



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
INVITATION FOR BIDS**

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**INVITATION FOR BIDS**

**INSTRUCTIONS TO PREQUALIFIED BIDDERS**



**EDUCATION & LITERACY  
DEPARTMENT, GOVERNMENT  
OF SINDH**



**PUBLIC PRIVATE PARTNERSHIP UNIT,  
FINANCE DEPARTMENT  
GOVERNMENT OF SINDH**

**[29.10.2015]**



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**IMPORTANT NOTICE**

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This Invitation for Bids is provided to the Bidders solely for use in preparing and submitting Bids in connection with the competitive bidding process to manage and operate the Facilities in PPP mode for a term of the Concession Period. This Invitation for Bids is being issued by the Education & Literacy Department, Government of Sindh, in consultation with the PPP Unit, Finance Department, Government of Sindh, solely for use by Prequalified Bidders in considering the Project.

*Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Glossary of this Invitation for Bids.*

The evaluation criteria were determined by the Education & Literacy Department, Government of Sindh, in consultation with the PPP Unit, Finance Department, Government of Sindh. Neither any of these entities, nor their consultants, advisors, employees, personnel, agents, make any representation (expressed or implied) or warranties as to the accuracy or completeness of the information contained herein, or in any other document made available to a person in connection with the tender process for the Project and the same shall have no liability for this Invitation for Bids or for any other written or oral communication transmitted to the recipient in the course of the recipient's evaluation of the Project. Neither any of these entities, nor their employees, personnel, agents, consultants, advisors and contractors etc. will be liable to reimburse or compensate the recipient for any costs, fees, damages or expenses incurred by the recipient in evaluating or acting upon this Invitation for Bids or otherwise in connection with the Project as contemplated herein.

The Bids submitted in response to the Invitation for Bids by any of the Bidders shall be upon the full understanding and agreement of any and all terms of the Invitation for Bids and such submission shall be deemed as an acceptance to all the terms and conditions stated in the Invitation for Bids. Any Bids in response to the Invitation for Bids submitted by any of the Bidder shall be construed based on the understanding that the Bidder has done a complete and careful examination of the Invitation for Bids and has independently verified all the information received (whether written or oral) from the Government of Sindh (including from its employees, personnel, agents, consultants, advisors and contractors, etc.).

This Invitation for Bids does not constitute a solicitation to invest, or otherwise participate, in the Project, nor shall it constitute a guarantee or commitment of any manner on the part of the Government that the Project will be awarded. The Education & Literacy Department, Government of Sindh reserves its right, in its full discretion, to modify the Invitation for Bids and/or the Project at any time to the fullest extent permitted by law, and shall not be liable to reimburse or compensate the recipient for any costs, taxes, expenses or damages incurred by the recipient in such an event.



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**1. DEFINITIONS**

All capitalized terms not defined herein shall have the meaning set forth in the Concession Agreement.

<b>Authority or ELD</b>	The Education and Literacy Department, a department of Government of Sindh
<b>BAFO</b>	has the meaning set forth in Section 6.4.4
<b>Bid</b>	has the meaning set forth in Section 4.1.1
<b>Bid Data Sheet</b>	means the data sheet attached as <b>ANNEX 1 (BID DATA SHEET)</b>
<b>Bidder</b>	An enterprise or consortium that has been prequalified as a bidder in terms of the Shortlisting Document
<b>Bid Costs</b>	has the meaning set forth in Section 2.3.1
<b>Bid Security</b>	the security deposit that a Bidder must provide, in the form of a financial guarantee issued by a scheduled commercial bank operating in Pakistan acceptable to the Government (with a minimum credit rating of 'A-' according to the PACRA rating scale for financial institutions), in form and substance as attached hereto as <b>FORM B</b> to <b>ANNEX 2 (FORMS)</b> and in the amounts and conditions specified in Section 4.4.1 ( <i>Bid Security</i> ), it being clarified that the Bid Security shall not be in the form of an insurance or corporate guarantee
<b>Bid Security Expiry Date</b>	has the meaning set forth in Section 4.4.1.1
<b>Bid Security Validity Period</b>	has the meaning set forth in Section 4.4.1.2
<b>Bids Submission Deadline</b>	has the meaning set forth in Section 5.3.1
<b>Bid Validity Period</b>	has the meaning set forth in Section 4.6.1
<b>Bidding Documents</b>	has the meaning set forth in Section 3.1.1
<b>Bidding Process</b>	has the meaning set forth in Section 2.1.1
<b>Bids Evaluation Report</b>	has the meaning set forth in Section 6.7
<b>Clarification/Comments Request Deadline</b>	is specified in the Estimated Timetable
<b>Community Mobilization Program</b>	The Community Mobilization Program being implemented by the Government of Sindh in collaboration with the USAID under the umbrella of the Sindh Basic Education Program



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<b>Concession Agreement</b>	the draft of the Concession Agreement is attached as to <b>ANNEX 3 (DRAFT CONCESSION AGREEMENT)</b>
<b>Concession Period</b>	The period for this the Concession Agreement would be entered into with the successful EMOs, which is proposed to be ten (10) years at present.
<b>Consortium</b>	a Bidder comprised of a group of two or more enterprises formed to submit a Bid and, if applicable, to carry out the Concession
<b>DBSF</b>	has the meaning set forth in Section 2.2.4
<b>EMO</b>	Education Management Organizations from the private sector who would undertake the management and operation of the Public Schools as part of the Project, including individual private parties.
<b>Estimated Timetable</b>	has the meaning set forth in Section 2.4.1
<b>Evaluation Committee</b>	has the meaning set forth in Section 6.1.1
<b>Facilities</b>	Each group / basket of public schools identified in <b>ANNEX 8</b> .
<b>Final Bidding Documents</b>	has the meaning set forth in Section 3.4.1
<b>Financial Bid</b>	has the meaning set forth in Section 4.4.2.1
<b>Financial Bid Envelope</b>	has the meaning set forth in Section 5.2.1
<b>Financial Model</b>	has the meaning set forth in Section 4.4.2.6
<b>Financial Score</b>	has the meaning set forth in Section 6.4.3
<b>Invitation for Bids</b>	This invitation for bids dated [29.10.2015], 2015 including its Annexes and Forms.
<b>Integrity Pact</b>	the instrument entitled 'Integrity Pact' as attached to this Invitation for Bids as <b>FORM D</b> to <b>ANNEX 2</b> , duly signed by the Authority and the Bidder
<b>Management Fee</b>	means the management fee set out in each Bidder's Financial Bid, which management fee will be part of the Project Cost but will be charged above and beyond the operations and maintenance costs of the Facilities being charged by the Bidder.
<b>Member</b>	An enterprise that is part of a Bidder on an exclusive basis
<b>Notification of Award</b>	has the meaning set forth in Section 7.4.1



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<b>Operator</b>	The Bidder or the Project Company incorporated by the Bidder after signing of the Concession Agreement in accordance with Section 7.5.1
<b>PPP</b>	Public Private Partnership
<b>PPP Act</b>	The Public Private Partnership Act, 2010 (as amended from time to time).
<b>PPP Unit</b>	means the Sindh Public-Private Partnership Unit established under Sindh Public-Private Partnership Act 2010
<b>Prequalification Applications</b>	The applications submitted by prospective bidders seeking to prequalify for the Project in conformity with the requirements of the Shortlisting Document
<b>Project</b>	has the meaning set forth in Section 2.1.1
<b>Project Company</b>	has the meaning set forth in Section 7.5.1
<b>Project Cost</b>	means the estimated cost of the Project as will be set out in each Bidder's Financial Bid, in accordance with <b>ANNEX 2, FORM F</b> , Attachment 2 ( <i>Estimated Project Cost</i> ) and as defined in Section 4.4.2.5.
<b>Response to Questions Document</b>	has the meaning set forth in Section 3.3.1.2
<b>SBEP</b>	Sindh Basic Education Program
<b>Second Ranking Bidder</b>	has the meaning set forth in Section 7.7.1
<b>Shortlisting Document</b>	The shortlisting document containing detailed instructions to prospective bidders made available following the public notice published on May 13, 2015.
<b>SMC</b>	School Management Committee
<b>Substitute Selection Notice</b>	has the meaning set forth in Section 7.7.1
<b>Successful Bidder</b>	has the meaning set forth in Section 7.2
<b>Technical Bid</b>	has the meaning set forth in Section 4.2.1
<b>Technical Documents</b>	means the documents listed in the Section 4.2.1
<b>Technical Bid Envelope</b>	has the meaning set forth in Section 5.2.1



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<b>USAID</b>	United States Agency for International Development
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## SINDH EDUCATION MANAGEMENT ORGANIZATIONS INVITATION FOR BIDS

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### 2. INTRODUCTION & PROJECT DESCRIPTION

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#### 2.1 INTRODUCTION

- 2.1.1. The Authority in collaboration with the USAID and SBEP, desires to outsource the management and administration of certain public schools in Sindh to EMOs in a manner that such public schools will be managed and run by these EMOs on a public-private partnership basis, under the PPP Act (the **Project**). It is envisaged that the EMOs will be selected by the Authority through a fair and transparent competitive bidding process (the **Bidding Process**) and the Authority will enter into a Concession Agreement with each of the successful EMOs in respect of the Project.
- 2.1.2. This Invitation for Bids is being issued by the Authority, in consultation with the PPP Unit, Finance Department, Government of Sindh to the prospective Bidders that have been prequalified by the Authority following the evaluation of their Shortlisting Applications submitted in accordance with the terms and conditions of the Shortlisting Document.

#### 2.2 PROJECT DESCRIPTION

- 2.2.1 The Government aims to contract credible EMOs from the private sector to manage and improve the functioning of public schools by introducing innovations, modernizing the education system, addressing management gaps, maintaining and upgrading the school building and facilities, and cooperatively working along with teachers, schools' staff, school management committees, surrounding communities and local tiers of the Education and Literacy Department. In order to improve the standard of education in the province of Sindh, the Government, acting through the Authority, envisages a PPP model, for the introduction of EMOs in Sindh.
- 2.2.2 The Project is an important part of the Government's strategy towards developing Sindh's education sector and improving the literacy rate. In 2013, the Government of Sindh passed the Sindh Right of Children to Free and Compulsory Education Act in compliance with Article 25-A of the Constitution of Pakistan. The legislation has placed a renewed obligation on the Government of Sindh, including the Authority, to take steps to address the weak performance of the education sector. Accordingly, the public schools managed and run by the EMOs will function under the given constitutional provision and the aforesaid Act passed thereafter. The education in such public schools will remain free of charge for all the students. The admission process will be strictly non-discriminatory and as per the spirit mentioned in the statute law.
- 2.2.3 The Authority is working closely with the Community Mobilization Program, a component of Government of Sindh and USAID's supported Sindh Basic Education Program, for the successful implementation of this Project.
- 2.2.4 The Authority's key objectives for the Project include:
- (i) Improving the functioning of public schools through innovation and modernization of the education system;
  - (ii) Reducing inefficiencies and addressing the management gaps in public education;
  - (iii) Delivering better quality education to the children in the province of Sindh; and



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- (iv) Encouraging greater private sector investment in the education sector, in particular in the rural and less developed areas of the province of Sindh.
- (v) To meet the key performance indicators as set out in the Annex 7.

**2.3 BID COSTS**

- 2.3.1 Each Bidder shall bear all costs associated with the preparation and submission of its Bid and the Bidder's participation in the Bidding Process (the "**Bid Costs**") including, without limitation, all costs and expenses related to, participation in pre-bid conference, preparation and submission of the Bidding Documents, the provision of any additional information, conducting due diligence of the Project, visits to the Project site, engagement of consultants, advisors and contractors and all other costs incurred as part of this Bidding Process up to the signing of the Concession Agreement by successful Bidders.
- 2.3.2 The Authority shall not be responsible or liable to pay any Bid Costs of any Bidder, regardless of the conduct or outcome of the Bidding Process.

**2.4 TIMETABLE**

- 2.4.1 The estimated timetable for the Bidding Process is as follows (the "**Estimated Timetable**"):

Activity	Target Date
Issuance of Bidding Documents	29 <sup>th</sup> October 2015
Clarifications / Comments Request Deadline	6 <sup>th</sup> November 2015
Pre-Bid Conference / Bidders Meetings	9 <sup>th</sup> November 2015
Release Amended Bidding Documents (if required)	11 <sup>th</sup> November 2015
Bids Submission Deadline	30 <sup>rd</sup> November 2015
Technical Bids Opening	30 <sup>th</sup> November 2015
Financial Bids Opening	7 <sup>th</sup> December 2015
Publication/Communication to Bidders of the Evaluation Report	14 <sup>th</sup> December 2015
Notification of Award	21 <sup>th</sup> December 2015
Execution of the Concession Agreement with Successful Bidder	31 <sup>th</sup> December 2015

- 2.4.2 The Authority may, in its sole discretion and without prior notice to Bidders, amend the Estimated Timetable. Bidders shall not rely in any manner whatsoever on the Estimated Timetable and the Authority shall not incur any liability whatsoever arising out of amendments



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to the Estimated Timetable.

**3. BIDDING DOCUMENTS**

**3.1 CONTENT OF BIDDING DOCUMENTS**

3.1.1 The nature of the Project, bidding procedures, contract terms and technical requirements are prescribed in the bidding documents, which include the following (collectively, the "**Bidding Documents**"):

NO	DESCRIPTION																														
<b>1</b>	<b>Invitation for Bids</b>																														
<b>2</b>	<b>Annexes to Invitation for Bids:</b>																														
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<b>3</b>	<b>Any addenda and/or amendments to the documents listed above, issued by the Authority.</b>																														

3.1.2 Each Bidder shall examine all instructions, terms and conditions, forms, specifications and other



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information contained in the Bidding Documents. If the Bidder,

- (a) fails to provide all documentation and information required by the Bidding Documents;  
or
- (b) submits a Bid which is not substantially responsive to the terms and conditions of the Bidding Documents,

such action shall be at the Bidder's risk and the Authority may determine that the Bid is non-responsive to the Bidding Documents and may reject it.

### **3.2 PRE-BID CONFERENCE**

3.2.1 The Authority has organized a pre-bid conference on the dates set out in the Estimated Timetable for discussing any comments that the Bidders might have with respect to the Project and the Bidding Documents.

3.2.2 The Authority reserves the right to call any additional pre-bid conferences, if it so desires.

### **3.3 BIDDERS COMMENTS AND CLARIFICATIONS ON BIDDING DOCUMENTS**

#### **3.3.1 Bidders' Requests for Clarification, Comments and mark-up of the Bidding Documents**

3.3.1.1 Bidders have the opportunity to propose comments to the Bidding Documents; however the Authority may (at its sole and absolute discretion) accept or reject such proposals and comments. All comments shall be made in writing and sent to the relevant persons mentioned in Annex 1.

3.3.1.2 Electronic copies of the response, including an explanation of the query but not identification of its source (the "**Response to Questions Document**"), shall be sent to all Bidders. If similar or repeated queries are made by Bidders, those queries may be listed as one query and the Authority may respond to such query only once. The Authority reserves the right not to consider such comments on the Bidding Documents.

### **3.4 AMENDMENT OF BIDDING DOCUMENTS**

3.4.1 At any time before the Bids Submission Deadline, the Authority may amend the Bidding Documents, for any reason, whether at its own initiative, or in response to the Bidder's questions, comments or mark-up.

3.4.2 Subject to Section 3.4.1, once revised versions of the Bidding Documents, if applicable, have been issued (the "**Final Bidding Documents**") as set out in the Estimated Timetable then no other communications of any kind whatsoever shall modify the Bidding Documents.

### **3.5 BIDDERS DUE DILIGENCE**

#### **3.5.1 Information Provided by the Authority**

3.5.1.1 Each Bidder is solely responsible for conducting its own independent research, due diligence, and any other work or investigations and for seeking any other independent advice necessary



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for the preparation of Bids, negotiation of agreements, and the subsequent delivery of all services to be provided by the Successful Bidder under the Concession Agreement.

- 3.5.1.2 No representation or warranty, express or implied, is made and no responsibility of any kind is accepted by the Authority or its advisors, employees, consultants or agents, for the completeness or accuracy of any information contained in the Bidding Documents or the Response to Questions Document, or provided during the Bidding Process or during the term of the Concession Agreement. The Authority and its advisors, employees, consultants and agents shall not be liable to any person or entity as a result of the use of any information contained in the Bidding Documents or the Response to Questions Document, or provided during the Bidding Process or during the term of the Concession Agreement.
- 3.5.1.3 Bidders may not rely on any statements made by the Authority or its advisors, employees, consultants or agents.
- 3.5.1.4 All Bidders shall, prior to submitting their Bid, review all requirements with respect to corporate registration and all other requirements that apply to companies that wish to conduct business in the Authority's country. The Bidders are solely responsible for all matters relating to their legal capacity to operate in the jurisdiction to which this Bidding Process applies. Any Bids submitted in response to this Invitation for Bids will be submitted upon a full understanding and agreement of terms of this Invitation for Bids and, therefore, the submission of Bids in response to this Invitation for Bids would be deemed as acceptance to the said terms.



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**4. BIDS: PREPARATION**

**4.1 CONTENT OF BID**

4.1.1 Bidders must prepare and submit their Bids in full compliance with the requirements of this Invitation for Bids together with the submission of the documents, forms and instruments required for submission by this Invitation for Bids. Each Bidder shall submit the following documents (together, the "**Bid**"):

1. Technical Bid
2. Financial Bid

**4.2 TECHNICAL BID DOCUMENTS**

**4.2.1 Format of the Bidding Documents**

Each Bidder shall submit a technical proposal (the "**Technical Bid**") by completing the following documents (collectively, the "**Technical Documents**"):

<b>PART</b>	<b>DESCRIPTION</b>	<b>RELEVANT ANNEX</b>
<b>Part I</b>	<b>Bid Form</b> as required under Section 4.2.2	ANNEX 2 – FORM A
<b>Part II</b>	<b>Power of Attorney</b> required under Section 4.2.6	ANNEX 2 – FORM B
<b>Part III</b>	<b>Conflict of Interest Statement</b> required under Section 4.2.7	ANNEX 2 – FORM C
<b>Part IV</b>	<b>Equity Structure of the Operator</b> required under Section 4.2.9 (if applicable)	[TO BE PROVIDED BY THE BIDDER]
<b>Part V</b>	<b>Integrity Pact</b> required under Section 4.2.8	ANNEX 2 – FORM D
<b>Part VI</b>	<b>Contents of Technical Bid</b> required under Section 4.3	ANNEX 5

**4.2.2 Bid Form**

In Part I of the Technical Documents, the Bidder shall complete and sign the Bid Form in the form attached hereto as **FORM A** of **ANNEX 2 (FORMS)**.

**4.2.3 Roles of Members and Consortium**

Each Bidder must describe in detail the individual roles of their Members and Consortium, as well as the nature of the planned legal relationships between them.



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**4.2.4 Supporting Information & Documentation**

Each Bidder may submit any other supporting information or documentation that may assist the Evaluation Committee in the evaluation process and the same may be annexed to the Bids.

**4.2.5 Not Used**

**4.2.6 Power of Attorney**

In Part II of the Technical Documents, each Bidder (or if the Bidder is a Consortium, each Consortium member) shall provide a written power of attorney substantially in the form attached hereto as **FORM B** of **ANNEX 2 (FORMS)**, **duly stamped and notarized**, indicating that the person(s) signing the Bid are authorized to sign the Bid on behalf of the Bidder (or if the Bidder is a Consortium, then on behalf of each Consortium member) and, thus, the Bid is binding upon the Bidder during the full period of its validity.

**4.2.7 Conflict of Interest Statement**

In Part III of the Technical Documents, each Bidder (or if the Bidder is a Consortium, each Consortium member) shall provide a written Conflict of Interest Statement, substantially in the form attached hereto as **FORM C** of **ANNEX 2 (FORMS)**, regarding any existing, potential, possible or future conflict of interest that a Bidder (and each member of a Consortium) may have with the Bidding Process, the Project, the Authority or any agency, instrumentality, consultant or advisor thereof (as such consultants and advisors are provided in the Bid Data Sheet).

**4.2.8 Integrity Pact**

The Bidder must provide the Integrity Pact in the form attached hereto as **FORM D** of **ANNEX 2 (FORMS)**, duly signed by the Authority and the Bidder (in case the Bidder is a Consortium, by the Lead Member).

**4.2.9 Equity Structure of the Operator**

In Part IV of the Technical Documents, each Bidder forming a special purpose company to undertake the Project shall provide the equity structure of such special purpose company. Such equity structure should be in the form of a chart showing percentages of shares of each Member if the Bidder is a Consortium. In case of a single Bidder the special purpose company shall be wholly owned and controlled by the Bidder.

**4.3 TECHNICAL BID**

4.3.1 Each Bidder shall submit a technical bid the content of which is specified in **ANNEX 5 (Content of Technical Bids)**. Each Technical Bid shall be prepared in conformity with the technical requirements specified in the Concession Agreement and this Invitation for Bids and must adhere to the format described herein.



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**4.4 FINANCIAL BID**

**4.4.1 Bid Security**

- 4.4.1.1 The financial bid submitted by each Bidder must be accompanied by a Bid Security in an amount equal to one percent (1%) of the Project Cost (as set out by the Bidders in the Bid) in Pakistani Rupees which shall remain valid until the date of expiry of the Bid Security Validity Period (the "**Bid Security Expiry Date**").
- 4.4.1.2 The Bid Security shall be in the form and substance as attached hereto as **FORM E of ANNEX 2 (FORMS)**. It is further clarified that no Bid Security in the form of insurance guarantee shall be entertained. The Bidder shall ensure that the Bid Security remains valid for a period of twenty eight (28) days after the end of the original Bid Validity Period and twenty eight (28) days after any extension of the Bid Validity Period subsequently requested by the Authority in accordance with Section 4.6 (the "**Bid Security Validity Period**"). The Bidder shall procure an extension of the Bid Security, at least fifteen (15) days prior to its expiry so that it remains fully valid and effective until the Bid Security Expiry Date. In event of failure by the Bidder to extend the Bid Security, at least fifteen (15) days prior to its expiry, the Authority shall be entitled to draw down in full the Bid Security up to its full outstanding value.
- 4.4.1.3 Any Bid not accompanied by a Bid Security or accompanied by a bid security that is not in accordance with the Invitation for Bids, shall be rejected by the Authority as being non-responsive. The Bid Security of a Bidder that is a Consortium shall be in the name of all of the Members in such Consortium submitting the Bid.
- 4.4.1.4 The Authority shall release the Bid Securities of the unsuccessful Bidders once the Concession Agreement has been signed or upon expiry of the Bid Security Validity Period.
- 4.4.1.5 The Bid Security of the Successful Bidder shall be returned upon delivery to the Authority of the Performance Security (as defined in and required by the Concession Agreement).
- 4.4.1.6 The Bid Security may, in the discretion of the Authority, be drawn in the full amount by the Authority in the following circumstances:
- (i) If the Bidder (or any member of a Consortium if the Bidder is a Consortium) withdraws its Bid during the Bid Validity Period; or
  - (ii) In the case of the Successful Bidder, if the Successful Bidder fails to:
    - (a) execute the Concession Agreement for any reason attributable to it prior to the time set forth in the Estimated Timetable; or
    - (b) furnish the Performance Security, as required by the Concession Agreement; or
    - (c) achieve all the conditions precedents agreed in the executed Concession Agreement including but not limited to achieving Financial Close and the detailed design of the Project.
  - (iii) If the Bidder or the Successful Bidder (i) resorts to deceit and/or fraud in its dealings with the Authority (including the Evaluation Committee), its advisors, employees,





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consultants or agents or otherwise in relation to the award of the Concession Agreement; or (ii) is proven to have personally or through an intermediary, either directly or indirectly, offered or attempted to offer a bribe to any Authority's employee involved with the Bid or the award of the Concession Agreement; and

(iv) In the case of the Successful Bidder, in accordance with the Concession Agreement.

### 4.4.2 **Financial Offer**

4.4.2.1 Each Bidder shall submit a financial bid by completing the Financial Bid Form set out in **FORM F** of **ANNEX 2 (FORMS)** (the "**Financial Bid**"). Bidders shall not amend or change the form in any way.

4.4.2.2 The Financial Bid shall include all taxes, duties, levies or charges in accordance with the Concession Agreement.

4.4.2.3 Not Used.

4.4.2.4 Not Used.

4.4.2.5 Each Bidder is required to attach to its Financial Bid a table, in the form provided in Attachment 2 to the Financial Bid Form (**FORM F** of **ANNEX 2 (FORMS)**), for estimated Project Cost (the "**Project Cost**"), along with the relevant detail.

4.4.2.6 In addition, each Bidder is required to provide a copy of the financial model relating to its Financial Bid on a 'Microsoft Excel Windows' readable USB memory stick (the "**Financial Model**"). The file containing the Financial Model shall be in an unlocked and un-password protected Microsoft Excel format and shall be complete, containing, *inter alia*, a user guide and data book setting out all of the Financial Model's assumptions.

4.4.2.7 The Financial Bid shall be quoted in Pakistani Rupees.

### 4.5 **LANGUAGE OF BID**

4.5.1 All Bids, and all correspondence and documents related to the Bid submitted by the Bidder to the Authority, shall be written in English.

### 4.6 **BID VALIDITY PERIOD**

4.6.1 Bids shall remain valid for ninety (90) days as from the Bids Submission Deadline (the "**Bid Validity Period**"). A Bid valid for a shorter period shall be rejected by the Authority as non-responsive.

4.6.2 In exceptional circumstances, the Authority may solicit the Bidders' consent to an extension of the Bid Validity Period. The request and responses thereto shall be made in writing. Such extension shall not be for more than thirty (30) days.

4.6.3 If a Bidder accepts to extend the Bid Validity Period, the Bid Security shall also be extended



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accordingly. A Bidder may refuse the Authority's request for extension without forfeiting its Bid Security. A Bidder accepting the request to extend its Bid Validity Period shall not be permitted to modify its Bid.



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**5. BIDS: SUBMISSION**

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**5.1 FORMAT AND SIGNING OF BIDS**

- 5.1.1 The Bidder shall prepare and submit one (1) printed original, one (1) printed copy and (1) electronic copy (on DVD or USB drive) as specified in the Bid Data Sheet, clearly marking each one as "**BID - ORIGINAL**", "**BID - COPY NO. 1**" as appropriate. In the event of any discrepancy between the original and any copy, the original shall govern.
- 5.1.2 The original and the printed copy of the Bid shall be typed or written in indelible ink and shall be signed by the Bidder or person(s) duly authorized to bind the Bidder to the contract. The latter authorization shall be indicated by written power of attorney accompanying the Bid and submitted as Part II to the Technical Documents in accordance with Section 4.2.6. **All pages of the Bid, except for un-amended printed literature, shall be initialed by the person or persons signing such Bid.**
- 5.1.3 The Bid shall contain no alterations, omissions or additions, unless such corrections are initialed by the person or persons signing the Bid.
- 5.1.4 Each DVD or USB drive requested shall include a table of contents, shall be free of any virus and shall contain non compressed and non-protected files in printable and reproducible PDF format. For the avoidance of doubt, it is expressly specified that DVD or USB drive shall contain a scanned electronic copy of the complete original Technical Bid.

**5.2 SEALING AND MARKING OF BIDS**

- 5.2.1 Each Bid shall be in a separate envelope indicating the Bid as original or copy clearly marked as "ORIGINAL" and "COPY", as appropriate. The Technical Bid shall be placed in a sealed envelope/box clearly marked "TECHNICAL PROPOSAL" (the "**Technical Bid Envelope**") and the Financial Bid in the sealed envelope clearly marked "FINANCIAL PROPOSAL" (the "**Financial Bid Envelope**"). These two envelopes and/or boxes, in turn, shall be sealed in an outer envelope/box bearing the address and information indicated in the Bid Data Sheet. The envelope/box shall be clearly marked: "DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE". Any Bidder who submits or participates in more than one Bid will be disqualified.
- 5.2.2 The inner envelopes/boxes shall each indicate the name and address of the Bidder so that the Bid can be returned unopened in case it is declared "late" as specified in Section 5.4.
- 5.2.3 If the outer envelope/box is not sealed and marked as required by Section 5.2.1, the Authority will assume no responsibility for the Bid's misplacement or premature opening. If the outer envelope/box discloses the Bidder's identity, the Authority will not guarantee the anonymity of the Bid submission, but this disclosure will not constitute grounds for Bid rejection.
- 5.2.4 The Technical Bid Envelope and the Financial Bid Envelope shall each indicate the name and address of the Bidder.
- 5.2.5 Each DVD or USB drive shall be submitted together with the relevant printed Bids in the same sealed envelopes as provided in the Bid Data Sheet:



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- (a) The DVD or USB drive containing the Bidders' Technical Bid shall be included in the Technical Bid Envelope and shall not contain any elements of the Financial Bid.
- (b) The Financial Bid shall not be submitted in DVD or USB; however, the Financial Model shall be submitted on USB as stated in Clause 4.4.2.6.

5.2.6 For the avoidance of doubt, it is expressly specified that the Bidders shall not be allowed to submit their Bids by e-mail.

**5.3 BIDS SUBMISSION DEADLINE**

5.3.1 Bids shall be received by the Authority at the address specified in the Bid Data Sheet no later than the time and date stated in the Bid Data Sheet as the "**Bids Submission Deadline**".

**5.4 LATE BIDS**

5.4.1 Any Bid received by the Authority after the Bids Submission Deadline for any reason whatsoever will be rejected and returned unopened to the Bidder.

**5.5 MODIFICATION AND WITHDRAWAL OF BIDS**

5.5.1 The Bidder shall not modify or withdraw its Bid after submission.

5.5.2 Any withdrawal of a Bid in the interval between the Bids Submission Deadline and the expiration of the Bid Validity Period specified in Section 4.6 shall result in the Bidder's forfeiture of its Bid Security, pursuant to Section 4.4.1.



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**6. BIDS: OPENING AND EVALUATION**

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**6.1 EVALUATION COMMITTEE**

- 6.1.1 The Authority shall set up a special-purpose committee which shall be responsible for assessing the Bids (the "**Evaluation Committee**").
- 6.1.2 The members of the Evaluation Committee shall be prohibited from participating directly or indirectly in the preparation and/or submission of any Bid, and shall be prohibited from providing any assistance to any Bidder for the purposes thereof, except as may be expressly provided herein.

**6.2 OPENING AND PRELIMINARY EXAMINATION OF BIDS**

- 6.2.1 The Evaluation Committee shall open the Bids of each Bidder, in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location stipulated in the Bid Data Sheet. The Bidders' representatives shall bear identification and authorization documents issued by the Bidder. The Bidders' representatives who are present shall sign a register evidencing their attendance.
- 6.2.2 The Evaluation Committee shall open the outer envelopes/boxes, one at a time, in the order in which the Bids were received, and take out the inner envelopes/boxes containing the Technical Bids and the Financial Bids. These inner envelopes/boxes shall be placed on a table in open view of the public but shall remain sealed. The Evaluation Committee shall then declare the Bids opening proceedings ended and shall dismiss the Bidders' representatives present.
- 6.2.3 No Bid shall be rejected at the Bids opening except for late Bids pursuant to Section 5.4.
- 6.2.4 At the opening of each bid, the Evaluation Committee shall announce the Bidders' names and any other details that it may consider appropriate.
- 6.2.5 The Evaluation Committee shall prepare minutes of the Bids opening, including the information disclosed to those present in accordance with Section 6.2.1.
- 6.2.6 The Evaluation Committee shall then proceed to the opening and evaluation of the Technical Bids and Financial Bids.

**6.3 OPENING AND EVALUATION OF THE TECHNICAL BID**

- 6.3.1 The Evaluation Committee shall evaluate the Technical Bids on a "pass / fail" basis following the criteria set forth in **ANNEX 4 (TECHNICAL EVALUATION CRITERIA)**. The Evaluation Committee's determination shall be based on the contents of the Technical Bid itself without recourse to extrinsic evidence.
- 6.3.2 Any deficiencies or errors in a Bid will not result in its automatic rejection. In case the Evaluation Committee determines that the Technical Bid is subject to minor deficiencies or certain errors or omissions, it may request for clarifications from the Bidders in writing to



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correct such deficiencies and submit the cured Technical Documents to the Evaluation Committee in accordance with the requirements set out in this Invitation for Bids.

6.3.3 The Authority shall notify in writing:

- (a) each Bidder whose Technical Bid has received a "pass" score that its Technical Bid has been accepted by the Evaluation Committee and that the Bidder is invited to attend the opening of the Financial Bids at the time, date, and location set out in the Bid Data Sheet; and
- (b) each Bidder whose Technical Bid has not received a "pass" score that its Technical Bid has been rejected by the Evaluation Committee and that the Bidder is not invited to attend the opening of the Financial Bids.

6.3.4 For the purposes of this determination, substantially responsive Technical Documents are those that conform to all the terms and conditions of the Bidding Documents without material deviations, objections, conditionality or reservations. A material deviation, objection, conditionality or reservation is one: (i) that affects in any substantial way the scope, quality or performance of the Concession Agreement; (ii) that limits in any substantial way, inconsistent with the Bidding Documents, the Authority's rights or the Successful Bidder's obligations under the Concession Agreement; or (iii) whose rectification would unfairly affect the competitive position of other Bidders who are presenting substantially responsive Technical Documents.

6.3.5 Bids for which the Technical Documents have been determined not to be substantially responsive shall be rejected, and the Bid Security as well as the unopened Financial Bid Envelope of that Bid shall be returned to the representatives of such Bidder.

6.3.6 The Evaluation Committee shall not open, and shall promptly return, the Financial Bid and Bid Security of each Bidder whose Technical Bid has not received a "pass" score and such Bidder's Bid shall not be considered further for evaluation, irrespective of the circumstances.

**6.4 OPENING AND EVALUATION OF FINANCIAL BIDS**

6.4.1 The Evaluation Committee shall open the Financial Bid Envelopes of those Bidders whose Technical Bid has received a "pass" score pursuant to Section 6.3.3(a) in the presence of Bidders' designated representatives who choose to attend, at the time, date, and location set out in the Bid Data Sheet.

6.4.2 The Evaluation Committee shall prepare minutes of the Financial Bid opening, including the information disclosed to those present in accordance with Section 6.4.1.

6.4.3 Each Financial Bid shall be evaluated and shall be given a score (the "**Financial Score**") based on the following formula:

<b>FINANCIAL SCORE = <math>Sf = 100 * Fm/F</math></b>
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Where  $S_f$  is the financial score,  $F_m$  is the lowest price and  $F$  is the price of the Bid under consideration.

- 6.4.4 The Evaluation Committee shall rank the Financial Bids from the lowest Financial Score to the highest Financial Score. Where two or more Bidders are evaluated to have the same Financial Score, the Evaluation Committee may request that the relevant Bidders submit a best and final financial offer ("**BAFO**") which, if submitted, must result in a lower Financial Score than the initial Financial Score. No Bidder shall be obliged to submit a BAFO and failure to do so shall not result in the forfeiture of the Bid Security. BAFO's shall be ranked lowest to highest.
- 6.4.5 Arithmetic errors in the Financial Bid, if any, will be rectified on the following basis: if there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of errors, its Financial Bid will be rejected.

### **6.5 WAIVER OF NON-CONFORMITIES IN BIDS**

- 6.5.1 The Evaluation Committee may waive any minor informality, non-conformity or irregularity in a Bid that does not constitute a material deviation, and that does not prejudice or affect the relative ranking of any Bidder as a result of the Technical Bid and Financial Bid evaluation.

### **6.6 CONTACTING THE AUTHORITY**

- 6.6.1 From the time of Bid submission to the time of the Concession Agreement award, if any Bidder wishes to contact the Authority, it should do so in writing.
- 6.6.2 If the Bidder or the Successful Bidder (i) resorts to deceit and/or fraud in its dealings with the Authority (including the Evaluation Committee), its advisors, employees, consultants or agents or otherwise in relation to the award of the Concession Agreement; or (ii) is proven to have personally or through an intermediary, either directly or indirectly, offered or attempted to offer a bribe to any Authority's employee involved with the Bid or the award of the Concession Agreement, then the Bidder's Bid and, if applicable, the said award, shall be cancelled and the Bid Security or the Performance Security (as the case may be) shall be forfeited, all without prejudice to any Authority's claim for ensuing damages and without prejudice to any criminal and/or administrative proceedings (or otherwise) in the province of Sindh.

### **6.7 EVALUATION REPORT**

- 6.7.1 The results of the evaluation of the Bids conducted by the Evaluation Committee in accordance with this Section 6.7.1 shall be reflected in the Bids evaluation report (the "**Bids Evaluation Report**") which shall be published on the Authority's official website and communicated to Bidders on the date specified in the Estimated Timetable which shall be at least seven (7) days prior to Notification of Award.



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**7. AWARD OF CONTRACT**

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**7.1 CHANGES IN QUALIFICATION STATUS**

- 7.1.1 Prior to proceeding with the award of the Concession Agreement, the Authority may verify to its satisfaction that no circumstances, in particular the Bidder's contract work in hand, future commitments and current litigation, have arisen or intervened during the period between the submission of its Prequalification Application and its Bid that would change the Authority's opinion as to whether the Bidder still meets the criteria set out in the Prequalification Document.
- 7.1.2 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's Bid, in which event the Authority may, subject to Section 7.3, proceed to the next lowest evaluated Financial Bid.

**7.2 AWARD CRITERIA**

- 7.2.1 Subject to Section 7.1 and 7.3, the Authority shall award the Concession Agreement to the Bidder whose Financial Bid was the lowest, in conformity with Section 6.4.3 (the "**Successful Bidder**").

**7.3 AUTHORITY'S RIGHT TO ACCEPT OR REJECT**

- 7.3.1 The Authority may, in its sole discretion,
- (a) accept any Bid;
  - (b) reject any Bid;
  - (c) annul the Bidding Process and reject all Bids;
  - (d) annul the Bidding Process and commence a new process; or
  - (e) waive irregularities, minor informalities, or minor non-conformities which do not constitute material deviations in the submitted Bids from the Bidding Documents,

at any time prior to the award of the Concession Agreement without incurring any liability to the affected Bidder or Bidders and without any obligation to inform the affected Bidder or Bidders of the grounds for the Authority's actions.

**7.4 NOTIFICATION OF AWARD**

- 7.4.1 Prior to the expiration of the Bid Validity Period, the Authority shall notify the Successful Bidder in writing that its Bid has been accepted by the Authority (the "**Notification of Award**").
- 7.4.2 The results of the Bidding Process, shall be published on the Authority's official website at least seven (7) days prior to Notification of Award.

**7.5 INCORPORATION OF A PROJECT COMPANY**

- 7.5.1 Prior to signing the Concession Agreement in accordance with provisions of Section 7.6 below,





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the Successful Bidder may (and if the Successful Bidder is a Consortium, the Successful Bidder shall) incorporate a special purpose company under the Pakistani Companies Ordinance, 1984, that will become Operator under the Concession Agreement (the "**Project Company**"). The shareholding of the Project Company (if incorporated) shall reflect the equity structure submitted by the Successful Bidder as Part IV of its Technical Documents.

### **7.6 SIGNING OF THE CONCESSION AGREEMENT**

7.6.1 Within thirty (30) calendar days of the Notification of Award, the Successful Bidder or the Project Company formed by the Successful Bidder (as the case may be) shall sign the Concession Agreement with the Authority. There shall be no negotiation of the Concession Agreement and modifications shall only be to complete the missing information and correcting errors.

### **7.7 FAILURE TO SIGN THE CONCESSION AGREEMENT**

7.7.1 If the Successful Bidder fails to comply with the provisions of Section 7.5 and 7.6, this failure shall constitute sufficient grounds for annulment of the award and forfeiture of the Bid Security and such other remedies as the Authority may take under the applicable law, and the Authority may, in its discretion, award the Concession Agreement to the Bidder who has the next lowest Financial Bid (the "**Second Ranking Bidder**"). In such event, the Authority shall notify the Second Ranking Bidder of its election by written notice (a "**Substitute Selection Notice**"). The Second Ranking Bidder shall, from and after the date of receipt of the Substitute Selection Notice, assume the status of the Successful Bidder hereunder and shall meet the requirements of Sections 7.5 and 7.6.

7.7.2 In the event that the Authority delivers a Substitute Selection Notice to the Second Ranking Bidder, the Second Ranking Bidder shall extend its Bid Security Validity Period to a date not earlier than the date of delivery of the Performance Security as specified in the Concession Agreement.



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**ANNEX 1 - BID DATA SHEET**

The following Bid-specific data shall supplement the provisions in Invitation for Bids.

<b>1</b>	<b>Project Name</b>	<b>Sindh Education Management Organizations</b>
<b>2</b>	<b>Address and Contact Person of the Authority</b>	<b>Sindh Education and Literacy Department, Dr. Fazlullah Pechuho Secretary Education, Government of Sindh 1st Floor, Tughlaq House, Sindh Secretariat, Karachi, Pakistan. Tel: +92-21-99211225</b>
<b>3</b>	<b>Address and Contact Person of PPP Unit</b>	<b>Mr. Tauseef Lateef Director Public Private Partnership (NODE) 3rd Floor, Old KDA Building, Secretariat No.3, Karachi. Tel: +92-21-99211180 Fax: +92-21-99211311 Email: directorppp.gos@gmail.com</b>
<b>4</b>	<b>Address for Submission of Bids, Bid Modifications and Bid Withdrawals</b>  <i>All Bids need to be sent to this address. Bids sent elsewhere will not be considered.</i>	<b>PPP NODE, EDUCATION AND LITERACY DEPARTMENT Mr. Tauseef Lateef Director Public Private Partnership (NODE) 3rd Floor, Old KDA Building, Secretariat No.3, Karachi. Tel: +92-21-99211180 Fax: +92-21-99211311 Email: ppp.node@sindheducation.gov.pk</b>
<b>5</b>	<b>Number of Copies of Bids</b>	- one (1) printed original - one (1) electronic copy (DVD or USB drive); and - one (1) printed copy.
<b>6</b>	<b>Bids Submission Deadline</b>	14:00 Pakistan time on November 30, 2015
<b>7</b>	<b>Place and Time of Technical Bids Opening</b>	15:00 Pakistan time on November 30, 2015, Committee Room, Tughlaq House, Sindh Secretariat, Karachi



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<b>8</b>	<b>Place and Time of Financial Bids Opening</b>	15:00 Pakistan time on [●], Committee Room, Tughlaq House, Sindh Secretariat, Karachi
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**ANNEX 2 - FORMS**

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**FORM A - BID FORM**

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**[ON THE LETTERHEAD OF THE BIDDER]  
RELATING TO THE SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

DATE:

**To:** Education and Literacy Department  
Government of Sindh  
1<sup>st</sup> Floor, Tughlaq House,  
Sindh Secretariat,  
Karachi, Pakistan.

**Re:** **SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

Ladies and/or Gentlemen,

**1. DEFINITIONS**

Unless the context indicates otherwise, all capitalized terms and expressions used herein and in our Bids have the meaning given to them in the document entitled 'Invitation for Bids' dated [●] (as amended and/or supplemented from time to time) (the **Invitation for Bids**).

**2. GENERAL**

We, the undersigned, acknowledge, confirm and agree that:

- A) having carefully examined, read and understood and agreed to the terms of the Concession Agreement (including the annexes), the Bidding Documents, including the Annexes;
- B) we have satisfied ourselves that we have full and complete understanding of the nature and location of the Project and services referenced above and the general and local conditions to be encountered in the performance thereof; and
- C) we, the undersigned, offer to carry out all services and obligations of the Operator as defined in the Concession Agreement in conformity with our Bid and the Bidding Documents.

**3. PRICING**

We understand that you are not bound to accept the lowest Financial Bid or any Bid you may receive.

**4. PERFORMANCE SECURITY**



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If our Bid is accepted, we undertake to provide the Performance Security (as defined in the Concession Agreement) in the form, in the amount and within the times specified in the Concession Agreement.

**5. PROPOSAL COMPLIANT WITH SUBMISSION REQUIREMENTS**

We declare and confirm that our Bid satisfies and complies with the submission requirements indicated in the Invitation for Bids.

We also undertake that no circumstances have arisen or intervened during the period between the submission of our Prequalification Application and this Bid that (i) has resulted in us no longer meeting the Prequalification Criteria or (ii) would materially and adversely affect our ability to satisfactorily perform the Services as defined in the Concession Agreement if our Bid is accepted.

**6. FIRM AND IRREVOCABLE PROPOSAL**

We agree to abide by this Bid, which consists of our Technical Bid and Financial Bid (each as defined in the Bidding Documents), for a period of one hundred and twenty (120) days from the Bids Submission Deadline as set forth in the Bidding Documents, and that it is irrevocable and shall remain binding upon us and may be accepted by you at any time before the expiration of that period.

Until a formal Concession Agreement is prepared and executed between us, our Bid, together with your written acceptance thereof and your Notification of Award, shall constitute a binding contract between us.

**7. FURTHER WARRANTIES**

We hereby represent and warrant that all information, data and materials of any nature whatsoever provided by us in the Bid is true and accurate and not misleading in any nature.

We have made a complete and careful examination of the Invitation for Bids and have received all the relevant information from the Authority, as required for the purposes of submission of the Bid. We further warrant that we have verified and understand all the information received from the Authority in connection with the Invitation for Bids.

To the extent that any provision in our Bid conflicts with the terms and conditions of the Bidding Documents, such provision is hereby withdrawn.

**8. CONFIDENTIALITY**

In connection with the transaction contemplated by the Invitation for Bids, the Bidder has been (or will be) given access to information regarding the Project, including, but not limited to, financial data, agreements, business plans, software, reports, data, records, forms and other information, as well as information regarding the Authority or provided by the Authority (all such information being referred to as "**Confidential Information**").

The Bidder hereby agrees and warrants that to the extent it receives Confidential Information, the Bidder and its affiliates, controlling and related persons and agents (collectively, the "**Recipient**"), the Recipient shall:



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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- (a) keep and maintain the Confidential Information strictly confidential;
- (b) disclose such Confidential Information (if at all) only to its controlling persons, its attorneys and professional advisors, and to such employees who have a reasonable need to know such Confidential Information (subject in each case to such person's agreement to make no further disclosure), or as may be required by law;
- (c) use such Confidential Information solely for the purpose of determining whether to enter into the transaction contemplated hereby; and
- (d) promptly upon request of the Authority disclosing Confidential Information following the abandonment of the transaction contemplated by the Invitation for Bids, return such Confidential Information (and all copies thereof) to the Authority.

**9. ADDITIONAL DOCUMENTS**

In addition to the Bid Form the Bidder shall submit the information identified in **SCHEDULE 1 (ADDITIONAL DOCUMENTS)** to this Bid Form together with the Bid Form.

We acknowledge and agree that the Authority will not be responsible for any errors or omissions on our part in preparing this Bid, and we shall indemnify the Authority fully in connection therewith.

*[signature]*

In the capacity of  
*[position]*

Authorized to sign this Bid Form of  
*[name of Bidder]*



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**SCHEDULE 1 – ADDITIONAL DOCUMENT**

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**(1) DESCRIPTION OF THE BIDDER**

- (a) Each Bidder must provide the following information:
- (i) A detailed description of the Bidder, including:
- Legal name;
  - Complete head office contact information, including mailing address, telephone and fax numbers, and an e-mail address;
- (ii) Incorporation details, including corporate charter, articles of incorporation, and proof of legal authorization to operate in Pakistan. If the Bidder is an unincorporated legal entity, then the proof of that legal entity's existence must be provided.
- (b) In case of a Consortium, the members of the Consortium shall enter into a binding joint bidding agreement for the purpose of submitting the Bids. The joint Bidding agreement to be submitted along with the Bid, shall, inter alia;
- (i) convey the intent to form a Project Company (with shareholding / ownership equity commitment(s) in the Project Company in accordance with this Invitation for Bids) which would enter into the Concession Agreement and subsequently perform all the obligations of the Operator in terms of the Concession Agreement, in case the Concession to undertake the Project is awarded to the Consortium;
- (ii) clearly outline the proposed roles and responsibilities, if any, of each member (including each Member);
- (iii) commit the minimum equity stake to be held by each Member;
- (iv) commit that all of the Members (whose experience will be evaluated for the purposes of this Invitation for Bids) shall subscribe to a cumulative of 100% of the paid up shares capital of the Project Company and subscribe to the shares in the Project Company.
- (v) provide for the members of the Consortium to undertake that they shall collectively submit/ include a statement to the effect that all members of the Consortium shall be liable, jointly and severally, for all obligations of the Operator in relation to the Project until the expiry of the Concession Agreement; and
- (vi) except as provided under this Invitation for Bids, there shall not be any amendment to the joint bidding agreement without the prior written consent of the Authority.
- (c) In case of a single Bidder (not being a Consortium), it must provide with an undertaking that it shall be liable for all obligations of the Operator in relation to the



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Project until the expiry of the Concession Period. Further, in case of a single Bidder, the Bidder shall neither undertake nor shall it permit any Change in Ownership and/or Control. Further, in case of a single Bidder (not a Consortium), the Bidder shall not, express with the prior written consent of the Authority, sell, transfer, convey or otherwise dispose its direct and / or indirect, legal and/or beneficial ownership in the shares of the Project Company (or any part thereof).





**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**FORM B - POWER OF ATTORNEY**

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**NOTES FOR EXECUTION OF POWER OF ATTORNEY**

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, each Bidder (or if the Bidder is a Consortium, each Consortium member) shall provide a written power of attorney substantially in the form attached hereto **FORM B OF ANNEX 2 (FORMS)**, **duly stamped and notarized**, indicating that the person(s) signing the Bid has(ve) the authority to sign the Bid and thus, the Bid is binding upon the Bidder during the full period of its validity.
- This Power of Attorney shall be notarised with the Notary Public.
- Please find below the form and substance of the Power of Attorney.



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**FORM OF POWER OF ATTORNEY RELATING TO THE SINDH EDUCATION MANAGEMENT  
ORGANIZATIONS**

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**[On Stamp Paper of at least Rs. 200]**

On this ..... day of .....

Before me

The Notary in this office

The undersigned

Mr./Ms. \_\_\_\_\_

In his capacity as \_\_\_\_\_

Nationality

Holder of Passport or ID no. \_\_\_\_\_

Issued from \_\_\_\_\_

Dated \_\_\_\_\_

Residing at \_\_\_\_\_

Hereby appoints Mr./Ms. \_\_\_\_\_ in his capacity as \_\_\_\_\_, to:

- (a) Execute under hand, or under seal, and deliver to the competent authorities all the documents listed in Schedule 1 attached hereto;
- (b) Deliver and receive any document or instrument in relation to the documents listed in Schedule 1 attached hereto; and

Do all things necessary and incidental in respect of the matters set out herein including to do, execute and perform any other deed or act ought to be done executed or performed to perfect or otherwise give effect to all documents in respect of the authority's Invitation for Bids in relation to the SINDH EDUCATION MANAGEMENT ORGANIZATIONS.

And is hereby authorized to appoint others for all or part of the powers delegated by the present Power of Attorney.



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IN WITNESS WHEREOF the Grantor has executed this Power of Attorney **[under seal]** on the date set out above.

[SEAL] )  
)  
)  
)

\_\_\_\_\_  
**[Name / Title of Grantor representative]**

**WITNESSES: WITNESS 1:**

.....

NAME:

CNIC / PASSPORT NUMBER:

ADDRESS:

**WITNESS 2:**

.....

NAME:

CNIC / PASSPORT NUMBER:

ADDRESS:

**ACCEPTED & AGREED**

.....

(SIGNATURE)

(NAME, TITLE AND ADDRESS OF THE ATTORNEY)

[NOTARISED]



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**FORM C - CONFLICT OF INTEREST STATEMENT**

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**RELATING TO THE SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

**[Insert the date]**

**Re: Sindh Education Management Organizations**

Ladies/Gentlemen,

We, the undersigned, are not aware of any conflict or potential conflict arising from prior or existing contract or relationship which could materially affect our capability to comply with our obligations under the Concession Agreement for the Project.

In particular, other than as disclosed below, we have no prior or existing contracts, negotiations or relationships with the Authority, its affiliates, representatives, advisors or consultants.

We disclose that the following transactions may be in conflict with the Project:

Name of Project	Date Started	Description of Conflict

Yours Sincerely,

Authorized Signature:  
Name and Title Signatory:  
Name of Firm:  
Address:



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**FORM D – INTEGRITY PACT  
DECLARATION OF FEES, COMMISSION AND BROKERAGE ETC. PAYABLE BY THE  
BIDDERS**

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**CONTRACT TITLE:      SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

[*Bidder*] hereby declares that it has not obtained or induced the procurement of any contract, right, interest, privilege or other obligation or benefit from Government of Sindh (the **GoS**) or any administrative subdivision or agency thereof or any other entity owned or controlled by it (i.e. the GoS) through any corrupt business practice.

Without limiting the generality of the foregoing, [*Bidder*] represents and warrants that it has fully declared the brokerage, commission, fees etc., paid or payable to anyone and not given or agreed to give and shall not give or agree to give to anyone within or outside Pakistan either directly or indirectly through any natural or juridical person, including its affiliate, agent, associate, broker, consultant, director, promoter, shareholder, sponsor or subsidiary, any commission, gratification, bribe, finder's fee or kickback, whether described as consultation fee or otherwise, with the object of obtaining or inducing the procurement of a contract, right, interest, privilege or other obligation or benefit, in whatsoever form, from the GoS, except that which has been expressly declared pursuant hereto.

[*Bidder*] certifies that it has made and will make full disclosure of all agreements and arrangements with all persons in respect of or related to the transaction with the GoS and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty. [*Bidder*] accepts full responsibility and strict liability for making any false declaration, not making full disclosure, misrepresenting facts or taking any action likely to defeat the purpose of this declaration, representation and warranty.

It agrees that any contract, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other right and remedies available to the GoS under any law, contract or other instrument, be voidable at the option of the GoS.

Notwithstanding any rights and remedies exercised by the GoS in this regard, the [*Bidder*] agrees to indemnify the GoS for any loss or damage incurred by it on account of its corrupt business practices and further pay compensation to the GoS in an amount equivalent to ten times the sum of any commission, gratification, bribe, finder's fee or kickback given by [*Bidder*] as aforesaid for the purpose of obtaining or inducing the procurement of any contract, right, interest, privilege or other obligation or benefit, in whatsoever form, from the GoS.

**Acknowledged, Accepted & Agreed  
For & On Behalf of:**

**EDUCATION      AND      LITERACY  
DEPARTMENT, GOVERNMENT OF SINDH  
through its duly authorized signatory**

**Acknowledged, Accepted & Agreed  
For & On Behalf of:**

**[INSERT NAME OF BIDDER], through its  
duly authorized signatory**



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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.....  
(Signature)

NAME:

DESIGNATION:

.....  
(Signature)

NAME:

DESIGNATION:



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**FORM E - BID SECURITY FORM**

**RELATING TO THE SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

....., 20...

To:  
The Government of Sindh, [Insert Address] (the "**Beneficiary**")

**Guarantee No:** \_\_\_\_\_ (**the Guarantee**)  
**Date of Issue:** \_\_\_\_\_  
**Date of Expiry:** \_\_\_\_\_  
**Guarantee Amount:** \_\_\_\_\_  
**Name of Guarantor:** \_\_\_\_\_  
**Name of Principal:** \_\_\_\_\_  
**Penal Sum of Security:** \_\_\_\_\_

We, [●]<sup>1</sup>, being the Guarantee issuing bank (the **Issuing Bank**) understand that the following party / parties have responded to the 'Invitation for Bids' issued by the Government of Sindh, dated [●] in relation to the 'Sindh Education Management Organizations' (as amended and/or supplemented or as clarified from time to time) (the **RFP**), by submitting their respective formal proposals / bids:

[Name of the Bidder], a [Insert legal status] existing under the laws of [Insert Country] having its [registered office OR place of business] located at [Insert address], (the **Bidder**, which expression includes its successors, assignees and transferees).

Further, We, the Issuing Bank, understand that pursuant to the RFP, the Bidder is required to provide the Government of Sindh (the **Beneficiary**), a bid security in the form of a bank guarantee equal to PKR [●] and issued by a scheduled commercial bank operating in Pakistan (with a minimum credit rating of at least 'A-' as rated by JCR VIS or an equivalent rating by PACRA).

The above premised, we (the **Issuing Bank**) hereby undertake irrevocably and unconditionally on demand to pay to the Beneficiary, without any notice, reference, recourse, evidence, document in support of the demand, the validity, proprietary or legality of the said demand to the Bidder or to any other entity or without any recourse or reference to the RFP or any other document, agreement, instrument or deed, any sum or sums (or any part thereof) equivalent in aggregate up to but not exceeding a maximum amount of:

PKR [●]/- (Pakistani Rupees [●])  
(the **Guaranteed Amount**)

at sight and immediately, provided however not later than 1 business day from the date of receipt of the Beneficiary's first written demand (the **Demand**) at the Issuing Bank's offices located at [●] or through SWIFT instructions transmitted by the Beneficiary's bank (i.e. [●]), on behalf of the Beneficiary, to the Issuing Bank, such Demand referring to this Guarantee and stating the amounts demanded.

<sup>1</sup> Insert name of issuing Bank;



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

This Guarantee shall come into force and shall become automatically effective upon the submission of the Proposal by the Guarantor to the Beneficiary in response to the RFP.

After having come into force, this Guarantee and our obligations hereunder will expire on the earlier of:

- (i) Bids Submission Deadline + [149 days] (the **Guarantee Original Expiry Date**) provided that, in the event the Issuing Bank has receipt of the Demand on or immediately prior to the Guarantee Original Expiry Date, the Issuing Bank shall honour that Demand; or
- (ii) when the aggregate of all payments made by us under this Guarantee equals the Guaranteed Amount.

Upon expiry, this Guarantee shall be returned to the Guarantor in terms of the conditions stipulated under the RFP. Multiple Demands may be made by the Beneficiary under this Guarantee but our aggregate liability will be restricted up to the Guaranteed Amount.

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

This Guarantee for its validity period shall not be prejudiced or affected in any manner by any change in our constitution or of the Bidder'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, agreement, deed or other instruments or documents are by way of reference only and shall not affect our obligations to make payment under the terms of this Guarantee.

The Beneficiary may not assign / transfer or cause or permit to be assigned or transferred any of their rights, interests and benefits of this Guarantee without our prior written consent, which consent shall not be unreasonably withheld or delayed.

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.

We hereby declare and confirm that under our constitution and applicable laws and regulations, we have the necessary power and authority, and all necessary authorizations, approvals and consents thereunder to enter into, execute, deliver and perform the obligations we have undertaken under this Guarantee, which obligations are valid and legally binding on and enforceable against us under the Pakistani law





**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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and under the laws of the jurisdiction where this Guarantee is issued. Further, that the signatory(ies) to this Guarantee is/are our 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 of Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein.

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

**Authorized signatory:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**Place:** \_\_\_\_\_  
**Authorized signatory:** \_\_\_\_\_  
**Date:** \_\_\_\_\_  
**Place:** \_\_\_\_\_



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
INVITATION FOR BIDS**

**FORM F - FINANCIAL BID FORM**

**RELATING TO THE SINDH EDUCATION MANAGEMENT ORGANIZATIONS**

**To:** Education and Literacy Department  
Government of Sindh  
1<sup>st</sup> Floor, Tughlaq House,  
Sindh Secretariat,  
Karachi, Pakistan.

**Re:** SINDH EDUCATION MANAGEMENT ORGANIZATIONS

Date:

Ladies and/or Gentlemen,

Having carefully examined the Bidding Documents, including the Annexes, the receipt of which is hereby acknowledged, and having satisfied ourselves with the nature and location of the works and services referenced above and the general and local conditions to be encountered in the performance thereof, we, the undersigned, propose:

<b>Total Project Cost</b>	<b>PKR [●]/- (Pakistani Rupees [●] Only)</b>
---------------------------	--

The Project Cost as per Section 4.4.2.5 of the Invitation for Bids are provided in Attachment 1 to this Financial Bid Form. In addition, a copy of the Financial Model, as required to be submitted in accordance with Section 4.4.2.6, is provided on a 'Microsoft Windows' readable USB memory stick submitted with the Financial Bid.

We acknowledge that the Financial Bid that we have submitted will remain fixed and will be only indexed in accordance with the terms and conditions of the Concession Agreement.

We acknowledge and agree that the Authority will not be responsible for any errors or omissions on our part in preparing this Financial Bid and the Project Cost, and we shall indemnify the Authority fully in connection therewith.

*[signature]*

In the capacity of  
*[position]*

Authorized to sign this Financial Bid Form of  
*[name of Bidder]*



**ATTACHMENT 1 TO THE FINANCIAL BID FORM – ESTIMATED PROJECT COST**

*The following table is only an indicative table in respect of various heads of costs and may be amended as per the Bidder's specific requirements / bid:*

A1. Budget for Proposed Interventions (Identified in Technical Bid)	Rs.	A2. Direct Cost	Rs.
Teacher Training		Salary of Project Management Staff	
Staff Training		Salary of School Staff (Teaching and non-teaching) hired by EMO	
Assessment System		Travel and General Expenses	
Supplementary Reading Material		Project Office Establishment Cost	
Interventions for screening Health, Hygiene and Nutrition status of children		Project Non-Salary Cost	
ICT and innovative approaches		Management Fee	
IT based School Management and Reporting		(Other(s) interventions proposed by EMOs)	
Community mobilization, activation and outreach			
(Other(s) interventions proposed by EMOs in technical bid)			
<b>TOTAL</b>		<b>TOTAL</b>	
A3. Overhead and Fixed Cost	Rs.	A4. Other Direct Cost	Rs.
Repair and Maintenance		Baseline Survey	
Purchase of Assets including furniture, equipment, etc. (In addition to the existing assets)		Audit	
Costs of the Independent Auditor		Monitoring and Reporting	
Costs of the Independent Expert		Contingencies.	
Utilities (on actuals)		(Other(s) interventions proposed by EMOs)	
WHT			
<b>TOTAL</b>		<b>TOTAL</b>	



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*The Financial Model submitted by the Bidder shall also include any anticipated revenues from sources other than the Project Cost.*

*The Bidder shall specify the Project Cost in respect of each year of the Concession Period. The following assumptions shall be used by the Bidder while quoting its Project Cost:*

- *A Discount Rate of 10% shall be assumed to index the Project Cost for each year of the Concession Period.*
- *The Costs of the Independent Expert and the Independent Auditor shall be based on market quotations, taking into account the requirement for their appointment.*
- *Cost of inflation will be built separately into the financial proposal.*
- *Cost of Utilities may take into account any renewable sources of energy that the Bidder desires to install.*
- *The Bidder shall take into account all capital expenditure that it desires to incur while quoting the Project Cost for each year of the Concession Period.*
- *The amounts in respect of purchase of any assets, fixtures or other equipment shall not exceed 15% of the PC-1 value of the specific school, as set out in Annexure 8. The budget for this head is non-lapsable and will add with next years' budget.*
- *Repair and Maintenance is fixed @10% of School Specific Budget of the School for FY 2015/16. The budget for this head is non-lapsable and will add with next year budget. The School Specific Budget for each school is set out in Annex 8.*
- *The Bidder shall take into account any other sources of revenues while calculating the Project Cost that it includes in the bid.*
- *The Bidder shall teach the syllabus as notified by the Sindh Text Book Board and all costs quoted in the Project Cost must reflect the same.*
- *The Bidder may propose any additional heads of costs in its break-up of the financial bid, which shall be considered by the Authority.*
- *Realistic budgets, aligned with all staffing, facilities, and programming needs should be provided. Budget narrative with clear assumptions about expenditures, as well as elaboration of any additional funding source such as private sector support grants.*



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- *The Management Fee quoted by the Bidder shall be separate in respect of each year of the Concession Period and this Management Fee shall be the additional amount bid by the Bidder in respect of providing services to the Authority hereunder. It is up to the Bidder whether it/he/she wants to include and charge a Management Fee or not.*



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**ANNEX 3 - DRAFT CONCESSION AGREEMENT**

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*[Draft of the Concession Agreement sent as separate attachment]*



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**ANNEX 4 - CONTENT OF TECHNICAL BID**

No	Sections to be submitted
(i)	<p><b>Experience of Management of Schools:</b> Demonstration of applicant’s expertise, skill-set, and record of successful experience necessary to start, manage, and grow a high-performing school</p>
(ii)	<p><b>Proposed Methodology and Work-Plan:</b></p> <ul style="list-style-type: none"> <li>• A thoughtful explanation of the applicant’s educational philosophy and consideration of how proposed pedagogy will successfully serve the intended school population.</li> <li>• Alignment of curriculum with the syllabus prescribed by the Education and Literacy Department, Government of Sindh, along with a detailed description of teaching methodology to achieve the Student Learning Objectives for students, including special need students and students performing below grade level.</li> <li>• Actionable plan for improving individual student learning needs and providing differentiated instruction, student-centered learning environment, and opportunities for co-curricular activities.</li> <li>• Robust plan for strategic data collection, analysis, and use, including assessment strategy, proposed intervention process, and effective communication of student results to parents and other stakeholders</li> <li>• Rigorous academic performance goals, disaggregated by gender and grades.</li> <li>• School academic calendar in compliance with the Government, and effective plan for tracking student attendance and reporting truancy</li> </ul>
(iii)	<p><b>Key professional staff qualifications and competence for the assignment:</b></p> <ul style="list-style-type: none"> <li>• CVs of key staff.</li> <li>• Comprehensive job descriptions for staff, and plan for successfully recruiting qualified individuals to key positions</li> </ul>
(iv)	<p><b>Suitability of the transfer of knowledge (training) program:</b> Cohesive and thorough plan for staff supervision, evaluation and continuous development, aligned with academic calendar.</p>
(v)	<p><b>Strategy to reduce inefficiencies and addressing management gaps in public education:</b></p> <ul style="list-style-type: none"> <li>• Description of the needs and priorities of the target community, and explanation of how school will complement existing delivery of education services.</li> <li>• Transparent plan for community role in school development and for parent voice in school decisions.</li> </ul>
(vi)	<p><b>Strategy to Achieve the KPIs</b></p>



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**ANNEX 5 - TECHNICAL EVALUATION CRITERIA**

Only those Bidders whose Technical Bids obtain at least 75% (seventy five percent) of the total available marks, and not less than 50% (fifty percent) of the available marks in any sub-section below, shall obtain a "pass" score and be technically accepted for evaluation of their Financial Bids under Section 6.4.3:

**(i) Experience of Management of Schools:**

- +10 years and minimum 5 and more. (10)
- 10 years and minimum of 1 to 4 school. (8)
- +5 years and minimum 5 and more. (6)
- 5 years and minimum of 1 to 4 school. (5)

**Total points for criteria (i): [10]**

**(ii) Proposed Methodology and Work-Plan in responding to the RFP:**

- a) Technical Approach and Methodology [20]
- b) Work plan [20]

**Total points for criterion (ii): [40]**

**(iii) Key professional staff qualifications and competence for the assignment:**

- Team:
- Education Expert/s(Qualifications of Experts and Trainers) [15]
- School(s) Based Project Manager [15]

**Total points for criterion (iii): [30]**

**(iv) Suitability of the transfer of knowledge (training) program:**

- a) Relevance of Training Program [10]
- b) Training Approach and Methodology [10]

**Total points for criterion (iv): [20]**

Total points for the criteria:	<b>100</b>
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The minimum score against any technical criteria could be point five (0.5) and the maximum score could be the points assigned for each criteria.

The minimum technical score required to pass is: 75 Points overall and minimum 50% in each criteria.





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The formula for determining the financial scores is the following:

$$\mathbf{Sf = 100 \times Fm / F}$$

Where: *Sf* is the financial score, *Fm* is the lowest price and *F* is the price of the proposal under consideration.



**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**ANNEX 6 – FINANCIAL STRUCTURE FOR THE EMOS**

**Government Financial Structure**

The current financial structure defined by GOS for a school budget consists of Salary Budget, and Non-Salary Budget, which are defined below, with a proposed mechanism under the EMO initiative.

**1. Salary Budget:**

**a) Salary of Government teachers:**

- Salary of Government teachers will continue to come from the office of Accountant General (AG) Sindh.
- Salary budget of Government teachers is allocated in provincial budget against sanctioned positions for each school.
- Budget for first batch of EMO schools is given in Annex-8 of the RFP,

**b) Salary of teacher hired by EMO:**

- Government will provide funding for teachers hired by EMOs and salary of these will be disbursed from Escrow account.
- This expenditure would be reimbursed on actual basis.

**2. Non-Salary Budget:**

**a) Development Budget**

- The development schemes for each school will be made in consultation with EMOs and will be executed under EMO's supervision
- EMO will prepare development schemes and submit to education department. The proposed schemes will provide in sufficient details the civil construction to be undertaken, cost estimates, design, and other engineering requirements. The proposed schemes will also outline the plan prepared by EMO for supervising implementation and management of the same. The required funds will be disbursed to EMO through Escrow account.

**b) Non-Development Budget**

**i) School Specific Budget (SSB)**

- SSB will be disbursed using Escrow account, and EMO will be responsible for the planning, budgeting, implementation and audit.
- The school-wise SSB of first batch of EMO schools is also given in Annex-8 of this RFP.

**ii) SMC fund**

- SMC fund will be disbursed by the ELD to respective SMCs of schools as per current practice.
- EMO will provide technical support to SMCs to develop the School Improvement Plans (SIPs), approval of SIPs by General Body of SMCs, and implementation of SIPs.



## SINDH EDUCATION MANAGEMENT ORGANIZATIONS INVITATION FOR BIDS

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- SIPs will not be restricted to SMC funding only, and will also include resources such as the SSB, and private sector resources.

### **iii) Repair and Maintenance**

- EMO will be responsible for repair and maintenance of the school.
- For year-1 of the contract, “10%” percent of non-salary component of the School Specific Budget will be allocated to school for repair and maintenance.
- For every consecutive year starting year-2, a projected resource requirement will be submitted by EMO at the end of each financial year (latest by April 30<sup>th</sup> of each FY).
- EMO will be responsible to request ELD to pitch this resource requirement in its budget to GOS.
- Once the resources are available, the Escrow account mechanism will be used to channel funds to EMO.

### **iv) Utilities/Bills**

- Utilities/Bills will be paid on actual basis. However for budgetary purposes Rs. 700/month/room will be allocated for each school. Classrooms and all places in the schools will be construed as ‘rooms’; such as library, computer and science labs, admin offices etc. The budget will be released through Escrow account.

The Financial Model from Bidders shall further outline the flow of resources to schools to meet the KPIs set by the government.



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**ANNEX 7- KEY PERFORMANCE INDICATORS**

**MANAGEMENT & ORGANIZATION: Planning, Implementation & Evaluation (Overall Weight-age: 40%):**

<b>1</b>	<b>Key Progress Indicator</b>	<b>School Management Plan – 20%</b>		
	<b>Description</b>	Implementation of an all-inclusive management model comprised of planning, designing, budgeting, implementation framework, managing resources, evaluation, reporting and feedback to meet KPIs, improve student achievement and increase school retention and graduation rates.		
	<b>Measurement/Criterion :</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 20%</b>
		<ul style="list-style-type: none"> <li>• Annual Management Plan.</li> </ul>	Start of the year or signing of the Concession (max within 30 days).	<b>10%</b>
		<ul style="list-style-type: none"> <li>• Implementation Framework Timelines. *</li> </ul>	Within 15 days after submission of Annual Management Plan.	<b>05%</b>
	<ul style="list-style-type: none"> <li>• Development of an EMIS/Maintenance of the EMIS.**</li> </ul>	At the end of the first academic term thereafter, reporting on monthly basis.	<b>05%</b>	
<b>Notes/Guidelines:</b>	<p><b>* Implementation Framework:</b> A guide for day-to-day School Operations and Management Procedures (SOP). Eg. School Assembly, School Timetable, Curriculum Management, Lesson Planning, Teaching Methodology Progress Monitoring, Examination System, Skills Development, Co-Curricular Activities etc.</p>		<p><b>** EMIS:</b> Office Management including but not limited to Maintenance of School Records. Eg. Attendance, Admissions, Transfers, Hiring, Promotions, School Reports; and Inventory: Blackboard, Bulletin Board, Desk, Chairs, Cupboards, Books and Equipment such as Electrical Equipment (Audio Visual Aids, Computer Hardware/Software etc.</p>	



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<b>2</b>	<b>Key Progress Indicator</b>	<b>Improved Teachers' Availability and Attendance – 10%</b>		
	<b>Description</b>	Work with the Government school staff, administrators to ensure availability and attendance of teachers during the entire academic year.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 10%</b>
		<ul style="list-style-type: none"> <li>• Teacher Incentive Program. **</li> </ul>	Start of the year or signing of the Concession (max within 30 days).	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Biometric Attendance Management System (BAMS). *</li> </ul>	Start of the year or signing of the Concession (max within 90 days) thereafter, reporting on monthly basis to GoS.	<b>05%</b>
<b>Notes/Guidelines:</b>	<p><b>* Biometric Attendance Management System (BAMS).</b> Introduction of an Attendance System with a biometric device. It ensures a new and systematic method of data collection, of both teachers and administrative staff with just a scan their fingerprint to maintain a daily/monthly attendance record of the school.</p>	<p><b>** Teacher Incentive Program.</b> A detailed program developed after consultation with the HM and Teachers that includes both Accountability and Rewards mechanisms. Development of a comprehensive ACR report on the performance of each teacher to approve the annual increments in the case of good performers and to decide whether to retain or replace the weak performers.</p>		



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<b>3</b>	<b>Key Progress Indicator</b>	<b>Improved Students' Enrollment and Retention– 10%</b>		
	<b>Description</b>	Adopt a variety of techniques to increase and retain student enrollments, including conducting local community outreach activities to solicit parents/community support for student enrollments and retention.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 10%</b>
		<ul style="list-style-type: none"> <li>• Students Enrolment Plan. *</li> </ul>	Baseline at the start of the year or signing of the Concession (max within 30 days).	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Students Retention Plan. **</li> </ul>	At the end of the first academic term thereafter, reporting on monthly basis.	<b>05%</b>
<b>Notes/Guidelines:</b>	<p><b>*Students Enrolment and Retention Plan: (Grade/Gender)</b> Annual enrollment targets based on baseline student classroom ratio plus 5 for assessment year 1, baseline student classroom ratio plus 10 for assessment year 2 and so on so forth till maximum enrollment is attained.</p>	<p><b>** Students Retention Plan:</b> Annual retention targets based on baseline report with gradual decrease in student drop-out ratio if any.</p>		



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**LEARNING AND TEACHING: CURRICULUM AND ASSESSMENT/TEACHING PEDAGOGY. (Weightage: 35%)**

<b>4</b>	<b>Key Progress Indicator</b>	<b>Lesson Planning and Students' Assessment System – 20%</b>		
	<b>Description</b>	Implementation of GOS approved curriculum and syllabi. Use of students data (such as from formative and summative assessments) to inform and differentiate instruction in order to meet the academic needs of all students. Improved student learning and achievement through systemic pedagogical approach and systematic curricular/co-curricular program.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 20%</b>
		<ul style="list-style-type: none"> <li>Lesson Planning System: * (Curriculum and Syllabus)</li> </ul>	Within 15 days after submission of Annual Management Plan.	<b>05%</b>
		<ul style="list-style-type: none"> <li>Assessment System: ** (Monthly Formative &amp; Annual Summative Assessment)</li> </ul>	Monthly Formative Assessment * Annual Summative Assessment (In-house)	<b>10%</b>
		<ul style="list-style-type: none"> <li>Independent Assessment (From a third party)</li> </ul>	At the start of the new Academic year (30 days into the new class)	<b>05%</b>
	<b>Notes/Guidelines:</b>	* <b>Lesson Planning System:</b> (Curriculum and Syllabus) Introduction of the Government based Curriculum and development of a syllabi by a team of educationists.		** <b>Assessment System: (In-House/Independent)</b> Implementation of a robust Assessment System that is based on good evaluation practices, its



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		<p>The school's syllabi to be aligned with provincial curriculum frameworks and expectations; aligned vertically between grades and horizontally across classrooms at the same grade level; is fully implemented in classrooms; and supports opportunities for all students to master various skills and concepts. The curriculum to be regularly reviewed and revised It should include what the students should know by the time they complete the course in the class, within the academic year.</p>	<p>focus should be from the beginning of the academic term through the end.</p> <p>In addition, the Authority will consider other assessment data as supplementary evidence for a school's performance, it will be done by an independent assessment agency mutually selected by the EMO and Authority.</p> <p>Reference to the baseline, at least additional twenty (20) percent students achieving level of proficiency each year in respective subjects to a maximum of ninety (90) percent of the student of each grade based on the summative examination.</p>
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<b>5</b>	<b>Key Progress Indicator</b>	<b>Training and Capacity Building of Staff - 15%</b>		
	<b>Description</b>	Professional capacity building of staff to enhance teaching pedagogical skills using variety of tools inclusive of ICT and alternate learning mechanisms to modernize learning process.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 15%</b>
		<ul style="list-style-type: none"> <li>• Training Need Assessment (TNA): *</li> </ul>	Baseline at the start of the year or signing of the Concession (max within 30 days).	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Pedagogical/IT Skills Training:**</li> </ul>	Within the first quarter of the Concession. Thereafter, Bi-annually.	<b>10%</b>
<b>Notes/Guidelines:</b>	<p><b>* Training Need Assessment:</b> A structured way to gathers data to determine what training needs to be developed to help teachers, school and the EMOs to accomplish their goals and objectives. This is an assessment that looks at current knowledges, skills, and abilities, to identify any gaps or areas of need.</p>		<p><b>** Pedagogical/IT Skills Training:</b> Pedagogical (teaching) skills teachers use to impart the specialized knowledge/content of their subject area(s). Effective teachers display a wide range of skills and abilities that lead to creating a learning environment where all students feel comfortable and are sure that they can succeed both academically and personally.</p> <p><b>IT Skills Training:</b> Skills needed for the teachers to teach basic computer concepts and skills so that students can use computer technology in everyday life to develop new social and economic opportunities for themselves, their families and their communities.</p>	



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**SCHOOL ETHOS AND COMMUNITY ENGAGEMENT: (WEIGHTAGE 25%)**

<b>6</b>	<b>Key Progress Indicator</b>	<b>Improved Community Engagement – 15%</b>		
	<b>Description</b>	Support School Management Committee (SMC) meetings to engage parents and community stakeholders to design, develop and implement a comprehensive school improvement plan; and invite inputs from local community on educational and programmatic needs of students;		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 15%</b>
		<ul style="list-style-type: none"> <li>• School Management Committees:*</li> </ul>	Within 15 days after submission of Annual Management Plan thereafter, on quarterly basis.	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Community Outreach Program: **</li> </ul>	At the start of the academic term thereafter, on quarterly basis.	<b>05%</b>
	<ul style="list-style-type: none"> <li>• Parent Teacher Meetings (PTM): ***</li> </ul>	At the end of the academic term on biannual basis.	<b>05%</b>	
<b>Notes/Guidelines:</b>	<p><b>*School Management Committees:</b> A notified body a School Management Committee (SMC) plays a key role in strengthening relationships between the schools and local communities. It comprises of an Executive Committee and General Body with members belonging to Teachers, Community Elders, Students, and Parents. Minutes of</p>		<p><b>* Community Outreach Program:</b> School develops a program to ensuring that information is readily available to parents, and the general public regarding nondiscriminatory enrollment practices and the availability of specialized programs and services at the school to meet the needs of all students, particularly girls.</p>	



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	<p>Meeting and/or Resolutions tasks to be documented. Coordination with Authority (PPP Node) and district education machinery to ensure quality i.e. Directorate Schools, D.E.Os, T.M.Os, etc.</p>	<p>School to engage with community to build an environment that is supportive, keeping in view of the cultural context whereby within the community everyone is celebrated, respected, and heard.</p>
	<p><b>*** Parent Teacher Meetings (PTM):</b> A meeting of Teachers with Parents to review the progress of the students' academic and behavioral problems in a course of an academic year.</p>	

<b>7</b>	<b>Key Progress Indicator</b>	<b>Improved Health and Hygiene practices – 10%</b>		
	<b>Description</b>	Design and implement school based hygiene and nutrition education and awareness raising activities. Work with parents and SMCs to run social and behavior change campaigns in school.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF</b>
		<ul style="list-style-type: none"> <li>Health and Safety Policy: *</li> </ul>	<p>Within 15 days after submission of Annual Management Plan. (Annual)</p>	<b>10%</b>
		<ul style="list-style-type: none"> <li>Healthy Practices/Activities/Facility: **</li> </ul>	<p>At the start of the new term thereafter, on quarterly basis with biannual reporting on screening and progress achieved.</p>	<b>05%</b>
	<b>Notes/Guidelines:</b>	<p><b>* Health and Safety Policy:</b> A Health and Safety Policy is for the welfare of all persons in school, whether students, teaching staff, office staff, domestic staff or visitors to the</p>		<p><b>** Healthy Practices/Activities/Facility:</b> Implementation of Healthy Activities pertaining to school. It means proper cleanliness in play areas and wherever movement of students takes</p>



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		<p>school are the responsibility of the Principal. The EMO should ensure that all staff and students are aware of it in accordance with their age and level of understanding of the H&amp;S Policy.</p>	<p>place (e.g. school corridors; to and from classrooms; in the classrooms etc). Arranging of Physical Education periods, and other co-curricular activities to inculcate good behaviour, manners, discipline and personality.</p>
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**SINDH EDUCATION MANAGEMENT ORGANIZATIONS  
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**ANNEX 8- DETAILS OF THE FACILITIES**

The following four groups of public schools are intended to be handed over to successful Bidders by the Authority. As such, a Bidder may submit its bid in respect of one or more groups of schools, as identified below. It is clarified that a separate bid would have to be submitted in accordance with the requirements of this Invitation for Bids in respect of each of the following groups of schools:

GRO UP	S N	Prefi x	Gend er	Name of School	SEMIS Code	District	Tehsil	UC	Current Level	Upgrade Level	Buildin g Type	PC-I Cost of furniture & fixtures (PKR)	SSB (non- Salary)
<b>1</b>	1.	GBES	Mix	GBES Kouro Goth	415030378	Khairpur	Khairpur	Khanpur	Elementary: Classes KG to 8	High: 2016: KG to 9 2017: KG to 10	Type I	8.4 million	563,000
	2.	GBHS	Mix	GBHS Tando Nazar Ali	415030402	Khairpur	Khairpur	Khanpur	High: Classes KG to 10	No Change	Type I	8.4 million	101,000
	3.	GBLS S	Mix	GBLSS Gagri	415030380	Khairpur	Khairpur	Wada Machyon	Elementary: Classes KG to 8	High: 2016: KG to 9 2017: KG to 10	Type 2	8.2 million	898,000
	4.	GGEL S	Girls	GGELS Arain	418050131	Sukkur	New Sukkur	Arain	Elementary	High: 2016: KG to 9 2017: KG to 10	Type 3	4.7 million	2,902,000
<b>2</b>	5.	GBHS S	Mix	GBHSS Setharja	415060822	Khairpur	Thari Mirwah	Setharja	Higher Secondary: Classes KG to 12	No Change	Type I	8.4 million	334,000
	6.	GBHS	Mix	GBHS Sami	415080275	Khairpur	Sobho Dero	Sami	High: Classes KG to 10	No Change	Type IA	6.8 million	155,000



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	7.	GBHS	Boys	GBHS Bozdar Wada	415060807	Khairpur	Thari Mirwah	Bozdar Wada	High: Classes KG to 10	No Change	Type 2	8.2 million	285,000
3	8.	GBES	Mix	GBES Pir Essa	415020309	Khairpur	Gambat	Kamal Dero	Elementary: Classes KG to 8	High: 2016: KG to 9 2017: KG to 10	Type IA	6.8 million	426,000
	9.	GBHS	Mix	GBHS Satabo	415020317	Khairpur	Gambat	Balharo	High: Classes KG to 10	No Change	Type IA	6.8 million	163,000
	10.	GBHS	Mix	GBHS Drib Mehar Shah	415040380	Khairpur	Kingri	Drib Mehar Shah	High: Classes 6 to 10	High: 2016: KG to 10	Type IA	6.8 million	262,000
4	11.	GBHS	Mix	GBHS Karoondi	415010524	Khairpur	Faiz Gung	Karoondi	High: Classes KG to 10	No Change	Type IA	6.8 million	512,000
	12.	GBHS	Mix	GBHS Jhahj Ragulator	415010528	Khairpur	Faiz Gung	Kot Lalu	High: Classes KG to 10	No Change	Type IA	6.8 million	176,000
	13.	GBHS	Mix	GBHS Tando Mir Ali	415060810	Khairpur	Thari Mirwah	Tando Mir Ali	High: Classes KG to 10	No Change	Type I	8.4 million	379,000

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## **CONCESSION AGREEMENT**

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**BETWEEN**

**EDUCATION & LITERACY DEPARTMENT  
GOVERNMENT OF SINDH, PAKISTAN**

**AND**

**[ ● ]**

**DATED [ ● ], 2015**

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**CONCESSION AGREEMENT**

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THIS CONCESSION AGREEMENT is made on [●] [●], 2015 at [●], Pakistan:

**BY & BETWEEN**

**EDUCATION & LITERACY DEPARTMENT, GOVERNMENT OF SINDH ACTING THROUGH SECRETARY EDUCATION, 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**

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- A. The GoS, acting through the Authority, is seeking to improve the quality of education in the province of Sindh by collaborating with the private sector and outsourcing the operation and management of certain public schools in the province of Sindh to the private sector under and pursuant to a management and services contract (the "**Project**").
- 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 (i) issuing a shortlisting document dated May 13, 2015 (the "**RFQ**") and (ii) issuing, to bidders having met the prequalification criteria in the RFQ, a request for proposal dated [●], 2015 (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.

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**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 Agreement are set out below:

**1. DEFINITIONS AND INTERPRETATION**

---

**1.1 DEFINITION**

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

"**Academic Year**" means the period starting from April 1 in a given year and ending on March 31 in the following year.

"**Affected Party**" has the meaning given in Article 14.1.1.

"**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.

"**Agreement**" or "**Concession Agreement**" means this agreement as of date hereof together with the Annexes hereto.

"**Agreement 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 Agreement Year which shall start on the Effective Date.

"**Annuity Amount Payments**" means the quarterly payments that the Authority shall make to the Operator on a quarterly basis in accordance with Article 8 of this Agreement;

"**Annuity Amount Payment Account Funding Date**" means:

- (a) in respect of the first (1<sup>st</sup>) Annuity Amount Payment Date, any date falling prior to the Effective Date;
- (b) in respect of each other Annuity Amount Payment Date, the date falling ten (10) days following issuance of an Annuity Amount Payment Certificate relating to the Annuity Amount Payment Date falling immediately prior to such Annuity Amount Payment Date.

"**Annuity Amount Payment Adjustment**" means, in relation to an Annuity Amount Payment Date, the adjustment (being an amount in Pakistani Rupees) to be made to the Annuity Amount Payment relating to such Annuity Amount Payment Date (excluding the first Annuity Amount Payment Date), as calculated through application of the Annuity Amount Payment Adjustment Formula in accordance with **Annex [●]** and as set out in the Annuity Amount Payment Certificate.

"**Annuity Amount Payment Adjustment Events**" shall bear the meaning ascribed thereto in Article 8.2.2.

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"**Annuity Amount Payment Certificate**" shall have the meaning ascribed thereto in Article 8.3.1.

"**Annuity Amount Payment Evaluation Date**" means:

- (a) in respect of the first (1<sup>st</sup>) Annuity Amount Payment Date, the Annuity Amount Payment Date;
- (b) in respect of each other Annuity Amount Payment Date, the date falling thirty (30) days immediately prior to such Annuity Amount Payment Date.

"**Annuity Amount Payment Evaluation Period**" means:

- (a) in respect of the first Annuity Amount Payment Date, a period equal to zero (0) days;
- (b) in respect of each other Annuity Amount Payment Date, the period between the two (2) Annuity Amount Payment Evaluation Dates falling immediately prior to such Annuity Amount Payment Date.

"**Annuity Amount Payment Invoice**" shall have the meaning ascribed thereto in Article 8.4.2(a).

"**Annuity Amount Payment Adjustment Formula**" means the formula for adjusting each Annuity Amount Payment relating to an Annuity Amount Payment Date due to occurrence of Annuity Amount Payment Adjustment Events during the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date, as set out in ANNEX XIII.

"**Annuity Amount Payment Date**" means each such date on which the Annuity Amount Payments shall be paid by the Authority to the Operator, being the dates set out in the Annuity Amount Payment Schedule.

"**Annuity Amount Payment Period**" means each three (3) months period (with the first such period commencing on the Effective Date) and continuing till the Expiry Date.

"**Annuity Amount Payment Schedule**" means the schedule setting out, *inter alia*, the Annuity Amount Payment Dates and the Annuity Amount Payments, as set out in ANNEX XIV and as updated on or prior to the Commencement Date.

"**Annuity Payment Account Funding Amount**" means, in respect of an Annuity Amount Payment Account Funding Date relating to an Annuity Amount Payment Date, an amount equal to that set out in the Annuity Amount Payment Certificate.

"**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

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the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement in accordance with the Applicable Laws, including those set-out in Annex-IX - Applicable Permits.

"**Arbitration**" has the meaning given in Article 18.2.1.

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

"**Arbitrator**" has the meaning given in Article 18.2.1.

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

"**Authority Annuity Amount Payment Account**" means the account to be established by the Authority and notified to the Operator and the Independent Auditor as an Authority Condition Precedent;

"**Authority's Employees**" means the employees of the Authority handed over to the Operator pursuant to this Agreement (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 15.2.

"**Award**" has the meaning given in Article 18.2.4.

"**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 Project Cost submitted by the Consortium / Operator to the Authority along with the Bid, being an amount equal to [*amount to be inserted once the Project Cost of the successful bidder is known*].

"**Capacity Test**" means the teacher capacity / training need assessment test to be conducted by the Operator to ascertain the capacity and training needs of the Authority's Employees being retained by the Operator, which test shall be conducted in accordance with Annex-IV.

"**Change in Ownership And / Or Control**" means and includes any assignment, sale, financing, grant of security interest, transfer of interest or other transaction of any type of description, including by or through voting securities, asset transfer, contract, merger, acquisition, succession, dissolution, liquidation or otherwise, that results directly or indirectly in a change in possession of the power to direct or control, or cause the direction or control of the management of the Operator or a significant aspect of its business.

"**Change in Law**" means the occurrence of any of the following subsequent to the Bid Due Date:

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- (i) the modification, amendment, variation, alteration or repeal of any existing Applicable Law; or
- (ii) the coming into effect of any new Applicable Law;
- (iii) changes in the interpretation, application or enforcement of any Applicable Law or judgment by any court / Government Authority;
- (iv) the introduction of the requirement for the Operator to obtain any new Applicable Permits; or
- (v) the introduction of any Taxes,

provided that Change in Law shall not include:

- (vi) any statute that has been published in draft bill form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of this Agreement, which is not in the public domain;
- (vii) a draft regulation or statutory instrument or delegated legislation that has been published prior to the date of this Agreement and which is in the public domain; or
- (viii) any modification, amendment, variation, alteration or repeal of any existing Applicable Law related to the Taxes.

**"Community Engagement Activities"** means activities to communicate the benefits of education and other services being provided by the Operator and the Authority to the community and the process of building ongoing and permanent relationships for the purpose of achieving a collaborative and collective vision for the Authority's strategy to improve the standard of education in the province of Sindh. Such activities shall include limited local media campaigns and community drop in sessions.

**"Concession"** means all of the rights granted by the Authority to the Operator in terms of this Agreement for implementing the Project and providing the Services to the Authority.

**"Concession Period"** means the period of the Concession specified in Article 3.2.1.

**"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.

**"Control"** with respect to a Person, means the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Person; or the power to direct the management and policies of such Person by operation of law, contract or otherwise.

**"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

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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.

"**Dispute**" has the meaning given in Article 18.1.

"**Effective Date**" means the date notified by the Authority to the Operator as being the date on which the Conditions Precedent are fulfilled 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.

"**Employment Criteria**" means the criteria to evaluate performance of the Authority's Employees, as set forth in ANNEXURE XII hereto.

"**EMOs District Support Committee**" means a committee comprised of the deputy commissioner of the local area, another representative of the Authority and two senior representatives of the Operator or as otherwise agreed between the Parties.

"**Environmental Management Plan**" means the environmental management plan for the Project, as approved by the Sindh Environmental Protection Agency.

"**EoD Remedy Period**" has the meaning given in Article 16.2.1.

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

"**Equity**" means funds advanced by the Shareholders, either in the form of share capital in the Operator or by loans from the Shareholders or their related parties to the Operator for the purposes of undertaking the Project.

"**Expert**" means any Person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

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

"**Facilities**" means [*insert names of the Public Schools granted to the Operator under this Agreement*], [●], [●] and [●]; and "**Facility**" means either of the foregoing, as the case may be, as set out in detail in Annex XIV – Details of Facilities.

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

"**Force Majeure Event**" has the meaning given in Article 14.1.1.

"**Force Majeure Notice**" has the meaning given in Article 14.1.1.

"**Force Majeure Period**" means the period commencing from, subject to Article 14.2, 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 14; or (b) the Termination Date of the Agreement; as applicable.

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**"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.

**"Fundamental Change in Law"** means any Change in Law that is not a Qualifying Change of Law and that:

- (ix) renders unenforceable, illegal, invalid or void any material right or material obligation of the Operator under this Agreement; or
- (x) results in the Operator being deprived of the whole or a substantial part of the benefit of this Agreement; or
- (xi) has a Material Adverse Effect on the Operator.

**"Good Industry Practice"** means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of teaching, management, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced manager or operator engaged in the operation and management of schools and facilities of the type and size similar to the Project.

**"GoP"** means the Government of Pakistan.

**"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 Agreement.

**"Handing Over Criteria"** means the criteria for hand-over of the Facilities by the Authority to the Operator in accordance with this Agreement, as set out in **ANNEXURE X**.

**"Independent Auditor"** shall be an independent third party Expert jointly appointed by the Parties in accordance with Article 7.1.1 read with Annex-VI- Terms of Reference for the Independent Expert and Independent Auditor, who shall have the duties and functions stated in this Agreement.

**"Independent Expert"** shall be an independent third party Expert jointly appointed by the Parties in accordance with Article 7.1.2 read with Annex-VI- Terms of Reference for the Independent Expert and Independent Auditor, who shall have the duties and functions stated in this Agreement.

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

**"Lapse of Consent"** means any Applicable Permit:

- (xii) ceasing to remain in full force and effect and not being renewed or replaced within the time period prescribed by the Applicable Laws for the renewal or



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replacement of such Applicable Permit or, where a time period is not prescribed by the Applicable Laws, within 60 (Sixty) Days of such Applicable Permit ceasing to be in full force and effect; or

- (xiii) not being issued upon application having been properly and timely made and diligently pursued within the time period prescribed by the Applicable Laws or where a time period is not prescribed by the Applicable Laws, within 60 (Sixty) Days of proper application being made for such Applicable Permit; or
- (xiv) being made subject, upon renewal, or otherwise, to any terms or conditions that materially and adversely affect the Operator's ability to perform its obligations under this Agreement,

**"Long-stop Date"** means the date of expiration of 30 (Thirty) Days from the date of execution of this Agreement, or extended up to a maximum of 60 (Sixty) Days, as mutually agreed by both Parties.

**"Management Fee"** means the management fee payable by the Authority to the Operator in respect of each year of the Concession Period, as set out in the Bid.

**"Material Adverse Effect"** means the effect of any act or event which materially and adversely affects the ability of a Party to exercise its material rights or perform any of its material obligations under and in accordance with the provisions of this Agreement.

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

**"Non-Performing Employees"** has the meaning given to it in Article 7.8.3.1.

**"Non Political Event"** has the meaning given in Article 14.1.1.

**"Notice of Intent to Terminate"** has the meaning given in Article 16.1.2.

**"Operator"** means [●].

**"Operator Annuity Amount Payment Account"** means the account to be established by the Operator and notified to the Authority as an Operator Condition Precedent;

**"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 15.1.

**"Operator's Notice"** has the meaning given to it in Article 7.8.3.1.

**"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 Agreement.

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

**"Pakistan"** means the Islamic Republic of Pakistan.

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

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**"Payable Annuity Amount Payment"** means, in respect of an Annuity Amount Payment Date, an amount equal to the difference between:

- (a) the Annuity Amount Payment relating to such Annuity Amount Payment Date (as set out in the Annuity Amount Payment Schedule); and
- (b) the Annuity Amount Payment Adjustment relating to such Annuity Amount Payment Date;

as set out in the Annuity Amount Payment Certificate. For sake of clarity there shall be no Annuity Amount Payment Adjustment in respect of the first Payable Annuity Amount Payment.

**"Payment Error"** has the meaning given in Article 7.6.7.

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

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

**"Permitted Events"** means:

- (a) Force Majeure Events;
- (b) Authority Events of Default; and
- (c) a Change in Law or Lapse of Consent,

in each case causing a delay in the performance of the Operator's obligations under this Agreement

**"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 14.1.2(b)

**"Project"** has the meaning given in Recital A.

**"Project Cost"** means an amount equal to [*amount to be inserted once the Project Cost of winning bidder is known*].

**"Qualifying Change in Law"** means any Change in Law:

- (a) which applies specifically to:
  - (i) the Project and not to other similar projects within the Province of Sindh;
  - (ii) the Operator, but not to other Persons; or
  - (iii) the provision of services that are the same as or substantially similar to the Services provided by the Operator under this Agreement, but not to other services;

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and

(b) which was not reasonably foreseeable by the Operator as at the Bid Due Date.

"**Remedial Action Notice**" has the meaning given in Article 16.1.1.

"**Remedial Period**" has the meaning given in Article 16.1.1.

"**RFP**" has the meaning given in Recital C.

"**RFQ**" has the meaning given in Recital C.

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

"**Services**" means the services that are provided by the Operator to the Authority in accordance with the terms of this Agreement, 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 Concession Period; and (b) the Termination Date.

["**Shareholders**" means any one or more (as the context may require) of the Persons holding any shares in the issued and paid-up equity share capital of the Operator or, in case the Operator is an unincorporated body, the members, trustees or their equivalent of the Operator.]

"**Successful School**" means a school delivering quality education aligned with the National Education Goals set by the Authority; retaining enrollment level of minimum 80% and graduating at least 60% students with optimal proficiency supplemented by co-curricular activities; while applying financial efficiency in utilizing the resources generally allocated for public schools, for larger scalability of the reform

"**Taking Over Criteria**" means the criteria for take-over of the Facilities by the Authority in accordance with this Agreement, as set out in ANNEXURE XI (*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 Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;

"**Termination Compensation**" means the compensation payable to the Operator on the Termination Date, in accordance with this Agreement.

"**Termination Date**" means the date on which this Agreement and the Concession hereunder are terminated by a Termination Notice.

"**Termination Notice**" means a notice issued by a Party to the other Party terminating

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the Agreement in accordance with the terms hereof.

**"Termination Payment"** means the different termination payments required to be paid by either Party hereunder in respect of different termination events, as set out in this Agreement;

**"Termination Payment Date"** means the date falling ninety (90) days following the Termination Date;

**"Threshold Limit"** means [●]<sup>1</sup> in aggregate over the Concession Period.

**"Transferor"** means, for the purposes of Article 11, the Shareholder purporting to transfer its shares or interests in the Operator.

**"Transferee"** means, for the purposes of Article 11, the Person to whom the Transferor purports to transfer its shares or interests in the Operator.]

**"Transfer Date"** means:

- (i) in case of early Termination of this Agreement prior to the end of the Concession 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 Concession Period, the last day of the Concession Period.

**"Unscheduled Outage"** has the meaning given in Article 7.4.3.

**"Vacation"** means the annual vacations of the public schools, as may be notified by the Authority from time to time.

## **1.2 RULES OF INTERPRETATION**

1.2.1 In this Agreement unless the context otherwise requires:

- (i) The words importing the singular means the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (ii) Where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires.
- (iii) "Article" and "Annex" shall refer, respectively to Articles of and Annexes to this Agreement. The Annexes to this Agreement shall form part and parcel of this Agreement.
- (iv) The headings and sub-headings in this Agreement (and references to them) are included for convenience only and shall not be taken into account in interpreting this Agreement.
- (v) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may, from time to time, be amended, varied, supplemented or

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<sup>1</sup> Shall be updated upon execution, amount to equal 5% of the Project Cost

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novated.

- (vi) A requirement that a payment be made on a Day which is not a business day shall be construed as a requirement that the payment be made on the next following business day.
- (vii) The words "written" and "in writing" includes a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

## **2. CONDITIONS PRECEDENT**

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### **2.1 EFFECTIVENESS OF THE AGREEMENT**

This Article 2, [●] and [●] and the related Annexes (if any), shall come into force on the date of execution of this Agreement. The other provisions of this Agreement 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 Agreement;
- (b) certified copies of all Applicable Permits that are required for all activities contemplated under this Agreement 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 Agreement; (ii) that the Applicable Permits are in full force and effect; and (iii) the Operator has duly and validly executed this Agreement and the terms of this Agreement 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 Annuity Amount Payment Account and notified the same to the Authority;
- (f) [●]<sup>2</sup>

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.

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<sup>2</sup> Further CPs to be included (if required) prior to finalization of the Agreement and on the basis of the Bidding Documents.

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- 2.3.2 The Conditions Precedent to be satisfied by the Authority are as follows:
- (a) the Authority has opened up the Authority Annuity Amount Payment Account and has funded it up to the first Payable Annuity Amount Payment;
  - (b) the Authority has handed over possession of the Facilities to the Operator in accordance with the Handing Over Criteria;
  - (c) the Authority has notified the EMOs District Support Committee(s) and has appointed its representatives on such EMOs District Support Committee(s);
  - (d) the Authority has issued a notification, notifying the handing over of the Facilities to the Operator on a specified future date;
  - (e) [●];<sup>3</sup>
- 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 as contemplated in Article 7.1.2;
  - (b) jointly appointing the Independent Auditor as contemplated in Article 7.1.1;
  - (c) [●]<sup>4</sup>.

**2.5 EFFECTIVE DATE**

Subject to Article 2.1, this Agreement 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 Agreement 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 Agreement.

- 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

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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absolute discretion), the Operator shall be entitled to terminate this Agreement 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 Agreement by issuing a written notice of 30 (Thirty) Days to the other Party.

On termination of this Agreement 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 Agreement 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 CONCESSION AND CONCESSION PERIOD**

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#### **3.1 GRANT OF THE CONCESSION**

- 3.1.1 In consideration of the Operator's obligations contained in this Agreement and relying on the Operator's warranties contained herein, the GoS, subject to the terms of this Agreement, 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 Agreement.
- 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 CONCESSION PERIOD**

- 3.2.1 Subject to early termination in accordance with this Agreement, the Concession is granted for a period of 10 (Ten) years commencing from the Effective Date (the "**Concession 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 Agreement) 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, elections and other similar events where it is customary to use the Facilities for such purposes; provided that the Authority shall give a reasonable notice to 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. The Operator shall assist the Authority in this regard and shall also extend the services of the school staff during such time, as may reasonably be requested by the Authority.
- 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 Concession 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 IMPROVEMENTS IN THE FACILITIES**

- 3.4.1 The Parties agree that the Operator shall be free to purchase, at its own cost and expense, assets, equipment or other teaching aids required to be used in the Facilities, in particular those that assist the Operator in fulfilling the KPIs. The Operator shall from time to time also replace the obsolete equipment and assets being used in the Facilities with new assets and equipment at its own cost. The Parties further agree that all such assets, equipment or other teaching aids (whether originally provided by the

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Authority or purchased or replaced by the Operator) shall be the property of the Authority and shall be handed over to the Authority, free from any encumbrances on the Transfer Date.

- 3.4.2 The Operator shall be free to use its own personal assets in the Facilities, the ownership whereof shall remain with the Operator.

**3.5 AUTHORITY'S ASSISTANCE**

- 3.5.1 The Authority shall provide and shall seek the co-operation of other relevant Government Authorities for providing such reasonable assistance as may be reasonably requested by the Operator for obtaining the grant or renewal of the Applicable Permits (if any) required for the performance of the Operator's obligations or the exercise of the Operator's rights under this Agreement.

**3.6 EXPIRY OF CONCESSION PERIOD**

- 3.6.1 Upon occurrence of the Expiry Date, the Operator shall hand-over the Facilities to the Authority on the Transfer Date and in accordance with the Taking-Over Criteria.

#### **4. GENERAL COVENANTS**

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##### **4.1 COVENANTS DURING THE SERVICES PERIOD**

- 4.1.1 The Operator agrees and undertakes that throughout the term of this Agreement:
- (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 Agreement;
  - (b) it shall perform all its obligations under this Agreement and ensure that it meets the KPIs;
  - (c) except as specifically permitted under this Agreement, 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 Agreement 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 not, without the prior written consent of the Authority or otherwise as stated in Annex XIV – Details of Facilities, change the level of education being provided at the Facilities (i.e. if a Facility is providing primary level education, it would continue to do so);
  - (f) it shall follow the national curriculum prescribed by the Government Authorities and shall use the reading materials and other books prescribed and/or provided by the Government Authorities, including the Authority. Without prejudice to the foregoing, the Operator shall be free to assign any additional reading materials, books or methods of learning that are permitted under the Applicable Laws;
  - (g) it shall ensure compliance with all Applicable Laws;
  - (h) [●]<sup>5</sup>.
- 4.1.2 At all times before, during or after the Services Period, the Operator shall hold harmless and indemnify the Authority from and against all loss, liability, damage, cost, expense, interest, fines, penalties, claims and amounts paid in settlement, suffered, incurred, paid or payable by the Authority in relation to or arising from the Operator's use of the Facilities or any part thereof. Notwithstanding anything to the contrary, all risks (including any claims and liabilities) relating to the right, title and interests of the Authority in the Facilities or any part thereof shall, during or after the Services Period, vest with the Authority.
- 4.1.3 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

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<sup>5</sup> Further covenants may be included (if required) at the time of finalization of the Concession Agreement.

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performance and activities of the Operator under this Agreement or pursuant to this Agreement in an Emergency;

- (b) the Authority, the Independent Expert and the Independent Auditor 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 Agreement; 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 Agreement. The Authority shall use its best endeavors to notify the Operator prior to exercising any rights under this Article 4.1.3.

- 4.1.4 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 Agreement, any Sanctionable Practices.

## **5. PERFORMANCE SECURITY**

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**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 1% (one percent) of the total Project Cost [of PKR [●] (Pakistani Rupees [●])] <sup>6</sup> and substantially in the form set out at Annex-VIII - FORM OF PERFORMANCE SECURITY AND PAYMENT SECURITY, 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 Agreement. 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.

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<sup>6</sup> This performance security shall be equal to 1% of the total Project Cost that the bidder bids in its Bidding Documents.

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**6. [NOT USED]**

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**6.1 [NOT USED]**

## **7. SERVICES PERIOD**

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### **7.1 INDEPENDENT AUDITOR & 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 Auditor during the Services Period (the "**Independent Auditor**").

The procedure for, the terms of appointment and the scope of work of the Independent Auditor are set out at Annex-VI - Terms of Reference for the Independent Expert and Independent Auditor.

7.1.2 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 and the scope of work of the Independent Expert are set out at Annex-VI - Terms of Reference for the Independent Expert and Independent Auditor.

7.1.3 All fees, costs, charges and expenses payable to the Independent Auditor and the Independent Expert shall be solely borne by the Operator, notwithstanding that the Independent Auditor and the Independent Expert shall be jointly appointed by the Authority and the Operator. Further, notwithstanding that the fees, costs, charges and expenses payable to the Independent Auditor and the Independent Expert shall be borne by the Operator:

- (a) the Independent Auditor and 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 Agreement to be issued by such party; or
  - (ii) jointly issued by the Parties;
- (b) the Independent Auditor and 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 Operator shall pay all fees, costs, charges and expenses due to the Independent Auditor and the Independent Expert in a diligent and timely manner and in accordance with the terms of engagement of the Independent Auditor and the Independent Expert respectively. Failure by the Operator to pay in a diligent and timely manner and in accordance with the terms of engagement of the Independent Auditor and the Independent Expert shall entitle the Authority to drawdown the Performance Security (without any notice, reference or prior recourse to the Operator or any other Person) and utilize such amounts to directly make payment to the Independent Auditor and the Independent Expert, in which case the Operator shall forthwith replenish the Performance Security.

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- 7.1.4 The Parties may replace the Independent Auditor and/or the Independent Expert in any of the following circumstances:
- (a) if the Independent Auditor and/or the Independent Expert have not discharged their duties in accordance with Article 7.1.5 below;
  - (b) if the Parties mutually agree not to renew the appointment of the Independent Auditor and/or the Independent Expert; or
  - (c) if the Independent Auditor and/or the Independent Expert tender their resignation in accordance with the terms of their appointment.

The Parties shall comply with Annex-VI - Terms of Reference for the Independent Expert and Independent Auditor in appointing such replacement Independent Auditor and/or Independent Expert.

- 7.1.5 The Independent Auditor and the Independent Expert shall be required to act independently, reasonably, fairly and expeditiously in fulfilling their duties and obligations under this Agreement.
- 7.1.6 The Independent Auditor and 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 Auditor and the Independent Expert during their attendance at the Facilities. The Independent Auditor and the Independent Expert shall have no authority to delay or hinder the performance of the Services, except as expressly specified in this Agreement.
- 7.1.7 The Operator agrees that notwithstanding any approval (including any deemed approval) of, review by or compliance with the instructions of the Independent Auditor and/or the Independent Expert, the Operator shall be solely responsible for the Services and shall bear all risk and liability for the same.

**7.2 COMMENCEMENT OF PERFORMANCE OF SERVICES**

- 7.2.1 The Operator shall be obligated to commence the Services in respect of the Facilities as and from the Effective Date.
- 7.2.2 As and from the Effective Date, the Operator shall be entitled to demand and collect the Annuity Amount Payments in accordance with Article 8.

**7.3 GENERAL REQUIREMENTS**

- 7.3.1 The Operator, in order to convert the Facilities into Successful Schools, 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.
- 7.3.2 The Operator may 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 teaching expertise and capability.
- 7.3.3 The Operator shall at all times during the Services Period, provide the Authority, the Independent Auditor, 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 Agreement.



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7.3.4 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.

**7.4 REPAIR AND MAINTENANCE OF THE FACILITIES**

7.4.1 The Operator shall maintain the Facilities in line with Good Industry Practice and shall ensure that the Facilities are fully operational throughout the Concession Period, in particular during an Academic Year (excluding the Vacations).

7.4.2 The Operator shall not schedule any major repair or maintenance work in respect of the Facilities at any time during the Services Period without the prior written consent of the Authority. The Operator shall ensure that all major repair and maintenance work in respect of the Facilities is scheduled at a time during the vacations when the Facilities are free and the consent of the Authority is sought in respect of such work and the period required to complete the same prior to undertaking such work. The Operator shall submit in writing to the Authority, with copies to the Independent Auditor and Independent Expert, the details and costs of all major maintenance and repair works proposed to be undertaken by the Operator in respect of the Facilities at least thirty (30) days prior to the Vacations in which such repair and maintenance work is being planned. All major repair and maintenance work and the costs thereof shall be certified by the Independent Expert and the Independent Auditor prior to the Authority approving the same and making appropriate disbursements in respect of such works; provided that the Independent Expert, the Independent Auditor and the Authority shall certify, amend and/or approve (as applicable) the request of the Operator within a period of thirty (30) days. The Authority shall disburse the costs of such repair and maintenance, as certified by the Independent Auditor, to the Operator within fifteen (15) days of the aforesaid approval. For sake of clarity any amounts paid by the Authority to the Operator in respect of repair and maintenance work pursuant to this Article 7.4.2 shall be in addition to the Annuity Amount Payments required to be made hereunder.

7.4.3 When the need arises for an unscheduled outage in order to undertake emergency maintenance during an Academic Year (“**Unscheduled Outage**”), the Operator shall advise the Authority of such need and the commencement and estimated duration of such work. The Authority shall allow the Operator to schedule such outage within a period of time that is reasonable under the circumstances and not exceeding the time required by Good Industry Practice. The Operator shall advise the Authority of the above matters by a notice in writing, and the Authority shall respond within 72 (Seventy Two) hours from receiving such notice. In case an extension is required in the Unscheduled Outage period, such extension shall be subject to the prior written approval of the Authority.

7.4.4 If the Operator ceases to operate any Facility for a period of 72 (Seventy Two) consecutive hours, other than due to a Force Majeure Event or an Unscheduled Outage, then the Authority shall be entitled, upon giving a 24 (Twenty Four) hours prior written notice, to step-in and undertake O&M and perform the Services at such Facility until the Operator demonstrates to the satisfaction of the Authority that it can and will resume normal operation of such Facility.

7.4.5 If the Authority has not notified the end of the step-in after the expiry of a period of 90 (Ninety) Days starting from the date of step-in by the Authority, and except as otherwise agreed by the Parties, the Agreement shall automatically be terminated for an Operator Event of Default. The exercise of the Authority's rights under this Article 7.4 shall be at the cost, risk and expense of the Operator. The Authority shall not be required to make any payments

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to the Operator during the time of step-in other than those payments that are already due and payable to the Operator under this Agreement prior to the time of step-in.

**7.5 APPLICABLE PERMITS AND APPLICABLE LAWS**

- 7.5.1 The Operator shall make any applications required in respect of and obtain all Applicable Permits for the performance of the Services to the Authority, in accordance with the provisions of Applicable Laws. The costs of complying with this requirement shall be borne solely by the Operator.
- 7.5.2 The Authority shall use reasonable endeavors to assist the Operator in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Operator has complied with all the requirements contained in the Applicable Laws for applying for such Applicable Permits.
- 7.5.3 The Operator shall comply with the conditions of all Applicable Permits, the provisions of all Applicable Laws and with Good Industry Practice in carrying out the Services at the Facilities at all times during the Services Period.
- 7.5.4 In the event of any Lapse of Consent, the Operator shall notify the same to the Authority (with a copy to the Independent Expert and the Independent Auditor) within 3 (Three) Days after becoming aware thereof. Following receipt of such notification by the Authority, the Operator shall provide the Authority all documents and information notified by the Authority to the Operator in respect of such Lapse of Consent.

**7.6 RECORDS, REPORTING, ACCOUNTS AND AUDITS**

- 7.6.1 The Operator shall maintain records of all students, teachers, staff, books, resources, equipment and compliance with the KPIs during the Services Period.
- 7.6.2 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.
- 7.6.3 The Operator shall deliver to the Authority (with copies to the Independent Auditor and 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 Annex-V - Reporting , and delivered to the Authority in writing (by email or facsimile) within 5 (Five) 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 5 (Five) 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.
- 7.6.4 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

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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 Agreement.

The Operator shall make available to the Authority, the Independent Expert and the Independent Auditor, 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, the Independent Expert and the Independent Auditor.

The Authority, the Independent Expert and the Independent Auditor 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.

- 7.6.5 The Operator shall provide the Authority with 2 (two) copies of its audited financial statements, along with a report thereon by the Independent Auditor, within 60 (Sixty) Days of the close of the Financial Year to which they pertain.
- 7.6.6 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 Academic Year to which they pertain.
- 7.6.7 If the Independent Auditor 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 Auditor of such Payment Error.

**7.7 PROVISION OF UTILITIES**

- 7.7.1 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 Concession Period.
- 7.7.2 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.

**7.8 EMPLOYEES**

**7.8.1 Employees provided by the Authority**

7.8.1.1 As and from the Effective Date, the Authority shall hand over the Authority's Employees employed at the Facilities to the Operator and the Operator undertakes to retain such Authority's Employees at the Facilities in accordance with this Agreement; provided, however, the Operator shall conduct the Capacity Test of all such Authority's Employees and the Operator shall formulate training programs for such Authority's Employees based on their training needs determined through the Capacity Test.

7.8.1.2 The Authority's Employees shall be under the control and direction of the Operator throughout the Services Period, provided that the Authority shall at all

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times be liable to remunerate the Authority's Employees in accordance with the relevant arrangements between such Authority's Employees and the Authority.

7.8.1.3 The Operator shall not dismiss or terminate any of the Authority's Employees without the prior written consent of the Authority and subject always to the provisions of this Agreement.

7.8.2 **Operator's Employees**

7.8.2.1 The Operator shall employ and shall be entitled to directly offer employment to any suitably qualified, experienced and skilled personnel (**Operator's Employees**) on such terms and conditions as it deems fit, subject to Good Industry Practice and Applicable Laws, for the purpose of undertaking the operations, management and maintenance of the Facilities and the performance of the Services in accordance with the requirements set out in Article 7.3.1. The Operator shall also appoint appropriately trained staff to provide basic health facilities at the Facilities.

7.8.2.2 The Authority is not and shall not be treated as the "principal employer" of or be deemed to have any contractual or other relationship with the Operator's Employees under any of the Applicable Laws or Applicable Permits relating to labor issues. The Operator shall hold harmless and indemnify the Authority against all losses that arise or that are incurred as a result of any claims made against the Authority in respect of matters relating to health and safety and the employment or welfare of the Operator's Employees.

7.8.2.3 The Operator shall be solely responsible to remunerate and make other payments, as per the relevant contracts, to the Operator's Employees. The Operator shall also be responsible for and shall indemnify the Authority against any costs or losses suffered by the Authority in respect of any misconduct, violation of law, malpractice or mistreatment of students by any of the Operator's Employees.

7.8.3 **Mechanism for Transfer of Non-performing Employees of the Authority**

7.8.3.1 In the event the Operator is of the opinion that any one or more of the Authority's Employees are not performing in accordance with the Employment Criteria (**Non-Performing Employees**), the Operator shall notify the Authority in writing (with a copy to the Independent Expert) along with reasonable details of the Employment Criteria not being met by such Non-Performing Employees (**Operator's Notice**).

7.8.3.2 Within 30 (Thirty) days of receipt of the Operator's Notice by the Authority, the Authority shall consult with the Independent Expert and shall conduct a hearing in the matter in the presence of the Non-Performing Employees, the EMO District Support Committee and the Independent Expert. The Authority shall provide a reasonable notice of hearing to the Non-Performing Employee and after two such notices, the hearing may proceed ex-parte in case the Non-Performing Employee fails to attend.

7.8.3.3 Within 15 (Fifteen) days of the hearing conducted in accordance with clause (b) above, the Authority, the EMO District Support Committee and the Independent Expert shall reach a decision in respect of the Non-Performing Employees and such decision shall be communicated to the Operator and the Non-Performing

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Employees in writing by the Authority, duly endorsed by the Independent Expert. The decision taken by the Authority and the Independent Expert hereunder may be along either of the following lines:

- (i) The claims made in the Operator's Notice may be rejected, in which case the Non-Performing Employees shall continue to be employed at the Facilities in accordance with this Agreement; or
- (ii) The claims made in the Operator's Notice may be accepted, in which case the Authority may transfer the Non-Performing Employees from the Facilities (as soon as practicable and in any event within a period of forty-five (45) days) and either provide the Operator with a suitable replacement thereof or notify the Operator to employ fresh personnel as the replacement of such Non-Performing Employees. In case of replacement of an Authority's Employee with an Operator's Employee, the reasonable costs thereof shall be paid by the Authority as part of the Annuity Amount Payments.

In the event the Authority and the Independent Expert cannot mutually reach a decision with respect to the fate of any Non-Performing Employees specified in the Operator's Notice, the decision of the Independent Expert shall prevail and the Authority undertakes to do all acts, deeds and things necessary to give effect to the decision made by the Independent Expert hereunder, including payment of any extra compensation to the Operator in case of replacement of an Authority's Employee with an Operator's Employee.

**7.8.4 Appraisal of the Employees**

The Operator shall evaluate all employees working at the Facilities, including the Authority's Employees and the Operator's Employees (collectively the **Employees**), on a quarterly basis in accordance with the timelines agreed upon between the Parties. The evaluation and appraisal of the Employees shall be based on the Employment Criteria; provided however the Authority shall have the absolute discretion with respect to promotion, remuneration and other benefits of the Authority's Employees. The Operator shall provide the report containing the evaluation of all Employees, carried out at the end of each quarter, to the Authority within 30 (Thirty) days of the end of each such quarter.

**7.8.5 Training of Employees**

7.8.5.1 The Operator shall ensure that the Employees are at all times properly trained in accordance with Good Industry Practice, for their respective functions.

7.8.5.2 The Operator shall not discriminate between the Authority's Employees and the Operator's Employees with regarding to their training, development, evaluation and appraisals.

7.8.5.3 The Authority shall assist the Operator in arranging for appropriate training programmes for the Employees and the Parties shall agree upon a training schedule at least 5 (Five) days prior to the start of each Financial Year, which training schedule shall specify the number and details of trainings to be attended by each Employee and the relevant Party who will arrange and pay for such trainings.

7.8.5.4 Notwithstanding the foregoing, the Operator shall be responsible to conduct at least two (2) training sessions for each Employee, in particular the teaching

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staff, in each Financial Year. The costs of such training sessions shall be borne by the Operator.

7.8.5.5 The Operator shall ensure that all teacher trainings are scheduled during the Vacations; provided that if any teacher trainings are required to be conducted during a period other than the Vacations, the Operator shall ensure that there is minimum disruption to the Services.

7.8.6 **Other Employee Matters**

7.8.6.1 In no event, whether upon expiration or early termination of the Concession Period, will the Authority be liable to reimburse or indemnify the Operator against any costs or liabilities (including any liability to pay retrenchment compensation) arising as a result of the termination of the employment of any or all of the Operator's Employees. The Operator shall be responsible for discharging all such costs or liabilities arising by operation of law.

7.9 **BOOKS**

Prior to the start of each Academic Year or otherwise as may be required, the Authority shall use its best endeavors to provide the relevant text books to be used by the Operator at the Facilities, which books shall be in accordance with the national curriculum prescribed by the Government Authorities. In the event the Authority fails to timely provide the relevant text books the Operator shall be free to arrange for and provide the same or use any existing resources available at the Facilities.

## **8. ANNUITY AMOUNT PAYMENTS AND INVOICING**

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### **8.1 ANNUITY AMOUNT PAYMENTS**

8.1.1 Subject to the provisions of this Agreement and in consideration of the Concession and the undertaking by the Operator to perform and discharge its obligations in accordance with the terms and conditions set out in this Agreement, the Authority agrees and undertakes to pay each Payable Annuity Amount Payment to the Operator on its corresponding Annuity Amount Payment Date in accordance with the terms of this Agreement.

### **8.2 ANNUITY AMOUNT PAYMENT ADJUSTMENT EVENTS & ANNUITY AMOUNT PAYMENT ADJUSTMENT**

8.2.1 The Annuity Amount Payments payable by the Authority to the Concessionaire on each Annuity Amount Payment Date shall be subject to Annuity Amount Payment Adjustment (as calculated in accordance with the Annuity Amount Payment Adjustment Formula) due to occurrence of the Annuity Amount Payment Adjustment Events during the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date.

8.2.2 The following events (as certified in writing by the Independent Expert) shall constitute the Annuity Amount Payment Adjustment Events; provided, that the same shall not constitute an Annuity Adjustment Event in case the same results from the Permitted Events (excluding the Non-Political Events) (the **Annuity Amount Payment Adjustment Events**):

- (a) the Facilities have remained out of operation at any time during an Academic Year; or
- (b) the Independent Expert determines that:
  - (i) the Operator has not met any one or more of the KPIs; and
  - (ii) the Operator has failed to maintain the Facilities in accordance with the provisions of this Agreement,

irrespective of whether the Facilities have been functioning properly or not.

8.2.3 In the event any of the Facilities are not operational during a given Academic Year (as determined by the Independent Expert), the same shall constitute an Operator Event of Default and the Authority may at its discretion Terminate this Agreement in accordance with Article 15.1 (*Operator Event of Default*) except in cases where the same is due to the Permitted Events.

### **8.3 DETERMINATION OF PAYABLE ANNUITY AMOUNT PAYMENT & ANNUITY AMOUNT PAYMENT CERTIFICATE**

8.3.1 Ten (10) days prior to the first (1<sup>st</sup>) Annuity Amount Payment Date and thereafter within five (5) days of each Annuity Amount Payment Evaluation Date relating to an Annuity Amount Payment Date, the Operator shall procure that the Independent Expert and the Independent Auditor jointly issue a written certificate in respect of such Annuity Amount Payment Date (the **Annuity Amount Payment Certificate**) to the Operator, the Authority and the Authority Annuity Amount Payment Account Bank setting out (wherever applicable):

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- (a) the Annuity Amount Payment Adjustment Events occurring in the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date;
- (b) the Annuity Amount Payment Adjustment calculated on the basis of the Annuity Amount Payment Adjustment Events occurring in the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date;
- (c) the Payable Annuity Amount Payment to be paid on such Annuity Amount Payment Date; and
- (d) the Annuity Payment Account Funding Amount to be funded by the Authority.

**8.4 PAYMENT OF ANNUITY AMOUNT PAYMENTS**

8.4.1 At least five (5) days prior to the each Annuity Amount Payment Date, the Authority shall deposit the Payable Annuity Amount Payment into the Authority Annuity Amount Payment Account.

8.4.2 Following issuance of the Annuity Amount Payment Certificate by the Independent Expert and the Independent Auditor, the Concessionaire shall (at least ten (10) days prior to the Annuity Amount Payment Date relating to such Annuity Amount Payment Certificate):

- (a) deliver an invoice (together with copies of the Annuity Amount Payment Certificate appended thereto) to the Authority in triplicate demanding payment of the Payable Annuity Amount Payment from the Authority Annuity Amount Payment Account (the **Annuity Amount Payment Invoice**); and
- (b) deliver the Annuity Amount Payment Certificate to the Authority Annuity Amount Payment Account Bank for payment to the Operator of the Payable Annuity Amount Payment on the relevant Annuity Amount Payment Date through, as per Annuity Amount Payment Account Standing Instructions, debiting of funds standing to the credit of the Authority Annuity Amount Payment Account on the Annuity Amount Payment Date in an amount equal to the Payable Annuity Amount Payment and crediting of the same to the Operator Annuity Amount Payment Account on the Annuity Amount Payment Date.

8.4.3 Any Dispute between the Parties in respect of any matters set out in the Annuity Amount Payment Certificate shall be resolved in accordance with the provisions of Article 18 (*Dispute Resolution*), provided however such Dispute shall not affect the payment of the Payable Annuity Amount Payment (as set out in the Annuity Amount Payment Certificate) to the Operator in accordance with the provisions of Article 17; provided, further, that following resolution of such Dispute, adjustments to the Annuity Amount Payments (to the extent required) shall be made in accordance with the determination/resolution of the Dispute.

**8.5 AUTHORITY ANNUITY AMOUNT PAYMENT ACCOUNT**

8.5.1 The Authority shall establish and maintain the Authority Annuity Amount Payment Account as soon as possible after signing of this Agreement and until the Expiry Date.

8.5.2 The Authority shall issue irrevocable standing instructions to the Authority Annuity Amount Payment Account Bank (in form and substance agreed between the Parties) (the **Authority**



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**Annuity Amount Payment Account Standing Instructions**) containing, *inter alia*, instructions to the Authority Annuity Amount Payment Account Bank:

- (a) to debit the Authority Annuity Amount Payment Account on each Annuity Amount Payment Date (upon receipt of an Annuity Amount Payment Certificate relating to such Annuity Amount Payment Date) in an amount equal to the Payable Annuity Amount Payment and credit the same to the Operator Annuity Amount Payment Account;
  - (b) in the event of Termination of this Agreement, to debit the Authority Annuity Amount Payment Account in an amount equal to the Unpaid Termination Payment Amount and credit the same to the Operator Annuity Amount Payment Account, in accordance with Article 17 below.
- 8.5.3 The Authority Annuity Amount Payment Account Standing Instructions issued by the Authority shall be irrevocable and shall remain effective, in each case, until the Expiry Date, and no withdrawal from the Authority Annuity Amount Payment Account may be made by the Authority, except as provided in this Agreement.
- 8.5.4 The Authority Annuity Amount Payment Account Standing Instructions (or any part thereof) issued by the Authority may be revoked pursuant a written revocation notice duly executed and confirmed by the Parties.
- 8.5.5 The Authority Annuity Amount Payment Account shall be strictly operated and maintained in accordance with the Authority Annuity Amount Payment Account Standing Instructions. Further, the Authority hereby undertakes and covenants with the Operator that it shall not create, incur, permit, assume or suffer to exist any encumbrance whatsoever upon or with respect to the Authority Annuity Amount Payment Account.
- 8.5.6 The Authority shall fund the Authority Annuity Amount Payment Account in an amount equal to the Annuity Payment Account Funding Amount on each Annuity Amount Payment Account Funding Date until the Expiry Date.

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**9. [NOT USED]**

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**9.1 [NOT USED]**

## **10. EMERGENCY STEP-IN**

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**10.1** Upon the occurrence of an Emergency, the Authority reserves the right to suspend the performance of the Services by the Operator and to step-in and take control over the O&M and the performance of the Services on a temporary basis. The Authority may only exercise such right of suspension by issuing a prior written notice of at least 48 (Forty Eight) hours.

The notice shall set out the following, to the extent possible in light of the circumstances of Emergency:

- (a) The nature of the Emergency and the reason for the step-in;
- (b) The date on which the Services are suspended;
- (c) The likely duration of the suspension; and
- (d) The effect of the suspension on the Operator and any reasonable obligations of assistance required of the Operator during the suspension period.

**10.2** During the suspension of the performance of the Services by the Authority pursuant to Article 10.1 above:

- (a) the Operator shall be relieved from its obligations to provide the Services but shall provide reasonable assistance to the Authority upon request;
- (b) the Authority shall be responsible for bearing all costs and expenses in relation to the O&M (including any agreed or scheduled maintenance) and the performance of the Services; and
- (c) the Operator shall not be entitled to any other payment or relief from the Authority in connection with such suspension and step-in.

**10.3** If the suspension of the performance of the Services by the Operator pursuant to Article 10.1 above continues for a period exceeding 60 (Sixty) Days, then the Operator shall be entitled to terminate this Agreement by giving a notice of at least 30 (Thirty) Days.

**10.4** On termination of this Agreement pursuant to Article 10.3 above, the Authority shall pay the Termination Compensation to the Operator in accordance with Article 17 below. Only for the purpose of determination of the Termination Compensation payable by the Authority, the suspension of the Services to be provided by the Operator and the performance of Services by the Authority in accordance with this Article 10 shall be treated as an "**Authority Event of Default**" unless such the Emergency or step-in was caused by an Operator Event of Default.

All other consequences of termination that are set out at Article 16.4 shall apply.

## **11. <sup>7</sup>OPERATOR SHAREHOLDING**

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### **11.1 SHAREHOLDING INFORMATION**

11.1.1 The Operator represents and warrants to the Authority that at the date of execution of this Agreement, the [shareholding of the Operator is][ownership/membership of the Operator is as follows]:

- (a) [●];
- (b) [●];
- (c) [●];

(each of which shall be a “Shareholder” for the purposes of this Agreement) and that no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial, equitable or other interest in any or all of the shares of the Operator.

### **11.2 CHANGE IN OWNERSHIP AND / OR CONTROL**

11.2.1 Subject to Article 11.2.3, the Operator shall not undertake or permit and hereby undertakes to procure that the Shareholders as set out in Article 11.1.1 shall not undertake or permit at any time any Change in Ownership And / Or Control unless such Change in Ownership And/or Control:

- (i) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Agency with appropriate jurisdiction; or
- (ii) is effected with the prior written approval of the Authority, which approval shall not be unreasonably withheld if the Transferor demonstrates to the Authority that the Transferee is at least as legally, technically and financially qualified and suitable to meet the Transferor's Project obligations. In this regard:
  - (a) the Transferor, or the Operator on behalf of the Transferor, shall submit to the Authority documents in respect of the Transferee as reasonably demonstrate that the Transferee is at least as legally, technically and financially qualified and suitable to meet the Transferor's Project obligations;
  - (b) the Authority shall review such documents, and notify to the Transferor, with a copy to the Operator, its written determination based on such review, no later than 60 (Sixty) Days following the date of submission of all required documentation by the Transferor; and
  - (c) if the Authority does not notify its written determination within the time period set out above, the Authority shall be deemed to have approved the transfer or assignment.

11.2.2 Without prejudice to the provision of Article 11.2.1 and subject to Article 11.2.3, the Operator shall not undertake or permit and hereby undertakes to procure that each of the Shareholders (excluding the Shareholders set out in Article 11.1.1) of the Operator do not undertake or

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<sup>7</sup> This Article has been drafted on the assumption that the Operator will be a company incorporated under the Companies Ordinance, 1984; however, if the Operator is registered/incorporated under any other law, this Article will be appropriately amended.

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permit any transfers or assignments of their shares or interests in shares of the Operator until the Expiry Date unless the same:

- (i) is required by any Applicable Laws or by the operation of the Applicable Laws or by order of a court, tribunal, or Government Authority with appropriate jurisdiction; or
- (ii) is effected with the prior written approval of the Authority.

11.2.3 Notwithstanding anything to the contrary set out herein, the Operator shall not undertake or permit and hereby undertakes to procure that each Transferor does not undertake or permit any transfers or assignments of its shares or interests in shares of the Operator to any Transferee:

- (a) whose nationality is restricted by the Applicable Laws; and
- (b) that has been named, and has entered into any transaction with, or for the benefit of, any of the individuals or entities named, on lists of sanctioned Persons promulgated by the United Nations Security Council or its committees pursuant to any resolution under Chapter VII of the United Nations Charter.

## **12. CHANGE IN LAW**

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### **12.1 CONSEQUENCES OF QUALIFYING CHANGE IN LAW**

12.1.1 If a Qualifying Change in Law occurs, then within 90 (Ninety) Days of its occurrence either Party may notify the other expressing its opinion on its likely effects, giving details of its opinion of:

- (a) any necessary change in the O&M or in the Services to be performed;
- (b) whether any changes are required to the terms of this Agreement to deal with such Qualifying Change in Law;
- (c) whether relief from compliance with obligations is required, including the obligation of the Operator to meet the KPIs, on occurrence of any relevant Qualifying Change in Law;
- (d) any increase in costs or delay that will result from the Qualifying Change in Law;
- (e) any capital expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the Services Period; and
- (f) in each case giving in full detail the procedure for implementing the change in the O&M or in performance of the Services.

A Party suffering from a Qualifying Change in Law shall not be entitled to claim any relief under this Article 12.1 unless it has served the notice within the time period set out above.

12.1.2 As soon as practicable after receipt of any notice from either Party under Article 12.1.1 above, the Parties shall discuss and attempt to agree the issues referred therein and any ways in which the Operator can mitigate the effect of the Qualifying Change in Law, including:

- (a) providing evidence that the Operator has used reasonable endeavors to minimize any increase in costs and maximize any reduction in costs;
- (b) demonstrating to the Authority that the Qualifying Change in Law is the direct and primary cause of the increase in costs and/or delay and the estimated increase in costs or delay could not reasonably be expected to be mitigated or recovered by the Operator; and
- (c) demonstrating that any expenditure which was anticipated to be incurred to replace or maintain assets that have been affected by the Qualifying Change in Law, has been taken into account in the amount stated in its opinion presented under Article 12.1.1.

12.1.3 If the Parties have complied with Articles 12.1.1 and 12.1.2 and the Parties mutually agree or it is determined by the Independent Expert or Independent Auditor in accordance with Article 18.1.2 that the Operator is required to incur additional capital expenditure or the Operator has suffered any increase in costs due to a Qualifying Change in Law, then the Operator shall (subject to the provisions of this Article 12.1) be entitled to receive compensation from the Authority either by way of a lump-sum payment or by any other means that the Parties mutually agree.

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12.1.4 The quantum of relief (whether extension of time or compensation) that the Operator shall be entitled to under Article 12.1.3 shall be as agreed by the Parties or as determined by the Independent Expert or Independent Auditor in accordance with Article 18.1.2, provided always that:

- (a) the Operator shall bear any increased cost or loss of net profit after tax, up to the Threshold Limit; and
- (b) the Operator shall only be entitled to relief that is reasonable for such Qualifying Change in Law.

12.1.5 If the Operator enjoys any reduction in costs as a result of the occurrence of the Qualifying Change in Law, provided that such reduction in costs of the Operator as a result of the occurrence of the Qualifying Change in Law is more than the Threshold Limit, then the Parties may decide to compensate the Authority by way of a lump-sum payment or by any other means that the Parties may mutually agree.

**12.2 CONSEQUENCES OF FUNDAMENTAL CHANGE IN LAW**

12.2.1 If a Fundamental Change in Law occurs or is shortly to occur, then either Party may notify the other expressing its opinion on:

- (a) the likely effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights and benefits accruing to the Operator; and
- (b) the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Fundamental Change in Law, while adhering to the original commercial and financial position of the Parties.

12.2.2 As soon as practicable after receipt of any notice from either Party under Article 12.2.1 above, the Parties shall meet to re-negotiate and agree on the amendments to the terms of this Agreement.

12.2.3 If the Parties are unable to agree on necessary amendments to the terms of this Agreement to give effect to the original commercial and financial position of the Parties within a period of 90 (Ninety) Days from the date on which a notice is issued under Article 12.2.1, then either Party shall be entitled to terminate this Agreement by giving a notice of 30 (Thirty) Days.

12.2.4 On termination of this Agreement pursuant to Article 12.2.3 above, the Authority shall pay the Termination Compensation. Only for the purpose of determination of the Termination Compensation payable by the Authority, the occurrence of a Fundamental Change in Law shall be treated as an "**Authority Event of Default**".

### **13. INDEMNITY AND INSURANCE**

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#### **13.1 INDEMNITY**

13.1.1 Subject to Article 13.1.2 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 Agreement.

13.1.2 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 Agreement.

13.1.3 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 Agreement, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Operator.



## **14. FORCE MAJEURE**

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### **14.1 FORCE MAJEURE EVENT**

14.1.1 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 Agreement; provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care, it being understood and agreed that reasonable care includes acts and activities to protect the 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 Lapse of Consent of which report to the Authority, the Independent Expert and the Independent Auditor shall have been given under Article 7.5.4 and that shall have existed for thirty (30) consecutive days or more; or
  - (iii) 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**), including, but not limited to:
  - (i) lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or
  - (ii) any Lapse of Consent of which report to GoS, the Independent Expert and the Independent Auditor shall have been given under Section 7.5.4 and that shall have existed for less than thirty (30) consecutive days; or
  - (iii) any strike, work-to-rule, go-slow, or analogous labour action that is not politically motivated or is not widespread or nationwide; or
  - (iv) explosion, chemical contamination, radioactive contamination or ionizing radiation (except to the extent any of the foregoing events or circumstances results directly from a Political Event, in which case such event or circumstance shall constitute a Political Event); or
  - (v) epidemic or plague.

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- (c) Force Majeure Events shall expressly not include the following conditions, events or circumstances:
- (i) late delivery or interruption in the delivery of any equipment or consumables in respect of the Facilities;
  - (ii) a delay in the performance of any Employee;
  - (iii) a breakdown in the Facilities or any part thereof; and
  - (iv) normal wear and tear or random flaws in the Facilities or the assets located thereon,

provided, that each of the events described in clauses (c)(i), (ii), (iii) or (iv) shall constitute a Force Majeure Event to the extent that such events or circumstances are caused by an event or circumstance that is in itself a Force Majeure Event whether experienced directly by the Operator or the Employees.

**14.2 OBLIGATION TO NOTIFY**

14.2.1 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, the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

14.2.2 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 Agreement 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 Agreement.

14.2.3 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

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- (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.

14.2.4 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.

**14.3 CONSEQUENCE OF FORCE MAJEURE EVENT**

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

- (a) there shall be no Termination of this Agreement except in accordance with the provisions of Article 14.5 and Article 16;
- (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 and the Independent Auditor);
  - (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 Academic 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 allocated in accordance with Article 14.4,

provided, however, that no relief, including extension of time for performance of the Services, shall be granted to the Affected Party to the extent that such failure or delay would nevertheless have been experienced by the Affected Party had the Force Majeure Event not occurred.

**14.4 ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE**

14.4.1 Upon occurrence of a Force Majeure Event, the Authority shall fund and bear the Force Majeure costs (less any insurance proceeds, if any, received by the Operator in respect of such Force Majeure Event).

14.4.2 Save and except as expressly provided in this Article 14.4.2, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**14.5 TERMINATION NOTICE FOR FORCE MAJEURE EVENT**

14.5.1 If:

- (a) a Force Majeure Event subsists for a continuous period of one hundred and twenty (120) days, either Party may in its discretion Terminate this Agreement by issuing a Termination Notice to the other Party; or

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- (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 Agreement by issuing a Termination Notice to the Operator,

in each case above, without being liable in any manner whatsoever, save as provided in this Article 14.5 and Article 14.6, and upon issue of such Termination Notice, this Agreement 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.

**14.6 TERMINATION PAYMENT FOR FORCE MAJEURE EVENT**

- 14.6.1 The Authority shall pay Termination Compensations, if any, as a result of termination due to a Force Majeure Event in accordance with Article 17 of this Agreement.

**14.7 FORCE MAJEURE DISPUTE RESOLUTION**

- 14.7.1 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.

**14.8 EXCUSE FROM PERFORMANCE OF OBLIGATIONS**

- 14.8.1 If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations (except payment obligations) to the extent it is unable to perform on account of such Force Majeure Event; provided, that:
- (a) 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;
  - (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
  - (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party (with a copy to the Independent Expert and the Independent Auditor) notice to that effect and shall promptly resume performance of its obligations hereunder.

## **15. EVENTS OF DEFAULT**

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### **15.1 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, a Qualifying Change in Law, a Fundamental Change in Law or a Force Majeure Event and (unless otherwise provided for in this Agreement) where the Operator has failed to remedy the defects specified in the Remedial Action Notice issued in accordance with Article 16.1.1:

- (a) abandonment by the Operator which means a cessation of the performance of Services or other obligations of the Operator for a period of 30 (Thirty) consecutive Days;
- (b) [the breach by the Operator of its obligations to maintain insurances in accordance with Article 13];
- (c) the breach by the Operator of its material obligations under this Agreement;
- (d) reduction or interruption in the availability of Facilities, excluding Scheduled Outage, for a period of 10 (Ten) Days in aggregate;
- (e) any material representation made or warranties given by the Operator under this Agreement being false or misleading;
- (f) failure of the Operator to obtain and maintain a valid Performance Security under Article 5.1;
- (g) [breach of the Operator's shareholding obligations under Article 11];
- (h) 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 Agreement or that otherwise has or may have a Material Adverse Effect (in the reasonable opinion of the Authority);
- (i) the occurrence of a Sanctionable Practice;
- (j) failure of the Operator to make any payments that are due to be made to the Authority under this Agreement, and if such failure is not cured within a period of thirty (30) days; and/or
- (k) [●]<sup>8</sup>.

### **15.2 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, a Qualifying Change in

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<sup>8</sup> Further Operator Events of Default may be included (if required) at the time of finalization of the Agreement.

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Law, a Fundamental Change in Law 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 16.1.1 within the Remedial Period:

- (a) Failure to maintain and/or fund the Authority Annuity Amount Payment Account in accordance with the provisions of this Agreement;
- (b) breach of the obligations with respect to transfer or assignment of its rights and obligations under this Agreement as provided in Article 20.12;
- (c) any material representation made or warranties given by the Authority under this Agreement being false or misleading;
- (d) a failure by the Authority to fulfill any other material obligations under this Agreement;
- (e) a Change in Law that (i) renders this Agreement unenforceable, or (ii) prevents any Party from exercising its rights and/or performing its obligations hereunder, or (iii) prevents the Operator from undertaking the Services pursuant to this Agreement;
- (f) failure of the Authority to make any payments that are due to be made to the Operator under this Agreement, and if such failure is not cured within a period of thirty (30) days; and/or
- (g) [●]<sup>9</sup>.

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<sup>9</sup> Ibid.

## **16. REMEDY OF DEFAULTS AND TERMINATION PROCEDURE**

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### **16.1 Performance of Obligations**

16.1.1 If at any time either Party has failed to perform any of its obligations under this Agreement 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**").

16.1.2 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 16.1.1, the non-defaulting Party may deliver a notice to the defaulting Party stating its intention to terminate this Agreement ("**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 15.1 (a), (h) 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.

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

### **16.2 CONSEQUENCES OF DEFAULT**

#### **16.2.1 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 15.1 (a), (e), (f), (g), (h) and (i), the Authority shall have the right to immediately terminate the Agreement 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 Agreement, 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 Agreement.

#### **16.2.2 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.

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- (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 16.2.1(a) applies, then the innocent Party shall be entitled to issue the Termination Notice to the defaulting Party, whereupon this Agreement shall terminate forthwith.

**16.3 ACCRUED RIGHTS AND LIABILITIES**

- 16.3.1 Notwithstanding anything to the contrary contained in this Agreement, any termination of the Agreement 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 Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- 16.3.2 Nothing in this Article 16.3 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.

**16.4 CONSEQUENCES OF TERMINATION**

- 16.4.1 If this Agreement 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 Annuity Amount Payments shall stand terminated with immediate effect and no Annuity Amount Payments 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 Annuity Amount Payments 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 17.
  - (b) by the Operator due to an Authority Event of Default,
    - (i) the right of the Operator to the Annuity Amount Payments shall stand terminated with immediate effect and no Annuity Amount Payments 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 Annuity Amount Payments up to the date of the Operator's receipt of the Termination Notice;



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- (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 17.
- (c) by any Party as a result of a Force Majeure Event or a Fundamental Change in Law,
- (i) the right of the Operator to the Annuity Amount Payments shall stand terminated with immediate effect and no Annuity Amount Payments 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 Annuity Amount Payments 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.

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

16.5.1 In case of Termination of this Agreement 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 Agreement 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.

**16.6 TERMINATION PAYMENTS**

16.6.1 The Termination Payment shall be payable to the Operator by the Authority on or prior to the Termination Payment Date in accordance with a demand being made by the Operator in writing, subject to the same being duly certified by the Independent Expert and Independent Auditor.

**16.7 MODE OF PAYMENT**

16.7.1 Notwithstanding any instructions to the contrary issued or any dispute raised by the Operator, the Termination Payment, and all other payments that are or may be payable by the Authority under any of the provisions of this Agreement shall be made only by way of credit directly to the Operator's Annuity Payment Account.

16.7.2 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and

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remedies which it may have in law or contract. All rights and obligations of either Party under this Agreement, including without limitation Termination Payment, shall survive the Termination of this Agreement to the extent such survival is necessary for giving effect to such rights and obligations.

## **17. COMPENSATION ON TERMINATION**

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### **17.1 CONSEQUENCES OF TERMINATION - COMPENSATION**

#### **17.1.1 Termination Due to Operator Event of Default**

17.1.1.1 Upon termination of this Agreement 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.

#### **17.1.2 Termination Due to Authority Event of Default, Political Force Majeure Event or Fundamental Change in Law**

17.1.2.1 Upon termination of this Agreement due to an Authority Event of Default, the Authority shall pay to the Operator, as Termination Compensation, an amount equal to one (1) year's Management Fee.

17.1.2.2 Upon termination of this Agreement due to a Political Force Majeure Event or a Fundamental Change in Law, the Authority shall not be liable to make any payments to the Operator in respect of Termination Compensation.

#### **17.1.3 Termination Due to Non-Political Force Majeure Event**

17.1.3.1 Upon termination of this Agreement due to a Non Political Force Majeure Event, the Authority shall pay to the Operator, as Termination Compensation, an amount equal to one (1) year's Management Fee.

### **17.2 CALCULATION AND PAYMENT OF TERMINATION COMPENSATION**

17.2.1 The final amount of the Termination Compensation payable pursuant to this Agreement shall be calculated by the Independent Auditor. The Independent Auditor shall submit a written report to the Parties setting out his findings within 30 (Thirty) Days of the date on which either Party first sends him a written request to calculate the Termination Compensation. The Parties shall provide all reasonable assistance to the Independent Auditor in order to enable him to achieve his mission within the prescribed deadline, including, as regards to the Operator, by giving full access to its accounts. The findings of the Independent Auditor as set out in his written report shall be final and binding on the Parties, save to the extent of any manifest error.

17.2.2 The Termination Compensation shall become due and payable to the Operator by the Authority within 60 (Sixty) Days of a demand being made by the Operator, by way of written notice, for the amount set out in the Independent Auditor's written report.

### **17.3 FULL AND FINAL SETTLEMENT**

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Article 17.3 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Operator against the Authority, in relation to any misrepresentation, breach and/or termination of this Agreement and the Operator shall be excluded from all other rights and remedies in respect of such misrepresentation, breach and/or termination.

**18. DISPUTE RESOLUTION**

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**18.1 PRELIMINARY SETTLEMENT**

**18.1.1 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 Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether during the Concession Period or on expiry thereof, whether before or after the termination of this Agreement ("**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 18.1.2.

**18.1.2 FAST-TRACK ADJUDICATION BY INDEPENDENT EXPERT/ INDEPENDENT AUDITOR**

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 14,
- (b) an Event of Default as specified in Article 15,
- (c) the remedy of defaults and termination procedures as specified in Article 16, and/or
- (d) the existence, nature and consequences of a Change in Law,

the Parties hereby agree to refer such matter for fast-track adjudication (subject always to final arbitration in terms of Article 18.2) to the Independent Expert and the Independent Auditor.

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 or to the Independent Auditor.

If any such specific dispute is not resolved by the Independent Expert or Independent Auditor, within 30 (Thirty) Days of its raising, it shall be resolved in accordance with Article 18.2.

**18.2 DISPUTE SETTLEMENT BY ARBITRATION**

**18.2.1 Appointment of Arbitrator and Rules governing Arbitration**

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

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

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- (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 18.2 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.

18.2.2 **Place of Arbitration**

The place of the Arbitration shall be Karachi, Pakistan.

18.2.3 **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.

18.2.4 **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.

18.2.5 **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.

18.2.6 **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 Agreement, without prejudice to a final adjustment in accordance with such Award, unless this Agreement stands terminated. The Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceedings

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hereunder.

**18.3 SURVIVAL**

The provisions of this Article 18 shall survive the termination of this Agreement for any reason whatsoever.

**19. REPRESENTATIONS AND WARRANTIES**

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**19.1 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 Agreement;
- (b) it has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (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 Agreement; and
- (d) this Agreement constitutes its legal, valid, binding and enforceable obligation.

**19.2 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 Agreement;
- (b) the execution, delivery and performance of this Agreement 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, agreement, 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 Agreement;
- (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 Agreement, any Sanctionable Practice.

**19.3 ACKNOWLEDGEMENT**

The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.

## **20. MISCELLANEOUS PROVISIONS**

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### **20.1 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 Agreement 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 Agreement by effluxion of time or otherwise in accordance with the provisions of this Agreement, shall survive the expiry of the Agreement.

### **20.2 ENTIRE AGREEMENT**

The Parties hereto acknowledge, confirm and undertake that this Agreement, 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.

### **20.3 NOTICES**

20.3.1 Any notice or request in reference to this Agreement shall be written in English language and shall be sent by registered airmail or facsimile (except notifications for the purposes of Article 0 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:

20.3.2 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.

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

### **20.4 GOVERNING LAW**

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



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Pakistan.

**20.5**     **COUNTERPARTS**

This Agreement 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.

**20.6**     **LANGUAGE**

20.6.1    All notices and communications between the Authority, the Operator, the Independent Expert and the Independent Auditor, required under this Agreement, shall be drawn up in English.

**20.7**     **CONFIDENTIALITY**

20.7.1    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 Agreement, or (iii) required to be shared with advisers in connection with the Project.

20.7.2    The provisions of Article 20.7.1 here above shall not apply to:

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

**20.8**     **AMENDMENTS**

20.8.1    Any provision of this Agreement must be recorded in an agreement in writing signed by the Parties.

**20.9**     **WAIVERS AND CONSENTS**

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

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

20.9.3    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.

**20.10**    **SEVERABILITY**

20.10.1   If at any time any provision of this Agreement 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

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impaired and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

- 20.10.2 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.

**20.11 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 Agreement.

**20.12 NO ASSIGNMENT**

- 20.12.1 Except as otherwise provided in this Agreement, the rights and obligations of the Operator under this Agreement shall not be assigned, novated or otherwise transferred to any Person without the prior written consent of the Authority.

- 20.12.2 The rights and obligations of the Authority under this Agreement 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 Agreement 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 Agreement.

**20.13 GOOD FAITH**

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

**20.14 INDEPENDENCE**

In respect of all matters dealing with the Concession Agreement the Independent Expert and the Independent Auditor shall be independent and shall ensure that they perform all their obligations in accordance with the Annex-VI - Terms of Reference for the Independent Expert and Independent Auditor including the Concession Agreement.

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**IN WITNESS WHEREOF** the Parties hereto have caused this Agreement 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:

.....

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**Annex-I Technical Information**

**1.4 Operating Procedures**

This table sets out the operating standards that the Operator should comply with during the operations of the Facilities.

<b>Process</b>	<b>Operating procedure</b>
Maintenance Requirements	The Operator shall ensure proper maintenance and repair of the Facilities in accordance with Good Industry Practice in order to ensure that the Facilities are fully available at all times in accordance with this Agreement.
Management System Requirements	Opening Closing time of the schools, Schedule of events in the Academic year, Recording keeping, Teacher attendance register/mechanism, Inventory register, Devising SOPs, late comers to the school, Counselling sessions with the students, Internal Committee for investigation/inquiry for any grave breach of the SOPs or misconduct by the staff and students, Warning / rectification measures, Tuc shop/school canteen menu to provide healthy and not illegal products, supervisory mechanism over the staff, supervisor mechanism over the children, monitoring visitors carefully (report to main office, sign in, wear badges, report unfamiliar people to school office), safety around the school vicinity, safety of all students during school hours, methods of reporting safety concerns by the students, evaluation and feedback from the students, Teacher meetings, prevention of violent incidents at schools, Emergency contact number of staff and students, connect with community partners ( emergency responders, area hospitals, victim’s assistance, etc) to review emergency response plans, school preparedness drills, encourage students to take responsibility for their part in maintaining safe school environments, consideration of students’ culture and religion, etc.
Safety Regulations	<p>The Operator shall comply with the Applicable Laws, Applicable Permits and Good Industry Practice.</p> <p>Safety standards apply to the operation and maintenance of the Facilities.</p> <p>The Operator shall specify any laws or policies directly applicable to the EMOs, including Anti Tabaco laws, prevention of child abuse, prevention of harassment at work place, etc.</p> <p>Appropriate approach towards students with drug addiction or mental illness should also be prepared.</p>
Environmental Requirements	The Operator shall comply with all environmental regulations and requirements under the Applicable Laws.
Certifications	The Operator shall ensure that it has all the required certifications required by it to provide the Services under this Agreement.

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**Annex-II KPIs**

**MANAGEMENT & ORGANIZATION: Planning, Implementation & Evaluation (Overall Weight-age: 40%):**

<b>1</b>	<b>Key Progress Indicator</b>	<b>School Management Plan – 20%</b>		
	<b>Description</b>	Implementation of an all-inclusive management model comprised of planning, designing, budgeting, implementation framework, managing resources, evaluation, reporting and feedback to meet KPIs, improve student achievement and increase school retention and graduation rates.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 20%</b>
		<ul style="list-style-type: none"> <li>Annual Management Plan.</li> </ul>	Start of the year or signing of the Concession (max within 30 days).	<b>10%</b>
		<ul style="list-style-type: none"> <li>Implementation Framework Timelines. *</li> </ul>	Within 15 days after submission of Annual Management Plan.	<b>05%</b>
<ul style="list-style-type: none"> <li>Development of an EMIS/Maintenance of the EMIS.**</li> </ul>	At the end of the first academic term thereafter, reporting on monthly basis.	<b>05%</b>		
<b>Notes/Guidelines:</b>	<p><b>* Implementation Framework:</b> A guide for day-to-day School Operations and Management Procedures (SOP). Eg. School Assembly, School Timetable, Curriculum Management, Lesson Planning, Teaching Methodology Progress Monitoring, Examination System, Skills Development, Co-Curricular Activities etc.</p>	<p><b>** EMIS:</b> Office Management including but not limited to Maintenance of School Records. Eg. Attendance, Admissions, Transfers, Hiring, Promotions, School Reports; and Inventory: Blackboard, Bulletin Board, Desk, Chairs, Cupboards, Books and Equipment such as Electrical Equipment (Audio Visual Aids, Computer Hardware/Software etc.</p>		
<b>2</b>	<b>Key Progress Indicator</b>	<b>Improved Teachers' Availability and Attendance – 10%</b>		
	<b>Description</b>	Work with the Government school staff, administrators to ensure availability and attendance of teachers during the entire academic year.		

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<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 10%</b>
	<ul style="list-style-type: none"> <li>Teacher Incentive Program. **</li> </ul>	Start of the year or signing of the Concession (max within 30 days).	<b>05%</b>
	<ul style="list-style-type: none"> <li>Biometric Attendance Management System (BAMS). *</li> </ul>	Start of the year or signing of the Concession (max within 90 days) thereafter, reporting on monthly basis to GoS.	<b>05%</b>
	<ul style="list-style-type: none"> <li><b>* Biometric Attendance Management System (BAMS).</b> Introduction of an Attendance System with a biometric device. It ensures a new and systematic method of data collection, of both teachers and administrative staff with just a scan their fingerprint to maintain a daily/monthly attendance record of the school.</li> </ul>	<b>** Teacher Incentive Program.</b> A detailed program developed after consultation with the HM and Teachers that includes both Accountability and Rewards mechanisms. Development of a comprehensive ACR report on the performance of each teacher to approve the annual increments in the case of good performers and to decide whether to retain or replace the weak performers.	
<b>Notes/Guidelines:</b>			

<b>3</b>	<b>Key Progress Indicator</b>	<b>Improved Students' Enrollment and Retention– 10%</b>		
	<b>Description</b>	Adopt a variety of techniques to increase and retain student enrollments, including conducting local community outreach activities to solicit parents/community support for student enrollments and retention.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 10%</b>
		<ul style="list-style-type: none"> <li>Students Enrolment Plan. *</li> </ul>	Baseline at the start of the year or signing of the Concession (max within 30 days).	<b>05%</b>
		<ul style="list-style-type: none"> <li>Students Retention Plan. **</li> </ul>	At the end of the first academic term thereafter, reporting on monthly basis.	<b>05%</b>
<b>Notes/Guidelines:</b>	<b>*Students Enrolment and Retention Plan: (Grade/Gender)</b> Annual enrollment targets based on baseline student classroom ratio plus 5 for assessment year 1, baseline	<b>** Students Retention Plan:</b> Annual retention targets based on baseline report with gradual decrease in student drop-out ratio if any.		

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		student classroom ratio plus 10 for assessment year 2 and so on so forth till maximum enrollment is attained.	
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**LEARNING AND TEACHING: CURRICULUM AND ASSESSMENT/TEACHING PEDAGOGY. (Weightage: 35%)**

<b>4</b>	<b>Key Progress Indicator</b>	<b>Lesson Planning and Students' Assessment System – 20%</b>		
	<b>Description</b>	<p>Implementation of GOS approved curriculum and syllabi. Use of students data (such as from formative and summative assessments) to inform and differentiate instruction in order to meet the academic needs of all students. Improved student learning and achievement through systemic pedagogical approach and systematic curricular/co-curricular program.</p>		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 20%</b>
		<ul style="list-style-type: none"> <li>• Lesson Planning System: * (Curriculum and Syllabus)</li> </ul>	Within 15 days after submission of Annual Management Plan.	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Assessment System: ** (Monthly Formative &amp; Annual Summative Assessment)</li> </ul>	Monthly Formative Assessment * Annual Summative Assessment (In-house)	<b>10%</b>
	<ul style="list-style-type: none"> <li>• Independent Assessment (From a third party)</li> </ul>	At the start of the new Academic year (30 days into the new class)	<b>05%</b>	
<b>Notes/Guidelines:</b>	<p><b>* Lesson Planning System: (Curriculum and Syllabus)</b> Introduction of the Government based Curriculum and development of a syllabi by a team of educationists. The school's syllabi to be aligned with provincial curriculum frameworks and expectations; aligned vertically between grades and horizontally across classrooms at the same grade level; is fully implemented in classrooms; and supports opportunities for all students to master various skills and concepts. The curriculum to be regularly reviewed and revised It should include what</p>		<p><b>** Assessment System: (In-House/Independent)</b> Implementation of a robust Assessment System that is based on good evaluation practices, its focus should be from the beginning of the academic term through the end.  In addition, the Authority will consider other assessment data as supplementary evidence for a school's performance, it will be done by an independent assessment agency mutually selected by the EMO and Authority.</p>	

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<b>5</b>	<b>Key Progress Indicator</b>	<b>Training and Capacity Building of Staff - 15%</b>		
	<b>Description</b>	Professional capacity building of staff to enhance teaching pedagogical skills using variety of tools inclusive of ICT and alternate learning mechanisms to modernize learning process.		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 15%</b>
		<ul style="list-style-type: none"> <li>• Training Need Assessment (TNA): *</li> <li>• Pedagogical/IT Skills Training:**</li> </ul>	<p>Baseline at the start of the year or signing of the Concession (max within 30 days).</p> <p>Within the first quarter of the Concession. Thereafter, Bi-annually.</p>	<p><b>05%</b></p> <p><b>10%</b></p>
	<b>Notes/Guidelines:</b>	<p><b>* Training Need Assessment:</b> A structured way to gathers data to determine what training needs to be developed to help teachers, school and the EMOs to accomplish their goals and objectives. This is an assessment that looks at current knowledges, skills, and abilities, to identify any gaps or areas of need.</p>		<p><b>** Pedagogical/IT Skills Training:</b> Pedagogical (teaching) skills teachers use to impart the specialized knowledge/content of their subject area(s). Effective teachers display a wide range of skills and abilities that lead to creating a learning environment where all students feel comfortable and are sure that they can succeed both academically and personally. <b>IT Skills Training:</b> Skills needed for the teachers to teach basic computer concepts and skills so that students can use computer technology in everyday life to develop new social and economic opportunities for themselves, their families and their communities.</p>
	the students should know by the time they complete the course in the class, within the academic year.	Reference to the baseline, at least additional twenty (20) percent students achieving level of proficiency each year in respective subjects to a maximum of ninety (90) percent of the student of each grade based on the summative examination.		

**SCHOOL ETHOS AND COMMUNITY ENGAGEMENT: (WEIGHTAGE 25%)**



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<b>6</b>	<b>Key Progress Indicator</b>	<b>Improved Community Engagement – 15%</b>		
	<b>Description</b>	Support School Management Committee (SMC) meetings to engage parents and community stakeholders to design, develop and implement a comprehensive school improvement plan; and invite inputs from local community on educational and programmatic needs of students;		
	<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 15%</b>
		<ul style="list-style-type: none"> <li>• School Management Committees:*</li> </ul>	Within 15 days after submission of Annual Management Plan thereafter, on quarterly basis.	<b>05%</b>
		<ul style="list-style-type: none"> <li>• Community Outreach Program: **</li> </ul>	At the start of the academic term thereafter, on quarterly basis.	<b>05%</b>
	<ul style="list-style-type: none"> <li>• Parent Teacher Meetings (PTM): ***</li> </ul>	At the end of the academic term on biannual basis.	<b>05%</b>	
<b>Notes/Guidelines:</b>	<p><b>*School Management Committees:</b> A notified body a School Management Committee (SMC) plays a key role in strengthening relationships between the schools and local communities. It comprises of an Executive Committee and General Body with members belonging to Teachers, Community Elders, Students, and Parents. Minutes of Meeting and/or Resolutions tasks to be documented. Coordination with Authority (PPP Node) and district education machinery to ensure quality i.e. Directorate Schools, D.E.Os, T.M.Os, etc.</p> <p><b>*** Parent Teacher Meetings (PTM):</b> A meeting of Teachers with Parents to review the progress of the students' academic and behavioral problems in a course of an academic year.</p>		<p><b>* Community Outreach Program:</b> School develops a program to ensuring that information is readily available to parents, and the general public regarding nondiscriminatory enrollment practices and the availability of specialized programs and services at the school to meet the needs of all students, particularly girls.  School to engage with community to build an environment that is supportive, keeping in view of the cultural context whereby within the community everyone is celebrated, respected, and heard.</p>	

<b>7</b>	<b>Key Progress Indicator</b>	<b>Improved Health and Hygiene practices – 10%</b>
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<b>Description</b>	Design and implement school based hygiene and nutrition education and awareness raising activities. Work with parents and SMCs to run social and behavior change campaigns in school.		
<b>Measurement/Criterion:</b>	<b>ACTION PLAN</b>	<b>FREQUENCY</b>	<b>BIFURCATION OF 10%</b>
	<ul style="list-style-type: none"> <li>• Health and Safety Policy: *</li> </ul>	Within 15 days after submission of Annual Management Plan. (Annual)	<b>05%</b>
	<ul style="list-style-type: none"> <li>• Healthy Practices/Activities/Facility: **</li> </ul>	At the start of the new term thereafter, on quarterly basis with biannual reporting on screening and progress achieved.	<b>05%</b>
<b>Notes/Guidelines:</b>	<p><b>* Health and Safety Policy:</b> A Health and Safety Policy is for the welfare of all persons in school, whether students, teaching staff, office staff, domestic staff or visitors to the school are the responsibility of the Principal. The EMO should ensure that all staff and students are aware of it in accordance with their age and level of understanding of the H&amp;S Policy.</p>		<p><b>** Healthy Practices/Activities/Facility:</b> Implementation of Healthy Activities pertaining to school. It means proper cleanliness in play areas and wherever movement of students takes place (e.g. school corridors; to and from classrooms; in the classrooms etc).  Arranging of Physical Education periods, and other co-curricular activities to inculcate good behaviour, manners, discipline and personality.</p>

**Annex-III Operator’s Scope of Work**

- A. Apply an all-inclusive management model comprised of planning, designing, budgeting, implementation, managing resources, evaluation, reporting and feedback to implement fully a comprehensive approach in order to meet key performance indicators, substantially improve student achievement outcomes and increase school retention and graduation rates;
- B. Work with the school staff, administrators and Government to ensure availability and attendance of teachers;
- C. Increase opportunities for staff capacity building and career growth to acquire/refine the skills necessary to meet the needs of the students in the school;
- D. Provide staff ongoing, high-quality, job-embedded professional development that is aligned with the school’s instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
- E. Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of all students;
- F. Implement Government approved curriculum and syllabus and help faculty refine their pedagogical and classroom management skills in line with student learning objectives, as approved by the Government;
- G. Improve student learning and achievement through a systemic pedagogical approach and a systematic curricular/co-curricular program;
- H. Increase learning opportunities for all students, with special emphasis on expanded learning experiences for students who are at-risk of academic failure;
- I. Implement high quality assessments that measure knowledge and application of concepts through the use of a variety of item types and formats;
- J. Adopt a variety of techniques to increase and retain student enrollments, including conducting local community outreach to solicit parents/community support for student enrollments and retention;
- K. Engage parents and community stakeholders to design, develop and implement a comprehensive school improvement plan through Community Engagement Activities;
- L. Be responsible to arrange School Management Committee (SMC) meetings on regular basis (at least one in each quarter) basis and report back to all stakeholders on progress and matters for concern;
- M. Invite inputs from local community and address comments/concerns concerning the educational and programmatic needs of students;

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- N. Work and coordinate with Government and district education machinery to monitor, ensure quality control and assessment systems;
- O. Act as the custodian of equipment and facilities at school and conduct regular maintenance;
- P. Conduct outreach to private sector to provide in-kind support to school and act as custodian of resources provided through private funding/contributions, grant funds or other philanthropic resource in/for the school;
- Q. Be accountable for results through outlined accountability measures, performance monitoring expectations, and key performance indicators, as decided in the contract;
- R. Managing the day-to-day operations and needs of the school including directly supporting the Principal/Headmaster(s) and other staff on instructional and operational matters;
- S. Ensure that the quality compliance parameters are invariably adhered to ensure provision of good education and successful program delivery;
- T. Establishing an embedded presence in the school and maintaining consistent and intensive onsite support;
- U. Discussing progress and barriers with the Principal/Headmaster(s) and key stakeholders on a regular basis
- V. Be responsible for all proper accounting, timely disbursement and audit of the expenditures of the allocated amount through the approved budget and contract;
- W. Stream line school administration processes and promote accountability and transparency at all systems and levels;
- X. Ensure fulfilment of and compliance with KPIs;
- Y. All other responsibilities as outlined in the contract.

**Annex-IV Guidelines for the Capacity Test**

The Capacity Test required to be undertaken by the Operator at the start of the Concession Period shall be conducted in accordance with the parameters proposed by the Operator and approved by the Authority and the Independent Expert. The parameters for the Capacity Test shall be provided by the Operator within 20 (Twenty) days of signing of this Agreement and shall be approved by the Authority and the Independent Expert within 15 (Fifteen) days of the Effective Date. The Authority and the Independent Expert may propose any reasonable changes to the Capacity Test parameters, which they deem appropriate. The Capacity Test shall be conducted within a reasonable time period, as may be determined by the EMO District Support Committee.

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**Annex-V Reporting Forms**

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

## **Annex-VI Terms of Reference for the Independent Expert and Independent Auditor**

The Independent Expert and the Independent Auditor shall be fulfill the duties and responsibilities set out below:

### **1. APPOINTMENT**

#### **1.1 APPOINTMENT OF INDEPENDENT EXPERT**

1.1.1 The Independent Auditor shall provide the Authority and the Operator with a list of 4 (Four) education consulting firms specializing in the field of education and literacy and that are able to deploy suitably qualified and experienced personnel (the “**IE List**”) provided however, each firm proposed by the Independent Auditor in the IE List shall have:

- (i) experience of managing and/or operating educational institutions or other similar facilities or shall have experience of evaluating the performance of educational institutions for a period of at least ten (10) years;
- (ii) experience of having performed detailed evaluations of teachers and school management;
- (iii) [●]<sup>10</sup>.

1.1.2 Within 15 (Fifteen) Days of receipt by the Authority and the Operator of the IE List, the Authority and the Operator shall (subject to one of the firms in the IE List being acceptable to the Authority and the Operator) select a reputed firm of educational experts from the IE List and the Parties shall appoint such firm as the Independent Expert.

1.1.3 In the event the firms of educational experts identified by the Independent Auditor in the IE List is not acceptable to the Authority and/or the Operator, the Parties shall appoint such firm as the Independent Expert as may be acceptable to the Parties provided that the firm to be appointed shall have:

- (i) experience of managing and/or operating educational institutions or other similar facilities or shall have experience of evaluating the performance of educational institutions for a period of at least ten (10) years;
- (i) experience of having performed detailed evaluations of teachers and school management;
- (ii) [●]<sup>11</sup>.

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<sup>10</sup> Other requirements may be included (if required) at the time of finalization of this Agreement.

<sup>11</sup> Ibid.

1.1.4 The Independent Expert shall be appointed and shall be responsible for fulfilling its duties and responsibilities from the date of its appointment until the Expiry Date, unless its appointment is terminated earlier.

1.2 APPOINTMENT OF INDEPENDENT AUDITOR

1.2.1 The Parties shall select one of the chartered accountancy firms out of the Big Four as the Independent Auditor.

1.1.3 In the event the Parties are unable to mutually agree on the appointment of the Independent Auditor out of the Big Four, the Parties shall appoint such firm as the Independent Auditor as may be acceptable to the Authority out of the Big Four.

2. **DUTIES AND RESPONSIBILITIES OF THE INDEPENDENT EXPERT**

2.1 **GENERAL**

The Independent Expert shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Expert in this Agreement. Without limiting the generality of the foregoing, the Independent Expert shall be responsible for:

- (i) reviewing and approving/certifying all activities associated with the fulfilment of KPIs by the Operator;
- (ii) reporting to the Authority on technical and financial aspects under the Agreement;
- (iii) if required, assisting the Parties in resolving any dispute or making determinations referred to it pursuant to the Agreement;
- (iv) [●]<sup>12</sup>.

3. **DUTIES AND RESPONSIBILITIES OF THE INDEPENDENT AUDITOR**

3.1 The Independent Auditor shall perform all such roles, duties and functions as are contemplated to be performed by the Independent Auditor in this Agreement. Without limiting the generality of the foregoing, during the Services Period, the Independent Auditor will be responsible for:

- (i) carrying out audits (on a quarterly and annual basis) to establish compliance or otherwise of the Services with the KPIs, Applicable Laws, Applicable Permits and Good Industry Practices in accordance with the procedures set out in the Agreement;
- (ii) assisting the Parties in determining, under the Concession Agreement:
  - existence and consequences of a Force Majeure Event,

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<sup>12</sup> Other responsibilities may be included (if required) at the time of finalization of this Agreement.



- an Event of Default,
  - the remedy of defaults and termination procedures,
  - the existence, nature and consequences of a Change in Law,
  - the existence and consequences of any of the other relief items set out in the Concession Agreement, and/or
  - any other matter of a technical nature referred by both Parties;
- (iii) carrying out any other duties and functions specified in the Concession Agreement, other than those listed above;
- (iv) [●]<sup>13</sup>.

#### **4. INDEPENDENCE**

In respect of all matters dealing with the Agreement the Independent Expert and the Independent Auditor shall be independent and shall ensure that it performs all its obligations in accordance with the Concession Agreement.

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<sup>13</sup> Ibid.

## Annex-VII FORM OF PERFORMANCE SECURITY

[ON APPROPRIATE STAMP PAPER]

### 1. FORM OF PERFORMANCE SECURITY

To:

**EDUCATION & LITERACY 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 agreement entitled the “CONCESSION AGREEMENT” dated [●], 2015 (hereinafter referred to as the “**Agreement**”) for the implementation of the Education Management Organizations Project in the Province of Sindh under the public private partnership mode:

- (a) **THE GOVERNOR OF SINDH** (THROUGH EDUCATION & LITERACY 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 Agreement, 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 Agreement, 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 Agreement may be amended, renewed, extended, modified, compromised, released or discharged by mutual agreement 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 Agreement 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 agreement, 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 Concession Agreement. The quantum, duration and renewal mechanism of the Performance Security shall follow the principles set out in Article 8.***

## **Annex-VIII Applicable Permits**

[To be completed by the Parties prior to signing of the Concession Agreement]

## Annex-IX Handing Over Criteria

The Authority shall handover the Facilities to the Operator in accordance with the following Handing Over Criteria, which Handing Over Criteria basically lists down the assets, furniture and fixtures available at the Facilities at the time of Handing Over. The list of following assets, furniture and fixtures shall be finalized between the Parties prior to signing of the Agreement:

### 20.15 Standard School Building Type 1:

Item No.	Description	Qty
1.1.1	Class Room Desk (Level -1) 21"x18" ht=18" to 20"	214
1.1.2	Class Room Desk (Level -2) 21"x18" ht=22" to 24"	104
1.1.3	Class Room Desk (Level -3) 24"x18" ht=28" to 30"	156
1.2.1	Class Room Chair (Level -1) a)1/2" thick Imported Ply-wood seat of size 14"x14" with 12" height	107
	b)Textured Fiber seat of size 14"x14" with 12" height	107
1.2.2	Class Room Chair (Level -2) 16"x16" ht=16"	104
1.2.3	Class Room Chair (Level -3) 14"x14" ht=18"	156
1.2.4	Level-4 Tablet Chair 18"x18" a)1/2" thick Imported Ply-wood seat of size: 18"x18"	84
	b)Textured Fiber seat of size: 18"x18"	84
1.3	Teacher Table 4'-0"x2'-0" x 2'-6"	14
1.4	Teacher Chair 19"x19"	14
1.5	Writing Board 8'-0" x 4'-0"	14
1.6-a	wall mounted shelf 2'-0" x 1'-3" x 8"	6
1.6-b	wall mounted shelf 2'-6" x 1'-3" x 8"	8
1.7-a	Class Room Racks 5'-0"x1'-4"x4'-4"	12
1.7-b	Class Room Racks 4'-0"x1'-4"x5'-4"	4
1.8	Notice Board 3'-0" x 3'-0"	14
2.1	Multi-Hall tablet Chair 18"x18"	115
2.2	Podium Chair 19"x19"	8
2.3	Rostrum 2'-8"x 1'-6"x 4'-0"	2
2.4	White Board 6'-0" x 4'-0"	1
2.5	Notice Board 3'-0" x 3'-0"	1
2.6	Base Cabinet 3'-0" x 1'-6"x 2'-6"	0
3.1.1	Principal Table with Side Rack L-shape	1
3.1.2-a	Principal Chair	1
3.1.2-b	Guest Chair	2

3.1.3	Sofa 2 Seater	2
3.1.4-a	Side Table 19"x19"	1
3.1.4-b	Center Table	1
3.1.5	Filing Cabinet 3'-0" x 2'-0" x 7'-0"	1
3.1.6	White Board 4'-0" x 3'-0"	1
3.1.7	Notice Board 3'-0" x 3'-0"	1
3.2.1	Admin. Chair	1
3.2.2	Admin Table	1
3.2.3	Side Table 19"x19"	1
3.2.4	Guest Chair	2
3.2.5	Sofa 2 Seater	3
3.2.6	Base Cabinet 3'-0" x 1'-6"x 2'-6"	3
3.2.7	Clerk Table	2
3.2.8	Clerk Chair	2
3.2.9	Wooden Partition 8'-0" x 8'-0"	0
3.2.10	White Board 4'-0" x 3'-0"	1
3.2.11	Notice Board 3'-0" x 3'-0"	1
3.2.12	Center Table	1
3.3.1-a	Staff room Table 6'-0"x 3'-0"	1
3.3.1-b	Center Table	1
3.3.2	Chair	6
3.3.3	Base Cabinet 3'-0" x 1'-6"x 2'-6"	4
3.3.4	white board	1
3.3.5	Notice Board 3'-0" x 3'-0"	1
3.3.6	Sofa 2 Seater	4
3.4.1	Doctor Chair	1
3.4.2	Doctor Table	1
3.4.3	Stool	1
3.4.4	FootStand	1
3.4.5	Couch	1
3.4.6	Base Cabinet 4'-0" x 1'-6"x 2'-6"	2
3.4.7	white Board	1
3.4.8	Notice Board 3'-0" x 3'-0"	1
3.4.9	Sofa 3 Seater	2
3.4.10	Side Table 19"x19"	1
3.4.11	Center Table	1
3.5.1	waiting Room table 3'-6"x 2'-0"	0
3.5.2	waiting Room chair	0
3.5.3-a	Sofa 2 Seater	0
3.5.3-b	Sofa 3 Seater	0
3.5.4	Side Table 19"x19"	0
3.5.5	Center Table	0
3.6.1-a	Store Room Cupboard 3'-0"x1'-3"x6'-0"	0



3.6.1-b	Store Room Cupboard 4'-0"x1'-3"x6'-0"	1
4.1-a	Librarian Table	0
4.1-b	Librarian Table	1
4.2	Librarian chair	1
4.3	Study Table 11'-0" x 3'-0"	2
4.4	Study Chair	16
4.5-a	Book Shelf 3'-0"x 1'-0" x 7'-0"	30
4.5-b	Book Shelf 4'-0"x 1'-0" x 7'-0"	0
4.6	white Board	1
4.7	Notice Board 3'-0" x 3'-0"	1
7.1	Notice Board lobby 6'-0" x 4'-0"	1

## 20.16 Standard School Building Type 1 A

Item No.	Description	Qty
1.1.1	Class Room Desk (Level -1) 21"x18" ht=18" to 20"	200
1.1.2	Class Room Desk (Level -2) 21"x18" ht=22" to 24"	84
1.1.3	Class Room Desk (Level -3) 24"x18" ht=28" to 30"	126
1.2.1	Class Room Chair (Level -1) a)1/2" thick Imported Ply-wood seat of size 14"x14" with 12" height	100
	b)Textured Fiber seat of size 14"x14" with 12" height	100
1.2.2	Class Room Chair (Level -2) 16"x16" ht=16"	84
1.2.3	Class Room Chair (Level -3) 14"x14" ht=18"	126
1.2.4	Level-4 Tablet Chair 18"x18" a)1/2" thick Imported Ply-wood seat of size: 18"x18"	84
	b)Textured Fiber seat of size: 18"x18"	84
1.3	Teacher Table 4'-0"x2'-0" x 2'-6"	14
1.4	Teacher Chair 19"x19"	14
1.5	Writing Board 8'-0" x 4'-0"	14
1.6-a	wall mounted shelf 2'-0" x 1'-3" x 8"	0
1.6-b	wall mounted shelf 2'-6" x 1'-3" x 8"	14
1.7-a	Class Room Racks 5'-0"x1'-4"x4'-4"	15
1.7-b	Class Room Racks 4'-0"x1'-4"x5'-4"	0
1.8	Notice Board 3'-0" x 3'-0"	14

2.1	Multi-Hall tablet Chair 18"x18"	77
2.2	Podium Chair 19"x19"	8
2.3	Rostrum 2'-8"x 1'-6"x 4'-0	2
2.4	White Board 6'-0" x 4'-0"	1
2.5	Notice Board 3'-0" x 3'-0"	1
2.6	Base Cabinet 3'-0" x 1'-6" x 2'-6"	6
3.1.1	Principal Table with Side Rack L-shape	1
3.1.2-a	Principal Chair	1
3.1.2-b	Guest Chair	2
3.1.3	Sofa 2 Seat	1
3.1.4-a	Side Table 19"x19"	0
3.1.4-b	Center Table	0
3.1.5	Filing Cabinet 3'-0" x 2'-0" x 7'-0"	1
3.1.6	White Board 4'-0" x 3'-0"	1
3.1.7	Notice Board 3'-0" x 3'-0"	1
3.2.1	Admin. Chair	1
3.2.2	Admin Table	1
3.2.3	Side Table 19"x19"	0
3.2.4	Guest Chair	2
3.2.5	Sofa 2 Seat	0
3.2.6	Base Cabinet 3'-0" x 1'-6" x 2'-6"	2
3.2.7	Clerk Table	2
3.2.8	Clerk Chair	2
3.2.9	Wooden Partition 8'-0" x 8'-0"	1
3.2.10	White Board 4'-0" x 3'-0"	1
3.2.11	Notice Board 3'-0" x 3'-0"	1
3.2.12	Center Table	0
3.3.1-a	Staff room Table 6'-0"x 3'-0"	1
3.3.1-b	Center Table	1
3.3.2	Chair	4
3.3.3	Base Cabinet 3'-0" x 1'-6" x 2'-6"	5
3.3.4	white board	1
3.3.5	Notice Board 3'-0" x 3'-0"	1
3.3.6	Sofa 2 Seat	4
3.4.1	Doctor Chair	1
3.4.2	Doctor Table	1
3.4.3	Stool	1
3.4.4	Foot Stand	1
3.4.5	Couch	1
3.4.6	Base Cabinet 4'-0" x 1'-6" x 2'-6"	2
3.4.7	white Board	1
3.4.8	Notice Board 3'-0" x 3'-0"	1
3.4.9	Sofa 3 Seat	0
3.4.10	Side Table 19"x19"	0
3.4.11	Center Table	0
3.5.1	waiting Room table 3'-6"x 2'-0"	1
3.5.2	waiting Room chair	7
3.5.3-a	Sofa 2 Seat	0
3.5.3-b	Sofa 3 Seat	0
3.5.4	Side Table 19"x19"	0

3.5.5	Center Table	0
3.6.1-a	Store Room Cupboard 3'-0"x1'-3"x6'-0"	1
3.6.1-b	Store Room Cupboard 4'-0"x1'-3"x6'-0"	0
4.1-a	Librarian Table	0
4.1-b	Librarian Table	1
4.2	Librarian chair	1
4.3	Study Table 11'-0" x 3'-0"	2
4.4	Study Chair	20
4.5-a	Book Shelf 3'-0"x 1'-0" x 7'-0"	0
4.5-b	Book Shelf 4'-0"x 1'-0" x 7'-0"	0
4.6	white Board	1
4.7	Notice Board 3'-0" x 3'-0"	1
7.1	Notice Board lobby 6'-0" x 4'-0"	1
	<b>Sub-Total</b>	

## 20.17 Standard School Building Type 2

Item No.	Description	Qty
1.1.1	Class Room Desk (Level -1) 21"x18" ht=18" to 20"	270
1.1.2	Class Room Desk (Level -2) 21"x18" ht=22" to 24"	104
1.1.3	Class Room Desk (Level -3) 24"x18" ht=28" to 30"	156
1.2.1	Class Room Chair (Level -1)	135
	a)1/2" thick Imported Ply-wood seat of size 14"x14" with 12" height	
	b)Textured Fiber seat of size 14"x14" with 12" height	135
1.2.2	Class Room Chair (Level -2) 16"x16" ht=16"	104
1.2.3	Class Room Chair (Level -3) 14"x14" ht=18"	156
1.2.4	Level-4 Tablet Chair 18"x18"	52
	a)1/2" thick Imported Ply-wood seat of size: 18"x18"	
	b)Textured Fiber seat of size: 18"x18"	52
1.3	Teacher Table 4'-0"x2'-0" x 2'-6"	12
1.4	Teacher Chair 19"x19"	12
1.5	Writing Board 8'-0" x 4'-0"	12
1.6-a	Wall mounted shelf 2'-0" x 1'-3" x 8"	12
1.6-b	Wall mounted shelf 2'-6" x 1'-3" x 8"	0
1.7-a	Class Room Racks 5'-0"x1'-4"x4'-4"	0
1.7-b	Class Room Racks 4'-0"x1'-4"x5'-4"	20
1.8	Notice Board 3'-0" x 3'-0"	12
2.1	Multi-Hall tablet Chair 18"x18"	115
2.2	Podium Chair 19"x19"	8
2.3	Rostrum 2'-8"x 1'-6"x 4'-0"	2
2.4	White Board 6'-0" x 4'-0"	1
2.5	Notice Board 3'-0" x 3'-0"	1
2.6	Base Cabinet 3'-0" x 1'-6"x 2'-6"	0
3.1.1	Principal Table with Side Rack L-shape	1
3.1.2-a	Principal Chair	1
3.1.2-b	Guest Chair	2
3.1.3	Sofa 2 Seat	2

3.1.4-a	Side Table 19"x19"	1
3.1.4-b	Center Table	1
3.1.5	Filing Cabinet 3'-0" x 2'-0" x 7'-0"	1
3.1.6	White Board 4'-0" x 3'-0"	1
3.1.7	Notice Board 3'-0" x 3'-0"	1
3.2.1	Admin. Chair	1
3.2.2	Admin Table	1
3.2.3	Side Table 19"x19"	2
3.2.4	Guest Chair	2
3.2.5	Sofa 2 Seat	3
3.2.6	Base Cabinet 3'-0" x 1'-6"x 2'-6"	0
3.2.7	Clerk Table	2
3.2.8	Clerk Chair	2
3.2.10	White Board 4'-0" x 3'-0"	1
3.2.11	Notice Board 3'-0" x 3'-0"	1
3.2.12	Center Table	1
3.3.1-a	Staff room Table 6'-0"x 3'-0"	1
3.3.1-b	Center Table	0
3.3.2	Chair	6
3.3.3	Base Cabinet 3'-0" x 1'-6"x 2'-6"	4
3.3.4	white board	1
3.3.5	Notice Board 3'-0" x 3'-0"	1
3.3.6-a	Sofa 2 Seat	3
3.3.6-b	Sofa 3 Seat	1
3.3.7	Side Table 19"x19"	1
3.4.1	Doctor Chair	1
3.4.2	Doctor Table	1
3.4.3	Stool	1
3.4.4	Foot Stand	1
3.4.5	Couch	1
3.4.6	Base Cabinet 4'-0" x 1'-6"x 2'-6"	2
3.4.7	white Board	1
3.4.8	Notice Board 3'-0" x 3'-0"	1
3.4.9	Sofa 3 Seat	0
3.4.10	Side Table 19"x19"	1
3.4.11	Center Table	0
3.5.1	waiting Room table 3'-6"x 2'-0"	0
3.5.2	waiting Room chair	0
3.5.3-a	Sofa 2 Seat	0
3.5.3-b	Sofa 3 Seat	0
3.5.4	Side Table 19"x19"	0
3.5.5	Center Table	0
3.6.1-a	Store Room Cupboard 3'-0"x1'-3"x6'-0"	0
3.6.1-b	Store Room Cupboard 4'-0"x1'-3"x6'-0"	1
4.1-a	Librarian Table	0
4.1-b	Librarian Table	1
4.2	Librarian chair	1
4.3	Study Table 11'-0" x 3'-0"	2
4.4	Study Chair	16
4.5-a	Book Shelf 3'-0"x 1'-0" x 7'-0"	30

4.5-b	Book Shelf 4'-0" x 1'-0" x 7'-0"	0
4.6	white Board	1
4.7	Notice Board 3'-0" x 3'-0"	1
7.1	Notice Board lobby 6'-0" x 4'-0"	1

### 20.18 Standard School Building Type 3

Item No.	Description	Qty
1.1.1	Class Room Desk (Level -1) 21"x18" ht=18" to 20"	0
1.1.2	Class Room Desk (Level -2) 21"x18" ht=22" to 24"	0
1.1.3	Class Room Desk (Level -3) 24"x18" ht=28" to 30"	210
1.2.1	Class Room Chair (Level -1)	0
	b)Textured Fiber seat of size 14"x14" with 12" height	0
1.2.2	Class Room Chair (Level -2) 16"x16" ht=16"	0
1.2.3	Class Room Chair (Level -3) 14"x14" ht=18"	210
1.2.4	Level-4 Tablet Chair 18"x18"	63
	b)Textured Fiber seat of size: 18"x18"	63
1.3	Teacher Table 4'-0"x2'-0" x 2'-6"	8
1.4	Teacher Chair 19"x19"	8
1.5	Writing Board 8'-0" x 4'-0"	8
1.6-a	wall mounted shelf 2'-0" x 1'-3" x 8"	0
1.6-b	wall mounted shelf 2'-6" x 1'-3" x 8"	8
1.7-a	Class Room Racks 5'-0"x1'-4"x4'-4"	0
1.7-b	Class Room Racks 4'-0"x1'-4"x5'-4"	0
1.8	Notice Board 3'-0" x 3'-0"	8
2.1	Multi-Hall tablet Chair 18"x18"	77
2.2	Podium Chair 19"x19"	8
2.3	Rostrum 2'-8"x 1'-6"x 4'-0	2
2.4	White Board 6'-0" x 4'-0"	1
2.5	Notice Board 3'-0" x 3'-0"	1
2.6	Base Cabinet 3'-0" x 1'-6" x 2'-6"	6
3.1.1	Principal Table with Side Rack L-shape	1
3.1.2-a	Principal Chair	1
3.1.2-b	Guest Chair	2
3.1.3	Sofa 2 Seat	1
3.1.4-a	Side Table 19"x19"	0
3.1.4-b	Center Table	0
3.1.5	Filing Cabinet 3'-0" x 2'-0" x 7'-0"	1
3.1.6	White Board 4'-0" x 3'-0"	1
3.1.7	Notice Board 3'-0" x 3'-0"	1
3.2.1	<b>Admin. Chair</b>	1
3.2.2	Admin Table	1
3.2.3	Side Table 19"x19"	0
3.2.4	Guest Chair	2

3.2.5	Sofa 2 Seat	0
3.2.6	Base Cabinet 3'-0" x 1'-6" x 2'-6"	2
3.2.7	Clerk Table	2
3.2.8	Clerk Chair	2
<b>Item</b>	<b>Description</b>	<b>Qty</b>
3.2.9	Wooden Partition 8'-0" x 8'-0"	1
3.2.10	White Board 4'-0" x 3'-0"	1
3.2.11	Notice Board 3'-0" x 3'-0"	1
3.2.12	Center Table	0
3.3.1-a	<b>Staff room Table 6'-0" x 3'-0"</b>	1
3.3.1-b	Center Table	1
3.3.2	Chair	4
3.3.3	Base Cabinet 3'-0" x 1'-6" x 2'-6"	5
3.3.4	white board	1
3.3.5	Notice Board 3'-0" x 3'-0"	1
3.3.6-a	Sofa 2 Seat	4
3.3.6-b	Sofa 3 Seat	0
3.3.7	Side Table 19"x19"	0
3.4.1	<b>Doctor Chair</b>	1
3.4.2	Doctor Table	1
3.4.3	Stool	1
3.4.4	Foot Stand	1
3.4.5	Couch	1
3.4.6	Base Cabinet 4'-0" x 1'-6" x 2'-6"	2
3.4.7	white Board	1
3.4.8	Notice Board 3'-0" x 3'-0"	1
3.4.9	Sofa 3 Seat	0
3.4.10	Side Table 19"x19"	0
3.4.11	Center Table	0
3.5.1	<b>waiting Room table 3'-6" x 2'-0"</b>	1
3.5.2	waiting Room chair	7
3.5.3-a	Sofa 2 Seat	0
3.5.3-b	Sofa 3 Seat	0
3.5.4	Side Table 19"x19"	0
3.5.5	Center Table	0
3.6.1-a	Store Room Cupboard 3'-0" x 1'-3" x 6'-0"	1
3.6.1-b	Store Room Cupboard 4'-0" x 1'-3" x 6'-0"	0
4.1-a	Librarian Table	0
4.1-b	Librarian Table	1
4.2	Librarian chair	1
4.3	Study Table 11'-0" x 3'-0"	2
4.4	Study Chair	20
4.5-a	Book Shelf 3'-0" x 1'-0" x 7'-0"	6
4.5-b	Book Shelf 4'-0" x 1'-0" x 7'-0"	0

4.6	white Board	1
4.7	Notice Board 3'-0" x 3'-0"	1
7.1	Notice Board lobby 6'-0" x 4'-0"	1

## **Annex-X 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 Agreement in proper working condition.



## **Annex-XI Employment Criteria**

[To be finalized between the Parties and the Independent Expert within Thirty (30) days of the Effective Date.]

## Annex-XII Annuity Amount Payment Adjustment Formula

The following formula / working shall be used to make deductions from the Annuity Amount Payments based on the level / degree of fulfilment of the KPIs by the Operator. The following adjustments shall be computed by the Independent Auditor based on the evaluation of the KPIs done by the Independent Expert from time to time and in accordance with this Agreement:

Formula **QP = PQ \* W / 100**

PA = IE Rating for each KPI

QPA = QP \* PA

A sample working in respect of the above formula, showing how the formula shall be applied to the level of fulfilment of KPIs, is provided below:

				PQ	
				Payment for the Quarter	10,000
KP	W	QP	PA	QPA	
		Quarter			Quarter Payment for
KPIs	Weightage	Payment Due	Performance Achieved	Performance Achieved	
K1	20	2,000	80%	1,600	
K2	10	1,000	100%	1,000	
K3	20	2,000	95%	1,900	
K4	10	1,000	75%	750	
K5	20	2,000	90%	1,800	
K6	10	1,000	75%	750	
K7	10	1,000	90%	900	
	100	10,000		8,700	

Legend	PQ	Payment for the Quarter
	KP	Key Performance Indicator
	W	Weightage Given in the Agreement
	QP	Quarter Payment Due for each KP
	PA	Performance Achieved, Rated by IE
	QPA	Quarter Payment for each KP

**Annex-XIII Annuity Amount Payment Schedule**

[To be finalized based on the Bid and Project Costs mentioned therein]

## **Annex-XIV Details of Facilities**

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