VOLUME II: SERVICES AND MANAGEMENT AGREEMENT

DATED AS OF AUGUST_____, 2016

AT: KARACHI, PAKISTAN

BETWEEN

HEALTH DEPARTMENT
GOVERNMENT OF SINDH
(As **Authority**)

AND

[•]
(As **Manager**)

For

Contracting Out of Regional Blood Centers in Sindh
(Karachi, Jamshoro, Nawabshah, Sukkur)

DRAFT

SERVICES AND MANAGEMENT AGREEMENT

THIS AGREEMENT is made at Karachi on this the _____day of _____, 2016 (the "**Signing Date**");

BETWEEN:

(1) **THE GOVERNOR OF SINDH**, acting through the SECRETARY, HEALTH DEPARTMENT, GOVERNMENT OF SINDH, having its principal office at _____, Karachi, Pakistan (hereinafter referred to as the **"Authority / GoS"**, which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns), of the one part;

AND

(2) **[•]** having its registered office at _____ (hereinafter referred to as the **"Manager"**, which expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest, permitted assigns and substitute), of the other part;

(the **Authority / GoS** and the **Manager** shall collectively be referred to as the "**Parties**" and individually as the "**Party**"**).**

WHEREAS:

(1) The Authority, through the Public Private Partnership Node at Health Department assisted by the Public Private Partnership (PPP) Unit, Finance Department, Government of Sindh, desires to improve the quality of health sector in the Sindh province in alignment with the requirements of the modern times. The Authority aims to significantly improve the coverage and utilization of health-care services, quality of care, and equity of access to services by geographical areas, income levels, and women and children, thus facilitating the general population of the province;

(2) On **[•]**, a Request for Proposals (the "**Request for Proposa**l" or "**RFP**") was issued by the Authority to prospective bidders for, inter alia, inviting submission of bids for the management, operations and maintenance of the RBCs in Sindh (the "**Project**") for the period of ten (10) years. After the technical evaluation of the bids and the subsequent financial evaluation by the Technical and Financial Evaluation Committee (**TFEC**) constituted for the Project, the Manager was found to be the Successful Bidder in terms of the RFP. Therefore, the Letter of Award / Acceptance (LoA) was issued to the Manager dated **[•]**.

(3) For this Purpose, the Authority has agreed to enter into this Agreement with the Manager for the execution of the Project, subject to and on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

DRAFT

1. DEFINITIONS

1.1. In this Agreement, the following words and expression shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"Agreement" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Authority" shall have the meaning attributed thereto in the array of Parties herein above;

"Effective Date" means the date, which shall not be later than sixty (60) days from the Signing Date, on which all the Conditions Precedents are fulfilled or waived.

"Escrow Agreement" means the agreement to be entered into between the Authority, the Manager, the escrow agent bank and any other Person agreed by the Parties;

"Essential Package of Health Services" or "EPHS" means the essential package of health services, which is the standardized health service package for primary health care and secondary care facilities;

"Force Majeure Event" shall have the meaning ascribed thereto under Article 12 of this Agreement;

"Regional Blood Center(s)" or "RBCs" means the state of the art regional blood center(s), (one each at Karachi, Jamshoro, Nawabshah& Sukkur) constructed by the Health Department Government of Sindh with the assistance from KfW-German Development Bank which is/are being transferred to the Manager for the management of the same under this Agreement;

"Grant Period" means a period of ten (10) years from the Effective Date;

"Health Department" means the health department, government of Sindh;

"HMIS" means Health Management Information System;

"Independent Expert" means the expert appointed in respect of the Project in accordance with Article 9 and in terms of the Independent Expert Agreement;

"Independent Expert Agreement" means the agreement to be entered into between the Authority, the Manager, the Independent Expert and any other Person agreed by the Parties in accordance with Article 9 of this Agreement;

"Key Performance Indicators" or "KPIs" mean the key performance indicators that have been developed by the Authority to measure the performance of the Manager against each activity under this Agreement, as set out in [**Schedule – A**] of this Agreement;

"Management Fee" means the annual service charges claim for the entire Grant Period by the Manager, payable by the GoS, as set out in [**Schedule – C**] of this**;**

"Manager" shall have the meaning attributed thereto in the array of Parties herein above;

"Material Adverse Effect" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations in accordance with the provisions of this Agreement, which act or event causes a material financial burden or loss to either Party;

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the parties to this Agreement individually;

"Performance Security" The security deposit that the Manager shall provide in advance each year and renewed every year during the Grant Period, either in the form of a pay order or demand draft or the first demand irrevocable and unconditional guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least 'AA-' as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the GoS, in the form of a demand guarantee or a standby letter of credit, guaranteeing the payment to the GoS of an amount equal to two percent (2%) of the Management Fee for the relevant year;

"Project" shall have the meaning attributed thereto in the Recitals above.

"Project Account" shall have a meaning ascribed thereto in Article 8.4 of this Agreement;

DRAFT

"**Staff**" shall mean the personnel on governmental payrolls including doctors, paramedics and other ancillary staff.

"Signing Date" shall mean the date of signing of this Agreement;

2. EFFECTIVENESS, COMMENCEMENT AND DURATION

2.1 EFFECTIVENESS OF THIS AGREEMENT

2.1.1 This Article 2 shall come into force on the Signing Date. The other provisions of this Agreement shall come into force on the Effective Date.

2.2 DURATION OF THIS AGREEMENT

2.2.1 This Agreement shall be for duration of ten (10) years from the Effective Date (the **Grant Period**) unless otherwise renewed by the Authority based on performance of the Manager as determined by the Authority and the Independent Expert.

2.3 CONDITIONS PRECEDENT

2.3.1 Both the Parties shall satisfy or procure the satisfaction of their respective Conditions Precedent as soon as reasonably possible and in any event within sixty (60) days of Signing Date (the **Effective Date**).

2.3.1.1 The Conditions Precedent to be satisfied by the Manager are as follows:

(a) submitting to the Authority certified true copies of all resolutions adopted by the board of directors/management of the Manager authorizing execution, delivery and performance of this Agreement;

(b) submitting to the Authority certified true copies of all resolutions adopted by the board of directors/management of the Manager authorizing a specified person or persons to execute this Agreement on behalf of the Manager; and all undertake all other acts specifically relating to the Agreement, as contemplated by this Agreement;

(c) The Manager has provided the Performance Security to the Authority, which shall be effective and valid for at least ninety (90) days beyond the date of completion of contract. The Performance Security may be renewed annually in advance based on the Management Fee of the respective year, however provided that the Performance Security shall be extended prior to expiry of the same so as to ensure that at all times during the Grant Period and ninety (90) days beyond it, the Performance Security is effective and valid, for the purposes set out in this Agreement.

(d) The Manager has carried out an initial assessment of the quality and availability of medical facilities through determining the health specialist and ancillary staffs abilities mutually agreed among the Parties and the results shall be conveyed to the Authority;

(e) The Manager has carried out a preliminary survey of the infrastructure, equipment, inventory, training aids, tools, furniture, and the results shall be conveyed to the Authority;

(f) The Manager has entered into the Independent Expert Agreement for the appointment of Independent Expert for the Project.

(g) The Manager has opened a Project Account with a reputable bank with the approval

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

(a) The Authority has provided a list of all buildings, equipment, supplies, furniture, fixtures, inventory and staff of the RBC(s), which shall be transferred with all rights and control, pertaining to the use and management of the same to the Manager;

DRAFT

(b) The Authority has handed over the physical, managerial and administrative control of the RBC(s) to the Manager.

(c) The Authority has entered into the Independent Expert Agreement for the appointment of Independent Expert for the Project.

3. GRANT OF MANAGEMENT CONTRACT, GRANT PERIOD

3.1. In consideration of the Manager's obligations contained in this Agreement and relying on the Managers warranties contained herein, the Authority, subject to the terms of this Agreement, hereby grants to the Manager and authorizes it, for the duration of the Grant Period, to operate, maintain and implement the Project and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement.

4. OBLIGATIONS OF THE AUTHORITY

4.1. The Authority hereby agrees and undertakes that:

(a) The Authority will provide a list of all buildings, equipment, supplies, furniture, fixtures, inventory and staff of the RBC(s), which shall be transferred with all rights and control, pertaining to the use and management of the same to the Manager;

(b) The Authority shall continue to release the annual single-line grant budget allocated to the RBC(s) in accordance with the government procedures and independent disbursement mechanism set out under Escrow Agreement;

(c) The Authority shall continue to pay salaries and other emoluments of all Staff, appointed and posted at the RBC(s), as these stood on the Signing Date;

(d) The salaries of Staff and their benefits will be disbursed in accordance with governmental procedures and all the staff posted in the RBC(s) would continue to be civil servants and entitled to regular service benefits as permissible under law;

(e) 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;

(f) The Authority may support and finance for any expansion of services, procurement and replacement of the necessary equipment or the rehabilitation of infrastructure of the RBC(s);

(g) The Authority shall monitor and inspect the performance of the Manager against the Key Performance Indicators as set out in [**Schedule – A**] of this Agreement.

5. OBLIGATIONS OF THE MANAGER

5.1. The Manager hereby agrees and undertakes that:

(a) The Manager shall takeover the rights and control of all buildings, equipment, supplies, furniture, fixtures, inventory and Staff of the RBC(s), pertaining to the use and management of the same, subject to the terms and conditions of this Agreement;

(b) The Manager shall be responsible for the delivery of, including but not limited to, the following:

(i) Preliminary survey of the infrastructure, equipment, inventory, training aids, tools, furniture, for preparing the required interventions, which may include refurbishing, refurnishing, up grading and/or procuring the required materials for RBC(s);

(ii) Initial assessment of the quality and availability of medical facilities through determining the health specialists and ancillary staffs abilities for preparing the required interventions which may include training of doctors and/or other ancillary staff, hiring of additional health specialists and/or other ancillary staff subject to terms and conditions of this Agreement;

(iii) The Manager shall provide technical and/or other trainings to the existing Staff including health specialists and/or other ancillary staff at the RBC(s), if needed, as examined during the initial assessment;

(iv) The Manager shall ensure capacity building of the existing Staff, health specialists and other ancillary staff and shall also extend this facility to other employees of Authority, as mutually decided by the Parties;

(c) The Manager shall be responsible for the availability of essential medicines and shall inform and facilitate the concerned officers to get the medicines tested from public drug testing laboratory to assess the quality of drugs. Besides, the Manager may, if it deems appropriate, get the medicines tested from any other reputed laboratory;

(d) The Manager shall be responsible for the cost of utilities and due maintenance of equipment, furniture and buildings of the RBC(s) at acceptable and satisfactory standards during the term of this Agreement;

(e) The Manager shall be responsible for all government taxes, duties and levies including local government tax during the term of this Agreement;

(f) The Manager shall ensure that the land and/or building and/or any other area of the RBC(s) transferred to the Manager under this Agreement shall solely be used for improving safe blood transfusion and health-care purposes, or any other additional services, as determined by the Authority from time to time;

(g) The Manager shall use the logo of the Authority along with its own logo in all official publications including but not limited to signboards, letter head and official cards, and in any course of events organized in connection with the assignment under this Agreement;

(h) The Manager shall place signboard with logo of the Authority at the RBC(s) for visibility of the assignment under this Agreement; The Manager will also be authorized to display his logo on all the signage of the RBC(s) and on its stationary.

(i) The Manager shall make the best possible use of the services of the Staff at the RBC(s), subject to the terms and conditions of their appointment, for the optimum delivery of the health services;

(j) The Manager shall provide to the Authority, the District Health Office and the Independent Expert, a bi-annual progress report in relation to the services performed by the Manager including the expenses incurred by the same;

(k) The Manager shall obtain at least seventy (70%) percent score on the Key Performance Indicators as given in [**Schedule – A**], to get a "pass" score on the evaluation of the performance, to be conducted bi-annually, under this Agreement. If the Manager fails to achieve the "pass" score for consecutive three (3) times, the Authority shall encash the Performance Security and shall have the right to terminate this Agreement.

(l) The Manager shall maintain a record of financial transactions and accounts in such manner as is expected of a corporate body;

(m) The Manager shall maintain an inventory register for all capital items procured or purchased under this Agreement;

(n) The Manager shall not assign rights or delegate obligations to any other party under this Agreement, without prior written consent of the Authority.

(o) The Manager shall transfer back to the Authority all the buildings, equipment, supplies, furniture, inventory and Staff of the RBC(s) at the expiry of the Grant Period or termination of this Agreement, whichever comes earlier.

6. REPRESENTATIONS AND WARRANTIES

6.1. Representations and Warranties of the Manager

6.1.1. The Manager represents and warrants to the Authority that:

(a) it is incorporated under the laws of Pakistan, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) its registered office is situated at [•] in the Province of Khyber Pakhtunkhwa;

(c) it has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(d) it has the financial standing, technical ability and capacity to perform its obligations under this Agreement;

(e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(f) it is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitutional document or memorandum and articles of association or any applicable laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it or they is or are a party or by which it or they or any of its or their properties or assets is bound or affected;

(h) there are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government department which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with all 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 Agreement;

(k) all rights and interests given to the Manager under this Agreement shall pass to and vest in the Authority or its nominee on the termination of this Agreement free and clear of all liens, claims and encumbrances; and

(l) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any government department pursuant to this Agreement 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 not misleading;

6.2. <u>Representations and Warranties of the Authority</u>

6.2.1. The Authority represents and warrants to the Manager:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out it the transactions contemplated herein

and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under the applicable laws to authorize the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has complied with the applicable laws in all material respects; and

(f) it has good and valid right, title and interest in the RBC(s) to grant the management of the RBC(s) to the Manager.

6.3. Disclosure

6.3.1. In the event that any occurrence of circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

7. STATUS OF STAFF& EMPLOYMENT

7.1. During the term of this Agreement, all Staff posted and appointed at the RBC(s) 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 Manager during the term of this Agreement.

7.2. The Manager may engage any additional staff including health specialists or any other ancillary staff, in accordance with the criteria as set out in [**Schedule – B**] by the Authority, to work at the Children Hospital, North Karachi who shall be governed by their respective employment contracts with the Manager and shall not have any rights and claims against the Authority, during the term or upon the termination of this Agreement.

7.3. The Manager shall be authorized to offer such additional benefits, advantages or perquisites as it deems justified in the context of functions assigned and performance demanded of the existing Staff. These benefits or prerequisite shall, however, be in the nature of an agreement between the Manager and the relevant Staff and the relevant staff shall not have any rights and claims against the Authority.

7.4. In case the Staff refuses or fails to carry out the services as contemplated under this Agreement, the Manager may surrender such staff back to the Authority, by way of specifying the specific misconduct and the lack of competency etc., as the case may be.

7.5. The services of all Staff posted or appointed at the RBC(s) or assigned to it on the Signing Date shall be made available to the Manager for performance of functions and duties on the same terms and conditions of their employment.

7.6. Any Staff at the RBC(s) or otherwise allocated to the Manager under this Agreement, found guilty of misconduct, acts of commission and omission, non-cooperation with the administration of the Manager shall be reported to the Authority for such actions. The Authority may initiate a prompt action against such staff and may transfer such staff from the RBC(s) within a period of six (06) weeks, and post them somewhere else.

7.7. If the Authority transfers any Staff from the RBC(s), pursuant to section 7.6 above, it shall arrange for a substitute of the same grade and rank for the vacant post within the period, not exceeding six (06) weeks, failing which, the salary of the vacant post shall be transferred to the Manager;

7.8. Only the designated officers as identified by the Authority shall have the right to visit the RBC(s) at mutually agreed time and the Manager shall facilitate such visits and shall take

DRAFT

due notice of any action on the written observations made during their visits, under intimation to the Authority.

7.9. Only the designated officers and/or auditors as identified by the Authority shall have the right to inspect any and/or all administrative and financial records, oral or written, of RBC(s) at mutually agreed time and the Manager shall facilitate such inspections and shall take due notice of any action on the written observations made during their inspection visits, under intimation to the Authority.

7.10. The Independent Expert shall have the right to inspect any and/or all administrative and financial records, oral or written, of RBC(s) at any time and the Manager shall facilitate such inspections and shall take due notice of any action on the written observations made during their inspection visits, under intimation to the Authority.

8. FINANCE & AUDIT

8.1. As set out in [**Schedule – C**], the Manager shall be provided by the Authority, a copy of the annual single-line grant dedicated for the RBC(s), for the year in advance to indicate the specific provisions made available for each purpose to which a line item relates. The funds shall, however, be provided to the Manager bi-annually in accordance with the government procedures and independent disbursement mechanism set out under Escrow Agreement. The Manager shall be free to utilize, as it deems most appropriate for the best delivery of the services under this Agreement.

8.2. The Manager shall carry out the services under this Agreement in accordance with the approved budget and Management Fee and the Authority shall not compensate for expenses beyond those approved in the budget.

8.3. The Manager shall notify and seek written consent from the Authority if it obtains any financing or donation, charity, philanthropic gifts, including financial or non-financial, for providing services under the scope of this Agreement from a third party during the term of this Agreement. The Manager shall utilize the support received from a third party as per the instructions of the Authority.

8.4. The Manager shall open and maintain a separate bank account to be operated by the Manager solely for the purposes of this Agreement (the **Project Account**);

8.5. The Project Account in respect of the RBC(s) 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.

8.6. In the event of any savings at the end of financial year, the unspent amount shall remain in the Project Account for future periods during the Grant Period, in the best interest of the RBC(s) subject to the consent of the Authority.

8.7. In the event of any savings at the end of the term of this Agreement, the unspent amount shall promptly be reported and paid to the Authority.

8.8. Any or all income generated under this Agreement shall be utilized in the RBC(s) in the development and best interests of the hospital.

9. INDEPENDENT EXPERT

9.1. Within fifteen (15) days from the Signing Date, the Manager shall provide the Authority with a list of three (3) reputable firms of technical experts for appointment of the Independent Expert (the **IE List**).

9.2. 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 Manager shall appoint such firm as the Independent Expert in terms of the Independent Expert Agreement.

9.3. In the event the firms of technical experts identified by the Manager in the IE List are not acceptable to the Authority, the Manager 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 Manager and such appointment shall be in terms of the Independent Expert Agreement.

DRAFT

9.4. 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.

9.5. 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 Grant Period, an Independent Expert is retained/appointed, for the purposes set out in this Agreement.

9.6. The Parties shall require the Independent Expert to designate and notify to the Authority and the Manager 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.

9.7. The Manager shall be solely responsible for the payment of the fees and expenses payable to the Independent Expert pursuant to the Independent Expert Agreement, notwithstanding that the Independent Expert shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Expert Agreement.

9.8. The appointment of the Independent Expert may be terminated:

9.8.1. 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;

9.8.2. by the Parties with the mutual consent of the Parties

9.9. The occurrence of any of the events listed in section 9.8, 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 Manager pursuant to section 9.1 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.

9.10. The Manager shall ensure that all provisions of this Agreement pertaining to the Independent Expert and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Expert Agreement.

10. DISPUTE RESOLUTION

10.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party shall, in the first instance, be attempted to be resolved amicably between the Parties.

10.2. The Parties agree to use their best efforts for resolving all disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any dispute.

11. ARBITRATION

11.1. In the event that any dispute between the Parties as to matters arising pursuant to this Agreement is not resolved amicably within thirty (30) days of receipt by one Party of the other Party's request for such amicable settlement, it shall be resolved in accordance with the following provisions:

(a) Each of the parties unconditionally and irrevocably agrees to the submission of such dispute to binding arbitration governed by the Arbitration Act, 1940, by appointment of a sole arbitrator that is acceptable to both the Parties.

(b) Each of the Parties unconditionally and irrevocably agrees to accept the award rendered by the Arbitrator as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any award rendered by the Arbitrator.

(c) The cost of the arbitration shall initially be borne by both the Parties equally, however, at the time of award, the cost shall be borne by either of the Party or both the Parties as assessed by the arbitrator.

(d) The venue of such arbitration, including the venue of hearings and meetings of the arbitral tribunal, shall be Karachi, and the language of arbitration proceedings shall be English.

(e) The Parties agree and undertake to carry out the award made by the Arbitrators without delay.

(f) The Manager and the Authority agree that an award may be enforced against the Manager and/or the Authority, as the case may be, and their respective assets wherever situated.

(g) This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the award in any arbitration proceedings hereunder.

12. FORCE MAJEURE

12.1 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 Agreement; provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care.

12.2 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:

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 & lockout, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide; or

iii. any lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or

iv. any change in law or legislation, any decision or order of governmental authorities or judicial authorities that impedes the performance under this Agreement.

12.3 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) days of the date of 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**).

12.4 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, to: i) assess the impact of the underlying Force Majeure Event; ii) determine the likely duration of Force Majeure Event; and iii) formulate damage mitigation measures and the steps to be undertaken by the Parties for

DRAFT

resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

12.5 Upon occurrence of the Force Majeure Event, the obligations of the Parties under this Agreement shall be suspended for the duration of the Force Majeure Event, provided however that the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event and/or of the effects of the same.

12.6 If a Force Majeure Event subsists for a continuous period of sixty (60) days, either Party may in its discretion terminate this Agreement by issuing a notice of termination to the other Party.

13. TERMINATION

13.1. This Agreement shall be automatically terminated at the expiry of the Grant Period, unless otherwise renewed by the Authority based on performance of the Manager as determined by the Authority and the Independent Expert.

13.2. Upon occurrence of the Force Majeure Event, either Party may in its discretion terminate this Agreement by issuing a notice of termination to the other Party subject to clause 12.6 of this Agreement;

13.3. If at any stage, the object of this Agreement is not being adequately achieved based on the assessment of the Authority, the Authority may issue a show cause notice to the Manager, with response time of maximum eight (08) weeks. Following the Manager's response, the Authority may allow a period of sixty (60) days to the Manager to rectify its non-performance and align to the object of this Agreement. If such fault persists at the expiry of the rectification period, as per the Independent Expert report, the Authority shall have the discretion to terminate this Agreement by issuing a notice of termination.

13.4. In the event, the Manager fails to achieve at least 70% "pass" performance score on KPIs for 3 consecutive times based on the assessment of Independent Expert, the Authority shall have a right to terminate this Agreement by issuing a notice of termination. In such a case, the Performance Security shall be encashed by the Authority and the Manager shall promptly return all unspent amount to the Authority.

13.5. The Authority upon the termination of this Agreement shall receive all the buildings, equipment, supplies, furniture, inventory and staff of the RBC(s) back from the Manager.

14. MISCELLANEOUS

14.1. ENTIRE AGREEMENT

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

14.2. AMENDMENT

14.2.1. The provisions of this Agreement may be amended or modified in writing only with the prior written consent of each of the Parties.

14.2.2. This Agreement may be executed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

14.3. SEVERABILITY

14.3.1. The failure by any Party to exercise any right or remedy herein or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future exercise of such

DRAFT

right or remedy, but the same shall continue and remain in full force and effect. All rights and remedies that any party may have at law, in equity or otherwise upon breach of any term or condition of this Agreement, shall be distinct, separate and cumulative rights and remedies and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy.

14.3.2. Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.

14.4. **NOTICES**

14.5. Any notice or request in reference to this Agreement shall be written in English language and shall be sent by mail, facsimile or email and shall be directed to the other Party at the address mentioned below:

Authority: Health Department, Government of Sindh.
Attention: Dr. Ahsanullah Khan
Address: Nurisng Directorate (Women Resource Center), Kala Pul Karachi.
Tel: 0321 2100494
Email: drahsan@sindhealth.pk

Manager: [•]
Attention:
Address:
Tel:
Fax:
Email:

14.6. Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

14.7. Each Party may change the above address by prior written notice to the other Party.

14.8. **GOVERNING LAW**

14.8.1. This Agreement shall be governed by and construed in accordance with the laws of Pakistan.

SIGNATURE PAGE

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed by their duly authorised officers as of the date first above written.

AS GOS

DRAFT

For and on behalf of **GOVERNMENT OF SINDH** through **SECRETARY, HEALTH DEPARTMENT** its authorized signatory

SIGNATURE

Name:
Designation:

……..

SIGNATURE

Name:
Designation:

……..

in the presence of:
signature of witnesses

SIGNATURE

1- Name:
Address:
NIC No:

……..

2- Name:
Address
NIC No:

……

AS MANAGER

For and on behalf of **[•]** through its authorized signatory

SIGNATURE

……

Name:
Designation:

in the presence of:
signature of witnesses

SIGNATURE

1- Name:
Address:
NIC No:

……

2- Name:
Address
NIC No:

……

DRAFT

[SCHEDULE – A]

KEY PERFORMANCE INDICATORS

The Manager 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 Agreement. (Only relevant and applicable KPI for RBC(s) will be applicable and agreed within the first quarter of the effective date between the Authority and the Manager)

DRAFT

[SCHEDULE – B]

CRITERIA FOR HIRING ADDITIONAL STAFF INCLUDING DOCTORS, PARAMEDICS OR ANY OTHER ANCILLARY STAFF BY THE POVERTY ERADICATION INITIATIVE

DRAFT

[SCHEDULE – C]

ANNUAL SINGLE-LINE GRANT DEDICATED FOR THE RBC(S)

During Grant Period, the single-line grant dedicated for the RBC(s) and Management Fee for the relevant year shall be provided to the Manager by Authority. Disbursement of first semi-annual payment shall be made by the Authority to the Manager within thirty (30) days of the Effective Date in accordance with the government procedures and independent disbursement mechanism set out under Escrow Agreement.

For the subsequent years during Grant Period, the Authority shall provide to the Manager a copy of the budget of single-line grant dedicated for the RBC(s) for the respective year in advance to indicate the specific provisions made available for each purpose to which a line item relates. The annual payments provided by the Authority shall include all taxes including property tax, local government tax and any other taxes and levies.

At all times during the Grant Period, disbursement of single-line grant and Management Fee shall be made to the Manager bi-annually in advance in accordance with the government procedures and independent disbursement mechanism set out under Escrow Agreement.

DRAFT