

**DRAFT CONCESSION AGREEMENT**

**BETWEEN**

**SOUTH PUNJAB FOREST COMPANY (SPFC)**

**As the Concessing Authority**

**AND**

**[●]**

**As the Concessionaire**

**AND**

**THE GOVERNOR OF PUNJAB**

**[INSERT DATE]**

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This **CONCESSION AGREEMENT** (the “**Agreement**”) is entered into on this [●] day of [●], [2017] at Lahore, Punjab, Pakistan,

**BY AND BETWEEN:**

1. **SOUTH PUNJAB FOREST COMPANY**, through its [●] and having its principal office at [●] (hereinafter referred to as the “**Concessing Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part; and
2. [●], a company incorporated under the Companies Ordinance, 1984 (Company Incorporation Number: [●]), having its registered office at [●] (hereinafter referred to as the “**Concessionaire**”, which expression shall, unless the context otherwise requires, include its successors-in-interest and permitted assigns) of Second Part;
3. **THE GOVERNOR OF PUNJAB**, through the Secretary Forestry, Wildlife & Fisheries Department of the Government of Punjab (hereinafter also referred to as the “**GoPb**” which expression shall, unless repugnant to the context or meaning thereof, include his administrators, successors and assigns) of Third Part.

**WHEREAS:**

- A. The need to enhance efficiencies in the forest sector has led the GoPb to explore the possibility of harnessing private sector investment and managerial skills in this sector.
- B. The Concessing Authority has been incorporated by the GoPb as a “forest company” pursuant to the provisions of the Forest Act, 1927 to oversee public private partnerships on assigned forest lands.
- C. Consequent thereto, the Concessing Authority is envisaging the afforestation of the forest land (“**Project**”) at the location specified and mapped in **Schedule 1- Annex A** of this Agreement (“**Project Site**”), for a period of 15 years on Public Private Partnership (PPP) mode.
- D. The GoPb has assigned the blank forest land of the Project Site to the Concessing Authority vide notification (Number SOFT (EXT) XI-16/2010) dated 16<sup>th</sup> March 2016.
- E. With an objective to develop the Project on Build Operate and Transfer (BOT) basis and in accordance with the Punjab Public Private Partnership Act, 2014, the Concessing Authority had invited competitive proposals from interested private parties to develop, design, undertake, finance, operate, maintain and manage the Project and at the end of the Concession Period (as hereinafter defined) transfer the Project to the Concessing Authority on the terms and conditions contained in the Request for Proposals, dated [●] (“**RFP**”) issued by the Concessing Authority.
- F. In response to the RFP, the Concessing Authority received proposals from various

bidders and the Concessioneing Authority after having evaluated the technical and financial proposals submitted by all bidders accepted the proposal submitted by the Successful Bidder [consisting of M/s [●],[●] and [●] (collectively the "**Consortium**") with [●] as its Lead Member (as hereinafter defined) / [●] (*as a single/individual bidder*)] and a Notice of Award, bearing no. [●], dated [●] was issued to the Successful Bidder.

- G. The Successful Bidder has incorporated the Concessionaire in accordance with the Companies Ordinance, 1984, as a special purpose vehicle for the purposes of the Project.
- H. The Concessioneing Authority is granting concession to the Concessionaire in accordance with this Agreement to develop, design, undertake, finance, operate, maintain and manage the Project and at the end of Concession Period transfer the Project to the Concessioneing Authority in accordance with the terms of this Agreement and for the said purpose, the GoPb has agreed to grant a licence of the Project Site to the Concessionaire, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and undertakings herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

## 1. DEFINITIONS & INTERPRETATIONS

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### 1.1. Definitions

In the Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

**“Additional Cost”** means the additional capital expenditure, the additional operating costs and/or additional taxes, as the case may be, which the Concessionaire has or will be required to incur, as described in Article 8.3.

**“Affected Party”** shall have the meaning ascribed to it in Article 9.1.

**“Afforestation”** shall mean the plantation of forest on the Project Site, in accordance with the terms of this Agreement.

**“Agreement”** means this Agreement dated as of the date first written above together with Recitals and all Schedules attached hereto, by and between the Concessioneing Authority and the Concessionaire, as may be amended by the Parties from time to time.

**“Already Planted Area”** shall mean the area on the Project Site having Forest Timber (excluding Invasive Species) whether naturally growing or planted, before the issuance of Notice to Commence to the Concessionaire.

**“Annual Progress Report”** shall have the meaning ascribed to it in Article 7.9.

**“Applicable Laws”** means any statute, law, regulation, development control regulations, ordinance, notification, rule, judgment, order, decree, bye-law, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency or instrumentality thereof having jurisdiction over the matter in question, as may be in force and effect during the subsistence of this Agreement, including but not limited to the laws detailed in Schedule 9.

**“Applicable Permits”** means all clearances, permits, authorisations, permissions, consents, exemptions, licenses, no-objection certificates and approvals required to be obtained or maintained under or pursuant to Applicable Laws, in connection with implementation of the Project during the subsistence of this Agreement.

**“Appointed Date”** means the date of this Agreement.

**“Approved Detailed Design”** means the Detailed Design provided by the

Concessionaire in accordance with the specifications and standards contained in Schedule 4 of this Agreement and approved by the Concessions Authority in accordance with this Agreement.

**“Biannual Progress Report”** shall have the meaning ascribed to it in Article 7.9.

**“Biodiversity”** means the variability among living species, ecosystems, and genes.

**“Book Value”** means the amount of cost incurred on the Project including depreciation and interest capitalized on the debt portion of the financing, if any, as per the books of the Concessionaire, duly verified and certified by the Joint Auditor in accordance with International Financial Reporting Standards (IFRS) and any applicable corporate legal standards. In computing the Book Value, the Joint Auditor shall rely on the costs of the actual works as approved by the Consultant(s). Provided that in the event of Termination, any revenue or proceeds earned from the Project by the Concessionaire, if any, shall be excluded in computing the Book Value.

**“BOT” or “Build-Operate-and-Transfer”** shall bear the meaning ascribed thereto under the Second Schedule of the Punjab Public Private Partnership Act, 2014.

**“Certificate of Compliance”** shall have the meaning ascribed to it in Article 3.3. (b).

**“Change in Law”** shall mean:

- (a) The adoption, promulgation, repeal, modification or reinterpretation after the date of this Agreement by any Government Agency of any Applicable Laws of Pakistan (including a final, binding and non-appealable decision of any Government Agency);
- (b) the imposition by a Government Agency of any material term or condition in connection with the issuance, renewal, extension, replacement or modification of any Applicable Permit after the date of this Agreement;
- (c) the imposition by a Government Agency of any additional Applicable Permit;  
or
- (d) the imposition of an increased rate of taxes, duties, fees, cess or charge imposed by any Government Agency under the Applicable Laws of Pakistan,

that in the case of each section (a), (b), (c), or (d) above establishes either a material increase in the Total Project Cost or a material decrease in revenue, as a requirement for the design, undertaking, operation or maintenance of the Project/Project Site that is materially more restrictive than requirements: (i) under the Applicable Laws of Pakistan as in effect as of the date of this Agreement; (ii) specified in any applications, or other documents filed in connection with such applications, for any Applicable



Permits filed by the Concessionaire on or before the issuance of Notice to Commence.

**“Change in Ownership”** shall mean direct or indirect transfer of more than [●%] of Ordinary Share Capital, or legal or beneficial ownership, or securities convertible into shares of the Concessionaire, during the Concession Period.

**“Compliance Date”** means the date following a forty-five (45) day period after the Appointed Date or such other date as agreed between the Concessions Authority and the Concessionaire by which time the Parties shall fulfil the Conditions Precedent (under Article 3), evidenced by the issuance of the **“Certificate of Compliance”** by each of the respective Parties / their authorized representatives.

**“Concession”** shall have the meaning ascribed to it in Article 2.

**“Concession Period”** or **“Term”** of the Agreement shall have the meaning ascribed to it in Article 2.3.

**“Concessionaire”** shall have the meaning ascribed to it in the Preamble of this Agreement.

**“Concessionaire Event of Default”** shall have the meaning ascribed to it in Article 10.1.1.

**“Concessionaire's Proposal to Rectify”** shall have the meaning ascribed to it in Article 10.2.1. (b).

**“Concessions Authority”** shall have the meaning ascribed to it in the Preamble of this Agreement.

**“Concessions Authority Event of Default”** shall have the meaning ascribed to it in Article 10.1.2.

**“Concessions Authority Proposal to Rectify”** shall have the meaning ascribed to it in Article 10.2.2. (b).

**“Conditions Precedent”** shall have the meaning ascribed to it in Article 3.

**“Consortium”** means the consortium consisting of (i) [●], (ii) [●], and (iii) [●] formed, to implement the Project.

**“Consultant”** means any consultant(s) or monitoring team(s) appointed by the Concessions Authority as provided under Article 8.1., for monitoring, evaluation or review of the Project. A monitoring team appointed by the Concessions Authority may appoint an independent consultant in accordance with Article 8.1. Both the Internal Consultant and the Independent Consultant shall be collectively called the

Consultant(s) under the terms of this Agreement.

**“Crop Share”** shall have the meaning ascribed to it in Article 6.1.

**“Crop Share Notice”** shall have the meaning ascribed to it in Article 6.1.

**“Cure Period”** shall have the meaning ascribed to it in Article 10.2.1. (c).

**“Detailed Design”** means the Detailed Design provided by the Concessionaire in accordance with Article 3.2. (a) and in the form prescribed in Schedule 4-Annex C.

**“Dispute”** shall have the meaning ascribed to it in Article 12.

**“Earmarked Area”** shall have the meaning ascribed to this term in Article 6.1.

**“Emergency”** means an event, series of events or circumstances which: (a) pose an immediate threat to life, health, property, or environment; or (b) has already caused loss of life, health detriments, property damage, or environmental damage; or (c) has a high probability of escalating to cause immediate danger to life, health, property, or environment, but does not result in a Material Adverse Effect or constitute a Force Majeure.

**“Encumbrance”** means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

**“Financial Assistance”** means the aggregate amount provided to the Concessionaire by way of loan, finance, advances, guarantees, refinancing or otherwise and other debt instruments by the Lenders for the financing of part of the Total Project Cost upto such extent as may be prescribed by the State Bank of Pakistan.

**“Financing Documents”** means the loan agreements or any amendments to the same, for which the term sheets related thereto have not been objected to by the Concessioneing Authority pursuant to Article 7.3., executed by the Successful Bidder or the Concessionaire and the Lenders in respect of the Financial Assistance to be provided by the Lenders to the Concessionaire by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost as such agreements, instruments, guarantees and documents may be amended from time to time in accordance with the provisions of Article 7.3.

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 9.

**“Force Majeure Notice”** shall have the meaning ascribed to it in Article 9.

**“Forest”** shall mean land with tree crown cover (or equivalent stocking level) of more than 10 percent and area of more than 0.5 hectares (ha). The trees should be able to reach a minimum height of 5 meters (m) at maturity in situ.

**“Forest Produce”** shall have the meaning ascribed to this term in Forest Act, 1927.

**“Forest Timber”** means the wood obtained from trees on the Project Site and includes wood (firewood, brushwood, twig, sawdust, chips), whether obtained by falling of a tree or plant or without it.

**“Forest Timber Crop”** shall have the meaning ascribed to it in Article 6.1. **“Good Industry Practice”** means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the development, implementation, operation and maintenance or supervision or monitoring thereof or any of them of a Project of the type and size similar to that of the Project.

**“GoPb”** means the Governor of Punjab on behalf of the Government of Punjab.

**“Government Agency”** shall mean (a) the Government of Pakistan, the Government of Punjab, or any subdivision of either, the Concessions Authority or any local governmental authority with jurisdiction over the Concessionaire, the Project, or any part thereof, (b) any department, authority, instrumentality, agency, or judicial body of the Government of Pakistan, the Government of Punjab or any local governmental authority, (c) the courts and tribunals of Pakistan, or (d) any commission or independent regulatory agency having jurisdiction over the Concessionaire, the Project or any part thereof.

**“Independent Consultant”** shall have the meaning ascribed to it in Article 8.1.

**“Indigenous Species Plantation Area”** shall have the meaning ascribed to it in Article 3.1 (c).

**“Indigenous Crop”** shall have the meaning ascribed to it in Article 6.1.

**“Indigenous Species”** shall mean the species of plants listed in Schedule 4-Annex F.

**“Internal Consultant”** shall have the meaning ascribed to it in Article 8.1.

**“Invasive Species”** is regarded as invasive if it has been introduced by human action to a location, area, or region where it did not previously occur naturally (i.e., is not a native species), becomes capable of establishing a breeding population in the new

location without further intervention by humans, and becomes a pest in the new location, directly threatening agriculture and/or the local Biodiversity. The term invasive species refers to a subset of those species defined as introduced species. If a species has been introduced but remains local, and is not problematic to agriculture or to the local Biodiversity, then it cannot be considered to be invasive and does not belong on this list. Invasive species are mostly exotic species introduced accidentally or intentionally by humans in natural or established habitat where they threaten the environment, economy and/or health. For the purposes of this Agreement, "Invasive Species" shall mean the species of plants listed in Schedule 4-Annex B.

**"Joint Auditor"** shall mean the auditor or a consortium of auditor and other technical expert(s) appointed jointly by the Concessionaire and the Concessions Authority, in accordance with the Punjab Procurement Regulatory Authority Act, 2009, for any purpose under this Agreement including but not limited to matters relating to the cost certifications, Additional Costs, Termination Payments etc.

**"KIBOR"** means One (1) Year Karachi Inter Bank Offer Rate which is the Average rate, Ask Side, for the relevant tenor, as published on Reuters page KIBOR or as published by the Financial Markets Association of Pakistan in case the Reuters page is unavailable.

**"Lead Member"** means [●].<sup>1</sup>

**"Lenders"** means financial institutions, banks and multilateral lending agencies including their successors and assigns, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents.

**"Material Adverse Effect"** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of the Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Agreement, or (c) frustrates a material provision of this Agreement or any of the Project Agreements.

**"Material Breach"** means a breach by either Party of any of its obligations under the Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within period prescribed under this Agreement.

**"Notice to Commence"** shall have the meaning ascribed to it in Article 3.3. (c).

**"Ordinary Share Capital"** shall mean any of the issued and paid-up share capital of the Concessionaire with voting or other rights of management and control.

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<sup>1</sup> To be deleted in case there is no consortium and the Project is awarded to a single bidder.

**“Pak Rupee(s)” or “PKR”** shall mean the official currency of Pakistan.

**“Parties”** means the parties to the Agreement and **“Party”** shall mean either of them, as the context may admit or requires.

**“Person”** unless specifically provided otherwise, shall mean any individual, company, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit.

**“Plantable Area”** is the area designated as plantable area in the Project Site Map (Schedule 1- Annex A) and excludes any designated Already Planted Area, Unplantable Area and Rangeland Area. Provided if the Concessioneing Authority harvests all or any part thereof of the Already Planted Area, thereafter such harvested area shall be deemed to be part of the Plantable Area.

**“Preliminary Notice to Remedy”** shall have the meaning ascribed to it in Article 10.2.1. (b) and Article 10.2.2. (b).

**“Preliminary Progress Report”** shall have the meaning ascribed to it in Article 7.9. (a).

**“Progress Report”** shall have the meaning ascribed to it in Article 7.9.

**“Project”** means, subject to the provisions of this Agreement, the development, financing, designing, undertaking, operation, maintenance and management of the Project Site in compliance of the standards prescribed in Schedule 4, (as also detailed in Article 2.2 (*Scope of Concession*)), including (i) plantation and maintenance of Recommended Species or other species approved by Concessioneing Authority at the Project Site; (ii) undertaking such activities as provided in the Scope of Concession; (iii) arranging, constructing or providing for the irrigation system at the Project Site; (iii) where and if possible insurance of the Project Site, for the purposes of operations on a continuous basis; and (v) transfer of all rights in developed land of the Project Site or under this Agreement, as envisaged, to the Concessioneing Authority at the end of the Concession Period or on prior termination of this Agreement.

**“Project Agreements”** means, collectively, this Agreement, the Financing Documents, and any agreement with a Sub-Contractor, in each case as amended, supplemented or otherwise modified from time to time and any other agreements or contract that may be entered into by the Concessioneing Authority with any person in connection with matters relating to, arising out of or incidental to the Project.

**“Project Design and Afforestation Standards”** means the specifications and standards given in Schedule 4 of this Agreement;

**“Project Performance Security”** means the performance security by way of an unconditional and irrevocable bank guarantee encashable on first written demand of

the Concessioneing Authority issued by a Scheduled bank regulated by State Bank of Pakistan or any 'AA' rated Insurance Company, acceptable to the Concessioneing Authority, substantially in the form provided as Schedule 2 and as also ascribed to in Article 7.2.

**"Project Site"** means the land area earmarked for the development of the Project comprising a land area of [●], wherein the Project is to be developed, implemented, established, operated, maintained and managed by the Concessioneire in accordance with the provisions of the Agreement. The final demarcation of area and location of the Project Site, the designated Rangeland Area and the Plantable Area, which may have a variation of approximately 10% from the Project Site Map (Schedule 1 (Annex A)), is subject to actual verification by the Concessioneing Authority. In any case, the Concessioneing Authority shall so demarcate the Project Site before issuance of Notice to Commence and the decision of the Concessioneing Authority shall be final in this regard.

**"Rangeland Area"** means the area designated in the Project Site Map (Schedule 1- Annex A) as Rangeland Area.

**"Rangeland Fee"** bears the meaning ascribed to this term in Article 6.3.

**"Recommended Species"** shall mean the species of plants listed in Schedule 4- Annex A.

**"Residual Crop"** shall have the meaning ascribed to this term in Article 6.1.

**"Revenue Share"** shall have the meaning ascribed to this term in Article 6.2.

**"RFP Bid Bond"** means the bid bond for an amount of PKR [●] (Pak Rupees [●] Only) submitted by the Successful Bidder in response to the RFP issued by the Concessioneing Authority.

**"Right of Way"** means an approach road between a public road and a continuous tract of forest land assigned to the Concessioneing Authority which also contains the Project Site. The Right of Way is mapped in Schedule 1- Annex B of this Agreement.

**"Spacing"** means the spacing requirements prescribed in Schedule 4: Annex E of this Agreement but in any case forest cover of not less than 200 trees per acre.

**"Sub-Contractor(s)"** means a reputed Person with whom the Concessioneire has entered into or may enter into contracts / agreements for the purpose of development and implementation of the Project.

**"Successful Bidder"** means [●] / the bidder [or, if applicable, consortium consisting of [●], [●] and [●] (with [●] as its Lead Member))] that is finally awarded the Concession

and invited to enter into this Agreement.

**“Termination”** means termination of this Agreement, pursuant to Termination Notice or non- fulfilment of Conditions Precedent or otherwise in accordance with the provisions of the Agreement but shall not, unless the context otherwise requires, include expiry of the Agreement due to efflux of time in the normal course.

**“Termination Date”** means the date specified in the Termination Notice as the date on which Termination occurs.

**“Termination Notice”** means the notice of Termination of the Agreement by either Party to the other Party, in accordance with Article 10 of this Agreement.

**“Termination Payment”** means the amount payable by the Concessioneing Authority to the Concessionaire upon Termination in accordance with Article 10 of this Agreement.

**“Third Party” or “Third Parties”** means any Person, real or legal or entity other than the Parties of the Agreement.

**“Total Project Cost”** means the actual cost incurred on the Project as certified by the statutory auditor(s).

**“Transfer Date”** means the date immediately following the date of the expiry of the Concession Period of the Term under this Agreement or any earlier termination thereof in accordance with the provisions of this Agreement.

**“Un-Plantable Area”** is the area designated as unplantable area in the Project Site Map (Schedule 1- Annex A), which may include sand dunes, waterlogged area, riverbeds and any other area unsuitable for plantation of trees.

**“Variation”** means any change to the Project, which is approved as a variation by the Concessioneing Authority and the Consultant(s) in accordance with Article 5.

**“Vesting Certificate”** shall have the meaning ascribed to it in Article 11.1 (f).

## 1.2. Interpretation

In the Agreement, unless the context otherwise requires:

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in

Pakistan, in particular Punjab;

- (c) the words importing singular shall include plural and vice versa;
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of the Agreement;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day shall mean a reference to a calendar day;
- (g) any reference to month shall mean a reference to a calendar month as per the Gregorian Calendar;
- (h) the Schedules to the Agreement form an integral part of the Agreement and will be in full force and effect as though they were expressly set out in the body of the Agreement; and
- (i) references to preamble, recitals, Articles, sub-articles or Schedules in the Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub- articles and Schedules of or to this Agreement.

### **1.3. Measurements and Arithmetic Conventions**

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

## **2. THE CONCESSION**

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### **2.1. Grant of Rights to Concessionaire**

Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practice, the Concessions Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and authority to plan, develop, design, monitor, finance, equip, operate, maintain and manage the Project at the Project Site (the "**Concession**") for a period of 15 years (or a shorter period in case of early termination by a Termination Notice in accordance with this Agreement), commencing from the date of issuance of Notice to Commence and ending on the Transfer Date (the "**Concession Period**"), which includes exercising and/or enjoying the rights, power, privileges and entitlements as set forth in this Agreement and implement the Project subject to and in accordance with the terms and conditions set forth herein. It is expressly understood and agreed by the Concessionaire that Concession is granted on the condition that in event of a dispute or breach of the Agreement, no claim or interest of the Concessionaire shall under any circumstances be entitled to specific performance or any injunctive, equitable or other prospective



relief.

## 2.2. Scope of Concession

Subject to and in accordance with the provisions of this Agreement including specifications and standards, Applicable Laws, Applicable Permits, terms of clearances, Good Industry Practice, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire, during the Concession Period, at its own cost to:

- a. construct 30 feet wide dirt track along the perimeter of the Project Site and allow other concessionaires of SPFC free of cost to use such track to access their own project sites;
- b. share with neighboring project sites the access to irrigation canal(s) network, if the same is made available at the Project Site by the Irrigation Department of the Government of Punjab. The Concessionaire shall not be allowed to block any potential water way, canal or route, that goes through the Project Site to neighbouring project sites allotted to other concessionaires. It shall be the responsibility of the Concessionaire at its own cost and expense to build all such water routes and canals through the Project Site and the Concessionaire shall submit its plan with respect thereto as part of the Detailed Design to be submitted to the Concessioning Authority for approval. The irrigation of the Project Site shall remain exclusive responsibility of the Concessionaire at its own cost and expense;
- c. allocate not more than 17.73% area of the Project Site in accordance with the Approved Detailed Design:
  - (i) for the construction of compartment/cross roads, trails to act as pathways for monitoring purposes and as fire-breakers. The construction of these roads shall be the responsibility of the Concessionaire at its own cost and expense;
  - (ii) for designing, installing, procuring, and constructing any structures and improvements, only temporary in nature, at the Project Site, including any residential house, campsites, fences, boundaries, access, storage shed, cattle barn, or silos for livestock fodder storage (such storage/silo would be allowed only for rangeland areas) only as provided in the Approved Detailed Design in compliance with the prescribed maximum construction area and standards (Schedule 4). The Concessionaire shall not raise any construction, build any structure or make any improvement at the Project Site which is permanent in nature; and
  - (iii) for building any irrigation system, channels, canals, paseels or khals on the Project Site.

Provided the area allocated under this sub clause (c) shall be managed strictly in compliance with the Approved Detailed Design at the cost and expense of Concessionaire. Further, the said area shall not be used for any purpose prohibited or not expressly approved by the Concessioneing Authority;

- d. plan, design, develop, finance, equip, operate, maintain and manage the Project Site, if required leveling and treating salinity of the same and transfer all its rights to the developed land of the Project Site to the Concessioneing Authority on the expiry or the prior termination of the Concession Period;
- e. arrange and maintain the irrigation system at the Project Site as per the terms and conditions of this Agreement;
- f. on and from the date of issuance of Notice to Commence and until the Transfer Date, the Concessionaire shall have the right to plant and maintain the Recommended Species or other species approved by the Concessioneing Authority. The Concessionaire shall only plant Indigenous Specie(s) on the Indigenous Species Plantation Area, in accordance with the terms of this Agreement;
- g. cut, collect, clear, remove, fell, lop, girdle, maintain, sell or exploit Forest Timber at the Project Site in conformity with the specifications and standards and other provisions of this Agreement;
- h. apportion and share the Forest Produce (and revenue related to non-timber related Forest Produce) with the Concessioneing Authority as provided in this Agreement;
- i. protect the Project Site from Invasive Species (Schedule 4- Annex B), in conformity with the specifications and standards and other provisions of this Agreement;
- j. refrain from and prohibit exploitation of the Project Site, except as provided under the terms and conditions of this Agreement or with prior written approval of the Concessioneing Authority;
- k. perform and fulfill all of the Concessionaire's obligations in accordance with this Agreement;
- l. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- m. subject to this Agreement and other relevant provisions under Applicable Laws, enter into agreements with such legal entities, as it may deem necessary and appropriate, for performing its obligations under this Agreement; maintain Spacing and fire lines on the Project Site, failing which Concessioneing Authority shall levy liquidated damages on Concessionaire of PKR [10,000] per year for every acre not maintained with requisite Spacing, which damages shall be so collectable by the Concessioneing Authority for the entire period of non-compliance with the said requirements;
- n. perform such obligations as specified in Schedule 4 Annex D, in case the Project

- Site consists of any designated Rangeland lot;
- o. create an Encumbrance, with respect to its rights and obligations under this Agreement excluding any right related to the Project Site, in favour of Lenders, only during the Concession Period strictly in part or whole, and in accordance with the terms of this Agreement. Provided that the Concessionaire shall create an Encumbrance in strict compliance with the provisions of this Agreement. Provided further, the Concessionaire shall not sub-let or mortgage or create any other Encumbrance over the Project Site or any part of the Project Site for any purpose and shall not pledge the Forest Timber without prior written approval of the Concessions Authority; and
  - p. exercise such other rights and obligations as the Concessions Authority may determine as being necessary or desirable for the purpose or incidental and necessary for implementing the Project.

### **2.3. "Concession Period" or "Term" of Agreement**

- (a) This Agreement shall be valid and binding on the Parties commencing from the Appointed Date. The term of the Concession shall initiate from the date of issuance of Notice to Commence under Article 3.3 (c) till a period of fifteen (15) years has lapsed thereafter (the "**Concession Period**" or the "**Term**") and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions of this Agreement. Provided that in the event of early termination, the period of the Agreement shall be limited to the period commencing from the Appointed Date and ending with the Termination Date.
- (b) Upon expiry of the Concession Period, the licence for Project Site granted to the Concessionaire under Article 4 shall stand terminated and all rights of the Concessionaire to the Project Site along with any Forest Produce shall stand transferred to the Concessions Authority.

### **2.4. Acceptance by Concessionaire**

In consideration of the rights, privileges and benefits conferred upon by the Concessions Authority pursuant to this Agreement and other good and valuable consideration expressed herein, the Concessionaire hereby accepts and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

## **3. CONDITIONS PRECEDENT**

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Save and except as may otherwise be expressly provided herein, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of all the conditions precedent ("**Conditions Precedent**") as set out in Article 3.1

and Article 3.2 on or before the expiry of a period of forty-five (45) days from the Appointed Date.

### **3.1. Conditions Precedent for the Concessing Authority**

The Concessing Authority shall have:

- (a) upon receipt of the Project Performance Security, returned the RFP Bid Bond to the Successful Bidder;
- (b) demarcated and measured the coordinates of Project Site, Rangeland Area and Plantable Area and provided the same to the Concessionaire;
- (c) designated and earmarked a contiguous area equivalent to ([•]X0.25)% of the Plantable Area (“**Indigenous Species Plantation Area**”) in the Detailed Design before approval and notified the Concessionaire of the same;
- (d) given comments / observations and ordered variations (if any) to the Detailed Design submitted by the Concessionaire or forwarded by the Consultant under Article 3.2 (b). Failure to do so will be considered deemed approval of the Detailed Design by the Concessing Authority; and
- (e) given comments / observations (if any) to an amendment of the Detailed Design under Article 3.2(b).

### **3.2. Conditions Precedent for the Concessionaire**

The Concessionaire shall have complied with the following:

- (a) Prepared a Detailed Design for the Project based on the Project Design and Afforestation Standards provided by the Concessing Authority as Schedule 4 and project cost estimates, including the species of trees to be planted, proposed spacing, stocking, planned rotation age of the forest crop, detailed irrigation plan, details and drawings of any constructions and improvements at the Project Site (which can only be temporary in nature), complete design calculations, area statement, drawings and all other details required for carrying out the Project and achieving the Project in accordance with this Agreement and the Applicable Laws;
- (b) Submitted the Detailed Design to the Concessing Authority and the Consultant(s) for their review and approval, within a period of twenty (20) days from the Appointed Date, however the approval of the Detailed

Design by the Consultant(s) and/or by the Concessing Authority shall not be construed so as to absolve the Concessionaire of its obligations under this Agreement and the Concessionaire shall continue to warrant that the Detailed Design is such as to ensure the safety, durability and reliability of the Project Site. Within five (5) days of receipt of the Detailed Design, the Consultant(s) shall review the submitted Detailed Design, and convey its comments/observations to the Concessionaire on the conformity of the Detailed Design with the Project Design and Afforestation Standards, Applicable Laws and Good Industry Practice. If the comments/observations of the Consultant(s) indicate that the Detailed Design is not in conformity with this Agreement, such Detailed Design shall be revised by the Concessionaire to the extent necessary and resubmitted to the Consultant(s) for further review. The Consultant(s) shall give its observations and comments, if any, within five (5) days of receipt of such revised Detailed Design, which shall be taken into account by the Concessionaire while finalising the Detailed Design. This process shall continue until the Consultant(s) is satisfied that the Detailed Design is in conformity with this Agreement and the Project Design and Afforestation Standards (Schedule 4). The Consultant(s) shall recommend and forward the Detailed Design to Concessing Authority for final approval. Within five (5) days of receipt of the Detailed Design, the Concessing Authority will approve the Detailed Design or return it to the Concessionaire with comments/observations through the Consultant(s). If the comments/observations of the Concessing Authority indicate that the Detailed Design is not in conformity with the Project Design and Afforestation Standards set forth in this Agreement, such Detailed Design shall be revised by the Concessionaire to the extent necessary and resubmitted to the Consultant(s) for review, observations and comments. The Consultant(s) shall give its observations and comments, if any, within five (5) days of the receipt of such revised Detailed Design. This process shall continue until the Consultant(s) is satisfied that the Detailed Design has been corrected in light of comments/observations of the Concessing Authority. The Consultant(s) shall recommend and forward the Detailed Design to the Concessing Authority for final approval. Within five (5) days of receipt of such revised Detailed Design with recommendation of the Consultant, the Concessing Authority will accord final approval of the Detailed Design. The Concessionaire shall be responsible for delays caused by reason of the Detailed Design not being in conformity with the Project Design and Afforestation Standards provided by the Concessing Authority, and shall not be entitled to seek any relief in that regard from the Concessing Authority;

- (c) Provided the Concessing Authority with copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorizing the execution, delivery and performance of this Agreement by the Concessionaire;

- (d) Delivered to the Concessing Authority, a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into the Agreement and the enforceability of the provisions thereof;
- (e) Delivered the Concessing Authority with copies of all insurance / takaful, social security payments and policies, if any available, obtained in accordance with Article 7.5.;
- (f) Executed the Integrity Pact in the form provided in Schedule 6 (*Integrity Pact*);
- (g) Provided the Project Performance Security in full to the Concessing Authority in accordance with Article 7.2.;
- (h) Provided the Concessing Authority with copies (certified as true copies by Director of the Concessionaire) of the constitutional documents of the Concessionaire including the Memorandum and Articles of the Association of the Concessionaire as well as all forms filed with the Securities Exchange Commission of Pakistan; and
- (i) Obtained all Government Agency clearances and permits under the Applicable Laws including in relation to environmental protection, afforestation standards and wildlife and forestry standards.

### **3.3. Obligations to Satisfy Conditions Precedent**

- (a) Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within forty-five (45) days of the Appointed Date.
- (b) Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (the "**Certificate of Compliance**").
- (c) The later of the date of issue of Certificate of Compliance to the Concessionaire or the Concessing Authority shall be the "**Compliance Date**", whereupon the remaining obligations of the Parties under this Agreement shall commence and whereon the Concessing Authority shall issue the "**Notice to Commence**" to the Concessionaire.
- (d) Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

### **3.4. Non-fulfilment of Conditions Precedent**

- (a) In the event that (i) any of the Conditions Precedents relating to the Concessionaire set forth in Article 3.2 have not been fulfilled within forty-five (45) days of the signing of the Agreement, (ii) the delay has not occurred as a result of breach of this Agreement by the Concessions Authority or due to Force Majeure, and (iii) unless, the Concessions Authority has not waived them fully or partially, the Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the parties and no Party shall subsequently have any rights or obligations under the Agreement and the Concessions Authority or GoPb shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- (b) In the event the Agreement has been terminated under Article 3.4(a) due to non-fulfilment of Conditions Precedent by the Concessionaire, the Concessions Authority or GoPb shall not be liable in any manner whatsoever to the Concessionaire or its Sub-Contractors, agents and employees and the Concessions Authority shall forfeit the Project Performance Security of the Concessionaire.
- (c) Instead of terminating the Agreement as provided in Article 3.4 (a) the Concessions Authority may extend the time for fulfilling the Conditions Precedent.
- (d) In the event that (i) any of the Conditions Precedent relating to the Concessions Authority set forth in Article 3.1 have not been fulfilled within forty-five (45) days of the signing of the Agreement, (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, (iii) unless, the Concessionaire has not waived them fully or partially, the Concessionaire shall have the right to forthwith terminate this Agreement by written notice to the Concessions Authority and the GoPb which shall be the only remedy available to the Concessionaire in this regard and no Party shall subsequently have any rights or obligations under the Agreement.
- (e) In the event the Agreement has been terminated under Article 3.4(d) due to non-fulfilment of Conditions Precedent by the Concessions Authority, the Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or its Sub-Contractors, agents and employees.

## **4. THE PROJECT SITE**

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### **4.1. The Site Licence for the Project**

1. In consideration of Concessions Authority receiving Crop Share or/and Rangeland Fee under this Agreement the GoPb shall grant: the Concessionaire licence to the Project Site for undertaking obligations set out in this Agreement, and consequent thereto, hand over the vacant possession of the

Project Site.

Provided that, the licence granted by the GoPb under this Article shall be deemed to be granted and operative, without further action or approval, only at the issuance of the Notice to Commence to the Concessionaire subject to satisfactory fulfilment of Conditions Precedent of the Concessionaire (Article 3.2).

2. The term of the licence granted under this Article shall be co-terminus with the Concession Period.
3. The Concessions Authority shall procure the Right of Way for the Concessionaire in accordance with the provisions of this Agreement. The Concessions Authority represents that at the time of grant of licence, any encumbrance, litigation, existing rights or claims on Project Site shall cumulatively not exceed more than ten percent (10%) of the total area of the Project Site.

Provided that any responsibility of developing the Project Site including arranging for irrigation, shall not be of the Concessions Authority or the GoPb.

4. It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the GoPb/Concessions Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever.
5. Notwithstanding anything contained herein, the Concessionaire acknowledges that its only right to the Project Site is a license to access the same for the purposes contemplated by this Agreement and the Concessionaire has no ownership or leasehold rights with respect to the Project Site or any part thereof.

#### **4.2. Right and Use of the Project Site**

Once operative, the licence granted to the Concessionaire under Article 4.1 shall be subject to the following conditions:

- (a) The Concessionaire shall have access to the Project Site and to make at its own costs, charges and expenses, such investigations and development activities (including but not limited to land filling, leveling, clearing, treating salinity, shifting of utilities, landscaping, irrigation and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project.
- (b) The Concessionaire undertakes to GoPb and the Concessions Authority that it shall not mortgage, transfer, assign, license, sub-licence or otherwise create an Encumbrance on the Project Site during the Concession Period. During the



Concession Period, the Concessionaire shall protect the Project Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Project Site, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

- (c) The Concessionaire may undertake plantation, seeding, harvesting and development of the Project Site by itself or through a Sub-Contractor possessing the requisite technical, financial and managerial expertise/capability and duly approved in writing by the Concessions Authority; but in either case, the Concessionaire shall remain solely responsible to meet the Project Design and Afforestation Standards and to fulfil all other obligations under this Agreement.
- (d) Subject to the terms of this Agreement, the Concessionaire shall have the right to develop, create, obtain, set up, construct as the context admits or requires, and operate and maintain the Project by itself or through its Sub-Contractors.
- (e) The Concessionaire shall have the right to use the Project Site in accordance with the provisions of this Agreement and for this purpose the Concessionaire may regulate the entry and use of the Project Site by the Third Parties.
- (f) The Concessionaire shall not without the prior written approval of the Concessions Authority use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (g) During the Concession Period, the Concessionaire shall provide the Consultant(s) and/or the Concessions Authority any documentation as required by such Consultant and/or the Concessions Authority with regard to the Project being undertaken by the Concessionaire.
- (h) The licence and right to use the Project Site granted to the Concessionaire hereunder shall always be subject to the right of access of GoPb, the Concessions Authority, the Consultants, any experts appointed by the Concessions Authority and their employees and agents for inspection, viewing and as exercise of their rights and performance of their obligations under this Agreement.
- (i) The Concessionaire shall ensure at its cost and consequence that during such period the Project Site is protected from any hazardous or contaminated material, and that no damage is caused by its activities thereat. The Concessionaire shall ensure protection of the Project Site from Invasive Species and shall from time to time uproot and clean the same from the Project Site. The Concessionaire shall further ensure that any hazardous or contaminated material used or intended to be used in carrying out the Project are kept under control and safe keeping in accordance with Applicable Law and Good Industry Practice, and shall ensure all such materials are properly and clearly labelled.

- (j) The Concessionaire shall seed and plant the Plantable Area of the Project Site, as provided in the Approved Detailed Design in accordance with Good Industry Practice and Applicable Laws and the Concessionaire will perform all work necessary in order to leave the Project Site in a proper condition for any following plantation of forest. For this purpose, the Concessionaire shall remove the stumps of the harvested trees from the land.
- (k) The Concessionaire shall not impoverish or waste the Project Site and shall use the Project Site for the purpose of forest plantation only or any other activity permitted by Applicable Laws and approved in writing by the Concessions Authority.
- (l) The Concessionaire has no rights to sand, gravel, or clay from the Project Site, except for its own use, it has no rights whatsoever to valuable stone or other such substances existing on, or under the surface of the Project Site.
- (m) The Concessions Authority, including its employees, agents and representatives shall be permitted to enter upon the Project Site at any time for the purpose of inspecting the Project Site, including any alterations and improvements thereon.

## 5. VARIATION

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### 5.1. Value Development

- (a) The Concessionaire may, at any time, submit to the Concessions Authority a written proposal (“**Variation Notice**”) which (in the Concessionaire’s opinion) will, if adopted: (i) accelerate the completion of the Project; (ii) reduce the cost of maintaining or operating the Project; (iii) improve the efficiency or value of the completed Project; and/or (iv) otherwise be of benefit to the Project or to the Concessions Authority.
- (b) The proposal shall be prepared at the cost of the Concessionaire and shall include the following items and information:
  - i. The factors which are likely to affect the Approved Detailed Design due to the said variation;
  - ii. The options for implementing the proposed variations and the effect, if any, each such option would have based on the costs and time thereof;
  - iii. The estimate of the additional cost and expenses, including for the additional works, which shall be incurred by the Concessionaire for implementing the said variation to the Approved Detailed Design; and
  - iv. The assessment of the time (in number of days) which is required to make such variation to the Approved Detailed Design.

## 5.2. Variation Procedure

- (a) The Concessioneing Authority shall, as soon as practicable after receiving such proposal (under Article 5.1 (*Value Development*)), respond with approval, disapproval or comments. The Concessionaire shall not delay any work whilst awaiting a response. The said proposal shall be deemed to be approved, if no comments are received from the Concessioneing Authority within thirty (30) days of receipt of Variation Notice.
- (b) Upon approving a Variation, the Concessionaire shall make revisions in Detailed Design and get it approved from the Consultant(s). Irrespective of any Variation approved pursuant to this Article 5, the Concessioneing Authority shall not grant any extension in the Concession Period.

## 6. CONSIDERATION

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### 6.1. Crop Share

1. As soon as crop of a species planted by the Concessionaire on the Plantable Area of Project Site is ready to harvest to receive any Forest Timber ("**Forest Timber Crop**"), the Concessionaire shall notify the Concessioneing Authority in writing ("**Crop Share Notice**"). The Concessionaire shall not harvest its share without following the process set out in this Article and seeking the written permission of the Concessioneing Authority which permission shall not be withheld unreasonably.
2. Within [•] days of receipt of Crop Share Notice, the Concessioneing Authority shall
  - i. arrange to visit the Project Site;
  - ii. in its discretion earmark a contiguous area equivalent to ([•]X0.75) % of the Plantable Area ("**Earmarked Area**") to receive its share of the Forest Timber Crop ("**Crop Share**");
  - iii. notify the location of the Earmarked Area to the Concessionaire; and
  - iv. notify to the Concessionaire that the Concessioneing Authority has decided:
    - a. not to harvest the Crop Share. In this case, the Concessionaire shall not damage and shall be solely responsible to maintain the Crop Share during the remainder of the Concession Period or till such time Concessioneing Authority does not harvest Crop Share, as the case may be; or
    - b. to harvest the Crop Share. The responsibility and cost of such harvesting shall be borne by the Concessioneing Authority.
3. According to the maturity age/harvest cycle, Crop Share(s) shall be payable for all species planted by the Concessionaire at the Project Site as and when it is ready to

harvest. Notwithstanding anything contained herein, the Concessionaire shall maintain Indigenous Species Plantation Area as prescribed in sub-clause 5 of this Article.

4. If Concessioneing Authority decides to harvest the Crop Share, the Concessionaire shall at its own cost, within [•] months of such harvesting, replant the Earmarked Area as per the Approved Detailed Design.
5. Before approving the Detailed Design, the Concessioneing Authority shall designate the Indigenous Species Plantation Area as provided in Article 3.1 (c). The Concessionaire shall only plant Indigenous Specie(s), as specified in the Approved Detailed Design, on the Indigenous Species Plantation Area. The Concessionaire or the Concessioneing Authority shall not harvest Forest Timber on the Indigenous Species Plantation Area (“**Indigenous Crop**”). During the term of the Concession Period, the Concessionaire shall be solely responsible for maintaining the plantation or Forest Timber, of the Indigenous Specie, on the Indigenous Species Plantation Area.
6. Provided the Concessionaire has complied with the procedure set out in this Article 6.1, and the Concessioneing Authority has notified the Crop Share, the Concessionaire shall be free to dispose of the Forest Timber Crop other than the Crop Share and the Indigenous Crop (“**Residual Crop**”). The Concessionaire shall not be allowed to harvest the Residual Crop if the Indigenous Crop is not maintained as per any standards set out by the Concessioneing Authority.
7. Any Already Planted Areas shall not be re-planted, cleared or harvested by the Concessionaire. At the time of commencement of the Concession Period, the Concessioneing Authority shall demarcate, count and maintain record of the tree count of such Already Planted Areas. Already Planted Area shall be excluded from the area of the Project Site for the purpose of calculating a Crop Share under this Article. In case, the Concessioneing Authority harvests all or any part thereof of the Already Planted Area, thereafter such harvested area shall be deemed part of the Plantable Area. The Concessionaire shall be responsible to plant any such area within a period of [] months and a Crop Share shall be payable on such area as provided in this Article 6. Nothing therein would entitle the Concessionaire to retain any share of Forest Timber from harvesting of Already Planted Area.
8. In case of violation of sub-clause (5) and (7) of this Article, in addition and without prejudice to any other rights or remedies available to it, the Concessioneing Authority may claim a share proportionate to its loss from the Residual Crop.

## **6.2. Revenue Share**

1. The Concessionaire shall keep a record of the Forest Produce for the Project Site and submit it to the Concessioneing Authority on written request. The Concessioneing

Authority shall have the right, at its own cost and expense, to have such records audited.

2. During the Concession Period, the Concessionaire shall, after every six months, pay [●] percentage of revenue earned from the sale or exploitation of Forest Produce (excluding Forest Timber for which Crop Share is payable) ("**Revenue Share**").

### **6.3. Rangeland Fee**

1. If there is any designated Rangeland Area in the Project Site, the Concessionaire shall annually in advance pay to the Concessions Authority for such Rangeland Area PKR [●] per acre, (amounting to a total of Pak Rupees [●] only) ("**Rangeland Fee**"). No Crop Share shall be payable for the Rangeland Area and the Concessionaire shall be free to harvest any Forest Timber planted by it on such Rangeland Area. The Rangeland Fee shall be increased annually by 5% of Rangeland Fee paid during the preceding year.

## **7. OBLIGATIONS OF THE CONCESSIONAIRE**

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Following satisfaction of the Conditions Precedent, in addition to and not in derogation or substitution of any of its other obligations under the Agreement, the Concessionaire shall have the following obligations:

### **7.1. Project Development**

The Concessionaire shall complete the Project in accordance with the terms of this Agreement.

### **7.2. Project Performance Security**

(a) For due and punctual performance of its obligations under this Agreement, relating to the Project during Concession Period, the Concessionaire shall deliver to the Concessions Authority on the Compliance Date and maintain a Project Performance Security. The amount of Project Performance Security shall be the aggregate of the following:

- i. PKR 12,500 per acre of the Plant-able Area of the Project Site (if any) (amounting to a total of Pak Rupees [●] only); and
- ii. PKR [●] (amounting to a total of Pak Rupees [●] only), equivalent of two years' Rangeland Fee for the total Rangeland Area (if any), of the Project Site.

The Project Performance Security amounting to a total of PKR [●] only, shall be in the form of an irrevocable, unconditional and first demand performance guarantee in favour of the Concessions Authority. The Project Performance Security shall be prepared and submitted as per the format given in Schedule 2 of this Agreement.

- (b) The Project Performance Security shall be from a Scheduled bank regulated by State Bank of Pakistan or a 'AA' rated insurance company, approved by the Concessing Authority, payable at Lahore, Punjab, Pakistan. The Project Performance Security shall be valid for a period of twelve (12) months from the Compliance Date and shall be renewed every year, at least thirty (30) days prior to the date of expiry of the Project Performance Security. All charges, fees, costs and expenses related to the Project Performance Security shall be borne and paid by the Concessionaire. At the end of the Concession Period the Performance Security, subject to the Concessing Authority's right to receive or recover amounts, if any, due from the Concessionaire under the Agreement, be duly discharged and released to the Concessionaire.
- (c) Upon the occurrence of a Concessionaire Event of Default during the Concession Period, the Concessing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Project Performance Security as damages. Upon such encashment and appropriation from the Project Performance Security, the Concessionaire shall, within thirty (30) days replenish the Project Performance Security, in case of partial appropriation, to its original level before such encashment or appropriation of and in case of appropriation of entire Project Performance Security to provide a fresh Project Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Concessing Authority a fresh Project Performance Security as aforesaid, failing which the Concessing Authority shall be entitled to terminate this Agreement.
- (d) If this Agreement is terminated due to any event other than a Concessionaire Event of Default, the Project Performance Security shall, subject to the Concessing Authority's right to receive or recover amounts, if any, due from the Concessionaire under the Agreement, be duly discharged and released to the Concessionaire.

### **7.3. Financing Arrangement, Payment of Taxes, etc.**

- (a) Prior to procuring any loan or financing for the Project, the Concessionaire shall deliver to the Concessing Authority a Schedule or a copy of the term sheet reflecting the proposed material terms of the Financing Documents, and setting forth a principal repayment Schedule that provides for a debt obligation that is not more than the maximum percentage of Total Project Cost prescribed by the State Bank of Pakistan including the maximum principal amounts and interest rate or rates (or mark-up or any other term connoting the return paid to the Lender on debt) and any Schedules or formulae that will be included in the Financing Documents for the computation of fees and charges payable to the

Lender upon the winding up for early termination of the loans under the Financing Documents, and shall also identify the equity commitment of the Successful Bidder. If the Concessing Authority has any objections to the terms specified in such term sheet or Schedule, it shall inform the Concessionaire thereof within fifteen (15) days of its receipt thereof; otherwise, it shall be deemed not to have objected to those terms and the Concessionaire shall be entitled thereafter to execute the Financing Documents, consistent with those terms and a principal repayment Schedule of the specified term or a shorter term without further notice to or non-objection by the Concessing Authority. The Concessionaire shall provide the Concessing Authority with a copy of the Financing Documents as executed no later than fifteen (15) days after the date of such execution.

- (b) The Concessionaire shall not execute any amendment or modification changing or affecting the repayment of principal (including any refinancing or restructuring of payment obligations under any Financing Document) or enter into any loan agreement for secured debt or otherwise incur any additional secured debt without submitting to the Concessing Authority, no less than thirty (30) days prior to execution of such amendment or modification to the Financing Documents or new loan agreements, a Schedule or term sheet setting forth the proposed revised principal repayment Schedule and the other principal financial terms or material modifications related thereto. The Concessing Authority shall notify the Concessionaire of any objections to the term sheet or Schedule related to the proposed modification to the principal repayment Schedule as soon as reasonably possible, and in any case within fifteen (15) days of receipt of the term sheet or Schedule. The Concessionaire shall deliver to the Concessing Authority, copies of all amendments to the executed Financing Documents within ten (10) days after the execution of each such document.
- (c) The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Concessing Authority.
- (d) The Concessionaire is under no obligation to obtain loan financing for the Project. The Concessionaire shall at its own cost, expense and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement.
- (e) The Concessionaire shall pay all duties, taxes, levies, etc. such Import Duties, etc. towards all or any of the equipment, material, furnishings, etc. to be installed in the Project/Project Site apart from taking any necessary approvals / permissions for the same.

- (f) The Concessionaire shall pay at its own cost all applicable, existing and future taxes / charges / fees / levies/ cess including any income tax, property tax, service(s) tax, water tax (abiana), stamp duty, registration charges and / or pay cost of any legal documentation charges, etc. in respect of the said Project / Project Site/ Forest Timber, as levied.

#### **7.4. Project Implementation**

- (a) The Concessionaire shall implement the Project in accordance with the standards and specifications as stipulated in Schedule 4 and as per the RFP, within the Concession Period.
- (b) The Concessionaire shall complete the development of land and plantation, as per the following schedule:
  - i. not less than twenty five percent of the Plantable Area in the first year of the Term;
  - ii. not less than fifty percent of the Plantable Area in the second year of the Term; and
  - iii. hundred percent of the Plantable Area by the end of the third year of the Term.

In case the Concessionaire fails to comply with the schedule provided herein the Concessioneing Authority shall levy liquidated damages on Concessionaire of PKR [10,000] per year for every acre not so planted as per the said schedule, which damages shall be so collectable by the Concessioneing Authority for the entire period of non-compliance. The right to levy damages under this Article shall neither relieve the Concessionaire from fulfilling and performing its obligations under this Agreement, nor prejudice and reduce any other corresponding rights and entitlements of the Concessioneing Authority including termination of this Agreement

- (c) The Concessionaire shall obtain all necessary approvals, permissions and sanctions for setting up of Project and other allied infrastructure and facilities.
- (d) The Consultant(s) appointed by the Concessioneing Authority shall have a right to inspect the Project Site for compliance of standards and specifications with the Approved Detailed Design and Applicable Laws.
- (e) The Concessionaire shall adhere to the Applicable Laws and Good Industry Practice and shall complete the seeding, harvesting or plantation process at the Project Site within a reasonable period after the date of issuance of Notice to Commence.



- (f) The Concessionaire may undertake implementation of the Project by itself or through Sub-Contractor(s) possessing requisite technical, financial and managerial expertise / capability; but in any case the Concessionaire shall and will remain solely responsible for its overall liabilities and obligations under the contract, overall supervision, monitoring and control of the activities of all the Sub-Contractors, their employees and agents engaged under respective "Project Agreements" as may be necessary.
- (g) For this purpose, Concessionaire shall undertake all necessary activities such as designing, planning, developing, financing, marketing, operating and maintaining the Project and the Project Site, in accordance with the provisions of the Agreement and as per Good Industry Practice.
- (h) The Concessionaire shall arrange for the irrigation of the Project Site as per the Approved Detail Design.
- (i) The Concessionaire shall plant, harvest, fertilize and maintain the Project Site in accordance with the provisions of the Agreement and as per Good Industry Practice. If provided in the Approved Detailed Design, the Concessionaire may install, procure and arrange specified and necessary equipment, plant, machinery, apparatus, services and its supporting infrastructure towards the Project. It shall keep all the necessary Project equipment adequately insured and shall pay regular and timely premium, at its own cost.
- (j) In terms with the provisions of the Agreement, the Concessionaire shall make timely discharge of its obligations to the Concessioneing Authority, wherever required and applicable.
- (k) The Concessionaire shall not remove any earth from the land/ Project Site until unless the local authorities have provided permission for it. In addition to this, the Concessionaire shall submit a copy of the document to the Concessioneing Authority, wherein it has been clearly stated that the approval has been granted.
- (l) The Concessionaire shall submit to the Concessioneing Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Concessioneing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within fifteen (15) days of the receipt of such drafts. Within seven (7) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Concessioneing Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record.

- (m) The Concessionaire shall provide all production inputs, machinery, plant and equipment necessary to complete the Project works, at its own cost. All Concessionaire's Equipment shall, when brought on to the Project Site, be deemed to be exclusively intended for the execution of the works of the Project. The Concessionaire shall ensure continuous workflow as required under the program and shall replace the broken machinery and equipment immediately after its occurrence and shall bear the entire cost. Market shortage of production inputs or breakdown of machinery or equipment shall not be a valid reason for any delay, extension in the Concession Period or addition of cost, towards the Project.
- (n) Concessionaire shall follow Applicable Laws regarding forest, wildlife, fisheries, land use and agricultural regulatory authorities and other environmental aspects.
- (o) The Concessionaire shall be prohibited to undertake activities which are mentioned in Schedule 8 (*Prohibited Activities*).
- (p) The Concessionaire shall at its own costs, expenses and consequences perform the following:
- i. To issue its receipts and invoice in its own name.
  - ii. The Concessionaire will take all necessary insurance in respect of the Project, as reasonable and having regard to Good Industry Practice. The Concessionaire shall throughout the term of the Agreement maintain such insurance as available and from time to time regularly bear and pay the insurance premium in this regard.
  - iii. The Concessionaire shall bear and pay all expenses, taxes, due and payable in respect of the operation and management of the Project, including income tax (agricultural or corporate), sales tax, VAT where applicable, service tax and the like and will ensure that these are paid in time and no defaults are made in respect of the same. Further the Concessionaire shall ensure that all returns in this regard are filed before the due date as per Applicable Laws.
  - iv. The Concessionaire shall not in the operation of the Project do any act or omission which shall be unlawful in nature and throughout the term abide by all the law, rules, orders, regulations and other requirements as applicable for the operation and management of the Project from time to time.

- v. The Concessionaire shall keep and maintain all such books, records and reports as are required to be maintained under Applicable Laws and shall submit or cause to be submitted to appropriate authorities, all information and reports as are legally required.
- vi. The Concessionaire shall submit to the Concessions Authority a copy of its audited annual report every year during the Concession Period.
- vii. The Concessionaire shall furnish to the Concessions Authority such information as required by the Concessions Authority with respect to operation and maintenance of the Project.
- viii. Notwithstanding anything contained herein, the Concessionaire shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the Project whether with regard to any negligence committed in the Project or by reason of deficiency in the the Project or otherwise for any reason whatsoever whether intentionally or unintentionally and the Concessions Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Concessionaire shall always keep the Concessions Authority indemnified in this regard.
- ix. The Concessionaire will ensure that the highest standards and Good Industry Practice of similar standing will be adopted and followed in the said Project throughout the Concession Period.
- x. In the event the Concessionaire has failed to operate and maintain the Project in accordance with Good Industry Practice and as per the provisions of this Agreement, a notice to that effect will be issued by the Concessions Authority to the Concessionaire. The Concessionaire shall take all steps to address the concerns raised by the Concessions Authority in the said notice within reasonable period. If the Concessionaire does not remedy any such Material Breach in the period specified in the notice, it shall be constituted as a Concessionaire Event of Default in terms of the provisions of Article 10.1.1.
- xi. The Concessionaire may subcontract operations and maintenance of parts of the Project/Project Site, provided however, that the Concessionaire shall remain liable for all obligations under this Agreement and it shall be obligatory upon the Concessionaire to provide copies of all such Project Agreements entered into from time to time with Third Parties to the Concessions Authority, with incorporated Clauses, in all Project Agreements with such respective Third Parties, that: (i) the

period of the Project Agreement shall be co-terminus with the Term of this Agreement and (ii) in case of Termination of this Agreement (by efflux of time or pre-mature termination), the Concessioneing Authority shall have the option to continue with such Project Agreements in its own discretion, such that all benefits, arising out of such Project Agreements of the Project, in case they continue to accrue, shall henceforth be accrued / appropriated to the Concessioneing Authority. It is being clarified here that the similar provision shall be mandatorily incorporated in all the Project Agreements and the signed copy of the Project Agreements shall be submitted to the Concessioneing Authority for perusal.

- xii. The Concessionaire shall invite a representative of the Concessioneing Authority, as nominated by the Concessioneing Authority, every year to the annual general meeting of the Concessionaire.

## **7.5. Insurance**

### **7.5.1. General**

If necessary and possible, the Concessionaire agrees to secure at its own expense and to keep in force at all times during the Concession Period hereof, takaful or insurance from any 'AA' rated (or higher rated) insurance company: (i) required under Applicable Law against claims for injury to persons or damage to property which may arise from or in connection with the performance of obligations under this Agreement by the Concessionaire, its agents, representatives or employees; (ii) cover, if available, for any damage to the Project as shall be prudent to insure against having regard to Good Industry Practice including against Force Majeure Events. Takaful or insurance requirements do not limit in any way the indemnity covenants contained in this Agreement or scope of liability of Concessionaire under this Agreement. Takaful or insurance required under Applicable Law must be maintained without any lapse in coverage during the entire Concession Period. Any takaful or insurance required under the Applicable Law, cancelled without the Concessioneing Authority's consent or failure by Concessionaire to provide evidence of renewal within forty-eight (48) hours after written notice by the Concessioneing Authority is a Material Breach and shall be deemed an immediate Event of Default on behalf of the Concessionaire under this Agreement.

### **7.5.2. Utilization of Insurance Proceeds**

- (a) Upon the occurrence of any loss under the policy of takaful or insurance, the Concessionaire shall utilize the proceeds received from takaful or insurance to make good the loss. In the event of the proceeds received under the policy of takaful or insurance be insufficient to cover the necessary repair and or

restoration works, or the cost of replacement, as the case may be, the Concessionaire shall make good the deficiency thereof.

#### 7.5.3. Evidence of Takaful / Insurance

The Concessionaire shall, upon receipt of the duly executed policies of takaful or insurance, provide to the Concessions Authority with copies of all such policies at least fifteen (15) days prior to the Compliance Date.

#### 7.5.4. Validity of Takaful or Insurance

The Concessionaire shall promptly pay all insurance premiums and ensure that the takaful or insurance policies are in force and valid throughout the Concession Period. Each takaful or insurance policy shall provide that the same shall not be cancelled or terminated unless ten (10) days clear notice of cancellation is provided to the Concessions Authority in writing. If at any time the Concessionaire fails to obtain or maintain in full force and effect any of the insurance required under this Agreement, the Concessions Authority may at its option obtain and maintain such insurance and all sums incurred by the Concessions Authority thereof shall be reimbursed by the Concessionaire to the Concessions Authority within seven (7) days from the receipt of claim in respect thereof made by the Concessions Authority or otherwise settle with the Concessionaire. Non exercise of option of the Concessions Authority to obtain insurance shall not constitute waiver of obligation of the Concessionaire to maintain insurance under this Article.

#### 7.5.5. Application of Takaful or Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all takaful or insurance policies received shall be promptly applied by the Concessionaire towards repair, renovation, restoration or re-instatement of the Project/Project Site or any part thereof which may have been damaged or destroyed. The Concessionaire shall carry out such repair, renovation, restoration or re-instatement to the extent possible in such manner that the Project/Project Site after such repair, renovation, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

#### 7.5.6. Waivers

- (a) All takaful/insurance covers taken under this Article 7.5 shall include a waiver of any right of subrogation of the insurers therein against, *inter alia*, the Concessionaire and its Sub-Contractors, employees, successors, permitted assigns, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.
- (b) All the insurance policies shall include the Concessions Authority as a beneficiary along with the Concessionaire.

## **7.6. Regulatory Clearances and Compliance**

At all times, the Concessionaire shall obtain the requisite regulatory and Applicable Permits from the appropriate Government Agency and shall also ensure that the processes employed in the development, operation and maintenance thereof, for the Project is in compliance with the Applicable Laws pertaining to environment, afforestation, wildlife, health and safety aspects including, policies and guidelines related thereto.

## **7.7. General Obligations**

The Concessionaire shall:

- (a) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (b) at all times, to afford access to the Project Site to the authorized representatives of GoPb, Concessioneing Authority, the Lenders, other persons duly authorized by any Government Agency having jurisdiction over the Project, to inspect the Project and to investigate any matter within their authority and upon reasonable notice;
- (c) perform and fulfil its obligations under any Financing Documents;
- (d) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under the Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Concessioneing Authority against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Concessioneing Authority be treated as employer in this regard;
- (e) make its own arrangements for implementation of Project and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits from time to time;
- (f) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (g) pay all taxes, duties, levies and outgoings, including utility charges and income tax relating to the Project;

- (h) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement; and
- (i) transfer the Project to the Concessions Authority in fully operational mode and ready for another plantation upon termination of this Agreement, in accordance with the provisions contained herein.

#### **7.8. No Breach of Obligations**

The Concessionaire shall not be considered to be in breach of its obligations under the Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under the Agreement is affected by or on account of any of the following:

- (a) Force Majeure Events, subject to Article 9;
- (b) Concessions Authority's Event of Default;
- (c) Compliance with the directions of any Government Agency, other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder; and
- (d) Closure of the Project/Project Site, or part thereof, with the approval of the Concessions Authority.

#### **7.9. Progress Reports**

The Concessionaire shall prepare and submit reports on the progress of implementation of Project ("**Progress Report(s)**"), detailing an executive summary of activities completed and under progress, as per the following schedule:

- a) The first report shall cover the period from the Appointed Date up to the end of the calendar month in which the Compliance Date occurred ("**Preliminary Progress Report**").
- b) For the first three years of the Concession Period, the Concessionaire shall prepare and submit report bi-annually ("**Biannual Progress Report**") to the Concessions Authority. Each Biannual Progress Report shall be submitted within seven (7) days of the last day of the six (6) month period to which it relates.
- c) Following completion of the third year of the Concession Period, Progress Reports shall be prepared and submitted annually ("**Annual Progress Report**"), for the remaining Concession Period. Each Annual Progress Report shall be submitted within seven (7) days of the last day of the twelve (12) month period to which it relates.

## 8. OBLIGATIONS OF THE CONCESSIONING AUTHORITY

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In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessioning Authority shall have the following obligations:

- (a) Any claims, liabilities and litigations for providing the Project Site free of Encumbrances, prior to the date of issue of Notice to Commence, shall be borne solely by the Concessioning Authority;
- (b) To facilitate the Concessionaire in getting all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek under the Agreement in connection with development of the Project and the performance of its obligations hereunder;
- (c) The Concessioning Authority shall use its best efforts to provide enabling environment to the Concessionaire for the execution of the Project;
- (d) Upon written request from the Concessionaire, provide reasonable facilitation to the Concessionaire for the purpose of discharging its obligations under the Agreement by the Concessionaire; and
- (e) The Concessioning Authority, either itself, or through its nominee may undertake the overall monitoring of the Project during the Concession Period.

### 8.1. Consultants

- (a) If and when required by it, the Concessioning Authority may appoint person(s) specialising in implementation of project for review of the progress of the Project (the “**Consultant(s)**”).
- (b) The Concessioning Authority may appoint a Consultant(s) who is a designated official of the Forest, Wildlife and Fisheries Department or an affiliate of the Concessioning Authority (“**Internal Consultant**”) for periodic monitoring, evaluation and review of the Project in accordance with Good Industry Practice, Applicable Laws and this Agreement. The Internal Consultant(s) may be appointed before the beginning of the Concession Period till after a period of six (6) months from the Transfer Date.
- (c) The Concessioning Authority may appoint an external specialist as Consultant (“**Independent Consultant**”), in accordance with the Punjab Procurement Regulatory Authority Act, 2009. For periodic review, the Independent Consultants may be appointed in 3<sup>rd</sup>, 6<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup> year of the Concession Period. The Concessioning Authority may also appoint any Independent Consultant before the end of the



Concession Period and prior to the harvest of any Forest Timber as provided in Article 6 (Consideration) of this Agreement.

- (d) The roles and functions of the Consultants shall be as mentioned in Schedule 7.
- (e) The Consultants shall submit monitoring and evaluation reports to the Concessions Authority.
- (f) If the Concessionaire has reason to believe that the Consultant is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Concessions Authority and seek termination of the appointment of the Consultant. Upon receipt of such representation, the Concessions Authority shall hold a tripartite meeting with the Concessionaire and the Consultant for an amicable resolution of the Dispute, and if any difference or disagreement between the Consultant and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with Article 12 (Dispute Resolution). In the event that the appointment of the Consultant is terminated hereunder, the Concessions Authority shall appoint forthwith another Consultant.
- (g) If a Party disputes any advice, instruction, decision, direction or award of the Consultant, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with Article 12 (Dispute Resolution).

## **8.2. Appointment of Joint Auditor**

- (a) A Joint Auditor may be appointed by the Concessions Authority, from time to time, as required under this Agreement, in accordance with the Punjab Procurement Regulatory Authority Act, 2009. The Joint Auditor shall be from within the panel of experts appointed by the State Bank of Pakistan.
- (b) The remuneration, cost and expenses of the Joint Auditor shall be paid by the Concessions Authority, however fifty (50%) of such remuneration, cost and expenses of the Joint Auditor shall be paid to the Concessions Authority by the Concessionaire.
- (c) If the Concessionaire has reason to believe that a Joint Auditor is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Concessions Authority and seek termination of the appointment of the Joint Auditor. Upon receipt of such representation, the Concessions Authority shall hold a tripartite meeting with the Concessionaire and Joint Auditor for an amicable resolution of the Dispute, and if any difference or disagreement between the Concessions Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with Article 12 (Dispute Resolution). In the event that the appointment of the Joint Auditor is terminated

hereunder, the Concessing Authority shall appoint forthwith another Joint Auditor.

- (d) If a Party disputes any advice, instruction, decision, direction or award of the Joint Auditor, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with Article 12 (Dispute Resolution).

### **8.3. Additional Cost Due to Change in Law**

Where a Change in Law results in Additional Cost, the Concessing Authority shall reimburse the Concessionaire for any Additional Cost, which is duly verified by the Joint Auditor, in excess of PKR 10,000,000 (Pak Rupees Ten Million Only). For the avoidance of doubt, the Concessionaire shall be solely liable for any Additional Cost equal to or below PKR 10,000,000 (Pak Rupees Ten Million Only).

## **9. FORCE MAJEURE**

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### **9.1. Force Majeure Event**

A “**Force Majeure Event**” shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party (the “**Affected Party**”), and is not attributable to the negligence of the Affected Party or its employees and that 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, it being understood and agreed that reasonable care includes acts and activities to protect the Project/Project Site from a casualty or other event that are reasonable in light of the probability of the occurrence of such event, the probable effect of such event if it should occur, and the likely efficacy of the protection measures. Without limiting the generality of the foregoing, “Force Majeure Events” hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:

- (a) A Non-Political Event shall mean one or more of the following acts or events which makes it impossible or impractical for the Affected Party to perform any of its obligations for a continuous period of not less than two (2) weeks from the date of its occurrence:
- i. Act of God, earthquake, soil erosion, change in natural watercourse, landslide;

- ii. Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- iii. Fire caused by lightning;
- iv. Country-wide strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Sub-Contractor; or
- v. Any failure or delay of a Sub-Contractor caused by any of the aforementioned Non-Political Events, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Sub-Contractor.

(b) A Political Event shall mean any event, including the following:

- i. Action of a Public Entity of expropriation, nationalization or compulsory acquisition or takeover the Project Site or Project or any part thereof from the Concessioneing Authority, thereby terminating the Concessionaire's acquired rights of operation and maintenance as per this Agreement (other than in accordance with termination rights under this Agreement);
- ii. Early termination of this Agreement by the Concessioneing Authority for reasons of national Emergency, national security or public interest; or
- iii. Any event or circumstances of a nature analogous to any of the foregoing.

(c) An Indirect Political Event shall mean any of the following which makes it impossible for the Concessionaire to perform any of its obligations for a continuous period of not less than two (2) weeks from the date of its occurrence:

- i. Ionizing radiation, serious epidemics, contamination by radio activity from nuclear fuel, any nuclear waste, or radioactive toxic explosion;
- ii. War, hostilities (whether war be declared or not), acts of terrorism, rebellion, riots or ethnic violence, civil commotion, unrest, disruption or civil war;
- iii. Invasion, act of foreign enemy, weapon conflict or military actions; or
- iv. Any event or circumstances of a nature analogous to any of the foregoing reasons including latent defect.

## 9.2. Force Majeure Period

The period commencing from the date of occurrence of a Force Majeure Event and ending on the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations.

### **9.3. Force Majeure Notice**

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice (“**Force Majeure Notice**”) report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- i. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;
  - ii. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party’s performance of its obligations under this Agreement;
  - iii. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
  - iv. any other information relevant to the Affected Party’s claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (c) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Sub-Clause (a), and such v
- (d) other information as the other Party may reasonably request the Affected Party to provide.

### **9.4. Performance of Obligations**

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under the Agreement because of a Force Majeure Event, it shall be excused from

performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given as required by the preceding Article 9.3.;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project as a result of the Force Majeure Event and to restore the Project/Project Site, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

#### **9.5. Consequences of Force Majeure Event**

In the case of Force Majeure Event, no extension in the Concession Period shall be given to the Concessionaire.

#### **9.6. Liability for other losses, damages etc.**

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

### **10. EVENTS OF DEFAULT AND TERMINATION**

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#### **10.1. Events of Default**

Events of Default shall mean either Concessionaire Event of Default or the Concessions Authority Event of Default or both as the context may admit or requires.

10.1.1. Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("**Concessionaire Event of Default**") unless such event has occurred as a result of Force Majeure in accordance with Article 9 or a breach of Concessions Authority or GoPb under this Agreement.

- (a) In the opinion of the Consultant(s), the Concessionaire has failed to implement the Project, during the Concession Period;
- (b) The Concessionaire has failed to pay any remuneration, cost or expense invoiced to the Concessionaire in relation to the Consultant(s) or any other payments or fees due to the Concessions Authority and more than ninety (90) days have lapsed since such payment or fee became due;
- (c) The Concessionaire has failed to comply with the Applicable Laws / Applicable Permits and such failure has resulted in a Material Breach of the Agreement;
- (d) The Concessionaire has harvested or disposed of all or any portion of Forest Timber Crop without complying with the procedure set out in Article 6.1. Provided the Concessions Authority shall not unreasonably, delay the process or withhold any consent;
- (e) The Concessionaire has harvested or failed to maintain the Already Planted Area or the Indigenous Species Plantation Area;
- (f) The Concessionaire has, in case of Rangeland Area, failed to perform any of its obligations or undertook any activity prohibited under this Agreement;
- (g) The Concessionaire has failed to implement the Project in accordance with the provisions of the Agreement and such failure, in the reasonable estimation of Concessions Authority, would likely delay the Project;
- (h) The Concessionaire's failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect;
- (i) The Concessionaire is in Material Breach of any of its obligations under the Agreement and the same has not been remedied for more than one hundred and twenty (120) days;

- (j) Any representation made or warranty as given by the Concessionaire under the Agreement is found to be false or misleading;
- (k) Change in Ownership of the Concessionaire without prior approval of the Concessioneing Authority;
- (l) A resolution has been passed for voluntary winding up of the Concessionaire;
- (m) Any petition for winding up of the Concessionaire and/or the Successful Bidder has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Concessioneing Authority, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire and/or the Successful Bidder under this Agreement;
- (n) A default has occurred under any of the Financing Documents and any of the Lender(s) to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (o) The Concessionaire has abandoned the Project for a consecutive period of six (6) consecutive months;
- (p) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (q) The Concessionaire has filed a claim, suit, writ or application against the Concessioneing Authority or the GoPb or its affiliate demanding specific performance, injunctive, equitable or other prospective relief;
- (r) The Concessionaire has suffered an attachment levied on any of its assets, which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding one hundred and twenty (120) days;
- (s) The Concessionaire has created Encumbrance(s) beyond the Concession Period / Term of this Agreement and in violation of the provisions herein in this regard; and/or
- (t) The Concessionaire has failed to serve a Crop Share Notice, in a timely manner and in the prescribed mode.

### 10.1.2. Concessing Authority Event of Default

Any of the following events shall constitute an Event of Default by the Concessing Authority ("**Concessing Authority Event of Default**") unless such event has occurred as a result of a breach of Concessaire under this Agreement:

- (a) any Material Breach or default by the Concessing Authority of or under this Agreement that is not remedied within one hundred twenty (120) days after notice from the Concessaire to the Concessing Authority stating that a Material Breach of this Agreement has occurred that could result in the termination of this Agreement, identifying the Material Breach in reasonable detail, and demanding remedy thereof;
- (b) any change in any Applicable Laws of Pakistan making unenforceable, invalid, or void any material undertaking of the Concessing Authority under this Agreement;
- (c) Any change in the interpretation of, any of the Applicable Laws (including the Constitution of Pakistan and any other Applicable Laws that gives effect to the injunctions of Islam, being in the case of a decision of a court, a decision which is no longer in suspense as a result of an appeal) from and after the date of this Agreement having the effect of making unlawful, unenforceable, invalid, or void any material undertaking of the Concessing Authority under this Agreement.

## **10.2. Termination Due to Event of Default**

### 10.2.1. Termination for Concessaire Event of Default

- (a) Without prejudice to any other right or remedy which Concessing Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessaire Event of Default, Concessing Authority shall be entitled to terminate the Agreement in the manner as set out under the following Sub-Clause (b) and (c).
- (b) If Concessing Authority decides to terminate the Agreement pursuant to the preceding Sub-clause (a), it shall in the first instance issue a "**Preliminary Notice to Remedy**" to the Concessaire and within thirty (30) days of receipt of the Preliminary Notice to Remedy, the Concessaire shall submit to the Concessing Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "**Concessaire's Proposal to Rectify**"). In case of non-submission of the Concessaire's Proposal to Rectify within the said period of thirty (30) days, the Concessing Authority shall be entitled to terminate the Agreement by issuing the Termination Notice.



- (c) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefore, the Concessionaire shall have further period of ninety (90) days ("**Cure Period**") to remedy / cure the underlying Event of Default. If, however the Concessionaire fails to remedy / cure the underlying Event of Default within such further period allowed, Concessioneing Authority shall be entitled to terminate the Agreement by issuing the Termination Notice.

10.2.2. Termination for Concessioneing Authority Event of Default

- (a) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of Concessioneing Authority Event of Default, the Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.
- (b) If the Concessionaire decides to terminate the Agreement pursuant to the preceding Sub-clause (a), it shall in the first instance issue **Preliminary Notice to Remedy** to the Concessioneing Authority. Within thirty (30) days of receipt of Preliminary Notice to Remedy, to Concessioneing Authority shall forward to the Concessionaire its proposal to remedy / cure the underlying Event of Default (the "**Concessioneing Authority's Proposal to Rectify**"). In case of non-submission of Concessioneing Authority's Proposal to Rectify within the said period of thirty (30) days, Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.
- (c) If Concessioneing Authority's Proposal to Rectify is forwarded to the Concessionaire within the period stipulated thereof, Concessioneing Authority shall have further period of ninety (90) days to remedy / cure the underlying Event of Default. If, however, Concessioneing Authority fails to remedy / cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate the Agreement by issuing Termination Notice.

10.2.3. Termination for Continuing Force Majeure Event

Upon Termination of this Agreement due to a Force Majeure Event continuing for a period beyond one (1) year, Termination Payment shall be made to the Concessionaire by the Concessioneing Authority in accordance with the following:

- (a) If Termination is due to a Force Majeure Event which is a Non-Political Event, no Termination Payment shall be made by the Concessioneing Authority to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any insurance obtained by it. The Concessionaire shall pay the Crop Share as provided in Article 6.1., to the extent of any unaffected Plantable Area.
- (b) If Termination is due to a Force Majeure Event which is a Political Event, the Concessioneing Authority shall pay to the Concessionaire the Termination Payment, within six (6) months of Termination Notice as a sum of following:
- i. Book Value as approved by the Joint Auditor and the Consultant(s); and
  - ii. Profit on Book Value as on the Termination Date X 1.5, where profit shall be computed in accordance with the directive of SBP for the calculation of profit on investment made in Pakistan Investment Bonds (Reference to SBP-BSC Circular No SEC.DIV./U-1/PIB/Intt./733/2004).
- (c) If Termination is due to a Force Majeure Event which is an Indirect Political Event, the Concessioneing Authority shall pay to the Concessionaire a Termination Payment, within six (6) months of the Termination Notice, equal to one hundred percent (100%) of the Book Value, as on the date of Termination Notice, minus the amount recovered by the Concessionaire through the proceeds of any insurance obtained by it.

Provided that the Concessioneing Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Concessioneing Authority from the Concessionaire as on the Termination Date and the Concessioneing Authority shall have an option to pay this Termination Payment within a maximum period of four (4) years in eight (8) bi-annual instalments subject to imposition of additional interest at KIBOR + three percent (3%) on account of delay in payment of due amount.

Provided, the Concessionaire cannot claim Termination Payment under this Article if it has harvested the Forest Timber within one year prior to the declaration of such Force Majeure.

Provided further, where Concessioneing Authority will pay the Termination Payment, it shall not share any Forest Timber with the Concessionaire. Any rights in the Mature Crop shall be deemed to be transferred to the Concessioneing Authority.

- (d) No Termination Payment shall be payable to the Concessionaire for Rangeland Areas, for termination on account of Force Majeure Event. Any Rangeland Fee paid in respect of the period following the service of Force Majeure Notice (in accordance with Article 9.3), may be returned to the Concessionaire by the Concessioneing Authority in case of such termination.

### **10.3. Termination Notice**

If a Party having become entitled to do so decides to terminate the Agreement pursuant to this Article 10 (Events of Default and Termination), it shall issue a notice (“**Termination Notice**”) setting out:

- (a) in sufficient detail the underlying Event of Default;
- (b) the Termination Date which shall be a date occurring not earlier than sixty (60) days from the date of Termination Notice;
- (c) the estimated Termination Payment including the details of computation thereof; and
- (d) any other relevant information.

#### 10.3.1. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (a) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project;
- (b) The Project/Project Site shall be transferred to the Concessioneing Authority by the Concessionaire on the Termination Date, free from all Encumbrances, as per the provisions of Article 11 of this Agreement;
- (c) The Termination Payment, if any, payable by either Party is paid to the other Party on the Termination Date.

#### 10.3.2. Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same. Provided that the Party in breach shall compensate the other Party for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

#### **10.4. Termination Payments**

- (a) Upon Termination of the Agreement on account of a Concessionaire Event of Default the Concessioneing Authority shall: (i) be entitled to retain Crop Share , if any, already received from the Concessionaire; (ii) not be obligated to share Forest Timber or to make payments to the Concessionaire; (iii) be entitled to retain any Forest Produce on Rangeland Areas and not make any payments; and (iv) be entitled to encash and retain the Performance Security, without prejudice to any other rights and remedies available to the Concessioneing Authority including but not limited to claiming damages.
- (b) In case of the occurrence of the Concessioneing Authority's Event of Default, the Concessioneing Authority shall pay to the Concessionaire the sum of the following:
- i. Book Value as approved by the Joint Auditor and the Consultant(s); and
  - ii. Profit on Book Value as on the Termination Date X 1.5, where profit shall be computed in accordance with the directive of SBP for the calculation of profit on investment made in Pakistan Investment Bonds (Reference to SBP-BSC Circular No SEC.DIV./U-1/PIB/Intt./733/2004).
- Provided Concessioneing Authority shall not share any Forest Timber with the Concessionaire.
- (c) All payments due to the Concessionaire as calculated under this Article 10 shall be made within thirty (30) days of receiving the Termination Notice. Provided, the Concessionaire cannot claim Termination Payment under this Article if it has harvested the Forest Timber within one year prior to the service of the Termination Notice.
- (d) No Termination Payment shall be payable to the Concessionaire for Rangeland Areas, for termination on account of Concessioneing Authority Event of Default. Any Rangeland Fee paid in respect of the period following the service of Termination Notice (in accordance with Article 10.3), may be returned to the Concessionaire by the Concessioneing Authority in case of such termination.

#### **10.5. Rights of Concessioneing Authority on Termination**

Upon termination of the Agreement for any reason whatsoever, Concessioneing Authority shall have the power and authority to:

- (a) Enter upon and take possession and control of the Project/ Project Site forthwith;  
and
- (b) Prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon / dealing with the Project/Project Site.

Notwithstanding anything contained in this Agreement, Concessioneing Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re- employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the transfer of the Project/Project Site by the Concessionaire to Concessioneing Authority shall be free from any such obligation.

#### **10.6. Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including each Party's right to claim and recover monetary damages and other rights and remedies which it may have under law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations. In any case, no claim or interest of the Concessionaire shall under any circumstances be entitled to specific performance or any injunctive, equitable or other prospective relief.

### **11. TRANSFER**

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#### **11.1. Mode of Transfer**

On the Transfer Date or in case of earlier termination under this Agreement, all rights and benefits of the Concessionaire arising from and under this Agreement or Project Site shall be deemed to be transferred to the Concessioneing Authority and the licence of the Project Site granted under Article 4 shall expire or deemed to be terminated/transferred, as the case may be. One (1) week prior to the Transfer Date, the Concessionaire shall comply with the following:

- (a) the Concessionaire shall remove the inventory related to the Project including, without limitation, any equipment, machinery, materials, fixtures within thirty (30) days of expiry of the Term, failing which the same would be deemed to be transferred to Concessing Authority free of cost. The Concessionaire shall deliver all relevant records pertaining to the Project including the records relating to design, irrigation plan, detailed engineering, operation and maintenance of the Project, programmes, manuals, Approved Detailed Design (inclusive of any Variations) and all other relevant documents to the Concessing Authority.
- (b) The Concessionaire shall ensure that the Project Site is ready for another plantation cycle, cured of all the shortcomings, defects and deficiencies as may be required or instructed by the Consultant(s) or the Concessing Authority. Further, any irrigation canals or system provided on the Project Site shall not be dismantled by the Concessionaire.
- (c) Without prejudice to the foregoing, the Concessionaire agrees to indemnify and keep indemnified the Concessing Authority and the GoPb from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Concessing Authority as a result of any actions or omissions of the Concessionaire prior to the Transfer Date. It is expressly understood by the Parties that this Article shall survive the termination or expiry of this Agreement.
- (d) **Vesting Certificate:** The Transfer Date is deemed to have occurred on the date when all the requirements under this Article 11 have been fulfilled by the Concessionaire and the requirements of the Successful Bidder pursuant to any undertakings in this Agreement have been fulfilled. The Concessing Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 3 (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Successful Bidder and the Concessionaire of all of its rights, title and interest in the Project Site or any part thereof, and their vesting in the Concessing Authority pursuant hereto. It is expressly agreed that the issue of Vesting Certificate shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessing Authority or its nominee.

## 12. DISPUTE RESOLUTION

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### 12.1. Amicable Resolution.

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in

relation to the Agreement (the "**Dispute**") shall in the first instance be attempted to be resolved amicably. Either Party may require such Dispute to be referred to the CEO South Punjab Forest Company and Chairman of Board of Directors of the Concessionaire, for amicable settlement.

Upon such reference, the two shall meet at the earliest mutual convenience and in any case within thirty (30) days of such reference to discuss and attempt to amicably resolve the Dispute, as evidenced by the signing of written terms of settlement within thirty (30) days of such meeting or such longer period as may be mutually agreed by the Parties.

If no consensus is reached as a result of the above, the Parties shall settle the Dispute in an amicable manner by mediation by an independent and impartial person appointed by the PPP Steering Committee.

If the Dispute is not amicably settled through mediation, either Party may refer the Dispute to arbitration in accordance with the provisions of the following Article 12.2.

## **12.2. Arbitration**

### 12.2.1. Procedure

Subject to the provisions of Article 12.1, any dispute, which is not resolved amicably, shall be finally decided by reference to arbitration under the Arbitration Act, 1940. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within fifteen (15) days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with the Arbitration Act, 1940.

### 12.2.2. Seat of Arbitration and Governing Law

The seat of arbitration shall be Lahore, Punjab, Pakistan only. The governing law for the purposes of any Dispute shall be the laws of Pakistan.

### 12.2.3. English Language

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

#### 12.2.4. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act, 1940.

#### 12.2.5. Performance during Arbitration

Pending the submission of and / or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

### **13. FINANCING AND LENDERS RIGHT**

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In case the Concessionaire procures financing or loan monies for the Project, the Concessioneing Authority hereby agrees that it may, at its discretion, enter into a direct agreement, substantially in the form of Schedule 5 (*Lenders Direct Agreement*) as per customary practices in such transactions, with the Lenders. The Concessionaire thereby may grant the Lenders certain rights in the event of "Termination for Concessionaire Event of Default" as set out in this Agreement.

### **14. REPRESENTATIONS AND WARRANTIES**

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#### **14.1. Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Concessioneing Authority that:

- (a) it is duly organised, validly existing and in good standing under the laws of Pakistan;
- (b) it has full power and authority to execute, deliver and perform its obligations under the Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) the information furnished in the bid / proposal and as updated on or before the date of the Agreement is true and accurate in all respects as on the date of this Agreement;



- (f) the execution, delivery and performance of the Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from the Concessions Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of the Agreement all rights and interests of the Concessionaire in and to the Project/Project Site shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or the Concessions Authority;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Concessions Authority or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by the Concessions Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder; and

(m) the Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Concessing Authority or the Government of Punjab shall not be liable for the same in any manner whatsoever to the Concessionaire.

#### **14.2. Representations and Warranties of the Concessing Authority**

The Concessing Authority represents and warrants to the Concessionaire that:

- (a) The Concessing Authority has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (b) This Agreement constitutes the Concessing Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (c) Concessing Authority has power and authority to grant the Concession contemplated in this Agreement to the Concessionaire; and
- (d) Upon the Concessionaire performing the covenants herein, it shall not at any time during the Concession Period hereof, interfere with peaceful exercise of the rights and discharge of its obligations by the Concessionaire, in accordance with this Agreement.

#### **14.3. Obligation to Notify Change**

In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

### **15. MISCELLANEOUS**

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#### **15.1. Assignment and Charges**

- (a) The Concessionaire shall not, directly or indirectly, assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with the prior consent of the Concessing Authority.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site or Project or any part thereof, except as envisaged under this Agreement.

- (c) Sub-clauses (a) and (b) hereinabove of Article 15.1., shall not apply to assignment of the Concessionaire's rights and benefits under this Agreement to, or in favour of, the Lenders as security for the Financial Assistance provided by them, subject to consent and prior approval of the Concessions Authority.
- (d) Notwithstanding anything contained in Article 15.1. (c), the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to the Mode of Transfer as described under Article 11.

### **15.2. Interest and Right of Set Off**

- (a) Any payable under any of the provisions of this Agreement by one Party to the other Party, if the same is not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such payable shall, until payment thereof, carry interest at KIBOR plus four percent (4%) per annum at the market value of the payable (prevailing at the time it became due), prorated on a daily basis, from the due and payable date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set-off.
- (b) Provided that, the stipulation regarding interest for delayed payments contained in this Article 15.2 shall neither be deemed nor construed to authorize any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

### **15.3. Governing Law and Jurisdiction**

This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed in accordance with the laws of Pakistan. The Courts of Pakistan only shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **15.4. Waiver**

- (a) Neither failure by the Concessions Authority to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by the Concessions Authority to the Concessionaire shall be treated or deemed as a waiver of any terms, conditions or provisions of this Agreement unless it is provided in writing.

(b) Waiver provided in writing by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
- ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
- iii. Shall not affect the validity or enforceability of this Agreement in any manner.

#### **15.5. Survival**

Termination of this Agreement:

- (a) shall not relieve the Concessionaire or Concessioneing Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof; and
- (b) except as otherwise provided in any provision of the Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such Termination or arising out of such Termination.

#### **15.6. Amendments**

The Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

#### **15.7. Notices**

Unless otherwise stated, notices to be given under the Agreement including but not limited to a notice of waiver of any term, breach of any term of the Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to the Concessioneing Authority

CEO, South Punjab Forest Company

Address: [●]

Phone: [●]

E-mail: [●]

If to the Concessionaire:

The Managing Director,

[●]

Address: [●]

Phone: [●]

E-mail: [●]

If to the Government of Punjab

[●]

Address: [●]

Phone: [●]

E-mail: [●]

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered.

- (a) In the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address; and
- (b) In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

### **15.8. Severability**

If for any reason whatsoever any provision of the Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under the Agreement or otherwise.

### **15.9. No Partnership**

Nothing contained in the Agreement shall be construed or interpreted as constituting a partnership between the Parties as contemplated either in the Partnership Act, 1932 or Limited Liability Partnership Act, 2017. None of the Parties shall have any authority to bind the other Parties in any manner whatsoever.

### **15.10. Language**

All notices required to be given under the Agreement and all communications, documentation and proceedings which are in any way relevant to the Agreement shall be in writing and in English language.

### **15.11. Exclusion of Implied Warranties etc.**

The Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

### **15.12. Counterparts**

The Agreement may be executed in more than one counterparts, each of which when executed and delivered shall constitute an original of the Agreement but shall together constitute one and the same Agreement.

### **15.13. General Liability and Indemnity**

- (a) The Concessionaire shall indemnify, defend and hold the Concessions Authority and the Government of Punjab harmless against any and all proceedings, actions and Third Party claims arising out of a breach by Concessionaire and its Sub-Contractors, agents, employees, etc. of any of its obligations under the Agreement except to the extent that Concessions Authority shall fulfil its obligations under this Agreement if

any such claim has arisen due to its breach of the terms and conditions contained herein.

- (b) The Concessions Authority shall, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, Third Party claims for loss, damage and expense of whatever kind and nature arising out of breach by the Concessions Authority, its officers, servants and agents of any obligations of the Concessions Authority under the Agreement except to the extent that any such claim has arisen due to breach by the Concessionaire of any of its obligations under this Agreement.

IN WITNESS WHEREOF each of the Parties has caused this Agreement to be executed and delivered on its behalf by its authorized representative as of the date first above written:

*[Signature pages to follow]*