
**SINDH INFRASTRUCTURE DEVELOPMENT COMPANY
LIMITED (SIDCL)**

GOVERNMENT OF PAKISTAN



REQUEST FOR PROPOSALS (RFP)

IN RELATION TO THE

**HIRING OF FUND MANAGER
FOR**

**FUND MANAGEMENT SERVICES FOR THE BUS RAPID TRANSIT
SYSTEM OF THE ORANGE AND GREEN LINES**

ISSUED ON: 28TH MAY 2021

LETTER OF INVITATION

The Sindh Infrastructure Development Company Limited (the “**Employer**”) invites Technical and Financial Proposal(s), sealed in separate envelopes and enclosed in one (1) single outer envelope from Bidders for the Projects.

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

The Employer is a public limited company established under the Companies Act, 2017. It is based in Karachi to carry out the business of infrastructure development, expansion and improvement, in line with government policy for planning, designing, implementing, constructing and executing infrastructure development projects in Karachi and adjoining areas. The Employer has been entrusted with the task of developing and improving the quality of certain forms of mass transport/transit system in the city of Karachi, Pakistan.

The Employer is developing the Green Line Project and the Orange Line Project for the city of Karachi consisting of:

- (i) 21 km BRTS Green Line from Surjani (Abdullah Mor) to Municipal Park with approximately twenty-five (25) stations with an average distance of approximately nine hundred (900) meters between Bus Stations;
- (ii) 4 km BRTS Orange Line from Town Municipal Administration Office (Orangi) to Board Office with approximately four (4) stations with an average distance of approximately one thousand (1000) meters between Bus Stations.

The corridor of the Green Line Project has been completed with state-of-the-art Intelligent Transport System (ITS) installations including Automatic Fare Collection (AFC) Systems, Operations Command & Control (OCC) Centre, monitoring cameras, surveillance and control mechanism and well-spaced bus stations. According to the original scope, the project was to end at Gurumandir. However, with other BRTS lines passing through M.A. Jinnah, a common corridor at Numaish and ending at Municipal Park has been included in Green Line Project as its extended scope.

The Bidders are informed that the Green Line Project corridor will be operational in two phases. In the first phase, Green Line Project from bus depot at Surjani to Numaish Underpass along with the Operations Control Centre (OCC) (with twenty-two (22) Bus Stations) will be operationalized. Thereafter, in the second phase, the common corridor between Numaish and Municipal Park (with three (3) Bus Stations) is expected to be operationalized by July 2022 (except as such date may be extended by the Employer and communicated to the Fund Manager). The Bidders are advised to plan the execution of Services in respect of the Green Line Project taking into account operationalization in two phases.

In respect of the Orange Line Project operations, 12 metre buses will be operational from TMA Office Orangi Town to Board Office in a dedicated Orange Line Project corridor. Between Board Office and Hyderi Station (Green Line Project) the 12 metre buses will commute in mixed traffic before entering the corridor for the Green Line Project (after the KDA Flyover). Upon entering the corridor for the Green Line Project, the 12 metre buses will commute till Nagan Station, exit and take a U-Turn in mixed traffic beneath start of elevated section of corridor for the Green Line Project. The total length of Orange Line Project will be 10 km in a single journey.

The Bidding Documents set out the process for the Successful Bidder to perform the Fund Management Services during the Term in relation to the operation of the Projects.

It is mandatory for the Bids to be prepared using the standard formats provided in Section H (*Bidding Forms*) and ITB 10 (*Financial Proposal*) of the Bidding Documents. Bids that are not prepared on the prescribed format may not be considered by the Employer. If any information required in the forms is found missing, or written elsewhere, no credit will be given in the relevant section of the evaluation and may lead to rejection of the Bid.

Bids must be delivered to the address given below by not later than the Submission Deadline. The Technical Proposal will be opened on the same day at 03:30 pm (Pakistan Standard Time) in the presence of the representatives of the Bidders who may wish to attend. The Financial Proposal of only technically qualified Bidders will be opened.

The Employer reserves the right to accept or reject any Bids received under the Bidding Documents or cancel / annul the Bidding Process, at any time during the Bidding Process.

Further information and the Bidding Documents in relation to the Projects may be obtained from the address given below on a working day during office hours before the Submission Deadline upon submission of a written application.

**The Chief Executive Officer
Sindh Infrastructure Development Company Limited
6th Floor, Extension Block, Bahria Complex IV, Karachi.
Ph: 021-35155101**

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**The Chief Executive Officer
Sindh Infrastructure Development Company Limited**

IMPORTANT NOTICE

These Bidding Documents are being issued to the recipient by the Employer solely for use in preparing and submitting its Bid for participation in the national competitive bidding process being conducted by the Employer for the purposes of selection of a Successful Bidder to perform the Fund Management Services in relation to the Projects.

The Bids will be reviewed in accordance with the applicable Pakistani laws. Neither the Employer, nor its employees, personnel, agents, consultants, advisors and contractors *etc.*, make any representation (express or implied) as to the accuracy or completeness of the information contained herein, or in any other document made available to any person in connection with the Bidding Process and the same shall have no liability for these Bidding Documents or for any other written or oral communication transmitted to the Bidders in the course of the evaluation of Bids. Neither the Employer nor its employees, personnel, agents, consultants, advisors and contractors *etc.*, will be liable in any manner whatsoever to reimburse or compensate the Bidders for any costs, fees, damages or expenses incurred by the Bidders in evaluating or acting upon these Bidding Documents or otherwise in connection with the Fund Management Services. Any Bid submitted in response to these Bidding Documents by any of the Bidders shall be upon full understanding and agreement of any and all terms of these Bidding Documents and such submission shall be deemed as an acceptance to all the terms and conditions stated in these Bidding Documents.

Any Bid that is submitted by a Bidder shall be construed based on the understanding that the Bidder acknowledges that prior to submission of the Bid in response to these Bidding Documents, the Bidder has, after a complete and careful examination, made an independent evaluation of these Bidding Documents and all information provided by the Employer. The Employer (including its employees, personnel, agents, consultants, advisors and contractors *etc.*) makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and / or completeness of any assessment, assumptions, statement or information provided by it and the Bidder shall have no claim whatsoever of any nature against the Employer (including its employees, personnel, agents, consultants, advisors and contractors *etc.*) in this regard.

These Bidding Documents do not constitute a solicitation to invest, or otherwise participate, in the Bidding Process, neither shall it constitute a guarantee on part of the Employer that the Agreements will be awarded.

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INSTRUCTIONS TO BIDDERS

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A. DEFINITIONS

In the Bidding Documents, capitalized terms shall have the meanings assigned to them under the Agreements. In addition, the following terms shall have the following meanings, unless the context otherwise requires:

“Acceptance of Notification of Award” has the meaning given to that term in ITB 30.2.

“Agreements” means, collectively the Orange Line Agreement and the Green Line Agreement.

“Authorised Representative” has the meaning given to that term in ITB 15.2.

“Bank Benchmark Rate” has the meaning given to that term in Bidding Form F2 (*Details of Financial Proposal*).

“Bid” means the bid comprising a Technical Proposal and a Financial Proposal, submitted or to be submitted by the Bidder to the Employer pursuant to the Bidding Documents.

“Bidder(s)” means a bidder that has submitted a Bid to the Employer pursuant to the Bidding Documents.

“Bidding Documents” means the Instructions to Bidders and the Agreements.

“Bidding Forms” means the forms attached to this ITB that shall be filled out by the Bidder and to be submitted as part of the Bid.

“Bid Opening” has the meaning given to that term in ITB 20.1.

“Bidding Process” has the meaning given to that term in ITB 1.1.

“Bid Security” has the meaning given to that term in ITB 13.1.

“Bid Validity Period” has the meaning given to that term in ITB 14.1.

“BRTS” means Bus Rapid Transit System.

“Bus Station(s)” has the meaning given to that term respectively under each of the Agreements.

“Clarification” has the meaning given to the term in ITB 5.1.

“Employer” means the Sindh Infrastructure Development Company Limited (SIDCL), a public limited company duly organized and existing under the laws of Pakistan with its office located at 6th Floor, Extension Block, Bahria Complex IV, Karachi, Pakistan.

“Financial Proposal” means the financial proposal submitted by the Bidders as part of their Bids pursuant to the Bidding Documents.

“Fund Manager” has the meaning given to that term respectively under each of the Agreements.

“Fund Management Services” means the services to be provided by the Fund Manager as set out in Annexure D (*Scope of Fund Management Services*) of the RFP and Schedule A (*Fund Manager’s Scope of Work*) of the Agreements.

“Green Line Project” has the meaning given to that term under the Green Line Agreement.

“Green Line Agreement” means the draft fund management agreement for the Green Line Project including all schedules attached thereto, to be entered into by and between the Employer and the Successful Bidder, in the form attached in Part II of the Bidding Documents.

“Integrity Pact” has the meaning given to that term in ITB 39.1.

“ITB” or **“Instructions to Bidders”** means the instructions to Bidders set out in Part I (*Instructions to Bidders*) of the Bidding Documents.

“Letter of Invitation” means the letter issued by the Employer to prospective Bidders for participation in the Bidding Process.

“Minimum Credit Rating” means, with respect to a person or the instruments issued by such person:

- (i) in relation to such a person, that is rated AA+ or higher by PACRA or AA+ or higher by VIS; and
- (ii) in relation to such an instrument, that it is rated AA+ or higher by PACRA or AA+ or higher by VIS,

provided that where a person or any instruments is rated by more than one of PACRA or VIS, as applicable, then the lowest rating will apply for determining whether the person or instrument has an Acceptable Pakistan Credit Rating.

“Notification of Award” has the meaning given to that term in ITB 30.1.

“Orange Line Project” has the meaning given to that term under the Orange Line Agreement.

“Orange Line Agreement” means the draft fund management agreement for the Orange Line Project including all schedules attached thereto, to be entered into by and between the Employer and the Successful Bidder, in the form attached in Part III of the Bidding Documents.

“Pakistani Rupee” or **“PKR”** means the lawful currency of Pakistan.

“Performance Security(ies)” means the performance securities to be furnished and maintained by the Successful Bidder in accordance with the terms of each of the Agreements.

“Procurement Laws” means collectively: (a) the Public Procurement Regulatory Authority Ordinance, 2002; and (b) the Public Procurement Rules, 2004, each as from time to time may be amended, modified, supplemented, extended or re-enacted.

“Projects” means collectively the Orange Line Project and the Green Line Project.

“Service Fee” has the meaning given to that term respectively under each of the Agreements.

“Submission Deadline” means 03:00 pm (Pakistan Standard Time) on June 14, 2021 as may be extended by the Employer in terms of ITB 6.3 and ITB 17.5.

“Successful Bidder” means the Bidder: (i) having the most advantageous Bid pursuant to the requirements of the Bidding Documents and the Procurement Laws; (ii) selected by the Employer to execute the Agreements and undertake the Fund Management Services pursuant to the requirements of the Bidding Documents.

“Sub-Contractors” has the meaning given to that term respectively under each of the Agreements.

“Taxes” has the meaning given to that term respectively under each of the Agreements.

“Term” has the meaning given to that term respectively under each of the Agreements.

“Technical Proposal” means the technical proposal submitted by the Bidders as part of their Bids pursuant to the Bidding Documents.

B. GENERAL

ITB 1. Scope of Bid and Source of Funds

- 1.1 The Employer wishes to conduct a national competitive bidding process (the “**Bidding Process**”) and receive Bids on a single-stage two-envelope basis as per the requirements of the Bidding Documents in accordance with the Procurement Laws, for the selection of a Successful Bidder to perform the Fund Management Services in relation to the Projects in accordance with the terms and conditions of the Agreements.

The Employer has been authorized by the Transport and Mass Transit Department, Government of Sindh (GoS) to conduct the Bidding Process in relation to the Projects pursuant to these Bidding Documents. Subject to the compliance of the requirements of the Bidding Documents, the Agreements will be executed between the Successful Bidder and the Employer.

- 1.2 Bidders must quote for the complete scope of Fund Management Services. The Bids shall be deemed to cover complete Fund Management Services and unpriced items, if any, shall be deemed to be covered by the Service Fee payable on a monthly basis by the Employer to the Fund Manager. Any Bid stating coverage of partial Services shall be rejected as non-responsive, pursuant to ITB 23.
- 1.3 The Employer is not bound to accept any Bid and reserves the right to annul the Bidding Process at any time prior to award of the Agreements without thereby incurring any liability to the Bidders.
- 1.4 The source of funds for the Projects shall be the Employer.

ITB 2. Eligible Bidders

- 2.1 A Bid received from a Bidder, shall only be considered for further evaluation in accordance with the requirements of the Bidding Documents if the criteria, as set out in Annexure A (*Basic Eligibility Criteria*), is satisfied and any non-compliant Bid shall be rejected by the Employer.
- 2.2 Not Used.
- 2.3 The Successful Bidder shall comply with and acquire all consents, approvals, permits and licenses applicable under the laws of Pakistan in relation to the performance of the Fund Management Services under each of the Agreements.
- 2.4 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request at any time during or after the Bidding Process.
- 2.5 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. The Employer will take appropriate actions to manage such conflicts of interest which may include rejecting the Bid if it determines that a conflict of interest has affected the integrity of the procurement process conducted under the Bidding Documents.

The circumstances provided in the Bidding Documents (including Annexure A (*Basic Eligibility Criteria*)) which may constitute a conflict of interest are not exhaustive, and the Employer shall be the sole determinant of when a conflict of interest shall arise.

- 2.6 Each Bidder shall indemnify the Employer, its affiliates and their advisors fully in respect of any damage, cost, penalty or expense of any kind incurred by such person arising from a Bidder's breach of its obligations referred to above and other obligations under the Bidding Documents.

ITB 3. Cost of Bidding

- 3.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid and the Employer shall in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bidding Process.

- 3.2 The Bidder is advised to obtain for itself at its own cost and responsibility all information that may be necessary for preparing the Bid and entering into the Agreements for execution and performance of the Fund Management Services. This shall include (as may be applicable) but not be limited to the following:

- (a) Inquiries on Pakistani federal, provincial and local taxes to the relevant tax regulatory authorities as per the applicable laws.
- (b) Inquiries on repatriation of payments/profits abroad to the concerned authorities of State Bank of Pakistan.
- (c) Any other information that may have a financial bearing on the Bid.

C. BIDDING DOCUMENTS

ITB 4. Contents of Bidding Documents

4.1 The Bidding Documents comprise the documents stated below and should be read in conjunction with any addendum issued in accordance with ITB 6.

- (1) Part I – Instructions to Bidders
 - a. ITB (Sections A – G)
 - b. Bidding Forms (Section H)
 - c. Bidding Documentary Requirements (Section I)
 - d. Annexures (Section J)
 - i. Basic Eligibility Criteria (Annexure A)
 - ii. Evaluation and Qualification Criteria (Annexure B)
 - iii. Notification of Award (Annexure C)
 - iv. Scope of Fund Management Services (Annexure D)

- (2) Part II – Green Line Agreement, including the following schedules thereto:
 - a. Schedule A: Scope of Work
 - b. Schedule B: Payment Schedule
 - c. Schedule C: Interest Rate
 - d. Schedule D: Maintenance of FM Machines
 - e. Schedule E: Form of Performance Security
 - f. Schedule F: Term Expiry Criteria
 - g. Schedule G: Release Certificate
 - h. Schedule H: List of Sub-Contractors
 - i. Schedule I: Insurance
 - j. Schedule J: Consents
 - k. Schedule K: Performance Security Amount
 - l. Schedule L: Form of Invoice

- (3) Part III – Orange Line Agreement, including the following schedules thereto:
 - a. Schedule A: Scope of Work
 - b. Schedule B: Payment Schedule
 - c. Schedule C: Interest Rate
 - d. Schedule D: Maintenance of FM Machines
 - e. Schedule E: Form of Performance Security
 - f. Schedule F: Term Expiry Criteria
 - g. Schedule G: Release Certificate
 - h. Schedule H: List of Sub-Contractors
 - i. Schedule I: Insurance
 - j. Schedule J: Consents
 - k. Schedule K: Performance Security Amount
 - l. Schedule L: Form of Invoice

- 4.2 The Bidding Forms comprise the forms stated below and should be read in conjunction with any addendum issued in accordance with ITB 6.
- (1) For the Technical Proposal
 - a. T1 – Letter of Technical Proposal
 - b. T2 – Form of Integrity Pact
 - c. T3 – Form of Power of Attorney
 - d. T4 – Form of Affidavit
 - (2) For the Financial Proposal
 - a. F1 – Letter of Financial Proposal
 - b. F2 – Details of Financial Proposal
 - c. F3 – Form of Bid Security
- 4.3 Bidders are expected to carefully examine the contents of the Bidding Documents. Failure to comply with the requirements for submission of Bid set out in the Bidding Documents will be at the Bidders’ own risk. Pursuant to ITB 23, Bids which are not responsive to the requirements of the Bidding Documents shall be rejected.
- 4.4 The Employer shall not be responsible for the completeness of the Bidding Documents and its addenda if they have not been obtained directly from the source stated by the Employer in the Letter of Invitation.
- 4.5 All Bidders are expected to examine all instructions, forms, terms and specifications in the Bidding Documents. Failure by the Bidders to furnish all/any information or documentation as per the requirements of the Bidding Documents may result in the rejection of their Bid.

ITB 5. Clarification of Bidding Documents

- 5.1 A Bidder requiring any clarification(s) in respect of the Bidding Documents (the “**Clarification**”) may raise its enquiries, in writing or by email at the following address, before or during the pre-bid meeting:

Company Secretary
Sindh Infrastructure Development Company Limited
Address: 6th Floor, Extension Block, Bahria Complex IV, Gizri, Karachi
Telephone: +9235155101
Email: info@sidcl.com.pk
Date of pre-bid meeting: June 3, 2021
Time of pre-bid meeting: 2:00 p.m (Pakistan Standard Time)

Any further Clarifications are to be submitted in writing should reach the Employer not later than fifteen (15) days prior to the Submission Deadline as per ITB 17.

- 5.2 The Employer shall issue clarification(s) or amendment(s) to the Bidding Documents resulting from such queries at least seven (07) days before the Submission Deadline to all Bidders. The Employer’s response shall be in writing with copies to all Bidders who have acquired the Bidding Documents in accordance with ITB 4.4, including a description of the inquiry but without identifying its source. Should the Employer deem

it necessary to amend the Bidding Documents as a result of a request for clarification, it shall do so following the procedure under ITB 6 and ITB 17.5.

- 5.3 The Bidder's designated representative is invited to attend a pre-bid meeting at the date, time and venue indicated in ITB 5.1. The purpose of the pre-bid meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 5.4 Bidders are advised to visit and examine the relevant site(s) where the Fund Management Services are to be performed and its surroundings and obtain for themselves on their own expense and responsibility all information that may be necessary for preparing the Bid and entering into the Agreements. The costs and permission(s) (if any) for the purposes of visiting such site(s) shall be at the Bidder's own expense and liability.
- 5.5 A Bidder or any of its personnel or agent may enter the site(s) where the Fund Management Services are to be performed, only upon the express condition that the Bidder, its personnel and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

ITB 6. Amendment of Bidding Documents

- 6.1 At any time prior to the Submission Deadline, the Employer may, for any reason, including at its own initiative, modify/amend the Bidding Documents by issuing an addendum.
- 6.2 Any addendum issued by the Employer shall become a part of the Bidding Documents pursuant to ITB 4.1 and shall be communicated in writing to all Bidders who have obtained the Bidding Documents from the Employer in accordance with ITB 4.4 and shall be binding on them. Such communication by the Employer shall constitute deemed receipt of the addenda.
- 6.3 To afford Bidders reasonable time in which to take an addendum into account in preparing their Bids, the Employer may, at its sole discretion, extend the Submission Deadline in accordance with ITB 17.5.

D. PREPARATION OF BIDS

ITB 7. Language of Bid

- 7.1 The Bid and all correspondence and documents related to the Bid exchanged between the Bidder and the Employer shall be written in English language. In case any document/information furnished by the Bidder is in a language other than English, it will need to be accompanied by an English translation (duly notarized by Notary Public and attested by Pakistan Embassy/Consulate and Ministry of Foreign Affairs, Pakistan in the country of origin) of its pertinent passages for the purposes of interpretation of the Bid. In case of any discrepancy, the English translation shall govern.

ITB 8. Documents Comprising the Bid

- 8.1 The Bid shall comprise a Technical Proposal, containing the documents listed in ITB 9 hereof, and a Financial Proposal, containing the documents listed in ITB 10, each submitted simultaneously in separate sealed envelopes clearly marked “TECHNICAL PROPOSAL” and “FINANCIAL PROPOSAL” respectively.
- 8.2 Bidders are expected to carefully examine the Bidding Documents when preparing their Bid and use only the relevant Bidding Forms as set out in ITB 4.1. Bidding Forms must be completed without any alterations to the text, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested. Any deviations/ omissions/ reservations from the formats provided in the Bidding Documents shall not be accepted and may form basis for the rejection of the Bid. Material deficiencies in providing the information requested may result in rejection of a Bid.
- 8.3 In case a document required to be submitted as part of the Technical Proposal, is submitted with Financial Proposal; or a document required to be submitted with Financial Proposal, is submitted with Technical Proposal, it shall not be considered for evaluation and such document shall be considered as not submitted by the Bidder.

ITB 9. Technical Proposal

- 9.1 The Technical Proposal shall demonstrate the Bidder’s unconditional acceptance of the complete scope of Fund Management Services and any obligations (direct or indirect) of the Successful Bidder under the Agreements. Any omission, reservation, deviation or condition attached in the Technical Proposal may cause the Bid to be declared non-responsive.
- 9.2 The Technical Proposal submitted by the Bidder shall include the following information:
- (1) Signed and filled out Letter of Technical Proposal undertaking unconditional acceptance of the Fund Management Services, as set out in Bidding Form T1.
 - (2) Written confirmation authorizing the signatory of the Bid to commit the Bidder, as set out in Bidding Form T3, in accordance with ITB 15.2.
 - (3) Documentary evidence establishing that the Bidder is eligible and not blacklisted, as set out in Bidding Form T4, in accordance with Annexure A (*Basic Eligibility Criteria*).
 - (4) Integrity Pact, as set out in Bidding Form T2, in accordance with ITB 39.
 - (5) Evidence indicated for each technical qualification criteria specified in Annexure B (*Evaluation and Qualification Criteria*).

- (6) List of Sub-Contractors in accordance with ITB 9.4.
 - (7) List of insurances to be obtained by the Bidder in accordance with ITB 36.
 - (8) Any other documents required under the Bidding Documents.
- 9.3 The Technical Proposal shall not include any direct or indirect financial information relating to the Financial Proposal. Any Bid having such financial information shall be declared non-responsive.
- 9.4 The Fund Manager cannot subcontract the Fund Management Services except for subcontracting the security services for cash collection. For any security services for cash collection (forming part of the Fund Management Services), which the Bidder intends to subcontract, the Bidder shall give details of the name and nationality of the proposed Sub-Contractors and Bidders are free to list more than one Sub-Contractor. In the event the Fund Manager wishes to change any of the Sub-Contractors listed in the Bid, the same shall be done with prior approval of the Employer and subject to requirements of the Agreements.

ITB 10. Financial Proposal

- 10.1 In preparing the Financial Proposal, Bidders are expected to fully understand the requirements and conditions outlined in the Bidding Documents, all contractual obligations of the Employer under the Agreements, scope of Fund Management Services in respect of each of the Project, and any obligations, direct or indirect, of the Successful Bidder under the Bidding Documents.
- 10.2 The Financial Proposal, in accordance with Bidding Form F2, shall provide an all-inclusive fixed (one-figure) i.e., the Service Fee payable for the Fund Management Services. The Service Fee shall be consideration for the performance of Fund Management Services and all obligations of the Fund Manager mentioned in or to be reasonably inferred from the Bidding Documents, including the Agreements. Such all-inclusive fixed (one-figure) for the Service Fee payable shall also include all Taxes, costs (including cost of procuring insurances), profits, risks, uncertainties and unknowns so as to enable the Fund Manager to unconditionally discharge its obligations and perform the Fund Management Services, whether direct or indirect, under the Agreements.
- 10.3 The Bidder may make any assumptions necessary to derive the Service Fee as set out in ITB 10.2, but the Employer shall only be obligated to make payments for the Fund Management Services, in accordance with the terms and conditions of the Agreements. Payment(s) may not be made conditional on any assumptions made by the Bidder, and/or indicated by the Employer. Any omission, reservation, deviation or condition included in the Financial Proposal to the contrary may cause the Bid to be declared non-responsive.
- 10.4 The Financial Proposal submitted by the Bidder shall comprise the following:
- (1) A breakdown of the Service Fee in the manner and detail set out in the relevant forms in Section H (*Bidding Forms*).
 - (2) Bidders are required to specify, in their Financial Proposal, all Fund Manager's Taxes applicable in relation to the provision of Fund Management Services.
 - (3) Signed and filled out Letter of Financial Proposal, as set out in Bidding Form F1.
 - (4) Bid Security, as set out in Bidding Form F3, in accordance with ITB 13.
 - (5) Details of Financial Proposal, as set out in Bidding Form F2, in accordance with ITB 10.

- (6) Any other document required in the Bidding Documents.
- 10.5 Under no circumstances shall the Employer consider/accept a conditional Bid.

ITB 11. Currencies of Bid and Payment

- 11.1 The Service Fee payable under the Agreements for Fund Management Services shall be quoted in PKR.
- 11.2 All payments in respect of the Fund Management Services shall be made in PKR in accordance with the terms of the Agreements.

ITB 12. Employer's Right to Verify Documents

- 12.1 The Employer retains the right to verify particulars regarding any information, statements and/or documents furnished with the Bids. Any Bidder found to be misrepresenting information may be disqualified at any stage of the Bidding Process and their Bid Security shall be forfeited.

ITB 13. Bid Security

- 13.1 The Bidder shall furnish, as part of the Financial Proposal in its Bid, a Bid Security equivalent to two-point five percent (2.5%) of the Service Fee (as provided in accordance with Bidding Form F2) (the "**Bid Security**").
- 13.2 The Bid Security shall be an irrevocable, bank guarantee in the form attached as Bidding Form F3, having a Minimum Credit Rating at all times, acceptable to the Employer.
- 13.3 The Bid Security shall be issued and maintained in PKR by an issuing bank in Pakistan, having the Minimum Credit Rating at all times, acceptable to the Employer.
- 13.4 The Bid Security shall be valid until twenty-eight (28) days following the Bid Validity Period, as may be extended in accordance with ITB 14.2. If the terms of the Bid Security issued by the Successful Bidder specifies an expiry date and the Performance Securities under each of the Agreements have not been issued till such expiry date by the Successful Bidder, the Successful Bidder shall, thirty (30) days prior to the expiry of the Bid Security, extend the Bid Security until such date as notified by the Employer.
- 13.5 Any Bid not accompanied by a compliant Bid Security (as exclusively determined by the Employer) shall be rejected by the Employer as non-responsive and a Bidder shall not be allowed to submit Bid Security at a later stage.
- 13.6 Any Bid not accompanied by a Bid Security, which is, in the sole discretion of the Employer, substantially compliant with the requirements of these Bidding Documents, shall be rejected by the Employer as non-responsive. Bidders are required to submit with their original proposals the original Bid Security. The Employer shall reject a Bid if a photocopy of original Bid Security is attached with the Financial Proposal and such Bid shall not be further evaluated.
- 13.7 The Bid Security of the unsuccessful Bidders shall be returned as soon as reasonably possible once the Successful Bidder's furnishes the Performance Securities pursuant to ITB 32.1 and signing of the Agreements.

- 13.8 The Bid Security of Successful Bidder shall be returned as soon as reasonably possible once the Successful Bidder has furnished the required Performance Securities (as set out in each of the Agreements) and has signed the Agreements.
- 13.9 The Bid Security shall be forfeited:
- (1) if a Bidder withdraws its Bid during the Bid Validity Period (except as provided in ITB 20) or if the Bidder is found to be engaged in any corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations; or
 - (2) if the Successful Bidder fails to:
 - a. sign the Agreements in accordance with ITB 33;
 - b. furnish Performance Securities pursuant to ITB 32.1 and the Agreements;
 - c. accept the arithmetical corrections of its Bid in accordance with ITB 22.4; or
 - d. fulfil its obligations under the Bidding Documents in terms thereof.
- 13.10 The Bid Security is required to protect the Employer against the risk of Bidder's conduct which would warrant the Bid Security's forfeiture, pursuant to ITB 13.9.

ITB 14. **Bid Validity**

- 14.1 Bids shall remain valid for a minimum period of one hundred twenty (120) days from the Submission Deadline, as may be extended by the Employer in accordance with ITB 14.2 (the "**Bid Validity Period**"). A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 14.2 In exceptional circumstances, prior to the expiration of the Bid Validity Period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 13, it shall also be extended for a corresponding period. Extension of Bid Security may be requested each time the period of Bid validity is extended. A Bidder may refuse the request following which such Bidder's Bid will be disqualified and its Bid Security returned without forfeiture. A Bidder granting the request shall not be required or permitted to modify its Bid.

ITB 15. **Format and Signing of Bid**

- 15.1 The Bidder shall prepare one (01) original of the Technical Proposal and one (01) original of the Financial Proposal comprising the Bid as described in ITB 8, and clearly mark each "ORIGINAL" in addition to the marking stipulated in ITB 8. In addition, the Bidder shall submit as "COPY" four (4) hard copies, printable softcopies (PDF), and editable softcopies (Word, Excel etc., as may be relevant). The CDs/DVDs/USB should be clearly marked "Technical Proposal" and "Financial Proposal" and placed in their respective envelopes. In the event of any discrepancy between the original and the copies, the original shall prevail.
- 15.2 The original and all copies of the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorised to sign on behalf of the Bidder (the "**Authorised Representative**"). This authorization shall consist of a written power of attorney, as set

out in Bidding Form T3. This authorization must contain the name and position held by each person signing the authorization and name and position of the authorised signatory.

- 15.3 Any interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the Authorised Representative signing the Bid.
- 15.4 Each Bid should be bound in the hard book binding form to avoid the possibility of removal or insertion of page(s). All pages of the Bid must be signed and stamped in original by the Bidder's Authorised Representative. All the pages must be numbered starting from the first page to the last. Any Bid not substantially adhering to these requirements may be rejected by the Employer.
- 15.5 The Employer reserves the right to reject a Bid which does not meet the requirements in ITB 15.

ITB 16. Submission, Sealing and Marking of Bids

- 16.1 Bidders shall submit their Bids by registered mail or courier or by hand. Bids submitted through, fax or e-mail or any other electronic transmission shall not be considered.
- 16.2 The Bidder shall submit its Bid as under:
 - (1) ORIGINAL and each COPY of the Bid shall be separately sealed and put in separate envelopes and marked as such.
 - (2) For either of the Financial Proposal and the Technical Proposal, original and all copies as given in ITB 15.1 shall be put in an outer sealed envelope and addressed as given in ITB 16.3. Any Bidder that combines Technical Proposal and Financial Proposal in one envelope shall be disqualified.
- 16.3 The inner and outer envelopes shall:
 - (1) bear the name and address of the Bidder;
 - (2) be addressed to the Employer in accordance with ITB 5.1; and
 - (3) bear the specific identification of this Bidding Process.
- 16.4 The outer envelope of the Technical Proposal shall bear a warning not to open the envelope before the Submission Deadline.
- 16.5 The outer envelope of the Financial Proposal shall bear a warning not to open the envelope before the Technical Proposal has been evaluated.
- 16.6 If all the envelopes are not sealed and marked as required, the Employer shall not assume any responsibility for the misplacement or premature opening of the Bid. In case of such misplacement of Bids or premature opening of Bid which results in disclosure of any direct or indirect financial information prior to the scheduled opening of the Financial Proposal, the Bid shall be rejected as non-responsive in accordance with ITB 9.3.

ITB 17. Deadline for Submission of Bids

- 17.1 Bids must be received by the Employer at the address specified in ITB 5.1 not later than the Submission Deadline.

- 17.2 Bids with charges payable shall not be accepted, nor shall any arrangements be made to collect the Bids from any delivery point other than the one specified in ITB 5.1. Bidders shall bear all expenses incurred in the preparation and delivery of Bids. No claims for refund of any expense shall be entertained.
- 17.3 Where delivery of the Bid is by mail and the Bidder wishes to receive an acknowledgment of receipt of such Bid, the Bidder shall make a request for such acknowledgement in a separate letter attached to (but not included in) the sealed Bid.
- 17.4 Upon request, acknowledgement of receipt of the Bids shall be provided to those delivering Bids in person or by messenger.
- 17.5 The Employer may, at its discretion, extend the Submission Deadline by issuing an addendum in accordance with ITB 6, in which case all rights and obligations of the Employer and the Bidders previously subject to the earlier Submission Deadline shall thereafter be subject to extended Submission Deadline.

ITB 18. Late Bids

- 18.1 Any Bid received by the Employer after the Submission Deadline shall be declared late, rejected and returned unopened to such Bidder.
- 18.2 Delays in the mail, delays of person(s) in transit, or delivery of a Bid to an incorrect location shall not be accepted as an excuse for failure to deliver a Bid at the proper place and time. It shall be the Bidder's responsibility to determine the manner in which to deliver its Bid in a timely manner.

ITB 19. Modification, Substitution and Withdrawal of Bids

- 19.1 Any Bidder may modify, substitute, or withdraw its Bid after submission provided that written notice of the modification, substitution or withdrawal is received by the Employer prior to the Bid Opening.
- 19.2 The notice for modification, substitution or withdrawal of any Bid shall be prepared, sealed, marked and delivered in accordance with the provisions applicable to the original Bid with additional marking of MODIFICATION or "SUBSTITUTION" on all envelopes in case of modification or substitution, or "WITHDRAWAL" on the envelope containing the notice, in case of withdrawal.
- 19.3 Withdrawal of a Bid during the interval between the Submission Deadline and the expiration of the Bid Validity Period (or any extension thereof) shall result in forfeiture of the Bid Security pursuant to ITB 13.
- 19.4 Bids requested to be withdrawn in accordance with ITB 19.1 shall be returned unopened to the requesting Bidder(s).
- 19.5 Upon submission of Bids, no changes to the Agreements will be permitted other than those requested by the Employer and agreed to by the Bidder and inclusion of details of the Successful Bidder (to whom the Agreements are awarded) and any other information that was incomplete prior to the Submission Deadline.

E. BID OPENING AND EVALUATION

ITB 20. Bid Opening

- 20.1 The Employer shall conduct the opening of Technical Proposals (the “**Bid Opening**”) in the presence of Bidders designated representatives who choose to attend, and at the following address, date and time:

Address: Committee Room, 6th floor, Extension Block, Bahria Complex IV, Gizri, Karachi

Date: June 14, 2021

Time: 3:30 pm (Pakistan Standard Time)

- 20.2 If the Technical Proposal and the Financial Proposal are submitted together in one envelope, the Employer may reject the entire Bid. If any document, required to be submitted with Technical Proposal, is submitted with Financial Proposal, or if any document required to be submitted with Financial Proposal is submitted with Technical Proposal, such document shall not be considered for evaluation and may also form the basis of rejection of a Bid.
- 20.3 The Financial Proposals shall remain unopened and will be held in custody of the Employer until the specified time of their opening, as communicated by the Employer to the Bidders in accordance with ITB 20.10.
- 20.4 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding Bid shall not be opened but returned to the Bidder. No Bid shall be withdrawn unless the corresponding withdrawal notice contains a valid authorization by the Bidder to request the withdrawal and is read out at the Bid Opening.
- 20.5 Second, outer envelopes marked “SUBSTITUTION” shall be opened. The inner envelopes containing the substitute Technical Proposal and/or substitute Financial Proposal shall be exchanged for the corresponding envelopes being substituted, which shall be returned to the Bidder unopened. Only the substituted Technical Proposal, if any, shall be opened, read out, and recorded. Substituted Financial Proposal, if any, will remain unopened in accordance with ITB 20.2. No Bid shall be substituted unless a valid authorization by the Bidder to request the substitution is submitted and is read out and recorded at Bid Opening.
- 20.6 Next, outer envelopes marked “MODIFICATION” shall be opened. The original Technical Proposal shall be opened, read out, and recorded, followed by the opening, reading out and recording of the modification to the Technical Proposal. Any modification to the Financial Proposal shall remain unopened in accordance with ITB 20.2. No Bid shall be modified unless a valid authorization by the Bidder to request the modification is submitted and is read out and recorded at the Bid Opening.
- 20.7 All other envelopes holding the Technical Proposals shall be opened one at a time, and the following read out and recorded:
- (1) the name of the Bidder;
 - (2) whether there is a modification or substitution; and
 - (3) any other details as the Employer may consider appropriate.

- 20.8 Only Technical Proposals read out and recorded at Bid Opening shall be considered for evaluation in accordance with requirements of the Bidding Documents. No Bid shall be rejected at the opening of Technical Proposals except for late Bids, in accordance with ITB 18.
- 20.9 The Employer shall prepare a record of the Bid Opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted Bids before the Submission Deadline.
- 20.10 At the end of the evaluation of the Technical Proposals, the Employer shall invite Bidders who have submitted responsive Technical Proposals pursuant to the requirements of the Bidding Documents including the requirements specified in Annexure B (*Evaluation and Qualification Criteria*) and who have been determined as qualified for award to attend the opening of the Financial Proposals. The date, time, and location of the opening of Financial Proposals shall be advised in writing by the Employer.
- 20.11 The Employer shall notify in writing at the time of or at any time prior to the opening of the Financial Proposals, the Bidders who have been rejected on the grounds of their Technical Proposals not being responsive to the requirements of the Bidding Documents. Such Bidders shall be required to collect their Financial Proposals unopened from the Employer on the date as notified by the Employer.
- 20.12 The Employer shall conduct the opening of Financial Proposals of all Bidders who have technically qualified, in the presence of Bidders' representatives who choose to attend at the address, date and time specified by the Employer. The Bidders' representatives who are present shall be requested to sign a register evidencing their attendance.
- 20.13 Financial Proposals of the Bidders shall be opened one at a time and the following read out and recorded:
- (1) the name of the Bidder;
 - (2) whether there is a modification or substitution;
 - (3) presence and value of original Bid Security;
 - (4) the Service Fee; and
 - (5) any other details as the Employer may consider appropriate.
- 20.14 Only Financial Proposals, read out and recorded during the opening of Financial Proposals shall be considered for evaluation. No Financial Proposal shall be rejected at the time of opening of Financial Proposals.
- 20.15 The Employer shall prepare a record of the opening of Financial Proposals that shall include, as a minimum: the name of the Bidder, presence or absence and the value of Bid Security and the Service Fee. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders who submitted bids in time.

ITB 21. Clarification of Bids

- 21.1 To assist in the examination, evaluation and comparison of the Technical Proposal and/or Financial Proposal, the Employer may, at its discretion, ask the Bidder for any clarification, additional information or supporting documentation in respect of any matter associated with the documentation submitted by the Bidder in its Bid. Any such request and the response shall be in writing and no change in the price in the Financial Proposal or substance of the Bid shall be sought, offered or permitted except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 22.4.
- 21.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, such Bid shall be rejected.
- 21.3 During the evaluation of Bids, the following definitions apply:
- a) "Deviation" is a departure from the requirements specified in the Bidding Documents.
 - b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents.
 - c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

ITB 22. Preliminary Examination

- 22.1 Prior to the detailed evaluation of Bids, pursuant to ITB 23, the Employer shall examine each Bid to determine whether:
- (1) the Bid is complete and does not deviate from the scope of Fund Management Services;
 - (2) any computational errors have been made;
 - (3) required sureties have been furnished;
 - (4) documents have been properly signed;
 - (5) valid authorization(s) are present;
 - (6) the Bid is valid till the required period;
 - (7) the Bidder continues to be eligible to Bid in terms of Annexure A (*Basic Eligibility Criteria*); and
 - (8) the Bids are generally in order.
- 22.2 A Bid may not be considered acceptable if:
- (1) it is not signed;
 - (2) its validity is less than the Bid Validity Period specified in ITB 14; or
- it does not clearly state in Bidding Form F1 that relevant Fund Manager's Taxes and other costs stated in ITB 10.3 and ITB 10.4(2) have been included in the Service Fee provided in Bidding Form F1.
- 22.3 A Bid shall not be considered acceptable if:
- (1) it is not accompanied by a Bid Security;
 - (2) it is submitted by a Bidder who has participated in more than one Bid;
 - (3) it is received after the Submission Deadline;
 - (4) it is submitted through fax, email, or any other form of electronic transmission;

- (5) the Bidder refuses to accept arithmetic correction(s); or
 - (6) it materially deviates from the requirements of the Bidding Documents.
- 22.4 The Employer shall require arithmetical errors to be rectified. If there is a discrepancy between:
- (1) the relevant unit price and total price that is obtained by multiplying the relevant unit price and quantity, the relevant unit price shall prevail, and the total price shall be corrected;
 - (2) the words and figures, the amount in words shall prevail.
- 22.5 If the Bidder does not accept the corrected amount of the Bid, its Bid shall be rejected, and its Bid Security forfeited.

ITB 23. Determination of Responsiveness of Bids

- 23.1 The Employer shall determine the responsiveness of each Bid to the Bidding Documents. The Technical Proposals that conform to all the terms and conditions of the Bidding Documents without material deviations, reservations or omissions shall be declared responsive. A material deviation, reservation or omission is one that:
- a) if accepted, would:
 - i. affect in any substantial way the scope, quality, or performance of the Fund Management Services specified in the Bidding Documents; or
 - ii. limit in any substantial way the Employer's rights or the Fund Management Services under the Bidding Documents; or
 - b) if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Technical Proposals.
- 23.2 The Employer's determination of a Bid's responsiveness may be based on the contents of the Bid itself without recourse to extrinsic evidence. If a Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 23.3 Any minor non-conformity or irregularity in a Technical Proposal that does not constitute a material deviation, reservation or omission may be waived by the Employer or required by the Employer to be rectified, provided such waiver or rectification does not prejudice or affect unfairly the competitive position of other responsive Technical Proposals.
- 23.4 A responsive Financial Proposal is one which meets the requirements of the Bidding Documents without any deviation, reservation or omission. No change in the Financial Proposals shall be allowed and shall be evaluated as per the information provided by the Bidders. A non-responsive Financial Proposal may not subsequently be made responsive by correction of the deviation, reservation, or omission.

ITB 24. Not Used

ITB 25. Successful Bidder

- 25.1 The Bidder that offers the most advantageous (lowest) bid i.e., the lowest Service Fee, shall be declared the Successful Bidder.

- 25.2 If the Bid, which results in the lowest Service Fee, in the opinion of the Employer, is seriously unbalanced or is seen to unfairly exploit the evaluation mechanism, the Employer may require the Bidder to produce detailed price analysis for any or all items of the Bid, to demonstrate the internal consistency of those prices.

ITB 26. Confidentiality

- 26.1 Subject to ITB 26.2, no Bidder shall contact the Employer on any matter relating to its Bid from the time of Bid submission. The evaluation result shall be announced at least ten (10) days prior to the issuance of the Notification of Award.
- 26.2 Any attempt by a Bidder to influence the Employer in the Bidding Process may result in the rejection of its Bid and encashment of its Bid Security. Whereas any Bidder feeling aggrieved may lodge a written complaint not later than fifteen (15) days after the announcement of the Successful Bidder and Notification of Award. However, the mere act of lodging a complaint shall not warrant suspension of the Bidding Process.
- 26.3 Notwithstanding ITB 26.2, from the time of Bid Opening to the time of award of Agreements, if any Bidder wishes to contact the Employer on any matter related to the Bidding Process, it should do so in writing.
- 26.4 Information relating to the evaluation of proposals and recommendations concerning award of the Agreements shall not be disclosed to the Bidders who submitted the Bids or to other persons not officially concerned with the Bidding Process, until the issuance of the Bid Evaluation Report.

F. AWARD OF CONTRACT

ITB 27. **Employer's Right to Accept/Reject Bids**

- 27.1 No Bid shall be considered to have been accepted unless such acceptance is confirmed in writing and notified to the Successful Bidder by the Employer.
- 27.2 The Employer reserves the right to annul the Bidding Process and reject all Bids in accordance with the Procurement Laws at any time prior to the issuance of the Notification of Award, without thereby incurring any liability to Bidders or providing any reason for rejection of the Bids. In case of such annulment, all Bids submitted and specifically, the Bid Security, shall be promptly returned to the Bidders. The decision of the Employer shall be final and binding and no correspondence shall be entered into with the Bidders.
- 27.3 The Employer shall not be responsible for, or pay for, any expenses or losses which may be incurred by any Bidder in the preparation of, or in connection with, its Bid.
- 27.4 Each Bidder fully waives off any and all rights to claim in respect of such expenses or losses and agrees to indemnify the Employer, its affiliates and their advisors fully in respect of any direct or indirect losses, damages, costs or expenses of any kind incurred by any of them.

ITB 28. **Not Used**

ITB 29. **Award Criteria**

- 29.1 Subject to ITB 27, the Employer shall award the Agreements to the Bidder whose Bid has been determined to be responsive to the requirements of the Bidding Documents, including in terms of ITB 23, the qualification criteria set out in Annexure B (*Evaluation and Qualification Criteria*) and offers the most advantageous bid in terms of ITB 25, provided that such Bidder continues to be eligible in accordance with the provisions of Annexure A (*Basic Eligibility Criteria*) and qualified to satisfactorily perform the Fund Management Services under the Agreements.
- 29.2 The Employer, at any stage of the Bid evaluation, having credible reasons for or prima facie evidence of any defect in capacity of a Bidder, may require such Bidders to provide information concerning their professional, technical, financial, legal or managerial competence.
- 29.3 The Employer may have clarification meeting(s) to clarify any item(s) in the Bid evaluation report.
- 29.4 The Employer reserves the right to include further detail and make any necessary changes in the terms and conditions of the Agreements prior to its award.

ITB 30. **Notification of Award**

- 30.1 Prior to expiration of the Bid Validity Period, the Employer shall notify the Successful Bidder in writing that its Bid has been accepted (the "**Notification of Award**"). The Notification of Award shall set out the Service Fee as quoted by the Bidder as per ITB

- 25.1, payable to the Successful Bidder in consideration of the execution and completion of the Fund Management Services subject to the terms of the Agreements.
- 30.2 The Successful Bidder shall acknowledge and return the Notification of Award with its acceptance (the “**Acceptance of Notification of Award**”) within seven (07) days of the issuance of Notification of Award, failure of which may constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security.

ITB 31. Not Used

ITB 32. Performance Security

- 32.1 The Successful Bidder shall furnish satisfactory Performance Securities having a Minimum Credit Rating by an issuing bank having a Minimum Credit Rating in accordance with the requirements of the Agreements no later than one (1) day prior to the date of signing of the Agreements, in the form attached to the Agreements.
- 32.2 Failure of the Successful Bidder to comply with the requirements of ITB 32.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of its Bid Security. In such event, the Employer may award the Agreements to the Bidder with the next ranked most advantageous bid that has been determined to be responsive to the requirements of the Bidding Documents in terms of ITB 23, provided that such Bidder continues to be eligible in accordance with the provisions of Annexure A (*Basic Eligibility Criteria*). The procedure to award the Agreements to the next ranked most advantageous bid shall apply *mutatis mutandis* to the existing procedure applicable to the most advantageous bid.
- 32.3 The Successful Bidder shall be required to furnish satisfactory Performance Securities in respect of both the Agreements for the Projects. In the event the Successful Bidder furnishes a Performance Security for one Project and not the other, within the timelines provided herein, the award of both Agreements shall be cancelled, and the Bid Security shall be forfeited.
- 32.4 In the event the notice to proceed is not issued within six (6) months of signing of the Orange Line Agreement, the Performance Security (furnished by the Successful Bidder under the Orange Line Agreement) shall, upon request of the Successful Bidder, be returned by the Employer.

ITB 33. Signing of Agreements

- 33.1 The Agreements shall be executed between the Employer and the Successful Bidder within thirty (30) days of the Notification of Award or within such extended timeline as determined by the Employer in its sole discretion, failing which the Bid Security shall be forfeited if such failure is due to reasons attributable to the Bidder.
- 33.2 In the event the Successful Bidder executes one of the Agreements and fails to execute the other Agreement, within the timelines provided herein, the award of both the Agreements shall be cancelled, and its Bid Security shall be forfeited.

ITB 34. Not Used

G. ADDITIONAL INSTRUCTIONS

ITB 35. Instructions not Part of the Agreements

- 35.1 Bids shall be prepared and submitted in accordance with the instructions contained in these Instructions to Bidders, which have been provided to guide Bidders in preparing their Bids, and as such do not constitute part of the Agreements.

ITB 36. Sufficiency of Bid

- 36.1 Each Bidder shall satisfy itself before Bidding as to the correctness and sufficiency of its Bid and of the rates and prices entered in Bidding Form F1 and/or Bidding Form F2. Except insofar as it is otherwise expressly provided in the Agreements, the Service Fee shall cover all the Services under the Agreements and all matters and things necessary for the proper performance of the Services.

ITB 37. Insurance

- 37.1 If a Bidder is selected as the Successful Bidder, it understands, undertakes and confirms that it shall be responsible for procuring all the relevant insurances as are customary obtained for performance of such Fund Management Services in accordance with prudent industry practices. All fees, costs and other expenditures relating to such insurances shall be borne by the Successful Bidder. Furthermore, the cost for insurances may be included in the Financial Proposal by the Bidders. The Bidders are required to specify all the insurances that may be required for the performance of the Fund Management Services.

ITB 38. Corrupt and Fraudulent Practices

- 38.1 For the purpose of this Bidding Process:
- (1) **“corrupt and fraudulent practice”** means the offering, giving, receiving, or soliciting, of anything of value to influence the action of a public official or the contractor in the procurement process or in contract execution to the detriment of the procuring agency; or misrepresentation of facts in order to influence a procurement process or the execution of a contract, collusive practices among Bidders (prior to or after bid submission) designed to establish bid prices at artificial, non-competitive levels and to deprive the procuring agency of the benefits of free and open competition and any request for, or solicitation of anything of value by any public official in the course of the exercise of his duty.
 - (2) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to achieve a wrongful gain or to cause a wrongful loss to another party.
 - (3) **“collusive practice”** means by arrangement between two or more parties to the procurement process or contract execution, designed to achieve with or without the knowledge of the procuring agency to establish prices at artificial, non-competitive levels for any wrongful gain.
 - (4) **“integrity violation”** means any act which violates anticorruption policy including corrupt, fraudulent, coercive, or collusive practice, abuse, and obstructive practice;

“obstructive practice” by harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract or deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements before investigators in order to materially impede an investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights.

- 38.2 Bidders supplying false or misleading information shall be disqualified from any further participation in the Bidding Process and their Bid Security shall be forfeited.
- 38.3 The Employer requires the Bidders to observe the highest standards of ethics during the Bidding Process, including when a Bidder is selected as a Successful Bidder.
- 38.4 The Employer shall reject a Bidder selected as the Successful Bidder if it determines that such Bidder has engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices or other integrity violations in competing for the Projects; and/or shall declare a person, firm or company ineligible, either indefinitely or for a stated period of time, to engage with the Employer and its affiliates, or to be awarded the contract of the Employer and its affiliates, if it at any time determines that the person, firm or company has engaged in corrupt or fraudulent practices in its engagements or in competing for, or in executing, any contract.
- 38.5 In the event a Bidder is rejected in accordance with ITB 38.4 prior to the signing of the Agreements, such rejection shall result in forfeiture of the Bid Security pursuant to ITB 13. However, if a Bidder is rejected in accordance with ITB 38.4 after the Agreements have been signed, such rejection shall result in forfeiture/encashment in full of the Performance Securities in accordance with the Agreements.
- 38.6 The Employer will sanction/impose remedial actions on a firm or an individual, at any time in accordance with applicable laws including declaring ineligible and/or blacklisting, either indefinitely or for a stated period of time, to participate as a contractor, nominated subcontractor, consultant, or service provider; or in any other capacity, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices or other integrity violations.

Any Bidder, other than through the Authorised Representative, found to be canvassing or have canvassed any of the Employer or its employee, contractor, consultant or anyone who has a direct working relationship with Employer, regarding the Projects may be excluded from further consideration.

ITB 39. **Integrity Pact**

- 39.1 Each Bidder shall sign and stamp Bidding Form T2 provided in the Bidding Document (the “**Integrity Pact**”). Failure to provide such Integrity Pact may render the Bid non-responsive.

H. BIDDING FORMS
BIDDING FORM T1 - LETTER OF TECHNICAL PROPOSAL

Date:

To:
Sindh Infrastructure Development Company Limited
6th Floor, Extension Block,
Bahria Complex IV, Karachi.

Reference: Fund Management Services for the Orange Line Project and Green Line Project

We, the undersigned, confirm, undertake and declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda Nos. ----- issued in accordance with ITB 6 (*Amendment of Bidding Documents*).
- (b) We offer to perform and undertake the Fund Management Services in respect of the Projects in conformity with the Bidding Documents without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the Bidding Documents including the schedules/annexures attached to the Bidding Documents.
- (c) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred twenty days (120) days from the date fixed for the Submission Deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (d) We, including any Sub-Contractors, for any part of the Fund Management Services, have or will have nationalities from eligible countries, in accordance with the requirements of the Bidding Documents.
- (e) We, including any Sub-Contractors, for any part of the Fund Management Services, do not have any conflict of interest in accordance with the requirements of the Bidding Documents.
- (f) We understand that all the schedules/annexures attached to the Bidding Documents are integral part of the Bidding Documents.
- (g) We have reviewed and accepted the form of the 'Agreements' (attached as Part II (*Green Line Agreement*) and Part III (*Orange Line Agreement*) to the Bidding Documents) and undertake to execute the same within the time period stipulated in Notification of Award.
- (h) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Agreements (attached as Part II (*Green Line Agreement*) and Part III (*Orange Line Agreement*) to the Bidding Documents) are executed.
- (i) We have not been blacklisted by any authority/entity and have not been involved in any investigation for fraud or corruption in or outside Pakistan. We are not involved in any bankruptcy or liquidation proceedings. We have not been engaged in any corrupt or

fraudulent practices nor have any commissions or gratuities been or are to be paid by us to agents relating to this Bid and Agreements' execution.

- (j) We are not participating, as a Bidder in more than one Bid in this Bidding Process in accordance with the requirements of the Bidding Documents.
- (k) We, our affiliates or subsidiaries, including any Sub-Contractors for any part of the Agreements, have not been declared ineligible under the Employer's country laws or official regulations.
- (l) We agree to permit the Employer or its representative to inspect our accounts and records and other documents relating to the Bid submission and to have them audited by auditors appointed by the Employer at its expense.
- (m) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and/or our blacklisting by the Employer.
- (n) We undertake, if our Bid is accepted, to furnish the Performance Securities as per the requirements of the Bidding Documents and the Agreements.
- (o) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other person or persons making a Bid for the Fund Management Services.
- (p) We understand that the Bidding Documents have been issued by the Employer for the Projects; and if our Bid is accepted, we shall execute the Agreements for the Projects as per the requirements of the Bidding Documents.

(Unless otherwise specified, capitalized terms used herein shall have the same meaning given to them in the Bidding Documents).

Name
In the capacity of
Signed
Duly authorized to sign the Bid for and on behalf of[Name of Bidder]
Date

[Seal]

in the presence of

[*name*]
[*Signature*]
[*Title*]
[*name*]
[*Signature*]
[*Title*]

BIDDING FORM T2 - INTEGRITY PACT¹

Dated _____

[*name of Bidder Company*] (the “**Bidder Company**”) 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 Pakistan, Sindh Infrastructure Development Company Limited, any administrative subdivision or agency thereof or any other entity owned or controlled by Government of Pakistan (collectively to be hereinafter referred to as the “**GoP**”) through any corrupt business practice.

Without limiting the generality of the foregoing, [*name of Bidder Company*] 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 GoP, except that which has been expressly declared pursuant hereto.

[*name of Bidder Company*] 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 GoP and has not taken any action or will not take any action to circumvent the above declaration, representation or warranty.

[*name of Bidder Company*] 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 contracts, right, interest, privilege or other obligation or benefit obtained or procured as aforesaid shall, without prejudice to any other rights and remedies available to GoP under any law, contracts or other instrument, be voidable at the option of GoP.

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

Name of Employer: Sindh Infrastructure Development Company Limited Name of Bidder Company:

Signature: **Signature:**

[Seal]

[Seal]

¹ Please refer to Bidding Documentary Requirements (Section I) for compliance requirements.

BIDDING FORM T3 - POWER OF ATTORNEY²

KNOWN BY ALL THAT by this Power of Attorney [*insert name of Bidder*³] (the “**Bidder**”) having its head office situated at [•], does hereby nominate, appoint & authorize Mr. [•] S/o Mr. [•] and Mr. [•] S/o Mr. [•] (both of whose specimen signatures are appended below), on behalf of the Bidder, hereinafter referred to as the attorney, to sign the Bid, the ancillary documents, the Acceptance of Notification of Award and the Agreements (if awarded the Notification of Award) and to act for and on behalf of the Bidder and to bind the Bidder in relation to the bidding process and all ancillary documents, instruments and evidences submitted pursuant thereto.

This Power of Attorney is issued with respect to Bidding Documents circulated on [*insert date RFP is floated*] (the “**Bidding Documents**”).

Capitalized terms used herein and not otherwise defined shall bear the meaning ascribed thereto in the Bidding Documents.

The Bidder does hereby ratify & confirm whatever the attorney shall do by virtue of these presents.

Specimen signature of Mr. [*name of the nominee on behalf of Bidder*]

Specimen signature of Mr. [*name of the attorney appointed by Bidder*]

[*Signature*] _____

[*Name*]

[*Designation*]

[*Company*]

WITNESSES:

1. Signature: _____	2. Signature: _____
Name: _____	Name: _____
S/O: _____	S/O: _____
Address: _____	Address: _____
_____	_____
Passport / CNIC: _____	Passport/ CNIC: _____

² Please refer to Bidding Documentary Requirements (Section I) for compliance requirements.

BIDDING FORM T4 - AFFIDAVIT

Notes for Execution of Affidavit

- *The mode of execution of the Affidavit should be in accordance with the procedure, if any, laid down by the applicable laws and the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution / power of attorney in favour of the person executing this Affidavit for the delegation of power hereunder on behalf of the Bidder.*
- *This Affidavit shall be attested by Oath Commissioner.*

Please find below the form and substance of the Affidavit.

Affidavit

Date: _____

Sindh Infrastructure Development Company Limited,
6th Floor, Extension Block,
Bahria Complex IV, Karachi, Pakistan.

We, [*insert name of Bidder*] hereby represent and warrant that, as of the date of this Affidavit [*name of Bidder*]:

- a. are not in bankruptcy or liquidation proceedings;
- b. are not blacklisted by any governmental or non-governmental department / agency;
- c. have not been convicted of, fraud, corruption, collusion or money laundering;
- d. are not aware of any conflict of interest or potential conflict of interest arising from prior or existing contracts or relationships which could materially affect our capability to comply with the obligations under the Agreements;
- e. [are legally and financially autonomous and operate under commercial law]⁴;
- f. there is no pending litigation which represents more than fifty percent (50%) of our net worth or any pending litigation that could prevent or materially impede us from performing our obligations in respect of the Fund Management Services and the Agreements.

⁴Only relevant for the government owned legal enterprise or institution.

BIDDING FORM F1 - LETTER OF FINANCIAL PROPOSAL

Date:

To:
Sindh Infrastructure Development Company Limited
6th Floor, Extension Block,
Bahria Complex IV, Karachi.

Reference: Fund Management Services for the Orange Line Project and Green Line Project

We, the undersigned, confirm, undertake and declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda Nos. ----- issued in accordance with ITB 6 (*Amendment of Bidding Documents*).
- (b) We offer to perform and undertake the Fund Management Services in respect of the Projects in conformity with the Bidding Documents without any omission, reservation and deviation; and we accept and undertake to comply with all requirements in the Bidding Documents including the schedules/annexures attached to the Bidding Documents.
- (c) As security for due performance of the undertakings and obligations of this Bid, we submit unconditionally herewith a Bid Security equivalent to *[insert value]* drawn in your favour or made payable to you and valid for a period twenty-eight (28) days beyond the period of validity of Bid. We confirm that the Bid Security has been issued and maintained in PKR in accordance with the requirements of the Bidding Documents.
- (d) The Service Fee stated in our Bid, is inclusive of all Fund Manager's Taxes].
- (e) Our Bid consisting of the Technical Proposal and the Financial Proposal shall be valid for a period of one hundred and twenty days (120) days from the date fixed for the Submission Deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
- (f) We, including any Sub-Contractors, for any part of the Fund Management Services, have or will have nationalities from eligible countries, in accordance with the requirements of the Bidding Documents.
- (g) We, including any Sub-Contractors, for any part of the Fund Management Services, do not have any conflict of interest in accordance with the requirements of the Bidding Documents.
- (h) We understand that all the schedules/annexures attached to the Bidding Documents are integral part of the Bidding Documents.
- (i) We have reviewed and accepted the form of the 'Agreements' (attached as Part II (*Green Line Agreement*) and Part III (*Orange Line Agreement*) to the Bidding Documents) and undertake to execute the same within the time period stipulated in Notification of Award.

- (j) We understand that this Bid, together with your written acceptance thereof included in your Notification of Award, shall constitute a binding contract between us, until the Agreements (attached as Part II (*Green Line Agreement*) and Part III (*Orange Line Agreement*) to the Bidding Documents) are executed.
- (k) We have not been blacklisted by any authority/entity and have not been involved in any investigation for fraud or corruption in or outside Pakistan. We are not involved in any bankruptcy or liquidation proceedings. We have not been engaged in any corrupt or fraudulent practices nor have any commissions or gratuities been or are to be paid by us to agents relating to this Bid and Agreements' execution.
- (l) We are not participating, as a Bidder in more than one Bid in this Bidding Process in accordance with the requirements of the Bidding Documents.
- (m) We, our affiliates or subsidiaries, including any Sub-Contractors for any part of the Fund Management Services, have not been declared ineligible under the Employer's country laws or official regulations.
- (n) We agree to permit the Employer or its representative to inspect our accounts and records and other documents relating to the Bid submission and to have them audited by auditors appointed by the Employer at its expense.
- (o) We hereby declare that all the information and statements made in this Bid are true and accept that any misrepresentation contained in it shall lead to our disqualification, forfeiture of the Bid Security and/or our blacklisting by the Employer.
- (p) We undertake, if our Bid is accepted, to furnish the Performance Securities as per the requirements of the Bidding Documents and the Agreements.
- (q) We do hereby declare that the Bid is made without any collusion, comparison of figures or arrangement with any other person or persons making a Bid for the Fund Management Services.
- (r) We understand that the Bidding Documents have been issued by the Employer for the Projects; and if our Bid is accepted, we shall execute the Agreements for the Projects as per the requirements of the Bidding Documents.

(Unless otherwise specified, capitalized terms used herein shall have the same meaning given to them in the Bidding Documents).

Name

In the capacity of

Signed

Duly authorized to sign the Bid for and on behalf of

Date

[Seal]

in the presence of

[*Name*]

[*Signature*]

[*Title*]

[*Name*]

[*Signature*]

[*Title*]

BIDDING FORM F2 - DETAILS OF FINANCIAL PROPOSAL

Service Fee = PKR *[to be inserted]* per annum

BIDDING FORM F3 -FORM OF BID SECURITY (BANK GUARANTEE)

Guarantee No.: _____
Executed on: _____
Expiry date: _____

[Letter by the Guarantor to the Employer]

Name of Guarantor (Bank) with address: _____

Name of Principal (Bidder) with address: _____

Guaranteed Amount (express in words and figures): _____

Bid Reference No. _____ Date of Bid _____

The above premised, we (the **Guarantor**) hereby undertake irrevocably and unconditionally on demand to pay to Sindh Infrastructure Development Company Limited (the **Employer**), without any notice, reference or recourse to the Bidder or to any other entity or without any recourse or reference to any 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:

[•] [•]/- ([•][•])
(the **Guaranteed Amount**)

at sight and immediately upon the receipt of the Employer's first written demand (the **Demand**) at the Guarantor's offices located at [•] or through SWIFT instructions transmitted by the Employer's bank (i.e. National Bank of Pakistan), on behalf of the Employer, to the Guarantor, such Demand stating:

- (a) that the Bidder is in breach of its obligations towards the Employer; and
- (b) the total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Employer; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Employer's bank (i.e. National Bank of Pakistan), on behalf of the Employer.

We, the Guarantor, shall unconditionally honour a Demand hereunder made in compliance with this Bank 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 Bank 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.

Such demand must be received by us on or before the [•] (the **Expiry Date**), when this Bank Guarantee shall expire and shall be returned to us.

We have been informed that the Employer may require the Bidder to extend this Bank Guarantee if the Performance Securities have not been issued thirty (30) days prior to such expiry date. We undertake to immediately pay you such guaranteed amount upon receipt by us of your demand in writing and your written statement that the Performance Securities have not been issued and that this Bank Guarantee has not been extended.

Upon expiry, this Bank Guarantee shall be returned to the Bidder without undue delay.

The Guaranteed Amount shall be revised upon receipt by us of a notice duly signed by the Employer and the Bidder of the revised guaranteed amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Employer, 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 Bank Guarantee for its validity period shall not be affected in any manner by any change in our constitution or of the Bidder's constitution or of their successors and assignees and this Bank 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 Bank Guarantee.

If one or more of the provisions of this Bank 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 Bank 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 Bank Guarantee, which obligations are valid and legally binding on and enforceable against us under the laws of Pakistan and under the laws of the jurisdiction where this Bank Guarantee is issued. Further, that the signatory(ies) to this Bank Guarantee is/are our duly authorized officer(s) to execute this Bank Guarantee.

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

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

This Bank Guarantee is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758.

Name:

Designation:

I. BIDDING DOCUMENTARY REQUIREMENTS

No.	NAME	REQUIREMENTS ⁵
1.	LETTER OF TECHNICAL PROPOSAL AND LETTER OF FINANCIAL PROPOSAL	LOCAL BIDDER
		To be dated, signed by the Authorised Representative, duly witnessed, and duly stamped (PKR 100/-).
2.	FORM OF BID SECURITY	To be dated, signed by an Authorised Representative and duly stamped (PKR 500/-).
3.	POWER OF ATTORNEY	To be dated; witnessed; notarized; duly stamped (PKR 1000/-); signed by an Authorised Representative; and in the language as required under the ITB.
4.	AFFIDAVIT	To be dated; witnessed; notarized; duly stamped (PKR 100/-); signed by Authorised Representative; and in the language as required under the ITB.

⁵ Under the Laws of Pakistan (Qanun-e-Shahdat, 1984), the minimum witnessing requirement mandates the presence of either two males, or one male and two females to witness, for all instances of witnessing in financial matters.

J. ANNEXURES

ANNEXURE A – BASIC ELIGIBILITY CRITERIA

Single Stage Two Envelope under Public Procurement Rules 2004 has been adopted for evaluating the bids. A Bid received from a Bidder, shall only be considered if all the following components (and the relevant requirements of the Bidding Documents) are satisfied:

➤ **CONSTITUTIVE DOCUMENTS**

A detailed description of the Bidder including:

- Legal name;
- Complete head office contact information, including mailing address, telephone number and an e-mail address;
- Incorporation details, including certification of incorporation, memorandum and articles of association. If the Bidder is an unincorporated legal entity, then the proof of that legal entity's existence must be provided (certified true copies to be provided).

➤ **REGISTRATION WITH TAX AUTHORITIES**

The Bidder must possess a valid registration certificate from the income tax authority (i.e. the NTN certificate) and relevant sales tax authority, if applicable. Valid NTN certificate(s) and tax returns filed for last three years are to be attached and relevant sales tax certificate, if applicable.

➤ **AFFIDAVIT FOR GOVERNMENT OWNED LEGAL ENTITIES**

In case the Bidder is a government owned legal enterprise or institution, such Bidder must establish that it is legally and financially autonomous and operating under commercial law.

Bidder that is a government owned legal enterprise or institution shall submit an affidavit as set out in Bidding Form T4 confirming that they are legally and financially autonomous and operating under commercial law.

➤ **NO CONFLICT OF INTEREST**

A Bidder shall not have a conflict of interest. A Bidder found to have a conflict of interest shall be disqualified. Employer considers a conflict of interest to be a situation in which a party has interests that could improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations. At the time of bidding, Bidders may be considered to be in a conflict of interest with one or more parties if they, *inter alia*; participated as a consultant in the preparation of the technical/commercial/financial/legal specifications for the Fund Management Services, that are the subject of this Bidding Process.

A Bidder may also be considered to be in a conflict of interest with one or more parties in this Bidding Process if a Bidder participates in more than one Bid in this Bidding Process or is an affiliate of the Employer or any of its advisors. This will result in the disqualification of all Bids in which it is involved.

➤ **NON-BLACKLISTING**

Each Bidder shall provide evidence in the form of an affidavit set out as Bidding Form T4.

A Bidder or any partner constituting the Bidder which has been blacklisted by any of its employers/clients while providing services or performing works in Pakistan, at the date of submission of the Bid under the Bidding Documents or thereafter, then the Bidder shall not be considered.

➤ **LITIGATION HISTORY**

All pending litigation against the Bidder shall in total not represent more than fifty percent (50%) of the respective net worth, nor shall there be any litigation that prevents or materially impedes the Bidder from its obligations in respect of the Fund Management Services and the terms of the Agreements.

Each Bidder shall provide representation under an affidavit set out as Bidding Form T4.

➤ **ELIGIBLE COUNTRIES**

A Bidder, Sub-Contractors and all partners constituting the Bidder, shall have the nationality of an eligible country i.e. (any country of the world with whom Islamic Republic of Pakistan has commercial/trade relations and those who are not subject to sanctions imposed by the United Nations Security Council and has a nationality that has not been proscribed under the applicable laws).

A Bidder shall be deemed to have the nationality of a country if the Bidder is a national of that country; or is constituted, incorporated or registered and operates in conformity with the provisions of the laws of that country.

The above requirement shall apply to the determination of the nationality of Bidders.

➤ **CREDIT RATINGS**

Bidder must be a scheduled bank registered with the State Bank of Pakistan and with a minimum long-term credit rating of at least 'AA-' based on Pakistan Credit Rating Agency's (PACRA) and JCR-VIS Credit Rating Company.

➤ **CASH MANAGEMENT SERVICES**

Bidder must have current cash management contracts with at least 2 clients where the value of cash managed by the Bidder is greater than PKR 1 billion per annum. The cash collection includes physical cash as well as digitized cash management.

Bidder shall provide evidence/letter that show the client's satisfaction of the services provided by the Bidder.

ANNEXURE B – EVALUATION AND QUALIFICATION CRITERIA

Sr. No	Information required	Criteria	Points
1.	Net assets Net assets of the bidder in the last year evidenced by the most recent audited financial statements in PKR billion.	≥ 20	20 points
		$\geq 17.5 < 20$	15 points
		$\geq 15 < 17.5$	10 points
		$\geq 12.5 < 15$	05 points
		< 12.5	0 points
2.	Fee/commission income on cash management Average fee earned from cash management services in the last three (3) years in PKR million.	$\geq 45 < 55$	10 points
		$\geq 35 < 45$	7.5 points
		$\geq 15 < 25$	5 points
		$\geq 5 < 15$	2.5 points
		< 5	0 points
3.	Volume of cash management Current cash management services/contracts of > PKR 1 billion per annum evidenced by confirmation from such clients.	> 4 clients	20 points
		4 clients	15 points
		3 clients	10 points
		2 clients	05 points
		< 2 clients	0 points
4.	Core Banking System (CBS) Number of CBS used in the last ten (10) years evidenced by snapshots of the existing Core Banking System in place and clearly disclose Core Banking Solutions used during the last 10 years. Please justify the reasons for the changes between systems if any.	1 system	10 points
		2 systems	5 points
		3 systems	2.5 points
		< 3 systems	0 points
5.	Long term credit rating for scheduled commercial banks	AAA	10 points
		AA+	7.5 points
		AA	5 points
		AA-	2.5 points
		< AA-	0 points
6.	ADC experience Number of years of implementing ADC (internet banking/mobile application banking) for cash management services evidenced by launch date/first transaction of ADC specified.	≥ 5	10 points
		$\geq 3 < 5$	7.5 points
		$\geq 2 < 3$	5 points
		< 2	2.5 points
7.	ADC volumes Number of transactions by ADCs (internet banking/mobile application banking) for cash management services evidenced by records of banking systems in the last one year	$\geq 30,000$	10 points
		$\geq 20,000 < 30,000$	7.5 points
		$\geq 10,000 < 20,000$	5 points
		$< 10,000$	2.5 points
8.	Approach and methodology	10 points	

ANNEXURE C – NOTIFICATION OF AWARD

[Date]

To: [Name and address of the Successful Bidder]

This is to notify you that your Bid consisting of the Technical Proposal and the Financial Proposal dated [insert date] for execution of the '[Green Line Agreement and Orange Line Agreement] in the form attached to the Bidding Documents (the **"Agreements"**) for the Service Fee [insert amounts in numbers and words], as corrected and modified in accordance with the Bidding Documents is hereby accepted by the Employer.

You are requested to countersign and furnish your acceptance of this Notification of Award within [seven (07) days] of issuance of this Notification of Award which shall constitute your acceptance of this Notification of Award (the **"Letter of Acceptance"**) and thereafter sign the Agreements (in the form attached to the Bidding Documents) within [thirty (30) days] of issuance of this Notification of Award.

One (01) day prior to the date of signing of the Agreements you are required to furnish the Performance Securities.

On the date of signing of the Agreements you are required to provide certified true copies of all resolutions of the board of directors / governing body of the Fund Manager authorizing execution, delivery of the Agreements and the performance of the Fund Management Services under the Agreements (each to the satisfaction of the Employer). Failure to furnish the Letter of Acceptance, execute the Agreements or furnish the Performance Securities or the aforesaid authorization from board of directors / governing body of the Fund Manager each within the aforesaid time period may result in cancellation of the award and forfeiture of the Bid Security.

This Notification of Award shall incorporate all agreements made to the Bid (if any) agreed between the Employer and yourself. This Notification of Award duly accepted by you shall constitute, subject to all terms and conditions of the Bidding Documents except the changes or modifications agreed between yourself and the Employer, a binding contract between us until the aforesaid Agreements are executed.

We would appreciate immediate notification and in any case within [seven (07) days] of award, of your acceptance of this Notification of Award i.e. the Letter of Acceptance, by returning one copy of this Notification of Award after affixing your signature in the space provided below.

Unless expressly specified otherwise, all capitalized terms used herein shall bear the meaning ascribed thereto in the Bidding Documents

[Authorized Signature]
[Name and Title of Signatory]
[Name of Employer]

WITNESSES:

1. Signature: _____	2. Signature: _____
Name: _____	Name: _____
S/O: _____	S/O: _____
Address: _____	Address: _____
_____	_____
Passport / CNIC: _____	Passport/ CNIC: _____

ACCEPTED

For and on behalf of the successful Bidder,
[Authorized Signature]
[Name and Title of Signatory]
[Name of successful Bidder]
[Date]

WITNESSES:

1. Signature: _____
Name: _____
S/O: _____
Address: _____

2. Signature: _____
Name: _____
S/O: _____
Address: _____

Passport / CNIC: _____

Passport/CNIC: _____

ANNEXURE D – SCOPE OF FUND MANAGEMENT SERVICES

1. BANKING SYSTEM INTEGRATION

The Fund Manager's back-office must have complete system implementation and integration capabilities with all payment mechanisms (mobile phone application, internet/web portal, HHM, TOM, TVM) to ensure uninterrupted and efficient payment/top-up capabilities.

The Fund Manager must integrate with the Employer based on straight-through processing providing host to host connectivity; and provide daily paperless reports, on demand reports and reconciliation reports to the Employer and its control partners as per Employer's instructions.

In order to ensure smooth collections throughout the Bus Stations, as well as through other payments mechanisms, the Integrated Intelligent Transport System (IITS) shall be integrated with the Fund Manager's back office to digitize the entire process as well as to minimize human error.

The Fund Manager and the IITS operator must coordinate on the integration including on integration timelines to ensure completion of integration must be completed within sixty (60) days from the issuance of the Notice to Proceed.

2. COLLECTION OF CASH FROM BUS STATIONS

The Fund Manager will ensure collection of cash from the Stationery Ticket Vending Machines (TVM), and Ticket Office Machine (TOM), including cash from HHM sales, at each Bus Station.

System users are expected to make cash payments on the TVM and TOM to purchase tickets and/ or reload their Contact-less Smart Cards (CSCs). Over the course of daily operations, the TVM and TOM is expected to accumulate considerable quantity of cash which will be collected by the Fund Manager periodically.

2.1. Cash Proceeds At TOM

System users will procure tickets, reload CSCs, in exchange for cash on TOMs installed in kiosks across all Bus Stations along the BRT Corridor. Payments on the TOM will involve considerable human involvement whereby a representative of the Facilities Manager will be operating the TOM. Such representative will collect cash from system users and store cash in the TOM counter(s) on each Bus Station along the BRT Corridor.

The Fund Manager is required to provide Currency Detector Machines and Point of Sales (POS) Card Machines (together "**Machines**"). The Currency Detector Machine will be used to ensure that only genuine currency notes are collected by the Facilities Manager on the TOM. The Fund Manager would be responsible for the required maintenance and upgradation of the Machines. The Fund Manager would also be responsible for training the staff initially and periodically upon upgrading/changing of the Machines. The training(s) will include, inter alia, techniques used in Financial Institutions (FIs) to detect counterfeit currency.

The Fund Manager would additionally provide manuals to the staff for operations of the Machines that it has installed or has provided. The Employer will allocate staff that require training during mobilization period. Once trained, there will be periodic trainings during the Services Period arranged by the Fund Manager.

Any new staff of the Facilities Manager shall also be trained by the Fund Manager to operate the Machines as Notified by the Employer from time to time.

The Fund Manager is not responsible for the collection of any counterfeit currency at the TOMs and the responsibility to ensure genuineness of currency notes received from Users is that of the Facilities Manager.

The Cash received at the TOMs shall be collected in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*) by the Fund Manager at the end of day throughout the Services Period.

2.2. Cash Proceeds At TVM

Users will also have the option to procure tickets and recharge their CSCs from TVMs, where a representative of the Facilities Manager will assist the Users in depositing cash in the TVMs.

The cash received at the TVMs shall be collected by the Fund Manager upon notification by the AFC system. A two-man rule will be employed to ensure security of the TVM. On each notification day end during the Services Period, representatives of the Facilities Manager and the Fund Manager will unlock the TVM and the Fund Manager will collect the cash box in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*).

2.3. Collection Procedure

All cash received at the TOMs **daily** from all Bus Stations at day end while cash tray from TVMs will be collected on notification day end throughout the Services Period.

The Fund Manager shall be allowed to sub-contract the cash collection services, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor. The Fund Manager would be the point of contact (POC) for all Services to be performed by the Fund Manager.

Before the cash is collected from the Bus Station, the Fund Manager will share with the Facilities Manager the following information:

- Name and Computerized National Identity Card (CNIC) Number/staff code of the security personnel who will collect the cash
- Car registration information

This information will be shared with all Bus Stations (by way of designated communication email) along the BRT Corridor individually, by the Fund Manager. Upon arrival of the security personnel for cash collection, the Facilities Manager would verify personnel identity through comparing the list sent by the Fund Manager with personnel company IDs and CNICs.

Upon such confirmation, the Facilities Manager shall allow the personnel in the Bus Station premises and the Fund Manager will perform its cash collection operations.

2.3.1. Procedure for collection from TOM

Once the cash from the TOM has been received by the Fund Manager personnel, the cash will be put in bags and sealed in front of the Facilities Manager. Once the Facilities Manager is satisfied with the seal, the security personnel will transport the sealed bags for counting and depositing.

2.3.2. Procedure for collection of TVM cash box

On each notification day, the full cash box will be collected from TVM by the Fund Manager personnel and simultaneously the TVM will be replaced with an empty cash box. The cash box will be transported to cash counting center/branch/storage depot where there the cash boxes will be opened (with special key) for counting under CCTV cam. The TVM banknotes system will have multiple keys (e.g., separate keys to withdraw the cash box and to open the cash box). After the count is complete for both bags the sums to be deposited in the Collection Account should match the revenue statement generated as per the IITS systems. In the event of any discrepancy the responsibility and obligation to reimburse the Employer by depositing such discrepant amounts in the Collection Account shall be as follows:

- **Counterfeit cash collected by TVM (as collected in TVM cash box):** IITS shall be required to reimburse any counterfeit currency accepted/collected by the TVMs.
- **Counterfeit notes collected by TOM (as collected in TOM bag):** Facilities Manager shall be required to reimburse any counterfeit currency accepted/collected at the TOMs.
- If (including counterfeit) **amount does not match** revenue statement generated as per the IITS system, Facilities Manager would be responsible.
- If there is **excess cash** in the bag as compared to the revenue statement generated as per the IITS system, all cash would be deposited.
- For **seal broken or cash lost during transit;** Fund Manager would be responsible.

2.4. Security of cash proceeds

The Fund Manager will collect cash from Bus Stations at the end of each operating day. The safety and security of cash proceeds in the armored vehicles as well as any cash storage depots overnight (prior to being deposited in the Collection Account the following day during bank working hours) lies completely with the Fund Manager.

To ensure the security of the cash collected overnight, the Fund Manager may sub-contract such security services to a reputable security firm(s) with requisite cash collection experience, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor.

2.5. Timings of Cash Collection

The Fund Manager is required to collect cash at stipulated timelines as per mutual agreement between Fund Manager and the Employer (in consultation with Facilities

Manager). The details of the timings for cash collection from each Bus Station across the BRT Corridor are set out in Exhibit I (*Minimum Cash Balance and Cash Pick Up Timings*) hereto. Failure to adhere to stipulated timelines will lead to Performance Liquidated Damages under **Exhibit II (Key Performance Indicators)** hereto.

In addition to the Performance Liquidated Damages, if the Fund Manager fails to collect cash from the Bus Station within the stipulated collection timings, the Fund Manager shall be liable for any security breach/theft at any of the Bus Stations. The Fund Manager shall be liable to compensate and reimburse the amount, to the Employer, which was stolen to the extent of the money which was not collected by the Fund Manager within the stipulated timeline.

Repeated delays in collecting cash from the Bus Stations may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

3. AVAILABILITY OF MINIMUM CASH BALANCE

The BRT system being one of the first public sector transport projects in Karachi is geared to attract a lot of Users and therefore where payments are through cash change balance is required to be available at Bus Stations. Non-availability of change may make the system inefficient and delay the onboarding process.

In this regard, the Fund Manager will be required to arrange minimum cash balance for change payments at every Bus Station on commencement of operations and maintain it throughout the Services Period.

Such amount of minimum cash balance may be revised on a day's notice either upwards or downwards based on mutual agreement between the Employer and Fund Manager in consultation with the Facilities Manager. The quantity of minimum cash balance for each Bus Station has been provided in **Exhibit I (Minimum Cash Balance and Cash Pick Up Timings)**.

In case the Facilities Manager determines that it is running low on minimum cash balance, the Facilities Manager shall have the authority to request (with a copy of such Notice to the Employer) for additional change from the Fund Manager, which shall be promptly made available to Bus Stations within a two-hour notice.

On each day end during the Services Period, the Fund Manager will ensure that the denominations of minimum cash balance have been replenished at each Bus Station along the BRT Corridor. The Fund Manager and the authorized representative of Facilities Manager will verify and sign-off on the said replenishment of the minimum cash balance.

The Fund Manager shall ensure that currency notes handed over as minimum cash balance are genuine.

3.1. Reimbursement of The First Minimum Cash Balance

Cash collection at the end of the first day of operations would be utilized to offset minimum cash balance fronted by the Fund Manager. First day's cash deposit by the Fund Manager into the Collection Account would be net-off the minimum cash balance

fronted at the start of the first day of operations. Relevant documentations with respect to funding and deduction shall be provided to the Employer by the Fund Manager.

3.2. Allocation of Minimum Cash Balance

The minimum cash balance will be apportioned in the following way:

- (i) TOM – 70%
- (ii) TVM – 30%

The following denominations are to be provided by the Fund Manager at every Bus Station:

Cash Amount (PKR)	Currency notes / Coins
500	5%
100	10%
50	15%
20	20%
10	25%
5	25%

4. BANKING OPERATIONS

4.1. Collection Account

The Fund Manager shall be responsible to open bank account(s) for deposit of sums relating to the operations and maintenance of the Project and maintain it throughout the Services Period. The account title shall be Sindh Infrastructure Development Company Limited Collection Account (“**Collection Account**”). The Collection Account must have subaccounts for various bank payments through TVM, TOM, HHM, website and mobile phone applications.

The authorized signatories shall be nominated by Sindh Infrastructure Development Company Limited (SIDCL) Board of Directors or the Chief Executive Officer (CEO) and updated as required.

The Collection Account shall be used for all deposits and payments relating to the Project.

4.2. Revenue Deposits

After the collection of cash from each Bus Station, the cash must be deposited in the Collection Account by the Fund Manager, on the following business day. The Collection Account shall be used for deposits of all cash collected from Bus Stations.

The Fund Manager shall ensure that all funds deposited either physically or electronically must be reflective in Employer’s bank statements immediately. Any discrepancy between the bank balance and revenues as per Automated Fare Collection systems must be reconciled on an urgent basis. Persistent irregularities in the bank reconciliation may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

Apart from Fare Revenue which will be collected from Bus Stations physically as well as electronically/digitally, other payments/sums relating to the Project may also be deposited in the Collection Account. Such deposits may be made by the Employer or any other Project Contractor engaged by the Employer in respect of the Project including property management firm(s) responsible for exploitation of non-fare revenue potential. The Fund Manager must notify the Employer on any such deposits immediately upon receipt.

4.3. Integration With Central Clearing House (CCH) Bank Interface

The Fund Manager shall ensure that each User's data is completely secure. Any data hack or data security breach attributable to the Fund Manager will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. The Fund Manager is required to remedy the hack/security breach within twelve (12) hours; failure to do so may result in imposition of Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

The Fund Manager shall ensure that all transactions issued by the CCH are completed as per as per best practices. Failure to process transactions within stipulated timelines due to any reasons attributable to the Fund Manager shall result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. Persistent delays and failure in processing transactions may lead to an event of default attributable to the Fund Manager.

4.4. Payments To Project Contractors

To ensure smooth operations of the system, timely payments must be made to all Project Contractors including, *inter alia*, bus/fleet operator, Facilities Manager, IITS operator, third-party independent expert(s) all of which are critical components of the Project operations.

Payments must be made by way of bank transfer or bank cheques in the designated bank accounts of the Project Contractors in such sums and on such date and time as specified in the instructions issued by the Employer.

Any delay, attributable to the Fund Manager, in processing and executing payments to the relevant Project Contractors will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**.

4.4.1. Bank Cheques

The Employer will issue instructions by means of cheque signed by two authorized signatories. Upon any change in authorized signatories, the Employer will notify the Fund Manager of such change. The Fund Manager will only be liable to ensure payments if the payment instructions are issued by authorized signatories and inform the Employer where there is any inconsistency in authorized signatories.

4.4.2. Bank Transfer

Upon issuance of bank transfer instructions by the Employer by means of integrated payments capabilities, the Fund Manager must transfer such payments to the relevant Project Contractors.

The Fund Manager is required to ensure that it provides an interface to the Employer to issue such payment instructions to the Fund Manager, view up to date periodic cash positions and reports as and when required. Such interface must be completely digital and minimize manual interplay.

4.5. Periodic Cash Position and Overdraft

The Fund Manager must provide to the Employer periodic cash position at the end of each operating day in order to assess funding surplus or shortfall against stipulated payments to the relevant Project Contractors whichever is appropriate.

In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for the transfer(s)/ payment to the relevant Project Contractors, the Fund Manager shall notify the same to the Employer within one (1) hour of receiving the payment instructions from the Employer. The Employer will have the option either to:

- (a) arrange and deposit funds in the Collection Account for payments to the relevant Project Contractors;
- (b) withdraw the payment instructions; or
- (c) request the Fund Manager to lend the shortfall amount i.e., the difference in the amount of the required payments and the available balance in the Collection Account.

The Fund Manager shall comply with the instructions and make payment of the total amounts as per the payment instructions received from the Employer.

In the Parties proceed in accordance with part (c) above, the Employer will be liable to pay interest on the overdraft amount at a rate mutually agreed between the Fund Manager and the Employer. The Employer will be liable to repay in full, amounts ninety (90) days from the overdraft receiving date. In case of non-repayment and if the Collection Account has excess monies available, such amounts would be first used to offset the overdraft amount. In case no monies are available in the Collection Account, the Fund Manager can call a default of the Employer.

5. ASSISTANCE IN LEGAL / REGULATORY REQUIREMENTS

The Fund Manager will assist the Employer in conducting periodic audits of all receipts and payments as and when required by the Employer.

The Fund Manager must cooperate with any third party appointed by the Employer or any relevant government agency appointed for conducting such audits. Any malfeasance attributable to the Fund Manager may lead to event of default.

During the currency of the audit, the Fund Manager must continue performing its obligation as per agreed scope of work.

6. REVENUE ALLOCATED TO THE EMPLOYER

The Fund Manager shall pay to the Employer float income earned on the balance to the credit of the Collection Account at a rate equivalent to one-year KIBOR quoted on the website of State Bank of Pakistan minus 1%. The Fund Manager shall allocate all such income in the Collection Account of the Employer.

7. INVOICING FOR SERVICES

The Fund Manager will raise an invoice for monthly Service Fee at the end of each operating month during the Services Period. Payments for the invoice will be debited from the Collection Account upon issuance of instructions by the Employer within five (5) working days.

8. BANK GATEWAY INTEGRATION

The Fund Manager should be able to scan the accounts belonging to the money deposited by the dealers at maximum half-hour intervals and send them to IITS operator servers together with the relevant amount and the terminal number and transfer the relevant amounts to IITS operator accounts automatically. This information given by IITS operator servers is credited to the relevant dealers for the money they have deposited. The data communication interface for this purpose is created by the IITS operator software team and the Fund Manager working together, and the data communication interface for research, the IITS operator software team, and the Fund Manager working together. Also, the Fund Manager shall provide the following;

- The Fund Manager shall develop, build, configure onsite at each TVM/TOM the interface with the PoS;
- The Fund Manager shall provide the SIM Cards for the HHM, TVM PoS, and TOM PoS along with a complete data package

IITS operator calls these intervals with parameters “given by the bank”.

8.1. REQUEST PARAMETERS

- Account_no
- Startdate (DD-MM-YYYY)
- Enddate (DD-MM-YY)

8.2. OUTCOME PARAMETERS

- Terminal Number
- Amount
- Datetime (YYYYMMDDHHMMSS)
- Provision_no



9. MOBILE APPLICATION & WEBSITE ONLINE TOP-UP PAYMENT

The Fund Manager shall provide the Gateway to enable the Web payment and to interface with AFC CCH for statement and reports for the integration between AFC system and Fund Manager system, the Fund Manager shall provide the following:

- Payment processor API (Virtual POS)
- Payment processor API (Virtual POS) Integration document
- Merchant Name
- Merchant ID

10. THIRD-PARTY INTEGRATION

For the Third-Party integration such as Easypaisa, JazzCash, UBL Omni, the Fund Manager shall provide the following.

- Payment processor API
- Merchant Name
- Merchant ID

11. SMS LOGIN INTEGRATION

SMS Gateway

12. PAYMENT INTEGRATION FOR HHM

The provided HHM device has EMV L1/L2 certificate and supports EMV contactless, however, its validity has to be approved by the Fund Manager.

- HHM Brand/Model: Urovo I9000S
- HHM Datasheet: Urovo I9000S Datasheet

Otherwise, the Fund Manager shall provide and maintain connectivity with Fund Manager back office”.



13. PHYSICAL POS FOR TOM

- The physical unattended PoS terminal which has required certified
- The physical unattended PoS terminal serial port Integration document



14. UNATTENDED POS TERMINAL

- The physical unattended pos terminal which has required certificates.
- The physical unattended pos terminal integration document.
- The IITS operator uses ingenico unattended pos terminal having certification of EMV L1/L2 but L3 will be within the Fund Manager’s scope of work.

Datasheet: Ingenico Unattended POS Terminal



15. VALIDATOR CONTACTLESS EMV CARD READER

- Contactless EMV Card Reader which has required certificated
- Contactless EMV Card Reader integration document.
- ISO 8583

16. MOBILIZATION PERIOD REQUIREMENTS AND TIMELINES

REQUIREMENTS	TIMELINES
First minimum cash balance would be fronted	At least one (1) day prior to the Commencement Date
Integration with IITS systems	NTP + 60 days
Collection Account is open	NTP + 30 days
Training(s)	NTP + 20 days

EXHIBIT I: MINIMUM CASH BALANCE AND CASH PICK UP TIMINGS

S.No	BUS STATION	MINIMUM CASH BALANCE (PKR)	CASH PICK-UP TIMINGS (PST)
1.	Surjani Town	25,000	2300 hours
2.	- (Unknown)	15,000	2300 hours
3.	Jama Masjid	20,000	2300 hours
4.	4K Chowrangi	25,000	2300 hours
5.	2 Minute Ki Chowrangi	20,000	2300 hours
6.	- (Unknown 2)	15,000	2300 hours
7.	Power House	25,000	2300 hours
8.	Telephone Exchange	20,000	2300 hours
9.	UP More	15,000	2300 hours
10.	Nagan Chowrangi	25,000	2300 hours
11.	Shadman No.2	20,000	2300 hours
12.	2K Bus stop	20,000	2300 hours
13.	Faiz House	15,000	2300 hours
14.	Hyderi Bus stop	25,000	2300 hours
15.	Board Office	15,000	2300 hours
16.	Baqai Hospital Bus stop	20,000	2300 hours
17.	Petrol Pump Bus stop	25,000	2300 hours
18.	Rizvia Bus stop	15,000	2300 hours
19.	Gulbahar	15,000	2300 hours
20.	Lasbela Chowk	25,000	2300 hours
21.	Gurumandir	15,000	2300 hours
22.	Numaish	25,000	2300 hours
23.	Sea Breeze Center	15,000	2300 hours
24.	Gul Plaza	20,000	2300 hours
25.	Municipal Park	20,000	2300 hours
26.	5 no. Chowrangi	15,000	2300 hours
27.	Orangi Town Police Station	25,000	2300 hours
28.	Abdullah College	20,000	2300 hours
29.	Dilpasand Sweets	25,000	2300 hours

EXHIBIT II: KEY PERFORMANCE INDICATORS

Key Performance Indicators: The Fund Manager’s performance of Services shall be evaluated by means of required service levels for Key Performance Indicators (KPIs).

Deduction Percentages. Failure to meet these service levels shall lead to the imposition of Performance Deduction Percentages as per the table 1 below. The Employer shall notify Performance Deduction Percentage within ten (10) days of submission of invoice by the Fund Manager.

Employer review of KPIs. Employer may at all reasonable times, directly or through an Employer appointed independent agent, observe, inspect, and satisfy itself with the observance by Fund Manager of the KPIs.

KPI table. The systems must be designed and operated to meet these KPIs in the following table 1.

S. NO	EVENT / KPI	DEDUCTIONS
1.	Collection of cash from Bus Stations	
1.1.	Failure to reach the Bus Station on the specified time frame to collect cash.	PKR 1,000 per occurrence per Bus Station
2.	Minimum cash balance	
2.1.	Failure to provide the Facilities Manager with daily cash balance (change) as specified in Exhibit I.	PKR 1,000 per occurrence per Bus Station
2.2.	Fund Manager fails to provide the Facilities Manager with cash balance (change) on two hours’ notice upon shortage during operations.	PKR 100 per occurrence per Bus Station
3.	Banking Operations	
3.1.	Failure to deposit the cash collected in Collection Account on the following business day	PKR 1000 per occurrence
3.2.	Hacking/data security breach of the Fund Manager’s banking systems	PKR 10,000 per day
3.3.	Failure of Fund Manager’s banking systems which causes a delay in the sale of tickets/top-ups	PKR 10,000 per day
3.4.	Failure to pay the Project Contractors as per Employer’s Instructions in a timely manner.	PKR 10,000 per day
3.5.	Failure to make available date and information required for periodic audits	PKR 10,000 per occurrence
3.6.	Failure/break down of FM Machines due to lack of/improper maintenance	PKR 1,000 per occurrence per Bus Station

EXHIBIT III: PAYMENT INTEGRATION REQUIREMENTS

1. Compatibility Chart

DEVICE/COMPONENT	PAYMENT WITH EMV CONTACTLESS BANK CARD	PAYMENT WITH CONTACT BANK CARD	PAYMENT WITH MAGNETIC BANK CARD	SEND BANK TOP-UP/AUTO RELOAD	AUTO-RELOAD
Ticket Vending Machine	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)		
Ticket Office Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Handheld Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Mobile APP	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)		X (PG should be able to store payment methods)
Website	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X	X (PG should be able to store payment methods)

FUND MANAGEMENT AGREEMENT

BETWEEN

**SINDH INFRASTRUCTURE DEVELOPMENT COMPANY LTD. (FORMERLY KARACHI
INFRASTRUCTURE DEVELOPMENT CO. LTD.)
(AS EMPLOYER)**

AND

[TO BE INSERTED]
(AS FUND MANAGER)

RELATING TO:

**BRTS GREEN LINE PROJECT
AT KARACHI, SINDH, PAKISTAN**

DATED: AS OF ____ OF _____, 2021

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FUND MANAGEMENT AGREEMENT

This **FUND MANAGEMENT AGREEMENT** (this “**Agreement**”) is made on this _____ day of _____, 2021,

BETWEEN

- (1) **SINDH INFRASTRUCTURE DEVELOPMENT COMPANY LTD. (FORMERLY KARACHI INFRASTRUCTURE DEVELOPMENT CO. LTD. (“KIDCL”))**, a public limited company duly organized and existing under the laws of Pakistan, with its principal office located at 6th Floor, Extension Block, Bahria Complex IV, Karachi (the “**Employer**”, which expression shall include its successors-in-interest and permitted assigns);

AND

- (2) [**●**], a company incorporated under the laws of Pakistan, with its registered office located at [**●**], Pakistan (the “**Fund Manager**”, which expression shall include its successors-in-interest and permitted assigns).

(Each of the Employer and the Fund Manager is hereinafter, individually referred to as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS:

- (A) The Employer has been entrusted with the task of developing and improving the quality of mass transport/transit system in the city of Karachi, Pakistan, including the development and operations of the Project.
- (B) The Employer has undertaken public procurement process in terms of the Public Procurement Rules, 2004, passed by the Federal Government pursuant to Section 26 of the Public Procurement Regulatory Authority Ordinance, 2002, to select a fund manager to provide Services.
- (C) The Fund Manager presented its Bid for the performance of the Services and was selected as the successful bidder.
- (D) The Employer wishes to conclude an agreement with the Fund Manager to set forth the terms and conditions for the performance of the Services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

The terms used in this Agreement shall have the meanings stated below:

“Agreement” means this Fund Management Agreement including all schedules, exhibits and annexes included herein.

“Applicable Standards” mean the standards, requirements and criterion applicable to the performance of the Services as contained in:

- (a) the Laws;
- (b) the Implementation Plan;
- (c) the Prudent Industry Practices; and
- (d) the Consents;

provided, however, in the event of any discrepancy, conflict or inconsistencies in the standards, requirements and criterion set out above, the most stringent standards, requirements and criterion shall apply.

“Arbitration Act” means the Pakistan Arbitration Act, 1940 (as may be amended, modified, supplemented, extended or re-enacted from time to time).

“Automated Fare Collection” means electronic collection of Fare Revenues from Users credited directly to the Collection Account through the following:

- (a) TVM;
- (b) TOM;
- (c) website; and
- (d) mobile application.

“Bid” means the bid submitted by the Fund Manager in response to the Bidding Documents.

“Bid Submission Date” means [*insert date*].

“Bidding Documents” means the bidding documents issued by the Employer on [*insert date*].

“BRT Corridor” means the dedicated corridor (comprising of BRT Corridor Phase I and BRT Corridor Phase II) for the Project on which the Buses are operated.

“BRT Corridor Phase I” means the dedicated corridor for the Project from Surjani to Numaish underpass along with the Bus Stations located on the corridor.

“BRT Corridor Phase II” means the dedicated corridor for the Project from Numaish to Municipal Park along with the Bus Stations located on the corridor.

“BRTS” means Bus Rapid Transit System.

“Bus” or “Buses” means the buses being operated by the operator engaged by the Employer for the Project.

“Bus Operations” means the operating hours during a day when the Buses are being operated on the BRT Corridor for Users.

“Bus Stations” means the bus stations on the BRT Corridor for utilisation as stations for the Buses, together with relevant fixtures and fittings being operated by the Facilities Manager engaged by the Employer for the Project.

“Cash” means all Fare Revenues received in cash from Users at the TOMs and the TVMs.

“Cash Collection” means the collection of Cash from the TOMs and TVMs located at the Bus Stations.

“Collection Account” means the account titled *“Sindh Infrastructure Development Company Limited Collection Account”* denominated in Pakistani Rupees opened by and maintained in, the name of the Employer at the Designated Branch of the Fund Manager for deposit and utilisation of all Fare Revenues collected from Users, any non-fare revenue generated from the Project and any other sums deposited (including by the Employer or other Project Contractors) in respect of the Project.

“Commencement Date” means, as applicable, the Commencement Date Phase I and/or Commencement Date Phase II.

“Commencement Date Phase I” has the meaning given to that term in Section 4.3.1.

“Commencement Date Phase II” has the meaning given to that term in Section 4.3.1.

“Confidential Information” means all information, documentation, data, know-how or trade secrets, of whatever nature relating to the Project, disclosed by one Party to the other Party in accordance with Section 11 (*Confidential Information*).

“Consents” means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, or similar items that is or are required to be, from time to time, obtained and/or maintained by the Fund Manager for the performance of the Services.

“Coordination and Collection Procedure” means: (a) coordination with the Employer and other Project Contractors; and (b) the procedure and protocols to be followed by the Fund Manager, in each case for Cash Collection during the Services Period as set out in Section 2 (*Collection of Cash from Bus Stations*) of **Schedule A (Scope of Work)**.

“**Cost**” means all expenditure reasonably and properly incurred (or to be incurred) by the Fund Manager for performing of the Services, including overhead and similar charges but does not include profit.

“**CSCs**” means the contactless smart cards.

“**CPI**” means the Consumer Price Index - General published by the Pakistan Bureau of Statistics.

“**Currency Detector Machines**” means the machines provided by the Fund Manager for installation at the TOMs and TVMs for detection of any counterfeit currency.

“**Default Delay Period**” means, in relation to the Mobilization Period, the days (or part thereof) that lapse between the: (a) Scheduled Commencement Date Phase I and the Commencement Date Phase I; or (b) Scheduled Commencement Date Phase II and the Commencement Date Phase II.

“**Delay Liquidated Damages**” means the delay liquidated damages payable by the Fund Manager for delay in the achievement of the: (a) Commencement Date Phase I by the Scheduled Commencement Date Phase I; or (b) Commencement Date Phase II by the Scheduled Commencement Date Phase II (as applicable), in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*).

“**Delay Liquidated Damages Cap**” means an amount equivalent to ten percent (10%) of the annual Service Fee.

“**Designated Branch**” means the corporate branch of the Fund Manager, located at the *[insert branch details]*, Pakistan.

“**Dispute**” has the meaning given to that term in Section 19.1 (*Notice of Dispute*).

“**Effective Date**” means the date of signing of this Agreement.

“**Employer**” means the entity identified as “Employer” in the preamble and its legal successors and permitted assigns.

“**Employer Authority Matters**” has the meaning given to that term in Section 2.10 (*Employer Authority Matters*).

“**Employer’s Instruction**” has the meaning given to the term in Section 3.3 (*Employer’s Instructions*).

“**Employer’s Representative**” has the meaning given to that term in Section 3.2 (*Employer’s Representative*).

“**Encumbrance**” means any charge, pledge, hypothecation, lien, mortgage, assignment, right of set-off, option, contractual restrictions (such as negative covenants having the

effect of creating or acknowledging security interests in favour of creditors) or other encumbrance or security arrangement or interest of any kind securing any obligation or any type of preferential arrangement (including conditional sale, title transfer and retention arrangements) having similar effect.

“Face Value” means the amount (at any time) available for drawing / encashment under the Performance Security.

“Facilities” means the Project facilities comprising of the BRT Corridor, Bus Stations, the Operations Control Centre and all associated equipment and installations.

“Facilities Manager” means the Project Contractor engaged by the Employer for, *inter alia*,: (a) Fare Revenue collection from Users at the Bus Stations; and (b) operations and maintenance of the Facilities.

“Fare Revenue” means revenue generated from charges paid by the Users either in cash or electronically at such fare slabs as are notified by the competent authority from time to time.

“Force Majeure Event” has the meaning given to that term in Section 16 (*Force Majeure*).

“Fund Manager” means the entity/entities identified as “Fund Manager” in the preamble and its legal successors and permitted assigns.

“Fund Manager’s Approval Request” has the meaning given to the term in Section 2.10.2.

“Fund Manager’s Representative” has the meaning given to that term in Section 2.4.1.

“FM Machines” means collectively the Currency Detector Machines and Point of Sales (POS) Card Machines.

“GOP” means the Government of Pakistan.

“Implementation Plan” means, as applicable, the Implementation Plan Phase I and/or the Implementation Plan Phase II.

“Implementation Plan Phase I” has the meaning given to that term in Section 2.3.1.

“Implementation Plan Phase II” has the meaning given to that term in Section 2.3.1.

“Independent Expert(s)” means the independent third-party engineers, transport expert and/or third-party financial advisors appointed by the Employer for, *inter alia*, supervision, verification, approval and certification functions of the Employer under this Agreement.

“Indexation Mechanism” means the adjustments to the Service Fee as set out in **Schedule B (Payment Schedule)**.

“Interest Rate” means the interest rate as calculated and adjusted in accordance with **Schedule C (Interest Rate)**.

“IITS System” means the integrated intelligent transport system for the Project.

“IITS Integration Instructions” means the instructions for integration with the IITS System as set out in **Schedule A (Scope of Work)**.

“Key Performance Indicators” means the key performance indicators to be complied with and fulfilled by the Fund Manager during the Services Period as set out in **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)**.

“Laws” means (as may be applicable to either of the Parties) the federal, provincial and local laws of Pakistan, and all orders, rules, regulations, executive orders, statutory regulatory orders, decrees, judicial decisions, notifications, or other similar directives issued by any competent entity that in each case have the effect of law and are enforceable under law, as may be in force and effect during the Term and as may be amended, re-promulgated, substituted or replaced from time to time.

“Liquidated Damages” means collectively, the Delay Liquidated Damages and the Performance Liquidated Damages.

“Long Stop Date” means date falling three (3) months following the Effective Date, as maybe extended with mutual consent of the Parties in terms of Section 4.1.3.

“Loss” means any loss, claim, demand, damage, liability, judgment, payment or obligation, all costs and expenses (including without limitation reasonable legal fees) related thereto and amounts in settlement in lieu thereof.

“Maintain” or “Maintenance” means together the Planned Maintenance and the Unplanned Maintenance of the FM Machines as set out in **Schedule D (Maintenance of FM Machines)**.

“Minimum Cash Balance” means the minimum cash balance required to be maintained at each Bus Station for making change payments to Users as set out in **Exhibit I (Minimum Cash Balance and Cash Pick Up Timings)** of **Schedule A (Scope of Work)** subject to upward or downward revision on mutual agreement between the Parties in consultation with the Facilities Manager.

“Minimum Cash Balance Procedure” means: (a) coordination with the Employer and other Project Contractors; and (b) the procedure and protocols to be followed by the Fund Manager, in each case for making available the Minimum Cash Balance at the Bus Stations during the Services Period as set out in Section 3 (*Availability of Minimum Cash Balance*) of **Schedule A (Scope of Work)**.

“Minimum Credit Rating” means, with respect to a person or the instruments issued by such person:

- (a) in relation to such a person, that is rated AA+ or higher by PACRA or AA+ or higher by VIS; and
- (b) in relation to such an instrument, that it is rated AA+ or higher by PACRA or AA+ or higher by VIS,

provided that where a person or any instruments is rated by more than one of PACRA or VIS, as applicable, then the lowest rating will apply for determining whether the person or instrument has a Minimum Credit Rating.

“Mobilization Period” means, collectively or as the context may require, the Mobilization Period Phase I and/or Mobilization Period Phase II.

“Mobilization Period Phase I” means the period commencing from issuance of the Notice to Proceed and, unless terminated earlier in accordance with Section 9 (*Default and Termination*), continuing until the Commencement Date Phase I is achieved.

“Mobilization Period Phase II” means the period commencing from June 01, 2022 (except as may be extended by the Employer) and unless terminated earlier in accordance with Section 9 (*Default and Termination*), continuing until the Commencement Date Phase II is achieved.

“Mobilization Period Requirements” means, collectively, the Mobilization Period Requirements Phase I and Mobilization Period Requirements Phase II.

“Mobilization Period Requirements Phase I” has the meaning given to the term in Section 4.2.2.

“Mobilization Period Requirements Phase II” has the meaning given to the term in Section 4.2.3.

“Month” means a calendar month during the Services Period according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

“Monthly Invoice” has the meaning given to that term in Section 5.1.3.

“Monthly Payable Amount” has the meaning given to that term in Section 5.1.5.

“Monthly Payment Date” has the meaning given to that term in Section 5.1.6.

“Non-Compliance” has the meaning given to that term in Section 2.16.1.

“Notified, Notice” and its grammatical variations shall mean as notified in writing.

“Notice to Proceed” means the notice to commence the Mobilization Period Requirements Phase I, to be issued by the Employer to the Fund Manager in accordance with this Agreement.

“O&M Manuals” mean the manuals for the operations and Maintenance of the FM Machines as supplemented and amended from time to time and as updated by the Fund Manager in accordance with this Agreement.

“OL Fund Management Agreement” means the fund management agreement entered into by the Employer and the Fund Manager with respect to the Orange Line Project.

“Operating Committee” means the operating committee established or to be established by the Employer for co-ordination of the respective programmes and procedures of the Project Contractors (including the Fund Manager) for the operation and maintenance of the Project.

“Operations Control Centre” means the operations control centre for the Project used for, *inter alia*, the monitoring, coordinating and managing the overall operations of the Project.

“Orange Line Project” means the 4 km BRTS Orange Line from Town Municipal Administration Office (Orangi) to Board Office.

“Order of Precedence” has the meaning given to that term in Section 3.6 (*Order of Precedence*).

“Overdraft Amount” has the meaning given to that term in Section 6.4.4.

“Overdraft Payment Date” has the meaning given to that term in Section 6.4.5.

“Pakistani Rupees” or “PKR” means the lawful currency of Islamic Republic of Pakistan.

“Party” means Employer or Fund Manager individually and **“Parties”** means Employer and Fund Manager collectively.

“PC Payment Amount” has the meaning given to that term in Section 6.4.2.

“PC Payment Date” has the meaning given to that term in Section 6.4.2.

“Performance End Date” means, unless terminated earlier in accordance with Section 9 (*Default and Termination*) the date of expiration of this Agreement which shall be:

- (a) the tenth (10) anniversary of the Commencement Date Phase I; and
- (b) the date the Employer has issued the Release Certificate.

“Personnel” means those employees (including other security staff) of the Fund Manager hired for the performance of the Services.

“Performance Liquidated Damages” means the liquidated damages payable by the Fund Manager during the Services Period for any Non-Compliance, in accordance with Section 2.16 (*Performance Liquidated Damages*) and **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)**.

“Performance Liquidated Damages Cap” means an amount equivalent to ten percent (10%) of the annual Service Fee.

“Performance Security” means an irrevocable, unconditional and on-demand bank guarantee, denominated and payable in PKR, having a Minimum Credit Rating at all times equivalent to the Performance Security Amount in an amount set out in Section 7.2 (*Performance Security*), issued by a bank, having a Minimum Credit Rating at all times, in each case acceptable to the Employer, in the form set out in **Schedule E (Form of Performance Security)**.

“Performance Security Amount” means an amount as calculated and adjusted in accordance with **Schedule K (Performance Security Amount)**.

“Performance Security Expiry Date” has the meaning set out in Section 7.2.2.

“Planned Maintenance” means those tasks identified as routine services, scheduled services and wear and tear replacements as further detailed in **Schedule D (Maintenance of FM Machines)**.

“Point of Sales (POS) Card Machines” means the machines provided by the Fund Manager for installation at the TOMs and TVMs for purchase of tickets or reloading of CSCs through electronic cards by Users.

“Project” means the twenty-one (21) km BRTS Green Line from Surjani (Abdullah Mor) to Municipal Park with approximately twenty-five (25) stations with an average distance of approximately nine hundred (900) meters between stations.

“Project Contractors” means the various contractors (other than the Fund Manager) appointed by the Employer in connection with the Project.

“Project Insurance Policies” means the policies of insurance and any exhibits thereto required to be maintained by the Fund Manager.

“Prudent Industry Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used in the country by experienced firms performing services on projects of similar type, size, complexity and location which, in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice, and as are in accordance with generally accepted national standards of professional care, skill, diligence and

competence applicable to the Services.

“Release Certificate” means the certificate to be issued under Section 8 (*Application for Release Certificate*) in the form attached hereto as **Schedule G (Release Certificate)**.

“Relevant Documents” has the meaning set out in Section 15.2.1.

“Scheduled Commencement Date Phase I” means the date falling sixty (60) days from the Notice to Proceed (unless extended by the Employer from time to time pursuant to Section 4.2.1).

“Scheduled Commencement Date Phase II” means July 01, 2022 (unless extended by the Employer from time to time pursuant to Section 4.2.1).

“Service Fee” means the fee payable for each Month during the Services Period, by the Employer to the Fund Manager in accordance with Section 5 (*Price and Payment Terms*) and **Schedule B (Payment Schedule)**.

“Services” means the: (a) integration with the IITS System for digital payments; (b) providing the FM Machines and carrying out Maintenance of the FM Machines; (c) Cash Collection from TOMs and TVMs and deposit into the Collection Account; (d) providing the Minimum Cash Balance at the Bus Stations; and (e) making payments to Project Contractors on the Employer’s Instructions in accordance with Section 6.4 (*Payments to Project Contractors*); each (a)-(e) as detailed in **Schedule A (Scope of Work)** to be carried out by the Fund Manager.

“Services Period” means the period commencing on the Commencement Date Phase I and ending on the Performance End Date.

“Service Records” has the meaning set out in Section 2.11.1.

“Service Year” means each period of twelve (12) consecutive months, the first such period commencing on the Commencement Date Phase I and thereafter commencing on each anniversary of the Commencement Date Phase I.

“Sub-Contractor” means any person named in this Agreement as a sub-contractor and identified in the list set forth in **Schedule H (List of Sub-Contractors)**, or any person appointed as a sub-contractor by the Fund Manager for undertaking any part of the Services (subject to Section 13.3 (*Subcontracting*)) and the legal successors in title to each sub-contractor.

“Successor Fund Manager” has the meaning given to that term in Section 9.7.1.

“Taxes” means the sales tax on services that may be applicable on the Fund Manager (including its Sub-Contractors or its Personnel) or to the Services and deemed to be included in the Service Fee.

“**Term**” has the meaning given to that term in Section 4.1.1.

“**Term Expiry Criteria**” means the term expiry criteria as set out in **Schedule F** (*Term Expiry Criteria*).

“**TOM**” means the ticket office machine installed by the Fund Manager at the Bus Stations and operated manually by staff of the Facilities Manager for purchasing of tickets and reloading of CSCs by Users.

“**Training Programme**” means the training programme (as approved by the Employer in accordance with Section 2.13 (*Training*)) to be conducted by the Fund Manager for using the FM Machines and on techniques to detect counterfeit currency as more specifically described in the **Schedule A** (*Scope of Work*).

“**Transferee**” has the meaning given to that term in Section 13.2.1.

“**Transferor**” has the meaning given to that term in Section 13.2.1.

“**Transition Period**” has the meaning given to that term in Section 9.7.1.

“**TVM**” means the stationery ticket vending machines to be installed at the Bus Stations by the Fund Manager for purchasing of tickets and reloading of CSCs by Users.

“**Users**” means the passengers that access the Bus Stations and travel on the Buses being operated on the BRT Corridor.

“**Unplanned Maintenance**” means all maintenance and services other than Planned Maintenance, to ensure that the FM Machines are managed, operated and maintained to meet the Applicable Standards.

1.2. INTERPRETATION

In this Agreement:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) references to Sections, Exhibits, Schedules and Annexes are, unless the context otherwise requires, references to Sections, Exhibits, Schedules or Annexes to this Agreement;

- (f) a reference to any legislation or legislative provision includes any statutory modification, amendment, or re-enactment of or legislative provision substituted for, and any subordinate legislation under that legislation or legislative provision;
- (g) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (h) except as provided in Section 11 (*Confidential Information*), nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Employer to claim any benefit provided under applicable Laws (whether in effect now or in the future);
- (i) headings shall not be taken into consideration in the interpretation of this Agreement;
- (j) the words “including”, “includes” and any variants of those words will be read as if followed by the words “without limitation”;
- (k) any reference to a party includes its respective successors in interest and permitted assigns, from time to time;
- (l) unless otherwise specifically provided in this Agreement, a reference to an agreement shall be a reference to that agreement as amended, re-stated, supplemented, modified or novated from time to time; and
- (m) a reference to business day(s) hereunder will be construed as a reference to a day on which banks are legally permitted to be open for business in Pakistan.

2. FUND MANAGER’S GENERAL RESPONSIBILITIES

2.1. THIS AGREEMENT

- 2.1.1. In consideration of the Service Fee payable to the Fund Manager by the Employer, the Fund Manager hereby agrees to execute the Services, in accordance with and subject to the terms of this Agreement.

2.2. EXECUTION OF SERVICES

- 2.2.1. The Fund Manager shall:
 - (a) continuously, diligently perform and execute the Services as per the Applicable Standards, any Employer’s Instructions and other manuals, policies, procedures and plans to be established pursuant to this Agreement; and

- (b) ensure that the Services are executed with due skill and care, in a proper, workmanlike manner with properly equipped facilities in accordance with recognized good practice and Applicable Standards.
- 2.2.2. No review, non-objection, or approval by the Employer of any agreement, document, instrument or plan proposed by the Fund Manager shall relieve the Fund Manager from any liability that it would otherwise have had for its negligence or default in the preparation of such agreement, document, instrument or plan or failure to comply with Applicable Standards or to satisfy the Fund Manager's obligations under this Agreement. The Employer is not liable to the Fund Manager or any other person by reason of its review, non-objection, or approval of any agreement, document, instrument or plan.
- 2.2.3. If the Fund Manager becomes aware of a conflict between the Applicable Standards and other requirements set out in Section 2.2.1 or elsewhere in this Agreement, then the Fund Manager shall promptly notify the Employer and the Parties shall discuss in good faith and agree the manner in which the Fund Manager should execute the Services, provided that the Employer shall not be entitled to require the Fund Manager to act in breach of any applicable Laws.
- 2.2.4. The Fund Manager hereby agrees to indemnify, defend and hold the Employer harmless from any and all liabilities, damages, costs, penalties, fines, expenses, fees and charges of any nature associated with any non-compliance and violations by the Fund Manager of this Section 2.2 (*Execution of Services*).

2.3. IMPLEMENTATION PLAN

- 2.3.1. The Fund Manager shall prepare and submit to the Employer a detailed proposed implementation plan for execution of Services in respect of: (a) BRT Corridor Phase I within five (5) days of the Notice to Proceed (the "**Implementation Plan Phase I**"); and (b) BRT Corridor no later than twenty-five (25) days prior to the Scheduled Commencement Date Phase II (the "**Implementation Plan Phase II**"). The Fund Manager shall ensure that its proposed Implementation Plan: (a) is consistent with the requirements of the Applicable Standards; and (b) accounts for coordination and the activities, operations and works of other Project Contractors in setting timelines for performance of the Services so as not to unreasonably interfere with, disrupt or delay the Project Contractor works, Project operations or the Services. Each Implementation Plan shall show all relevant information in relation to the anticipated performance of the Services.
- 2.3.2. The Employer shall Notify the Fund Manager, within ten (10) days of its receipt of the proposed Implementation Plan, whether it: (a) accepts such Implementation Plan; or (b) shall propose amendments to the same. In the event the Employer proposes amendments to the proposed Implementation Plan, the Parties shall meet (within three (3) days of the Employer's proposal of such amendments) to discuss such amendments and to mutually agree on the same.
- 2.3.3. The Implementation Plan:

- (a) submitted by the Fund Manager to the Employer and approved by the Employer in terms of Section 2.3.2(a) without any amendments; or
- (b) submitted by the Fund Manager to the Employer, as amended by the amendments proposed by the Employer that are mutually agreed between the Parties in accordance with Section 2.3.2;

shall be strictly complied with by the Fund Manager for execution of the Services and the Fund Manager shall commence and proceed with the implementation of the Implementation Plan in accordance therewith.

- 2.3.4. Any alteration to the Implementation Plan shall only be made by the Fund Manager with the prior written approval to the Employer.

2.4. FUND MANAGER'S REPRESENTATIVE

- 2.4.1. As part of the Fund Manager's management of performance of this Agreement, during the Term, the Fund Manager shall designate one or more individual(s), each of whom shall function as the Fund Manager's single point of contact (the "**Fund Manager's Representative**"). The Fund Manager's Representative shall serve as a contact point to the Employer for matters pertaining to this Agreement. The Fund Manager may also utilize other Personnel and performance support methods in connection with performance of this Agreement.

- 2.4.2. The Fund Manager's Representative may change from time to time during the Term of this Agreement, provided that the Fund Manager shall have an individual at all times serving such a role regardless of the specific individual or job title used. The Fund Manager shall not replace Fund Manager's Representative without prior intimation to the Employer provided that prior to replacement of the outgoing Fund Manager's Representative, the Parties shall meet to address and minute any matters relating to the outgoing Fund Manager's Representative's activities in the Project.

- 2.4.3. The Fund Manager's Representative shall be an experienced and capable person and a full-time employee of the Fund Manager dedicated to directing the execution of the Services and shall be available at all times.

- 2.4.4. The Fund Manager shall be fully and solely responsible to the Employer for any act, omission or error of the Fund Manager's Representative and other Personnel as if they were an act, error or omission of the Fund Manager. The Fund Manager shall ensure that the Fund Manager's Representative provides copies to the Fund Manager of all communications given or received by it in accordance with this Agreement.

2.5. OPERATING COMMITTEE

- 2.5.1. The Fund Manager's Representative shall serve as a member of the Operating Committee and the Fund Manager shall ensure that the Fund Manager's Representative fulfils his role as member of the Operating Committee fully and in good faith.

2.5.2. The Operating Committee shall have no power or authority to amend or modify the provisions of this Agreement or to determine the rights or obligations of the Fund Manager under this Agreement.

2.6. PERSONNEL REQUIREMENTS

2.6.1. The Fund Manager shall ensure that adequate Personnel are available during the Term for the execution of the Mobilization Period Requirements and the Services.

2.6.2. The Fund Manager shall be responsible for its Personnel's health and safety requirements for the Services performed by Fund Manager under this Agreement and shall ensure observance of requirements under the Applicable Standards.

2.7. CONSENTS

2.7.1. During the Term, the Fund Manager will obtain and maintain, at its own cost and expense, all Consents required to be obtained and maintained with respect to the Services. The Fund Manager will obtain all Consents within a reasonable time taking into account the Applicable Standards and timelines for performance of its obligations under this Agreement and shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

2.7.2. The Fund Manager shall provide to the Employer a list of all Consents, clearly designating the issuing agency and dates of issuance and expiration of all Consents, a copy of all permits, licenses, and approvals already issued and maintained by the Fund Manager and the Fund Manager's schedule for obtaining or renewing all Consents.

2.8. INTEGRATION WITH IITS SYSTEM

2.8.1. Within sixty (60) days from the Notice to Proceed, the Fund Manager shall integrate its systems with the IITS System in accordance with the IITS Integration Instructions to permit collection of Fare Revenues from Users through means of Automated Fare Collection.

2.9. FM MACHINES

2.9.1. Within sixty (60) days from the Notice to Proceed, the Fund Manager shall provide the FM Machines (along with the O&M Manuals) and comply with any Employer's Instructions for: (a) integration of the FM Machines with the IITS System; (b) coordinate with any other Project Contractor for integration of the FM Machines in the Project operations as may be required by the Employer; and (c) Maintain the FM Machines during the Services Period.

2.9.2. The Fund Manager shall retain title to all FM Machines provided in accordance with Section 2.9.1 and shall be responsible for: (a) all costs associated with the repair, replacement, Maintenance thereof; (b) for risk of Loss; and (c) any insurance costs for such FM Machines.

2.10. EMPLOYER AUTHORITY MATTERS

2.10.1. The Fund Manager shall be required to obtain written approval of the Employer prior to taking any action in relation to the following matters (the “**Employer Authority Matters**”):

- (a) any alteration to the Implementation Plan under Section 2.3.4;
- (b) approve the Fund Managers’ Representative in accordance with Section 2.4 (*Fund Manager’s Representative*); and
- (c) assignment of any rights and obligations under this Agreement, including subcontracting of the Services under Section 13.3 (*Subcontracting*).

2.10.2. Within fifteen (15) days of receipt, the Employer shall consider the Fund Manager’s request for the Employer’s written approval in relation to any of the Employer’s Authority Matters (“**Fund Manager’s Approval Request**”) and shall either:

- (a) approve the Fund Managers Approval Request; or
- (b) reject the Fund Managers Approval Request and convey their comments/observations (if any) to the Fund Manager.

The Fund Manager shall (at its own cost and expense) re-submit the revised Fund Managers Approval Request no later than ten (10) days from receipt of the rejection and/or comments/observations under Section 2.10.2(b) above, and the approval process under this Section 2.10.2 shall be repeated.

2.11. SERVICE RECORDS

2.11.1. The Fund Manager shall maintain full, complete and accurate records concerning the performance of all Services (“**Service Records**”). Upon request of the Employer, the Fund Manager shall provide the Employer and/or the Employer’s Representatives with access to review on twenty-four (24) hours’ prior notice and/or a copy of such records promptly and no later than two (2) business days.

2.12. INSPECTION

During the Services Period, the Fund Manager hereby gives the Employer and the Employer’s Representative, full opportunity and access to inspect and examine the books, records, management system including inspection of the Services being provided by the Fund Manager. Inspection will be carried out by the Employer and/or the Employer’s Representative, as and when deemed necessary by the Employer during the Services Period.

2.13. TRAINING

- 2.13.1. The Fund Manager shall within two (2) days following issuance of the Notice to Proceed submit its proposed training programme to the Employer for approval.
- 2.13.2. Within three (3) days of receipt, the Employer shall review the proposed training programme and shall either:
- (a) approve the proposed training programme (the “**Training Programme**”); or
 - (b) reject the proposed training programme and convey its comments/observations (if any) to the Fund Manager.
- 2.13.3. In the event no approval or objections to the proposed training programme is provided in accordance with Section 2.13.2(b), the proposed training programme shall be deemed to be approved by the Employer.
- 2.13.4. The Fund Manager shall promptly (at its own cost and expense) re-submit the revised training programme, no later than three (3) days from receipt of the aforesaid observations under Section 2.13.2(b), and the approval process under this Section 2.13 (*Training Programme*) shall be repeated.
- 2.13.5. The Fund Manager shall carry out training in accordance with the Training Programme approved under this Section 2.13 (*Training Programme*). Training is to be provided as part of the Services under this Agreement and the Fund Manager’s obligations shall not be considered completed for the purposes of issuance of the Release Certificate until this training has been completed.
- 2.13.6. Training shall be conducted initially as a Mobilization Period Requirement and, thereafter, periodically as per the Training Programme including upon upgrading and/or changing of the FM Machines.
- 2.13.7. The Employer shall Notify the Fund Manager of the Employer’s personnel and other Project Contractors that are required to be trained during the Mobilization Period and thereafter periodically as per the Training Programme.

2.14. NOT USED.

2.15. KEY PERFORMANCE INDICATORS

- 2.15.1. The Fund Manager shall comply with the Key Performance Indicators during the Services Period.
- 2.15.2. The Key Performance Indicators may be revised, if required by the Employer, with the consent of the Fund Manager.

- 2.15.3. The performance by Fund Manager of its obligations under the Agreement, including compliance with Key Performance Indicators, will be monitored, measured and evaluated by the Employer and the Independent Expert. Any discrepancies or non-compliances identified by the Employer and/ or the Independent Expert, if any, will be reported to the Fund Manager for corrective action in accordance with Section 2.15.4.
- 2.15.4. In the event of any discrepancy or non-compliance with respect to the Key Performance Indicators, the Fund Manager will be required within five (5) days or such additional time period as Notified by the Employer, or immediately in case of matters identified as urgent by the Employer and/or the Independent Expert, to provide assurance, to the satisfaction of the Employer and the Independent Expert, that the Fund Manager: (a) is acting in compliance with the Key Performance Indicators (along with supporting evidence); or (b) shall take all necessary actions to cure any discrepancy or non-compliance with Key Performance Indicators, to mitigate and prevent similar discrepancies or non-compliances arising in the future and at all times be compliant with the Key Performance Indicators.
- 2.15.5. Any corrective measures taken by the management of the Fund Manager in accordance with Section 2.15.4 will be immediately reported to the Employer and its Independent Expert. Thereafter, the Employer and/or the Independent Expert may in accordance with Section 2.15.4 undertake an audit to evaluate and report on status of achievement of Key Performance Indicators.

2.16. PERFORMANCE LIQUIDATED DAMAGES

- 2.16.1. If the Fund Manager fails to comply with the Key Performance Indicators (each a “**Non-Compliance**”) the Employer may in its sole discretion deduct as Performance Liquidated Damages and not as a penalty an amount described and calculated in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** from the Monthly Invoices for each Month during a Service Year in which that Non-Compliance has occurred or continued for one or more days up to the Performance Liquidated Damages Cap.
- 2.16.2. In the event that the Performance Liquidated Damages (by way of calculation) exceed the Performance Liquidated Damages Cap, the Employer shall have the option (to be exercised at its sole and absolute discretion) to terminate this Agreement in accordance with Section 9 (*Default and Termination*) and pursue its remedies set out therein and/or encash the Performance Security.
- 2.16.3. The Performance Liquidated Damages specified in Section 2.16.1 have been calculated by the Parties as representing the actual daily loss to the Employer as a result of any Non-Compliance and are not a penalty. Given the nature of the Services to be performed by the Fund Manager, it is entirely possible to calculate the actual loss suffered by the Employer and the stated Performance Liquidated Damages in Section 2.16.1 and **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** reflect such calculation. The Fund Manager waives, to the extent permitted by any applicable law, any defence as to the validity and quantum of any Performance Liquidated Damages in this Agreement on the grounds that such Performance Liquidated Damages are not

calculated on the actual loss suffered by the Employer or are void as penalties or otherwise.

2.17. OPENING OF THE COLLECTION ACCOUNT

- 2.17.1. The Fund Manager shall establish and maintain the Collection Account at the Designated Branch for the Services Period.
- 2.17.2. The authorised signatories for the Collection Account (including any change thereof from time to time) shall be Notified by the Employer to the Fund Manager.
- 2.17.3. The Collection Account shall bear interest/profit/mark-up in the currency in which the account is denominated at the Interest Rate and such interest/profit/mark-up shall be credited to the Collection Account on the dates and times as maybe agreed from time to time between the Fund Manager and the Employer.
- 2.17.4. The Fund Manager shall not create any Encumbrance on the Collection Account (other than as expressly permitted by the Employer).

3. EMPLOYER GENERAL RESPONSIBILITIES

3.1. GENERAL

- 3.1.1. The Employer shall:
 - (a) fulfil responsibilities and obligations (including approval of plans and programmes submitted for review and approval) under this Agreement in the manner and at the time necessary to meet Fund Manager's schedule and the requirements of this Agreement.
 - (b) provide reasonable assistance to the Fund Manager in obtaining any relevant Consents that are required to be obtained in the Fund Manager's name within Pakistan.

3.2. EMPLOYER'S REPRESENTATIVE

- 3.2.1. As part of the Employer's management of performance of this Agreement, during the Term, the Employer shall designate for this Agreement one or more individual(s), each of whom shall function as the Employer's single point of contact (the "**Employer's Representative**"). The Employer's Representative shall serve as a contact point for the Fund Manager for matters pertaining to this Agreement.
- 3.2.2. The Employer may also utilize other Employer personnel and performance support methods in connection with performance of this Agreement including with respect to any approval functions of the Employer under this Agreement and for such purposes the Employer personnel shall be deemed to be acting as an Employer's Representative.
- 3.2.3. The Employer's Representative may change from time to time during the Term of this

Agreement, provided that the Employer shall have an individual at all times serving such a role regardless of the specific individual or job title used and provided further that the Employer shall provide prior written notice of any such changes.

3.2.4. The Employer may involve the Independent Expert(s) engaged by the Employer in respect of the Project. The Independent Expert(s) shall be empowered by the Employer to:

- (a) carry out any approval functions of the Employer under this Agreement; and
- (b) validate any technical and financial matters as specified by the Employer, and for such purposes the Independent Expert(s) shall be deemed to be acting as an Employer's Representative.

Furthermore, for the purposes of Section 3.2.4 (a) and (b) above, the Independent Expert(s) shall have access to the Service Records and all related information, documentation etc, and its determinations shall be binding on the Fund Manager.

In the event any dispute arises between the Parties with regard to any advice, instruction, decision, direction and/or award of the Independent Expert, then such dispute shall be referred for dispute resolution in accordance with Section 19 (*Dispute Resolution*).

3.3. EMPLOYER'S INSTRUCTIONS

The Fund Manager shall comply with written instructions given by the Employer and/or the Employer's Representative, from time to time in relation to the execution of the Services including for payments to Project Contractors in accordance with Section 6.4 (*Payments to Project Contractors*) (the "**Employer's Instructions**"). The manner for implementation of the Employer's Instructions will be determined by the Fund Manager following consultation with the Employer's Representative, provided at all times, the Applicable Standards are complied with.

3.4. EMPLOYER'S CLAIMS

3.4.1. Other than Liquidated Damages payable in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) and/or Section 2.16 (*Performance Liquidated Damages*), if the Employer considers itself to be entitled to any payment under this Agreement and/or the extension (if any) of the relevant performance deadline including under Section 16 (*Force Majeure*), the Employer shall give notice and particulars to the Fund Manager pursuant to this Section.

3.4.2. The notice shall be given as soon as practicable after the Employer becomes aware of the event or circumstances giving rise to the claim.

3.4.3. The particulars shall specify the Section or other basis of the claim and shall include substantiation of the amount and/or extension to which the Employer considers itself to be entitled in connection with the Agreement. The Employer shall then proceed to make a determination in accordance with Section 3.5 (*Determinations*) including of the amount

(if any) which the Employer is entitled to be paid by the Fund Manager.

3.5. DETERMINATIONS

- 3.5.1. Whenever this Agreement provides that the Employer shall proceed in accordance with this Section 3.5 (*Determinations*) to agree or determine any matter, the Employer shall consult with the Fund Manager in an endeavour to reach agreement. If agreement is not achieved within a period of ten (10) days, the Employer shall make a fair determination in accordance with this Agreement, taking due regard of all relevant circumstances.
- 3.5.2. The Employer or the Employer's Representative shall give notice to the Fund Manager of each agreement or determination, with supporting particulars. If the Fund Manager disagrees with such determination, the Fund Manager shall give notice, to the Employer, of its dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the Dispute for dispute resolution in accordance with Section 19 (*Dispute Resolution*).

3.6. ORDER OF PRECEDENCE

The documents forming this Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity, discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply (the "**Order of Precedence**"):

- (a) Any amendment or modification to this Agreement, made by both Parties after the Effective Date of this Agreement;
- (b) this Agreement (excluding the Schedule and Exhibits);
- (c) the Schedules (together with their Exhibits).

4. TERM, MOBILIZATION PERIOD AND COMMENCEMENT

4.1. EFFECTIVE DATE, NOTICE TO PROCEED AND TERM

- 4.1.1. This Agreement shall become effective on the Effective Date and unless terminated earlier in accordance with Section 9 (*Default and Termination*), shall end on the Performance End Date (the "**Term**").
- 4.1.2. The Employer may issue the Notice to Proceed, in its sole and absolute discretion, at any time on or prior to the Long Stop Date.
- 4.1.3. The Long Stop Date may be extended from time to time with the mutual consent of the Parties.
- 4.1.4. If for reasons not attributable to the Fund Manager the Notice to Proceed is not issued within seven (7) days following the Long Stop Date, then either Party shall have the right

to terminate this Agreement and neither Party shall be liable to the other in any respect (including in respect of Section 9 (*Default and Termination*)).

- 4.1.5. Unless otherwise set out in this Agreement, the Fund Manager's obligation to execute the Services (other than the Mobilization Period Requirements Phase I) shall commence upon the Commencement Date Phase I.

4.2. MOBILIZATION PERIOD

- 4.2.1. The Employer may at any time in its sole discretion: (i) defer and/or waive any of the Mobilization Period Requirements; and/or (ii) extend the Scheduled Commencement Date Phase I or the Scheduled Commencement Date Phase II (as applicable), each (i) and (ii) in accordance with Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*).

- 4.2.2. During the Mobilization Period Phase I, the Fund Manager shall:

- (a) submit the Implementation Plan Phase I under Section 2.3 (*Implementation Plan*) within five (5) days of the Notice to Proceed;
- (b) submit the list of Consents under Section 2.7.2 within ten (10) days of the Notice to Proceed;
- (c) complete integration with the IITS System in accordance with Section 2.8.1 within sixty (60) days from the Notice to Proceed;
- (d) provide the FM Machines (along with the O&M Manuals) (other than for the BRT Corridor Phase II) in accordance with Section 2.9.1 within sixty (60) days from the Notice to Proceed;
- (e) procure the approval of its Training Programme and carry out training in accordance with Section 2.13 (*Training Programme*) within twenty (20) days from the Notice to Proceed;
- (f) establish the Collection Account at the Designated Branch of the Fund Manager in accordance with Section 2.17.1 within thirty (30) days from the Notice to Proceed;
- (g) procure the Project Insurance Policies required to be procured and maintained by the Fund Manager in accordance with **Schedule I (*Insurance*)**;
- (h) arrange Minimum Cash Balance for change payments at every Bus Station in accordance with Section 6.2 (*Availability of Minimum Cash Balance*) no later than one (1) day prior to the Commencement Date Phase I; and
- (i) complete any other works and/or Services as required under **Schedule A (*Scope of Work*)**;

(requirements set out in (a) to (i) above shall collectively be referred to as the “**Mobilization Period Requirements Phase I**”).

4.2.3. During the Mobilization Period Phase II, the Fund Manager shall:

- (a) submit the Implementation Plan Phase II under Section 2.3 (*Implementation Plan*) no later than twenty-five (25) days prior to the Scheduled Commencement Date Phase II;
- (c) submit the list of Consents under Section 2.7.2 no later than twenty (20) days prior to the Scheduled Commencement Date Phase II;
- (d) complete integration with the IITS System in accordance with Section 2.8.1 no later than one (1) day prior to the Scheduled Commencement Date Phase II;
- (d) provide the FM Machines (along with the O&M Manuals) in accordance with Section 2.9.1 no later than one (1) day prior to the Scheduled Commencement Date Phase II;
- (e) carry out training in accordance with Section 2.13 (*Training Programme*) no later than ten (10) days prior to the Scheduled Commencement Date Phase II;
- (f) arrange Minimum Cash Balance for change payments at every Bus Station in accordance with Section 6.2 (*Availability of Minimum Cash Balance*) no later than one (1) day prior to the Commencement Date Phase II;
- (g) procure the Project Insurance Policies required to be procured and maintained by the Fund Manager in accordance with **Schedule I (Insurance)**; and
- (f) complete any other works and/or Services as required under **Schedule A (Scope of Work)**;

(requirements set out in (a) to (f) above shall collectively be referred to as the “**Mobilization Period Requirements Phase II**”).

4.3. COMMENCEMENT DATE

4.3.1. Subject to Section 4.2.1, (a) the Commencement Date Phase I shall be the actual date on which the Mobilization Period Requirements Phase I have been completed to the satisfaction of the Employer (the “**Commencement Date Phase I**”); and (b) the Commencement Date Phase II shall be the actual date the Mobilization Period Requirements Phase II have been completed to the satisfaction of the Employer (the “**Commencement Date Phase II**”).

4.3.2. In the event the: (a) Commencement Date Phase I is not achieved by the Scheduled Commencement Date Phase I; and/or (b) Commencement Date Phase II is not achieved by the Scheduled Commencement Date Phase II (as applicable), the Employer shall have the right (to be exercised at its sole and absolute discretion) to: (i) impose Delay

Liquidated Damages; and/or (ii) terminate this Agreement by issuance of a written termination notice to the Fund Manager and encash the Performance Security to its full value. For the avoidance of doubt, it is clarified that the provisions of this Section 4.3.2 shall not limit or prejudice in any manner the Parties' right to terminate this Agreement in accordance with the provisions of Section 9 (*Default and Termination*).

4.4. WAIVER AND/OR DEFERRAL OF MOBILIZATION PERIOD REQUIREMENTS AND EXTENSION OF SCHEDULED COMMENCEMENT DATE

4.4.1. The Employer may (at its discretion) waive and/or defer any of the Mobilization Period Requirements Phase I and/or Mobilization Period Requirements Phase II (as applicable), with such conditions as it may deem fit.

4.4.2. Not Used.

4.4.3. Any deferral and/or waiver of any Mobilization Period Requirement Phase I or Mobilization Period Requirements Phase II (as applicable) in terms of this Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*) shall be Notified to the Fund Manager.

4.4.4. Notwithstanding anything contained herein, the: (a) Scheduled Commencement Date Phase I; or (b) Scheduled Commencement Date Phase II (as applicable) may be extended from time to time by the Employer.

4.4.5. If the Fund Manager considers itself to be entitled to an extension of the: (a) Scheduled Commencement Date Phase I; or (b) Scheduled Commencement Date Phase II (as applicable) including under Section 16 (*Force Majeure*) and/or Section 17 (*Changes*), the Fund Manager shall give notice to the Employer describing the event or circumstance giving rise to such claim of extension. The Notice shall be given as soon as practicable, and not later than five (5) days after the Fund Manager became aware of the relevant event or circumstance. Such Notice shall make reference to the provision of this Agreement that stipulates the entitlement of the Fund Manager to claim for an extension of any timeline. When determining each extension of time, the Employer shall review previous determinations and make a determination in terms of Section 3.5 (*Determinations*) and may ask for such further information/documentation as the Employer may require to make such determination.

Provided, however that the Fund Manager shall not be entitled to any extension in the: (a) Scheduled Commencement Date Phase I; or (b) Scheduled Commencement Date Phase II (as applicable) in respect of any period where the Fund Manager would have nevertheless experienced delays in any case for reasons not attributable to the Employer including for any of the events occurring under Section 16 (*Force Majeure*) and/or Section 17 (*Changes*).

4.5. SERVICES PERIOD

4.5.1. During the Services Period, the Fund Manager shall execute the Services (other than those already performed during the Mobilization Period Phase I or Mobilization Period

Phase II (as applicable)) and the Employer shall make payments of the Service Fee in accordance with Section 5 (*Price and Payment Terms*).

- 4.5.2. Services in respect of: (a) the BRT Corridor Phase I shall commence from Commencement Date Phase I; and (b) the BRT Corridor Phase II shall commence from Commencement Date Phase II and continue for the remaining Term.

4.6. DELAY LIQUIDATED DAMAGES DURING MOBILIZATION PERIOD

- 4.6.1. If the Fund Manager fails to complete all the Mobilization Period Requirements Phase I or Mobilization Period Requirements Phase II (as applicable) (except as may be deferred and/or waived in accordance with Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*)) by the: (a) Scheduled Commencement Date Phase I; or (b) Scheduled Commencement Date Phase II (as applicable), the Fund Manager shall pay Delay Liquidated Damages in the amounts specified in Section 4.6.2 to the Employer for the Default Delay Period in accordance with Section 5.7 (*Payment of Delay Liquidated Damages*).
- 4.6.2. For each day (or part thereof) of the Default Delay Period, the Fund Manager shall pay an amount equivalent to one point five percent (0.5%) of the Performance Security. The Employer shall not be restricted from invoicing for such claimable amounts after the: (a) Commencement Date Phase I; or (b) Commencement Date Phase II (as applicable).
- 4.6.3. The total amount due under this Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) shall not exceed the Delay Liquidated Damages Cap during the relevant Default Delay Period.
- 4.6.4. Subject to Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*), in the event the: (a) Commencement Date Phase I has not occurred within ninety (90) days after the expiry of the Scheduled Commencement Date Phase I; or (b) Commencement Date Phase II has not occurred within ninety (90) days after the expiry of the Scheduled Commencement Date Phase II (as applicable), and such delay is due to events for which the Fund Manager is not entitled to any extension of time, or the Delay Liquidated Damages Cap (by way of calculation) has been exceeded, the Employer will have the right, *inter alia*, to terminate this Agreement.
- 4.6.5. The Delay Liquidated Damages specified in Section 4.6.2 have been calculated by the Parties as representing the actual daily loss to the Employer for the Default Delay Period and are not a penalty. Given the nature of the Mobilization Period Requirements to be performed by the Fund Manager, it is entirely possible to calculate the actual loss suffered by the Employer and the stated Delay Liquidated Damages in Section 4.6.2 reflect such calculation. The Fund Manager thus hereby waives, to the extent permitted by any applicable Law, any defence as to the validity and quantum of any Delay Liquidated Damages in this Agreement on the grounds that such Delay Liquidated Damages are not calculated on the actual loss suffered by the Employer or are void as penalties or otherwise.

- 4.6.6. These Delay Liquidated Damages shall be the only damages due from the Fund Manager for such default, other than in the event of termination under Section 9.2 (*Termination for Fund Manager's Default*). Any payment or claim for Delay Liquidated Damages shall not relieve the Fund Manager from its obligation to complete and fulfil the Mobilization Period Requirements, or from any other duties, obligations or responsibilities which it may have under this Agreement.

5. PRICE AND PAYMENT TERMS

5.1. PAYMENTS OF SERVICE FEE

- 5.1.1. In consideration of performance of Services by the Fund Manager, the Employer shall pay to the Fund Manager, each Month during the Services Period, the Service Fee.
- 5.1.2. The Service Fee includes, without limitation, any and all direct, indirect and ancillary charges and costs of whatever nature incurred by or imposed on the Fund Manager and/or any agent or Sub-Contractor in the performance of the Services, unless stated otherwise in this Agreement.
- 5.1.3. In respect of: (a) the Services for BRT Corridor Phase I from the Commencement Date Phase I; and (b) the Services for BRT Corridor Phase II from Commencement Date Phase II, the Fund Manager shall submit the invoices (substantially in the form and substance attached hereto as **Schedule L (Form of Invoice)**) to the Employer on the first (1st) day of every month (for the previous month) ("**Monthly Invoice**") in respect of the Service Fee payable to the Fund Manager. Provided, however, that for the first Monthly Invoice for each phase issued by the Fund Manager, the payment shall be calculated for the period starting from the relevant Commencement Date.
- 5.1.4. Payments by the Employer shall be subject to submission of a Monthly Invoice by the Fund Manager in terms of Section 5.1.3 along with a confirmation by the Fund Manager that the Performance Security is in place in terms of Section 7.2 (*Performance Security*).
- 5.1.5. Payments of the Service Fee due and payable by the Employer (and as claimed by the Fund Manager in the Monthly Invoice) shall be less: (a) any disputed amounts; (b) any deductions on account of tax (if any); (c) any Liquidated Damages or any other amounts due from the Fund Manager, which have not been fully recovered through encashment of the Performance Security (the "**Monthly Payable Amount**").
- 5.1.6. No later than five (5) business days following the receipt of the Monthly Invoice (the "**Monthly Payment Date**") the Employer shall issue an Employer's Instruction to the Fund Manager to debit the Monthly Payable Amount from the Collection Account. In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for making payment of the relevant Monthly Payment Amount, the Fund Manager shall Notify the Employer within one (1) hour of receiving the Employer's Instruction. Thereafter, the Employer may elect to proceed in accordance with Section 6.4.4 (a) or (b) for payment of the Monthly Payment Amount to the Fund Manager.

5.1.7. Each payment being made by the Employer to the Fund Manager shall be subject to the continued validity of the Performance Security in terms of this Agreement.

5.2. CURRENCY OF PAYMENTS & SERVICE FEE ESCALATION

5.2.1. All due and payable amounts under this Agreement will be payable in Pakistani Rupees.

5.2.2. All payments of the Service Fee shall be adjusted in accordance with the Indexation Mechanism.

5.3. LATE PAYMENT CHARGE

5.3.1. Not Used.

5.3.2. The Fund Manager shall pay only simple interest on all amounts not paid by the relevant due date at a rate equal to the Karachi Inter-Bank Offered Rate (**KIBOR**) for the actual number of days (after relevant due date) which the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) day year.

5.4. DISPUTED INVOICES

5.4.1. If the Employer disputes the whole or any part of any Monthly Invoice or supporting evidence issued by the Fund Manager, it shall immediately notify the Fund Manager and the Fund Manager shall issue a credit note together with two invoices, one in respect of the disputed amount and the second in respect of the amount not disputed. All disputed amounts shall become due and payable following resolution of the dispute.

5.4.2. The Employer shall be liable to pay and issue an Employer's Instruction in respect of the invoiced amount which is not in dispute and shall be entitled to withhold payment of any amount which is in dispute pending resolution of the dispute.

5.4.3. The Employer and the Fund Manager shall use best efforts to resolve any dispute within ten (10) business days of the dispute arising.

5.4.4. If the Parties fail to resolve the dispute within such ten (10) business days, the matter shall be referred for dispute resolution in accordance with Section 19 (*Dispute Resolution*).

5.4.5. All payments under Section 5.1.1 shall be subject to scrutiny by the Employer and/or its Independent Expert and in case of any error, discrepancy or deficiency in the Monthly Invoices, the same will be Notified to the Fund Manager and thereafter be adjusted against the next Monthly Invoice.

5.5. TAXES

5.5.1. The Service Fee includes the Fund Manager's Taxes and the Fund Manager shall be responsible for any and all Fund Manager's Taxes.

5.5.2. After the Bid Submission Date, if there is any change (increase or decrease) in the Fund Manager's Taxes, other than a change in income tax /withholding income tax applicable on the Fund Manager (the "**Excluded Taxes**"), the same shall be dealt with in the following manner:

- (a) if there is an increase in any applicable Fund Manager's Taxes (other than the Excluded Taxes) which are final and/or non-reimbursable and/or non-adjustable, the Fund Manager shall notify the Employer of such increase and provide evidence thereof along with the proposed increase in the Service Fee as a consequence thereof. Within fifteen (15) days of receiving the Fund Manager's notification, the Employer shall review the same and revise the Service Fee to the extent of the increase in Fund Manager's Taxes as per the applicable Law; and
- (b) if there is a decrease in any applicable Fund Manager's Taxes (other than the Excluded Taxes) which are final and/or non-reimbursable and/or non-adjustable, the Fund Manager or the Employer shall notify the other Party of such decrease and provide evidence thereof along with the proposed decrease in the Service Fee as a consequence thereof. Within fifteen (15) days of receiving such notification, the notified Party shall review the same and revise the Service Fee to the extent of the decrease in Fund Manager's Taxes as per the applicable Law.

5.5.3. The Fund Manager shall at all times be required to seek and avail all exemptions or reduced rates of taxes, levies and duties, and the Employer shall also retain the right to require the Fund Manager to seek and avail all such available exemptions in the knowledge of the Employer from time to time. In the event of failure of the Fund Manager to avail any such benefit of exemption or reduction in taxes, levies and duties, the Employer shall be entitled to adjust the Service Fee by taking into account that the Fund Manager has availed the aforesaid benefit.

5.5.4. The Fund Manager hereby agrees to indemnify, defend and hold the Employer harmless from any and all taxes, liabilities, damages, costs, penalties, fines, expenses, fees (including attorney's fees) and charges of any nature associated with any non-compliance and violations by the Fund Manager of this Section 5.6 (*Taxes and Duties*) including the consequences of any failure to pay the Fund Manager's Taxes as required by any applicable Laws, in relation to the Services.

5.6. PAYMENT OF DELAY LIQUIDATED DAMAGES

5.6.1. Any amounts payable as Delay Liquidated Damages in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) shall be paid within fourteen (14) days of receipt of an invoice for the same issued by the Employer failing which the Delay Liquidated Damages (along with late payment charge calculated as per Section 5.3.2) may be recovered by encashing the Performance Security.

5.6.2. Notwithstanding encashment of the Performance Security, the Fund Manager shall continue to be responsible for performance of the Services in accordance with this Agreement.

- 5.6.3. In case the Delay Liquidated Damages cannot be adjusted in terms of this Section 5.6 (*Payment of Delay Liquidated Damages*), the Fund Manager shall continue to be liable to pay such amounts.

5.7. PAYMENT OF PERFORMANCE LIQUIDATED DAMAGES

- 5.7.1. Any amounts payable as Performance Liquidated Damages under Section 2.16 (*Performance Liquidated Damages*) may be: (i) set-off and deducted from amounts payable by the Employer to the Fund Manager in accordance with Section 5 (*Price and Payment Terms*); or (b) recovered by encashing the Performance Security.
- 5.7.2. Notwithstanding encashment of the Performance Security or set-off and deduction of Liquidated Damages from amounts payable under Section 5 (*Price and Payment Terms*), the Fund Manager shall continue to be responsible for performance of the Services in accordance with this Agreement.
- 5.7.3. In case the Performance Liquidated Damages cannot be adjusted in terms of this Section 5.7 (*Payment of Performance Liquidated Damages*), the Fund Manager shall continue to be liable to pay such amounts within fourteen (14) days of receipt of an invoice for the same issued by the Employer.

6. PERFORMANCE OF SERVICES

6.1. CASH COLLECTION FROM BUS STATIONS

- 6.1.1. Cash Collection from the Bus Stations shall be carried out daily by the Fund Manager throughout the Services Period in accordance with the Coordination and Collection Procedure.
- 6.1.2. The Fund Manager shall be responsible for the safety and security of the Cash collected from the Bus Stations during transit in armoured vehicles as well as any Cash storage depots overnight prior to being deposited in the Collection Account.
- 6.1.3. The Fund Manager shall be responsible for any theft, loss, pilferage of Cash and shall be required to reimburse the Employer by depositing in the Collection Account an amount as determined by the Employer in accordance with Section 6.4 (*Audit*) where such theft, loss, pilferage of Cash occurs:
- (a) due to the failure and/or delay by the Fund Manager in Cash Collection in accordance with the timelines and procedures set out in the Coordination and Collection Procedure; and
 - (b) during the period when the Cash (following Cash Collection from Bus Stations) is in the custody of the Fund Manager.

6.2. AVAILABILITY OF MINIMUM CASH BALANCE

- 6.2.1. The Fund Manager shall arrange Minimum Cash Balance for change payments at every Bus Station at least one (1) day prior to the respective Commencement Date and thereafter, maintain the Minimum Cash Balance throughout the Services Period in accordance with the Minimum Cash Balance Procedure.
- 6.2.2. The Minimum Cash Balance shall be replenished by the Fund Manager:
- (a) daily after Bus Operations at the time of Cash Collection as per the Coordination and Collection Procedure; and
 - (b) during Bus Operations, if the Minimum Cash Balance for change payments is not sufficient as intimated by the Facilities Manager (with a copy of such Notice to the Employer).

6.3. REVENUE DEPOSITS

- 6.3.1. The Fund Manager shall:
- (a) deposit all Cash from Cash Collection for each day into the Collection Account no later than the following business day; and
 - (b) ensure that all funds deposited electronically or physically in the Collection Account are reflected in the Employer's bank statements immediately and the Employer is Notified of the same.

6.4. PAYMENTS TO PROJECT CONTRACTORS

- 6.4.1. The Fund Manager shall upon receipt of an Employer's Instruction utilise funds standing credit to the Collection Account for making payment of the PC Payment Amount on the PC Payment Date to the relevant Project Contractor.
- 6.4.2. Each Employer's Instruction issued in this respect shall specify;
- (a) the sum payable to the relevant Project Contractor ("**PC Payment Amount**");
 - (b) date and time ("**PC Payment Date**") for payment of the PC Payment Amount to the relevant Project Contractor;
 - (c) mode of payment i.e., by way of bank transfer of bank cheque; and
 - (d) any other information reasonably required by the Fund Manager to effect such payment to the Project Contractor.
- 6.4.3. Any delay, attributable to the Fund Manager, in processing and making timely payments to the relevant Project Contractors will result in imposition of Performance Liquidated

Damages assessed in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)**.

- 6.4.4. In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for making payment of the relevant PC Payment Amount, the Fund Manager shall Notify the Employer within one (1) hour of receiving the Employer's Instruction. Thereafter, the Employer may elect to:
- (a) arrange and deposit additional funds in the Collection Account for making payments to the relevant Project Contractor;
 - (b) withdraw the Employer's Instruction; or
 - (c) request the Fund Manager to overdraft the Collection Account and make available the shortfall amount i.e., the difference in the amount required for the PC Payment Amount and the available balance in the Collection Account (the "**Overdraft Amount**").
- 6.4.5. In the event the Employer proceeds in accordance with Section 6.4.4(c), the Employer will be liable to pay within ninety (90) days the Overdraft Amount ("**Overdraft Payment Date**") in full along with interest on the Overdraft Amount at a rate mutually agreed between the Parties.
- 6.4.6. If the Employer does not repay the Overdraft Amount by the Overdraft Payment Date, the Fund Manager shall be entitled to utilise any funds available in the Collection Account to offset the Overdraft Amount.
- 6.4.7. In the event the Employer fails to repay the Overdraft Amount in accordance with Section 6.4.6, the Fund Manager may terminate this Agreement in terms of Section 9.1 (*Termination for Employer's Default*).

6.5. AUDIT

- 6.5.1. If there is any discrepancy with respect to the:
- (a) sums in the Collection Account collected by the Fund Manager through: (i) Cash Collection; and (ii) Automated Fare Collection system;
 - (b) reported Fare Revenue collected through Cash and electronically as appearing on the automated report generated through the IITS System;

as determined by the Employer in accordance with Section 3.5 (*Determinations*), then the Fund Manager shall be liable to pay such amounts within fifteen (15) days of receipt of an invoice for the same issued by the Employer.

6.6. MONITORING

- 6.6.1. The Employer shall (through the Operations Control Centre) monitor and inspect (in

accordance with Section 2.12 (*Inspection*)) the performance of the Services by the Fund Manager.

- 6.6.2. In the event any of the monitoring devices become non-responsive or non-functional due to any reason, keeping in view the public convenience, the Services shall not be suspended, provided, however, the Fund Manager shall remain liable to maintain Service Records in accordance with Section 2.11 (*Services Records*) and provide the same to the Employer upon request.
- 6.6.3. The Fund Manager shall not tamper, and shall ensure that its representatives, agents, employees, Personnel, Sub-Contractors, vendors, suppliers engaged by the Fund Manager for the performance of Services or any part thereof do not tamper monitoring devices installed at the Facilities. In the event the Fund Manager breaches the foregoing covenant, the Fund Manager shall: (a) indemnify and hold the Employer harmless against any Loss and consequences of Employer's inability to monitor the Facilities including any consequent over payment of any sums to the Fund Manager and/or any other Project Contractor; and (b) take all remediable action reasonably acceptable to the Employer to ensure that such tampering does not reoccur, including the development or addition of security systems.

6.7. MAINTENANCE OF THE FM MACHINES

- 6.7.1. The Fund Manager shall ensure that: (a) the FM Machines are maintained at all times in a good, clean and orderly condition; and (b) all Planned Maintenance and Unplanned Maintenance is carried out in accordance with Applicable Standards.

6.8. PLANNED MAINTENANCE

- 6.8.1. The Fund Manager shall in planning and carrying out the Planned Maintenance, ensure that such Planned Maintenance:
 - (a) is (to the extent possible) without any interruption in the execution of the Services or to the overall operations of the Project and in this respect the Fund Manager shall co-ordinate with other Project Contractors in accordance with Section 6.11 (*Co-Operation with Other Project Contractors*);
 - (b) does not result in any Non-Compliance with the Key Performance Indicators.

- 6.8.2. All costs with respect to the Planned Maintenance shall be borne by the Fund Manager.

6.9. UNPLANNED MAINTENANCE

- 6.9.1. If, at any time during the Term, an Unplanned Maintenance is required on the FM Machines the Fund Manager shall immediately Notify the Employer specifying the reasons for such Unplanned Maintenance and time required to complete the Unplanned Maintenance.

- 6.9.2. Thereafter, the Employer shall at its sole discretion determine, following inspection (if necessary), whether the Unplanned Maintenance is due to:
- (a) the act, omission, wilful misconduct, negligence or breach under this Agreement of the Fund Manager; or
 - (b) attributable to the Employer; or
 - (c) where so alleged by the Fund Manager, attributable to any of the other Project Contractors.
- 6.9.3. If the Employer determines that the Unplanned Maintenance is attributable to:
- (a) the Fund Manager, then the Employer may, at its sole discretion (i) impose Performance Liquidated Damages under Section 2.16 (*Performance Liquidated Damages*); and/or (ii) terminate this Agreement in accordance with Section 9 (*Default and Termination*). If the Unplanned Maintenance is determined to be attributable to the Fund Manager, the Fund Manager shall bear the full Cost for the same; or
 - (b) the Employer, then the Fund Manager shall be entitled to submit its claim for Costs and/or extensions in any timelines hereunder. The Employer shall then proceed in accordance with Section 3.5 (*Determinations*) to agree or determine any Costs (if any) which the Fund Manager is entitled to; or
 - (c) any other Project Contractor, then the Fund Manager shall be entitled to submit its claim for Costs hereunder. The Employer shall then proceed in accordance with Section 3.5 (*Determinations*) to agree or determine any Costs (if any) which the Fund Manager is entitled to.

6.10. NOT USED

6.11. CO-OPERATION WITH OTHER PROJECT CONTRACTORS

- 6.11.1. During the Term, the Fund Manager shall coordinate with other Project Contractors in connection with their activities related to the Project.
- 6.11.2. Not Used.
- 6.11.3. The Fund Manager shall be responsible for the following tasks in relation to coordination with Project Contractors:
- (a) provide information and assistance as such Project Contractors may reasonably request, including meeting with those Project Contractors (during meeting of the Operating Committee or otherwise) for the purpose of co-ordinating and clarifying any interfaces between the Services and the activities, operations and works of such Project Contractors;

- (b) using all reasonable endeavours in conjunction with the Employer and such Project Contractors to resolve any actual or potential difficulties relating to the performance of the Services arising out of the progress of the Project Contractor works; and
 - (c) using reasonable endeavours to carry out the Services and cooperate with the Project Contractors so as not to unreasonably interfere with, disrupt or delay the Project Contractor works, Project operations or the Services.
- 6.11.4. If during the Term, for any reason attributable to the Fund Manager (as determined by the Employer):
- (a) there is an interruption in the Project operations as being carried out by the Employer or any other Project Contractor including where such interruption results in loss of Fare Revenue to the Employer including due to the suspension of Project operations; or
 - (b) there is damage to the Facilities, Buses or property of any other Project Contractor;

then the Fund Manager shall indemnify, defend and hold the Employer harmless from any and all liabilities, claims, damages, costs, penalties, fines, expenses, fees and charges of any nature associated with and arising therefrom, and the Employer shall be entitled to make a claim under Section 3.4 (*Employer's Claims*).

6.12. SUSPENSION OF SERVICES BY THE EMPLOYER

- 6.12.1. The Fund Manager shall upon receipt of a notice from the Employer, suspend the Services or any part thereof for such time or times and in such manner as the Employer may consider necessary.
- 6.12.2. The Fund Manager shall recommence the Services upon receipt of written notice from the Employer, provided that, during any period of suspension, the Employer shall keep the Fund Manager advised as to the likelihood of its requiring the Fund Manager to recommence the Services and shall give the Fund Manager reasonable notice of recommencement (taking into account the extent of mobilization likely to be required by the Fund Manager prior to recommencement of Services).
- 6.12.3. During any period of suspension (except to the extent such suspension is caused by the act or omission of the Fund Manager) the Fund Manager shall be entitled to receive the Service Fee for the Month during which suspension occurs. The Employer waives any and all right or claim to Performance Liquidated Damages for Non-Compliance with any Key Performance Indicators during and as a result of any period of suspension (except to the extent such suspension is caused by the act or omission of the Fund Manager).

6.13. INSURANCES

- 6.13.1. The Fund Manager shall obtain and maintain during the Services Period the Project Insurance Policies set out in **Schedule I (Insurance)** in accordance with the requirements set out therein.

7. PERFORMANCE SECURITY

7.1. NOT USED.

7.2. PERFORMANCE SECURITY

- 7.2.1. Prior to the Effective Date, the Fund Manager has delivered to the Employer the Performance Security for proper performance by the Fund Manager of its obligations, in an amount equal to the Performance Security Amount for the first Service Year (as determined in accordance with **Schedule K (Performance Security Amount)**). The Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Employer's first written demand without any prior Notice, reference or recourse to the Fund Manager for encashment. The Fund Manager shall ensure that the Face Value of the Performance Security is adjusted either upwards or downwards to ensure that the Face Value of the Performance Security remains equivalent to: (i) the Performance Security Amount for the first Service Year (as determined in accordance with **Schedule K (Performance Security Amount)**) until the Commencement Date Phase I; and (ii) the Performance Security Amount (as determined in accordance with **Schedule K (Performance Security Amount)**) for the relevant Service Year from the Commencement Date Phase I till the Release Date. The Fund Manager shall replenish the Performance Security following any encashment during a Service Year to ensure that its Face Value, at all times, remains equivalent to the Performance Security Amount.
- 7.2.2. The first Performance Security shall be valid for twelve (12) months following its issuance (the "**Performance Security Expiry Date**"). Twenty-eight (28) days prior to each Performance Security Expiry Date, the Fund Manager shall extend the validity of each Performance Security for a further period of twelve (12) months or replace the Performance Security with a new Performance Security valid for a period of twelve (12) months, effective in each case upon expiry of the last Performance Security. The Performance Security to be established in the last Service Year shall be maintained until the date falling ten (10) days after the Employer's issuance of the Release Certificate. Each Performance Security shall be valid and enforceable until its expiry.
- 7.2.3. In the event of failure by the Fund Manager to keep valid, extend the validity of or provide a new Performance Security in accordance with this Section 7.2 (*Performance Security*), the Employer shall have the right to encash the Performance Security to its full outstanding value, provided however, when the Employer has encashed the Performance Security in terms of this Section 7.2.3, the Employer shall Fund the encashed proceeds to the Fund Manager upon the Fund Manager establishing and furnishing to the Employer a new Performance Security in accordance with Section 7.2 (*Performance Security*).
- 7.2.4. The Employer may make a demand under the Performance Security in the event of:

- (a) failure by the Fund Manager to keep the Performance Security valid or extend the validity of the Performance Security as described in Section 7.2.3 above, in which event the Employer may claim the full amount of the Performance Security;
- (b) failure by the Fund Manager to pay the Employer an amount due including any Liquidated Damages or determined under Section 19 (*Dispute Resolution*), within fourteen (14) days after such agreement or determination;
- (c) material breach by the Fund Manager of any Fund Manager's obligations under this Agreement;
- (d) circumstances which entitle the Employer to termination under Section 9.2 (*Termination for Fund Manager's Default*), irrespective of whether Notice of termination has been given;
- (e) any claims that the Employer may have up to the Performance End Date;
- (f) Not Used.
- (g) any other event, circumstance or provision stated under this Agreement which entitles the Employer to make a demand under the Performance Security.

7.2.5. The Employer shall return the Performance Security to the Fund Manager within twenty-eight (28) days after the Performance End Date, provided that, no event is subsisting that entitles the Employer to make a demand under the Performance Security nor are there any outstanding claims by the Employer under the Performance Security.

7.2.6. Where, at any time subsequent to the issuance of the Performance Security, the Performance Security issuing bank (as specified in the definition of Performance Security above) or the Performance Security fails to meet the Minimum Credit Rating, then, upon the instructions of the Employer, the Fund Manager shall within ten (10) days of receipt of such instructions from the Employer, procure from a bank or financial institution, which meets the Minimum Credit Rating a substitute Performance Security for the amount prevailing as of that date. Upon receipt of such substitute Performance Security in the form and substance satisfactory to the Employer, the Employer shall return the earlier issued Performance Security to the Fund Manager.

8. APPLICATION FOR RELEASE CERTIFICATE

8.1. FULFILMENT OF TERM EXPIRY CRITERIA AND ISSUANCE OF RELEASE CERTIFICATE

8.1.1. The Fund Manager's obligations relating to the Services Period shall expire when:

- (a) the Fund Manager has fulfilled the Term Expiry Criteria; and
- (b) the Release Certificate is issued by the Employer.

- 8.1.2. The Fund Manager shall notify the Employer, when each of the Term Expiry Criteria has been met and pursuant to such notification, shall apply to the Employer for issuance of the Release Certificate. Following the Employer's receipt of the Fund Manager's afore-stated notification, the Employer shall within thirty (30) days of receipt of the Fund Manager's afore-stated Notification, either:
- (a) upon verification of each of the Term Expiry Criteria having been met, issue the Release Certificate to the Fund Manager, provided that the Fund Manager has, in all material respects, met the Term Expiry Criteria; or
 - (b) reject the Fund Manager's application for issuance of the Release Certificate, giving reasons and specifying the work required to be done, or obligation required to be fulfilled, by the Fund Manager to enable the Release Certificate to be issued. The Fund Manager shall then complete this work or fulfil such obligation, at no cost to the Employer, before issuing a further notice under this Section.
- 8.1.3. In the event of the Employer's rejection of the Fund Manager's request for issuance of the Release Certificate in accordance with Section 8.1.2(b), the Fund Manager shall either:
- (a) accept the Employer's rejection for issuance of the Release Certificate, in which case the Fund Manager shall perform its relevant obligations under this Agreement so as to meet the Term Expiry Criteria and fulfil the outstanding Services and obligations as specified by the Employer, and the procedure set out in Section 8.1.2 shall be repeated; or
 - (b) dispute the Employer's decision of the Term Expiry Criteria or any part thereof not being met, in which case such dispute shall be determined in accordance with Section 19 (*Dispute Resolution*). If following the resolution of the dispute in accordance with Section 19 (*Dispute Resolution*) it is determined that:
 - (i) the Term Expiry Criteria is not met, the Fund Manager shall perform its relevant obligations under this Agreement so as to meet the Term Expiry Criteria and the procedure set out in Section 8.1.2 and Section 8.1.3 shall be repeated; or
 - (ii) the Term Expiry Criteria is met, the Employer shall issue the Release Certificate within ten (10) business days of the resolution of the dispute in accordance with Section 19 (*Dispute Resolution*).

9. DEFAULT AND TERMINATION

9.1. TERMINATION FOR EMPLOYER'S DEFAULT

9.1.1. The Fund Manager may terminate this Agreement in the following circumstances by giving Notice of termination on expiry of the period specified in this Section 9.1.1 and its reason for termination:

- (a) if the Employer has failed to make due payments as per the terms of this Agreement excluding any: (i) disputed amounts; and (ii) deductions that the Employer is entitled to make under this Agreement, provided, however, the right to terminate for Employer's payment default only arises where: (A) the Fund Manager has complied with the requirements and the payment terms as prescribed under this Agreement; and (B) the due and payable sums remain unpaid for sixty (60) business days after receipt of Notice of non-payment by the Fund Manager to the Employer, which Notice will be a precondition for termination; and
- (b) if the Employer commits a material breach of this Agreement that has a material adverse effect on the Fund Manager's ability to perform its obligations under this Agreement and fails to remedy the same within sixty (60) days, after Notice from the Fund Manager to the Employer stating such material default or material breach.

9.2. TERMINATION FOR FUND MANAGER'S DEFAULT

9.2.1. The Employer may terminate this Agreement in the following circumstances by giving thirty (30) days' Notice of termination, or any other notice period specified otherwise in this Section 9.2.1 or Notified by the Employer, to the Fund Manager and referring to this Section 9.2.1 and its reason for termination:

- (a) the Fund Manager subcontracts the Services (except as permitted hereunder) or assigns this Agreement without approval or consent of the Employer; or
- (b) the Fund Manager voluntarily abandons the Project or repudiates this Agreement or the Fund Manager loses the relevant approvals, licenses and permits, including the Consents, required to execute the Services and fails to remedy the same within thirty (30) days of occurrence; or
- (c) if the Fund Manager commits a material default or material breach of this Agreement and fails to remedy the same within thirty (30) days or such additional period as may be agreed by the Employer, after Notice from the Employer to the Fund Manager stating such material default or material breach; or
- (d) the Services provided by the Fund Manager fail to meet the Key Performance Indicators and / or the Applicable Standards; or
- (e) a final judgment against Fund Manager in excess of the equivalent of PKR 50,000,000/- (Pakistani Rupees Fifty Million only) remains unsatisfied for more than sixty (60) days (unless a bond is filed or other steps are taken to effectively stay enforcement of such judgment), or (ii) a levy is issued or attachment is made

on all or any part of the Fund Manager and such levy or attachment is not discharged or the property is not redeemed within thirty (30) days after such levy or attachment; or

- (f) if the: (i) Commencement Date Phase I is not achieved within ninety (90) days from the expiry of the Scheduled Commencement Date Phase I; or (ii) Commencement Date Phase II is not achieved within ninety (90) days from the expiry of the Scheduled Commencement Date Phase II;
- (g) if the Fund Manager fails to furnish, keep valid and maintain in full effect the Performance Security in accordance with this Agreement; or
- (h) the (a) Delay Liquidated Damages Cap; or (b) Performance Liquidated Damages Cap has been exceeded (by way of calculation).

9.2.2. The Employer may terminate this Agreement immediately by Notice to the Fund Manager and without any opportunity to cure if:

- (a) the Fund Manager becomes bankrupt or insolvent, or has a receiving order issued against it, or compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or a receiver is appointed over any part of its undertaking or assets, or if the Fund Manager takes or suffers any other analogous action in consequence of debt; or
- (b) any statement, representation or warranty set out in Section 12 (*Representations and Warranties*) proves to be incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Fund Manager's ability to perform its obligations under this Agreement and / or ensure that the Fund Manager performs its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Employer under this Agreement; or
- (c) any wilful misstatement or wilful misrepresentation (not set out in Section 12 (*Representations and Warranties*)) made by the Fund Manager which has a material adverse effect on the performance of Services by the Fund Manager under this Agreement; or
- (d) the Fund Manager is found to be engaged in corrupt or fraudulent practices in executing its obligations under the Agreement; or
- (e) the Fund Manager creates any Encumbrance on the Collection Account (other than as expressly permitted by the Employer); or
- (f) the Fund Manager or any of its representatives (including Sub-Contractors) become blacklisted by the GoP, any provincial or local government, or a corporation, company, institution, corporate body, local body, local authority, agency or organisation set up or controlled (directly or indirectly) by the GoP; or

- (g) termination of the OL Fund Management Agreement.

9.3. OBLIGATIONS PRIOR TO EXPIRY OR TERMINATION

- 9.3.1. Termination or expiration of this Agreement will not relieve the Fund Manager of any obligation arising under this Agreement or in respect of Services completed prior to expiry or termination of this Agreement.

9.4. ACTIONS TO BE TAKEN UPON EXPIRY OR TERMINATION

- 9.4.1. On the date of expiration or termination of this Agreement, the Fund Manager shall, at the Employer's request,:
 - (a) cease all further performance of the Services, except such Services as the Employer may specify for continued operations of the Project including depositing any Cash in custody of the Fund Manager into the Collection Account;
 - (b) terminate all ongoing subcontracts and other contractual agreements, except those to be assigned to the Employer pursuant to Section 9.4.1(c) below;
 - (c) take physical possession of all FM Machines provided in accordance with Section 2.9.1;
 - (d) assign to the Employer, or to any person designated by the Employer: (i) subcontracts, service agreements and other contractual agreements (including warranties) (as applicable) as may be designated by the Employer; and (ii) any issued permits, licenses, authorizations, approvals, patents and other proprietary rights, if any, then held by the Fund Manager; and
 - (e) deliver to the Employer all information and records as may be reasonably requested by the Employer including all plans or other manuals and other information prepared hereunder as of the date of termination.

9.5. PAYMENTS BY FUND MANAGER FOLLOWING EXPIRY OR TERMINATION

- 9.5.1. Upon expiry or termination of this Agreement, the Fund Manager shall pay the Employer the sum of (a), (b) and (c) below, in each case as may be due and payable in accordance with the terms of this Agreement:
 - (a) any sums due and payable by the Fund Manager to the Employer under the Agreement including under Section 14 (*General Indemnity*);
 - (b) any Liquidated Damages accrued, due and payable under the provisions of this Agreement as at the date of termination; and
 - (c) any Losses incurred by the Employer as a result of such termination for Fund

Manager's default under Section 9.2 (*Termination for Fund Manager's Default*).

- 9.5.2. In the event, this Agreement is terminated for a Fund Manager default under Section 9.2 (*Termination for Fund Manager's Default*), the Employer shall be entitled to encash the Performance Security to its full value.

9.6. PAYMENTS BY EMPLOYER FOLLOWING EXPIRY OR TERMINATION

- 9.6.1. Subject to Section 9.6.2, within thirty (30) days following the Fund Manager's compliance with its obligations under Section 9.4 (*Actions to be taken Upon Expiry or Termination*), the Fund Manager shall submit to the Employer for payment a final invoice for all outstanding amounts of the Service Fee.

- 9.6.2. If this Agreement is terminated by the Employer due to Fund Manager's default under Section 9.2 (*Termination for Fund Manager's Default*):

- (a) the Employer shall submit to the Fund Manager for payment an invoice for any direct out-of-pocket expenses properly and reasonably incurred by the Employer and solely attributable to such termination and, if the Employer engages a replacement Fund Manager, the additional costs reasonably incurred by the Employer in engaging such replacement Fund Manager and the amount by which the reasonable costs payable under the replacement contract for carrying out the Services exceed the amount that would have been payable to the Fund Manager, which amount shall be deducted from any amounts outstanding to the Fund Manager, provided, however, that if the Employer elects to engage a replacement Fund Manager, the Employer shall use its best efforts to engage such replacement Fund Manager as soon as possible after termination of this Agreement; and
- (b) in the event that expenses of the Employer under Section 9.6.2(a) are greater than any amount then owing to the Fund Manager, then the Fund Manager shall bear responsibility for the payment of such amount to the Employer provided that the Employer shall take all reasonable steps to minimize such costs, and if such costs are less than any amount owing to the Fund Manager, the Employer shall pay the remaining balance to the Fund Manager.

- 9.6.3. Any payments made pursuant to this Section 9.6 (*Payments by Employer following Expiry or Termination*) shall be made within thirty (30) days of the date of the invoice.

9.7. SUCCESSOR TO FUND MANAGER UPON EXPIRY OR TERMINATION

- 9.7.1. In addition to any actions taken in accordance with Section 9.4 (*Actions to be taken Upon Expiry or Termination*), upon expiry or termination of this Agreement, the Fund Manager, if requested in writing by the Employer, shall provide the Services and carry out its obligations under this Agreement after the expiry or termination for a period of sixty (60) days or such longer period as may be agreed between the Parties (the "**Transition Period**"), for smooth hand over to a successor nominated by the Employer (the "**Successor Fund Manager**"). This Agreement shall remain in full force and effect

during the Transition Period. The Fund Manager shall be entitled to the Service Fee as consideration for performance of Services (subject to the terms and conditions for payment under Section 5 (*Price and Payment Terms*)) and the Fund Manager's obligations set out in this Section 9.7 (*Successor to Fund Manager Upon Expiry or Termination*) during the Transition Period.

- 9.7.2. The Fund Manager shall facilitate the appointment and commencement of duties of the Successor Fund Manager so as not to disrupt the normal operation of the Project and shall provide full access to all relevant information, data and records relating thereto to the Successor Fund Manager and its representatives and shall accede to all requests made by the Successor Fund Manager in connection with the preparation for taking over the Services and in furtherance thereof, the Fund Manager shall provide to the Employer and/or the Successor Fund Manager such information and documents which the Employer and/or the Successor Fund Manager may reasonably request from the Fund Manager in connection with the operation of the Facilities.

9.8. COLLECTION ACCOUNT AND MINIMUM CASH BALANCE

- 9.8.1. Upon expiry or termination of this Agreement all funds in the Collection Account shall as instructed by the Employer pursuant to an Employer's Instruction be either: (a) transferred to a bank account (as Notified by the Employer under the aforesaid Employer's Instruction); or (b) paid to the Employer by way of pay order.
- 9.8.2. Upon expiry or termination of this Agreement, the Fund Manager shall have no claim on any Minimum Cash Balance at the Bus Stations and all such Minimum Cash Balance shall belong to the Employer.

9.9. END OF TERM ACTIVITIES

- 9.9.1. Subject to Section 9.7 (*Successor to Fund Manager Upon Expiry or Termination*), the responsibility for the Services shall transfer to the Employer or the Employer's designated Fund Manager after the Performance End Date, including activities in progress as of the Performance End Date. The Fund Manager shall schedule all Services, planned activities and obligations under this Agreement so that they are concluded prior to the Performance End Date.

9.10. SET-OFF RIGHTS

- 9.10.1. Without prejudice to other rights and remedies of the Employer, the Employer shall be entitled to deduct any amounts payable by the Fund Manager to the Employer from any amounts due to the Fund Manager by the Employer. If payments due to the Employer are not sufficient to cover the amounts payable by the Fund Manager, the Fund Manager shall pay the difference to the Employer within fourteen (14) days of the Employer's demand failing which the Employer may recover the payable amount by encashing the Performance Security.

9.11. OBLIGATIONS PRIOR TO EXPIRY OR TERMINATION

9.11.1. Notwithstanding termination or expiration of the Term of this Agreement and transfer of the responsibility for performance of the Services at the Performance End Date, the Fund Manager shall not be relieved of any obligation arising out of Services performed prior to termination.

10. NOT USED

11. CONFIDENTIAL INFORMATION

11.1. CONFIDENTIAL INFORMATION

11.1.1. Each Party agrees that it shall, and shall ensure that its contractors, agents, employees, officers (including members of its board of directors and its supervisory board) shall, hold in confidence for the benefit of the other Parties all the Confidential Information and shall not disclose to any third party or use (except for the purposes of this Agreement) the Confidential Information or any part thereof without such other Parties prior written approval. The Parties shall be required to limit the number of persons within their respective organisations to whom the Confidential Information is disclosed to the absolute minimum necessary to properly enable such Party to fulfil its obligations under this Agreement.

11.2. LIMITATIONS

11.2.1. The restrictions in Section 11.1 (*Confidential Information*) shall not apply, or shall cease to apply, to any part of the Confidential Information that:

- (a) was in the possession of the recipient Party or a contractor, agent, employee, officer (including members of its board of directors and its supervisory board) or shareholder of the recipient Party at the time of the disclosure;
- (b) was obtained by the recipient Party in good faith from a third party entitled to make disclosure thereof;
- (c) is required to be published or disclosed by a Party under any Law or the rules of any securities exchange to which any Party or the holders, directly or indirectly, of any of its equity capital is subject;
- (d) a Party, with the approval of the other Party, discloses to financial institutions, bona fide potential purchasers, its consultants and contractors;
- (e) is in or comes into the public domain other than by reason of a breach of Section 11.1 (*Confidential Information*) above.

11.3. CONFIDENTIALITY PROVISIONS TO SURVIVE

- 11.3.1. The confidentiality obligation of the Parties pursuant to Sections 11.1 (*Confidential Information*) shall remain in full force and effect for a period of five (5) years after the date of the expiration or earlier termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1. FUND MANAGERS REPRESENTATIONS AND WARRANTIES

- 12.1.1. Without prejudice to the other representations, warranties and conditions expressed elsewhere in this Agreement, or otherwise mandatorily implied by law, the Fund Manager represents, warrants and undertakes to the Employer that:

- (a) it is a company, duly incorporated and validly existing under the laws of the Pakistan;
- (b) it has full power and authority to enter into this Agreement and to carry out and perform the Services and that this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (c) it has submitted certified true copies of all resolutions of the board of directors / governing body of the Fund Manager authorizing execution, delivery of this Agreement and the performance of the Services under this Agreement;
- (d) it has submitted Performance Security in accordance with this Agreement and the Bidding Documents, prior to the Effective Date;
- (e) all information, statements, plans, documents and reports furnished or submitted by the Fund Manager to the Employer in connection with this Agreement are in all material respects true and correct;
- (f) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict the terms of its memorandum and articles of association or any covenant, contract, agreement, arrangement, decree, understanding or any other document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the Fund Manager to perform its obligations under this Agreement;
- (g) no action, litigation, arbitration or administrative proceedings has been commenced, or, to the best of its information, knowledge and belief following the making of all reasonable inquiry, is pending or threatened against the Fund Manager and nor is there subsisting any unsatisfied judgment decree or award given against it by any court, arbitrator or other body which will materially and adversely affect or impede the Fund Manager's ability to perform its obligations under this Agreement;
- (h) the Fund Manager: (i) has familiarized itself with the Project; (ii) has reviewed the requirements for execution of the Services; and (iii) has familiarized itself

with all prevailing factors and conditions affecting the obligations of the Fund Manager under this Agreement, and all other factors and conditions affecting execution of the Services, and accepts the same and agrees that all such matters are satisfactory and will not prevent performance by the Fund Manager of its obligations under this Agreement, and accepts that it shall not be entitled to raise any defense or make any claim under or in relation to this Agreement as a consequence of:

- (i) any mistake, gap or insufficiency in or in relation to its knowledge or understanding of the above matters; or
 - (ii) the state, condition or content of any such matters and waives any right it may have to raise any such defence or make any such claim;
- (i) it has provided the Employer with true and accurate information about its experience and qualifications and has not omitted any information that would be relevant to the Employer's decision to retain the Fund Manager to carry out the Services in the manner and to the extent contemplated herein;
 - (j) it shall not change its legal status or otherwise amend its constitutive documents without prior written Notice to the Employer;
 - (k) it has not granted and will not during the Term of this Agreement grant to any third party any rights which are inconsistent with the rights granted under this Agreement;
 - (l) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict with any applicable Law in effect on the date of this Agreement;
 - (m) the entry into and performance by the Fund Manager of this Agreement requires no governmental or other approvals, or if required, all such approvals have been obtained;
 - (n) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict with any document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the Fund Manager to perform its obligations under this Agreement;
 - (o) it has not taken any action nor, to the best of its information and knowledge, after making all due enquiry, have any steps been taken or legal proceedings been started or threatened against it for winding-up, dissolution or re-organisation, the enforcement of any security interest over its assets or for the appointment of a receiver, administrative receiver or administrator, trustee, judicial factor or similar officer of it or of its assets;

- (p) no action, litigation, arbitration or administrative proceedings has been commenced, or, to the best of its information, knowledge and belief following the making of all reasonable inquiry, is pending or threatened against the Fund Manager and nor is there subsisting any unsatisfied judgment decree or award given against it by any court, arbitrator or other body which will materially and adversely affect or impede the Fund Manager's ability to perform its obligations under this Agreement;
- (q) obtain and maintain the Consents during the Term and ensure compliance with all applicable Laws while performing all its obligations under this Agreement and be completely liable for any breach in this respect;
- (r) ensure the payment of all dues in a timely manner, whether to the competent authorities or to any other parties, incurred while performing its obligations under this Agreement;
- (s) ensure that the Services are implemented in an uninterrupted and continuous manner and that the same are not suspended or stopped unless provided for under this Agreement or under the directions of the Employer;
- (t) it has sufficient Personnel, trained staff, facilities and approved subcontracts or other agreements in place and available to enable the Fund Manager to fully execute the Services;
- (u) it has not granted and will not during the Services Period grant to any third party any rights which are inconsistent with the rights granted under this Agreement;
- (v) it will promptly Notify the Employer of any event or claim, including but not limited, to any violation or default with respect to any order, writ, injunction etc., which, if substantiated, is reasonably likely to either have a material adverse effect or result in any liability for the Employer;
- (w) keep the Collection Account free from any Encumbrances (other than as expressly permitted by the Employer);
- (x) all rights and interests vested in the Fund Manager pursuant to this Agreement shall automatically pass to and vest in the Employer or to any nominee specified by the Employer, without any claims or Encumbrances, on the termination or expiry of this Agreement;
- (y) no representation or warranty contained herein or in any other ancillary agreement entered into by the Employer pursuant to this Agreement contains or shall contain any untrue, incorrect or misleading statement or omit to state a material fact. In the event that any occurrence or circumstances comes to the attention of the Fund Manager that renders any of its aforesaid representations or warranties untrue or incorrect, the Fund Manager shall immediately Notify the Employer of the same. For the avoidance of any doubt, such Notice shall not have the effect of remedying any breach of the representation or warranty that

has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of the Parties under this Agreement.

- 12.1.2. Each of the aforesaid representations and warranties shall be deemed to be repeated by the Fund Manager prior to each payment by the Employer in accordance with Section 5 (*Price and Payment Terms*).

12.2. EMPLOYER'S REPRESENTATIONS AND WARRANTIES

- 12.2.1. Without prejudice to the other representations, warranties and conditions expressed elsewhere in this Agreement, or otherwise mandatorily implied by law, the Employer represents, warrants and undertakes to the Fund Manager that:
- (a) it is a company, duly incorporated and validly existing under the laws of the Pakistan;
 - (b) it will assist the Fund Manager at all times during the Term to obtain Consents from competent authorities for the implementation of Services;
 - (c) it will ensure payments of all amounts due to the Fund Manager under the provisions of this Agreement.

13. ASSIGNMENT AND NOVATION

13.1. ASSIGNMENT

- 13.1.1. Except as permitted in Section 13.3 (*Subcontracting*), the Fund Manager shall not assign, transfer or charge, in whole or in part, its rights and obligations to perform or deal in any other manner with any or all of its rights and obligations under this Agreement without the Employer's prior written consent.
- 13.1.2. The Employer may at any time assign, transfer, charge, subcontract, or deal in any other manner with any or all of its rights under this Agreement without the Fund Manager's prior consent.

13.2. NOVATION

- 13.2.1. Subject to obtaining all relevant prior approvals, the Employer (the "**Transferor**") may assign or transfer by novation all or any part of its rights, interests, benefits or obligations under this Agreement to any entity or entities assuming all or part of the Transferor's rights and obligations under this Agreement (the "**Transferee**") so long as such Transferee shall assume in writing for the benefit of the Transferor and Fund Manager all of the obligations of the Transferor under this Agreement. Upon such assignment or transfer and assumption, the Transferor shall be relieved of all obligations assigned or transferred to and assumed by the Transferee under this Agreement. The Fund Manager hereby agrees and undertakes, as required by the Employer to enter into and execute such

further documents (in such form and substance as prescribed by the Employer) to give effect to the aforesaid assignment or transfer by novation.

13.3. SUBCONTRACTING

- 13.3.1. Except for subcontracting the security services for cash collection, the Fund Manager cannot subcontract the entire Services with respect to the Project.
- 13.3.2. The Fund Manager shall obtain the Employer's prior written consent, not to be unreasonably withheld, for any onsite Sub-Contractors who shall be performing any part of the Services.
- 13.3.3. The Fund Manager shall be responsible for the acts, omissions, failure to perform or defaults of any Sub-Contractors, its agents or employees, as fully as if they were the acts, omissions or defaults of the Fund Manager, its agents or employees. Any subcontracting by the Fund Manager shall not release or discharge the Fund Manager of any of its responsibilities or obligations under this Agreement.

14. GENERAL INDEMNITY

14.1. INDEMNITY BY THE FUND MANAGER

- 14.1.1. The Fund Manager on behalf of itself, its Sub-Contractors, Personnel, employees, successors and assignees shall save, defend, indemnify and hold harmless the Employer, the Employer's Representative and each of its respective contractors, agents, representatives, consultants and employees from and against all claims, damages (including any environmental damages), Losses and expenses arising out of or resulting from the performance, non-performance or breach by the Fund Manager of its obligations under this Agreement or the negligence, wilful default or fraud of the Fund Manager, its Personnel, employees, officers, agents or Sub-Contractors, including, without any limitation, as a result of any claim;
 - (a) in respect of injury or destruction of physical property including third party property; or
 - (b) in respect of any third-party claims; or
 - (c) in respect of bodily injury, sickness, disease, or death or personal injury or other health and safety liability; or
 - (d) arising in relation to any liabilities, incurred by the Fund Manager on the Employer's behalf which are not authorised under this Agreement; or
 - (e) by any User on the Buses or at the Facilities; or
 - (f) for any breach or non-compliance of the Applicable Standards; or

- (g) for the breach of any intellectual property rights or patents as provided in Section 15.2 (*Ownership of Relevant Documents*) and Section 15.3 (*Intellectual Property Rights*); or
- (h) in accordance with Section 2.2.4; or
- (i) in accordance with Section 2.7.1; or
- (j) in accordance with Section 5.5.4; or
- (k) in accordance with Section 6.6.3; or

which may be brought or alleged or threatened against the Employer or any of its employees, officers and agents by any person.

14.1.2. This Section 14 (*General Indemnity*) shall survive expiration or termination of this Agreement.

14.1.3. For the purposes of this Section 14 (*General Indemnity*), the term “Fund Manager” shall mean Fund Manager, its affiliates, Sub-Contractors and Personnel of any tier, and their respective agents and employees, whether individually or collectively.

15. INTELLECTUAL PROPERTY RIGHTS

15.1. NOT USED

15.2. OWNERSHIP OF RELEVANT DOCUMENTS

15.2.1. Without prejudice to the other rights of the Employer in respect of this Agreement, the records, information, know-how, plans, documentation, data, results and any associated intellectual property prepared by the Fund Manager pursuant to this Agreement, and the records, information and data collected by the Fund Manager during the performance of the Services (collectively referred to as the “**Relevant Documents**”) shall be in the exclusive ownership of the Employer. The Employer shall retain the copyright and other intellectual property rights in all Relevant Documents and other data furnished or to be furnished by (or on behalf of) the Fund Manager in connection with the Services.

15.2.2. The Fund Manager hereby agrees to indemnify the Employer for any breach of any intellectual property rights by the Fund Manager, its employees, officers, agents, Sub-Contractors and / or members arising out of the performance of the Services and this Agreement.

15.3. INTELLECTUAL PROPERTY RIGHTS

15.3.1. In this Section, “*infringement*” means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other

intellectual or industrial property right relating to the Services; and “*claim*” means a claim (or proceedings pursuing a claim) alleging an infringement.

- 15.3.2. The Fund Manager shall be responsible for the payment of all fees, royalties and other charges, if any, that may be payable under the terms of any license or permission in respect of any patent rights, design trademark, copyright or trade name, intellectual property right or other protected right relating to:
- (a) any design of the FM Machines provided by Fund Manager; and
 - (b) any work done or method employed in the performance of the Services.
- 15.3.3. If any patent or another industrial right is infringed, the Fund Manager shall procure for Employer the right of utilization either by modification to the effect that they are free of any third party’s right or by procuring the third party’s authorization of utilization.
- 15.3.4. In the event of any claim being made or proceeding instituted against Employer to which the above provisions applies, Employer shall promptly notify Fund Manager thereof and Fund Manager shall, at its own cost, in Employer’s name deal with such claim or conduct such proceedings and settle such claims and any litigation or arbitration that may arise from it. Employer shall not, unless Fund Manager shall fail to deal with such claim or conduct such negotiation, litigation or arbitrations, make any admission prejudicial thereto.
- 15.3.5. The Fund Manager hereby agrees to indemnify the Employer for any breach of any intellectual property rights by the Fund Manager, its employees, officers, agents, Sub-Contractors and / or members arising out of the performance of the Services and this Agreement.

16. FORCE MAJEURE

16.1. FORCE MAJEURE

- 16.1.1. A “Force Majeure Event” will mean an event beyond the reasonable control of the Parties, which materially and adversely affects the performance by such 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, such events include but are not limited to, any of the following:
- (a) Acts of God, including fire, flood, earthquake, tornado, hurricane, or other natural disaster;
 - (b) War, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - (c) Terrorist attacks, civil war, civil commotion, strikes, or riots;

- (d) Nuclear, chemical or biological contamination or sonic boom;
- (e) Fire, explosion or accidental damage; and
- (f) Military takeover or political instability.

16.2. NOTIFICATION OBLIGATION

- 16.2.1. The Party affected by a Force Majeure Event will give Notice thereof within seven (7) days from the commencement of the occurrence of such event in writing to the other Party and such Notice will include specific details of the occurrence.
- 16.2.2. Provided a Notice has been duly given by the affected Party in accordance with Section 16.2.1, then during the currency of any Force Majeure Event, neither Party will be responsible or liable to the other for any failure or delay in performance of its obligations (other than any payment obligations) or be deemed to be in breach of this Agreement, to the extent that such failure or delay is caused by Force Majeure Event.

16.3. DUTY TO MITIGATE

- 16.3.1. The affected Party will use all reasonable efforts and will ensure that it uses all reasonable efforts to mitigate the effects of a Force Majeure Event. Furthermore, notwithstanding Section 16 (*Force Majeure*), the affected Party will continue to perform its obligations under this Agreement as far as it is reasonably practical and will seek all reasonable alternative means for performance of its obligations not prevented by the Force Majeure Event.

16.4. TERMINATION FOR FORCE MAJEURE

- 16.4.1. In the event the interruption of the affected Party's obligations continues for a period in excess of forty-five (45) calendar days, either Party will have the right to terminate this Agreement upon thirty (30) calendar days prior written notice to the other Party.

17. CHANGES

17.1. CHANGES

- 17.1.1. Each Party may, from time to time, propose changes in the scope of the Services, which changes will be subject to mutual agreement of the Parties. The Fund Manager will advise the Employer if any proposed change results in a change in the price, payment terms or have other impacts on the terms or performance of the Services and this Agreement. Neither Party shall be obligated to proceed with any change until the Parties have agreed upon its effect and signed a written amendment or change order document.

18. NOTICES

18.1. All notices required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered by personal in-hand delivery, sent by facsimile transmission, or sent prepaid by recognized delivery service (such as Federal Express), addressed as follows:

(a) If to Fund Manager:

Address: [●]

Tel.: [●]

Email: [●]

Attention: [●]

(b) If to Employer:

Address: [●]

Tel.: [●]

Email: [●]

Attention: [●]

Such notices shall be deemed to have been given when delivered in the case of in-hand delivery, on the date shown by a facsimile transmission report or confirmation in the case of successfully completed facsimile transmission, and on the date of delivery in the case of delivery service. Either Party may modify its address for notices by advance written notice to the other Party delivered in conformance with this Section 18 (*Notices*).

19. DISPUTE RESOLUTION

19.1. NOTICE OF DISPUTE

19.1.1. In the event that there arises between the Parties any dispute, controversy or claim arising out of or relating to this Agreement, including, without prejudice to the generality of the foregoing, the breach, termination or validity thereof, the Party wishing to declare a dispute shall deliver to the other Party a written notice identifying the disputed issue (the “**Dispute**”).

19.2. RESOLUTION BY PARTIES

19.2.1. Within fifteen (15) days of delivery of notice of a Dispute, the Parties shall use best efforts to settle the Dispute by discussions between members of the senior management of each Party. In the event that such individuals are unable to reach agreement within fifteen (15) days, or such longer period as they may agree, then both Parties (if acceptable) shall refer the Dispute for arbitration.

19.3. ARBITRATION

Any Dispute that is not resolved within thirty (30) days of delivery of a notice of dispute pursuant to Section 19.2 (*Resolution by Parties*) shall be finally settled by arbitration under the Arbitration Act.

- (a) The arbitration shall be conducted in Karachi, Pakistan. Except as awarded by the arbitral tribunal, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.
- (b) No arbitrator shall be an employee or agent or former employee or agent of the Parties.
- (c) The decision of the arbitrators shall be final and binding upon the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Party in whose favor the award is given may enforce such award or judgment in any jurisdiction, including any jurisdiction where the other Party's assets may be located. Except as the Fund Manager and the Employer otherwise agree in writing pending the final resolution of any dispute in accordance with this Section 19 (*Dispute Resolution*), the Fund Manager shall proceed diligently with the performance of the Fund Manager's obligations under this Agreement and in compliance with the Employer's or Employer's Representative's directions, respectively.
- (d) The language at any arbitration under this Agreement shall be English.

19.4. PERFORMANCE TO CONTINUE DURING ARBITRATION OR LITIGATION

- 19.4.1. Unless this Agreement shall already have been terminated, the Parties shall in every case proceed with the performance of all of their obligations under this Agreement during, and notwithstanding, any resolution of Disputes in accordance with Article 19 (*Dispute Resolution*).

20. RELATIONSHIP

- 20.1. The Parties to this Agreement are independent entities. Neither Party is an agent, representative or partner of the other Party. Neither Party shall have any right, power or authority to enter into any contract or memorandum of understanding for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, collaboration or partnership between the Parties or to impose any liability attributable to such relationship upon either Party.
- 20.2. At all times, the Fund Manager shall act with appropriate propriety and discretion and in particular shall refrain from making any public statement concerning this Agreement or the Services without the prior approval of the Employer and shall refrain from engaging in any political activity.

20.3. The Fund Manager shall report immediately to the Employer any accident or injury and any damage to the property of the Employer or to the property of persons or any third parties occurring in or arising out of the performance of the Services and any act, manner, or thing which, within his knowledge, may have caused such accident or injury. The Fund Manager shall also report immediately to the Employer any circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Services.

21. AMENDMENTS

21.1. This Agreement may not be amended or modified unless the Employer has given its consent for such amendment in writing.

22. VALIDITY AND ENFORCEABILITY

22.1. The invalidity or unenforceability of any portion or provision of this Agreement will not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision will be deemed separated from this Agreement, and the balance of the Agreement will be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid by any court of law having jurisdiction thereof, the Parties will immediately renegotiate in good faith such term or provision of the Agreement to rectify such invalidity.

23. EXCLUSIVE RIGHTS AND REMEDIES

23.1. The rights and remedies set forth in this Agreement are the exclusive rights and remedies of each Party with respect to this Agreement, its performance or breach.

24. ENTIRE AGREEMENT

24.1. This Agreement and all schedules, exhibits, attachments, and annexures, if any, hereto, constitutes the entire agreement between the Parties pertaining to the subject matter thereof and there are no binding understandings between the Parties pertaining to the subject matter hereto that are not contained in this Agreement. This Agreement will supersede and cancel any and all previous contracts, arrangements or understandings that may have existed or may exist on these matters between the Parties. This Agreement may only be amended by a written instrument executed between the Parties.

25. LANGUAGE

25.1. The language of this Agreement, and all documents, materials and training, if any, to be supplied by the Fund Manager under this Agreement shall be English.

26. SURVIVAL

- 26.1.** Notwithstanding anything to the contrary contained in this Agreement, all such relevant provisions of this Agreement that are required for the enforcement of each Party's obligations and for the settlement of liabilities, in each case, upon termination or expiry of this Agreement shall survive the termination or expiry of this Agreement until such obligations have been performed and the liabilities settled. Furthermore, any other provisions expressly specified in this Agreement to survive termination shall survive termination of this Agreement.

27. NO WAIVER

- 27.1.** No forbearance, indulgence or relaxation or inaction by any Party at any time, to require performance of any of the provisions of this Agreement shall, in any way, affect, diminish or prejudice the right of such Party to require performance of that provision and any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver of or acquiescence to any continuing or succeeding breach of such provisions or a waiver of any right under or arising out of this Agreement, or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.

28. GOVERNING LAW

- 28.1.** This Agreement will be governed in accordance with the laws of Pakistan.

29. COUNTERPARTS

- 29.1.** This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were a single copy of this Agreement, provided, that all counterparts have been duly executed by both Parties hereto.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written in accordance with their respective laws.

AS EMPLOYER

For and on behalf of **SINDH
INFRASTRUCTURE DEVELOPMENT
COMPANY LTD** through its authorised
signatory



SIGNATURE

Name:
Designation:

.....

IN THE PRESENCE OF
WITNESSES:

SIGNATURE

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

AS FUND MANAGER

For and on behalf of [INSERT FUND
MANAGER] through its authorised
signatory



SIGNATURE

Name:
Designation:

.....

IN THE PRESENCE OF
WITNESSES:

SIGNATURE

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

SCHEDULE A: SCOPE OF WORK

1. BANKING SYSTEM INTEGRATION

The Fund Manager's back-office must have complete system implementation and integration capabilities with all payment mechanisms (mobile phone application, internet/web portal, HHM, TOM, TVM) to ensure uninterrupted and efficient payment/top-up capabilities.

The Fund Manager must integrate with the Employer based on straight-through processing providing host to host connectivity; and provide daily paperless reports, on demand reports and reconciliation reports to the Employer and its control partners as per Employer's instructions.

In order to ensure smooth collections throughout the Bus Stations, as well as through other payments mechanisms, the Integrated Intelligent Transport System (IITS) shall be integrated with the Fund Manager's back office to digitize the entire process as well as to minimize human error.

The Fund Manager and the IITS operator must coordinate on the integration including on integration timelines to ensure completion of integration must be completed within sixty (60) days from the issuance of the Notice to Proceed.

2. COLLECTION OF CASH FROM BUS STATIONS

The Fund Manager will ensure collection of cash from the Stationery Ticket Vending Machines (TVM), and Ticket Office Machine (TOM), including cash from HHM sales, at each Bus Station.

System users are expected to make cash payments on the TVM and TOM to purchase tickets and/or reload their Contact-less Smart Cards (CSCs). Over the course of daily operations, the TVM and TOM is expected to accumulate considerable quantity of cash which will be collected by the Fund Manager periodically.

2.1. Cash Proceeds At TOM

System users will procure tickets, reload CSCs, in exchange for cash on TOMs installed in kiosks across all Bus Stations along the BRT Corridor. Payments on the TOM will involve considerable human involvement whereby a representative of the Facilities Manager will be operating the TOM. Such representative will collect cash from system users and store cash in the TOM counter(s) on each Bus Station along the BRT Corridor.

The Fund Manager is required to provide Currency Detector Machines and Point of Sales (POS) Card Machines (collectively the "**Machines**"). The Currency Detector Machine will be used to ensure that only genuine currency notes are collected by the Facilities Manager on the TOM. The Fund Manager would be responsible for the required maintenance and upgradation of the Machines. The Fund Manager would also be responsible for training the staff initially and periodically upon upgrading/changing of the Machines. The training(s) will include, inter alia, techniques used in Financial Institutions (FIs) to detect counterfeit currency.

The Fund Manager would additionally provide manuals to the staff for operations of the Machines that it has installed or has provided. The Employer will allocate staff that require training during mobilization period. Once trained, there will be periodic trainings during the Services Period arranged by the Fund Manager.

Any new staff of the Facilities Manager shall also be trained by the Fund Manager to operate the Machines as Notified by the Employer from time to time.

The Fund Manager is not responsible for the collection of any counterfeit currency at the TOMs and the responsibility to ensure genuineness of currency notes received from Users is that of the Facilities Manager.

The Cash received at the TOMs shall be collected in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*) by the Fund Manager at the end of day throughout the Services Period.

2.2. Cash Proceeds At TVM

Users will also have the option to procure tickets and recharge their CSCs from TVMs, where a representative of the Facilities Manager will assist the Users in depositing cash in the TVMs.

The cash received at the TVMs shall be collected by the Fund Manager upon notification by the AFC system. A two-man rule will be employed to ensure security of the TVM. On each notification day end during the Services Period, representatives of the Facilities Manager and the Fund Manager will unlock the TVM and the Fund Manager will collect the cash box in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*).

2.3. Collection Procedure

All cash received at the TOMs **daily** from all Bus Stations at day end while cash tray from TVMs will be collected on notification day end throughout the Services Period.

The Fund Manager shall be allowed to sub-contract the cash collection services, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor. The Fund Manager would be the point of contact (POC) for all Services to be performed by the Fund Manager.

Before the cash is collected from the Bus Station, the Fund Manager will share with the Facilities Manager the following information:

- Name and Computerized National Identity Card (CNIC) Number/staff code of the security personnel who will collect the cash
- Car registration information

This information will be shared with all Bus Stations (by way of designated communication email) along the BRT Corridor individually, by the Fund Manager. Upon arrival of the security personnel for cash collection, the Facilities Manager would verify personnel identity through comparing the list sent by the Fund Manager with personnel company IDs and CNICs.

Upon such confirmation, the Facilities Manager shall allow the personnel in the Bus Station premises and the Fund Manager will perform its cash collection operations.

2.3.1. Procedure for collection from TOM

Once the cash from the TOM has been received by the Fund Manager personnel, the cash will be put in bags and sealed in front of the Facilities Manager. Once the Facilities Manager is satisfied with the seal, the security personnel will transport the sealed bags for counting and depositing.

2.3.2. Procedure for collection of TVM cash box

On each notification day, the full cash box will be collected from TVM by the Fund Manager personnel and simultaneously the TVM will be replaced with an empty cash box. The cash box will be transported to cash counting center/branch/storage depot where the cash boxes will be opened (with special key) for counting under CCTV cam. The TVM banknotes system will have multiple keys (e.g., separate keys to withdraw the cash box and to open the cash box). After the count is complete for both bags the sums to be deposited in the Collection Account should match the revenue statement generated as per the IITS systems. In the event of any discrepancy the responsibility and obligation to reimburse the Employer by depositing such discrepant amounts in the Collection Account shall be as follows:

- **Counterfeit cash collected by TVM (as collected in TVM cash box):** IITS shall be required to reimburse any counterfeit currency accepted/collected by the TVMs.
- **Counterfeit notes collected by TOM (as collected in TOM bag):** Facilities Manager shall be required to reimburse any counterfeit currency accepted/collected at the TOMs.
- If (including counterfeit) **amount does not match** revenue statement generated as per the IITS system, Facilities Manager would be responsible.
- If there is **excess cash** in the bag as compared to the revenue statement generated as per the IITS system, all cash would be deposited.
- For **seal broken or cash lost during transit;** Fund Manager would be responsible.

2.4. Security of cash proceeds

The Fund Manager will collect cash from Bus Stations at the end of each operating day. The safety and security of cash proceeds in the armoured vehicles as well as any cash storage depots overnight (prior to being deposited in the Collection Account the following day during bank working hours) lies completely with the Fund Manager.

To ensure the security of the cash collected overnight, the Fund Manager may sub-contract such security services to a reputable security firm(s) with requisite cash collection experience, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor.

2.5. Timings of Cash Collection

The Fund Manager is required to collect cash at stipulated timelines as per mutual agreement between Fund Manager and the Employer (in consultation with Facilities Manager). The details of the timings for cash collection from each Bus Station across the BRT Corridor are set out in Exhibit I (*Minimum Cash Balance and Cash Pick Up Timings*) hereto. Failure to adhere to stipulated timelines will lead to Performance Liquidated Damages under **Exhibit II (Key Performance Indicators)** hereto.

In addition to the Performance Liquidated Damages, if the Fund Manager fails to collect cash from the Bus Station within the stipulated collection timings, the Fund Manager shall be liable for any security breach/theft at any of the Bus Stations. The Fund Manager shall be liable to compensate and reimburse the amount, to the Employer, which was stolen to the extent of the money which was not collected by the Fund Manager within the stipulated timeline.

Repeated delays in collecting cash from the Bus Stations may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

3. AVAILABILITY OF MINIMUM CASH BALANCE

The BRT system being one of the first public sector transport projects in Karachi is geared to attract a lot of Users and, therefore, where payments are through cash change balance is required to be available at Bus Stations. Non-availability of change may make the system inefficient and delay the onboarding process.

In this regard, the Fund Manager will be required to arrange minimum cash balance for change payments at every Bus Station on commencement of operations and maintain it throughout the Services Period.

Such amount of minimum cash balance may be revised on a day's notice either upwards or downwards based on mutual agreement between the Employer and Fund Manager in consultation with the Facilities Manager. The quantity of minimum cash balance for each Bus Station has been provided in **Exhibit I (Minimum Cash Balance and Cash Pick Up Timings)**.

In case the Facilities Manager determines that it is running low on minimum cash balance, the Facilities Manager shall have the authority to request (with a copy of such Notice to the Employer) for additional change from the Fund Manager, which shall be promptly made available to Bus Stations within a two-hour notice.

On each day end during the Services Period, the Fund Manager will ensure that the denominations of minimum cash balance have been replenished at each Bus Station along the BRT Corridor. The Fund Manager and the authorized representative of Facilities Manager will verify and sign-off on the said replenishment of the minimum cash balance.

The Fund Manager shall ensure that currency notes handed over as minimum cash balance are genuine.

3.1. Reimbursement of The First Minimum Cash Balance

Cash collection at the end of the first day of operations would be utilized to offset minimum cash balance fronted by the Fund Manager. First day's cash deposit by the Fund Manager into the Collection Account would be net-off the minimum cash balance fronted at the start of the first day of operations. Relevant documentations with respect to funding and deduction shall be provided to the Employer by the Fund Manager.

3.2. Allocation of Minimum Cash Balance

The minimum cash balance will be apportioned in the following way:

- (i) TOM – 70%
- (ii) TVM – 30%

The following denominations are to be provided by the Fund Manager at every Bus Station:

Cash Amount (PKR)	Currency notes / Coins
500	5%

100	10%
50	15%
20	20%
10	25%
5	25%

4. BANKING OPERATIONS

4.1. Collection Account

The Fund Manager shall be responsible to open bank account(s) for deposit of sums relating to the operations and maintenance of the Project and maintain it throughout the Services Period. The account title shall be Sindh Infrastructure Development Company Limited Collection Account (“**Collection Account**”). The Collection Account must have subaccounts for various bank payments through TVM, TOM, HHM, website and mobile phone applications.

The authorized signatories shall be nominated by Sindh Infrastructure Development Company Limited (SIDCL) Board of Directors or the Chief Executive Officer (CEO) and updated as required.

The Collection Account shall be used for all deposits and payments relating to the Project.

4.2. Revenue Deposits

After the collection of cash from each Bus Station, the cash must be deposited in the Collection Account by the Fund Manager, on the following business day. The Collection Account shall be used for deposits of all cash collected from Bus Stations.

The Fund Manager shall ensure that all funds deposited either physically or electronically must be reflected in Employer’s bank statements immediately. Any discrepancy between the bank balance and revenues as per Automated Fare Collection systems must be reconciled on an urgent basis. Persistent irregularities in the bank reconciliation may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

Apart from Fare Revenue which will be collected from Bus Stations physically as well as electronically/digitally, other payments/sums relating to the Project may also be deposited in the Collection Account. Such deposits may be made by the Employer or any other Project Contractor engaged by the Employer in respect of the Project including property management firm(s) responsible for exploitation of non-fare revenue potential. The Fund Manager must notify the Employer of any such deposits immediately upon receipt.

4.3. Integration With Central Clearing House (CCH) Bank Interface

The Fund Manager shall ensure that each User’s data is completely secure. Any data hack or data security breach attributable to the Fund Manager will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. The Fund Manager is required to remedy the hack/security breach within twelve (12) hours; failure to do so may result in imposition of Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

The Fund Manager shall ensure that all transactions issued by the CCH are completed as per best practices. Failure to process transactions within stipulated timelines due to any reasons attributable to the Fund Manager shall result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. Persistent delays and failure in processing transactions may lead to an event of default attributable to the Fund Manager.

4.4. Payments To Project Contractors

To ensure smooth operations of the system, timely payments must be made to all Project Contractors including, *inter alia*, bus/fleet operator, Facilities Manager, IITS operator and third-party independent expert(s) all of which are critical components of the Project operations.

Payments must be made by way of bank transfer or bank cheques in the designated bank accounts of the Project Contractors in such sums and on such date and time as specified in the instructions issued by the Employer.

Any delay, attributable to the Fund Manager, in processing and executing payments to the relevant Project Contractors will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**.

4.4.1. Bank Cheques

The Employer will issue instructions by means of cheque signed by two authorized signatories. Upon any change in authorized signatories, the Employer will notify the Fund Manager of such change. The Fund Manager will only be liable to ensure payments if the payment instructions are issued by authorized signatories and inform the Employer where there is any inconsistency in authorized signatories.

4.4.2. Bank Transfer

Upon issuance of bank transfer instructions by the Employer by means of integrated payments capabilities, the Fund Manager must transfer such payments to the relevant Project Contractors.

The Fund Manager is required to ensure that it provides an interface to the Employer to issue such payment instructions to the Fund Manager, view up to date periodic cash positions and reports as and when required. Such interface must be completely digital and minimize manual interplay.

4.5. Periodic Cash Position and Overdraft

The Fund Manager must provide to the Employer periodic cash position at the end of each operating day in order to assess funding surplus or shortfall against stipulated payments to the relevant Project Contractors whichever is appropriate.

In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for the transfer(s)/ payment to the relevant Project Contractors, the Fund Manager shall notify the same to the Employer within one (1) hour of receiving the payment instructions from the Employer. The Employer will have the option either to:

- (a) arrange and deposit funds in the Collection Account for payments to the relevant Project Contractors;
- (b) withdraw the payment instructions; or

- (c) request the Fund Manager to lend the shortfall amount i.e., the difference in the amount of the required payments and the available balance in the Collection Account.

The Fund Manager shall comply with the instructions and make payment of the total amounts as per the payment instructions received from the Employer.

In the Parties proceed in accordance with part (c) above, the Employer will be liable to pay interest on the overdraft amount at a rate mutually agreed between the Fund Manager and the Employer. The Employer will be liable to repay in full, amounts ninety (90) days from the overdraft receiving date. In case of non-repayment and if the Collection Account has excess monies available, such amounts would be first used to offset the overdraft amount. In case no monies are available in the Collection Account, the Fund Manager can call a default of the Employer.

5. ASSISTANCE IN LEGAL / REGULATORY REQUIREMENTS

The Fund Manager will assist the Employer in conducting periodic audits of all receipts and payments as and when required by the Employer.

The Fund Manager must cooperate with any third party appointed by the Employer or any relevant government agency appointed for conducting such audits. Any malfeasance attributable to the Fund Manager may lead to event of default.

During the currency of the audit, the Fund Manager must continue performing its obligation as per agreed scope of work.

6. REVENUE ALLOCATED TO THE EMPLOYER

The Fund Manager shall pay to the Employer float income earned on the balance to the credit of the Collection Account at a rate equivalent to one-year KIBOR quoted on the website of State Bank of Pakistan minus 1%. The Fund Manager shall allocate all such income in the Collection Account of the Employer.

7. INVOICING FOR SERVICES

The Fund Manager will raise an invoice for monthly Service Fee at the end of each operating month during the Services Period. Payments for the invoice will be debited from the Collection Account upon issuance of instructions by the Employer within five (5) working days.

8. BANK GATEWAY INTEGRATION

The Fund Manager should be able to scan the accounts belonging to the money deposited by the dealers at maximum half-hour intervals and send them to IITS operator servers together with the relevant amount and the terminal number and transfer the relevant amounts to IITS operator accounts automatically. This information given by IITS operator servers is credited to the relevant dealers for the money they have deposited. The data communication interface for this purpose is created by the IITS operator software team and the Fund Manager working together, and the data communication interface for research, the IITS operator software team, and the Fund Manager working together. Also, the Fund Manager shall provide the following;

- The Fund Manager shall develop, build, configure onsite at each TVM/TOM the interface with the PoS;

- The Fund Manager shall provide the SIM Cards for the HHM, TVM PoS, and TOM PoS along with a complete data package

IITS operator calls these intervals with parameters “given by the bank”.

8.1. REQUEST PARAMETERS

- Account_no
- Startdate (DD-MM-YYYY)
- Enddate (DD-MM-YY)

8.2. OUTCOME PARAMETERS

- Terminal Number
- Amount
- Datetime (YYYYMMDDHHMMSS)
- Provision_no



9. MOBILE APPLICATION & WEBSITE ONLINE TOP-UP PAYMENT

The Fund Manager shall provide the Gateway to enable the Web payment and to interface with AFC CCH for statement and reports for the integration between AFC system and Fund Manager system, the Fund Manager shall provide the following:

- Payment processor API (Virtual POS)
- Payment processor API (Virtual POS) Integration document
- Merchant Name
- Merchant ID

10. THIRD-PARTY INTEGRATION

For the Third-Party integration such as Easypaisa, JazzCash, UBL Omni, the Fund Manager shall provide the following.

- Payment processor API
- Merchant Name
- Merchant ID

11. SMS LOGIN INTEGRATION

SMS Gateway

12. PAYMENT INTEGRATION FOR HHM

The provided HHM device has EMV L1/L2 certificate and supports EMV contactless, however, its validity has to be approved by the Fund Manager.

- HHM Brand/Model: Urovo I9000S
- HHM Datasheet: Urovo I9000S Datasheet

Otherwise, the Fund Manager shall provide and maintain connectivity with Fund Manager back office”.



13. PHYSICAL POS FOR TOM

- The physical unattended PoS terminal which has required certificated
- The physical unattended PoS terminal serial port Integration document



14. UNATTENDED POS TERMINAL

- The physical unattended pos terminal which has required certificates.
- The physical unattended pos terminal integration document.
- The IITS operator uses ingenico unattended pos terminal having certification of EMV L1/L2 but L3 will be within the Fund Manager’s scope of work.

Datasheet: Ingenico Unattended POS Terminal
iSelf Serisi



15. VALIDATOR CONTACTLESS EMV CARD READER

- Contactless EMV Card Reader which has required certificates
- Contactless EMV Card Reader integration document.
- ISO 8583

16. MOBILIZATION PERIOD REQUIREMENTS AND TIMELINES

REQUIREMENTS	TIMELINES
--------------	-----------

First minimum cash balance would be fronted	At least one (1) day prior to the Commencement Date
Integration with IITS systems	NTP + 60 days
Collection Account is open	NTP + 30 days
Training(s)	NTP + 20 days

EXHIBIT I: MINIMUM CASH BALANCE AND CASH PICK UP TIMINGS

S.No	BUS STATION	MINIMUM CASH BALANCE (PKR)	CASH PICK-UP TIMINGS (PST)
1.	Surjani Town	25,000	2300 hours
2.	- (Unknown)	15,000	2300 hours
3.	Jama Masjid	20,000	2300 hours
4.	4K Chowrangi	25,000	2300 hours
5.	2 Minute Ki Chowrangi	20,000	2300 hours
6.	- (Unknown 2)	15,000	2300 hours
7.	Power House	25,000	2300 hours
8.	Telephone Exchange	20,000	2300 hours
9.	UP More	15,000	2300 hours
10.	Nagan Chowrangi	25,000	2300 hours
11.	Shadman No.2	20,000	2300 hours
12.	2K Bus stop	20,000	2300 hours
13.	Faiz House	15,000	2300 hours
14.	Hyderi Bus stop	25,000	2300 hours
15.	Board Office	15,000	2300 hours
16.	Baqai Hospital Bus stop	20,000	2300 hours
17.	Petrol Pump Bus stop	25,000	2300 hours
18.	Rizvia Bus stop	15,000	2300 hours
19.	Gulbahar	15,000	2300 hours
20.	Lasbela Chowk	25,000	2300 hours
21.	Gurumandir	15,000	2300 hours
22.	Numaish	25,000	2300 hours
23.	Sea Breeze Center	15,000	2300 hours
24.	Gul Plaza	20,000	2300 hours
25.	Municipal Park	20,000	2300 hours
26.	5 no. Chowrangi	15,000	2300 hours
27.	Orangi Town Police Station	25,000	2300 hours
28.	Abdullah College	20,000	2300 hours
29.	Dilpasand Sweets	25,000	2300 hours

EXHIBIT II: KEY PERFORMANCE INDICATORS

Key Performance Indicators: The Fund Manager’s performance of Services shall be evaluated by means of required service levels for Key Performance Indicators (KPIs).

Deduction Percentages. Failure to meet these service levels shall lead to the imposition of Performance Deduction Percentages as per the table 1 below. The Employer shall notify Performance Deduction Percentage within ten (10) days of submission of invoice by the Fund Manager.

Employer review of KPIs. Employer may at all reasonable times, directly or through an Employer appointed independent agent, observe, inspect, and satisfy itself with the observance by Fund Manager of the KPIs.

KPI table. The systems must be designed and operated to meet these KPIs in the following table 1.

S. NO	EVENT / KPI	DEDUCTIONS
1.	Collection of cash from Bus Stations	
1.1.	Failure to reach the Bus Station on the specified time frame to collect cash.	PKR 1,000 per occurrence per Bus Station
2.	Minimum cash balance	
2.1.	Failure to provide the Facilities Manager with daily cash balance (change) as specified in Exhibit I.	PKR 1,000 per occurrence per Bus Station
2.2.	Fund Manager fails to provide the Facilities Manager with cash balance (change) on two hours’ notice upon shortage during operations.	PKR 100 per occurrence per Bus Station
3.	Banking Operations	
3.1.	Failure to deposit the cash collected in Collection Account on the following business day	PKR 1000 per occurrence
3.2.	Hacking/data security breach of the Fund Manager’s banking systems	PKR 10,000 per day
3.3.	Failure of Fund Manager’s banking systems which causes a delay in the sale of tickets/top-ups	PKR 10,000 per day
3.4.	Failure to pay the Project Contractors as per Employer’s Instructions in a timely manner.	PKR 10,000 per day
3.5.	Failure to make available date and information required for periodic audits	PKR 10,000 per occurrence
3.6.	Failure/break down of FM Machines due to lack of/improper maintenance	PKR 1,000 per occurrence per Bus Station

EXHIBIT III: PAYMENT INTEGRATION REQUIREMENTS

1. Compatibility Chart

DEVICE/COMPONENT	PAYMENT WITH EMV CONTACTLESS BANK CARD	PAYMENT WITH CONTACT BANK CARD	PAYMENT WITH MAGNETIC BANK CARD	SEND BANK TOP-UP/AUTO RELOAD	AUTO-RELOAD
Ticket Vending Machine	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)		
Ticket Office Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Handheld Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Mobile APP	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)		X (PG should be able to store payment methods)
Website	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X	X (PG should be able to store payment methods)

SCHEDULE B: PAYMENT SCHEDULE

$$\textit{Service Fee (Revised)} = \textit{Service Fee (Base)} * \frac{\textit{CPI (Revised)}}{\textit{CPI (Reference)}}$$

Where:

Service Fee (Revised) = service fee payable each Month to the Fund Manager in each Service Year following indexations.

Service Fee (Base) = service fee quoted by the Fund Manager in its financial Bid.

CPI (Revised) = Consumer Price Index (CPI) – General published by the Pakistan Bureau of Statistics at the start of each Service Year.

CPI (Reference) = Consumer Price Index (CPI) - General published by the Pakistan Bureau of Statistics on the Commencement Date.

SCHEDULE C: INTEREST RATE

Interest Rate means the three-month Karachi Interbank Offer Rate published on the website of State Bank of Pakistan minus one percent.

SCHEDULE D: MAINTENANCE OF FM MACHINES

The Fund Manager must ensure that the FM Machines are in optimal condition throughout the Service Period. Among other functions to ensure smooth operations of the Machines, the Fund Manager must:

- (i) Inspect the Machines on a weekly basis and conduct cleaning operations as per best practices (including the use of canned air and cleaning cards, etc.)
- (ii) Replace or remedy any defects or deficiencies in the Machines immediately upon notification of any malfunction/defects.

SCHEDULE E: FORM OF PERFORMANCE SECURITY

To: , 2021
[●]
[Insert Address]

PERFORMANCE SECURITY NO. (the **Security**)

We, [●]¹, being the Security issuing bank (the “**Issuing Bank**”) understand that the following parties are entering into an agreement titled the “**FUND MANAGEMENT AGREEMENT**” (the **Agreement**):

- (a) Sindh Infrastructure Development Company, a public limited company incorporated under the laws of Pakistan with its registered office located at 6th Floor, Extension Block, Bahria Complex IV, Karachi (the “**Employer**”); and
- (b) [●], a company incorporated under the laws of [●] having its registered office located at [●] (the “**Fund Manager**”).

Further, we understand that pursuant to the Notification of Award dated [●] (the “**Notification of Award**”) and the Agreement, the Fund Manager is required to provide the Employer with a performance Security equal to [●] [●]/- ([●] [●]) and maintain the same in accordance with the terms of the Agreement.

The above premised, we (the Issuing Bank) hereby undertake irrevocably and unconditionally on demand to pay to the Employer, without any notice, reference or recourse to the Fund Manager or to any other entity or without any recourse or reference to the Notification of Award, Agreement 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:

[●] [●]/- ([●][●])
(the “**Guaranteed Amount**”)

at sight and immediately, however not later than three (3) business days from the date of receipt of the Employer’s first written demand (the Demand) at the Issuing Bank’s offices located at [●] or through SWIFT instructions transmitted by the Employer’s bank (i.e., the National Bank of Pakistan), on behalf of the Employer, to the Issuing Bank, such Demand stating:

- (a) that the Fund Manager is in breach of its obligations towards the Employer:
 - (i) specifying the breach and, if applicable, requesting the Fund Manager to cure the breach;
 - (ii) if applicable, certifying that the Fund Manager has failed to remedy the breach within the period allowed for remedial action; and

¹ Insert name of Issuing Bank;

(b) the total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Employer; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Employer's bank (i.e., National Bank of Pakistan), on behalf of the Employer.

We, the Issuing Bank, shall unconditionally honour a Demand hereunder made in compliance with this Security 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 Security, 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 Security shall come into force and shall become automatically effective upon its issuance.

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

- (i) [●] (the "**Performance Security Original Expiry Date**") provided that, in the event the Issuing Bank has receipt of the Demand on or immediately prior to the Performance Security Original Expiry Date, the Issuing Bank shall honour that Demand; or
- (ii) when the aggregate of all payments made by us under this Security equal the Guaranteed Amount.

Upon expiry, this Security shall be returned to the Fund Manager without undue delay. Multiple Demands may be made by the Employer under this Security but our aggregate liability will be restricted up to the Guaranteed Amount.

The Guaranteed Amount shall be revised upon receipt by us of a notice duly signed by the Employer and the Fund Manager of the revised guaranteed amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Employer, the Fund Manager 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 Security for its validity period shall not be affected in any manner by any change in our constitution or of the Fund Manager's constitution or of their successors and assignees and this Security 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 Security.

If one or more of the provisions of this Security 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 Security.

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 Security, which obligations are valid and legally binding on and enforceable against us under the laws of Pakistan and under the laws of the jurisdiction where this Security is issued. For the avoidance of doubt, in the event of any inconsistency between the laws of Pakistan and the laws of the jurisdiction where the Security was issued, we agree that the laws of Pakistan shall prevail. Further, that the signatory(ies) to this Security is/are our duly authorized officer(s) to execute this Security.

This Security and all rights and obligations arising from this Security shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein. The issuance of this Security is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Security is issued.

This Security is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Security and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Security shall prevail.

.....
Name:
Designation:

SCHEDULE F: TERM EXPIRY CRITERIA

Term Expiry Criteria means the Fund Manager fulfilling each of the following criteria:

- (a) All Services that are contemplated under this Agreement to be performed by the Fund Manager prior to expiry of the Term have been completed.
- (b) All trainings have been completed as per the Training Programme.
- (c) All reports under this Agreement have been submitted to the Employer.
- (d) The Fund Manager has paid the Liquidated Damages to the Employer in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** of this Agreement.
- (e) The Fund Manager has settled and paid the Employer all amounts that are due to the Employer pursuant to the terms and conditions of this Agreement.

SCHEDULE G: RELEASE CERTIFICATE

Date:

To,

[**THE FUND MANAGER**],
[Address]

REFERENCE: RELEASE CERTIFICATE

Dear Sir/Madam,

We, [*INSERT COMPANY NAME*] (the **Employer**), hereby refer you, the Fund Manager to the agreement entitled “Fund Management Agreement” entered into between the Employer and the Fund Manager on [●], 202[1] (the **Agreement**).

Unless defined herein, all capitalized terms shall bear the meaning ascribed thereto in the Agreement.

Further to the written notice issued by you to the Employer dated [●], as attached hereto at Exhibit A (the **Fund Manager Request Notice**), the Employer hereby issues this Release Certificate and confirms satisfaction of the Term Expiry Criteria on [●].

IN WITNESS WHEREOF, the Employer has caused this Release Certificate to be executed by its duly authorized representative.

For and on behalf of,
[*INSERT COMPANY NAME*]

.....

Name:
Designation:

WITNESS I

WITNESS II

.....
Name:
CNIC:

.....
Name:
CNIC:

RELEASE CERTIFICATE - EXHIBIT A – FUND MANAGER REQUEST NOTICE

Date:

To,

[*INSERT COMPANY NAME*],
[*insert address*].

REFERENCE: NOTICE TO REQUEST ISSUANCE OF RELEASE CERTIFICATE

Dear Sir/Madam,

We, the Fund Manager hereby refer you, [●] (the **Employer**), to the agreement entitled “Fund Management Agreement” entered into between the Employer and the Fund Manager on [●], 20[21] (the **Agreement**).

Unless defined herein, all capitalized terms shall bear the meaning ascribed thereto in the Agreement.

Pursuant to and in accordance with the terms of the Agreement, the Fund Manager hereby confirms that each of the Term Expiry Criteria has been met and satisfied.

Based on the foregoing, the Fund Manager hereby issues this notice to the Employer requesting the issuance of the Release Certificate by the Employer in accordance with the terms of the Agreement

IN WITNESS WHEREOF, the Fund Manager has caused this notice to be executed by its duly authorized representative as of the day of, 20.....

For and on behalf of,
THE FUND MANAGER

.....

Name:
Designation:

WITNESS I

WITNESS II

.....
Name:
NIC:

.....
Name:
NIC:

SCHEDULE H: LIST OF SUB-CONTRACTORS

[to be inserted on Effective Date]

SCHEDULE I: INSURANCE

The Fund Manager shall procure and maintain the following insurance coverage, at its own cost:

A. *[to be inserted from the list submitted as part of the Bid]*

With regard to the insurance policies, the Fund Manager or the Fund Manager's insurers will endeavour to provide thirty (30) days (except ten (10) days in the event of cancellation for non-payment of premium) notice to Employer in the event of cancellation or change.

Upon the request of the Employer the Fund Manager shall deliver to the Employer certificate(s) of insurance showing that the insurance policies are in full force and effect.

FAILURE TO MAINTAIN INSURANCE:

Failure by the Fund Manager to maintain any insurance required under this **Schedule I (Insurances)** shall constitute a material breach of this Agreement.

SCHEDULE J: CONSENTS

[to be inserted within ten (10) days of Notice to Proceed]

SCHEDULE K: PERFORMANCE SECURITY AMOUNT

Performance Security Amount = 10% of annual Service Fee

SCHEDULE L: FORM OF INVOICE

PARTICULARS	REFERENCE	PKR
Adjusted Service Fee per Month	(a)	
Less: Deductions for Non-Compliance of KPIs	(b)	
Net Adjusted Service Fee per Month	(a) – (b)	

FUND MANAGEMENT AGREEMENT

BETWEEN

**SINDH INFRASTRUCTURE DEVELOPMENT COMPANY LTD. (FORMERLY KARACHI
INFRASTRUCTURE DEVELOPMENT CO. LTD.)
(AS EMPLOYER)**

AND

[TO BE INSERTED]
(AS FUND MANAGER)

RELATING TO:

**BRTS ORANGE LINE PROJECT
AT KARACHI, SINDH, PAKISTAN**

DATED: AS OF ____ OF _____, 2021

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FUND MANAGEMENT AGREEMENT

This **FUND MANAGEMENT AGREEMENT** (this “**Agreement**”) is made on this _____ day of _____, 2021,

BETWEEN

- (1) **SINDH INFRASTRUCTURE DEVELOPMENT COMPANY LTD. (FORMERLY KARACHI INFRASTRUCTURE DEVELOPMENT CO. LTD. (“KIDCL”))**, a public limited company duly organized and existing under the laws of Pakistan, with its principal office located at 6th Floor, Extension Block, Bahria Complex IV, Karachi (the “**Employer**”, which expression shall include its successors-in-interest and permitted assigns);

AND

- (2) [**●**], a company incorporated under the laws of Pakistan, with its registered office located at [**●**], Pakistan (the “**Fund Manager**”, which expression shall include its successors-in-interest and permitted assigns).

(Each of the Employer and the Fund Manager is hereinafter, individually referred to as a “**Party**” and collectively referred to as the “**Parties**”).

RECITALS

WHEREAS:

- (A) The Employer has been entrusted with the task of developing and improving the quality of mass transport/transit system in the city of Karachi, Pakistan, including the development and operations of the Project.
- (B) The Employer has undertaken public procurement process in terms of the Public Procurement Rules, 2004, passed by the Federal Government pursuant to Section 26 of the Public Procurement Regulatory Authority Ordinance, 2002, to select a fund manager to provide Services.
- (C) The Fund Manager presented its Bid for the performance of the Services and was selected as the successful bidder.
- (D) The Employer wishes to conclude an agreement with the Fund Manager to set forth the terms and conditions for the performance of the Services.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. DEFINITIONS

The terms used in this Agreement shall have the meanings stated below:

“Agreement” means this Fund Management Agreement including all schedules, exhibits and annexes included herein.

“Applicable Standards” mean the standards, requirements and criterion applicable to the performance of the Services as contained in:

- (a) the Laws;
- (b) the Implementation Plan;
- (c) the Prudent Industry Practices; and
- (d) the Consents;

provided, however, in the event of any discrepancy, conflict or inconsistencies in the standards, requirements and criterion set out above, the most stringent standards, requirements and criterion shall apply.

“Arbitration Act” means the Pakistan Arbitration Act, 1940 (as may be amended, modified, supplemented, extended or re-enacted from time to time).

“Automated Fare Collection” means electronic collection of Fare Revenues from Users credited directly to the Collection Account through the following:

- (a) TVM;
- (b) TOM;
- (c) website; and
- (d) mobile application.

“Bid” means the bid submitted by the Fund Manager in response to the Bidding Documents.

“Bid Submission Date” means [*insert date*].

“Bidding Documents” means the bidding documents issued by the Employer on [*insert date*].

“BRT Corridor” means the dedicated corridor for the Project on which the Buses are operated.

“BRTS” means Bus Rapid Transit System.

“Bus” or “Buses” means the buses being operated by the operator engaged by the Employer for the Project.

“Bus Operations” means the operating hours during a day when the Buses are being operated on the BRT Corridor for Users.

“Bus Stations” means the bus stations on the BRT Corridor for utilisation as stations for the Buses, together with relevant fixtures and fittings being operated by the Facilities Manager engaged by the Employer for the Project.

“Cash” means all Fare Revenues received in cash from Users at the TOMs and the TVMs.

“Cash Collection” means the collection of Cash from the TOMs and TVMs located at the Bus Stations.

“Collection Account” means the account titled “*Sindh Infrastructure Development Company Limited Collection Account*” denominated in Pakistani Rupees opened by and maintained in, the name of the Employer at the Designated Branch of the Fund Manager for deposit and utilisation of all Fare Revenues collected from Users, any non-fare revenue generated from the Project and any other sums deposited (including by the Employer or other Project Contractors) in respect of the Project.

“Commencement Date” has the meaning given to that term in Section 4.3.1.

“Confidential Information” means all information, documentation, data, know-how or trade secrets, of whatever nature relating to the Project, disclosed by one Party to the other Party in accordance with Section 11 (*Confidential Information*).

“Consents” means all such approvals, consents, authorizations, notifications, concessions, acknowledgements, licenses, permits, or similar items that is or are required to be, from time to time, obtained and/or maintained by the Fund Manager for the performance of the Services.

“Coordination and Collection Procedure” means: (a) coordination with the Employer and other Project Contractors; and (b) the procedure and protocols to be followed by the Fund Manager, in each case for Cash Collection during the Services Period as set out in Section 2 (*Collection of Cash from Bus Stations*) of **Schedule A (Scope of Work)**.

“Cost” means all expenditure reasonably and properly incurred (or to be incurred) by the Fund Manager for performing of the Services, including overhead and similar charges but does not include profit.

“CSCs” means the contactless smart cards.

“CPI” means the Consumer Price Index - General published by the Pakistan Bureau of Statistics.

“Currency Detector Machines” means the machines provided by the Fund Manager for installation at the TOMs and TVMs for detection of any counterfeit currency.

“Default Delay Period” means, in relation to the Mobilization Period, the days (or part thereof) that lapse between the Scheduled Commencement Date and the Commencement Date.

“Delay Liquidated Damages” means the delay liquidated damages payable by the Fund Manager for delay in the achievement of the Commencement Date by the Scheduled Commencement Date, in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*).

“Delay Liquidated Damages Cap” means an amount equivalent to ten percent (10%) of the annual Service Fee.

“Designated Branch” means the corporate branch of the Fund Manager, located at the *[insert branch details]*, Pakistan.

“Dispute” has the meaning given to that term in Section 19.1 (*Notice of Dispute*).

“Effective Date” means the date of signing of this Agreement.

“Employer” means the entity identified as “Employer” in the preamble and its legal successors and permitted assigns.

“Employer Authority Matters” has the meaning given to that term in Section 2.10 (*Employer Authority Matters*).

“Employer’s Instruction” has the meaning given to the term in Section 3.3 (*Employer’s Instructions*).

“Employer’s Representative” has the meaning given to that term in Section 3.2 (*Employer’s Representative*).

“Encumbrance” means any charge, pledge, hypothecation, lien, mortgage, assignment, right of set-off, option, contractual restrictions (such as negative covenants having the effect of creating or acknowledging security interests in favour of creditors) or other encumbrance or security arrangement or interest of any kind securing any obligation or any type of preferential arrangement (including conditional sale, title transfer and retention arrangements) having similar effect.

“Face Value” means the amount (at any time) available for drawing / encashment under the Performance Security.

“Facilities” means the Project facilities comprising of the BRT Corridor, Bus Stations, the Operations Control Centre and all associated equipment and installations.

“Facilities Manager” means the Project Contractor engaged by the Employer for, *inter alia*,: (a) Fare Revenue collection from Users at the Bus Stations; and (b) operations and maintenance of the Facilities.

“Fare Revenue” means revenue generated from charges paid by the Users either in cash or electronically at such fare slabs as are notified by the competent authority from time to time.

“Force Majeure Event” has the meaning given to that term in Section 16 (*Force Majeure*).

“Fund Manager” means the entity/entities identified as “Fund Manager” in the preamble and its legal successors and permitted assigns.

“Fund Manager’s Approval Request” has the meaning given to the term in Section 2.10.2.

“Fund Manager’s Representative” has the meaning given to that term in Section 2.4.1.

“FM Machines” means collectively the Currency Detector Machines and Point of Sales (POS) Card Machines.

“GL Fund Management Agreement” means the fund management agreement entered into by the Employer and the Fund Manager with respect to the Green Line Project.

“GOP” means the Government of Pakistan.

“Green Line Project” means the 21 km BRTS Green Line from Surjani (Abdullah Mor) to Municipal Park.

“Implementation Plan” has the meaning given to that term in Section 2.3.1.

“Independent Expert(s)” means the independent third-party engineers, transport expert and/or third-party financial advisors appointed by the Employer for, *inter alia*, supervision, verification, approval and certification functions of the Employer under this Agreement.

“Indexation Mechanism” means the adjustments to the Service Fee as set out in Schedule B (*Payment Schedule*).

“Interest Rate” means the interest rate as calculated and adjusted in accordance with Schedule C (*Interest Rate*).

“IITS System” means the integrated intelligent transport system for the Project.

“IITS Integration Instructions” means the instructions for integration with the IITS System as set out in Schedule A (*Scope of Work*).

“Key Performance Indicators” means the key performance indicators to be complied with and fulfilled by the Fund Manager during the Services Period as set out in **Exhibit II (Key Performance Indicators)** of Schedule A (*Scope of Work*).

“Laws” means (as may be applicable to either of the Parties) the federal, provincial and local laws of Pakistan, and all orders, rules, regulations, executive orders, statutory regulatory orders, decrees, judicial decisions, notifications, or other similar directives issued by any competent entity that in each case have the effect of law and are enforceable under law, as may be in force and effect during the Term and as may be amended, re-promulgated, substituted or replaced from time to time.

“Liquidated Damages” means collectively, the Delay Liquidated Damages and the Performance Liquidated Damages.

“Long Stop Date” means date falling six (6) months following the Effective Date, as maybe extended with mutual consent of the Parties in terms of Section 4.1.3.

“Loss” means any loss, claim, demand, damage, liability, judgment, payment or obligation, all costs and expenses (including without limitation reasonable legal fees) related thereto and amounts in settlement in lieu thereof.

“Maintain” or “Maintenance” means together the Planned Maintenance and the Unplanned Maintenance of the FM Machines as set out in **Schedule D (Maintenance of FM Machines)**.

“Minimum Cash Balance” means the minimum cash balance required to be maintained at each Bus Station for making change payments to Users as set out in **Exhibit I (Minimum Cash Balance and Cash Pick Up Timings) of Schedule A (Scope of Work)** subject to upward or downward revision on mutual agreement between the Parties in consultation with the Facilities Manager.

“Minimum Cash Balance Procedure” means: (a) coordination with the Employer and other Project Contractors; and (b) the procedure and protocols to be followed by the Fund Manager, in each case for making available the Minimum Cash Balance at the Bus Stations during the Services Period as set out in Section 3 (*Availability of Minimum Cash Balance*) of **Schedule A (Scope of Work)**.

“Minimum Credit Rating” means, with respect to a person or the instruments issued by such person:

- (a) in relation to such a person, that is rated AA+ or higher by PACRA or AA+ or higher by VIS; and
- (b) in relation to such an instrument, that it is rated AA+ or higher by PACRA or AA+ or higher by VIS,

provided that where a person or any instruments is rated by more than one of PACRA or VIS, as applicable, then the lowest rating will apply for determining whether the person or instrument has a Minimum Credit Rating.

“Mobilization Period” means the period commencing from issuance of the Notice to Proceed and, unless terminated earlier in accordance with Section 9 (*Default and Termination*), continuing until the Commencement Date is achieved.

“Mobilization Period Requirements” has the meaning given to the term in Section 4.2.2.

“Month” means a calendar month during the Services Period according to the Gregorian calendar beginning at 12:00 midnight on the last day of the preceding month and ending at 12:00 midnight on the last day of that month.

“Monthly Invoice” has the meaning given to that term in Section 5.1.3.

“Monthly Payable Amount” has the meaning given to that term in Section 5.1.5.

“Monthly Payment Date” has the meaning given to that term in Section 5.1.6.

“Non-Compliance” has the meaning given to that term in Section 2.16.1.

“Notified, Notice” and its grammatical variations shall mean as notified in writing.

“Notice to Proceed” means the notice to commence the Mobilization Period Requirements, to be issued by the Employer to the Fund Manager in accordance with this Agreement.

“O&M Manuals” mean the manuals for the operations and Maintenance of the FM Machines as supplemented and amended from time to time and as updated by the Fund Manager in accordance with this Agreement.

“Operating Committee” means the operating committee established or to be established by the Employer for co-ordination of the respective programmes and procedures of the Project Contractors (including the Fund Manager) for the operation and maintenance of the Project.

“Operations Control Centre” means the operations control centre for the Project used for, *inter alia*, the monitoring, coordinating and managing the overall operations of the Project.

“Order of Precedence” has the meaning given to that term in Section 3.6 (*Order of Precedence*).

“Overdraft Amount” has the meaning given to that term in Section 6.4.4.

“Overdraft Payment Date” has the meaning given to that term in Section 6.4.5.

“Pakistani Rupees” or “PKR” means the lawful currency of Islamic Republic of Pakistan.

“Party” means Employer or Fund Manager individually and **“Parties”** means Employer and Fund Manager collectively.

“PC Payment Amount” has the meaning given to that term in Section 6.4.2.

“PC Payment Date” has the meaning given to that term in Section 6.4.2.

“Performance End Date” means, unless terminated earlier in accordance with Section 9 (*Default and Termination*) the date of expiration of this Agreement which shall be:

- (a) the tenth (10) anniversary of the Commencement Date; and
- (b) the date the Employer has issued the Release Certificate.

“Personnel” means those employees (including other security staff) of the Fund Manager hired for the performance of the Services.

“Performance Liquidated Damages” means the liquidated damages payable by the Fund Manager during the Services Period for any Non-Compliance, in accordance with Section 2.16 (*Performance Liquidated Damages*) and **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)**.

“Performance Liquidated Damages Cap” means an amount equivalent to ten percent (10%) of the annual Service Fee.

“Performance Security” means an irrevocable, unconditional and on-demand bank guarantee, denominated and payable in PKR, having a Minimum Credit Rating at all times equivalent to the Performance Security Amount in an amount set out in Section 7.2 (*Performance Security*), issued by a bank, having a Minimum Credit Rating at all times, in each case acceptable to the Employer, in the form set out in **Schedule E (Form of Performance Security)**.

“Performance Security Amount” means an amount as calculated and adjusted in accordance with **Schedule K (Performance Security Amount)**.

“Performance Security Expiry Date” has the meaning set out in Section 7.2.2.

“Planned Maintenance” means those tasks identified as routine services, scheduled services and wear and tear replacements as further detailed in **Schedule D (Maintenance of FM Machines)**.

“Point of Sales (POS) Card Machines” means the machines provided by the Fund Manager for installation at the TOMs and TVMs for purchase of tickets or reloading of CSCs through electronic cards by Users.

“Project” means the 8 km BRTS Orange Line from Town Municipal Administration Office (Orangi) to Board Office with approximately four (4) stations with an average distance of approximately one thousand (1000) meters between stations.

“Project Contractors” means the various contractors (other than the Fund Manager) appointed by the Employer in connection with the Project.

“Project Insurance Policies” means the policies of insurance and any exhibits thereto required to be maintained by the Fund Manager.

“Prudent Industry Practices” means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used in the country by experienced firms performing services on projects of similar type, size, complexity and location which, in the exercise of reasonable judgment and in the light of the facts known at the time the decision was made, are considered good, safe and prudent practice, and as are in accordance with generally accepted national standards of professional care, skill, diligence and competence applicable to the Services.

“Release Certificate” means the certificate to be issued under Section 8 (*Application for Release Certificate*) in the form attached hereto as **Schedule G (Release Certificate)**.

“Relevant Documents” has the meaning set out in Section 15.2.1.

“Scheduled Commencement Date” means the date falling sixty (60) days from the Notice to Proceed (unless extended by the Employer from time to time pursuant to Section 4.2.1).

“Service Fee” means the fee payable for each Month during the Services Period, by the Employer to the Fund Manager in accordance with Section 5 (*Price and Payment Terms*) and **Schedule B (Payment Schedule)**.

“Services” means the: (a) integration with the IITS System for digital payments; (b) providing the FM Machines and carrying out Maintenance of the FM Machines; (c) Cash Collection from TOMs and TVMs and deposit into the Collection Account; (d) providing the Minimum Cash Balance at the Bus Stations; and (e) making payments to Project Contractors on the Employer’s Instructions in accordance with Section 6.4 (*Payments to Project Contractors*); each (a)-(e) as detailed in **Schedule A (Scope of Work)** to be carried out by the Fund Manager.

“Services Period” means the period commencing on the Commencement Date and ending on the Performance End Date.

“Service Records” has the meaning set out in Section 2.11.1.

“Service Year” means each period of twelve (12) consecutive months, the first such period commencing on the Commencement Date and thereafter commencing on each anniversary of the Commencement Date.

“Sub-Contractor” means any person named in this Agreement as a sub-contractor and identified in the list set forth in **Schedule H (List of Sub-Contractors)**, or any person appointed as a sub-contractor by the Fund Manager for undertaking any part of the Services (subject to Section 13.3 (*Subcontracting*)) and the legal successors in title to each sub-contractor.

“Successor Fund Manager” has the meaning given to that term in Section 9.7.1.

“Taxes” means the sales tax on services that may be applicable on the Fund Manager (including its Sub-Contractors or its Personnel) or to the Services and deemed to be included in the Service Fee.

“Term” has the meaning given to that term in Section 4.1.1.

“Term Expiry Criteria” means the term expiry criteria as set out in **Schedule F (Term Expiry Criteria)**.

“TOM” means the ticket office machine installed by the Fund Manager at the Bus Stations and operated manually by staff of the Facilities Manager for purchasing of tickets and reloading of CSCs by Users.

“Training Programme” means the training programme (as approved by the Employer in accordance with Section 2.13 (*Training*)) to be conducted by the Fund Manager for using the FM Machines and on techniques to detect counterfeit currency as more specifically described in the **Schedule A (Scope of Work)**.

“Transferee” has the meaning given to that term in Section 13.2.1.

“Transferor” has the meaning given to that term in Section 13.2.1.

“Transition Period” has the meaning given to that term in Section 9.7.1.

“TVM” means the stationery ticket vending machines to be installed at the Bus Stations by the Fund Manager for purchasing of tickets and reloading of CSCs by Users.

“Users” means the passengers that access the Bus Stations and travel on the Buses being operated on the BRT Corridor.

“Unplanned Maintenance” means all maintenance and services other than Planned Maintenance, to ensure that the FM Machines are managed, operated and maintained to meet the Applicable Standards.

1.2. INTERPRETATION

In this Agreement:

- (a) words indicating one gender include all genders;

- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) references to Sections, Exhibits, Schedules and Annexes are, unless the context otherwise requires, references to Sections, Exhibits, Schedules or Annexes to this Agreement;
- (f) a reference to any legislation or legislative provision includes any statutory modification, amendment, or re-enactment of or legislative provision substituted for, and any subordinate legislation under that legislation or legislative provision;
- (g) unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- (h) except as provided in Section 11 (*Confidential Information*), nothing shall be construed or interpreted as limiting, diminishing or prejudicing in any way the rights of the Employer to claim any benefit provided under applicable Laws (whether in effect now or in the future);
- (i) headings shall not be taken into consideration in the interpretation of this Agreement;
- (j) the words “including”, “includes” and any variants of those words will be read as if followed by the words “without limitation”;
- (k) any reference to a party includes its respective successors in interest and permitted assigns, from time to time;
- (l) unless otherwise specifically provided in this Agreement, a reference to an agreement shall be a reference to that agreement as amended, re-stated, supplemented, modified or novated from time to time; and
- (m) a reference to business day(s) hereunder will be construed as a reference to a day on which banks are legally permitted to be open for business in Pakistan.

2. FUND MANAGER'S GENERAL RESPONSIBILITIES

2.1. THIS AGREEMENT

2.1.1. In consideration of the Service Fee payable to the Fund Manager by the Employer, the Fund Manager hereby agrees to execute the Services, in accordance with and subject to the terms of this Agreement.

2.2. EXECUTION OF SERVICES

2.2.1. The Fund Manager shall:

- (a) continuously, diligently perform and execute the Services as per the Applicable Standards, any Employer's Instructions and other manuals, policies, procedures and plans to be established pursuant to this Agreement; and
- (b) ensure that the Services are executed with due skill and care, in a proper, workmanlike manner with properly equipped facilities in accordance with recognized good practice and Applicable Standards.

2.2.2. No review, non-objection, or approval by the Employer of any agreement, document, instrument or plan proposed by the Fund Manager shall relieve the Fund Manager from any liability that it would otherwise have had for its negligence or default in the preparation of such agreement, document, instrument or plan or failure to comply with Applicable Standards or to satisfy the Fund Manager's obligations under this Agreement. The Employer is not liable to the Fund Manager or any other person by reason of its review, non-objection, or approval of any agreement, document, instrument or plan.

2.2.3. If the Fund Manager becomes aware of a conflict between the Applicable Standards and other requirements set out in Section 2.2.1 or elsewhere in this Agreement, then the Fund Manager shall promptly notify the Employer and the Parties shall discuss in good faith and agree the manner in which the Fund Manager should execute the Services, provided that the Employer shall not be entitled to require the Fund Manager to act in breach of any applicable Laws.

2.2.4. The Fund Manager hereby agrees to indemnify, defend and hold the Employer harmless from any and all liabilities, damages, costs, penalties, fines, expenses, fees and charges of any nature associated with any non-compliance and violations by the Fund Manager of this Section 2.2 (*Execution of Services*).

2.3. IMPLEMENTATION PLAN

2.3.1. The Fund Manager shall prepare and submit to the Employer a detailed proposed implementation plan for execution of Services in respect of the BRT Corridor within five (5) days of the Notice to Proceed (the "**Implementation Plan**"). The Fund Manager shall ensure that its proposed Implementation Plan: (a) is consistent with the requirements of the Applicable Standards; and (b) accounts for coordination and the activities, operations and works of other Project Contractors in setting timelines for

performance of the Services so as not to unreasonably interfere with, disrupt or delay the Project Contractor works, Project operations or the Services. Each Implementation Plan shall show all relevant information in relation to the anticipated performance of the Services.

2.3.2. The Employer shall Notify the Fund Manager, within ten (10) days of its receipt of the proposed Implementation Plan, whether it: (a) accepts such Implementation Plan; or (b) shall propose amendments to the same. In the event the Employer proposes amendments to the proposed Implementation Plan, the Parties shall meet (within three (3) days of the Employer's proposal of such amendments) to discuss such amendments and to mutually agree on the same.

2.3.3. The Implementation Plan:

- (a) submitted by the Fund Manager to the Employer and approved by the Employer in terms of Section 2.3.2(a) without any amendments; or
- (b) submitted by the Fund Manager to the Employer, as amended by the amendments proposed by the Employer that are mutually agreed between the Parties in accordance with Section 2.3.2;

shall be strictly complied with by the Fund Manager for execution of the Services and the Fund Manager shall commence and proceed with the implementation of the Implementation Plan in accordance therewith.

2.3.4. Any alteration to the Implementation Plan shall only be made by the Fund Manager with the prior written approval to the Employer.

2.4. FUND MANAGER'S REPRESENTATIVE

2.4.1. As part of the Fund Manager's management of performance of this Agreement, during the Term, the Fund Manager shall designate one or more individual(s), each of whom shall function as the Fund Manager's single point of contact (the "**Fund Manager's Representative**"). The Fund Manager's Representative shall serve as a contact point to the Employer for matters pertaining to this Agreement. The Fund Manager may also utilize other Personnel and performance support methods in connection with performance of this Agreement.

2.4.2. The Fund Manager's Representative may change from time to time during the Term of this Agreement, provided that the Fund Manager shall have an individual at all times serving such a role regardless of the specific individual or job title used. The Fund Manager shall not replace Fund Manager's Representative without prior intimation to the Employer provided that prior to replacement of the outgoing Fund Manager's Representative, the Parties shall meet to address and minute any matters relating to the outgoing Fund Manager's Representative's activities in the Project.

2.4.3. The Fund Manager's Representative shall be an experienced and capable person and a full-time employee of the Fund Manager dedicated to directing the execution of the Services and shall be available at all times.

2.4.4. The Fund Manager shall be fully and solely responsible to the Employer for any act, omission or error of the Fund Manager's Representative and other Personnel as if they were an act, error or omission of the Fund Manager. The Fund Manager shall ensure that the Fund Manager's Representative provides copies to the Fund Manager of all communications given or received by it in accordance with this Agreement.

2.5. OPERATING COMMITTEE

2.5.1. The Fund Manager's Representative shall serve as a member of the Operating Committee and the Fund Manager shall ensure that the Fund Manager's Representative fulfils his role as member of the Operating Committee fully and in good faith.

2.5.2. The Operating Committee shall have no power or authority to amend or modify the provisions of this Agreement or to determine the rights or obligations of the Fund Manager under this Agreement.

2.6. PERSONNEL REQUIREMENTS

2.6.1. The Fund Manager shall ensure that adequate Personnel are available during the Term for the execution of the Mobilization Period Requirements and the Services.

2.6.2. The Fund Manager shall be responsible for its Personnel's health and safety requirements for the Services performed by Fund Manager under this Agreement and shall ensure observance of requirements under the Applicable Standards.

2.7. CONSENTS

2.7.1. During the Term, the Fund Manager will obtain and maintain, at its own cost and expense, all Consents required to be obtained and maintained with respect to the Services. The Fund Manager will obtain all Consents within a reasonable time taking into account the Applicable Standards and timelines for performance of its obligations under this Agreement and shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so.

2.7.2. The Fund Manager shall provide to the Employer a list of all Consents, clearly designating the issuing agency and dates of issuance and expiration of all Consents, a copy of all permits, licenses, and approvals already issued and maintained by the Fund Manager and the Fund Manager's schedule for obtaining or renewing all Consents.

2.8. INTEGRATION WITH IITS SYSTEM

2.8.1. Within sixty (60) days from the Notice to Proceed, the Fund Manager shall integrate its systems with the IITS System in accordance with the IITS Integration Instructions to

permit collection of Fare Revenues from Users through means of Automated Fare Collection.

2.9. FM MACHINES

2.9.1. Within sixty (60) days from the Notice to Proceed, the Fund Manager shall provide the FM Machines (along with the O&M Manuals) and comply with any Employer's Instructions for: (a) integration of the FM Machines with the IITS System; (b) coordinate with any other Project Contractor for integration of the FM Machines in the Project operations as may be required by the Employer; and (c) Maintain the FM Machines during the Services Period.

2.9.2. The Fund Manager shall retain title to all FM Machines provided in accordance with Section 2.9.1 and shall be responsible for: (a) all costs associated with the repair, replacement, Maintenance thereof; (b) for risk of Loss; and (c) any insurance costs for such FM Machines.

2.10. EMPLOYER AUTHORITY MATTERS

2.10.1. The Fund Manager shall be required to obtain written approval of the Employer prior to taking any action in relation to the following matters (the "**Employer Authority Matters**"):

- (a) any alteration to the Implementation Plan under Section 2.3.4;
- (b) approve the Fund Managers' Representative in accordance with Section 2.4 (*Fund Manager's Representative*); and
- (c) assignment of any rights and obligations under this Agreement, including subcontracting of the Services under Section 13.3 (*Subcontracting*).

2.10.2. Within fifteen (15) days of receipt, the Employer shall consider the Fund Manager's request for the Employer's written approval in relation to any of the Employer's Authority Matters ("**Fund Manager's Approval Request**") and shall either:

- (a) approve the Fund Managers Approval Request; or
- (b) reject the Fund Managers Approval Request and convey their comments/observations (if any) to the Fund Manager.

The Fund Manager shall (at its own cost and expense) re-submit the revised Fund Managers Approval Request no later than ten (10) days from receipt of the rejection and/or comments/observations under Section 2.10.2(b) above, and the approval process under this Section 2.10.2 shall be repeated.

2.11. SERVICE RECORDS

- 2.11.1. The Fund Manager shall maintain full, complete and accurate records concerning the performance of all Services (“**Service Records**”). Upon request of the Employer, the Fund Manager shall provide the Employer and/or the Employer’s Representatives with access to review on twenty-four (24) hours’ prior notice and/or a copy of such records promptly and no later than two (2) business days.

2.12. INSPECTION

During the Services Period, the Fund Manager hereby gives the Employer and the Employer’s Representative, full opportunity and access to inspect and examine the books, records, management system including inspection of the Services being provided by the Fund Manager. Inspection will be carried out by the Employer and/or the Employer’s Representative, as and when deemed necessary by the Employer during the Services Period.

2.13. TRAINING

- 2.13.1. The Fund Manager shall within two (2) days following issuance of the Notice to Proceed submit its proposed training programme to the Employer for approval.
- 2.13.2. Within three (3) days of receipt, the Employer shall review the proposed training programme and shall either:
- (a) approve the proposed training programme (the “**Training Programme**”); or
 - (b) reject the proposed training programme and convey its comments/observations (if any) to the Fund Manager.
- 2.13.3. In the event no approval or objections to the proposed training programme is provided in accordance with Section 2.13.2(b), the proposed training programme shall be deemed to be approved by the Employer.
- 2.13.4. The Fund Manager shall promptly (at its own cost and expense) re-submit the revised training programme, no later than three (3) days from receipt of the aforesaid observations under Section 2.13.2(b), and the approval process under this Section 2.13 (*Training Programme*) shall be repeated.
- 2.13.5. The Fund Manager shall carry out training in accordance with the Training Programme approved under this Section 2.13 (*Training Programme*). Training is to be provided as part of the Services under this Agreement and the Fund Manager’s obligations shall not be considered completed for the purposes of issuance of the Release Certificate until this training has been completed.

2.13.6. Training shall be conducted initially as a Mobilization Period Requirement and, thereafter, periodically as per the Training Programme including upon upgrading and/or changing of the FM Machines.

2.13.7. The Employer shall Notify the Fund Manager of the Employer's personnel and other Project Contractors that are required to be trained during the Mobilization Period and thereafter periodically as per the Training Programme.

2.14. NOT USED

2.15. KEY PERFORMANCE INDICATORS

2.15.1. The Fund Manager shall comply with the Key Performance Indicators during the Services Period.

2.15.2. The Key Performance Indicators may be revised, if required by the Employer, with the consent of the Fund Manager.

2.15.3. The performance by Fund Manager of its obligations under the Agreement, including compliance with Key Performance Indicators, will be monitored, measured and evaluated by the Employer and the Independent Expert. Any discrepancies or non-compliances identified by the Employer and/ or the Independent Expert, if any, will be reported to the Fund Manager for corrective action in accordance with Section 2.15.4.

2.15.4. In the event of any discrepancy or non-compliance with respect to the Key Performance Indicators, the Fund Manager will be required within five (5) days or such additional time period as Notified by the Employer, or immediately in case of matters identified as urgent by the Employer and/or the Independent Expert, to provide assurance, to the satisfaction of the Employer and the Independent Expert, that the Fund Manager: (a) is acting in compliance with the Key Performance Indicators (along with supporting evidence); or (b) shall take all necessary actions to cure any discrepancy or non-compliance with Key Performance Indicators, to mitigate and prevent similar discrepancies or non-compliances arising in the future and at all times be compliant with the Key Performance Indicators.

2.15.5. Any corrective measures taken by the management of the Fund Manager in accordance with Section 2.15.4 will be immediately reported to the Employer and its Independent Expert. Thereafter, the Employer and/or the Independent Expert may in accordance with Section 2.15.4 undertake an audit to evaluate and report on status of achievement of Key Performance Indicators.

2.16. PERFORMANCE LIQUIDATED DAMAGES

2.16.1. If the Fund Manager fails to comply with the Key Performance Indicators (each a “**Non-Compliance**”) the Employer may in its sole discretion deduct as Performance Liquidated Damages and not as a penalty an amount described and calculated in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** from the

Monthly Invoices for each Month during a Service Year in which that Non-Compliance has occurred or continued for one or more days up to the Performance Liquidated Damages Cap.

- 2.16.2. In the event that the Performance Liquidated Damages (by way of calculation) exceed the Performance Liquidated Damages Cap, the Employer shall have the option (to be exercised at its sole and absolute discretion) to terminate this Agreement in accordance with Section 9 (*Default and Termination*) and pursue its remedies set out therein and/or encash the Performance Security.
- 2.16.3. The Performance Liquidated Damages specified in Section 2.16.1 have been calculated by the Parties as representing the actual daily loss to the Employer as a result of any Non-Compliance and are not a penalty. Given the nature of the Services to be performed by the Fund Manager, it is entirely possible to calculate the actual loss suffered by the Employer and the stated Performance Liquidated Damages in Section 2.16.1 and **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** reflect such calculation. The Fund Manager waives, to the extent permitted by any applicable law, any defence as to the validity and quantum of any Performance Liquidated Damages in this Agreement on the grounds that such Performance Liquidated Damages are not calculated on the actual loss suffered by the Employer or are void as penalties or otherwise.

2.17. OPENING OF THE COLLECTION ACCOUNT

- 2.17.1. The Fund Manager shall establish and maintain the Collection Account at the Designated Branch for the Services Period.
- 2.17.2. The authorised signatories for the Collection Account (including any change thereof from time to time) shall be Notified by the Employer to the Fund Manager.
- 2.17.3. The Collection Account shall bear interest/profit/mark-up in the currency in which the account is denominated at the Interest Rate and such interest/profit/mark-up shall be credited to the Collection Account on the dates and times as maybe agreed from time to time between the Fund Manager and the Employer.
- 2.17.4. The Fund Manager shall not create any Encumbrance on the Collection Account (other than as expressly permitted by the Employer).

3. EMPLOYER GENERAL RESPONSIBILITIES

3.1. GENERAL

- 3.1.1. The Employer shall:
- (a) fulfil responsibilities and obligations (including approval of plans and programmes submitted for review and approval) under this Agreement in the manner and at the time necessary to meet Fund Manager's schedule and the requirements of this Agreement.

- (b) provide reasonable assistance to the Fund Manager in obtaining any relevant Consents that are required to be obtained in the Fund Manager's name within Pakistan.

3.2. EMPLOYER'S REPRESENTATIVE

- 3.2.1. As part of the Employer's management of performance of this Agreement, during the Term, the Employer shall designate for this Agreement one or more individual(s), each of whom shall function as the Employer's single point of contact (the "**Employer's Representative**"). The Employer's Representative shall serve as a contact point for the Fund Manager for matters pertaining to this Agreement.
- 3.2.2. The Employer may also utilize other Employer personnel and performance support methods in connection with performance of this Agreement including with respect to any approval functions of the Employer under this Agreement and for such purposes the Employer personnel shall be deemed to be acting as an Employer's Representative.
- 3.2.3. The Employer's Representative may change from time to time during the Term of this Agreement, provided that the Employer shall have an individual at all times serving such a role regardless of the specific individual or job title used and provided further that the Employer shall provide prior written notice of any such changes.
- 3.2.4. The Employer may involve the Independent Expert(s) engaged by the Employer in respect of the Project. The Independent Expert(s) shall be empowered by the Employer to:
 - (a) carry out any approval functions of the Employer under this Agreement; and
 - (b) validate any technical and financial matters as specified by the Employer, and for such purposes the Independent Expert(s) shall be deemed to be acting as an Employer's Representative.

Furthermore, for the purposes of Section 3.2.4 (a) and (b) above, the Independent Expert(s) shall have access to the Service Records and all related information, documentation etc, and its determinations shall be binding on the Fund Manager.

In the event any dispute arises between the Parties with regard to any advice, instruction, decision, direction and/or award of the Independent Expert, then such dispute shall be referred for dispute resolution in accordance with Section 19 (*Dispute Resolution*).

3.3. EMPLOYER'S INSTRUCTIONS

The Fund Manager shall comply with written instructions given by the Employer and/or the Employer's Representative, from time to time in relation to the execution of the Services including for payments to Project Contractors in accordance with Section 6.4 (*Payments to Project Contractors*) (the "**Employer's Instructions**"). The manner for implementation of the Employer's Instructions will be determined by the Fund Manager

following consultation with the Employer's Representative, provided at all times, the Applicable Standards are complied with.

3.4. EMPLOYER'S CLAIMS

- 3.4.1. Other than Liquidated Damages payable in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) and/or Section 2.16 (*Performance Liquidated Damages*), if the Employer considers itself to be entitled to any payment under this Agreement and/or the extension (if any) of the relevant performance deadline including under Section 16 (*Force Majeure*), the Employer shall give notice and particulars to the Fund Manager pursuant to this Section.
- 3.4.2. The notice shall be given as soon as practicable after the Employer becomes aware of the event or circumstances giving rise to the claim.
- 3.4.3. The particulars shall specify the Section or other basis of the claim and shall include substantiation of the amount and/or extension to which the Employer considers itself to be entitled in connection with the Agreement. The Employer shall then proceed to make a determination in accordance with Section 3.5 (*Determinations*) including of the amount (if any) which the Employer is entitled to be paid by the Fund Manager.

3.5. DETERMINATIONS

- 3.5.1. Whenever this Agreement provides that the Employer shall proceed in accordance with this Section 3.5 (*Determinations*) to agree or determine any matter, the Employer shall consult with the Fund Manager in an endeavour to reach agreement. If agreement is not achieved within a period of ten (10) days, the Employer shall make a fair determination in accordance with this Agreement, taking due regard of all relevant circumstances.
- 3.5.2. The Employer or the Employer's Representative shall give notice to the Fund Manager of each agreement or determination, with supporting particulars. If the Fund Manager disagrees with such determination, the Fund Manager shall give notice, to the Employer, of its dissatisfaction with a determination within fourteen (14) days of receiving it. Either Party may then refer the Dispute for dispute resolution in accordance with Section 19 (*Dispute Resolution*).

3.6. ORDER OF PRECEDENCE

The documents forming this Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity, discrepancy or inconsistency between the documents forming part of this Agreement, the following order of precedence shall apply (the "**Order of Precedence**"):

- (a) Any amendment or modification to this Agreement, made by both Parties after the Effective Date of this Agreement;
- (b) this Agreement (excluding the Schedule and Exhibits);

- (c) the Schedules (together with their Exhibits).

4. TERM, MOBILIZATION PERIOD AND COMMENCEMENT

4.1. EFFECTIVE DATE, NOTICE TO PROCEED AND TERM

- 4.1.1. This Agreement shall become effective on the Effective Date and unless terminated earlier in accordance with Section 9 (*Default and Termination*), shall end on the Performance End Date (the “**Term**”).
- 4.1.2. The Employer may issue the Notice to Proceed, in its sole and absolute discretion, at any time on or prior to the Long Stop Date.
- 4.1.3. The Long Stop Date may be extended from time to time with the mutual consent of the Parties.
- 4.1.4. If for reasons not attributable to the Fund Manager the Notice to Proceed is not issued within seven (7) days following the Long Stop Date, then either Party shall have the right to terminate this Agreement and neither Party shall be liable to the other in any respect (including in respect of Section 9 (*Default and Termination*)).
- 4.1.5. Unless otherwise set out in this Agreement, the Fund Manager’s obligation to execute the Services (other than the Mobilization Period Requirements) shall commence upon the Commencement Date.

4.2. MOBILIZATION PERIOD

- 4.2.1. The Employer may at any time in its sole discretion: (i) defer and/or waive any of the Mobilization Period Requirements; and/or (ii) extend the Scheduled Commencement Date, each (i) and (ii) in accordance with Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*).
- 4.2.2. During the Mobilization Period, the Fund Manager shall:
 - (a) submit the Implementation Plan under Section 2.3 (*Implementation Plan*) within five (5) days of the Notice to Proceed;
 - (b) submit the list of Consents under Section 2.7.2 within ten (10) days of the Notice to Proceed;
 - (c) complete integration with the IITS System in accordance with Section 2.8.1 within sixty (60) days from the Notice to Proceed;
 - (d) provide the FM Machines (along with the O&M Manuals) in accordance with Section 2.9.1 within sixty (60) days from the Notice to Proceed;

- (e) procure the approval of its Training Programme and carry out training in accordance with Section 2.13 (*Training Programme*) within twenty (20) days from the Notice to Proceed;
- (f) establish the Collection Account at the Designated Branch of the Fund Manager in accordance with Section 2.17.1 within thirty (30) days from the Notice to Proceed;
- (g) procure the Project Insurance Policies required to be procured and maintained by the Fund Manager in accordance with **Schedule I (Insurance)**;
- (h) arrange Minimum Cash Balance for change payments at every Bus Station in accordance with Section 6.2 (*Availability of Minimum Cash Balance*) no later than one (1) day prior to the Commencement Date; and
- (i) complete any other works and/or Services as required under **Schedule A (Scope of Work)**;

(requirements set out in (a) to (i) above shall collectively be referred to as the “**Mobilization Period Requirements**”).

4.2.3. Not Used.

4.3. COMMENCEMENT DATE

4.3.1. Subject to Section 4.2.1.; the Commencement Date shall be the actual date on which the Mobilization Period Requirements have been completed to the satisfaction of the Employer (the “**Commencement Date**”).

4.3.2. In the event the Commencement Date is not achieved by the Scheduled Commencement Date, the Employer shall have the right (to be exercised at its sole and absolute discretion) to: (i) impose Delay Liquidated Damages; and/or (ii) terminate this Agreement by issuance of a written termination notice to the Fund Manager and encash the Performance Security to its full value. For the avoidance of doubt, it is clarified that the provisions of this Section 4.3.2 shall not limit or prejudice in any manner the Parties’ right to terminate this Agreement in accordance with the provisions of Section 9 (*Default and Termination*).

4.4. WAIVER AND/OR DEFERRAL OF MOBILIZATION PERIOD REQUIREMENTS AND EXTENSION OF SCHEDULED COMMENCEMENT DATE

4.4.1. The Employer may (at its discretion) waive and/or defer any of the Mobilization Period Requirements, with such conditions as it may deem fit.

4.4.2. Not Used.

- 4.4.3. Any deferral and/or waiver of any Mobilization Period Requirements in terms of this Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*) shall be Notified to the Fund Manager.
- 4.4.4. Notwithstanding anything contained herein, the Scheduled Commencement Date may be extended from time to time by the Employer.
- 4.4.5. If the Fund Manager considers itself to be entitled to an extension of the Scheduled Commencement Date including under Section 16 (*Force Majeure*) and/or Section 17 (*Changes*), the Fund Manager shall give notice to the Employer describing the event or circumstance giving rise to such claim of extension. The Notice shall be given as soon as practicable, and not later than five (5) days after the Fund Manager became aware of the relevant event or circumstance. Such Notice shall make reference to the provision of this Agreement that stipulates the entitlement of the Fund Manager to claim for an extension of any timeline. When determining each extension of time, the Employer shall review previous determinations and make a determination in terms of Section 3.5 (*Determinations*) and may ask for such further information/documentation as the Employer may require to make such determination.

Provided, however that the Fund Manager shall not be entitled to any extension in the Scheduled Commencement Date in respect of any period where the Fund Manager would have nevertheless experienced delays in any case for reasons not attributable to the Employer including for any of the events occurring under Section 16 (*Force Majeure*) and/or Section 17 (*Changes*).

4.5. SERVICES PERIOD

- 4.5.1. During the Services Period, the Fund Manager shall execute the Services (other than those already performed during the Mobilization Period) and the Employer shall make payments of the Service Fee in accordance with Section 5 (*Price and Payment Terms*).

4.6. DELAY LIQUIDATED DAMAGES DURING MOBILIZATION PERIOD

- 4.6.1. If the Fund Manager fails to complete all the Mobilization Period Requirements (except as may be deferred and/or waived in accordance with Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*)) by the Scheduled Commencement Date, the Fund Manager shall pay Delay Liquidated Damages in the amounts specified in Section 4.6.2 to the Employer for the Default Delay Period in accordance with Section 5.7 (*Payment of Delay Liquidated Damages*).
- 4.6.2. For each day (or part thereof) of the Default Delay Period, the Fund Manager shall pay an amount equivalent to one point five percent (0.5%) of the Performance Security. The Employer shall not be restricted from invoicing for such claimable amounts after the Commencement Date.

- 4.6.3. The total amount due under this Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) shall not exceed the Delay Liquidated Damages Cap during the relevant Default Delay Period.
- 4.6.4. Subject to Section 4.4 (*Waiver and/or Deferral of Mobilization Period Requirements and Extension of Scheduled Commencement Date*), in the event the Commencement Date has not occurred within ninety (90) days after the expiry of the Scheduled Commencement Date, and such delay is due to events for which the Fund Manager is not entitled to any extension of time, or the Delay Liquidated Damages Cap (by way of calculation) has been exceeded, the Employer will have the right, *inter alia*, to terminate this Agreement.
- 4.6.5. The Delay Liquidated Damages specified in Section 4.6.2 have been calculated by the Parties as representing the actual daily loss to the Employer for the Default Delay Period and are not a penalty. Given the nature of the Mobilization Period Requirements to be performed by the Fund Manager, it is entirely possible to calculate the actual loss suffered by the Employer and the stated Delay Liquidated Damages in Section 4.6.2 reflect such calculation. The Fund Manager thus hereby waives, to the extent permitted by any applicable Law, any defence as to the validity and quantum of any Delay Liquidated Damages in this Agreement on the grounds that such Delay Liquidated Damages are not calculated on the actual loss suffered by the Employer or are void as penalties or otherwise.
- 4.6.6. These Delay Liquidated Damages shall be the only damages due from the Fund Manager for such default, other than in the event of termination under Section 9.2 (*Termination for Fund Manager's Default*). Any payment or claim for Delay Liquidated Damages shall not relieve the Fund Manager from its obligation to complete and fulfil the Mobilization Period Requirements, or from any other duties, obligations or responsibilities which it may have under this Agreement.

5. PRICE AND PAYMENT TERMS

5.1. PAYMENTS OF SERVICE FEE

- 5.1.1. In consideration of performance of Services by the Fund Manager, the Employer shall pay to the Fund Manager, each Month during the Services Period, the Service Fee.
- 5.1.2. The Service Fee includes, without limitation, any and all direct, indirect and ancillary charges and costs of whatever nature incurred by or imposed on the Fund Manager and/or any agent or Sub-Contractor in the performance of the Services, unless stated otherwise in this Agreement.
- 5.1.3. From Commencement Date, the Fund Manager shall submit the invoices (substantially in the form and substance attached hereto as **Schedule L (Form of Invoice)**) to the Employer on the first (1st) day of every month (for the previous month) ("**Monthly Invoice**") in respect of the Service Fee payable to the Fund Manager. Provided, however, that for the first Monthly Invoice issued by the Fund Manager, the payment shall be calculated for the period starting from the Commencement Date.

- 5.1.4. Payments by the Employer shall be subject to submission of a Monthly Invoice by the Fund Manager in terms of Section 5.1.3 along with a confirmation by the Fund Manager that the Performance Security is in place in terms of Section 7.2 (*Performance Security*).
- 5.1.5. Payments of the Service Fee due and payable by the Employer (and as claimed by the Fund Manager in the Monthly Invoice) shall be less: (a) any disputed amounts; (b) any deductions on account of tax (if any); (c) any Liquidated Damages or any other amounts due from the Fund Manager, which have not been fully recovered through encashment of the Performance Security (the “**Monthly Payable Amount**”).
- 5.1.6. No later than five (5) business days following the receipt of the Monthly Invoice (the “**Monthly Payment Date**”) the Employer shall issue an Employer’s Instruction to the Fund Manager to debit the Monthly Payable Amount from the Collection Account. In the event upon receiving an Employer’s Instruction, the account balance in the Collection Account is insufficient for making payment of the relevant Monthly Payment Amount, the Fund Manager shall Notify the Employer within one (1) hour of receiving the Employer’s Instruction. Thereafter, the Employer may elect to proceed in accordance with Section 6.4.4 (a) or (b) for payment of the Monthly Payment Amount to the Fund Manager.
- 5.1.7. Each payment being made by the Employer to the Fund Manager shall be subject to the continued validity of the Performance Security in terms of this Agreement.

5.2. CURRENCY OF PAYMENTS & SERVICE FEE ESCALATION

- 5.2.1. All due and payable amounts under this Agreement will be payable in Pakistani Rupees.
- 5.2.2. All payments of the Service Fee shall be adjusted in accordance with the Indexation Mechanism.

5.3. LATE PAYMENT CHARGE

- 5.3.1. Not Used.
- 5.3.2. The Fund Manager shall pay only simple interest on all amounts not paid by the relevant due date at a rate equal to the Karachi Inter-Bank Offered Rate (**KIBOR**) for the actual number of days (after relevant due date) which the relevant amount remains unpaid on the basis of a three hundred and sixty-five (365) day year.

5.4. DISPUTED INVOICES

- 5.4.1. If the Employer disputes the whole or any part of any Monthly Invoice or supporting evidence issued by the Fund Manager, it shall immediately notify the Fund Manager and the Fund Manager shall issue a credit note together with two invoices, one in respect of the disputed amount and the second in respect of the amount not disputed. All disputed amounts shall become due and payable following resolution of the dispute.

- 5.4.2. The Employer shall be liable to pay and issue an Employer's Instruction in respect of the invoiced amount which is not in dispute and shall be entitled to withhold payment of any amount which is in dispute pending resolution of the dispute.
- 5.4.3. The Employer and the Fund Manager shall use best efforts to resolve any dispute within ten (10) business days of the dispute arising.
- 5.4.4. If the Parties fail to resolve the dispute within such ten (10) business days, the matter shall be referred for dispute resolution in accordance with Section 19 (*Dispute Resolution*).
- 5.4.5. All payments under Section 5.1.1 shall be subject to scrutiny by the Employer and/or its Independent Expert and in case of any error, discrepancy or deficiency in the Monthly Invoices, the same will be Notified to the Fund Manager and thereafter be adjusted against the next Monthly Invoice.

5.5. TAXES

- 5.5.1. The Service Fee includes the Fund Manager's Taxes and the Fund Manager shall be responsible for any and all Fund Manager's Taxes.
- 5.5.2. After the Bid Submission Date, if there is any change (increase or decrease) in the Fund Manager's Taxes, other than a change in income tax /withholding income tax applicable on the Fund Manager (the "**Excluded Taxes**"), the same shall be dealt with in the following manner:
 - (a) if there is an increase in any applicable Fund Manager's Taxes (other than the Excluded Taxes) which are final and/or non-reimbursable and/or non-adjustable, the Fund Manager shall notify the Employer of such increase and provide evidence thereof along with the proposed increase in the Service Fee as a consequence thereof. Within fifteen (15) days of receiving the Fund Manager's notification, the Employer shall review the same and revise the Service Fee to the extent of the increase in Fund Manager's Taxes as per the applicable Law; and
 - (b) if there is a decrease in any applicable Fund Manager's Taxes (other than the Excluded Taxes) which are final and/or non-reimbursable and/or non-adjustable, the Fund Manager or the Employer shall notify the other Party of such decrease and provide evidence thereof along with the proposed decrease in the Service Fee as a consequence thereof. Within fifteen (15) days of receiving such notification, the notified Party shall review the same and revise the Service Fee to the extent of the decrease in Fund Manager's Taxes as per the applicable Law.
- 5.5.3. The Fund Manager shall at all times be required to seek and avail all exemptions or reduced rates of taxes, levies and duties, and the Employer shall also retain the right to require the Fund Manager to seek and avail all such available exemptions in the knowledge of the Employer from time to time. In the event of failure of the Fund Manager to avail any such benefit of exemption or reduction in taxes, levies and duties,

the Employer shall be entitled to adjust the Service Fee by taking into account that the Fund Manager has availed the aforesaid benefit.

- 5.5.4. The Fund Manager hereby agrees to indemnify, defend and hold the Employer harmless from any and all taxes, liabilities, damages, costs, penalties, fines, expenses, fees (including attorney's fees) and charges of any nature associated with any non-compliance and violations by the Fund Manager of this Section 5.6 (*Taxes and Duties*) including the consequences of any failure to pay the Fund Manager's Taxes as required by any applicable Laws, in relation to the Services.

5.6. PAYMENT OF DELAY LIQUIDATED DAMAGES

- 5.6.1. Any amounts payable as Delay Liquidated Damages in accordance with Section 4.6 (*Delay Liquidated Damages During Mobilization Period*) shall be paid within fourteen (14) days of receipt of an invoice for the same issued by the Employer failing which the Delay Liquidated Damages (along with late payment charge calculated as per Section 5.3.2) may be recovered by encashing the Performance Security.
- 5.6.2. Notwithstanding encashment of the Performance Security, the Fund Manager shall continue to be responsible for performance of the Services in accordance with this Agreement.
- 5.6.3. In case the Delay Liquidated Damages cannot be adjusted in terms of this Section 5.6 (*Payment of Delay Liquidated Damages*), the Fund Manager shall continue to be liable to pay such amounts.

5.7. PAYMENT OF PERFORMANCE LIQUIDATED DAMAGES

- 5.7.1. Any amounts payable as Performance Liquidated Damages under Section 2.16 (*Performance Liquidated Damages*) may be: (i) set-off and deducted from amounts payable by the Employer to the Fund Manager in accordance with Section 5 (*Price and Payment Terms*); or (b) recovered by encashing the Performance Security.
- 5.7.2. Notwithstanding encashment of the Performance Security or set-off and deduction of Liquidated Damages from amounts payable under Section 5 (*Price and Payment Terms*), the Fund Manager shall continue to be responsible for performance of the Services in accordance with this Agreement.
- 5.7.3. In case the Performance Liquidated Damages cannot be adjusted in terms of this Section 5.7 (*Payment of Performance Liquidated Damages*), the Fund Manager shall continue to be liable to pay such amounts within fourteen (14) days of receipt of an invoice for the same issued by the Employer.

6. PERFORMANCE OF SERVICES

6.1. CASH COLLECTION FROM BUS STATIONS

- 6.1.1. Cash Collection from the Bus Stations shall be carried out daily by the Fund Manager throughout the Services Period in accordance with the Coordination and Collection Procedure.
- 6.1.2. The Fund Manager shall be responsible for the safety and security of the Cash collected from the Bus Stations during transit in armoured vehicles as well as any Cash storage depots overnight prior to being deposited in the Collection Account.
- 6.1.3. The Fund Manager shall be responsible for any theft, loss, pilferage of Cash and shall be required to reimburse the Employer by depositing in the Collection Account an amount as determined by the Employer in accordance with Section 6.4 (*Audit*) where such theft, loss, pilferage of Cash occurs:
- (a) due to the failure and/or delay by the Fund Manager in Cash Collection in accordance with the timelines and procedures set out in the Coordination and Collection Procedure; and
 - (b) during the period when the Cash (following Cash Collection from Bus Stations) is in the custody of the Fund Manager.

6.2. AVAILABILITY OF MINIMUM CASH BALANCE

- 6.2.1. The Fund Manager shall arrange Minimum Cash Balance for change payments at every Bus Station at least one (1) day prior to the respective Commencement Date and thereafter, maintain the Minimum Cash Balance throughout the Services Period in accordance with the Minimum Cash Balance Procedure.
- 6.2.2. The Minimum Cash Balance shall be replenished by the Fund Manager:
- (a) daily after Bus Operations at the time of Cash Collection as per the Coordination and Collection Procedure; and
 - (b) during Bus Operations, if the Minimum Cash Balance for change payments is not sufficient as intimated by the Facilities Manager (with a copy of such Notice to the Employer).

6.3. REVENUE DEPOSITS

- 6.3.1. The Fund Manager shall:
- (a) deposit all Cash from Cash Collection for each day into the Collection Account no later than the following business day; and

- (b) ensure that all funds deposited electronically or physically in the Collection Account are reflected in the Employer's bank statements immediately and the Employer is Notified of the same.

6.4. PAYMENTS TO PROJECT CONTRACTORS

- 6.4.1. The Fund Manager shall upon receipt of an Employer's Instruction utilise funds standing credit to the Collection Account for making payment of the PC Payment Amount on the PC Payment Date to the relevant Project Contractor.
- 6.4.2. Each Employer's Instruction issued in this respect shall specify;
 - (a) the sum payable to the relevant Project Contractor ("**PC Payment Amount**");
 - (b) date and time ("**PC Payment Date**") for payment of the PC Payment Amount to the relevant Project Contractor;
 - (c) mode of payment i.e., by way of bank transfer of bank cheque; and
 - (d) any other information reasonably required by the Fund Manager to effect such payment to the Project Contractor.
- 6.4.3. Any delay, attributable to the Fund Manager, in processing and making timely payments to the relevant Project Contractors will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)**.
- 6.4.4. In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for making payment of the relevant PC Payment Amount, the Fund Manager shall Notify the Employer within one (1) hour of receiving the Employer's Instruction. Thereafter, the Employer may elect to:
 - (a) arrange and deposit additional funds in the Collection Account for making payments to the relevant Project Contractor;
 - (b) withdraw the Employer's Instruction; or
 - (c) request the Fund Manager to overdraft the Collection Account and make available the shortfall amount i.e., the difference in the amount required for the PC Payment Amount and the available balance in the Collection Account (the "**Overdraft Amount**").
- 6.4.5. In the event the Employer proceeds in accordance with Section 6.4.4(c), the Employer will be liable to pay within ninety (90) days the Overdraft Amount ("**Overdraft Payment Date**") in full alongwith interest on the Overdraft Amount at a rate mutually agreed between the Parties.

- 6.4.6. If the Employer does not repay the Overdraft Amount by the Overdraft Payment Date, the Fund Manager shall be entitled to utilise any funds available in the Collection Account to offset the Overdraft Amount.
- 6.4.7. In the event the Employer fails to repay the Overdraft Amount in accordance with Section 6.4.6, the Fund Manager may terminate this Agreement in terms of Section 9.1 (*Termination for Employer's Default*).

6.5. AUDIT

6.5.1. If there is any discrepancy with respect to the:

- (a) sums in the Collection Account collected by the Fund Manager through: (i) Cash Collection; and (ii) Automated Fare Collection system;
- (b) reported Fare Revenue collected through Cash and electronically as appearing on the automated report generated through the IITS System;

as determined by the Employer in accordance with Section 3.5 (*Determinations*), then the Fund Manager shall be liable to pay such amounts within fifteen (15) days of receipt of an invoice for the same issued by the Employer.

6.6. MONITORING

- 6.6.1. The Employer shall (through the Operations Control Centre) monitor and inspect (in accordance with Section 2.12 (*Inspection*)) the performance of the Services by the Fund Manager.
- 6.6.2. In the event any of the monitoring devices become non-responsive or non-functional due to any reason, keeping in view the public convenience, the Services shall not be suspended, provided, however, the Fund Manager shall remain liable to maintain Service Records in accordance with Section 2.11 (*Services Records*) and provide the same to the Employer upon request.
- 6.6.3. The Fund Manager shall not tamper, and shall ensure that its representatives, agents, employees, Personnel, Sub-Contractors, vendors, suppliers engaged by the Fund Manager for the performance of Services or any part thereof do not tamper monitoring devices installed at the Facilities. In the event the Fund Manager breaches the foregoing covenant, the Fund Manager shall: (a) indemnify and hold the Employer harmless against any Loss and consequences of Employer's inability to monitor the Facilities including any consequent over payment of any sums to the Fund Manager and/or any other Project Contractor; and (b) take all remediable action reasonably acceptable to the Employer to ensure that such tampering does not reoccur, including the development or addition of security systems.

6.7. MAINTENANCE OF THE FM MACHINES

6.7.1. The Fund Manager shall ensure that: (a) the FM Machines are maintained at all times in a good, clean and orderly condition; and (b) all Planned Maintenance and Unplanned Maintenance is carried out in accordance with Applicable Standards.

6.8. PLANNED MAINTENANCE

6.8.1. The Fund Manager shall in planning and carrying out the Planned Maintenance, ensure that such Planned Maintenance:

- (a) is (to the extent possible) without any interruption in the execution of the Services or to the overall operations of the Project and in this respect the Fund Manager shall co-ordinate with other Project Contractors in accordance with Section 6.11 (*Co-Operation with Other Project Contractors*);
- (b) does not result in any Non-Compliance with the Key Performance Indicators.

6.8.2. All costs with respect to the Planned Maintenance shall be borne by the Fund Manager.

6.9. UNPLANNED MAINTENANCE

6.9.1. If, at any time during the Term, an Unplanned Maintenance is required on the FM Machines the Fund Manager shall immediately Notify the Employer specifying the reasons for such Unplanned Maintenance and time required to complete the Unplanned Maintenance.

6.9.2. Thereafter, the Employer shall at its sole discretion determine, following inspection (if necessary), whether the Unplanned Maintenance is due to:

- (a) the act, omission, wilful misconduct, negligence or breach under this Agreement of the Fund Manager; or
- (b) attributable to the Employer; or
- (c) where so alleged by the Fund Manager, attributable to any of the other Project Contractors.

6.9.3. If the Employer determines that the Unplanned Maintenance is attributable to:

- (a) the Fund Manager, then the Employer may, at its sole discretion (i) impose Performance Liquidated Damages under Section 2.16 (*Performance Liquidated Damages*); and/or (ii) terminate this Agreement in accordance with Section 9 (*Default and Termination*). If the Unplanned Maintenance is determined to be attributable to the Fund Manager, the Fund Manager shall bear the full Cost for the same; or

- (b) the Employer, then the Fund Manager shall be entitled to submit its claim for Costs and/or extensions in any timelines hereunder. The Employer shall then proceed in accordance with Section 3.5 (*Determinations*) to agree or determine any Costs (if any) which the Fund Manager is entitled to; or
- (c) any other Project Contractor, then the Fund Manager shall be entitled to submit its claim for Costs hereunder. The Employer shall then proceed in accordance with Section 3.5 (*Determinations*) to agree or determine any Costs (if any) which the Fund Manager is entitled to.

6.10. NOT USED.

6.11. CO-OPERATION WITH OTHER PROJECT CONTRACTORS

6.11.1. During the Term, the Fund Manager shall coordinate with other Project Contractors in connection with their activities related to the Project.

6.11.2. Not Used.

6.11.3. The Fund Manager shall be responsible for the following tasks in relation to coordination with Project Contractors:

- (a) provide information and assistance as such Project Contractors may reasonably request, including meeting with those Project Contractors (during meeting of the Operating Committee or otherwise) for the purpose of co-ordinating and clarifying any interfaces between the Services and the activities, operations and works of such Project Contractors;
- (b) using all reasonable endeavours in conjunction with the Employer and such Project Contractors to resolve any actual or potential difficulties relating to the performance of the Services arising out of the progress of the Project Contractor works; and
- (c) using reasonable endeavours to carry out the Services and cooperate with the Project Contractors so as not to unreasonably interfere with, disrupt or delay the Project Contractor works, Project operations or the Services.

6.11.4. If during the Term, for any reason attributable to the Fund Manager (as determined by the Employer):

- (a) there is an interruption in the Project operations as being carried out by the Employer or any other Project Contractor including where such interruption results in loss of Fare Revenue to the Employer including due to the suspension of Project operations; or
- (b) there is damage to the Facilities, Buses or property of any other Project Contractor;

then the Fund Manager shall indemnify, defend and hold the Employer harmless from any and all liabilities, claims, damages, costs, penalties, fines, expenses, fees and charges of any nature associated with and arising therefrom, and the Employer shall be entitled to make a claim under Section 3.4 (*Employer's Claims*).

6.12. SUSPENSION OF SERVICES BY THE EMPLOYER

- 6.12.1. The Fund Manager shall upon receipt of a notice from the Employer, suspend the Services or any part thereof for such time or times and in such manner as the Employer may consider necessary.
- 6.12.2. The Fund Manager shall recommence the Services upon receipt of written notice from the Employer, provided that, during any period of suspension, the Employer shall keep the Fund Manager advised as to the likelihood of its requiring the Fund Manager to recommence the Services and shall give the Fund Manager reasonable notice of commencement (taking into account the extent of mobilization likely to be required by the Fund Manager prior to commencement of Services).
- 6.12.3. During any period of suspension (except to the extent such suspension is caused by the act or omission of the Fund Manager) the Fund Manager shall be entitled to receive the Service Fee for the Month during which suspension occurs. The Employer waives any and all right or claim to Performance Liquidated Damages for Non-Compliance with any Key Performance Indicators during and as a result of any period of suspension (except to the extent such suspension is caused by the act or omission of the Fund Manager).

6.13. INSURANCES

- 6.13.1. The Fund Manager shall obtain and maintain during the Services Period the Project Insurance Policies set out in **Schedule I (*Insurance*)** in accordance with the requirements set out therein.

7. PERFORMANCE SECURITY

7.1. NOT USED.

7.2. PERFORMANCE SECURITY

- 7.2.1. Prior to the Effective Date, the Fund Manager has delivered to the Employer the Performance Security for proper performance by the Fund Manager of its obligations, in an amount equal to the Performance Security Amount for the first Service Year (as determined in accordance with **Schedule K (*Performance Security Amount*)**). The Performance Security shall be encashable in accordance with the terms thereof and shall be payable on the Employer's first written demand without any prior Notice, reference or recourse to the Fund Manager for encashment. The Fund Manager shall ensure that the Face Value of the Performance Security is adjusted either upwards or downwards to ensure that the Face Value of the Performance Security remains equivalent to: (i) the Performance Security Amount for the first Service Year (as determined in accordance with **Schedule K (*Performance Security Amount*)**) until the Commencement Date ; and

(ii) the Performance Security Amount (as determined in accordance with **Schedule K (Performance Security Amount)**) for the relevant Service Year from the Commencement Date till the Release Date. The Fund Manager shall replenish the Performance Security following any encashment during a Service Year to ensure that its Face Value, at all times, remains equivalent to the Performance Security Amount.

7.2.2. The first Performance Security shall be valid for twelve (12) months following its issuance (the “**Performance Security Expiry Date**”). Twenty-eight (28) days prior to each Performance Security Expiry Date, the Fund Manager shall extend the validity of each Performance Security for a further period of twelve (12) months or replace the Performance Security with a new Performance Security valid for a period of twelve (12) months, effective in each case upon expiry of the last Performance Security. The Performance Security to be established in the last Service Year shall be maintained until the date falling ten (10) days after the Employer’s issuance of the Release Certificate. Each Performance Security shall be valid and enforceable until its expiry.

7.2.3. In the event of failure by the Fund Manager to keep valid, extend the validity of or provide a new Performance Security in accordance with this Section 7.2 (*Performance Security*), the Employer shall have the right to encash the Performance Security to its full outstanding value, provided however, when the Employer has encashed the Performance Security in terms of this Section 7.2.3, the Employer shall Fund the encashed proceeds to the Fund Manager upon the Fund Manager establishing and furnishing to the Employer a new Performance Security in accordance with Section 7.2 (*Performance Security*).

7.2.4. The Employer may make a demand under the Performance Security in the event of:

- (a) failure by the Fund Manager to keep the Performance Security valid or extend the validity of the Performance Security as described in Section 7.2.3 above, in which event the Employer may claim the full amount of the Performance Security;
- (b) failure by the Fund Manager to pay the Employer an amount due including any Liquidated Damages or determined under Section 19 (*Dispute Resolution*), within fourteen (14) days after such agreement or determination;
- (c) material breach by the Fund Manager of any Fund Manager’s obligations under this Agreement;
- (d) circumstances which entitle the Employer to termination under Section 9.2 (*Termination for Fund Manager’s Default*), irrespective of whether Notice of termination has been given;
- (e) any claims that the Employer may have up to the Performance End Date;
- (f) Not Used.
- (g) any other event, circumstance or provision stated under this Agreement which entitles the Employer to make a demand under the Performance Security.

- 7.2.5. The Employer shall return the Performance Security to the Fund Manager within twenty-eight (28) days after the Performance End Date, provided that, no event is subsisting that entitles the Employer to make a demand under the Performance Security nor are there any outstanding claims by the Employer under the Performance Security.
- 7.2.6. Where, at any time subsequent to the issuance of the Performance Security, the Performance Security issuing bank (as specified in the definition of Performance Security above) or the Performance Security fails to meet the Minimum Credit Rating, then, upon the instructions of the Employer, the Fund Manager shall within ten (10) days of receipt of such instructions from the Employer, procure from a bank or financial institution, which meets the Minimum Credit Rating a substitute Performance Security for the amount prevailing as of that date. Upon receipt of such substitute Performance Security in the form and substance satisfactory to the Employer, the Employer shall return the earlier issued Performance Security to the Fund Manager.

8. APPLICATION FOR RELEASE CERTIFICATE

8.1. FULFILMENT OF TERM EXPIRY CRITERIA AND ISSUANCE OF RELEASE CERTIFICATE

- 8.1.1. The Fund Manager's obligations relating to the Services Period shall expire when:
- (a) the Fund Manager has fulfilled the Term Expiry Criteria; and
 - (b) the Release Certificate is issued by the Employer.
- 8.1.2. The Fund Manager shall notify the Employer, when each of the Term Expiry Criteria has been met and pursuant to such notification, shall apply to the Employer for issuance of the Release Certificate. Following the Employer's receipt of the Fund Manager's afore-stated notification, the Employer shall within thirty (30) days of receipt of the Fund Manager's afore-stated Notification, either:
- (a) upon verification of each of the Term Expiry Criteria having been met, issue the Release Certificate to the Fund Manager, provided that the Fund Manager has, in all material respects, met the Term Expiry Criteria; or
 - (b) reject the Fund Manager's application for issuance of the Release Certificate, giving reasons and specifying the work required to be done, or obligation required to be fulfilled, by the Fund Manager to enable the Release Certificate to be issued. The Fund Manager shall then complete this work or fulfil such obligation, at no cost to the Employer, before issuing a further notice under this Section.
- 8.1.3. In the event of the Employer's rejection of the Fund Manager's request for issuance of the Release Certificate in accordance with Section 8.1.2(b), the Fund Manager shall either:

- (a) accept the Employer's rejection for issuance of the Release Certificate, in which case the Fund Manager shall perform its relevant obligations under this Agreement so as to meet the Term Expiry Criteria and fulfil the outstanding Services and obligations as specified by the Employer, and the procedure set out in Section 8.1.2 shall be repeated; or
- (b) dispute the Employer's decision of the Term Expiry Criteria or any part thereof not being met, in which case such dispute shall be determined in accordance with Section 19 (*Dispute Resolution*). If following the resolution of the dispute in accordance with Section 19 (*Dispute Resolution*) it is determined that:
 - (i) the Term Expiry Criteria is not met, the Fund Manager shall perform its relevant obligations under this Agreement so as to meet the Term Expiry Criteria and the procedure set out in Section 8.1.2 and Section 8.1.3 shall be repeated; or
 - (ii) the Term Expiry Criteria is met, the Employer shall issue the Release Certificate within ten (10) business days of the resolution of the dispute in accordance with Section 19 (*Dispute Resolution*).

9. DEFAULT AND TERMINATION

9.1. TERMINATION FOR EMPLOYER'S DEFAULT

9.1.1. The Fund Manager may terminate this Agreement in the following circumstances by giving Notice of termination on expiry of the period specified in this Section 9.1.1 and its reason for termination:

- (a) if the Employer has failed to make due payments as per the terms of this Agreement excluding any: (i) disputed amounts; and (ii) deductions that the Employer is entitled to make under this Agreement, provided, however, the right to terminate for Employer's payment default only arises where: (A) the Fund Manager has complied with the requirements and the payment terms as prescribed under this Agreement; and (B) the due and payable sums remain unpaid for sixty (60) business days after receipt of Notice of non-payment by the Fund Manager to the Employer, which Notice will be a precondition for termination; and
- (b) if the Employer commits a material breach of this Agreement that has a material adverse effect on the Fund Manager's ability to perform its obligations under this Agreement and fails to remedy the same within sixty (60) days, after Notice from the Fund Manager to the Employer stating such material default or material breach.

9.2. TERMINATION FOR FUND MANAGER'S DEFAULT

9.2.1. The Employer may terminate this Agreement in the following circumstances by giving thirty (30) days' Notice of termination, or any other notice period specified otherwise in

this Section 9.2.1 or Notified by the Employer, to the Fund Manager and referring to this Section 9.2.1 and its reason for termination:

- (a) the Fund Manager subcontracts the Services (except as permitted hereunder) or assigns this Agreement without approval or consent of the Employer; or
- (b) the Fund Manager voluntarily abandons the Project or repudiates this Agreement or the Fund Manager loses the relevant approvals, licenses and permits, including the Consents, required to execute the Services and fails to remedy the same within thirty (30) days of occurrence; or
- (c) if the Fund Manager commits a material default or material breach of this Agreement and fails to remedy the same within thirty (30) days or such additional period as may be agreed by the Employer, after Notice from the Employer to the Fund Manager stating such material default or material breach; or
- (d) the Services provided by the Fund Manager fail to meet the Key Performance Indicators and / or the Applicable Standards; or
- (e) a final judgment against Fund Manager in excess of the equivalent of PKR 50,000,000/- (Pakistani Rupees Fifty Million only) remains unsatisfied for more than sixty (60) days (unless a bond is filed or other steps are taken to effectively stay enforcement of such judgment), or (ii) a levy is issued or attachment is made on all or any part of the Fund Manager and such levy or attachment is not discharged or the property is not redeemed within thirty (30) days after such levy or attachment; or
- (f) if the Commencement Date is not achieved within ninety (90) days from the expiry of the Scheduled Commencement Date;
- (g) if the Fund Manager fails to furnish, keep valid and maintain in full effect the Performance Security in accordance with this Agreement; or
- (h) the (a) Delay Liquidated Damages Cap; or (b) Performance Liquidated Damages Cap has been exceeded (by way of calculation).

9.2.2. The Employer may terminate this Agreement immediately by Notice to the Fund Manager and without any opportunity to cure if:

- (a) the Fund Manager becomes bankrupt or insolvent, or has a receiving order issued against it, or compounds with its creditors, or, being a corporation, a resolution is passed or order is made for its winding up (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or a receiver is appointed over any part of its undertaking or assets, or if the Fund Manager takes or suffers any other analogous action in consequence of debt; or

- (b) any statement, representation or warranty set out in Section 12 (*Representations and Warranties*) proves to be incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a material adverse effect on the Fund Manager's ability to perform its obligations under this Agreement and / or ensure that the Fund Manager performs its obligations under this Agreement or having a material adverse effect on the rights or obligations of the Employer under this Agreement; or
- (c) any wilful misstatement or wilful misrepresentation (not set out in Section 12 (*Representations and Warranties*)) made by the Fund Manager which has a material adverse effect on the performance of Services by the Fund Manager under this Agreement; or
- (d) the Fund Manager is found to be engaged in corrupt or fraudulent practices in executing its obligations under the Agreement; or
- (e) the Fund Manager creates any Encumbrance on the Collection Account (other than as expressly permitted by the Employer); or
- (f) the Fund Manager or any of its representatives (including Sub-Contractors) become blacklisted by the GoP, any provincial or local government, or a corporation, company, institution, corporate body, local body, local authority, agency or organisation set up or controlled (directly or indirectly) by the GoP; or
- (g) termination of the OL Fund Management Agreement.

9.3. OBLIGATIONS PRIOR TO EXPIRY OR TERMINATION

- 9.3.1. Termination or expiration of this Agreement will not relieve the Fund Manager of any obligation arising under this Agreement or in respect of Services completed prior to expiry or termination of this Agreement.

9.4. ACTIONS TO BE TAKEN UPON EXPIRY OR TERMINATION

- 9.4.1. On the date of expiration or termination of this Agreement, the Fund Manager shall, at the Employer's request,
 - (a) cease all further performance of the Services, except such Services as the Employer may specify for continued operations of the Project including depositing any Cash in custody of the Fund Manager into the Collection Account;
 - (b) terminate all ongoing subcontracts and other contractual agreements, except those to be assigned to the Employer pursuant to Section 9.4.1(c) below;
 - (c) take physical possession of all FM Machines provided in accordance with Section 2.9.1;

- (d) assign to the Employer, or to any person designated by the Employer: (i) subcontracts, service agreements and other contractual agreements (including warranties) (as applicable) as may be designated by the Employer; and (ii) any issued permits, licenses, authorizations, approvals, patents and other proprietary rights, if any, then held by the Fund Manager; and
- (e) deliver to the Employer all information and records as may be reasonably requested by the Employer including all plans or other manuals and other information prepared hereunder as of the date of termination.

9.5. PAYMENTS BY FUND MANAGER FOLLOWING EXPIRY OR TERMINATION

9.5.1. Upon expiry or termination of this Agreement, the Fund Manager shall pay the Employer the sum of (a), (b) and (c) below, in each case as may be due and payable in accordance with the terms of this Agreement:

- (a) any sums due and payable by the Fund Manager to the Employer under the Agreement including under Section 14 (*General Indemnity*);
- (b) any Liquidated Damages accrued, due and payable under the provisions of this Agreement as at the date of termination; and
- (c) any Losses incurred by the Employer as a result of such termination for Fund Manager's default under Section 9.2 (*Termination for Fund Manager's Default*).

9.5.2. In the event, this Agreement is terminated for a Fund Manager default under Section 9.2 (*Termination for Fund Manager's Default*), the Employer shall be entitled to encash the Performance Security to its full value.

9.6. PAYMENTS BY EMPLOYER FOLLOWING EXPIRY OR TERMINATION

9.6.1. Subject to Section 9.6.2, within thirty (30) days following the Fund Manager's compliance with its obligations under Section 9.4 (*Actions to be taken Upon Expiry or Termination*), the Fund Manager shall submit to the Employer for payment a final invoice for all outstanding amounts of the Service Fee.

9.6.2. If this Agreement is terminated by the Employer due to Fund Manager's default under Section 9.2 (*Termination for Fund Manager's Default*):

- (a) the Employer shall submit to the Fund Manager for payment an invoice for any direct out-of-pocket expenses properly and reasonably incurred by the Employer and solely attributable to such termination and, if the Employer engages a replacement Fund Manager, the additional costs reasonably incurred by the Employer in engaging such replacement Fund Manager and the amount by which the reasonable costs payable under the replacement contract for carrying out the Services exceed the amount that would have been payable to the Fund Manager, which amount shall be deducted from any amounts outstanding to the Fund Manager, provided, however, that if the Employer elects to engage a

replacement Fund Manager, the Employer shall use its best efforts to engage such replacement Fund Manager as soon as possible after termination of this Agreement; and

- (b) in the event that expenses of the Employer under Section 9.6.2(a) are greater than any amount then owing to the Fund Manager, then the Fund Manager shall bear responsibility for the payment of such amount to the Employer provided that the Employer shall take all reasonable steps to minimize such costs, and if such costs are less than any amount owing to the Fund Manager, the Employer shall pay the remaining balance to the Fund Manager.
- 9.6.3. Any payments made pursuant to this Section 9.6 (*Payments by Employer following Expiry or Termination*) shall be made within thirty (30) days of the date of the invoice.

9.7. SUCCESSOR TO FUND MANAGER UPON EXPIRY OR TERMINATION

- 9.7.1. In addition to any actions taken in accordance with Section 9.4 (*Actions to be taken Upon Expiry or Termination*), upon expiry or termination of this Agreement, the Fund Manager, if requested in writing by the Employer, shall provide the Services and carry out its obligations under this Agreement after the expiry or termination for a period of sixty (60) days or such longer period as may be agreed between the Parties (the “**Transition Period**”), for smooth hand over to a successor nominated by the Employer (the “**Successor Fund Manager**”). This Agreement shall remain in full force and effect during the Transition Period. The Fund Manager shall be entitled to the Service Fee as consideration for performance of Services (subject to the terms and conditions for payment under Section 5 (*Price and Payment Terms*)) and the Fund Manager’s obligations set out in this Section 9.7 (*Successor to Fund Manager Upon Expiry or Termination*) during the Transition Period.
- 9.7.2. The Fund Manager shall facilitate the appointment and commencement of duties of the Successor Fund Manager so as not to disrupt the normal operation of the Project and shall provide full access to all relevant information, data and records relating thereto to the Successor Fund Manager and its representatives and shall accede to all requests made by the Successor Fund Manager in connection with the preparation for taking over the Services and in furtherance thereof, the Fund Manager shall provide to the Employer and/or the Successor Fund Manager such information and documents which the Employer and/or the Successor Fund Manager may reasonably request from the Fund Manager in connection with the operation of the Facilities.

9.8. COLLECTION ACCOUNT AND MINIMUM CASH BALANCE

- 9.8.1. Upon expiry or termination of this Agreement all funds in the Collection Account shall as instructed by the Employer pursuant to an Employer’s Instruction be either: (a) transferred to a bank account (as Notified by the Employer under the aforesaid Employer’s Instruction); or (b) paid to the Employer by way of pay order.
- 9.8.2. Upon expiry or termination of this Agreement, the Fund Manager shall have no claim on any Minimum Cash Balance at the Bus Stations and all such Minimum Cash Balance shall belong to the Employer.

9.9. END OF TERM ACTIVITIES

9.9.1. Subject to Section 9.7 (*Successor to Fund Manager Upon Expiry or Termination*), the responsibility for the Services shall transfer to the Employer or the Employer's designated Fund Manager after the Performance End Date, including activities in progress as of the Performance End Date. The Fund Manager shall schedule all Services, planned activities and obligations under this Agreement so that they are concluded prior to the Performance End Date.

9.10. SET-OFF RIGHTS

9.10.1. Without prejudice to other rights and remedies of the Employer, the Employer shall be entitled to deduct any amounts payable by the Fund Manager to the Employer from any amounts due to the Fund Manager by the Employer. If payments due to the Employer are not sufficient to cover the amounts payable by the Fund Manager, the Fund Manager shall pay the difference to the Employer within fourteen (14) days of the Employer's demand failing which the Employer may recover the payable amount by encashing the Performance Security.

9.11. OBLIGATIONS PRIOR TO EXPIRY OR TERMINATION

9.11.1. Notwithstanding termination or expiration of the Term of this Agreement and transfer of the responsibility for performance of the Services at the Performance End Date, the Fund Manager shall not be relieved of any obligation arising out of Services performed prior to termination.

10. NOT USED

11. CONFIDENTIAL INFORMATION

11.1. CONFIDENTIAL INFORMATION

11.1.1. Each Party agrees that it shall, and shall ensure that its contractors, agents, employees, officers (including members of its board of directors and its supervisory board) shall, hold in confidence for the benefit of the other Parties all the Confidential Information and shall not disclose to any third party or use (except for the purposes of this Agreement) the Confidential Information or any part thereof without such other Parties prior written approval. The Parties shall be required to limit the number of persons within their respective organisations to whom the Confidential Information is disclosed to the absolute minimum necessary to properly enable such Party to fulfil its obligations under this Agreement.

11.2. LIMITATIONS

11.2.1. The restrictions in Section 11.1 (*Confidential Information*) shall not apply, or shall cease to apply, to any part of the Confidential Information that:

- (a) was in the possession of the recipient Party or a contractor, agent, employee, officer (including members of its board of directors and its supervisory board) or shareholder of the recipient Party at the time of the disclosure;
- (b) was obtained by the recipient Party in good faith from a third party entitled to make disclosure thereof;
- (c) is required to be published or disclosed by a Party under any Law or the rules of any securities exchange to which any Party or the holders, directly or indirectly, of any of its equity capital is subject;
- (d) a Party, with the approval of the other Party, discloses to financial institutions, bona fide potential purchasers, its consultants and contractors;
- (e) is in or comes into the public domain other than by reason of a breach of Section 11.1 (*Confidential Information*) above.

11.3. CONFIDENTIALITY PROVISIONS TO SURVIVE

11.3.1. The confidentiality obligation of the Parties pursuant to Sections 11.1 (*Confidential Information*) shall remain in full force and effect for a period of five (5) years after the date of the expiration or earlier termination of this Agreement.

12. REPRESENTATIONS AND WARRANTIES

12.1. FUND MANAGERS REPRESENTATIONS AND WARRANTIES

12.1.1. Without prejudice to the other representations, warranties and conditions expressed elsewhere in this Agreement, or otherwise mandatorily implied by law, the Fund Manager represents, warrants and undertakes to the Employer that:

- (a) it is a company, duly incorporated and validly existing under the laws of the Pakistan;
- (b) it has full power and authority to enter into this Agreement and to carry out and perform the Services and that this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (c) it has submitted certified true copies of all resolutions of the board of directors / governing body of the Fund Manager authorizing execution, delivery of this Agreement and the performance of the Services under this Agreement;

- (d) it has submitted Performance Security in accordance with this Agreement and the Bidding Documents, prior to the Effective Date;
- (e) all information, statements, plans, documents and reports furnished or submitted by the Fund Manager to the Employer in connection with this Agreement are in all material respects true and correct;
- (f) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict the terms of its memorandum and articles of association or any covenant, contract, agreement, arrangement, decree, understanding or any other document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the Fund Manager to perform its obligations under this Agreement;
- (g) no action, litigation, arbitration or administrative proceedings has been commenced, or, to the best of its information, knowledge and belief following the making of all reasonable inquiry, is pending or threatened against the Fund Manager and nor is there subsisting any unsatisfied judgment decree or award given against it by any court, arbitrator or other body which will materially and adversely affect or impede the Fund Manager's ability to perform its obligations under this Agreement;
- (h) the Fund Manager: (i) has familiarized itself with the Project; (ii) has reviewed the requirements for execution of the Services; and (iii) has familiarized itself with all prevailing factors and conditions affecting the obligations of the Fund Manager under this Agreement, and all other factors and conditions affecting execution of the Services, and accepts the same and agrees that all such matters are satisfactory and will not prevent performance by the Fund Manager of its obligations under this Agreement, and accepts that it shall not be entitled to raise any defense or make any claim under or in relation to this Agreement as a consequence of:
 - (i) any mistake, gap or insufficiency in or in relation to its knowledge or understanding of the above matters; or
 - (ii) the state, condition or content of any such matters and waives any right it may have to raise any such defence or make any such claim;
- (i) it has provided the Employer with true and accurate information about its experience and qualifications and has not omitted any information that would be relevant to the Employer's decision to retain the Fund Manager to carry out the Services in the manner and to the extent contemplated herein;
- (j) it shall not change its legal status or otherwise amend its constitutive documents without prior written Notice to the Employer;

- (k) it has not granted and will not during the Term of this Agreement grant to any third party any rights which are inconsistent with the rights granted under this Agreement;
- (l) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict with any applicable Law in effect on the date of this Agreement;
- (m) the entry into and performance by the Fund Manager of this Agreement requires no governmental or other approvals, or if required, all such approvals have been obtained;
- (n) the entry into and performance by the Fund Manager of this Agreement does not and will not conflict with any document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the Fund Manager to perform its obligations under this Agreement;
- (o) it has not taken any action nor, to the best of its information and knowledge, after making all due enquiry, have any steps been taken or legal proceedings been started or threatened against it for winding-up, dissolution or re-organisation, the enforcement of any security interest over its assets or for the appointment of a receiver, administrative receiver or administrator, trustee, judicial factor or similar officer of it or of its assets;
- (p) no action, litigation, arbitration or administrative proceedings has been commenced, or, to the best of its information, knowledge and belief following the making of all reasonable inquiry, is pending or threatened against the Fund Manager and nor is there subsisting any unsatisfied judgment decree or award given against it by any court, arbitrator or other body which will materially and adversely affect or impede the Fund Manager's ability to perform its obligations under this Agreement;
- (q) obtain and maintain the Consents during the Term and ensure compliance with all applicable Laws while performing all its obligations under this Agreement and be completely liable for any breach in this respect;
- (r) ensure the payment of all dues in a timely manner, whether to the competent authorities or to any other parties, incurred while performing its obligations under this Agreement;
- (s) ensure that the Services are implemented in an uninterrupted and continuous manner and that the same are not suspended or stopped unless provided for under this Agreement or under the directions of the Employer;
- (t) it has sufficient Personnel, trained staff, facilities and approved subcontracts or other agreements in place and available to enable the Fund Manager to fully execute the Services;

- (u) it has not granted and will not during the Services Period grant to any third party any rights which are inconsistent with the rights granted under this Agreement;
- (v) it will promptly Notify the Employer of any event or claim, including but not limited, to any violation or default with respect to any order, writ, injunction etc., which, if substantiated, is reasonably likely to either have a material adverse effect or result in any liability for the Employer;
- (w) keep the Collection Account free from any Encumbrances (other than as expressly permitted by the Employer);
- (x) all rights and interests vested in the Fund Manager pursuant to this Agreement shall automatically pass to and vest in the Employer or to any nominee specified by the Employer, without any claims or Encumbrances, on the termination or expiry of this Agreement;
- (y) no representation or warranty contained herein or in any other ancillary agreement entered into by the Employer pursuant to this Agreement contains or shall contain any untrue, incorrect or misleading statement or omit to state a material fact. In the event that any occurrence or circumstances comes to the attention of the Fund Manager that renders any of its aforesaid representations or warranties untrue or incorrect, the Fund Manager shall immediately Notify the Employer of the same. For the avoidance of any doubt, such Notice shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of the Parties under this Agreement.

12.1.2. Each of the aforesaid representations and warranties shall be deemed to be repeated by the Fund Manager prior to each payment by the Employer in accordance with Section 5 (*Price and Payment Terms*).

12.2. EMPLOYER'S REPRESENTATIONS AND WARRANTIES

12.2.1. Without prejudice to the other representations, warranties and conditions expressed elsewhere in this Agreement, or otherwise mandatorily implied by law, the Employer represents, warrants and undertakes to the Fund Manager that:

- (a) it is a company, duly incorporated and validly existing under the laws of the Pakistan;
- (b) it will assist the Fund Manager at all times during the Term to obtain Consents from competent authorities for the implementation of Services;
- (c) it will ensure payments of all amounts due to the Fund Manager under the provisions of this Agreement.

13. ASSIGNMENT AND NOVATION

13.1. ASSIGNMENT

- 13.1.1. Except as permitted in Section 13.3 (*Subcontracting*), the Fund Manager shall not assign, transfer or charge, in whole or in part, its rights and obligations to perform or deal in any other manner with any or all of its rights and obligations under this Agreement without the Employer's prior written consent.
- 13.1.2. The Employer may at any time assign, transfer, charge, subcontract, or deal in any other manner with any or all of its rights under this Agreement without the Fund Manager's prior consent.

13.2. NOVATION

- 13.2.1. Subject to obtaining all relevant prior approvals, the Employer (the "**Transferor**") may assign or transfer by novation all or any part of its rights, interests, benefits or obligations under this Agreement to any entity or entities assuming all or part of the Transferor's rights and obligations under this Agreement (the "**Transferee**") so long as such Transferee shall assume in writing for the benefit of the Transferor and Fund Manager all of the obligations of the Transferor under this Agreement. Upon such assignment or transfer and assumption, the Transferor shall be relieved of all obligations assigned or transferred to and assumed by the Transferee under this Agreement. The Fund Manager hereby agrees and undertakes, as required by the Employer to enter into and execute such further documents (in such form and substance as prescribed by the Employer) to give effect to the aforesaid assignment or transfer by novation.

13.3. SUBCONTRACTING

- 13.3.1. Except for subcontracting the security services for cash collection, the Fund Manager cannot subcontract the entire Services with respect to the Project.
- 13.3.2. The Fund Manager shall obtain the Employer's prior written consent, not to be unreasonably withheld, for any onsite Sub-Contractors who shall be performing any part of the Services.
- 13.3.3. The Fund Manager shall be responsible for the acts, omissions, failure to perform or defaults of any Sub-Contractors, its agents or employees, as fully as if they were the acts, omissions or defaults of the Fund Manager, its agents or employees. Any subcontracting by the Fund Manager shall not release or discharge the Fund Manager of any of its responsibilities or obligations under this Agreement.

14. GENERAL INDEMNITY

14.1. INDEMNITY BY THE FUND MANAGER

14.1.1. The Fund Manager on behalf of itself, its Sub-Contractors, Personnel, employees, successors and assignees shall save, defend, indemnify and hold harmless the Employer, the Employer's Representative and each of its respective contractors, agents, representatives, consultants and employees from and against all claims, damages (including any environmental damages), Losses and expenses arising out of or resulting from the performance, non-performance or breach by the Fund Manager of its obligations under this Agreement or the negligence, wilful default or fraud of the Fund Manager, its Personnel, employees, officers, agents or Sub-Contractors, including, without any limitation, as a result of any claim;

- (a) in respect of injury or destruction of physical property including third party property; or
- (b) in respect of any third-party claims; or
- (c) in respect of bodily injury, sickness, disease, or death or personal injury or other health and safety liability; or
- (d) arising in relation to any liabilities, incurred by the Fund Manager on the Employer's behalf which are not authorised under this Agreement; or
- (e) by any User on the Buses or at the Facilities; or
- (f) for any breach or non-compliance of the Applicable Standards; or
- (g) for the breach of any intellectual property rights or patents as provided in Section 15.2 (*Ownership of Relevant Documents*) and Section 15.3 (*Intellectual Property Rights*); or
- (h) in accordance with Section 2.2.4; or
- (i) in accordance with Section 2.7.1; or
- (j) in accordance with Section 5.5.4; or
- (k) in accordance with Section 6.6.3; or

which may be brought or alleged or threatened against the Employer or any of its employees, officers and agents by any person.

14.1.2. This Section 14 (*General Indemnity*) shall survive expiration or termination of this Agreement.

14.1.3. For the purposes of this Section 14 (*General Indemnity*), the term "Fund Manager" shall

mean Fund Manager, its affiliates, Sub-Contractors and Personnel of any tier, and their respective agents and employees, whether individually or collectively.

15. INTELLECTUAL PROPERTY RIGHTS

15.1. NOT USED

15.2. OWNERSHIP OF RELEVANT DOCUMENTS

15.2.1. Without prejudice to the other rights of the Employer in respect of this Agreement, the records, information, know-how, plans, documentation, data, results and any associated intellectual property prepared by the Fund Manager pursuant to this Agreement, and the records, information and data collected by the Fund Manager during the performance of the Services (collectively referred to as the “**Relevant Documents**”) shall be in the exclusive ownership of the Employer. The Employer shall retain the copyright and other intellectual property rights in all Relevant Documents and other data furnished or to be furnished by (or on behalf of) the Fund Manager in connection with the Services.

15.2.2. The Fund Manager hereby agrees to indemnify the Employer for any breach of any intellectual property rights by the Fund Manager, its employees, officers, agents, Sub-Contractors and / or members arising out of the performance of the Services and this Agreement.

15.3. INTELLECTUAL PROPERTY RIGHTS

15.3.1. In this Section, “*infringement*” means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Services; and “*claim*” means a claim (or proceedings pursuing a claim) alleging an infringement.

15.3.2. The Fund Manager shall be responsible for the payment of all fees, royalties and other charges, if any, that may be payable under the terms of any license or permission in respect of any patent rights, design trademark, copyright or trade name, intellectual property right or other protected right relating to:

- (a) any design of the FM Machines provided by Fund Manager; and
- (b) any work done or method employed in the performance of the Services.

15.3.3. If any patent or another industrial right is infringed, the Fund Manager shall procure for Employer the right of utilization either by modification to the effect that they are free of any third party’s right or by procuring the third party’s authorization of utilization.

15.3.4. In the event of any claim being made or proceeding instituted against Employer to which the above provisions applies, Employer shall promptly notify Fund Manager thereof and Fund Manager shall, at its own cost, in Employer’s name deal with such claim or conduct such proceedings and settle such claims and any litigation or arbitration that may arise from it. Employer shall not, unless Fund Manager shall fail to deal with such claim or

conduct such negotiation, litigation or arbitrations, make any admission prejudicial thereto.

- 15.3.5. The Fund Manager hereby agrees to indemnify the Employer for any breach of any intellectual property rights by the Fund Manager, its employees, officers, agents, Sub-Contractors and / or members arising out of the performance of the Services and this Agreement.

16. FORCE MAJEURE

16.1. FORCE MAJEURE

- 16.1.1. A “Force Majeure Event” will mean an event beyond the reasonable control of the Parties, which materially and adversely affects the performance by such 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, such events include but are not limited to, any of the following:

- (a) Acts of God, including fire, flood, earthquake, tornado, hurricane, or other natural disaster;
- (b) War, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
- (c) Terrorist attacks, civil war, civil commotion, strikes, or riots;
- (d) Nuclear, chemical or biological contamination or sonic boom;
- (e) Fire, explosion or accidental damage; and
- (f) Military takeover or political instability.

16.2. NOTIFICATION OBLIGATION

- 16.2.1. The Party affected by a Force Majeure Event will give Notice thereof within seven (7) days from the commencement of the occurrence of such event in writing to the other Party and such Notice will include specific details of the occurrence.
- 16.2.2. Provided a Notice has been duly given by the affected Party in accordance with Section 16.2.1, then during the currency of any Force Majeure Event, neither Party will be responsible or liable to the other for any failure or delay in performance of its obligations (other than any payment obligations) or be deemed to be in breach of this Agreement, to the extent that such failure or delay is caused by Force Majeure Event.

16.3. DUTY TO MITIGATE

16.3.1. The affected Party will use all reasonable efforts and will ensure that it uses all reasonable efforts to mitigate the effects of a Force Majeure Event. Furthermore, notwithstanding Section 16 (*Force Majeure*), the affected Party will continue to perform its obligations under this Agreement as far as it is reasonably practical and will seek all reasonable alternative means for performance of its obligations not prevented by the Force Majeure Event.

16.4. TERMINATION FOR FORCE MAJEURE

16.4.1. In the event the interruption of the affected Party’s obligations continues for a period in excess of forty-five (45) calendar days, either Party will have the right to terminate this Agreement upon thirty (30) calendar days prior written notice to the other Party.

17. CHANGES

17.1. CHANGES

17.1.1. Each Party may, from time to time, propose changes in the scope of the Services, which changes will be subject to mutual agreement of the Parties. The Fund Manager will advise the Employer if any proposed change results in a change in the price, payment terms or have other impacts on the terms or performance of the Services and this Agreement. Neither Party shall be obligated to proceed with any change until the Parties have agreed upon its effect and signed a written amendment or change order document.

18. NOTICES

18.1. All notices required or desired to be given pursuant to this Agreement shall be in writing and shall be delivered by personal in-hand delivery, sent by facsimile transmission, or sent prepaid by recognized delivery service (such as Federal Express), addressed as follows:

(a) If to Fund Manager:

Address: [●]
Tel.: [●]
Email: [●]
Attention: [●]

(b) If to Employer:

Address: [●]
Tel.: [●]
Email: [●]
Attention: [●]

Such notices shall be deemed to have been given when delivered in the case of in-hand delivery, on the date shown by a facsimile transmission report or confirmation in the case of successfully completed facsimile transmission, and on the date of delivery in the case of delivery service. Either Party may modify its address for notices by advance written notice to the other Party delivered in conformance with this Section 18 (*Notices*).

19. DISPUTE RESOLUTION

19.1. NOTICE OF DISPUTE

19.1.1. In the event that there arises between the Parties any dispute, controversy or claim arising out of or relating to this Agreement, including, without prejudice to the generality of the foregoing, the breach, termination or validity thereof, the Party wishing to declare a dispute shall deliver to the other Party a written notice identifying the disputed issue (the “**Dispute**”).

19.2. RESOLUTION BY PARTIES

19.2.1. Within fifteen (15) days of delivery of notice of a Dispute, the Parties shall use best efforts to settle the Dispute by discussions between members of the senior management of each Party. In the event that such individuals are unable to reach agreement within fifteen (15) days, or such longer period as they may agree, then both Parties (if acceptable) shall refer the Dispute for arbitration.

19.3. ARBITRATION

Any Dispute that is not resolved within thirty (30) days of delivery of a notice of dispute pursuant to Section 19.2 (*Resolution by Parties*) shall be finally settled by arbitration under the Arbitration Act.

- (a) The arbitration shall be conducted in Karachi, Pakistan. Except as awarded by the arbitral tribunal, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.
- (b) No arbitrator shall be an employee or agent or former employee or agent of the Parties.
- (c) The decision of the arbitrators shall be final and binding upon the Parties. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The Party in whose favor the award is given may enforce such award or judgment in any jurisdiction, including any jurisdiction where the other Party’s assets may be located. Except as the Fund Manager and the Employer otherwise agree in writing pending the final resolution of any dispute in accordance with this Section 19 (*Dispute Resolution*), the Fund Manager shall proceed diligently with the performance of the Fund Manager’s obligations under this Agreement and in compliance with the Employer’s or Employer’s Representative’s directions, respectively.

(d) The language at any arbitration under this Agreement shall be English.

19.4. PERFORMANCE TO CONTINUE DURING ARBITRATION OR LITIGATION

19.4.1. Unless this Agreement shall already have been terminated, the Parties shall in every case proceed with the performance of all of their obligations under this Agreement during, and notwithstanding, any resolution of Disputes in accordance with Article 19 (*Dispute Resolution*).

20. RELATIONSHIP

20.1. The Parties to this Agreement are independent entities. Neither Party is an agent, representative or partner of the other Party. Neither Party shall have any right, power or authority to enter into any contract or memorandum of understanding for or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, collaboration or partnership between the Parties or to impose any liability attributable to such relationship upon either Party.

20.2. At all times, the Fund Manager shall act with appropriate propriety and discretion and in particular shall refrain from making any public statement concerning this Agreement or the Services without the prior approval of the Employer and shall refrain from engaging in any political activity.

20.3. The Fund Manager shall report immediately to the Employer any accident or injury and any damage to the property of the Employer or to the property of persons or any third parties occurring in or arising out of the performance of the Services and any act, manner, or thing which, within his knowledge, may have caused such accident or injury. The Fund Manager shall also report immediately to the Employer any circumstances or events which might reasonably be expected to hinder or prejudice the performance of the Services.

21. AMENDMENTS

21.1. This Agreement may not be amended or modified unless the Employer has given its consent for such amendment in writing.

22. VALIDITY AND ENFORCEABILITY

22.1. The invalidity or unenforceability of any portion or provision of this Agreement will not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision will be deemed separated from this Agreement, and the balance of the Agreement will be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision. Notwithstanding the provisions of the preceding sentence, should any term or provision of this Agreement be found invalid by any court of law having jurisdiction thereof, the Parties will

immediately renegotiate in good faith such term or provision of the Agreement to rectify such invalidity.

23. EXCLUSIVE RIGHTS AND REMEDIES

- 23.1.** The rights and remedies set forth in this Agreement are the exclusive rights and remedies of each Party with respect to this Agreement, its performance or breach.

24. ENTIRE AGREEMENT

- 24.1.** This Agreement and all schedules, exhibits, attachments, and annexures, if any, hereto, constitutes the entire agreement between the Parties pertaining to the subject matter thereof and there are no binding understandings between the Parties pertaining to the subject matter hereto that are not contained in this Agreement. This Agreement will supersede and cancel any and all previous contracts, arrangements or understandings that may have existed or may exist on these matters between the Parties. This Agreement may only be amended by a written instrument executed between the Parties.

25. LANGUAGE

- 25.1.** The language of this Agreement, and all documents, materials and training, if any, to be supplied by the Fund Manager under this Agreement shall be English.

26. SURVIVAL

- 26.1.** Notwithstanding anything to the contrary contained in this Agreement, all such relevant provisions of this Agreement that are required for the enforcement of each Party's obligations and for the settlement of liabilities, in each case, upon termination or expiry of this Agreement shall survive the termination or expiry of this Agreement until such obligations have been performed and the liabilities settled. Furthermore, any other provisions expressly specified in this Agreement to survive termination shall survive termination of this Agreement.

27. NO WAIVER

- 27.1.** No forbearance, indulgence or relaxation or inaction by any Party at any time, to require performance of any of the provisions of this Agreement shall, in any way, affect, diminish or prejudice the right of such Party to require performance of that provision and any waiver or acquiescence by any Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver of or acquiescence to any continuing or succeeding breach of such provisions or a waiver of any right under or arising out of this Agreement, or acquiescence to or recognition of rights and/or position other than as expressly stipulated in this Agreement.

28. GOVERNING LAW

28.1. This Agreement will be governed in accordance with the laws of Pakistan.

29. COUNTERPARTS

29.1. This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were a single copy of this Agreement, provided, that all counterparts have been duly executed by both Parties hereto.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year first above written in accordance with their respective laws.

AS EMPLOYER

For and on behalf of **SINDH
INFRASTRUCTURE DEVELOPMENT
COMPANY LTD** through its authorised
signatory



SIGNATURE

Name:
Designation:

.....

IN THE PRESENCE OF
WITNESSES:

SIGNATURE

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

AS FUND MANAGER

For and on behalf of [INSERT FUND
MANAGER] through its authorised
signatory



SIGNATURE

Name:
Designation:

.....

IN THE PRESENCE OF
WITNESSES:

SIGNATURE

1- Name:
Address:
CNIC / Passport No:

.....

2- Name:
Address:
CNIC / Passport No:

.....

SCHEDULE A: SCOPE OF WORK

1. BANKING SYSTEM INTEGRATION

The Fund Manager's back-office must have complete system implementation and integration capabilities with all payment mechanisms (mobile phone application, internet/web portal, HHM, TOM, TVM) to ensure uninterrupted and efficient payment/top-up capabilities.

The Fund Manager must integrate with the Employer based on straight-through processing providing host to host connectivity; and provide daily paperless reports, on demand reports and reconciliation reports to the Employer and its control partners as per Employer's instructions.

In order to ensure smooth collections throughout the Bus Stations, as well as through other payments mechanisms, the Integrated Intelligent Transport System (IITS) shall be integrated with the Fund Manager's back office to digitize the entire process as well as to minimize human error.

The Fund Manager and the IITS operator must coordinate on the integration including on integration timelines to ensure completion of integration must be completed within sixty (60) days from the issuance of the Notice to Proceed.

2. COLLECTION OF CASH FROM BUS STATIONS

The Fund Manager will ensure collection of cash from the Stationery Ticket Vending Machines (TVM), and Ticket Office Machine (TOM), including cash from HHM sales, at each Bus Station.

System users are expected to make cash payments on the TVM and TOM to purchase tickets and/or reload their Contact-less Smart Cards (CSCs). Over the course of daily operations, the TVM and TOM is expected to accumulate considerable quantity of cash which will be collected by the Fund Manager periodically.

2.1. Cash Proceeds At TOM

System users will procure tickets, reload CSCs, in exchange for cash on TOMs installed in kiosks across all Bus Stations along the BRT Corridor. Payments on the TOM will involve considerable human involvement whereby a representative of the Facilities Manager will be operating the TOM. Such representative will collect cash from system users and store cash in the TOM counter(s) on each Bus Station along the BRT Corridor.

The Fund Manager is required to provide Currency Detector Machines and Point of Sales (POS) Card Machines (collectively the "**Machines**"). The Currency Detector Machine will be used to ensure that only genuine currency notes are collected by the Facilities Manager on the TOM. The Fund Manager would be responsible for the required maintenance and upgradation of the Machines. The Fund Manager would also be responsible for training the staff initially and periodically upon upgrading/changing of the Machines. The training(s) will include, inter alia, techniques used in Financial Institutions (FIs) to detect counterfeit currency.

The Fund Manager would additionally provide manuals to the staff for operations of the Machines that it has installed or has provided. The Employer will allocate staff that require training during mobilization period. Once trained, there will be periodic trainings during the Services Period arranged by the Fund Manager.

Any new staff of the Facilities Manager shall also be trained by the Fund Manager to operate the Machines as Notified by the Employer from time to time.

The Fund Manager is not responsible for the collection of any counterfeit currency at the TOMs and the responsibility to ensure genuineness of currency notes received from Users is that of the Facilities Manager.

The Cash received at the TOMs shall be collected in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*) by the Fund Manager at the end of day throughout the Services Period.

2.2. Cash Proceeds At TVM

Users will also have the option to procure tickets and recharge their CSCs from TVMs, where a representative of the Facilities Manager will assist the Users in depositing cash in the TVMs.

The cash received at the TVMs shall be collected by the Fund Manager upon notification by the AFC system. A two-man rule will be employed to ensure security of the TVM. On each notification day end during the Services Period, representatives of the Facilities Manager and the Fund Manager will unlock the TVM and the Fund Manager will collect the cash box in accordance with the procedure laid out in Section 2.3 (*Collection Procedure*).

2.3. Collection Procedure

All cash received at the TOMs **daily** from all Bus Stations at day end while cash tray from TVMs will be collected on notification day end throughout the Services Period.

The Fund Manager shall be allowed to sub-contract the cash collection services, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor. The Fund Manager would be the point of contact (POC) for all Services to be performed by the Fund Manager.

Before the cash is collected from the Bus Station, the Fund Manager will share with the Facilities Manager the following information:

- Name and Computerized National Identity Card (CNIC) Number/staff code of the security personnel who will collect the cash
- Car registration information

This information will be shared with all Bus Stations (by way of designated communication email) along the BRT Corridor individually, by the Fund Manager. Upon arrival of the security personnel for cash collection, the Facilities Manager would verify personnel identity through comparing the list sent by the Fund Manager with personnel company IDs and CNICs.

Upon such confirmation, the Facilities Manager shall allow the personnel in the Bus Station premises and the Fund Manager will perform its cash collection operations.

2.3.1. Procedure for collection from TOM

Once the cash from the TOM has been received by the Fund Manager personnel, the cash will be put in bags and sealed in front of the Facilities Manager. Once the Facilities Manager is satisfied with the seal, the security personnel will transport the sealed bags for counting and depositing.

2.3.2. Procedure for collection of TVM cash box

On each notification day, the full cash box will be collected from TVM by the Fund Manager personnel and simultaneously the TVM will be replaced with an empty cash box. The cash box will be transported to cash counting center/branch/storage depot where the cash boxes will be opened (with special key) for counting under CCTV cam. The TVM banknotes system will have multiple keys (e.g., separate keys to withdraw the cash box and to open the cash box). After the count is complete for both bags the sums to be deposited in the Collection Account should match the revenue statement generated as per the IITS systems. In the event of any discrepancy the responsibility and obligation to reimburse the Employer by depositing such discrepant amounts in the Collection Account shall be as follows:

- **Counterfeit cash collected by TVM (as collected in TVM cash box):** IITS shall be required to reimburse any counterfeit currency accepted/collected by the TVMs.
- **Counterfeit notes collected by TOM (as collected in TOM bag):** Facilities Manager shall be required to reimburse any counterfeit currency accepted/collected at the TOMs.
- If (including counterfeit) **amount does not match** revenue statement generated as per the IITS system, Facilities Manager would be responsible.
- If there is **excess cash** in the bag as compared to the revenue statement generated as per the IITS system, all cash would be deposited.
- For **seal broken or cash lost during transit;** Fund Manager would be responsible.

2.4. Security of cash proceeds

The Fund Manager will collect cash from Bus Stations at the end of each operating day. The safety and security of cash proceeds in the armoured vehicles as well as any cash storage depots overnight (prior to being deposited in the Collection Account the following day during bank working hours) lies completely with the Fund Manager.

To ensure the security of the cash collected overnight, the Fund Manager may sub-contract such security services to a reputable security firm(s) with requisite cash collection experience, provided, however, the Fund Manager shall be responsible for all acts and omissions of such sub-contractor.

2.5. Timings of Cash Collection

The Fund Manager is required to collect cash at stipulated timelines as per mutual agreement between Fund Manager and the Employer (in consultation with Facilities Manager). The details of the timings for cash collection from each Bus Station across the BRT Corridor are set out in Exhibit I (*Minimum Cash Balance and Cash Pick Up Timings*) hereto. Failure to adhere to stipulated timelines will lead to Performance Liquidated Damages under **Exhibit II (Key Performance Indicators)** hereto.

In addition to the Performance Liquidated Damages, if the Fund Manager fails to collect cash from the Bus Station within the stipulated collection timings, the Fund Manager shall be liable for any security breach/theft at any of the Bus Stations. The Fund Manager shall be liable to compensate and reimburse the amount, to the Employer, which was stolen to the extent of the money which was not collected by the Fund Manager within the stipulated timeline.

Repeated delays in collecting cash from the Bus Stations may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

3. AVAILABILITY OF MINIMUM CASH BALANCE

The BRT system being one of the first public sector transport projects in Karachi is geared to attract a lot of Users and, therefore, where payments are through cash change balance is required to be available at Bus Stations. Non-availability of change may make the system inefficient and delay the onboarding process.

In this regard, the Fund Manager will be required to arrange minimum cash balance for change payments at every Bus Station on commencement of operations and maintain it throughout the Services Period.

Such amount of minimum cash balance may be revised on a day's notice either upwards or downwards based on mutual agreement between the Employer and Fund Manager in consultation with the Facilities Manager. The quantity of minimum cash balance for each Bus Station has been provided in **Exhibit I (Minimum Cash Balance and Cash Pick Up Timings)**.

In case the Facilities Manager determines that it is running low on minimum cash balance, the Facilities Manager shall have the authority to request (with a copy of such Notice to the Employer) for additional change from the Fund Manager, which shall be promptly made available to Bus Stations within a two-hour notice.

On each day end during the Services Period, the Fund Manager will ensure that the denominations of minimum cash balance have been replenished at each Bus Station along the BRT Corridor. The Fund Manager and the authorized representative of Facilities Manager will verify and sign-off on the said replenishment of the minimum cash balance.

The Fund Manager shall ensure that currency notes handed over as minimum cash balance are genuine.

3.1. Reimbursement of The First Minimum Cash Balance

Cash collection at the end of the first day of operations would be utilized to offset minimum cash balance fronted by the Fund Manager. First day's cash deposit by the Fund Manager into the Collection Account would be net-off the minimum cash balance fronted at the start of the first day of operations. Relevant documentations with respect to funding and deduction shall be provided to the Employer by the Fund Manager.

3.2. Allocation of Minimum Cash Balance

The minimum cash balance will be apportioned in the following way:

- (i) TOM – 70%
- (ii) TVM – 30%

The following denominations are to be provided by the Fund Manager at every Bus Station:

Cash Amount (PKR)	Currency notes / Coins
500	5%

100	10%
50	15%
20	20%
10	25%
5	25%

4. BANKING OPERATIONS

4.1. Collection Account

The Fund Manager shall be responsible to open bank account(s) for deposit of sums relating to the operations and maintenance of the Project and maintain it throughout the Services Period. The account title shall be Sindh Infrastructure Development Company Limited Collection Account (“**Collection Account**”). The Collection Account must have subaccounts for various bank payments through TVM, TOM, HHM, website and mobile phone applications.

The authorized signatories shall be nominated by Sindh Infrastructure Development Company Limited (SIDCL) Board of Directors or the Chief Executive Officer (CEO) and updated as required.

The Collection Account shall be used for all deposits and payments relating to the Project.

4.2. Revenue Deposits

After the collection of cash from each Bus Station, the cash must be deposited in the Collection Account by the Fund Manager, on the following business day. The Collection Account shall be used for deposits of all cash collected from Bus Stations.

The Fund Manager shall ensure that all funds deposited either physically or electronically must be reflected in Employer’s bank statements immediately. Any discrepancy between the bank balance and revenues as per Automated Fare Collection systems must be reconciled on an urgent basis. Persistent irregularities in the bank reconciliation may lead to Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

Apart from Fare Revenue which will be collected from Bus Stations physically as well as electronically/digitally, other payments/sums relating to the Project may also be deposited in the Collection Account. Such deposits may be made by the Employer or any other Project Contractor engaged by the Employer in respect of the Project including property management firm(s) responsible for exploitation of non-fare revenue potential. The Fund Manager must notify the Employer of any such deposits immediately upon receipt.

4.3. Integration With Central Clearing House (CCH) Bank Interface

The Fund Manager shall ensure that each User’s data is completely secure. Any data hack or data security breach attributable to the Fund Manager will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. The Fund Manager is required to remedy the hack/security breach within twelve (12) hours; failure to do so may result in imposition of Performance Liquidated Damages for non-compliance with KPIs and thereafter constitute an event of default to the Fund Manager entitling the Employer to terminate.

The Fund Manager shall ensure that all transactions issued by the CCH are completed as per best practices. Failure to process transactions within stipulated timelines due to any reasons attributable to the Fund Manager shall result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**. Persistent delays and failure in processing transactions may lead to an event of default attributable to the Fund Manager.

4.4. Payments To Project Contractors

To ensure smooth operations of the system, timely payments must be made to all Project Contractors including, *inter alia*, bus/fleet operator, Facilities Manager, IITS operator and third-party independent expert(s) all of which are critical components of the Project operations.

Payments must be made by way of bank transfer or bank cheques in the designated bank accounts of the Project Contractors in such sums and on such date and time as specified in the instructions issued by the Employer.

Any delay, attributable to the Fund Manager, in processing and executing payments to the relevant Project Contractors will result in imposition of Performance Liquidated Damages assessed in accordance with **Exhibit II (Key Performance Indicators)**.

4.4.1. Bank Cheques

The Employer will issue instructions by means of cheque signed by two authorized signatories. Upon any change in authorized signatories, the Employer will notify the Fund Manager of such change. The Fund Manager will only be liable to ensure payments if the payment instructions are issued by authorized signatories and inform the Employer where there is any inconsistency in authorized signatories.

4.4.2. Bank Transfer

Upon issuance of bank transfer instructions by the Employer by means of integrated payments capabilities, the Fund Manager must transfer such payments to the relevant Project Contractors.

The Fund Manager is required to ensure that it provides an interface to the Employer to issue such payment instructions to the Fund Manager, view up to date periodic cash positions and reports as and when required. Such interface must be completely digital and minimize manual interplay.

4.5. Periodic Cash Position and Overdraft

The Fund Manager must provide to the Employer periodic cash position at the end of each operating day in order to assess funding surplus or shortfall against stipulated payments to the relevant Project Contractors whichever is appropriate.

In the event upon receiving an Employer's Instruction, the account balance in the Collection Account is insufficient for the transfer(s)/ payment to the relevant Project Contractors, the Fund Manager shall notify the same to the Employer within one (1) hour of receiving the payment instructions from the Employer. The Employer will have the option either to:

- (a) arrange and deposit funds in the Collection Account for payments to the relevant Project Contractors;
- (b) withdraw the payment instructions; or

- (c) request the Fund Manager to lend the shortfall amount i.e., the difference in the amount of the required payments and the available balance in the Collection Account.

The Fund Manager shall comply with the instructions and make payment of the total amounts as per the payment instructions received from the Employer.

In the Parties proceed in accordance with part (c) above, the Employer will be liable to pay interest on the overdraft amount at a rate mutually agreed between the Fund Manager and the Employer. The Employer will be liable to repay in full, amounts ninety (90) days from the overdraft receiving date. In case of non-repayment and if the Collection Account has excess monies available, such amounts would be first used to offset the overdraft amount. In case no monies are available in the Collection Account, the Fund Manager can call a default of the Employer.

5. ASSISTANCE IN LEGAL / REGULATORY REQUIREMENTS

The Fund Manager will assist the Employer in conducting periodic audits of all receipts and payments as and when required by the Employer.

The Fund Manager must cooperate with any third party appointed by the Employer or any relevant government agency appointed for conducting such audits. Any malfeasance attributable to the Fund Manager may lead to event of default.

During the currency of the audit, the Fund Manager must continue performing its obligation as per agreed scope of work.

6. REVENUE ALLOCATED TO THE EMPLOYER

The Fund Manager shall pay to the Employer float income earned on the balance to the credit of the Collection Account at a rate equivalent to one-year KIBOR quoted on the website of State Bank of Pakistan minus 1%. The Fund Manager shall allocate all such income in the Collection Account of the Employer.

7. INVOICING FOR SERVICES

The Fund Manager will raise an invoice for monthly Service Fee at the end of each operating month during the Services Period. Payments for the invoice will be debited from the Collection Account upon issuance of instructions by the Employer within five (5) working days.

8. BANK GATEWAY INTEGRATION

The Fund Manager should be able to scan the accounts belonging to the money deposited by the dealers at maximum half-hour intervals and send them to IITS operator servers together with the relevant amount and the terminal number and transfer the relevant amounts to IITS operator accounts automatically. This information given by IITS operator servers is credited to the relevant dealers for the money they have deposited. The data communication interface for this purpose is created by the IITS operator software team and the Fund Manager working together, and the data communication interface for research, the IITS operator software team, and the Fund Manager working together. Also, the Fund Manager shall provide the following;

- The Fund Manager shall develop, build, configure onsite at each TVM/TOM the interface with the PoS;

- The Fund Manager shall provide the SIM Cards for the HHM, TVM PoS, and TOM PoS along with a complete data package

IITS operator calls these intervals with parameters “given by the bank”.

8.1. REQUEST PARAMETERS

- Account_no
- Startdate (DD-MM-YYYY)
- Enddate (DD-MM-YY)

8.2. OUTCOME PARAMETERS

- Terminal Number
- Amount
- Datetime (YYYYMMDDHHMMSS)
- Provision_no



9. MOBILE APPLICATION & WEBSITE ONLINE TOP-UP PAYMENT

The Fund Manager shall provide the Gateway to enable the Web payment and to interface with AFC CCH for statement and reports for the integration between AFC system and Fund Manager system, the Fund Manager shall provide the following:

- Payment processor API (Virtual POS)
- Payment processor API (Virtual POS) Integration document
- Merchant Name
- Merchant ID

10. THIRD-PARTY INTEGRATION

For the Third-Party integration such as Easypaisa, JazzCash, UBL Omni, the Fund Manager shall provide the following.

- Payment processor API
- Merchant Name
- Merchant ID

11. SMS LOGIN INTEGRATION

SMS Gateway

12. PAYMENT INTEGRATION FOR HHM

The provided HHM device has EMV L1/L2 certificate and supports EMV contactless, however, its validity has to be approved by the Fund Manager.

- HHM Brand/Model: Urovo I9000S
- HHM Datasheet: Urovo I9000S Datasheet

Otherwise, the Fund Manager shall provide and maintain connectivity with Fund Manager back office”.



13. PHYSICAL POS FOR TOM

- The physical unattended PoS terminal which has required certificated
- The physical unattended PoS terminal serial port Integration document



14. UNATTENDED POS TERMINAL

- The physical unattended pos terminal which has required certificates.
- The physical unattended pos terminal integration document.
- The IITS operator uses ingenico unattended pos terminal having certification of EMV L1/L2 but L3 will be within the Fund Manager’s scope of work.

Datasheet: Ingenico Unattended POS Terminal
iSelf Serisi



15. VALIDATOR CONTACTLESS EMV CARD READER

- Contactless EMV Card Reader which has required certificates
- Contactless EMV Card Reader integration document.
- ISO 8583

16. MOBILIZATION PERIOD REQUIREMENTS AND TIMELINES

REQUIREMENTS	TIMELINES
--------------	-----------

First minimum cash balance would be fronted	At least one (1) day prior to the Commencement Date
Integration with IITS systems	NTP + 60 days
Collection Account is open	NTP + 30 days
Training(s)	NTP + 20 days

EXHIBIT I: MINIMUM CASH BALANCE AND CASH PICK UP TIMINGS

S.No	BUS STATION	MINIMUM CASH BALANCE (PKR)	CASH PICK-UP TIMINGS (PST)
1.	Surjani Town	25,000	2300 hours
2.	- (Unknown)	15,000	2300 hours
3.	Jama Masjid	20,000	2300 hours
4.	4K Chowrangi	25,000	2300 hours
5.	2 Minute Ki Chowrangi	20,000	2300 hours
6.	- (Unknown 2)	15,000	2300 hours
7.	Power House	25,000	2300 hours
8.	Telephone Exchange	20,000	2300 hours
9.	UP More	15,000	2300 hours
10.	Nagan Chowrangi	25,000	2300 hours
11.	Shadman No.2	20,000	2300 hours
12.	2K Bus stop	20,000	2300 hours
13.	Faiz House	15,000	2300 hours
14.	Hyderi Bus stop	25,000	2300 hours
15.	Board Office	15,000	2300 hours
16.	Baqai Hospital Bus stop	20,000	2300 hours
17.	Petrol Pump Bus stop	25,000	2300 hours
18.	Rizvia Bus stop	15,000	2300 hours
19.	Gulbahar	15,000	2300 hours
20.	Lasbela Chowk	25,000	2300 hours
21.	Gurumandir	15,000	2300 hours
22.	Numaish	25,000	2300 hours
23.	Sea Breeze Center	15,000	2300 hours
24.	Gul Plaza	20,000	2300 hours
25.	Municipal Park	20,000	2300 hours
26.	5 no. Chowrangi	15,000	2300 hours
27.	Orangi Town Police Station	25,000	2300 hours
28.	Abdullah College	20,000	2300 hours
29.	Dilpasand Sweets	25,000	2300 hours

EXHIBIT II: KEY PERFORMANCE INDICATORS

Key Performance Indicators: The Fund Manager’s performance of Services shall be evaluated by means of required service levels for Key Performance Indicators (KPIs).

Deduction Percentages. Failure to meet these service levels shall lead to the imposition of Performance Deduction Percentages as per the table 1 below. The Employer shall notify Performance Deduction Percentage within ten (10) days of submission of invoice by the Fund Manager.

Employer review of KPIs. Employer may at all reasonable times, directly or through an Employer appointed independent agent, observe, inspect, and satisfy itself with the observance by Fund Manager of the KPIs.

KPI table. The systems must be designed and operated to meet these KPIs in the following table 1.

S. NO	EVENT / KPI	DEDUCTIONS
1.	Collection of cash from Bus Stations	
1.1.	Failure to reach the Bus Station on the specified time frame to collect cash.	PKR 1,000 per occurrence per Bus Station
2.	Minimum cash balance	
2.1.	Failure to provide the Facilities Manager with daily cash balance (change) as specified in Exhibit I.	PKR 1,000 per occurrence per Bus Station
2.2.	Fund Manager fails to provide the Facilities Manager with cash balance (change) on two hours’ notice upon shortage during operations.	PKR 100 per occurrence per Bus Station
3.	Banking Operations	
3.1.	Failure to deposit the cash collected in Collection Account on the following business day	PKR 1000 per occurrence
3.2.	Hacking/data security breach of the Fund Manager’s banking systems	PKR 10,000 per day
3.3.	Failure of Fund Manager’s banking systems which causes a delay in the sale of tickets/top-ups	PKR 10,000 per day
3.4.	Failure to pay the Project Contractors as per Employer’s Instructions in a timely manner.	PKR 10,000 per day
3.5.	Failure to make available date and information required for periodic audits	PKR 10,000 per occurrence
3.6.	Failure/break down of FM Machines due to lack of/improper maintenance	PKR 1,000 per occurrence per Bus Station

EXHIBIT III: PAYMENT INTEGRATION REQUIREMENTS

1. Compatibility Chart

DEVICE/COMPONENT	PAYMENT WITH EMV CONTACTLESS BANK CARD	PAYMENT WITH CONTACT BANK CARD	PAYMENT WITH MAGNETIC BANK CARD	SEND BANK TOP-UP/AUTO RELOAD	AUTO-RELOAD
Ticket Vending Machine	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)	X (with a certified unattended embedded POS)		
Ticket Office Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Handheld Machine	X (with a certified attended external POS)	X (with a certified attended external POS)	X (with a certified attended external POS)		
Mobile APP	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)		X (PG should be able to store payment methods)
Website	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X (by entering card number in the payment processing screen)	X	X (PG should be able to store payment methods)

SCHEDULE B: PAYMENT SCHEDULE

$$\textit{Service Fee (Revised)} = \textit{Service Fee (Base)} * \frac{\textit{CPI (Revised)}}{\textit{CPI (Reference)}}$$

Where:

Service Fee (Revised) = service fee payable each Month to the Fund Manager in each Service Year following indexations.

Service Fee (Base) = service fee quoted by the Fund Manager in its financial Bid.

CPI (Revised) = Consumer Price Index (CPI) – General published by the Pakistan Bureau of Statistics at the start of each Service Year.

CPI (Reference) = Consumer Price Index (CPI) - General published by the Pakistan Bureau of Statistics on the Commencement Date.

SCHEDULE C: INTEREST RATE

Interest Rate means the three-month Karachi Interbank Offer Rate published on the website of State Bank of Pakistan minus one percent.

SCHEDULE D: MAINTENANCE OF FM MACHINES

The Fund Manager must ensure that the FM Machines are in optimal condition throughout the Service Period. Among other functions to ensure smooth operations of the Machines, the Fund Manager must:

- (i) Inspect the Machines on a weekly basis and conduct cleaning operations as per best practices (including the use of canned air and cleaning cards, etc.)
- (ii) Replace or remedy any defects or deficiencies in the Machines immediately upon notification of any malfunction/defects.

SCHEDULE E: FORM OF PERFORMANCE SECURITY

....., 2021

To:
[●]
[Insert Address]

PERFORMANCE SECURITY NO. (the **Security**)

We, [●]¹, being the Security issuing bank (the “**Issuing Bank**”) understand that the following parties are entering into an agreement titled the “**FUND MANAGEMENT AGREEMENT**” (the **Agreement**):

- (a) Sindh Infrastructure Development Company, a public limited company incorporated under the laws of Pakistan with its registered office located at 6th Floor, Extension Block, Bahria Complex IV, Karachi (the “**Employer**”); and
- (b) [●], a company incorporated under the laws of [●] having its registered office located at [●] (the “**Fund Manager**”).

Further, we understand that pursuant to the Notification of Award dated [●] (the “**Notification of Award**”) and the Agreement, the Fund Manager is required to provide the Employer with a performance Security equal to [●] [●]/- ([●] [●]) and maintain the same in accordance with the terms of the Agreement.

The above premised, we (the Issuing Bank) hereby undertake irrevocably and unconditionally on demand to pay to the Employer, without any notice, reference or recourse to the Fund Manager or to any other entity or without any recourse or reference to the Notification of Award, Agreement 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:

[●] [●]/- ([●][●])
(the “**Guaranteed Amount**”)

at sight and immediately, however not later than three (3) business days from the date of receipt of the Employer’s first written demand (the Demand) at the Issuing Bank’s offices located at [●] or through SWIFT instructions transmitted by the Employer’s bank (i.e., the National Bank of Pakistan), on behalf of the Employer, to the Issuing Bank, such Demand stating:

- (a) that the Fund Manager is in breach of its obligations towards the Employer:
 - (i) specifying the breach and, if applicable, requesting the Fund Manager to cure the breach;
 - (ii) if applicable, certifying that the Fund Manager has failed to remedy the breach within the period allowed for remedial action; and

¹ Insert name of Issuing Bank;

(b) the total amounts demanded.

A Demand shall only be honoured by us: (i) in the case of a written Demand, if it is made by and bears the signature of an authorised officer or other representative of the Employer; or (ii) in the case of a Demand transmitted through SWIFT, if it is transmitted through authenticated SWIFT instructions by the Employer's bank (i.e., National Bank of Pakistan), on behalf of the Employer.

We, the Issuing Bank, shall unconditionally honour a Demand hereunder made in compliance with this Security 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 Security, 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 Security shall come into force and shall become automatically effective upon its issuance.

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

- (i) [●] (the “**Performance Security Original Expiry Date**”) provided that, in the event the Issuing Bank has receipt of the Demand on or immediately prior to the Performance Security Original Expiry Date, the Issuing Bank shall honour that Demand; or
- (ii) when the aggregate of all payments made by us under this Security equal the Guaranteed Amount.

Upon expiry, this Security shall be returned to the Fund Manager without undue delay. Multiple Demands may be made by the Employer under this Security but our aggregate liability will be restricted up to the Guaranteed Amount.

The Guaranteed Amount shall be revised upon receipt by us of a notice duly signed by the Employer and the Fund Manager of the revised guaranteed amount.

We hereby agree that any amendment, renewal, extension, modification, compromise, release or discharge by mutual agreement by the Employer, the Fund Manager 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 Security for its validity period shall not be affected in any manner by any change in our constitution or of the Fund Manager's constitution or of their successors and assignees and this Security 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 Security.

If one or more of the provisions of this Security 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 Security.

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 Security, which obligations are valid and legally binding on and enforceable against us under the laws of Pakistan and under the laws of the jurisdiction where this Security is issued. For the avoidance of doubt, in the event of any inconsistency between the laws of Pakistan and the laws of the jurisdiction where the Security was issued, we agree that the laws of Pakistan shall prevail. Further, that the signatory(ies) to this Security is/are our duly authorized officer(s) to execute this Security.

This Security and all rights and obligations arising from this Security shall be governed and construed in all respects in accordance with the laws of Pakistan. The courts in Pakistan shall have exclusive jurisdiction in respect of any dispute relating to any matter contained herein. The issuance of this Security is permitted according to the laws of Pakistan and the laws of the jurisdiction where this Security is issued.

This Security is subject to the Uniform Rules for Demand Guarantee, ICC Publication No.758. To the extent that there is any inconsistency between the terms of this Security and the Uniform Rules for Demand Guarantees, ICC Publication No. 758, the terms of this Security shall prevail.

.....
Name:
Designation:

SCHEDULE F: TERM EXPIRY CRITERIA

Term Expiry Criteria means the Fund Manager fulfilling each of the following criteria:

- (a) All Services that are contemplated under this Agreement to be performed by the Fund Manager prior to expiry of the Term have been completed.
- (b) All trainings have been completed as per the Training Programme.
- (c) All reports under this Agreement have been submitted to the Employer.
- (d) The Fund Manager has paid the Liquidated Damages to the Employer in accordance with **Exhibit II (Key Performance Indicators)** of **Schedule A (Scope of Work)** of this Agreement.
- (e) The Fund Manager has settled and paid the Employer all amounts that are due to the Employer pursuant to the terms and conditions of this Agreement.

SCHEDULE G: RELEASE CERTIFICATE

Date:

To,

[THE FUND MANAGER],
[Address]

REFERENCE: RELEASE CERTIFICATE

Dear Sir/Madam,

We, [INSERT COMPANY NAME] (the **Employer**), hereby refer you, the Fund Manager to the agreement entitled "Fund Management Agreement" entered into between the Employer and the Fund Manager on [●], 202[1] (the **Agreement**).

Unless defined herein, all capitalized terms shall bear the meaning ascribed thereto in the Agreement.

Further to the written notice issued by you to the Employer dated [●], as attached hereto at Exhibit A (the **Fund Manager Request Notice**), the Employer hereby issues this Release Certificate and confirms satisfaction of the Term Expiry Criteria on [●].

IN WITNESS WHEREOF, the Employer has caused this Release Certificate to be executed by its duly authorized representative.

For and on behalf of,
[INSERT COMPANY NAME]

.....

Name:
Designation:

WITNESS I

WITNESS II

.....
Name:
CNIC:

.....
Name:
CNIC:

RELEASE CERTIFICATE - EXHIBIT A – FUND MANAGER REQUEST NOTICE

Date:

To,

[*INSERT COMPANY NAME*],
[*insert address*].

REFERENCE: NOTICE TO REQUEST ISSUANCE OF RELEASE CERTIFICATE

Dear Sir/Madam,

We, the Fund Manager hereby refer you, [●] (the **Employer**), to the agreement entitled “Fund Management Agreement” entered into between the Employer and the Fund Manager on [●], 20[21] (the **Agreement**).

Unless defined herein, all capitalized terms shall bear the meaning ascribed thereto in the Agreement.

Pursuant to and in accordance with the terms of the Agreement, the Fund Manager hereby confirms that each of the Term Expiry Criteria has been met and satisfied.

Based on the foregoing, the Fund Manager hereby issues this notice to the Employer requesting the issuance of the Release Certificate by the Employer in accordance with the terms of the Agreement

IN WITNESS WHEREOF, the Fund Manager has caused this notice to be executed by its duly authorized representative as of the day of, 20.....

For and on behalf of,
THE FUND MANAGER

.....

Name:
Designation:

WITNESS I

WITNESS II

.....
Name:
NIC:

.....
Name:
NIC:

SCHEDULE H: LIST OF SUB-CONTRACTORS

[to be inserted on Effective Date]

SCHEDULE I: INSURANCE

The Fund Manager shall procure and maintain the following insurance coverage, at its own cost:

A. *[to be inserted from the list submitted as part of the Bid]*

With regard to the insurance policies, the Fund Manager or the Fund Manager's insurers will endeavour to provide thirty (30) days (except ten (10) days in the event of cancellation for non-payment of premium) notice to Employer in the event of cancellation or change.

Upon the request of the Employer the Fund Manager shall deliver to the Employer certificate(s) of insurance showing that the insurance policies are in full force and effect.

FAILURE TO MAINTAIN INSURANCE:

Failure by the Fund Manager to maintain any insurance required under this **Schedule I (Insurances)** shall constitute a material breach of this Agreement.

SCHEDULE J: CONSENTS

[to be inserted within ten (10) days of Notice to Proceed]

SCHEDULE K: PERFORMANCE SECURITY AMOUNT

Performance Security Amount = 10% of annual Service Fee

SCHEDULE L: FORM OF INVOICE

PARTICULARS	REFERENCE	PKR
Adjusted Service Fee per Month	(a)	
Less: Deductions for Non-Compliance of KPIs	(b)	
Net Adjusted Service Fee per Month	(a) – (b)	