.

“**FP & PHC**” means the Family Planning & Primary Health Care integrated programme for provision of health care services at the doorsteps of the communities for improvement of maternal health, newborn health and provision of family planning services & integrated vertical health programs.

"**Fraudulent Practice**" means any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.

"**GoS**" means the Government of Sindh, Pakistan.

"**Government Authority**" means the GoP, the GoS, any local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate over which the GoP or the GoS exercises control, court or other judicial or administrative body or official or Person, having jurisdiction over the Operator, the Facilities, the Project or any portion thereof and the performance of obligations and exercise of rights of the Parties in accordance with the terms of the Management Contract.

“**Handing Over Criteria**” means the criteria for hand-over of the Facilities by the Authority to the Operator in accordance with this Contract, as set out in **ANNEXURE D**.

"**Independent Expert**" shall be an independent third party Expert jointly appointed by the Parties in accordance with Article 7.1.1 read with OB - Appointment of an Independent Expert.

“**Job Description**” is detailed narration of actions that an employee must take to achieve the objective.

"**KPIs**" means the Key Performance Indicators regarding the Operator's performance of Services under this Contract, as set out in Annexure A (*KPIs*).

"**Long-stop Date**" means the date of expiration of 60 (Sixty) Days from the date of execution of this Contract, or extended up to a maximum of 180 (One Hundred and Eighty) Days, as mutually agreed by both Parties.

"**Management Fee**" means the service charges claim for the entire Contract Period by the Bidder payable in equitable portion year-wise.

"**Minimum Service Delivery Package (MSDP)**" means minimum level of services; patients and service user have a right to expect. MSDP include minimum package of services, standards of care and mandatory requirement/ system specifications that must be complied and are vital to ensure delivery of the services, as further described in the annexure to this Contract to be agreed between the Parties.

"**Month**" means the calendar month as per the Gregorian calendar.

"**Non Political Event**" has the meaning given in Article 10.1.1.

"**Notice of Intent to Terminate**" has the meaning given in Article 12.1.2.

"**Operator**" means [●].

"**Operator's Employees**" has the meaning given to it in Article 7.8.2.1.

"**Operator Event of Default**" means any or all of the events that are listed at Article 11.1.

"**Outreach and community based services**" means immunization, sanitation, malaria control, maternal and child health and family planning.

"**O&M**" means the operation and maintenance of the Facilities during the Services Period and includes, all matters connected with or incidental to operations and maintenance of the Facilities and provision of Services to the Authority, in accordance with the terms of the Management Contract.

"**PACRA**" means the Pakistan Credit Rating Agency Limited.

"**Party**" means the Authority or the Operator, as applicable, and "**Parties**" means the Authority and the Operator collectively.

"**Performance Security**" has the meaning given in Article 5.1.

"**Performance Security Expiry Date**" has the meaning given in Article 5.2.

"**Person**" means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization or any other legal entity.

"**PKR**" or "**Pakistani Rupees**" means the lawful currency of Pakistan.

"**Political Force Majeure Event**" has the meaning given in Article 11.1.2(b)

"**Primary care facilities**" means Dispensaries, MCH Centres, Basic Health Units and Rural Health Centres.

"Project" has the meaning given in Recital A.

"Referral level care facilities" means Tehsil Headquarter, District Headquarter Hospitals, Tertiary care hospitals and specialized care units that are located at respective levels and offer first line referral services.

"Remedial Action Notice" has the meaning given in Article 12.1.1.

"Remedial Period" has the meaning given in Article 12.1.1.

"RFP" has the meaning given in Recital C.

"Sanctionable Practice" means any Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

"Secondary Care Facilities" means Tehsil Headquarter (THQ) Hospital and District Headquarter (DHQ) Hospital.

"Services" means the services that are provided by the Operator to the Authority in accordance with the terms of this Contract, in particular the scope of work of the Operator set out in Annex III (*Operator's Scope of Work*).

"Services Period" means the period commencing on the Effective Date and ending on the earlier to occur of: (a) the date of expiration of the Contract Period; or (b) the Termination Date.

"Standardized Medical Protocols (SMPs)" standard steps to be taken by a health facility during medical or surgical management of a patient.

"Standardized Operating Procedure (SOPs)" detailed description of steps required in performing a task.

"Taking Over Criteria" means the criteria for take-over of the Facilities by the Authority in accordance with this Contract, as set out in **ANNEXURE E** (*Taking-Over Criteria*).

"Taxes" means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, octroi, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Operator.

"Termination" means the termination of this Contract hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;

"Termination Date" means the date on which this Contract hereunder are terminated by a Termination Notice.

"Termination Notice" means a notice issued by a Party to the other Party terminating the Management Contract in accordance with the terms hereof.

"Threshold Limit" means [●]¹ in aggregate over the Contract Period.

"Transfer Date" means:

- (i) in case of early Termination of this Contract prior to the end of the Contract Period, the Termination Payment Date subject to the Authority making payment of the relevant Termination Payment to the Operator on or prior to such date;
- (ii) in case of end of the Contract Period, the last day of the Contract Period.

2. CONDITIONS PRECEDENT

2.1 EFFECTIVENESS OF THE CONTRACT

This Article 2, [●] and [●] and the related Annexes (if any), shall come into force on the date of execution of this Contract. The other provisions of this Contract shall come into force on the Effective Date.

2.2 OPERATOR'S CONDITIONS PRECEDENT

2.2.1 The Operator shall satisfy or procure the satisfaction of the following Conditions Precedent as soon as reasonably possible and in any event by the Long-stop Date and give notice to the Authority no later than 5 (Five) Days after the date of satisfaction of each condition.

2.2.2 The Conditions Precedent to be satisfied by the Operator are as follows:

- (a) submitting to the Authority certified true copies of all resolutions adopted by the board of directors (or other equivalent body) of the Operator authorizing execution, delivery and performance of this Contract;
- (b) certified copies of all Applicable Permits that are required for all activities contemplated under this Contract including operation of the Facilities;
- (c) providing a legal opinion to the Authority from a reputable and appropriately experienced legal counsel of the Operator acceptable to the Authority confirming that: (i) the Operator has obtained all necessary Applicable Permits for the purpose of performance of the Operator's obligations and the exercise of the Operator's rights under this Contract; (ii) that the Applicable Permits are in full force and effect; and (iii) the Operator has duly and validly executed this Contract and the terms of this Contract are fully enforceable against the Operator;
- (d) submitting the Performance Security to the Authority as contemplated in Article 5.1;
- (e) the Operator shall have opened up the Operator Payment Account and notified the same to the Authority;
- (f) [●]

in each case, in such form as may be satisfactory to the Authority (acting reasonably).

2.3 AUTHORITY'S CONDITIONS PRECEDENT

2.3.1 The Authority shall satisfy or procure the satisfaction of the following Conditions Precedent as soon as reasonably possible and in any event by the Long-stop Date and give notice to the Operator no later than 5 (Five) Days after the date of satisfaction of each condition; provided that the Authority shall not be obligated to procure the satisfaction of any of the following Conditions Precedent unless the Operator has fulfilled its Conditions Precedent specified in Article 2.2.2.

2.3.2 The Conditions Precedent to be satisfied by the Authority are as follows:

- (a) the Authority has opened up the PPP Node Assignment Account;

- (b) the Authority has transferred annual allocated budget amount into the PPP Node Assignment Account and further onward transfer into Operator Payment Account;
- (c) the Authority shall de-notify the drawing and disbursement officer (the “DDO”) of the Facilities;
- (d) the Authority has handed over possession of the Facilities to the Operator in accordance with the Handing Over Criteria;
- (e) the Authority has issued a notification, notifying the handing over of the Facilities to the Operator on a specified future date;
- (f) [●];

in each case, in such form as may be satisfactory to the Operator (acting reasonably).

2.4 JOINT CONDITIONS PRECEDENT

2.4.1 The Parties shall jointly satisfy or procure the satisfaction of the following Conditions Precedent as soon as reasonably possible and in any event by the Long-stop Date.

2.4.2 The Conditions Precedent to be jointly satisfied by the Parties are as follows:

- (a) jointly appointing the Independent Expert;
- (b) jointly execute Escrow Agreement
- (c) [●].

2.5 EFFECTIVE DATE

Subject to Article 2.1, this Contract shall come into force and effect on the Effective Date, provided such date is before the Longstop Date.

2.6 CONSEQUENCES OF FAILURE TO FULFILL THE CONDITIONS PRECEDENT

2.6.1 If the Operator fails to fulfill any of the Conditions Precedent that it is required to fulfill under Article 2.2 by the Long-stop Date (unless waived or deferred by the Authority in its absolute discretion), the Authority shall be entitled to terminate this Contract by issuing a written notice of 30 (Thirty) Days to the Operator.

On such termination, the Authority shall be entitled to draw on the Performance Security of the Operator (and if the Performance Security has not been submitted by the Long-stop Date, the Bid Security) in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Authority as a result of the Operator's failure to fulfill the Conditions Precedent and implement the Project in accordance with the terms of this Contract.

2.6.2 If the Authority fails to fulfill any of the Conditions Precedent that it is required to fulfill under Article 2.3 by the Long-stop Date (unless waived or deferred by the Operator in its absolute discretion), the Operator shall be entitled to terminate this Contract by issuing a written notice of 30 (Thirty) Days to the Operator.

- 2.6.3 If the Parties fail to fulfill any of the Conditions Precedent that they are required to fulfill under Article 2.4 by the Long-stop Date (unless waived or deferred by the mutual consent of the Parties), either Party shall be entitled to terminate this Contract by issuing a written notice of 30 (Thirty) Days to the other Party.

On termination of this Contract pursuant to Articles 2.6.2 or 2.6.3 above, the Authority shall return the Performance Security to the Operator if the same has been received by the Authority (and if the Performance Security has not been received by the Authority, the Bid Security). For sake of clarity, the Authority shall not draw on any of the aforesaid securities in case of termination due to the Authority's failure to fulfil any of the Conditions Precedent. The Parties further agree that in case of termination of this Contract for whatever reason prior to the Effective Date, the Authority shall not be liable to compensate the Operator in respect of such termination.

3. GRANT OF MANAGEMENT CONTRACT

3.1 GRANT OF THE MANAGEMENT CONTRACT

- 3.1.1 In consideration of the Operator's obligations contained in this Contract and relying on the Operator's warranties contained herein, the GoS, subject to the terms of this Contract, hereby grants to the Operator and authorizes it, for the duration of the Services Period, to manage and run the Project, including the Facilities, and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Contract.
- 3.1.2 The Operator agrees that the Authority shall have the sole and exclusive right to require from the Operator full availability of the Facilities throughout the Services Period and in accordance with the Good Industry Practice.

3.2 CONTRACT PERIOD

- 3.2.1 Subject to early termination in accordance with this Contract, the Management Contract is granted for a period of 10 (Ten) years commencing from the Effective Date (the "**Contract Period**").

3.3 RIGHT, TITLE AND INTEREST IN THE FACILITIES

- 3.3.1 The Parties acknowledge that full ownership, rights and title to the Facilities (including any additions, modifications or construction thereon carried out by the Operator pursuant to this Contract) shall be vested with the Authority throughout the Services Period and thereafter and the Operator shall not create any encumbrance or other third-party rights over the Facilities or any part thereof or otherwise sub-let or part with the possession of the Facilities at any time during the Services Period.
- 3.3.2 The Authority shall be entitled to use the Facilities at any time and from time to time in accordance with the Applicable Laws, in particular during national emergencies, and other similar events where it is customary to use the Facilities for such purposes; provided that the Authority shall with consensus of the Operator prior to exercising any rights hereunder and shall ensure that there is minimum impact on the Services being rendered by the Operator hereunder due to Authority's use of the Facilities and that the Facilities are not damaged or destroyed..
- 3.3.3 Subject to Article 3.3.2 above, the Operator undertakes that the Facilities shall not be used for any commercial or private purposes, including but not limited to public gatherings,

functions, weddings, political events, other than any events specifically linked to the purposes for which the Management Contract is granted to the Operator. The Authority hereby undertakes that it shall not permit or request the Operator to facilitate any of the foregoing events at the Facilities.

3.4 COMMENCEMENT OF PERFORMANCE OF SERVICES

3.4.1 The Operator shall be obligated to commence the Services in respect of the Facilities as and from the Effective Date.

3.4.2 As and from the Effective Date, the Operator shall be entitled to receive the annual budgeted allocated amount from the Authority on a semi-annual basis in advance.

4. GENERAL COVENANTS

4.1 COVENANTS DURING THE SERVICES PERIOD

4.1.1 The Operator agrees and undertakes that throughout the term of this Contract:

- (a) it shall retain and maintain the Facilities in peaceful possession, in accordance with Good Industry Practices, and enjoy the benefits of the Facilities in accordance with this Contract;
- (b) it shall perform all its obligations under this Contract and ensure that it meets the KPIs;
- (c) except as specifically permitted under this Contract, it shall not vacate or part with the possession of the Facilities;
- (d) during the entire Services Period, the Operator shall obtain all Applicable Permits that are required for all activities contemplated under this Contract including the operation of the Facilities unconditionally, or if such Applicable Permits are subject to conditions, then complying with all such conditions such that such Applicable Permits are and shall be kept in full force and effect for the entire Services Period;
- (e) it shall ensure compliance with all Applicable Laws;
- (f) [●]².

4.1.2 Notwithstanding anything to the contrary contained in Article 4.1.1 above, the Operator agrees that:

- (a) the Authority and its representatives/nominees shall have full rights to enter upon, access and utilize the Facilities, for the purpose of monitoring the performance and activities of the Operator under this Contract or pursuant to this Contract in an Emergency;
- (b) the Authority and the Independent Expert shall have full rights to enter upon, access and utilize the Facilities, for the purpose of exercising their rights and fulfilment of their duties under this Contract; and

- (c) Government Authorities shall have the right to enter upon and access the Facilities in accordance with Applicable Law,

provided that such access does not unreasonably interfere with or hinder the performance of the Operator's obligations under this Contract. The Authority shall use its best endeavors to notify the Operator prior to exercising any rights under this Article 4.1.3.

- 4.1.3 The Operator shall not engage in (and shall not authorize or permit any Affiliate or any other Person acting on its behalf to engage in) with respect to the Project or any transaction contemplated by this Contract, any Sanctionable Practices.

5. PERFORMANCE SECURITY

- 5.1 On or prior to the Long-Stop Date, the Operator shall submit to the Authority an unconditional and irrevocable on demand bank guarantee or standby letter of credit, issued by a scheduled bank operating in Pakistan that is reasonably acceptable to the Authority, having a long-term credit rating of at least "A-" according to the PACRA rating scale for financial institutions, for an amount that is equal to 2% (two percent) of the Management Fee [of PKR [●] (Pakistani Rupees [●])]³ and substantially in the form set out at 0 -, to secure the due performance of the Operator's obligations during the Services Period and for the purposes set out in Article 2.6 and this Article 5 (the "**Performance Security**").

- 5.2 The Operator shall maintain the Performance Security in full force and effect from the date on which it is issued until the date falling 90 (Ninety) Days following the last Day of the Services Period (the "**Performance Security Expiry Date**"), at which date the Performance Security shall be released.

If the Performance Security is scheduled to expire prior to the Performance Security Expiry Date, then the Operator shall notify the Authority of the same at least 30 (Thirty) Days prior to the scheduled expiry of the Performance Security, and the Operator shall (notwithstanding such notification) arrange for an extension of the Performance Security such that it remains valid and in full force and effect until the Performance Security Expiry Date. If the Operator fails to extend the Performance Security in terms of this Article 5.2, the Authority shall be entitled to drawdown the Performance Security (without any notice, reference or prior recourse to the Operator or any other Person) in full. The amount so received shall be treated as a cash-retention and to the extent that there are no outstanding claims thereto, shall be released upon submission of a new Performance Security acceptable to the Authority or upon the Performance Security Expiry Date.

- 5.3 The Authority shall have the right to draw on the Performance Security (without any notice, reference or prior recourse to the Operator or any other Person) upon the Operator's failure to honor any of its obligations, responsibilities or commitments under this Contract. In addition, the Authority shall have the right to draw on the Performance Security (without any notice, reference or prior recourse to the Operator or any other Person), as applicable, in accordance with Article 2.6.

6. OBLIGATIONS OF THE PARTIES

6.1 OBLIGATIONS OF THE AUTHORITY

The GoS through Authority agrees and shall be responsible for:

- a) To provide overall oversight and guidance.
- b) The Authority will form a committee with representation of both the Parties, to compile a list of buildings, equipment, supplies, furniture, fixtures, inventory and staff of the Facilities;
- c) To transfer the control, use and management of the personnel, building, furniture/fixtures, supplies, equipment of the Facilities under this Contract to the Operator.
- d) The Authority shall clear all outstanding bills including, electricity, gas, water & conservancy and other utilities bills, and all taxes including property tax, local government tax and any other taxes and levies due up till the Effective Date;
- e) To release the entire budgetary allocation of Facilities under this Contract to the Operator through one line transfer as a performance/ results based support. This includes the salaries (along with the allowances) of all the sanctioned vacant posts in all categories.
- f) The releases shall be yearly based on the performance results and the annual budget approved. Staff seconded to the Operator under this Contract shall continue to be paid by the GoS in the same manner as they were being paid prior to the commencement of this Contract. However Operator may request stoppage or reduction of particular seconded staff salary if his/her performance is not satisfactory or the concerned staff is not attending to duty regularly, in which case the GoS shall be responsible to transfer the concerned staff member(s) from the Facilities to another department/facility.
- g) Any expansion of services requiring additional expenses shall entitle the Operator to seek additional funds which the GoS shall consider on merit.
- h) To procure the services of an Independent Expert to monitor the performance of the Operator against the given indicators, targets and achievements from the allocated budget to the Facilities.
- i) To provide the Operator with the latest provincial (district wise) demographic profile needed for the calculation of the performance indicators.
- j) To provide relevant information about health institutions (staff, equipment, training status etc), health status of population, utilization of health facilities and access to the training courses at the time of extending the Programme under the Contract to new Districts / facility.
- k) To provide technical guidelines to the Operator from time to time.

- l) To facilitate Operator in processing, implementation and analysis of DHIS reports on predefined targets.
- m) Conduct Health Facility Assessment, mid-term evaluation and final evaluation
- n) Provide technical guidelines and new ones developed during the Contract Period as for the province.
- o) Assistance and support within reason to Operator to obtain additional funding from development or regular budget.
- p) Facilitate Health Facility staff's access to the training opportunities at District and provincial levels.
- q) To hand over implementation of the MSDP to the Operator after the integration of Vertical Programs (currently under process). For this purpose, GoS shall transfer the financial resources, Human Resources and Administrative Control to the Operator. At the time of doing so, indicators and reporting format will be separately agreed upon by the Parties and added to this Contract as an addendum.
- r) Convene meetings with the management of Operator at any mutually agreeable time to discuss and resolve issues related to the Contract and its implementation.
- s) Review the quarterly report of Operator and provide feedback to Operator.
- t) Conduct announced and unannounced visits to monitor implementation with a view to evaluate and assist the program.

6.2 OBLIGATIONS OF THE OPERATOR

6.2.1 The Operator shall be responsible for the following actions:

- a) To take over the control, use and management of the personnel, building, furniture/fixtures, supplies, equipment of the Facilities under this Contract.
- b) To manage the Facilities in their catchment areas including Financial Management, Human Resource Management (including Government employees, intra-district transfers, trainings & performance incentives, recruitment of contract staff as required, purchase of medicines, equipment and consumables, repair and maintenance of health facilities within the budget provided by the Government and other resources for the purpose.
- c) To deliver the services which the Facilities are mandated to, in an efficient and cost effective manner.
- d) The Operator shall be responsible for the transparent procurement of essential drugs (including the provincial health department's essential drug list) and supplies, of acceptable quality from reputable suppliers;

- e) To implement MSDP/ EPHS. At the time of taking over this responsibility, the MSDP, EPHS, indicators and reporting format will be separately agreed upon by the Parties and added to this Contract as an addendum.
- f) To establish appropriate regular reporting mechanism from health facilities to Authority and analyze the reports especially against the targets assigned to the Operator.
- g) **Maintenance of health facilities:** The Operator shall be responsible for the proper maintenance of the physical assets comprising the Facilities, subject to wear and tear in the ordinary course, handed over to it by the Authority as well as physical assets procured with funds under the Contract. The Operator shall hand over all these assets to the Authority at the end of the Contract, or at the termination date of this Contract becomes effective.
- h) The Operator shall comply with National and International technical guidelines applicable to the level of Facilities.
- i) In carrying out the above services the Operator shall comply with National & Provincial Technical guidelines that currently exist (e.g. EPI) and those that are developed during the life of the Contract.
- j) The Operator will ensure implementation of Quality Standards of Authority in the Facilities under the Agreement.
- k) **Capacity Building:** The Operator will be responsible for ensuring that health workers have the necessary skills to deliver services and provide technical and/or other trainings accordingly.
- l) **Payment obligations:** To maintain separate bank accounts for the funds received from the assignment account of Health PPP Node under this Contract.
- m) **Audit:**
 - i. Arrange the Internal Audit of the Operator transactions of the Facilities under this Contract.
 - ii. Arrange Statutory Audit of the **Operator** operations at the Facilities as part of Statutory Audit of its Facilities operations under the law applicable to the Operator as a non- profit Company in the private sector, under section 42 of the Companies Ordinance 1984. Audit will be carried out annually and in compliance of “International Audit Standards” and the provisions of Companies Ordinance, 1984. Audit reports in respect of the Facilities shall be regularly provided to the Authority.
- n) Have sole discretion in the use of resources purchased or provided under the Contract.
- o) Provide performance based incentives for existing Government staff at its discretion and to refer any non performing seconded employees to the Authority as explained later in the Contract.

- p) To establish referrals linkages between the Facilities and Higher Level Health Care Facilities in the district and a proper record to this effect will be maintained.
- q) In case of disaster / emergency, the Facilities will provide health coverage within their available resources in coordination with the Authority.
- r) The Operator shall not use the Facilities for a purpose other than specified under this Contract.
- s) Update the operational manual on regular basis and share the same with the Authority.
- t) After termination of this Contract, the Operator will hand over the Facilities to the Authority.
- u) All responsibilities of the Operator under this Contract shall be subject to release of adequate and timely budgetary funds to the Operator by the Authority for the Facilities.

6.2.2 Human Resource Management

- 6.2.2.1 During the term of this Contract, all staff posted and appointed at the Facilities shall retain their current employment status and shall continue to be governed by the terms and conditions of employment as determined by the Authority as these stood as on the signing date. The supervisory controls shall be exercised by the Operator during the term of this Contract.
- 6.2.2.2 The Operator will take over for an initial period of three months, the responsibility for Human Resource Management of Government employees presently posted at the Facilities in the districts who will be seconded to the Operator. The secondment of the staff to Operator for the Contract Period will be accounted for as if he/she has worked as government employee in a similar position as far as future (after the secondment) government promotion, retirement and other benefits are concerned. After the completion of the buffer period of three months, the Operator may recommend to the Authority to relocate any of its staff members or employees to another location. Such recommendations of the Operator shall be binding on Authority and shall be implemented within six (06) weeks from the receipt of the request of relocation of the employees.
- 6.2.2.3 The Operator shall ensure to appoint duly qualified doctors / paramedics meeting the standard / criteria set by the Authority as far as qualification, training and skills are concerned. Operator will have sole discretion over the employing, posting, removing, remuneration and customary managerial prerogatives over staff that is recruited by it. Staff recruited by the Operator shall have no claim against the Authority upon conclusion of this Contract.
- 6.2.2.4 The Authority shall take appropriate action against any non performing seconded employee/s referred by the Operator within six (6) weeks, failing which the employee/s shall stand repatriated to the Authority.
- 6.2.2.5 The post of repatriated employees/s shall be filled by transfer by the Authority by a staff of choice of Operator within one month, in case of not doing so, the Authority shall declare the post vacant and transfer its salary to the Operator which shall fill the post.
- 6.2.2.6 The ultimate disciplinary measure of Operator against a Government employee is his/her release from its services at the health facility managed by Operator and transfer the staff back to the District Health Office.
- 6.2.2.7 Performance Evaluation Report of seconded staff will be written/initiated by Operator countersigned by District Health Officer. If needed 2nd countersigning authority may be Director General Health Services.
- 6.2.2.8 Long leave of the seconded staff which has to be deducted from leave account will be forwarded by DSM with his/her recommendations to District Health Office within 15 days, otherwise application will be directly forwarded to District Health Officer with a copy to DSM. The same shall be applicable to Maternity Leave & Hajj leave.
- 6.2.2.9 On approval of long leave (except maternity and Hajj leave) the said person will be considered repatriated to District Health Office. District Health Officer will arrange substitute beforehand or declare the post vacant for further action by Operator. This arrangement of substitute will be done in the minimum possible time not exceeding six (6) weeks.

- 6.2.2.10 At the end of Contract, all staff on secondment shall report to the Authority and the Operator shall under no circumstances be responsible for further retention of their services.
- 6.2.2.11 During the period of the Contract the Authority will not transfer/recruit any staff without prior approval by Operator.
- 6.2.2.12 In case a position falls vacant due to any reason, the Operator will fill the position for a minimum period of six months. Both the parties shall meet twice a year to mutually agree on the availability of a position for recruitment by the Authority. Once regular staff is recruited, they shall be accommodated accordingly against the vacant posts whereby temporary arrangements have been made by Operator. For the purpose, the Authority will inform the Operator at least one month before appointment so that Operator can take necessary action (one month notice to its contract employee/s).
- 6.2.2.13 Operator will pay attention to ensure the availability of qualified and trained staff on need basis in the facility to provide the best possible services as per agreed Health Care Services package. Authority got the right to check and verify their credentials.

6.2.3 **Procurement of drugs, supplies and basic equipment**

- 6.2.3.1 The Operator will be responsible for the transparent procurement of essential drugs (including the provincial health department's essential drug list) and supplies, of acceptable quality from reputable suppliers.
- 6.2.3.2 The Operator will be responsible for the availability of essential medicines and shall inform and facilitate the officials concerned for getting the medicines tested through public Drug Testing Laboratory to assess the quality of drugs. Besides, the Operator may, if deemed appropriate by it, get the medicines tested in any other reputed laboratory.
- 6.2.3.3 The Operator will also be responsible for ensuring the availability of basic equipments, furniture and fixture in line with the services provided by the Facilities as per standard laid down by the Authority under the Contract. Such equipment/assets shall be duly entered in a stock register of the Facilities and shall become property of Authority on expiry of this Contract.

7. **SERVICES PERIOD**

7.1 **INDEPENDENT EXPERT**

- 7.1.1 As a Condition Precedent to the Effective Date, the Parties shall jointly appoint an Expert to fulfill the duties and obligations of the Independent Expert during the Services Period (the "**Independent Expert**").

The procedure for, the terms of appointment of the Independent Expert are set out at 0B.

- 7.1.2 All fees, costs, charges and expenses payable to the Independent Expert shall be borne by the Authority, notwithstanding that the Independent Expert shall be jointly appointed by the Authority and the Operator:

- (a) the Independent Expert shall act independently and in an unbiased manner and shall perform their services for the benefit and in the best interests of the Project and not that of any other Person or entity and shall not act on any instructions issued by any Party in respect of the Project unless the same are:
 - (i) contemplated by this Contract to be issued by such party; or
 - (ii) jointly issued by the Parties;
- (b) the Independent Expert shall be independent monitors, Experts and/or auditors and shall not be considered employees, agents or representatives of the Parties or any other stakeholder in the Project or any affiliate of any of them, for any purpose.

The Authority shall pay all fees, costs, charges and expenses due to the Independent Expert in a diligent and timely manner and in accordance with the terms of engagement of the Independent Expert.

7.1.3 The Parties may replace the Independent Expert in any of the following circumstances:

- (a) if the Independent Expert have not discharged their duties in accordance with Article 7.1.4 below;
- (b) if the Parties mutually agree not to renew the appointment of the Independent Expert; or
- (c) if the Independent Expert tender their resignation in accordance with the terms of their appointment.

The Parties shall comply with OB in appointing such replacement Independent Expert.

7.1.4 The Independent Expert shall be required to act independently, reasonably, fairly and expeditiously in fulfilling their duties and obligations under this Contract.

7.1.5 The Independent Expert shall at all times during the Services Period, have the right to enter upon and access the Facilities. The Operator shall have the right to accompany the Independent Expert during their attendance at the Facilities. The Independent Expert shall have no authority to delay or hinder the performance of the Services, except as expressly specified in this Contract.

7.1.6 The Operator agrees that notwithstanding any approval (including any deemed approval) of, review by or compliance with the instructions of the Independent Expert, the Operator shall be solely responsible for the Services and shall bear all risk and liability for the same.

7.2 GENERAL REQUIREMENTS

7.2.1 The Operator shall undertake and be responsible for the O&M of the Facilities and shall perform the Services in a manner that is in compliance with the KPIs, the Applicable Laws, the Applicable Permits and Good Industry Practice.

7.2.2 The Operator shall undertake the O&M of the Facilities and perform the Services itself and/or through its employees and agents possessing the requisite technical, financial, managerial and health related expertise and capability.

7.2.3 The Operator shall at all times during the Services Period, provide the Authority, the Independent Expert and their representatives with reasonable access to the Facilities for monitoring of the Services and for conducting inspections and audits in accordance with this Contract.

7.2.4 The Operator shall develop and implement a safety and surveillance program for the Facilities, comply with the Safety Regulations and adopt appropriate safeguards and measures for security of environment, human life and property at the Facilities in accordance with the Applicable Laws and Good Industry Practice.

7.3 RECORDS, REPORTING, ACCOUNTS AND AUDITS

7.3.1 The Operator shall maintain records of all patients, doctors, staff, resources, equipment and compliance with the KPIs during the Services Period.

7.3.2 The Operator shall maintain books of accounts recording all payments received from the Authority and other revenues derived/collected by it from or on account of the Facilities and the Services.

7.3.3 The Operator shall deliver to the Authority (with copies to the Independent Expert) the following reports within the time specified below:

- (a) Quarterly reports relating to the performance of Services at the Facilities, meeting/non-meeting of KPIs and a summary of the income received and expenditure incurred during such quarter prepared substantially in the form set out in 0 and delivered to the Authority in writing (by email or facsimile) within 10 (Ten) Days after the end of each Quarter;
- (b) reports on any critical damage or security lapse at the Facilities leading to any interruptions or outages of the Facilities within 10 (Ten) Days of such occurrence;
- (c) reports on any material litigation (including any winding-up proceedings or notice to commence winding-up), proceedings or material disputes to which the Operator is a party, the appointment of a receiver or administrator in relation to the business or assets of the Operator and any adverse orders or judgments passed by any Government Authorities that affects or is likely to affect the performance of the Services, as soon as reasonably possible after the occurrence of such events.

7.3.4 Without limiting the Operator's obligations under Applicable Laws, during the Services Period and for a period of 3 (Three) years thereafter, the Operator shall on demand produce to the Authority all such evidence as may be reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to any of the provisions of this Contract.

The Operator shall make available to the Authority, the Independent Expert all books and records maintained by the Operator upon a request being made by any of them. The Operator shall and shall cause its employees and agents to fully co-operate and provide all assistance to the Authority and the Independent Expert.

The Authority and the Independent Expert will have the right to access, make copies of and audit, all such books, records, accounts, financial statements, reports, evaluations and any other information relating to the performance of the Services.

- 7.3.5 The Operator shall provide the Authority with 2 (two) copies of its audited financial statements, along with a report thereon by the Independent Expert, within 60 (Sixty) Days of the close of the Financial Year to which they pertain.
- 7.3.6 The Operator shall also provide the Authority with 2 (two) copies of the KPI's report, duly reviewed and certified by the Independent Expert, within 30 (Thirty) Days of the end of each financial Year to which they pertain.
- 7.3.7 If the Independent Expert reports an inaccuracy in any statement or computation that has resulted in an over-payment or an under-payment of an amount by a Party (a "**Payment Error**"), the amount of such Payment Error shall be adjusted in the next quarterly payment due immediately after receipt of notification from the Independent Expert of such Payment Error.
- 7.3.8 For avoidance of doubt, the Operator is required to provide KPIs report (duly verified by the Independent Expert) on quarterly basis to the Authority which will conform, inter alia, the meeting of the KPIs etc. and further, the Operator is required to conduct the financial audits in accordance with the Applicable.
- 7.3.9 Laws at the end of each Financial Year and provide the audited financial statements in accordance with this Contract.

7.4 PROVISION OF UTILITIES

- 7.4.1 The Operator shall be solely responsible for arranging for all utilities for the operation and maintenance of the Facilities. Notwithstanding the foregoing, the Authority shall be solely responsible to pay any outstanding dues or claims in respect of any utilities consumed at the Facilities prior to the commencement of the Contract Period.
- 7.4.2 Where the Operator seeks to procure any utilities from Government Authorities, the Authority shall use reasonable endeavors to assist the Operator in obtaining rates from such Government Authorities that are no higher than the rates offered to commercial or industrial users of such utilities.

8. ALLOCATED BUDGET AND MANAGEMENT FEE

8.1 OPERATOR PAYMENT ACCOUNT

The Operator shall open Operator Payment Account in one of the scheduled bank acceptable to the Authority. All the expenditures for operations and management shall be made from Operator Payment Account.

8.2 ASSIGNMENT ACCOUNT OF HEALTH PPP NODE

- 8.2.1 The Authority has opened a dedicated account for release of budget amount to Operator through PPP Node Assignment Account.

8.3 ANNUAL BUDGET AND MANAGEMENT FEE

- 8.3.1 Subject to the provisions of this Contract and the undertaking by the Operator to perform and discharge its obligations in accordance with the terms and conditions set out in this Management Contract, the Authority agrees and undertakes to pay Management fee and

Semi-annual budget to the Operator one month before the commencement of each new semi-annual period in accordance with the terms of this Management Contract.

- 8.3.2 The Operator shall propose to the Authority, itemized operational and development budget for each year to indicate the specific provisions required for each purpose. The Authority will consider the budget proposal on merit and decide accordingly. The proposed budget amount with any modification shall be transferred in Assignment Account of PPP Node prior to the start of each financial year.
- 8.3.3 The Operator shall have complete discretion over the manner in which such funds are utilized for the operation and management of the Facilities.
- 8.3.4 The Operator Payment Account in respect of the Facilities shall be audited by Independent Expert bi-annually and a copy thereof shall be provided to the Authority within thirty (30) days of the approval of accounts.

9. INDEMNITY

9.1 INDEMNITY

- 9.1.1 Subject to Article 9.1.2 below, the Operator shall be responsible for, and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for:

- (a) death or personal injury of any persons;
- (b) loss of or damage to property (including the Facilities or other property belonging to the Authority or for which the Operator is responsible);
- (c) non-compliance by the Operator with Applicable Laws or Applicable Permits;
- (d) actions, claims, demands, costs, charges and expenses (including legal expenses),
- (e) any adverse site conditions or environmental damage at the Facilities (whether pre-existing or caused by or arising from the use of the Facilities).
- (f) any proceedings against the Authority by any relevant Government Authority (including any withholding or deduction from amounts payable to the Authority by that Government Authority) for failure of the Operator to comply with any of its obligations hereunder.

which may arise out of, or in consequence of, the operation and maintenance of the Facilities, the performance of the Services and any other performance or non-performance by the Operator of its obligations under this Management Contract.

- 9.1.2 The Operator shall not be responsible or be obliged to indemnify the Authority to the extent any injury, loss, damage, cost and expense caused by the negligence or willful misconduct of the Authority or breach by the Authority of its obligations under the Management Contract.
- 9.1.3 The Authority shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in

respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Management Contract, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Operator.

10. FORCE MAJEURE

10.1 FORCE MAJEURE EVENT

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

- (a) the following political events that occur inside or directly involve the province of Sindh and affect the Operator’s ability to undertake the Services or operate the Facilities (each a **Political Event**):
 - (i) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - (ii) any strike, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide.
- (b) the following events beyond the reasonable control of the affected Party (each a **Non Political Event**), uncontrollable events including, but not limited to:
 - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
 - (ii) explosion, chemical contamination, radioactive contamination in which case, it will be Political Event); or
 - (v) epidemic;

10.2 OBLIGATION TO NOTIFY

10.2.1 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within forty-eight (48) hours of the occurrence of a Force Majeure Event or from the date of having knowledge thereof, Notify the Independent Expert and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

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

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

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

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

10.2.4 The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than weekly) reports and such other information, details and/or documents that the other Party may reasonably require.

10.3 CONSEQUENCE OF FORCE MAJEURE EVENT

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

- (a) there shall be no Termination of this Management Contract except in accordance with the provisions of Article 10.4;
- (b) in the event of occurrence of a Force Majeure Event:
 - (i) the timelines for performance by the Operator of its relevant obligations to be performed shall be extended by the Force Majeure Period (as determined by the Independent Expert);
 - (ii) if the Independent Expert determines, the Operator shall be excused from the fulfilment of the KPIs for the duration of the Force Majeure Period, and the Parties, in consultation with the Independent Expert, may revise the KPIs to be fulfilled by the Operator for the Management Contract Year in which the Force Majeure Event occurs;

- (iii) all costs, fees, expenses and charges arising from and relating to the Force Majeure Event shall be borne by the Authority.

10.4 TERMINATION NOTICE FOR FORCE MAJEURE EVENT

10.4.1 If:

- (a) a Force Majeure Event subsists for a continuous period of sixty (60) days, either Party may in its discretion Terminate this Management Contract by issuing a Termination Notice to the other Party; or
- (b) in case of a Political Event, the GoS determines that the Force Majeure costs relating to the same are unacceptable then the GoS may in its discretion Terminate this Management Contract by issuing a Termination Notice to the Operator,

upon issue of such Termination Notice, this Management Contract shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided, that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant fifteen (15) days' time to make a representation, and may after the expiry of such fifteen (15) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

10.5 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT

- 10.5.1 The Authority shall pay Termination Compensations, if any, as a result of termination due to a Force Majeure Event in accordance with Article 10 of this Management Contract.

10.6 FORCE MAJEURE DISPUTE RESOLUTION

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

11. EVENTS OF DEFAULT

11.1 THE OPERATOR EVENT OF DEFAULT

"Operator Event of Default" means any of the following events arising out of any acts or omissions of the Operator and which have not occurred as a direct consequence of any Authority Event of Default or a Force Majeure Event and (unless otherwise provided for in this Management Contract) where the Operator has failed to remedy the defects specified in the Remedial Action Notice issued in accordance with Article 12.1.1:

- (a) abandonment by the Operator which means a cessation of the performance of Services or other obligations of the Operator even for a single day except due to Force Majeure as defined in this Contract;

- (b) the breach by the Operator of its material obligations under this Management Contract;
- (c) reduction or interruption in the availability of Facilities, for a period of 03 (Three) Days in aggregate;
- (d) any material representation made or warranties given by the Operator under this Contract being false or misleading;
- (e) failure of the Operator to obtain and maintain a valid Performance Security under Article 5.1;
- (f) the Operator entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Operator or if the Operator becomes unable to pay its debts as they fall due or the appointment of a receiver or administrator in respect of the Operator, its business and assets or any re-structuring, re-organization, amalgamation, arrangement or compromise affecting the Operator's ability to fulfill its obligations under this Management Contract or that otherwise has or may have a Material Adverse Effect (in the reasonable opinion of the Authority);
- (g) the occurrence of a Sanctionable Practice;
- (h) failure of the Operator to make any payments that are due to be made to the Authority under this Management Contract, and if such failure is not cured within a period of thirty (30) days; and/or
- (i) [●].

11.2 AUTHORITY EVENT OF DEFAULT

"**Authority Event of Default**" means any of the following events, unless such an event has occurred as a consequence of the Operator Event of Default or a Non Political Force Majeure Event and only where the Authority has failed to remedy the defects specified in the Remedial Action Notice issued in accordance with Article 12.1.1 within the Remedial Period:

- (a) Failure to maintain and/or fund the allocated budget amount and Management Fee in accordance with the provisions of this Management Contract;
- (b) breach of the obligations with respect to transfer or assignment of its rights and obligations under this Management Contract as provided in Article 16.12;
- (c) any material representation made or warranties given by the Authority under this Management Contract being false or misleading;
- (d) a failure by the Authority to fulfill any other material obligations under this Management Contract;
- (e) failure of the Authority to make any payments that are due to be made to the Operator under this Management Contract, and if such failure is not cured within a period of thirty (30) days; and/or
- (f) [●].

12. REMEDY OF DEFAULTS AND TERMINATION PROCEDURE

12.1 Performance of Obligations

12.1.1 If at any time either Party has failed to perform any of its obligations under this Management Contract and that failure is capable of remedy, then the other Party may serve a notice (a "**Remedial Action Notice**") requiring such Party to remedy that failure (and any damage resulting from that failure) within a stipulated period (the "**Remedial Period**").

12.1.2 If the Party, on whom a Remedial Action Notice is served, fails to remedy the Event of Default within the Remedial Period, or if no Remedial Action Notice is given pursuant to Article 12.1.1, the non-defaulting Party may deliver a notice to the defaulting Party stating its intention to terminate this Management Contract ("**Notice of Intent to Terminate**"). The Notice of Intent to Terminate shall specify with reasonable detail, the grounds on which termination is sought and any relevant defaults committed by the defaulting Party.

Provided that in case of Article 11.1 (a), (f) and (i), the Authority shall have the right to immediately deliver a Notice of Intent to Terminate, without any obligation to first serve a Remedial Action Notice or to provide a Remedial Period to the Operator.

12.1.3 The provisions of this Management Contract, to the fullest extent necessary to give effect thereto, shall survive the term of the Management Contract or the termination of this Management Contract and the obligations of Parties to be performed or discharged following the termination of this Management Contract, shall accordingly be performed or discharged by the Parties.

12.2 CONSEQUENCES OF DEFAULT

12.2.1 Event of Default Remedy Period

(a) Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of not less than 60 (Sixty) Days ("**EoD Remedy Period**") to cure the Event of Default; provided that in case of Articles 11.1 (a), (e), (f), (g), (h) and (i), the Authority shall have the right to immediately terminate the Management Contract herewith on the provision of the Notice of Intent to Terminate, without any obligation to provide an EoD Remedy Period.

(b) During the EoD Remedy Period, the defaulting Party may continue to undertake efforts to cure the Event of Default. During the EoD Remedy Period, the Parties shall continue to perform such of their respective obligations under this Management Contract, which are capable of being performed with the objective, as far as possible, of ensuring continued availability of the Project and the continued performance of the Services, failing which the Party in breach shall be liable to compensate the other Party for any loss or damage occasioned or suffered on account of breach of conditions of this Management Contract.

12.2.2 Withdrawal of Notice of Intent to Terminate

(a) If, during the EoD Remedy Period, the defaulting Party rectifies or remedies the Event of Default to the satisfaction of the innocent Party or the innocent Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default has ceased to exist, the innocent Party shall withdraw the Notice of Intent to Terminate in writing.

- (b) If following the end of the EoD Remedy Period, the breach has not been remedied or the defaulting Party has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of the innocent Party or the proviso in Article 12.2.1(a) applies, then the innocent Party shall be entitled to issue the Termination Notice to the defaulting Party, whereupon this Management Contract shall terminate forthwith.

12.3 ACCRUED RIGHTS AND LIABILITIES

- 12.3.1 Notwithstanding anything to the contrary contained in this Management Contract, any termination of the Management Contract pursuant to the provisions contained herein shall be without prejudice to accrued rights of either Party including its right to claim and recover damages and other rights and remedies which it may have in law or contract. All accrued rights and obligations of either Party under this Management Contract, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Management Contract, to the extent such survival is necessary for giving effect to such rights and obligations.
- 12.3.2 Nothing in this Article 12.3 shall prevent or restrict the right of the Authority to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

12.4 CONSEQUENCES OF TERMINATION

- 12.4.1 If this Management Contract is terminated prior to its expiry:
 - (a) by the Authority due to an Operator Event of Default,
 - (i) the right of the Operator to the Management Fee shall stand terminated with immediate effect and Management Fee shall accrue and / or be payable to the Operator from the date of the Termination Notice; provided, however, the Authority shall effect payment of the undisputed, accrued and unpaid Management Fee up to the date of the Operator's receipt of the Termination Notice;
 - (ii) the Operator shall immediately and in any event on the Transfer Date, hand-over the Facilities to the Authority in accordance with the Taking-Over Criteria;
 - (iii) the Authority shall pay to the Operator on or prior to the Termination Payment Date, by way of Termination Payment, an amount determined in accordance with Article 14.
 - (b) by the Operator due to an Authority Event of Default,
 - (i) the Operator shall immediately and in any event on the Transfer Date, hand-over the Facilities to the Authority in accordance with the Taking-Over Criteria;
 - (ii) the Authority shall pay to the Operator on or prior to the Termination Payment Date, by way of Termination Payment, an amount determined in accordance with Article 13.
 - (c) by any Party as a result of a Force Majeure Event,

- (i) the right of the Operator to the Management Fee shall stand terminated with immediate effect and no Management Fee shall accrue and / or be payable to the Operator from the date of the Termination Notice; provided, however, the Authority shall effect payment of the undisputed, accrued and unpaid Management Fee up to the date of the Operator's receipt of the Termination Notice;
- (ii) the Operator shall immediately and in any event on the Transfer Date, hand-over the Facilities to the Authority in accordance with the Taking-Over Criteria;
- (iii) the Authority shall not be required to make any further payments to the Operator on account of such termination.

12.5 RIGHTS OF THE GOS ON TERMINATION AND/OR FINAL EXPIRY DATE

12.5.1 In case of Termination of this Management Contract for any reason whatsoever and subject to receipt by the Operator of the Termination Payment on or prior to the Transfer Date or in case of expiry of this Management Contract on the Expiry Date, the Authority shall, on the Transfer Date, have the power and authority to:

- (a) take possession and control of Facilities;
- (b) prohibit the Operator and any person claiming through or under the Operator from entering upon the Facilities or any part thereof.

13. COMPENSATION ON TERMINATION

13.1 CONSEQUENCES OF TERMINATION - COMPENSATION

13.1.1 Termination Due to Operator Event of Default

13.1.1.1 Upon termination of this Management Contract on account of an Operator Event of Default at any time, the Operator shall pay to the Authority, as Termination Compensation, an amount equal to the value of the Performance Security. In this regard the Authority may, as the Termination Compensation due from the Operator, encash the entire Performance Security.

13.1.2 Termination Due to Authority Event of Default, Political Force Majeure Event

13.1.2.1 Upon termination of this Management Contract due to an Authority Event of Default, or Political Force Majeure Event, the Authority shall return back the Performance Security of the Operator.

13.1.3 Termination Due to Non-Political Force Majeure Event

13.1.3.1 Upon termination of this Management Contract due to a Non Political Force Majeure Event, the Authority shall not be liable to make any payments to the Operator in respect of Termination Compensation.

14. DISPUTE RESOLUTION

14.1 PRELIMINARY SETTLEMENT

14.1.1 Amicable Settlement

If any dispute or difference or claims of any kind arises between the Authority and the Operator in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Management Contract, or the rights, duties or liabilities of any Party under this Management Contract, whether during the Contract Period or on expiry thereof, whether before or after the termination of this Management Contract ("**Dispute**"), then the Partnership Committee shall meet, at the request of any Party, in an effort to resolve such Dispute by discussion between them.

The Partnership Committee shall meet as and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the Dispute and produce written terms of settlement. If the Dispute is not resolved by discussion between them, as evidenced by the signing of the written terms, within 30 (Thirty) Days of raising such Dispute, the Dispute shall be resolved in accordance with Article 14.1.2.

14.1.2 FAST-TRACK ADJUDICATION BY INDEPENDENT EXPERT

If any specific dispute or difference or claims of any kind arises between the Authority and the Operator related to the determination of:

- (a) existence and the consequences of a Force Majeure Event as specified in Article 101,
- (b) an Event of Default as specified in Article 12,
- (c) the remedy of defaults and termination procedures as specified in Article 123, and/or
- (d) the Parties hereby agree to refer such matter for fast-track adjudication (subject always to final arbitration in terms of Article 15.2) to the Independent Expert.

The Parties may also, if they so agree at that time, refer for determination any other matter of a technical nature to the Independent Expert.

If any such specific dispute is not resolved by the Independent Expert, within 30 (Thirty) Days of its raising, it shall be resolved in accordance with Article 14.2.

14.2 DISPUTE SETTLEMENT BY ARBITRATION

14.2.1 Appointment of Arbitrator and Rules governing Arbitration

The Parties acknowledge and agree that this Management Contract constitutes a commercial transaction.

Each of the Parties unconditionally and irrevocably agrees in respect of a Dispute:

- (a) to the submission of such Dispute to binding arbitration governed by the Arbitration Act, by appointment of three arbitrators, one to be appointed by the

Authority, one to be appointed by the Operator and one to be appointed jointly by the two arbitrators appointed by the Authority and the Operator ("**Arbitrators**"). Any arbitration proceedings commenced pursuant to this Article 14.2 shall be referred to as the Arbitration ("**Arbitration**");

- (b) not to claim any right it may have under the laws of any jurisdiction to hinder, obstruct or nullify the submission of the Dispute to the Arbitration; and
- (c) to accept the Award rendered by the Arbitrator and any judgment entered thereon by a court of competent jurisdiction as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any award rendered by the Arbitrator or court of competent jurisdiction.

14.2.2 **Place of Arbitration**

The place of the Arbitration shall be Karachi, Pakistan.

14.2.3 **English Language**

The request for the Arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings pursuant to the Arbitration shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

14.2.4 **Enforcement of the Award**

Any decision or award resulting from the Arbitration ("**Award**") shall be final and binding upon the Parties.

The Parties hereby waive, to the extent permitted by Applicable Law, any rights to appeal or to review of such Award by any court or tribunal. The Parties hereto, agree that an Award may be enforced against the Parties to the Arbitration proceeding or their assets, wherever they may be found, and that a judgment upon the Award may be entered in any court having jurisdiction thereof.

14.2.5 **Fees and Expenses**

The fees and expenses of the Arbitrator and all other expenses of the Arbitration shall be borne and paid by the respective Parties, subject to determination by the Arbitrators. The Arbitrators may provide in the Award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

14.2.6 **Performance during Arbitration**

Pending the submission of and/or decision on a Dispute or until the Award is published, the Parties shall continue to perform all of their obligations under this Management Contract, without prejudice to a final adjustment in accordance with such Award, unless this Management Contract stands terminated. The Management Contract and the rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceedings hereunder.

14.3 **SURVIVAL**

The provisions of this Article 145 shall survive the termination of this Management Contract for any reason whatsoever.

15. REPRESENTATIONS AND WARRANTIES

15.1 MUTUAL REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Management Contract;
- (b) it has taken all necessary action to authorize the execution, delivery and performance of this Management Contract;
- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Management Contract; and
- (d) this Management Contract constitutes its legal, valid, binding and enforceable obligation.

15.2 OPERATOR'S REPRESENTATIONS AND WARRANTIES

The Operator represents and warrants to the Authority that:

- (a) it has the financial and technical standing and capacity to undertake the Project in accordance with the terms of this Management Contract;
- (b) the execution, delivery and performance of this Management Contract will not conflict with, result in the breach of, constitute a default under any of the terms of its [Memorandum and Articles of Association] or those of any member of the Consortium or any Applicable Laws or any covenant, contract, Management Contract, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (c) all information contained in the Bid is true, complete and not misleading;
- (d) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Management Contract;
- (e) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to the GoP or the GoS in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
- (f) neither the Operator nor any of its Affiliates, nor any Person acting on its or their behalf, has committed or engaged in, with respect to the Project or any transaction contemplated by this Management Contract, any Sanctionable Practice.

15.3 ACKNOWLEDGEMENT

The Parties acknowledge and confirm that the Parties have relied upon and have

entered into this Management Contract on the basis of the representations, warranties and undertakings made by the Parties hereunder.

16. MISCELLANEOUS PROVISIONS

16.1 SURVIVAL OF OBLIGATIONS

Any cause or action which may have arisen in favour of either Party or any right which is vested in either Party under any of the provisions of this Management Contract as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the term of the Management Contract by effluxion of time or otherwise in accordance with the provisions of this Management Contract, shall survive the expiry of the Management Contract.

16.2 ENTIRE MANAGEMENT CONTRACT

The Parties hereto acknowledge, confirm and undertake that this Management Contract, as at the date hereof, constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project.

16.3 NOTICES

- 16.3.1 Any notice or request in reference to this Management Contract shall be written in English language and shall be sent by registered airmail or facsimile (except notifications for the purposes of Article 7 which shall always be by email or fax) and shall be directed to the other Party at the address mentioned below:

Authority: [●]

Attention:

Address

Tel:

Fax:

Email:

Operator: [●]

Attention:

Address:

Tel:

Fax:

Email:

- 16.3.2 Any notice or demand served by registered post shall be deemed to be duly served 48 (Forty Eight) hours after posting and a notice or demand sent by facsimile shall be deemed to have been served at the time of its transmission and in proving service of the same it will be sufficient to prove, in the case of a letter, that such letter was sent by registered airmail, addressed and placed in the post and in the case of a facsimile transmission, that such facsimile was duly transmitted to a current facsimile number of the addressee at the address referred above.
- 16.3.3 Each Party may change the above address by prior written notice to the other Party.

16.4 GOVERNING LAW

This Management Contract shall be governed by and construed in accordance with the laws of Pakistan.

16.5 COUNTERPARTS

This Management Contract may be executed in two counterparts, each of which, when executed and delivered, will be an original, and both counterparts together shall constitute one and the same instrument.

16.6 LANGUAGE

16.6.1 All notices and communications between the Authority, the Operator and the Independent Expert, required under this Management Contract, shall be drawn up in English.

16.7 CONFIDENTIALITY

16.7.1 Each of the Parties shall keep confidential and ensure that their employees, officers, consultants and advisers shall keep confidential, all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party, relating to the Project and shall not, without the consent of the other Party, publish or otherwise disclose or use the same for its own purposes otherwise than as may be required (i) by Applicable Laws or appropriate regulatory authorities, (ii) to perform its obligations under this Management Contract, or (iii) required to be shared with advisers in connection with the Project.

16.7.2 The provisions of Article 16.7.1 here above shall not apply to:

- (a) any information in the public domain otherwise than by breach of this Management Contract;
- (b) information in the possession of the receiving Party thereof before divulgence as aforesaid, and which was not obtained under any obligation of confidentiality

16.8 AMENDMENTS

16.8.1 Any provision of this Management Contract must be recorded in an Management Contract in writing signed by the Parties.

16.9 WAIVERS AND CONSENTS

16.9.1 Any provision or breach of any provision of this Management Contract may be waived before or after it occurs only if evidenced by an Management Contract in writing signed by the waiving Party.

16.9.2 Any consent under or pursuant to any provision of this Management Contract must also be in writing and given prior to the event, action or omission for which it is sought.

16.9.3 Any such waiver or consent may be given subject to any conditions thought fit by the Person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.

16.10 SEVERABILITY

- 16.10.1 If at any time any provision of this Management Contract is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Management Contract shall not be affected.
- 16.10.2 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to the Operator and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

16.11 COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Management Contract.

16.12 NO ASSIGNMENT

- 16.12.1 Except as otherwise provided in this Management Contract, the rights and obligations of the Operator under this Management Contract shall not be assigned, novated or otherwise transferred to any Person without the prior written consent of the Authority.
- 16.12.2 The rights and obligations of the Authority under this Management Contract shall not be assigned, novated or otherwise transferred to any Person other than a public body or a government company or a statutory corporation that:
- (a) is a single entity;
 - (b) to whom the entire Management Contract is assigned and/or transferred; and
 - (c) has the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Management Contract.

16.13 GOOD FAITH

Each Party shall act in good faith in exercising its rights and performing its obligations under this Management Contract.

16.14 INDEPENDENCE

In respect of all matters dealing with the Management Contract the Independent Expert shall be independent and shall ensure that they perform all their obligations in accordance with the 0 Terms of Reference for Independent Expert including the Management Contract.

IN WITNESS WHEREOF the Parties hereto have caused this Management Contract to be executed by their duly authorized representatives on this [*insert date*] day of [*insert month*], 2015:

FOR AND ON BEHALF OF:

[●], THE AUTHORITY WITHIN NAMED,
THROUGH ITS AUTHORISED
SIGNATORY

}

SIGNATURE

Name:

.....

Designation:

in the presence of:
signature of **WITNESSES**

SIGNATURE

1- Name:
Address:
NIC No:

.....

2- Name:
Address
NIC No:

.....

[●], THE OPERATOR WITHIN NAMED,
THROUGH ITS AUTHORISED
SIGNATORY

}

SIGNATURE

NAME:

DESIGNATION:

.....

IN THE PRESENCE OF:
SIGNATURE OF **WITNESSES**

SIGNATURE

1- NAME:
ADDRESS:
NIC No:

.....

2- NAME:
ADDRESS
NIC No:

.....

[Annexure - A I] KPIs
REPORTING FORMAT (DHIS/HMIS/REPORT BY IN-CHARGE)

S #	Name of Indicators	Means of Verification	Frequency of Reporting
1	Average Daily OPD Attendance	DHIS/ HMIS	Monthly
2	Percentage of age and Gender wise Utilization of OPD (New cases only)	DHIS/ HMIS	Monthly
3	Percentage of referred cases attended at the Facility OPD	DHIS/ HMIS	Monthly
4	Percentage of Follow up OPD Cases	DHIS/ HMIS	Monthly
5	Average daily emergency service Utilization	DHIS/ HMIS	Monthly
6	Average daily specialty wise OPD Utilization	DHIS/ HMIS	Monthly
7	Per Capita OPD Attendance	Report by In charge	Monthly
8	Percentage of Lab Services Utilization (OPD)	DHIS/ HMIS	Monthly
9	Percentage of Lab Services Utilization (Indoor)	DHIS/ HMIS	Monthly
10	Percentage of X -Ray Service Utilization (OPD)	DHIS/ HMIS	Monthly
11	Percentage of X -Ray Service Utilization (Indoor)	DHIS/ HMIS	Monthly
12	Monthly Bed Occupancy Rate (BOR)	DHIS/ HMIS	Monthly
13	Average Length of Stay (ALOS)	DHIS/ HMIS	Monthly
14	Percentage of Hospital Death Among Admitted Patients	DHIS/ HMIS/ Case Report by In Charge	Monthly
15	Percentage of Left Against Medical Advise (LAMA)	DHIS/ HMIS/ Case Report by In Charge	Monthly
16	Annual per capita Hospital Admission Rate	DHIS/ HMIS Report by In charge	Monthly
17	Percentage of Full Immunization Coverage	DHIS/ HMIS	Monthly
18	Measles coverage	DHIS/ HMIS	Monthly
19	Percentage of TT2 coverage	DHIS/ HMIS	Monthly
20	Couple Years of Protection (CYP) Delivered	DHIS/ HMIS	Monthly
21	Percentage of Antenatal Care (ANC) Coverage	DHIS/ HMIS	Monthly
22	Average Number of ANC Attendances	DHIS/ HMIS	Monthly
23	Prevalence of Anemia among first ANC attendance	DHIS/ HMIS	Monthly
24	Percentage of Postnatal Care (PNC) Coverage	DHIS/ HMIS	Monthly
25	Percentage of Delivery Coverage at Health Facility	DHIS/ HMIS	Monthly
26	Percentage of LHW Pregnancy Registration	DHIS/ HMIS	Monthly
27	Maternal Deaths reported by LHWs	DHIS/ HMIS	Monthly
28	Annual OPD case Load Profile	DHIS/ HMIS	Monthly
29	Annual top 5 communicable and top 5 non-communicable diseases at OPD	DHIS/ HMIS	Annually
30	Annual IPD case Load Profile	DHIS/ HMIS	Annually
31	Annual top 5 communicable and top 5 non-communicable diseases at IPD	DHIS/ HMIS	Annually

S #	Name of Indicators	Means of Verification	Frequency of Reporting
32	Percentage of OPD Diarrheal Cases (under 05 Children)	DHIS/ HMIS	Monthly
33	Percentage of Diarrheal Fatality Among Under 05 Children admitted for Diarrhea	DHIS/ HMIS	Monthly
34	Percentage of OPD Pneumonia Cases (under 05 Children)	DHIS/ HMIS	Monthly
35	Percentage of Pneumonia Fatality Among Under-05 Children admitted with Pneumonia	DHIS/ HMIS	Monthly
36	OPD Malaria Cases Per 1000 Population	DHIS/ HMIS	Annually
37	Malaria Case Admissions per 1000 Population	DHIS/ HMIS	6- Monthly
38	Percentage of Malaria Fatality among Admitted Malaria Cases	DHIS/ HMIS	Monthly
39	Percentage of Malaria Slide Positively	DHIS/ HMIS	Monthly
40	Percentage of Plasmodium Falciparum Slide Positively	DHIS/ HMIS	Monthly
41	TB Suspected Identification rate per 1000 Population	DHIS/ HMIS	Monthly
42	Proportion of TB-DOTS Intensive Phase Patients missing for <1 week	DHIS/ HMIS	Monthly
43	OPD Suspected Measles Cases	DHIS/ HMIS	Monthly
44	Neonatal tetanus cases admitted	DHIS/ HMIS	Monthly
45	Percentage of OPD Malnourished Children < 5 Years	DHIS/ HMIS	Monthly
46	Percentage of Low Birth Weight (LBW) (Facility-based)	DHIS/ HMIS	Monthly
47	Expected Obstetric Complication Admitted	DHIS/ HMIS	Monthly
48	Expected Caesarean section performed.	DHIS/ HMIS	Monthly
49	Percentage of Fatality among Admitted Obstetric Complication Cases	DHIS/ HMIS	Monthly
50	Percentage of Newborn Case Fatality in Health Facility	DHIS/ HMIS	Monthly
51	Percentage of Still Birth among all births taking place in the facility	DHIS/ HMIS	Monthly
52	Percentage of STI Cases among OPD cases	DHIS/ HMIS	Monthly
53	Percentage of Hepatitis B+VE (among patients screened for Hepatitis)	DHIS/ HMIS	Monthly
54	Percentage of Hepatitis C+VE (among patients screened for Hepatitis)	DHIS/ HMIS	Monthly
55	Budget Release	DHIS/ HMIS	Monthly
56	Total Unspent budget for each Head/line item	DHIS/ HMIS	Monthly
57	Total Unspent budget	DHIS/ HMIS	Monthly
58	Per capita non-salary budget allocation	DHIS/ HMIS	Monthly
59	Stock out of tracer drugs / supplies	DHIS/ HMIS	Monthly
60	Proportion of Staff position filled by category	DHIS/ HMIS	Monthly
61	Proportion of Staff position	DHIS/ HMIS	Monthly
62	Proportion of Specialist Staff position filled	DHIS/ HMIS	Monthly
63	Proportion of Staff position filled of General Medical Doctors	DHIS/ HMIS	Monthly

S #	Name of Indicators	Means of Verification	Frequency of Reporting
64	Proportion of Staff position filled of Paramedical Staff	DHIS/ HMIS	Monthly
68	Facility waste disposal	DHIS/ HMIS	Monthly
69	Emergency Obstetric Care	DHIS/ HMIS	Monthly
70	Blood Bank Screening facilities	DHIS/ HMIS	Monthly
72	DHIS/ HMIS Reporting Compliance	Report by In Charge	Monthly
73	DHIS/ HMIS Reporting timelines	Report by In Charge	Monthly
74	DHIS/ HMIS Reporting completeness	Report by In Charge	Monthly
75	DHIS/ HMIS Reporting accuracy	Report by In Charge	Monthly

[Annexure - A II] KPI - Performance Score Card for the Facilities

The Operator shall obtain at least 70% (seventy percent) out of the total 100% (hundred percent) on the Key Performance Indicators, to get a “pass” score on the evaluation of the performance under this Contract.

(Total KPIs: 15, Total Score: 75)

Performance Domains/ Sub Domains/KPIs			
1. Domain: Planning & Management	Weight	15	
1.1 Subdomain: Human Resource	Weight	5	
1.1.1 KPI: Filled Posts Index	Definition	Percentage of Essential posts filled sanctioned posts	
	Data Capture Point	Online DHIS	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)	
	Interval	Monthly	
	Data Type	Percentage Value	
	Criteria / Formula	Composite index calculated from essential post filled against criteria of sanctioned posts in Secondary Hospitals (See in Annex 1.1.1 for detailed weights, criteria and calculation formula)	
	Performance Range	THQ	Upper Limit = 90, Lower Limit = 50
		DHQ	Upper Limit = 90, Lower Limit = 50
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5	
Weight		5	
1.2 Subdomain: Financial Management	Weight	5	
1.2.1 KPI: Budget Consumption	Definition	Percentage of actual expenditure against selected budget items	
	Data Capture Point	Online DHIS	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)	
	Interval	Annually	
	Data Type	Percentage Value	
	Criteria / Formula	Numerator: Total Expenditure during fiscal year Denominator: Total Released Budget during fiscal year	
	Performance	THQ	Upper Limit = 90, Lower Limit = 50

	Range	DHQ	Upper Limit = 90, Lower Limit = 50
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5	
	Weight	5	
1.3 Subdomain: Medicines/Supplies	Weight	5	
1.3.1 KPI: Drug Availability Index	Definition	Composite Index: Percentage of Essential medicines/supplies available in Hospital	
	Data Capture Point	Online DHIS	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)	
	Interval	Monthly	
	Data Type	Percentage value	
	Criteria / Formula	Numerator: No of Medicine/vaccine not stock out this month Denominator: 27 (Essential medicine stock out in DHIS) (See in Annex - 1.3.1 for list of essential medicine)	
	Performance Range	THQ	Upper Limit = 100, Lower Limit = 80
		DHQ	Upper Limit = 100, Lower Limit = 80
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5	
	Weight	5	
2. Domain: Monitoring and Supervision	Weight	10	
2.1 Subdomain: MIS	Weight	10	
2.1.1 KPI: Reporting Compliance	Definition	Timely submission of DHIS monthly report.	
	Data Capture Point	Online DHIS	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)	
	Interval	Monthly	
	Data Type	Yes / No	
	Criteria / Formula	Report submitted within due submission date. Yes = 1, No=0	
	Performance Range	Upper Limit = 1, Lower Limit = 0	
	Scoring formula	Performance = 1 \rightarrow Score = 10	
		Performance = 0 \rightarrow Score = 0	
	Weight	5	
2.1.2 KPI: Data Quality Percentage (LQAS)	Definition	Percentage of monthly reports with consistency in reported vs actual data of DHIS.	
	Data Capture Point	Online DHIS	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)	
	Interval	Monthly	
	Data Type	Percentage Value	
	Criteria / Formula	Percentage calculated through LQAS method	
	Performance Range	THQ	Upper Limit = 95, Lower Limit = 80
		DHQ	Upper Limit = 95, Lower Limit = 80
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5	
	Weight	5	

3. Domain: Hospital Management & Services	Weight	50
3.1 Subdomain: Service Quality	Weight	5
3.1.1 KPI: Clinical Audit of Hospital	Definition	Clinical Audit of Hospital is performed and reported
	Data Capture Point	DHO Office Record
	Data Entry Method	Capturing Sheet (Data will be entered from Capturing sheet)
	Interval	Annually
	Data Type	Yes / No
	Criteria / Formula	Yes=1, No=0
	Performance Range	Upper Limit = Yes, Lower Limit = No
	Scoring formula	Performance = 1 → Score = 5 Performance = 0 → Score = 0
	Weight	5
3.2 Subdomain: Service Delivery	Weight	45
3.2.1 KPI: Health Facility Utilization Rate (Average Daily OPD)	Definition	Average Daily OPD Attendance (New + Follow up cases of all OPDs)
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Average (Average Daily OPD)
	Criteria / Formula	Numerator: Number of total OPD new cases + follow up cases Denominator: No of working days of month
	Performance Range	THQ Upper Limit = 500, Lower Limit = 150 DHQ Upper Limit = 800, Lower Limit = 200
	Scoring formula	Performance >= Upper Limit → Score = 5 Performance <= Lower Limit → Score = 0 Otherwise → Score = ((Performance - Lower Limit)/(Upper Limit - Lower Limit)) x 5
	Weight	5
3.2.2 KPI: Bed Occupancy Rate	Definition	Percentage of Average daily bed occupied in Hospital during month
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Percentage Value
	Criteria / Formula	Numerator: Total daily patient bed count (admitted patients male+female) Denominator: Number of Allocated Hospital Beds x Number of days in month Minimum Allocated Beds (THQ = 20, DHQ = 100)
	Performance Range	THQ Upper Limit = 70, Lower Limit = 40 DHQ Upper Limit = 80, Lower Limit = 50
	Scoring formula	Performance >= Upper Limit → Score = 5 Performance <= Lower Limit → Score = 0 Otherwise → Score = ((Performance - Lower Limit)/(Upper Limit - Lower Limit)) x 5
	Weight	5
3.2.3 KPI: Average length of patient stay	Definition	Average length of Patient Stay
	Data Capture	Online DHIS

	Point	
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Number (No of days)
	Criteria / Formula	Numerator: Total admitted patient days Denominator: No of patient exits (Discharged, LAMA, Referred and died)
	Performance Range	THQ Upper Limit = 3, Lower Limit = 1 DHQ Upper Limit = 5, Lower Limit = 1
	Scoring formula	Performance >= Upper Limit → Score = 5 Performance <= Lower Limit → Score = 0 Otherwise → Score = ((Performance - Lower Limit)/(Upper Limit - Lower Limit)) x 5
	Weight	5
3.2.4 KPI: EmONC service Status	Definition	Maintaining the status of Comprehensive EmONC service provider as per definition.
	Data Capture Point	Online MNCH-MIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online MNCH-MIS)
	Interval	Quarterly
	Data Type	Yes / No
	Criteria / Formula	Yes =1, No=0
	Performance Range	Upper Limit = Yes, Lower Limit = No
	Scoring formula	Performance = 1 → Score = 5 Performance = 0 → Score = 0
	Weight	5
3.2.5 KPI: Institutional Deliveries (All)	Definition	TotalNumber Institutional Deliveries of all types conducted in Hospital
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Number
	Criteria / Formula	Numerator: Number of normal/assisted deliveries + C-Sections
	Performance Range	THQ Upper Limit = 40, Lower Limit = 15 DHQ Upper Limit = 100, Lower Limit = 30
	Scoring formula	Performance >= Upper Limit → Score = 5 Performance <= Lower Limit → Score = 0 Otherwise → Score = ((Performance - Lower Limit)/(Upper Limit - Lower Limit)) x 5
	Weight	5
3.2.6 KPI: Institutional Deliveries (C Section)	Definition	% of C-Section out of total deliveries conducted in hospital
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Percentage Value
	Criteria / Formula	Numerator: Total Number of C-Section deliveries conducted hospital Denominator: Total Number of deliveries of all types (Normal + Forceps + C-Sections) conducted hospital
	Performance Range	THQ Upper Limit = 15, Lower Limit = 5 DHQ Upper Limit = 15, Lower Limit = 5
	Scoring formula	Performance >= Upper Limit → Score = 5 Performance <= Lower Limit → Score = 0

		Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5
	Weight	5
3.2.7 KPI: Surgical Procedures	Definition	Number of surgical procedures performed: <ul style="list-style-type: none"> Gynae General Surgery Eye/ENT Accidents/trauma Others
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Data Type	Number
	Criteria / Formula	Numerator: Number of surgeries performed in Health facility
	Performance Range	THQ Upper Limit = 40, Lower Limit = 10 DHQ Upper Limit = 100, Lower Limit = 40
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5
	Weight	5
3.2.8 KPI: Emergency Services provided	Definition	Number of emergency services provided (round the clock)
	Data Capture Point	Online DHIS
	Data Entry Method	Automatic (Data will be automatically retrieved from online DHIS)
	Interval	Monthly
	Information Type	Number
	Criteria / Formula	Numerator: No of Emergencies seen
	Performance Range	THQ Upper Limit = 40, Lower Limit = 10 DHQ Upper Limit = 100, Lower Limit = 40
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5
	Weight	5
3.3 Subdomain: Emergency Transport	Weight	5
3.3.1 KPI: Cases Transported on ambulance for referral	Definition	Functional status of Ambulance with patient Load (Patient Referred per functional Ambulance)
	Data Capture Point	Logbook of Health facilities
	Data Entry Method	Capturing Sheet (Data will be entered from capturing sheet)
	Interval	Quarterly
	Data Type	Per Capita (Patient Referred per functional Ambulance)
	Criteria / Formula	Numerator: No of cases transported on Ambulance Denominator : Total No of functional Ambulances
	Performance Range	THQ Upper Limit = 30, Lower Limit = 15 DHQ Upper Limit = 30, Lower Limit = 15
	Scoring formula	Performance \geq Upper Limit \rightarrow Score = 5 Performance \leq Lower Limit \rightarrow Score = 0 Otherwise \rightarrow Score = ((Performance – Lower Limit)/(Upper Limit – Lower Limit)) x 5
	Weight	5
	Discussion	

[Annexure-A III] Targets, Criteria and Formulas of Composite Index KPI's

(Only relevant and applicable KPI for DHQ Hospital Shikarpur will be applicable and agreed within the first quarter of the effective date between the Authority and the Operator)

Table – 1. Filled Post Index : Percentage of essential posts filled against sanctioned posts

Facility Type	THQ			DHQ		
Criteria	Essential Staff	Sanctioned	Weight	Sanctioned Staff	Sanctioned	Weight
	Gynecologist	1	6	Gynecologist	1	6
	Pediatrician	1	6	Pediatrician	1	6
	Anesthetist	1	5	Anesthetist	1	5
	Other Specialists	2	13	Other Specialists	10	13
	CMO/SMO/MO	7	15	CMO/SMO/MO	20	15
	WMO	3	15	WMO	9	15
	Nurse (Female)	4	15	Nurse (Female)	10	15
	Technicians	3	10	Technicians	10	10
	Dispenser	3	5	Dispenser	10	5
	Vaccinator	2	10	Vaccinator	2	10
		27	100		74	100
Formula	<p>Filled Post index of THQ = If(Gynecologist posts filled >= 1) then 6 else 0 + If(Pediatrician posts filled >= 1) then 6 else 0 + If(Anesthetistposts filled >= 1) then 5 else 0 + If(Other Specialistsposts filled >= 2) then 13else ((No of Other Specialist posts filled)/2) * 13 + If(CMO/SMO/MOposts filled >= 7) then 15 else ((No of CMO/SMO/MO posts filled)/7)*15 + If(WMOposts filled >= 3) then 15 else ((No of WMO posts filled)/3) * 15 + If(Nurse (Female)posts filled >= 4) then 15 else ((No of Nurse (Female) posts filled)/4) * 15 + If(Techniciansposts filled >= 3) then 10 else ((No of Technicians posts filled)/3) * 10 + If(Dispenserposts filled >= 3) then 5 else ((No of Dispenser posts filled)/3) * 5 + If(Vaccinatorposts filled >= 2) then 10 else ((No of Vaccinator posts filled)/2) * 10</p> <p>Filled Post index of DHQ = If(Gynecologist posts filled >= 1) then 6 else 0 + If(Pediatrician posts filled >= 1) then 6 else 0 + If(Anesthetistposts filled >= 1) then 5 else 0 + If(Other Specialistsposts filled >= 10) then 13 else ((No of Other Specialist posts filled)/10) * 13 + If(CMO/SMO/MOposts filled >= 20) then 15 else ((No of CMO/SMO/MO posts filled)/20) * 15 + If(WMOposts filled >= 9) then 15 else ((No of WMO posts filled)/9) * 15 + If(Nurse (Female)posts filled >= 10) then 15 else ((No of Nurse (Female) posts filled)/10) * 15 + If(Techniciansposts filled >= 10) then 10 else ((No of Technicians posts filled)/10) * 10 + If(Dispenserposts filled >= 10) then 5 else ((No of Dispenser</p>					

	posts filled)/10) * 5 + If(Vaccinatorposts filled >= 2) then 10 else ((No of Vaccinator posts filled)/2) * 10
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Table – 2 Drug Availability Index

(Only relevant and applicable Drugs for DHQ Hospital Shikarpur will be applicable and agreed within the first quarter of the effective date between the Authority and the Operator)

Medicine / Vaccine List Available in DHIS for stock out reporting	Drug List: (18 Essential Medicines and 9 Vaccine for all HF type included in DHIS)	
	Essential Medicine List (From DHIS)	Vaccine List (From DHIS)
	Cap. Amoxicillin Syp. Amoxicillin Tab. Cotrimoxazole Syp. Cotrimoxazole Tab. Metronidazole Syp. Metronidazole Inj. Ampicillin Tab. Diclofenac Syp. Paracetamol Inj. Diclofenac Tab. Chloroquin Syp. Salbutamol Syp. Anthelmintic I/V infusions Inj. Dexamethasone Tab. Iron / Folic Acid ORS Oral pills (COC)	BCG vaccine Pentavalent vaccine Polio vaccine Hepatitis-B vaccine Measles vaccine Tetanus Toxoid Anti Rabies Vaccine Anti Snake Venom Vaccine Syringes
Formula	Drug availability Index = (Sum of availability of all 27 medicine/ Vaccine in all THQ) / 27	

Annexure : Baseline Health Facility Assessment

[To be finalized by the Parties along with the Independent Expert within thirty (30) days of the Effective Date.]

Annexure B – Appointment of Independent Expert

The Independent Expert shall be appointed as set out below:

1. APPOINTMENT

1.1 APPOINTMENT OF INDEPENDENT EXPERT

- 1.1.1 Within fifteen (15) days from the signing date, the Operator shall provide the Authority with a list of three (3) reputable firms of technical experts for appointment of the Independent Expert (the **IE List**).
- 1.1.2 Within seven (7) days of receipt by the Authority of the IE List, the Authority shall select a reputed firm of technical experts from the IE List and the Authority and the Operator shall appoint such firm as the Independent Expert in terms of the Independent Expert Agreement.
- 1.1.3 In the event the firms of technical experts identified by the Operator in the IE List are not acceptable to the Authority, the Operator and the Authority shall appoint (in terms of the Independent Expert Agreement) such firm as the Independent Expert as is mutually acceptable to the Authority and the Operator and such appointment shall be in terms of the Independent Expert Agreement.
- 1.1.4 The Independent Expert shall provide the services set out in the Independent Expert Agreement and as requested by the Parties with mutual consent from time to time.
- 1.1.5 The appointment of the Independent Expert shall be for an initial term of two (2) years (the **Appointment Term**) from the Effective Date; provided, however, the Independent Expert Appointment term shall be extended prior to expiry of the same so as to ensure that at all times during the Contract Period, an Independent Expert is retained/appointed, for the purposes set out in this Contract.
- 1.1.6 The Parties shall require the Independent Expert to designate and notify to the Authority and the Operator of the authorized representatives of the Independent Expert that shall be authorized by the Independent Expert to sign for and on behalf of the Independent Expert, and any communication or document required to be signed by the Independent Expert shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Expert; provided, that the Independent Expert may, by notice in writing to the Parties, substitute any of the authorized signatories.
- 1.1.7 The appointment of the Independent Expert may be terminated:
 - a). by either Party if, the Independent Expert is adjudged insolvent and / or bankrupt and / or the winding up proceedings are filed against the Independent Expert and/or the Independent Expert files winding up proceedings in a court of law and / or any action for malpractice and / or misadministration is filed against the Independent Expert in a court of law;
 - b). by the Parties with the mutual consent of the Parties.

- 1.1.8 The occurrence of any of the events listed in Events of Default, the Parties shall have the right to terminate the Independent Expert Agreement in accordance with the terms of the same or and/or in the event of expiry of the Appointment Term, the Parties shall appoint a new Independent Expert. In the afore-stated circumstances, the Parties shall replace the appointed Independent Expert with another firm of technical experts provided by the Operator pursuant to section [] above; provided, however, that the termination and/or replacement of the Independent Expert shall not have effect till such time as the replacement Independent Expert has been appointed.
- 1.1.9 The Operator shall ensure that all provisions of this Contract pertaining to the Independent Expert and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Expert Agreement.

ANNEXURE C - FORM OF PERFORMANCE SECURITY

[ON APPROPRIATE STAMP PAPER]

1. FORM OF PERFORMANCE SECURITY

To:

**HEALTH DEPARTMENT,
GOVERNMENT OF SINDH,**

GUARANTEE NO. (hereinafter referred to as the “**Guarantee**”)

Dated:

[INSERT NAME OF BANK], being the Guarantee issuing bank (hereinafter referred to as the “**Guarantor Bank**”) understands that the following parties have entered into an Management Contract entitled the “MANAGEMENT CONTRACT” dated [●], 2015 (hereinafter referred to as the “**Management Contract**”) for the implementation of the Management contract Project in the Province of Sindh under the public private partnership mode:

- (a) **THE GOVERNOR OF SINDH** (THROUGH HEALTH DEPARTMENT), having its offices at [●] (hereinafter referred to as the “**Authority**”); and
- (b) [●], a company incorporated under the laws of Pakistan, having its registered office located at [●] (hereinafter referred to as the “**Operator**”, which expression shall, where the context so permits, be deemed to mean and include its legal heirs, successors in interest, administrators, executors, and permitted assigns).

Further, the Guarantor Bank understands that pursuant to the terms of the Management Contract, the Operator is required to provide the Authority with a bank guarantee in an amount equal to PKR [INSERT AMOUNT IN NUMBERS]/- (Pakistani Rupees [INSERT AMOUNT IN WORDS]).

The above premised, the Guarantor Bank hereby undertakes irrevocably and unconditionally to pay to the Authority, without any notice, reference or prior recourse to the Operator or to any other entity or without any recourse or reference to the Management Contract, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])
(hereinafter referred to as the “**Guaranteed Amount**”)

immediately, however not later than within [three (3)] business days from the date of the Guarantor Bank's receipt of the Authority's first written demand (hereinafter referred to as the "**Demand**") at the Guarantor Bank's offices located at [INSERT ADDRESS OF THE GUARANTOR BANK AT WHICH DEMAND WILL BE MADE], such Demand stating:

- (a) the total amounts demanded; and
- (b) the bank account to which the amounts demanded pursuant to the demand are to be credited/transferred (hereinafter referred to as the "**Bank Account**").

A Demand shall only be honoured by the Guarantor Bank if it is made by and bears the signature of an authorised officer or representative of the Authority.

The Guarantor Bank shall unconditionally honour a Demand hereunder (notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Operator or any other person) immediately (however not later than [3 (Three)] business days) of its receipt of the Authority's Demand, as stated earlier, and shall transfer the amount specified in the Demand to the Bank Account. Any payment made hereunder shall be made free and clear of and without deduction for, or on account of, any present or future taxes, deductions or withholdings of any nature whatsoever and by whomsoever imposed, and where any withholding on a payment is required by any applicable law, the Guarantor Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the Authority receives the full amount due hereunder as if no such withholding had occurred.

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

After having come into force, this Guarantee and the Guarantor Bank's obligations hereunder shall expire on [INSERT DATE AND TIME] (the **Guarantee Expiry Hard Date**) irrespective of whether this Guarantee has been returned to the Guarantor Bank provided that, if the Authority issues a Demand to the Guarantor Bank on or immediately prior to the Guarantee Expiry Hard Date and the same is received by the Guarantor Bank on or prior to the Guarantee Expiry Hard Date, the Guarantor Bank shall honour such Demand.

Upon expiry, this Guarantee shall be returned to the Operator without undue delay. Multiple Demands may be made by the Authority under this Guarantee but the Guarantor Bank's aggregate liability shall be restricted up to the Guaranteed Amount.

The Guarantor Bank hereby agrees that any part of the Management Contract may be amended, renewed, extended, modified, compromised, released or discharged by mutual Management Contract between the Authority and the Operator without:

- (a) in any way impairing or affecting the Guarantor Bank's liabilities hereunder;
- (b) notice to the Guarantor Bank; and
- (c) the necessity for any additional endorsement, consent or guarantee by the Guarantor Bank.

The obligations of the Guarantor Bank herein are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Management Contract or the insolvency, bankruptcy, reorganization, dissolution or liquidation of the Operator or any change in ownership of the Operator or any purported assignment by the Operator or any other circumstance whatsoever which might otherwise constitute a discharge or defence of a guarantor

or a surety. In order to give effect to this Guarantee, the Authority shall be entitled to treat the Guarantor Bank as the principal debtor.

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

All references to any contract or other instruments are by way of reference only and shall not affect the Guarantor Bank's obligations to make payment under the terms of this Guarantee.

The Authority may assign / transfer or cause or permit to be assigned or transferred any of its rights, title, interests and benefits of this Guarantee with prior notification to the Guarantor Bank. The Guarantor Bank shall not assign or transfer any of its rights or obligations under this Guarantee.

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

The Guarantor Bank hereby represents and warrants to the Authority that:

- (a) it has the power to execute, deliver and perform the terms and provisions of this Guarantee and has taken all necessary action to authorize the execution, delivery and performance by it of this Guarantee;
- (b) the Guarantor Bank has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms;
- (c) neither the execution, delivery or performance by the Guarantor Bank of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any law, statute, rule or regulations or any order, writ, injunction or decree of any court or governmental instrumentality; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any Management Contract, contract or instrument to which the Guarantor Bank is a party of by which it or any of its property or assets is bound; or (iii) violate any provision of the Guarantor Bank's constituent documents; and
- (d) no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except as have been obtained or made prior to the date hereof), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorize, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee.

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

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

**EXECUTED & ISSUED
FOR & ON BEHALF OF THE GUARANTOR BANK**

.....
NAME:
DESIGNATION:
DATED:

WITNESSES

WITNESS I

WITNESS II

.....
NAME:
CNIC No.:

.....
NAME
CNIC No.:

The precise form of the Performance Security (whether a bank guarantee or a standby letter of credit) shall be agreed between the Operator and the Authority prior to signing of the Management Contract. The quantum, duration and renewal mechanism of the Performance Security shall follow the principles set out in Article 8.

Annexure D - Handing Over Criteria

The Authority shall handover the Facilities to the Operator through a joint mechanism wherein the Authority may notify a committee proposed to be represented by both the Parties for Handing Over/Taking Over of the Facilities and the administrative control to the Private Partner.

Annexure E - Taking Over Criteria

The Taking Over Criteria of the Facilities shall be similar to the Handing Over Criteria specified in Annex IX above and the Operator shall ensure that the Facilities are handed back to the Operator after the Expiry Date and in accordance with the terms of this Contract in proper working condition.

Annexure F - Details of Facilities

[To be finalized at the time of signing of the Management Contract based on the Facilities awarded to the Operator]