

SCHEDULE 5
FORM OF LENDER'S DIRECT AGREEMENT¹

THIS DIRECT AGREEMENT (the "**Agreement**") is entered into on this the [●] day of [●], 2017 at [●],

BY AND AMONGST:

1. **South Punjab Forest Company** (hereinafter referred to as "**Concessing Authority**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns;
2. **Government of Punjab, Pakistan** (hereinafter referred to as "**Provincial Government**") which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns;
3. [●], a [private limited] company incorporated under the applicable laws of Pakistan having its registered office at [●] (hereinafter referred to as the "**Concessionaire**", which expression shall include its successors and permitted assigns); and
4. [●], a [private/public limited] company incorporated under the applicable laws of Pakistan having its registered office at [●] (hereinafter referred to as the "**Successful Bidder**", which expression shall include its successors and permitted assigns); and
5. [●], a banking company having its registered office at [●] (hereinafter referred to as "**the Lender**", which expression shall include its successors and permitted assigns).

WHEREAS:

- A. The Concessing Authority is developing the Project on BOT mode through a public-private partnership as regulated by the Punjab Public Private Partnership Act, 2014 and has granted the Concession to the special purpose vehicle (SPV) incorporated by the Successful Bidder;
- B. Through the Concession Agreement dated [●] entered into between the Concessing Authority and the Concessionaire (hereinafter referred to as the "**Concession Agreement**") the Concessionaire, as a wholly owned subsidiary of the Successful Bidder and the SPV incorporated to undertake the Project, is developing, designing, procuring, undertaking, engineering, marketing, operating, maintaining and managing the Project/Project Site;
- C. With a view to facilitate the financing of the Project by the Concessionaire, the Successful Bidder, the Concessing Authority and the Concessionaire have agreed to enter into this Direct Agreement with the Lender to provide step-in rights in case of a Concessionaire's Event of Default pursuant to the Concession Agreement.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

¹ Subject to comment from the Lenders.

1.1 Definitions

In this Agreement the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereafter respectively assigned to them.

"Agreement" means this agreement and its **Schedules** and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

"Financial Assistance" means the financial assistance set forth in Schedule A hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

"Lender(s)" means the financial institutions/banks whose name(s) and addresses are set out in **Schedule 1** hereto.

"Residual Concession Period" means the period which shall be the remainder of the Concession Period computed from the date of suspension of the Concession in terms of Article 2.3.

"Selectee" means a Person proposed by the Lender pursuant to this Agreement and approved by the Concessioneing Authority to undertake the Successful Bidder's obligations pursuant to the Concession Agreement for the Residual Concession Period, in accordance with the provisions of this Agreement.

"Security" shall mean the shares constituting one hundred percent (100%) of the total issued and paid up capital of the Concessionaire issued to the Successful Bidder and pledged in favor of the Lender through the Share Pledge Agreement, entered into between the Lender, the Successful Bidder and the Concessionaire, dated as of [●].

"Suspension Period" means the period commencing from the expiry of the Cure Period specified in the Preliminary Notice to Remedy and ending on the date on which all formalities connected with substitution of the Successful Bidder by the Selectee including any handing over of Project Site/Project, in accordance with this Agreement are completed and the substitution has become effective.

1.2 Capitalized terms used in this Agreement but not defined shall have the meaning assigned to them respectively in the Concession Agreement.

2. APPOINTMENT OF SUB-CONTRACTORS

2.1 Lenders Right to Step-in

The Concessioneing Authority and the Successful Bidder hereby irrevocably agree that upon occurrence of a Concessionaire Event of Default, the Lender(s) shall, without prejudice to any other rights or remedies available to them under law and Financing Documents, and without being required to exercise or exhaust such rights or remedies, have the right to enforce the Security for the Residual Concession Period in accordance with the provisions of this Agreement and the Concession Agreement.

2.2 Preliminary Notice of Termination

The Concessing Authority shall as soon as possible but in any case not later than fifteen (15) days of its knowledge of the occurrence of the Concessionaire Event of Default issue a Preliminary Notice to Remedy to the Concessionaire in terms of Article 10.2.1(b) of the Concession Agreement, with a copy thereof simultaneously couriered to the Lender. Provided if the Concessionaire Event of Default is the one set out in Article 10.1.1(l) of the Concession Agreement, the Concessing Authority shall not be obliged to issue copy of a Preliminary Notice to Remedy.

2.3 Suspension of Concession and Takeover of the Project/Project Site

The Concessionaire irrevocably agrees that if the Cure Period specified in Article 10.2.1(c) of the Concession Agreement lapses without the Concessionaire Event of Default having been cured, the Concession Agreement shall, effective from the expiry of such Cure Period, stand suspended without any further notice or other act of the Concessing Authority being required, and that the Lender shall have the right to enter upon and takeover the Concessionaire through the enforcement of its Security and to take all such steps as are necessary for the continued operation and maintenance of the Project or Project Site. The Successful Bidder hereby irrevocably consents to the takeover of the Concessionaire by the Lender forthwith upon suspension becoming effective.

In case of any unlawful suspension or suspension which is not permitted under the terms of this Agreement or the Concession Agreement by the Concessionaire, then: (a) in case such suspension occurs prior to the issuance of Notice to Commence, will cause the Concessionaire to lose its right to any outstanding payments/ Termination Payments under the Concession Agreement; and (b) in case following the issuance of Notice to Commence, it will cause the Concessionaire to be liable for damages which shall be the actual genuine estimate of costs suffered by the Concessing Authority on account of such suspension.

2.4 Substitution Notice

The Concessing Authority and the Concessionaire hereby irrevocably agree that in the event of the Concessionaire's failure to cure the Concessionaire's Event of Default specified in Article 10.2.1(c) of the Concession Agreement, the Lender may, within thirty (30) days of the expiry of the Cure Period specified therein notify the Concessing Authority and the Successful Bidder about the intention of the Lender to enforce its Security and ensure fulfillment by the Concessionaire of its obligations pursuant to the Concession Agreement for the Residual Concession Period (the "Takeover Notice").

2.5 Criteria for selection of the Sub-Contractor or Selectee

Following issuance of the Takeover Notice, the Lender shall in addition to any other criteria that it may deem fit and necessary, apply the following criteria in the selection of a Sub-Contractor or Selectee:

- (a) the Sub-Contractor or Selectee shall possess the net worth, experience, technical capability and managerial ability to perform and discharge all the residual duties, obligations and liabilities of the Concessionaire or Successful Bidder in respect of the Concession, under the Concession Agreement;
- (b) the Sub-Contractor or Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues, if any, of the Concessionaire to the Concessioneing Authority under and in accordance with the Concession Agreement, and also payment of amounts due to the Lender(s) under the Financing Documents upon terms and conditions as agreed to between the Selectee and the Lenders.

2.6 Approval of the Concessioneing Authority

The Sub-Contractor or Selectee shall be subject to the approval of Concessioneing Authority.

3. MODALITY FOR SUBSTITUTION

3.1 Modalities for Substitution

3.1.1 Selectee

The following procedure shall be followed for selection of the Selectee pursuant to this Agreement:

- (a) The Lender shall be entitled, within a period of one hundred twenty (120) days from the date of delivery of the Takeover Notice pursuant to the preceding Article 2.4 to invite or procure offers either through private negotiations or public auction or process of tender or otherwise from the eligible Persons, for the purchase of one hundred percent (100%) of Ordinary Share Capital by the Selectee and propose to the Concessioneing Authority for its approval of the Selectee (the "**Proposal**"). The Proposal of the Lender shall contain the particulars and information in respect of the Selectee, particulars of the amounts due to the Lenders under the Financing Documents, the terms of share purchase and such data and information as would be necessary and relevant for the Concessioneing Authority to decide as to the acceptability of the Selectee. The Lender shall provide to the Concessioneing Authority such additional information and clarification in respect of any data, particulars or information contained in the Proposal, as the Concessioneing Authority may reasonably require.
- (b) The Proposal shall be accompanied by an unconditional undertaking of the Selectee substantially in the form of the Successful Bidder's Undertaking to the effect that it shall upon acceptance by the Concessioneing Authority of the Proposal observe, comply with, perform and fulfill the residual terms, conditions and covenants of the Concession Agreement as if the Selectee had been the Concessionaire under the Concession Agreement, and to assume, take over, discharge and pay the

Concessionaire's obligations under the Financing Documents on the terms and conditions agreed to by the Selectee with the Lenders. The Selectee shall also undertake to enter into such documents and writings with the Concessions Authority and the Provincial Government and the Lender(s) as may be necessary or required to give effect to the substitution of the Successful Bidder by the Selectee.

- (c) The Concessions Authority shall convey to the Lender its acceptance or otherwise of the Selectee within thirty (30) days of: (a) the date of receipt of the Proposal by the Concessions Authority; or (b) the date of receipt of the additional information and clarifications in respect of any data, particulars or information comprised in the Proposal, provided by the Lender to the Concessions Authority, whichever is later.
- (d) At any time prior to the acceptance of the Selectee by the Concessions Authority pursuant to this Agreement, the Concessions Authority may require the Lender to satisfy it as to the eligibility of the Selectee and the decision of the Concessions Authority as to acceptance or rejection of any Selectee (which shall be reasonable), shall be final, conclusive and binding on the Lender, the Selectee and the Successful Bidder. In the event that the Concessions Authority fails to communicate its acceptance or otherwise or the objections if any it has to the acceptance of the Proposal/the Selectee within a period of thirty (30) days prescribed in the preceding sub-Article (c), the Concessions Authority shall be deemed to have accepted the Proposal/the Selectee.
- (e) The rejection of the Selectee if made by Concessions Authority shall be reasoned and be made after hearing the Lender. Following the rejection of the Proposal, the Lender shall have the right to submit a fresh Proposal, proposing another Selectee, within thirty (30) days of receipt of communication regarding rejection of the Selectee previously proposed. The provisions of preceding sub-Article (c) and (d) shall apply mutatis mutandis to such fresh Proposal.
- (f) If the Concessions Authority accepts the Proposal, the Concessions Authority shall take all necessary steps to substitute the Successful Bidder by the Selectee by amendment of the Concession Agreement or by execution of fresh agreement or such other writing as may be required or necessary to give effect to the substitution of the Successful Bidder by the Selectee for the Residual Concession Period.
- (g) The substitution of the Concessionaire by the Selectee shall be deemed to be complete upon the Selectee executing all necessary documents and writings with or in favour of Concessions Authority and the Lender(s) so as to give full effect to the terms and conditions of substitution subject to which the Selectee has been accepted by the Lender(s) and Concessions Authority and upon the delivery by Concessions Authority of the Project Site/Project to the Selectee. Upon the substitution becoming effective pursuant to this sub-Article all the rights of the Successful Bidder under the Concession Agreement and the Successful Bidder's Undertaking shall cease to exist. Provided nothing contained in this sub-Article shall prejudice any pending/subsisting claims of the Successful Bidder against the Concessions Authority or any claim of the Concessions Authority against the Concessionaire and the Selectee shall incur no liability or consequence on account of any previous breach/default and shall subject to

the terms and conditions of the substitution, have a period of ninety (90) days to cure any breach/default subsisting on the date of substitution and required or agreed to be cured.

- (h) The decision of the Lender and Concessioneing Authority in the selection of the Selectee shall be final and binding on the Successful Bidder and shall be deemed to have been made with the concurrence of the Successful Bidder. The Successful Bidder hereby expressly waives all rights to object to or challenge such selection of the Selectee on any ground whatsoever.
- (i) The provisions of this Article 3.1.1 (a), (b), (c), (d), (e), (f), (g), (h) shall apply mutatis mutandis to the selection of a Sub-Contractor under this Agreement, as they apply to the selection of Selectee.

3.2 Termination and Termination Payment

- (a) Where the Lender communicates in writing that: (i) the Lender does not intend to seek substitution of the Successful Bidder; or (ii) that the Lender has not been able to find a suitable Selectee or Sub-Contractor; or (iii) that the Concessioneing Authority has declined to accept the Selectee or Sub-Contractor proposed by the Lender, the Concessioneing Authority shall proceed to terminate the Concession and to make Termination Payment in accordance with the provisions of the Concession Agreement.
- (b) Nothing contained in these presents shall mean or be interpreted as provision of any guarantee or surety by Concessioneing Authority and it is expressly agreed that Concessioneing Authority has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amounts advanced by the Lenders to the Concessionaire.

4. MODE OF TERMINATION PAYMENTS

4.1 Mode of Payment

Concessioneing Authority and Concessionaire hereby irrevocably agree, and confirm that so long as the liabilities of the Concessionaire under the Financing Documents are outstanding the Termination Payment and any other amounts due and payable by Concessioneing Authority to the Concessionaire under any of the provisions of the Concession Agreement shall be paid only by way of credit directly to a bank account designated therefor by the Lender(s) and advised to the Concessioneing Authority and the Concessionaire in writing. The Lender(s) shall be entitled to receive and appropriate the same without any further reference to or consent of the Concessionaire to the extent of the amounts outstanding, due and payable under the Financing Documents. Any payment so made shall to the extent of such payment constitute a valid discharge by the Concessioneing Authority of its obligations with regard to the Termination Payment and of any other monies due to the Concessionaire under the Concession Agreement.

5. GENERAL

5.1 General

- (a) The Parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Agreement.
- (b) Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any Party shall be duly notified by registered post acknowledgement due and delivered to the other parties.
- (c) This Agreement shall not be affected by reorganisation of any Lender, the Successful Bidder or the Concessing Authority and the successor-in-interest of the Lender or Concessing Authority shall have the benefit of this Agreement.
- (d) Any dispute, difference or claim arising out of or in connection with or in relation to this Agreement which is not resolved amicably shall be decided in accordance with Article 12 (*Dispute Resolution*) of the Concession Agreement. Such arbitration shall be held in accordance with and shall be subject to the provisions of the Arbitration Act, 1940. The venue of such arbitration shall be Lahore, Pakistan and the Award shall be final and binding on the Parties. The Parties agree and undertake to carry out the award of the arbitrators (the "**Award**") without delay.
- (e) This Agreement and rights and obligations of the Parties hereunder shall remain in full force and effect pending the Award in any arbitration proceeding hereunder.
- (f) The courts of competent jurisdiction in Lahore alone shall have jurisdiction over all matters arising out of or relating to the arbitration agreement contained herein or proceedings arising out of or relating to the arbitration proceedings thereunder.
- (g) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
- (h) It shall not be necessary for the Lender to enforce or exhaust any other remedy available to them before invoking the provisions of this Agreement.
- (i) No amendment, variation or modification to this Agreement shall be valid and effectual unless made in writing and executed by the duly authorised representatives of all the Parties hereto.
- (j) All stamp duties or other imposts and charges as are applicable on this Agreement or on amendment of the Concession Agreement or execution of fresh Concession Agreement for the purpose of substitution as aforesaid, irrespective of the Lenders making such payment for the time being, shall be borne by and be to the account of the Concessionaire.

- (k) The Parties hereby expressly agree that for the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of the Concession Agreement shall prevail in the event of any inconsistency with this Agreement.

[Signature pages to follow]

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