

## **Volume III**



**Implementation of newly constructed Polytechnic of the Government of Uttar Pradesh through  
Public Private Partnership (PPP)**

**CONCESSION AGREEMENT**

*[Insert Date]*

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## CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (“**Agreement**”) is entered into on this [-----] day of 20 [-----] at [-----].

### BETWEEN

1. **The Governor of Uttar Pradesh through Shri/Smt.-----,<Designation> Department of Technical Education (UPTE), Government of Uttar Pradesh** having its principal office at Room Number-11, Ground Floor, New Building, Uttar Pradesh Secretariat, Lucknow 2266001 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns) of One Part;

### AND

2. [**Insert PSP Name**]<sup>1</sup>, {an entity incorporated under the provisions of [**insert relevant legislation**]<sup>2</sup> having its registered office at [**insert registered office address**], India (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

The Authority and the Concessionaire shall collectively be referred to as “**Parties**” and individually as a “**Party**”.

### WHEREAS:

- A. The GoUP and the Authority are considering private sector participation to operate government Polytechnic Institutes in a Private Public Partnership (PPP) Model.
- B. The GoUP is the owner of the building and land of<< Polytechnic Institutes >>situated at <<Address of the Institute>> more particularly described in **Schedule A (“Project Site”)**.
- C. The Authority had accordingly invited proposals under its [tender document number **insert number** dated [**insert date**] (the “**Request for Proposals**” or “**RFP**”) for shortlisting of bidders for undertaking for Implementation of newly constructed Industrial Training Institutes (“**Institute**”) of the Government of Uttar Pradesh through Public Private Partnership (PPP).
- D. Pursuant to the terms of the RFP, bids were received by the Authority on or before [**insert date**]. The Selected Bidder had submitted its bid for the Project on [-----] (“**Bid**”).
- E. Following the evaluation of the Bids submitted by the bidders, including that of the Selected Bidder, the Authority accepted the Bid. Subsequently, the Authority issued the letter of award no [**insert award number**] dated [-----] (“**Letter of Award**” or “**LOA**”) to the Selected Bidder, prescribing *inter-alia*, [execution of this Agreement within 30 (thirty) days of the date of issue thereof] through a {Special Purpose Vehicle}.
- F. {The Selected Bidder has since incorporated the Concessionaire and has requested the Authority, by its [letter dated [**insert date**], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to

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<sup>1</sup> The provisions in curly parenthesis and the blank spaces shall be retained in the draft Concession Agreement and shall be suitably modified/ filled after completion of the bid process to reflect the particulars relating to the Selected Bidder.

<sup>2</sup> To be amended basis the legal entity

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the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof}.

- G.** {The Authority, through its letter dated [*insert date*], has agreed to the request of the Selected Bidder, and accordingly is desirous of entering into this Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter}.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below.

## **PART I - PRELIMINARY**

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## ARTICLE 1: DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

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

**“Accounting Year”** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**“Agreement”** or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**“Applicable Laws”** means any statute, law, regulation, ordinance, notification, rule, regulation, precedent law, approval, directive, circular, guideline, policy, requirement or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of GOI, GoUP or Authority or Government Instrumentality thereof, as may be in force and effect on the date of this Agreement and during the subsistence of this Agreement

**“Applicable Permits”** means all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the operation and maintenance of the Institute during the subsistence of this Agreement and upon termination, the transfer of the Institute to the Authority during the subsistence of this Agreement;

**“Appointed Date”** means the date on which the handover of the Site is completed in accordance with Article 3 of this Agreement;

**“Arbitration Act”** means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

**“Associate”** means, in relation to the Selected Bidder (including the Consortium Members, if any) or the Concessionaire, a person who controls, is controlled by, or is under the common control with such Selected Bidder or any of the Consortium member or the Concessionaire, as the case may be. As used in this definition, the expression **control** means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise;

**“Auditors”** means a reputable firm of chartered accountants acting as the auditors of the Concessionaire and appointed in accordance with the provisions of Article 16, and in the event the {Concessionaire is a Company, the Auditor shall mean the statutory auditor of the Concessionaire under the provisions of the Companies Act, 1956 or any substitute thereof};

**“Authority”** means Department of Technical Education (UPTE), Government of Uttar Pradesh;

**“Authority Indemnified Persons”** shall have the meaning set forth in Clause 27.1.1;

**“Authority Representative”** means such person or persons as may be authorised in writing by the Authority

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to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Award**” shall have the meaning set forth in Clause 28.3.3;

“**Bank**” means a bank incorporated in India and having a minimum net worth of [Rs 1,000 crore (Rupees one thousand crore)] or any other bank acceptable to the Senior Lenders, but does not include a bank in which the Senior Lender has an interest;

“**Bank Rate**” means the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the RFP more specifically defined in Recital D and “**Bids**” shall mean the bids submitted by any and all qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the RFP ;

“**Bid Security**” means the security provided by the Selected Bidder to the Authority along with the Bid in accordance with the RFP, and which is to remain in force until substituted by the Performance Security;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the existing promoters/Selected Bidder/consortium members, together with its/their Associates in the total equity to decline below:

- (a) 100% (hundred per cent) at any time until the expiry of the 7<sup>th</sup> (seventh) anniversary of the SCOD;
- (b) the shareholding of the lead member of the consortium declines below 51% (fifty one percent) until the expiry of the 7<sup>th</sup> (seventh) anniversary of the SCOD;
- (c) the members other than the lead member of the consortium declines below 20 (twenty percent) until the expiry of the 7<sup>th</sup> (seventh) anniversary of the Project SCOD; and

provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {existing promoters/Selected Bidder/ any consortium member} to the total Equity, , shall constitute Change in Ownership;

“**Change in Ownership**” in case of a trust shall mean any change in the trust documents (including the trust deed) during the Concession Period and in case of a society shall mean any change in the society documents (including the memorandum of association);

“**Companies Act**” means the Companies Act, 1956 (to the extent applicable) or the Companies Act, 2013 as amended from time to time;

“**Complainant**” shall have the meaning set forth in Clause 30.1.1;

“**Complaint Register**” shall have the meaning set forth in Clause 30.1.1;

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**“Concession”** shall have the meaning set forth in Clause 3.1.1;

**“Concessionaire”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**“Concessionaire Default”** shall have the meaning set forth in Clause 24.1.1;

**“Concession Period”** shall have the meaning set forth in Clause 3.2;

**“Conditions Precedent”** shall have the meaning set forth in Clause 4.2;

**“Contractor”** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the material agreement for maintenance of the Institute or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the GoUP or the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the GoUP or the Authority after the receipt of the relevant information to accord their approval;

**“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Termination Date or at end of Concession Period

- (a) the unpaid principal amount, interest due ,and penal interest or penal charges payable to the lenders. ;

Provided further that the Debt Due, on or after the Project SCOD, shall in no case exceed [50% (fifty percent)] of the Total Project Cost;

**“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders for and in respect of Debt Due under the Financing Agreements;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes as set forth in Article 28;

**“Divestment Requirements”** shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 25;

**"Document" or "Documentation"** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, or expressed in any other written, electronic, audio or visual form;

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**"Drawings"** means all of the drawings and documents pertaining to the Institute as set forth in **Schedule E**, and shall include 'as built' drawings of the Institute;

**"Emergency"** means a condition or situation that is likely to endanger the security of the individuals on or about the Institute, including Users, visitors and any other users thereof, or which poses an immediate threat of material damage to the Institute;

**"Encumbrance"** means, any encumbrances 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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Institute, where applicable herein;

**"Equity"** means the paid up and subscribed equity of the company acting as the Concessionaire, and in the case of a Trust or Society, means the capital or funds owned by such Trust or Society;

**"Escrow Account"** means an account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures for and in respect of the Institute shall be credited and/or debited, as the case may be, in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account;

**"Equipment"** means furniture, fixtures and equipments installed by the Concessionaire towards complying the Applicable Laws and offering of identified courses in accordance to this Agreement;

**"Execution Date"** shall mean the date on which the Concession Agreement is executed between the Authority and the Concessionaire;

**"Faculty Member(s)"** means a qualified person who is under regular employment, tenure or short term contract, on a full time or part time basis whether as teaching staff or non-teaching staff, with the Institute as a faculty member for the purpose of providing research, educational, administrative or technical support or training services to Users in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice;

**"Fee(s)"** means the fees, tuition fees, examination fees, hostel fees (if any), food and mess charges (if any) levied by the Concessionaire on the Users towards any provision of Services or any activity undertaken by the Institute or incidental to the Institute, on the Project Site. For the avoidance of doubt, the Concessionaire shall not be entitled to collect any additional fees other than those prescribed hereinunder and as per Applicable Laws;

**"Financial Close"** means the fulfilment of all conditions' precedent to the initial availability of funds under the Financing Agreements;

**"Financial Model"** means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**"Financial Package"** means the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, ;

**"Financing Agreements"** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible

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debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with this Agreement;

**"Force Majeure"** or **"Force Majeure Event"** shall have the meaning as set forth in Clause 21.1;

**"GOI"** means the Government of India;

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a Polytechnic Institute engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent practices generally accepted for ensuring safe, economic, reliable and efficient operation and maintenance of the Institute and for providing a safe and reliable environment;

**"Government or GoUP"** means the Government of the State of Uttar Pradesh;

**"Government Instrumentality"** means any department, division or sub-division of the Government of India or the [State Government/GoUP] and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the [State Government/GoUP], as the case may be, and having jurisdiction over all or any part of the Institute or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**"Implementation Period"** means period beginning from the Appointed Date and ending on SCOD and subject to the provisions of this Agreement, which shall be a period of [●] ([●]) months] from the Appointed Date;

**"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 27;

**"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 27;

**"Insolvency Event"** in respect of a Concessionaire means:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 ("**Code**"); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days or (C) directions with the same or similar effect

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happen under the provisions of the Companies Act, 1965 or the Companies Act, 2013 or the Code in relation to the winding up of the company;

**“Inspection Report”** shall have the meaning set forth in Clause 11.9;

**“Institute” or “Polytechnic Institute”** Institute means designed, constructed, operated, maintained and managed under and in accordance with the provisions of this Agreement on the Project Site and shall include Project Assets, Equipment, furniture and other facilities or amenities provided in accordance with this Agreement and Applicable Laws;

**“Institute Management”** shall mean the Concessionaire acting by itself or through the Institute Management Committee (IMC) of the Institute;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 19, and includes all insurances required to be taken out by the Concessionaire under Clause 19.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Lenders' Representative”** means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

**“LOA” or “Letter of Award”** means the letter of award referred to in Recital E;

**“Leased Premises”** means the Project Site which is described, delineated and shown in **Schedule A**;

**“Maintenance Requirements”** shall have the meaning as forth in Schedule G;

**“Material Breach”** means a breach by the Concessionaire of any of its obligations under this Agreement which has/ is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure within the Cure Period.

**“Material Adverse Effect”** means circumstances which may or does: (a) render any right vested in a Party by the terms of this Agreement ineffective; or (b) adversely affect or restrict or frustrate: (i) the ability of any Party to observe and perform in a timely manner its obligations under this Agreement; or (ii) the legality, validity, binding nature or enforceability of this Agreement or any of the Project Agreements or (c) which act or event causes a material financial burden or loss to either Party;

**“O&M”** means the operation and maintenance of the Institute and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fees in accordance with the provisions of this Agreement;

**“O&M Expenses”** means expenses incurred by or on behalf of the Concessionaire for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other

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services; (c) premia for insurance; (d) all taxes, duties, cess and fees due and payable for O&M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M; and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**“Operation Period”** means the period commencing from Project SCOD and ending on the Transfer Date;

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

**“Performance Security”** shall have the meaning set forth in Clause 10.1;

**“Project”** means the upgradation, operation, maintenance and management of the Institute in accordance with the provisions of this Agreement, and includes all works, services and Equipment relating to or in respect of the Scope of the Project;

**“Project Agreements”** means this Agreement, the Financing Agreements, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to [Rs. 1,00,00,000 (Rupees one crore)]<sup>3</sup> for each such agreement;

**“Project Assets”** means all physical and other assets relating to and forming part of the Institute including:

- (a) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;
- (b) Investment in buildings and immovable fixtures or structures forming part of the Project;
- (c) civil structures, superstructures, classrooms, libraries, auditoriums, facilities and amenities;
- (d) financial assets, such as receivables, security deposits etc.;
- (e) insurance proceeds; and
- (f) Applicable Permits and authorisations relating to or in respect of the Project;

**“Project Execution Plan”** means a document that details out the timelines and approach for carrying out the following activities: Installation of Equipment and furniture/fixtures to meet requirements for regulatory affiliation, recruitment of Faculty Members, utilization of space and resources;

**“Project Site” or “Site”** shall have the meaning set forth in Recital B and Clause 5.1;

**“Rs.” or “Rupees” or “Indian Rupees”** means the lawful currency of the Republic of India;

**“Safety Requirements”** shall have the meaning set forth in Clause 13.1.1;

**“Schedule”** means a schedule under this Agreement;

**“SCOD” or “Scheduled Commencement Operation Date”** shall have the meaning set forth in Clause 3.4.1;

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**“Selected Bidder”** means the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

**“Senior Lenders”** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

**“Services”** means the services performed under this Agreement by the Concessionaire including providing vocational educational/ training in identified trades/ branches or any other academic services, permitted by Authority, offered by the Concessionaire towards creating Fees from the Institute.

**“Society”** means a society registered under the Societies Registration Act, 1860 or any other law for the time being in force for registration and regulation of societies in the State;

**“Specifications and Standards”** means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Institute, as set forth in **Schedule C**, and any modifications thereof, or additions thereto, as included in the design and engineering for the Institute submitted by the Concessionaire to, and expressly approved by, the Authority;

**“Specified Documents”** shall have the meaning set forth in Clause 29.1;

**“Statutory Auditors”** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 16.1;

**“Student”** means a person who is enrolled with the Institute as a student, [research personnel or any other capacity] in accordance with the provisions of this Agreement and Applicable Laws;

**“Suspension”** shall have the meaning set forth in Clause 23.1;

**“Taxes”** means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, Equipment and Services incorporated in and forming part of the Institute charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

**“Termination”** means the expiry or termination of this Agreement and the Concession hereunder;

**“Termination Notice”** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**“Termination Payment”** means the amount payable by the Authority to the Concessionaire, under and in accordance with this Agreement, upon Termination;

**“Tests”** mean the tests set forth in Schedule F to determine the completion of Project in accordance with the provisions of this Agreement;

**“Total Project Cost”** means the capital cost incurred by the Concessionaire to procure and install all Equipment in the Institute ;

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**“Transfer Date”** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

**“Trust”** means, a trust registered under the Indian Trusts Act, 1882;

**“Users”** mean the third parties who avail the Services or use the Institute or any part thereof including Students, Faculty Members, professionals and/or staff, in accordance with the provisions of this Agreement and Applicable Laws;

**“Vacant Possession”** means delivery of possession of the Project Site or any part thereof to the Concessionaire, free from all Encumbrances, and the grant of all easement rights and all other rights appurtenant thereto, so that the Concessionaire enjoys complete uninterrupted and quiet possession and control of the Project Site throughout the Concession Period;

**“Vesting Certificate”** shall have the meaning set forth in Clause 25.4;

**“Website”** shall have the meaning set forth in Clause 11.5;

**“WPI”** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month For illustration, the WPI is published at the web link <http://eaindustry.nic.in/#>. WPI index value is for the month of July 2014 is available, then the WPI Inflation Rate for the preceding year will be =  $[(\text{WPI Index Value at the end of July 2014})/(\text{WPI Index value at the end of August 2013}) - 1] \times 100$ .

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## 1.2 Interpretation

**12.1** In this Agreement, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on, being hours on the half hour of the clock;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday or a statutory holiday) on which the Bank in Lucknow are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date or period shall mean and include such date or period as may be extended pursuant to this Agreement;
- (l) any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (p) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or

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surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (q) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Clause 1.2.1(s) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (t) references to Recitals, Articles, Clauses, Sub-Clauses, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Sub-Clauses, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, in which such reference appears;
- (u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimate of loss and damages likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (v) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- (w) The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

**122** Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

**123** Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

### **1.3 Measurements and arithmetic conventions**

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

### **1.4 Priority of Agreements, Articles and Schedules**

**141** This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement,

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the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) the Agreement;
- (b) all other agreements and documents forming part hereof or referred to herein;
- (c) the LOA issued to the Selected Bidder;
- (d) written addenda to the RFP;
- (e) Bidding Documents; and
- (f) Bid;

**142** Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Clauses of this Agreement, the provision of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clause of this Agreement and the Schedules, the Clause shall prevail;
- (c) between any two Schedules, the Schedule more relevant to the issue shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail.

## **PART II - THE CONCESSION**

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## **ARTICLE 2: SCOPE OF THE PROJECT**

**2.1** The scope of the Project, during the Concession Period shall mean and include the following:

- (a) Upgrade the infrastructure facilities at the Institute as per the requirements broadly set forth in Schedule A and Schedule B together with provision of the respective Project facilities as specified in Schedule [B], and in conformity with the Specifications and Standards set forth in Schedule C, and in accordance with the Applicable Laws;
- (b) Operation, maintenance and management of the Institute in accordance with the provisions of this Agreement and Applicable Laws; and
- (c) Performance and fulfilment of all other obligations of the Concessionaire and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement, in accordance with the provisions of this Agreement and Applicable Laws.

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## ARTICLE 3: GRANT OF CONCESSION

### 3.1 The Concession

- 3.1.1.** Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority during the Concession Period to upgrade, operate and maintain the <<Allotted Institute Name>> at \_\_\_\_\_ [Place Name] (the “**Concession**”) for a period of 20 (twenty) years, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Concession Agreement. For the avoidance of doubt, it is clarified that at all times the Authority shall have absolute, unencumbered ownership rights in respect of the Project and the Concessionaire shall maintain the Project in good condition till the end of the Concession Period.
- 3.1.2.** Save and except as otherwise expressly set forth in this Agreement including the act of granting permission to upgrade the Institute at the designated area shall not vest or create any proprietary interest in the Project or any part thereof including any permanent fixtures, fittings etc. installed in the structure of the Project in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the Project in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.
- 3.1.3.** The Authority shall have the right but not the obligation, subject to Applicable Laws extend the Concession Period at the sole discretion of the Authority provided there are no material defaults during the term of the Concession Agreement. For the purpose of this Clause, ‘material default’ shall mean imposition of cumulative Damages of not more than [insert percentage] upto the 18<sup>th</sup> (eighteenth) anniversary date of the SCOD.
- 3.1.4.** On the Transfer Date for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project Site and the Project Assets shall revert to the Authority and the Authority would not be liable in any ways in relation thereto.

### 3.2 Concession period

- 3.2.1.** The Project shall commence from the Appointed Date and shall be for a period of 20 (twenty) years from such date (the “**Concession Period**”). For the avoidance of doubt, the Concession Period shall include the Implementation Period.
- 3.2.2.** At the end of the Concession Period or earlier Termination of this Concession Agreement for any reason whatsoever, all rights given under this Concession Agreement shall cease to have effect and the Project along-with all the assets (whether provided by the Authority to the Concessionaire or brought in by the Concessionaire during the subsistence of this Concession Agreement), in good and operational condition, shall revert to the Authority without any obligation of the Authority to pay or adjust any consideration or other payment to the Concessionaire.

### 3.3 Actions in Support of the Concession

- 3.3.1.** The Authority shall handover << Polytechnic Institute>> <<Location>> building to the Concessionaire free from any encumbrances.
- 3.3.2.** The Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.

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- 3.3.3.** For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Lenders its rights and interests under or pursuant to this Concession Agreement, including, without limitation, its rights in and to (i) the Project Agreements and (ii) the cash flows generated, by the Concessionaire, through this Project and to create a security in such rights and interests in favour of the Lenders with the prior approval of the Authority. However, it is also clarified that the Concessionaire shall not be entitled to mortgage any immovable asset, which is a part of the Project.
- 3.3.4.** The Authority shall, on best effort basis, render such assistance as the Concessionaire may reasonably require, from time to time, for availing and obtaining and all Applicable Permits and for completion of formalities relating to the Project provided that the Concessionaire activities are in compliance with the Applicable Laws.

### **3.4 Implementation Period**

- 3.4.1.** The Scheduled Commencement Operation Date shall be **XX** (“SCOD”) wherein the Concessionaire shall be required to comply with the following obligations:
- (a) Procure all necessary/ mandatory clearances, permits etc. which are required for commencing operations including admission of Students and commencement of the academic year;
  - (b) Installation of machines/Equipment in accordance with the Project Execution Plan approved by the Institute Management Committee;
  - (c) Recruit Faculty Members and support staff required for curriculum development, operation, training and placement etc. per the norms and regulations of AICTE/NCVET/GOUP for the Project;
  - (d) Procure and keep consumables ready as required for smooth Operations of the Project.
- 3.4.2.** The Concessionaire guarantees that the time for commencement of operations of the Project shall be achieved in accordance with the provisions of this Concession Agreement and not later than the SCOD, as per Clause 3.4. 1(a) of this Agreement.
- 3.4.3.** In the event that SCOD is not achieved for any reason other than Force Majeure or reasons attributable to the Authority , the Concessionaire shall, subject, pay to the Authority damages for delay beyond the date of SCOD to the extent of 0.1% of the Performance Security for every day of delay or part thereof until SCOD is achieved subject to a maximum of 10% of Performance Security. Provided that nothing contained in this sub-clause 3.4.3 shall be deemed or construed to authorize any delay by the Concessionaire in achieving the SCOD provided further that SCOD is still not achieved even after the overall ceiling of 10% of Performance Security, the Agreement shall be terminated forthwith by the Authority.
- 3.4.4.** In the event the SCOD is not achieved within the prescribed timelines (including any extension granted by the Authority in its sole discretion), for reasons other than a Concessionaire Default, the Parties agree and undertake that this Agreement shall get automatically terminated without any costs and/ expenses being payable by the Authority and the provisions of Divestment as set out in Article 25 shall apply. For the avoidance of doubt, the Authority decision shall be binding.

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## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

The Parties agree and undertake to fulfil the following conditions precedent as set out in Clauses 4.2 and 4.3 (“**Condition Precedent**”) within 90 (ninety) days from the date of execution of this Agreement. Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clause 4.2 or Clause 4.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1

### 4.2 Conditions Precedent for Authority

4.2.1 The Concessionaire may, upon fulfilling the Conditions Precedent as set out in Clauses 4.3.1 (a) to Clauses 4.3.1 (d) by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.2 within the period prescribed in such notice and such period shall not be less than 75 (seventy five) days, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) Hand over to the Concessionaire the Project Site <<Location>> (the exact area details laid down in Schedule A) along with all easement related rights and free from encumbrances ;
- (b) Carry out inspection of the <<Institute>>(wherein the representatives of Authority and Concessionaire shall be mandatorily present) and prepare a detailed inventory of the Facilities to be transferred, by the Authority, to the Concessionaire for undertaking the operation and management of the Project as per Article 5.

### 4.3 Conditions Precedent for Concessionaire

4.3.1 The Concessionaire shall:

- (a) Provide an undertaking that all the representations and warranties of the Concessionaire set forth in Article 8 are true and correct as on date of this Agreement and as on the SCOD and thereafter;
- (b) Provide the authority copies (certified as true copies by an authorized officer of the Concessionaire) of its constitutional documents of the Concessionaire;
- (c) Provide the authority copies (certified as true copies by an authorized officer 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) Deliver to the Authority a legal opinion from the Indian Legal Counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement, Project Agreements, and the Financing Documents and the enforceability of the provisions thereof;

Provide that upon request in writing by the Concessionaire, the Authority, may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Clause 4.3.1

### 4.4 Obligations to satisfy Condition Precedents

- (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 90 (ninety) days from the Appointed Date.
- (b) Each Party shall bear its respective costs and expenses of satisfying such Condition Precedents

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unless otherwise expressly provided.

**4.5 Non-fulfillment of Conditions Precedent**

- (a) In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 90 (ninety) days of the signing of this Agreement and also, the Authority, has not waived them fully or partially, this 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 this Agreement and the Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- (b) In the event that the Concessionaire has fulfilled its Conditions Precedent and the Authority has not procured fulfilment of any or all of the Condition Precedents set forth in Clause 4.2 within the period specified in respect thereof, the Authority shall not be liable in any manner whatsoever to the Concessionaire, consultants, agents and employees.
- (c) In the event the Authority has terminated this Agreement under Clause 4.5 (a) due to non fulfilment of Conditions Precedent by the Concessionaire, the Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, consultants, agents and employees. In addition to this, the Authority shall forfeit the Performance Security submitted before the signing of the Concession Agreement, by the Concessionaire.

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## ARTICLE 5: RIGHT OF WAY

### 5.1 Rights to the Site

The site at which the Institute is located is described in Schedule A and in respect of which the right of way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (“Site”).

For the purpose of this Agreement, the Concessionaire shall have rights to use the Site in accordance with this Agreement and the Project Site Lease Deed, and to this end, it may regulate the entry and use of the Institute by third parties in accordance with and subject to the provisions of this Agreement.

### 5.2 Access and Right of Way

**521** The Concessionaire acknowledges that, it has, after a complete and careful examination, made an independent evaluation of the Site as a whole and has determined the nature and extent of the difficulties, upgradations, inputs, costs, time, resources, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations under this Agreement and the extent and manner of efforts required. The Concessionaire further acknowledges that it shall have no recourse against the Authority if it is, at a later date, found that the Site is deficient in any manner whatsoever. If a deficiency is found, the Concessionaire hereby acknowledges and agrees that it shall, at its own cost and at no cost to the Authority, take all appropriate measures to remedy the same.

**522** For the purposes of this Agreement, the Concessionaire has:

- (a) inspected the Site and its surroundings;
- (b) satisfied itself as to the means of communication with, access to the Institute it may require or as may be otherwise necessary for the performance of its obligations under this Agreement;
- (c) perused the Documents concerning the Site, and satisfied itself with the terms and conditions contained therein, which may have an impact on the performance of its obligations under this Agreement;
- (d) obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations hereunder and its other rights and obligations under or pursuant to this Agreement.

**523** The Concessionaire expressly acknowledges that it shall have no recourse against the Authority in the event of any mistake made or misapprehension harboured by the Concessionaire in relation to any of the foregoing provisions of this Article 5 and the Authority hereby expressly disclaims any liability in respect thereof.

**524** The right of way granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Project Site Lease Deed, upon the Termination of this Agreement for any reason whatsoever. Notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the lease in respect of the Site including in respect of the Institute, shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

### 5.3 Procurement of Site

**531** The Authority and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the unencumbered land, buildings, structures,

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road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (“**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and right of way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 5.3.2, be deemed to constitute a valid lease and right of way to the Concessionaire for free and unrestricted use and development of the unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. It is agreed that valid lease and right of way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon access thereto being provided by the Authority to the Concessionaire.

**5.3.2** Without prejudice to the provisions of Clause 5.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and right of way such that the Appendix shall not include more than 10% (ten percent) of the total area of the Site required and necessary for the Institute.

**5.3.3** On and after signing the memorandum referred to in Clause 5.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure that no encroachment or occupation thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

**5.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 5.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. It is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

**5.5 Protection of Site from Encumbrances**

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

**5.6 Special/ temporary right of way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Institute and the performance of its obligations under this Agreement.

**5.7 Access rights of the Authority and others**

**5.7.1** The Concessionaire shall allow free access to the Site at all times to the Authority, Authority Representatives, Senior Lenders, and to the persons duly authorised by any Government Instrumentality to inspect the Institute and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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5.8 **Property Taxes**

All property taxes with respect to the Project Site shall be payable by the Concessionaire.. The Parties agree that stamp duties, if any, due and payable on the grant of lease comprising the Agreement shall be paid by the Concessionaire.

5.9 **Restriction on sub-letting**

The Concessionaire shall not sub-lease, sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for upgradation ,and maintenance of all or any part of the Institute.

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## ARTICLE 6: OBLIGATIONS OF THE CONCESSIONAIRE

### 6.1 General Obligations of the Concessionaire

- 6.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure, finance for and undertake the procurement, equipping, operation, maintenance and management of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Concessionaire shall arrange for and procure, at its own cost and risk, all Equipment, operation, maintenance and management of the Project.
- 6.1.3 During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities the Applicable Permits and keep in force and comply with the conditions of all Applicable Permits for the, operation and maintenance of the Project and upon Termination, the transfer of the Project to the Authority.
- 6.1.4 The Concessionaire, in addition and without prejudice to its rights specified in the other provisions of this Agreement, shall, during the Concession Period, without qualification, observe and comply with the following obligations
- (i) Obtain any and all Applicable Permits, necessary approvals, clearances and sanctions from the competent authorities and when they may be required, for the Concessionaire and its employees to perform their obligations under this Concession Agreement;
  - (ii) Take over the possession of the <<institute>><<Location>> from the Authority;
  - (iii) Commence operations at the <<institute allotted>> on or before the SCOD;
  - (iv) Make the necessary capital investments for operationalizing the Project;
  - (v) Procure Equipment, furniture and fixtures in accordance with the approved Project Execution Plan;
  - (vi) Operate, maintain and manage the Project as per the provisions of the Concession Agreement;
  - (vii) Apply, coordinate, obtain and keep effective all approvals/permits/compliances to run the Project, at all times during the Concession Period;
  - (viii) Not assign, transfer or create any lien or Encumbrance on the Project or any part thereof, during the Concession Period;
  - (ix) Undertake and discharge all the liabilities relating to salaries and operational expenses of the Project;
  - (x) Carry out the works strictly in accordance with the Project Execution Plan as approved by the <<Institute Management Committee>> as per the provisions of this Concession Agreement and the Schedules of this Concession Agreement, and all incidental works which may be inferred to be necessary for safe, reliable and efficient implementation and operation of the Project;
  - (xi) Solely responsible for day-to-day operation of the Institute and shall ensure that the operations conform to the extant laws including those under the NCVT/AICTE and the GoUP/Authority (as applicable);
  - (xii) establish a dedicated placement cell, which shall be headed by a competent person and such person

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shall be responsible towards employment assistance to the passing out trainees, networking with potential employers etc;

- (xiii) Provide the Authority, half yearly progress report during the Operations and Maintenance Period for the Institute, which shall contain information as set out in Clause 11.8.1 of this Agreement The Authority reserves the right to get the information verified through its own or a nominated personnel/agency at its own expense, as and when it deems appropriate;
- (xiv) Levy and charge the course Fees in accordance with the provisions of the Concession Agreement;
- (xv) To ensure that no damage(s) (structural or otherwise) is caused to the Institute/ Site as a result of its activities;
- (xvi) To ensure that consumables / materials used during the Implementation Period are of best quality;
- (xvii) To keep the machines/ Equipment with utmost care for the entire Concession Period;
- (xviii) To pay at its own costs all applicable expenses arising out of preparation of Project Execution Plan and all other operational aspects of the Project including security, salaries, administration, etc;
- (xix) To pay at its own cost all applicable existing and future taxes/ charges/ Fees/ levies including the services tax, property tax, stamp duty, registration charges and any other legal Documentation charges, if any, in respect of the said Project, as leviable;
- (xx) To duly supervise, monitor and control the activities of its employees as may be necessary;
- (xxi) To effect and maintain, or cause to be effected and maintained, at its own expense, insurance policies as may be required to be maintained by the Senior Lenders, under Applicable Laws and/ or such insurances that are necessary or desirable in accordance with Good Industry Practice;
- (xxii) To take all reasonable precautions for the prevention of accidents on or about the Project and provide all reasonable assistance along with emergency medical aid to accident victims (if any);
- (xxiii) Not to permit any person, claiming through or under the Concessionaire, to create or place any security interest over all or any part of the Project or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;
- (xxiv) Shall within the time permitted by the Authority, make good all the defects and ensure that the items or materials complies with the Concession Agreement;
- (xxv) Shall ensure that if any designated devices, materials or any process which are covered/protected under the intellectual property laws, all necessary rights and licences for use of such devices, materials or processes are duly procured as per Applicable Laws.

6.1.5 The Concessionaire shall make its own arrangements for the engagement of all its Faculty, staff and labour, local or otherwise, and for their payment, boarding, lodging and transport. The Concessionaire shall be solely responsible for the liability, cost, and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article. However, it is being clarified here that the Concessionaire shall be under no obligation to recruit any or part of the staff and labour from amongst persons in the service of the Authority. The Concessionaire shall be solely and primarily responsible to the Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives or any person acting under or for and on behalf of the Concessionaire as fully

as if they were the acts or defaults of the Concessionaire.

## **6.2 Obligations relating to Change in Control**

6.2.1 The Concessionaire shall not undertake or permit any change in Control except in the manner provided under this Agreement.

6.2.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:

- (a) The Selected Bidder; or
- (b) where the Selected Bidder is a consortium, any consortium member whose technical and financial credentials have been relied upon by the Authority in award of the Bid,

shall not carry out a change in Control without the prior written approval of the Authority.

6.2.3 The aforementioned Sub-Clauses shall constitute a change in Control requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard being final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such change in Control without such prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

6.2.4 For the purposes of this Clause:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

## **6.3 Obligations relating to employment of Faculty and operating staff**

6.3.1 The Concessionaire shall appoint the Faculty Members and operating staff that are to be engaged by the Institute and ensure that such persons are duly qualified and at all times properly trained with adequate and state-of-the-art training and Good Industry Practice, and that the non-teaching personnel engaged at the Institute are also sufficiently trained for their respective functions.

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- 6.3.2 The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Concessionaire shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Concessionaire or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Concessionaire for performance of its obligations under this Agreement and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

#### **6.4 Obligations relating to aesthetic quality of the Institute**

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Institute and shall achieve integration of the Institute with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects of repute for ensuring that the design of the Institute meets the aforesaid aesthetic standards.

#### **6.5 Obligations relating to medical aid**

For providing aid and assistance in medical emergencies in the Institute, the Concessionaire shall, set up and operate a medical aid post in the Institute, equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

#### **6.6 Obligations relating to cleanliness and hygiene**

The Concessionaire shall maintain a high standard of sanitation, cleanliness and hygiene in the Institute, and shall procure and deploy adequate infrastructure, Equipment and manpower for this purpose.

#### **6.7 Obligations relating to differently abled Users**

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment in the Institute for the differently abled Users enrolled in the Institute.

#### **6.8 Obligations relating to admission of Users**

The Concessionaire shall ensure that the criteria for admission of Students is fair and transparent, and in conformity with Applicable Laws as well as Government Orders time to time passed by Authority and the provisions of this Agreement.

#### **6.9 Obligations relating to use of Institute**

- 6.9.1 The Concessionaire shall use the Institute only for the purposes specified in this Agreement and for no other purpose.

6.9.2 The Concessionaire may, without causing any Material Adverse Effect on the educational or associated activities of the Institute and subject to Applicable Laws, use the Institute for other educational purposes including research, training, vocational training, professional or scientific courses, workshops, seminars and events or usage associated therewith.

#### **6.10 Sole purpose of the Concessionaire**

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The Concessionaire shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement. For the avoidance of doubt, it is expressly clarified that Clause 6.10 will only be applicable in case of SPV.

#### **6.11 Obligations relating to the Institute Management**

The Concessionaire shall at all times be responsible for all the functions and obligations to be performed by the management of the Institute, in accordance with the provisions of this Agreement.

#### **6.12 Obligations relating to equality**

The Concessionaire shall at all times ensure and procure that all Students are treated equally and that there is no discrimination on account of gender, caste, creed, religion, region, disability or any other factor. The Concessionaire shall also ensure and procure that all Students have equal access to education, co-curricular activities, facilities and opportunities at or in relation to the Institute.

#### **6.13 Transaction Documents**

The Concessionaire accepts and undertakes to ensure that the terms of all Project Agreements (including but not limited to the agreements between the Concessionaire and Contractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such Documents and this Agreement, the provisions of this Agreement shall prevail.

#### **6.14 Taxes and Charges**

The Concessionaire shall pay, at all times during the subsistence of this Agreement, goods and service tax, all taxes, levies, duties, cesses and all other statutory charges payable in respect of the Institute. Provided, however, that all payments made by the Concessionaire with respect to goods and service tax levied on or in respect of any Services provided by the Concessionaire to the Authority for and in respect of the Institute shall be paid by the Concessionaire upon receipt of particulars thereof.

#### **6.15 Obligations relating to information**

6.15.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

6.15.2 After receiving a notice from Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

#### **6.17 Branding of the Institute**

6.17.1 The Institute or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders except the Authority. Save and except as may be necessary in the normal course of business and always along with the name of the Authority, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Institute to advertise or display its own identity, brand equity or business interests, including those of its shareholders.

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- 6.17.2 The Institute shall be known, promoted, displayed, advertised and branded by the name of “[\_\_\_\_\_]” only, at all times, and the Concessionaire shall at all times, for the purpose of any advertisement, display, reflection, branding or otherwise, shall display the Institute as such. If it intends to display its own name or its shareholders name at the spots where other public notices are displayed for the public in the normal course of business, the same shall be preceded by the Authority’s name.

**6.18 Advertising in the Institute**

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place in the Institute except those related to the Institute operations.

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## **ARTICLE 7: OBLIGATIONS OF THE AUTHORITY**

### **7. General Obligations of the Authority**

- 7.1. The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 7.2. The Authority shall procure connection for and supply of electricity, water, and other utilities as may be necessary or required for the operation of the Project, as specified in Schedule B provided the charges for the water and electricity shall be solely borne by the Concessionaire.
- 7.3. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
  - (a) Assist Concessionaire, on best effort basis, in obtaining any and all permits, necessary approvals, clearances and sanctions from the competent authorities with respect to setting up and making the Project operational, including assistance, on best effort basis; for procuring affiliations for operationalizing the Institute as per the terms and conditions set out in this Agreement;
  - (b) Provide representation in the Management Committee for Polytechnics;
  - (c) Issue directives related to various aspects of the operation and norms, for continuous monitoring of the Project.

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## **ARTICLE 8: REPRESENTATIONS AND WARRANTIES**

### **8.1 Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

- i) The Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- ii) The Authority have taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
- iii) This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- iv) The Concessionaire shall have complete, lawful and uninterrupted right of way on the Site by way of lease in accordance with this Concession Agreement; and
- v) The Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

### **8.2 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Authority that:

- i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii) It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- iii) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Concession Agreement;
- iv) It has the financial standing and capacity to undertake the Project;
- v) This Concession Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi) It is subject to civil and commercial laws of India with respect to this Concession Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii) All the information furnished in the Concessionaire's Bid/Proposal is, and shall be, true and correct as on the Letter of Award and throughout the Concession Period/subsistence of the Concession Agreement. If in case any false or misleading information, as furnished by the Concessionaire (as a Bidder) in its Bid/Proposal, is found at a later stage after the signing of the Concession Agreement, it shall entitle the Authority to terminate the said signed Concession Agreement between the Parties. The costs and risks for such termination shall be entirely borne by the Concessionaire.
- viii) It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Accounting Year after the Letter of Award and any material change subsequent to the date of such accounts shall be notified to the Authority by the Concessionaire within 30 (thirty)

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days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;

- ix) The execution, delivery and performance of this Concession 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 is bound or affected;
- x) 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 authorities, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;
- xi) The Concessionaire 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 Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
- xii) The Concessionaire 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 on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
- xiii) All rights and interests of the Concessionaire in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Concessionaire or the Authority and that none of assets including materials, supplies or Equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement;
- xiv) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority in relation to clearances 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; and
- xv) The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Authority.

### **8.3 Obligation to Notify Change**

In the event that any of the representations or warranties made/ given by the Concessionaire ceases to be true or stands changed, it shall promptly notify Authority of the same.

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## **ARTICLE 9: DISCLAIMER**

### **9.1 Disclaimer**

- 9.1.1** 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 RFP, scope of the Project, Specifications and Standards, Project Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Users and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 9.1.2** The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in 9.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.
- 9.1.3** The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 9 above shall not vitiate this Agreement or render it voidable.
- 9.1.4** In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 9.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 9.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 9.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 9.1.5** Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

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## ARTICLE 10: PERFORMANCE SECURITY

### 10.1 Performance Security

**10.1.1** The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority within 30 (thirty) days from Letter of Award, an irrevocable and unconditional guarantee from a Bank for a sum of INR 20,00,000 (Indian Rupees Twenty Lakhs) in the format set forth in Schedule D (the “**Performance Security**”). The Concessionaire agrees and undertakes that the amount in the Performance Security as specified herein above shall be deemed to be modified to the extent of variation in the Price Index for every 3 (three) years and such additional amounts shall be deemed to be part of the Performance Security. The Concessionaire shall provide the additional Performance Security or replenish the Performance Security in order to comply with the provisions of this Clause 10.1.1. The Concessionaire shall, at all times, maintain and keep in force the Performance Security for the entire duration of the Concession Period in accordance with this Article 10. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

**10.1.2** Notwithstanding anything to the contrary contained in this Agreement, in the event that the Performance Security is not provided by the Concessionaire within the specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement including the Project Site Lease Deed (if executed) shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### 10.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to fulfil any Condition Precedent within the timeline(s) set out in the Agreement or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within [15 (fifteen)] days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security. In the event that the Concessionaire fails to do so, the Authority shall be entitled to terminate this Agreement in accordance with Article 24.

### 10.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of 12 (twelve) months from the expiry of the Concession Period or Termination of the Agreement, ; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 10.3 , the Authority shall release the Performance Security forthwith.

## **PART IV – MANAGEMENT AND OPERATION OF THE INSTITUTE**

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## **ARTICLE 11: OPERATION OF THE INSTITUTE**

### **11.1 Operation of the Institute**

- 11.11** The Concessionaire shall ensure operations of the Institute as per Applicable Laws and Good Industry Practice. The Concessionaire shall be solely responsible for day-to-day operation of the Institute.
- 11.12** Subject to Applicable Laws, the Institute shall operate 1(one) shift every day.
- 11.13** In the Institute, there shall be a minimum of 4 (four) branches out of which 3 (three) would be engineering branches and 1 (one) non-engineering branch. The list of the courses are set out in Schedule L.
- 11.14** During the Concession Period, the Concessionaire may change the trades / branches depending on the demand of the courses provided and a prior written approval is obtained from the Authority before undertaking such change.
- 11.15** The Concessionaire shall not subcontract the daily operations of the Institute to any person or in any manner including through any franchisee arrangement or otherwise.
- 11.16** The Concessionaire may operate other short-term vocational trainings under various state or central funded schemes or other academic activities to enhance the revenue, however any such training shall be conducted only after obtaining prior approval from the Authority. The Concessionaire agrees and undertakes that students enrolled in regular sessions in the Institute cannot be admitted under vocational trainings in parallel.

### **11.2 Hostel**

- 11.21** The Institute may have hostels in the campus provided that in case hostels are available, the Concessionaire shall be solely responsible for procuring the necessary facilities and Services for operating the hostels including procuring of requisite staff and operating and maintaining standards in relation to food, safety and sanitation.

### **11.3 Quality of Services**

- 11.31** The Concessionaire shall procure and install all requisite Equipment and furniture for the operation of the trade/branches allocated in the Institute. The Equipment and other furnishings should be as per the norms of affiliation of NCVT/AICTE. The Concessionaire shall procure that all Users receive quality Services in accordance with the provisions of this Agreement and Good Industry Practices.
- 11.32** The Equipment should be dedicated solely to the Institute and cannot be transferred without prior consent from the Authority.
- 11.33** The Concessionaire shall procure and ensure that all personnel engaged in the provision of Services are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum, be compliant with the performance standards set out at Schedule C. The Concessionaire shall regularly supervise and monitor the performance of the personnel to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.
- 11.34** The Concessionaire shall ensure a seamless affiliation of NCVT/AICTE as applicable and keep Authority in confidence about the progress of affiliation process.
- 11.35** The Concessionaire to ensure optimum usage of infrastructure and resources. The Concessionaire may operate

other academic programs in the Institute to generate funds with prior permission of Authority.

**11.36** The Concessionaire agrees and undertakes that in order to make the Institute a centre of excellence, the Concessionaire shall endeavor to bring the skilling and industry expertise from various organizations including through various collaborations.

**11.37** The Concessionaire shall address any complaints received from the Users in a prompt and effective manner and take all reasonable efforts to accommodate the requests of the Users.

**11.4 Non-Discriminatory access**

The Concessionaire shall establish an educational system based on Good Industry Practice and Applicable Laws such that every User shall have equal access to all facilities and opportunities and that no User, or category of Users, is discriminated against or unduly favoured, as the case may be.

**11.5 Website**

The Concessionaire shall establish a website for the Institute to post the rules, policies and information relating to the management, operation and performance of the Institute which may be of relevance or interest to the Students, staff, faculty and the general public (the "**Website**"). The Website shall contain such other information as may be required by Applicable Laws and this Agreement. The contents of the Website shall be updated frequently to provide the latest information.

**11.6 Institute Management Information System**

**11.61** The Concessionaire shall update the IMIS on regular basis:

**11.62** The IMIS shall include the features specified below:

- (a) creation of data base and generation of all information and reports as required under the provisions of this Agreement;
- (b) installation of the biometric system and its use in accordance with this Agreement;
- (c) particulars of each Student, Faculty Member and Staff, including the annual medical check-up records;
- (d) training of Faculty;
- (e) human resource management including of medical and other staff;
- (f) maintenance of Equipment;
- (g) housekeeping;
- (h) inventory management;
- (i) contract management;
- (j) cost accounting;
- (k) financial accounting;
- (l) insurance;

- (m) security and administration; and
- (n) any other details as may be required by the Authority.

### **11.63 Provision of CCTV**

The Institute shall install and operate a closed circuit television system (the "CCTV") all the classrooms, auditoriums, enclosures and passages used by the Users. The monitoring screens connected to each camera of the CCTV shall be installed in a control room for observation by persons authorised in this behalf by Concessionaire. The CCTV system shall be connected to the offices of the Authority in a manner that enables the Authority to observe the operations of the Institute. All recording on CCTV shall be classified and stored by the Institute Management for a period of at least 3 (three) months from the date of such recording.

### **11.7 Reports of unusual occurrence**

The Concessionaire shall send to the Authority a report stating accidents and unusual occurrences on the premises of the Institute relating to the safety and security of the Users and visitors as early as possible but not later than 48 (forty eight) hours from the occurrence of such incident. A monthly summary of such reports, if any, shall also be sent within 3 (three) days of the closing of each month. For the purposes of this, accidents and unusual occurrences in the Institute shall include:

- (a) Death or injury to any person;
- (b) Episode of sexual assault;
- (c) Suicide, abduction or attempted suicide or abduction of a User;
- (d) Any physical or mental injury or intimidation caused to any Student by a person engaged by the Institute Management or by any other person acting on its behalf;
- (e) Smoke or fire;
- (f) Flooding of the Institute premises;
- (g) Any other incident akin to the incidents listed above and
- (h) Such other relevant information as may be reasonably required by the Authority.

### **11.8 Half yearly Reports**

**11.81** The Concessionaire shall provide the Authority, a half yearly report during the Implementation Period for the Institute, which shall contain the following information:

- (a) **Summary of progress:** summary of operating and financial results. This would also include information about the various courses and details of Users who have been enrolled. The Authority reserves the right to get the details verified through its own or nominated personnel at its own expense, as and when it deems it appropriate;
- (b) **Operations plan:** an operations plan for running of the operations for the year and a report on the activities carried out during the previous year (including a commentary on any material deviation from expected activities as set out in the operations plan).

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- (c) **Revenue:** details of the Fee(s) for each relevant period.
  - (d) **Maintenance plan:** a maintenance plan for the Project for the next period and a report on maintenance carried out during the previous period (including a commentary on any material deviation from expected maintenance activities as set out in the maintenance plan).]

#### 11.9 **Inspection**

- 11.91** The Authority may inspect the Institute at any time during the Concession Period. After inspection, it shall make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Execution Plan and send a copy thereof to the Authority and the Concessionaire within [7 (seven)] days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Notwithstanding the foregoing, such inspection or submission of Inspection Report by the Authority shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

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## **ARTICLE 12: OPERATION OF THE PROJECT**

### **12.1 Authority's right to take remedial measures**

**12.1.1** In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Institute or any part thereof in conformity with the Project Execution Plan and fails to commence remedial works within [15 (fifteen)] days of receipt of a notice in this behalf from the Authority, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty percent)] of such cost shall be paid by the Concessionaire to the Authority as Damages.

**12.1.2** The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 12.1.1 directly from the Escrow Account, and for that purpose the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under these Clause 12.1.2, 18.2 and debit the same.

### **12.2 Overriding powers of the Authority**

**12.2.1** If in the opinion of the Authority, the Concessionaire is in Material Breach of its obligations under this Agreement and in particular, the Project Execution Plan, and such breach is causing or is likely to cause material hardship or danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for removing such hardship or danger as the case may be.

**12.2.2** In the event the Concessionaire, upon notice under Clause 12.2.1 , fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 12.1 along with the Damages specified therein.

### **12.3 Restoration of loss or damage to the Institute**

Save and except as otherwise expressly provided in this Agreement, in the event that the Institute or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Institute conforms to the provisions of this Agreement.

### **12.4 Modifications to the Institute**

The Concessionaire shall not carry out any material modifications to the Institute, save and except where such modifications are necessary for the Institute to operate in conformity with the Project Execution Plan Specifications and Standards, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the [Authority] of the proposed modifications along with particulars thereof at least [15 (fifteen)] days before commencing work on such modifications and shall reasonably consider any suggestions which the [Authority ] may make within [15 (fifteen)] days of receiving Concessionaire's proposal. For avoidance of doubt all modifications hereunder shall comply with the safety requirements, Project Execution Plan, Specifications and Standards, Applicable Laws, Applicable Permits, terms of this Agreement and Good

Industry Practice.

#### **12.5 Excuse from performance of obligations**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available to Users, or the Institute is not available for the use of the Institute on account of any of the following for the duration thereof:

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safe use of the Institute, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Institute.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Institute open to Users provided that Services can be provided safely.

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## **ARTICLE 13: SAFETY AND SECURITY REQUIREMENTS**

### **13.1 Safety Requirements and Security Obligations of the Concessionaire**

- 13.1.1** The Concessionaire shall comply with the provisions of this Agreement, Project Execution Plan, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Institute, Users and other persons present on the Project Site. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Institute and shall comply with the safety requirement set forth in Schedule H (the “**Safety Requirements**”).
- 13.1.2** The Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, provide or cause to be provided security within the Institute for prevention of crime, terrorism, sabotage and/or similar acts or occurrences in accordance with Applicable Laws and Good Industry Practice.
- 13.1.3** The Concessionaire shall install and operate a CCTV system to monitor the Institute as may be necessary and expedient for safe operations of the Institute in accordance with Good Industry Practice.
- 13.1.4** The Concessionaire shall engage and depute trained personnel for maintaining the security and safety of Users inside the Project Site in accordance with Good Industry Practice.
- 13.1.5** Concessionaire shall abide by and implement any instructions of the Authority and the GoUP for enhancing the security within and around the Institute. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the GoUP.
- 13.1.6** The Concessionaire shall provide and maintain a boundary wall (if required) and other suitable protection around the Institute and shall provide such other security Equipment and devices as may be necessary for the security of Students, staff, Faculty and visitors.
- 13.1.7** It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for any damage to the Institute and/or the Site other than the damages caused due to Force Majeure Events.

### **13.2 Expenditure on Safety Requirements**

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

### **13.3 Disaster management**

The Concessionaire shall procure that the Institute and Equipment conform to Applicable Laws, applicable codes of the National Disaster Management, GoUP and Good Industry Practice for responding to and management of any disaster and shall also train its staff in disaster management.

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**ARTICLE 14: ADMISSION OF STUDENTS AND FEES**

- 14.1 Admissions to the Institute (including payments of Fees thereof) shall be as per Applicable Laws and in accordance with the directions of the Authority. The program and shifts should be structured properly as per the prevailing regulations. The examinations in the Institute shall be as per NCVT/AICTE norms and the examination Fees are to be submitted by the Students as prescribed.
- 14.2 The Fees for the various courses in the Institute shall be as per Applicable Laws including any directions from the Authority.
- 14.3 The Concessionaire shall not charge any Fees other than those prescribed. In the event of any breach of this clause by the Concessionaire whatsoever, such breach may lead to forthwith termination as per the provisions of this Agreement.
- 14.4 Students admitted in the Institute would either be through Government quota – paying the regulated Government Fees; or private quota – paying the Fees fixed by regulatory body / committees for private institution Fees.
- 14.5 In the event the Authority is unable to provide the Government quota students in the Institute; the Concessionaire may fill up such vacant seats by admitting Students through the IMC / management quota after obtaining necessary approvals from the Authority.
- 14.6 The Concessionaire agrees and undertakes that the courses shall be conducted timely irrespective of the number of Students admitted in a unit / branch. In case there is a delay in the commencement of classes from the date as specified by the competent authority, such delay may be considered a breach of this Agreement.
- 14.7 The Concessionaire agrees and undertakes that it shall not cancel the admission of the Students under Government quota unless cogent reasons are provided for such cancellation. For non-admission / dropout of every candidate under Government quota, the Concessionaire shall provide reasons thereof and if the reason(s) are found inadequate, Damages shall be levied.

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**ARTICLE 15: KEY PERFORMANCE INDICATORS**
**15.1 Key Performance Indicators**

In case of non-compliance to any of the breach of the Agreement, liquidated damages as set out in this Agreement shall be applicable.

**15.2 Output Based:**

<b>Sl. No.</b>	<b>KPI</b>	<b>Penalty</b>
<b>1</b>	All candidates admitted are required to be registered with the relevant regulatory authorities.	Every candidate (Govt. private quota), not registered with concerned bodies would attract a penalty of 0.25% of the Performance Security with a ceiling of 10%.
<b>2</b>	All the candidate appearing for exam will have at least 75% attendance.	>75% - 100%: No Damages >75% - 65%: 5% of Performance Security >65% - 55%: 7.5% of Performance Security <55%: <b>10% of Performance Security (Would be considered as Severe Default and recurrent event might lead to termination)</b>
<b>3</b>	Atleast 80% of the total trainees appeared for exams to secure pass marks.	80% - 100%: No Damages >75% - 85%: 5% of Performance Security >70% - 75%: 7.5% of Performance Security <70%: <b>10% of Performance Security (Would be considered as Severe Default and recurrent event might lead to termination)</b>
<b>4</b>	Dropout should be less than 10% of the actual number of Government/ private quota candidates admitted and be less than 15% of the actual number of IMC/ Management quota students	Govt. Quota Candidates <10%: No Damages >10% - 20%: 5% of Performance Security >20%: 10% of Performance Security Private Quota Candidates <15%: No Damages >15% - 25%: 5% of Performance Security >25%: <b>10% of Performance Security (Would be considered as Severe Default and recurrent event might lead to termination)</b>

Sl. No.	KPI	Penalty
5	Successful placements of at least 50% of the candidates in a batch.	<p>≥ 50%: No Damages</p> <p>&gt;40% - 50%: 5% of Performance Security</p> <p>&lt;40%: <b>10% of Performance Security (Would be considered as Severe Default and recurrent event might lead to termination)</b></p>

### 15.3 Operational KPIs:

Sl. No.	KPI	Penalty
1.	Feedback of Candidates – It will be a qualitative parameter rated on a scale of 10. The average score out of 10 would be considered.	<p>Rating 8 and above: No Damages</p> <p>Rating 6-7: 5% of Performance Security</p> <p>Rating &lt;6: 10% of Performance Security</p> <p><b>Consecutive rating of 4 and below will be considered Severe Default and might lead to termination.</b></p>
2.	Feedback of Trainers/Teachers- a qualitative parameter rated on a scale of 10. The average score out of 10 would be considered.	<p>Rating 8 and above: No Damages</p> <p>Rating 6-7: 5% of Performance Security</p> <p>Rating &lt;6: 10% of Performance Security</p> <p><b>Consecutive rating of 4 and below will be considered Severe Default and might lead to termination.</b></p>
3.	Delay in filling the teachers/trainer's vacancies during operations – Delay in terms of days in filling vacant positions since the day of vacancy	<p>Vacant positions need to be filled within 3-month time. Thereafter for every week delay 1% of the Performance Security would be deducted till the time positions are unfilled subject to a ceiling of 10% in total.</p> <p>If the vacant positions are not filled further penalty including termination may be initiated at the sole discretion of the Authority.</p>

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**ARTICLE 16: INDEPENDENT AUDITOR**

- 16.1 The Authority shall, at its discretion and if it believes necessary, appoint a firm of chartered accountants out of a list of independent and reputable firms of chartered accountants in India as the Independent Auditor or the Authority nominated government auditor ("**Government Auditor**"), to audit the accounts of the Concessionaire for the Project on a yearly basis and have during the subsistence of this Agreement, as its auditors, a reputed firm of chartered accountants duly licensed to practice in India.
- 16.2 The Authority reserves the right from time to time to substitute a firm appointed as Independent Auditor by it with another reputed firm of chartered accountants, at anytime during the Concession Period, without assigning any reason whatsoever.
- 16.3 Any claim or document provided by the Concessionaire to the Authority relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto, in connection with the Project shall be valid and effective only if certified by the Independent Auditors.
- 16.4 The Independent Auditor shall verify and certify the Fees declared by the Concessionaire based on the audited financial reports of the Concessionaire. The Independent Auditor shall also have a right to investigate further in case there are reasons to believe that the Fees declared as per the audited financial statements do not reflect the true and correct picture of the gross revenue from the Project.
- 16.5 The Concessionaire shall make available to the Authority, its representatives and such auditor all its records, books, documents and other relevant information that may be reasonably be required to check or audit any information, figures, calculation of revenues of the Concessionaire and shall provide the Authority, its representative and such auditor reasonable access to its offices and premises for the purpose of such audit.
- 16.6 The remuneration, cost and expenses of the Independent Auditor shall be borne by the Authority, in case of appointment of Auditor other than the Authority nominated Government Auditor.

## **PART V – FINANCIAL COVENANTS**

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## **ARTICLE 17: FINANCING**

### **17.1 Financing Agreements**

The Concessionaire shall provide to the Authority 3 (three) copies of the Financial Package and Financial Model furnished by it to the prospective Senior Lenders. As and when such Financial Package is agreed with the Senior Lenders, the Concessionaire shall share the final draft of Financing Agreements to the Authority for its approval. Upon approval by the Authority of the drafts of the Financial Agreements, the Financing Agreements shall be executed with the Senior Lenders and a copy of the same shall be furnished by the Concessionaire to the Authority forthwith. In case, any changes are proposed by the Authority to the draft of the Financing Agreement, such shall be incorporated prior to the execution of Financing Agreements with the Senior Lenders.

Upon Termination of this Agreement due to the failure of the Concessionaire to procure prior written approval from the Authority in relation to the Financing Agreements prior to the execution of such Financing Agreements, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages for failure to procure such written approval in accordance with this Clause 17.1 of this Agreement.

## **ARTICLE 18: ESCROW**

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## ARTICLE 18: ESCROW ACCOUNT

### 18.1 Escrow Account

- 18.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.
- 18.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule I.

### 18.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all Fees received from the Users enrolled with the Institute and for research works and usage of Services and facilities of the Institute; and
- (b) all payments by the Authority, if any.

### 18.3 Withdrawals during Concession Period

- 18.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) Monthly emoluments payable to Faculty Members;
  - (b) All taxes due and payable by the Concessionaire for and in respect of the Project;
  - (c) O&M Expenses and other costs and expenses incurred by the Concessionaire in accordance with the provisions of this Agreement;
  - (d) Fees due and payable to the Authority;
  - (e) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement;
  - (f) Monthly proportionate provision of Debt Service (*if any*) due in an Accounting Year;
  - (g) Any reserve requirements set forth in the Financing Agreements; and
  - (h) Balance, if any, in accordance with the instructions of the Concessionaire.
- 18.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 18.3.1, except with the prior written approval of the Authority.

#### **18.4 Withdrawals for payment of Monthly Emoluments**

- 18.4.1 The Escrow Bank shall withdraw from the Escrow Account and deposit into a sub-account all sums required and necessary for payment of Monthly Emoluments to Faculty Members.
- 18.4.2 All payments for and in respect of Monthly Emoluments of Faculty Members shall be made by the Escrow Bank through direct electronic transfer to the respective bank accounts of Faculty Members on or before the 7<sup>th</sup> (seventh) day of a month for and in respect of the immediately preceding month. The Monthly Emoluments payable hereunder shall be certified by the Concessionaire at least once every 6 (six) months as due and payable to each of the Faculty Members in accordance with the provisions of this Agreement and the Escrow Bank shall have the obligation to make full and timely payment thereof in conformity with the order of appropriation specified in Article 18.3.1.

The Parties expressly agree that the Escrow Account shall, at all times, retain and reserve an amount equal to the total Monthly Emoluments payable to all Faculty Members for [2 (two)] months and only the balance remaining shall be withdrawn for any other purpose in accordance with the provisions of Article 18.3.1.

#### **18.5 Withdrawals upon Termination**

- 18.5.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
  - (b) outstanding Fee;
  - (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
  - (d) retention and payments relating to the liability for defects and deficiencies set forth in Article 18;
  - (e) incurred or accrued O&M Expenses;
  - (f) any other payments required to be made under this Agreement; and
  - (g) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-Clause (i) of this Clause 18.5.1 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 25.4.

- 18.5.2 The provisions of this Article 18 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 18.4.1 have been discharged.

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## **ARTICLE 19: INSURANCE**

### **19.1 Insurance during Concession Period**

The Concessionaire shall effect and maintain at its own cost, during the Project Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

### **19.2 Insurance cover**

19.2.1 Without prejudice to the provisions contained in Clause 19.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) loss, damage or destruction of the Institute at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Institute;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items from (a) to (e) above.

### **19.3 Notice to the Authority**

No later than [30 (thirty)] days prior to commencement of the operations the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 19. Within [30 (thirty)] days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **19.4 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 19 shall be maintained with insurers on terms consistent with Good Industry Practice. Within [15 (fifteen)] days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

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**19.5 Remedy for failure to insure**

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire,

**19.6 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 19 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia* the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to 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 or in any way connected with any loss, liability or obligation covered by such policies of insurance.

**19.7 Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**19.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the infrastructure of the Institute.

**19.9 Compliance with conditions of insurance policies**

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

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## **ARTICLE 20: AUDITS AND ACCOUNTS**

### **20.1 Audited accounts**

- 20.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the Fees and all incomes derived or collected by it from or on account of operating and managing the Institute and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall provide [2 (two)] copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within [90 (ninety) days] of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments to Authority under this Agreement. The Authority shall have the right to inspect the Fee records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 20.1.2 The Concessionaire shall, within [30 (thirty) days] of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange. In the case of Trust/Society, the Concessionaire shall within [30 (thirty) days] of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the [●].
- 20.1.3 On or before the thirty-first day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Auditors giving summarised information on Fees and such other information as the Authority may reasonably require.

### **20.2 Certification of claims by Auditors**

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

### **20.3 Set-off**

In the event any amount is due and payable by the Concessionaire to the Authority, it may set-off any sums payable by it and pay the balance remaining. Any exercise by the Authority of its rights under this Article shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

### **20.4 Dispute resolution**

In the event of there being any difference between the findings of the Independent Auditor and the certification provided by the Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

## **PART VI – FORCE MAJEURE AND TERMINATION**

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## **ARTICLE 21: FORCE MAJEURE**

### **21.1 Force majeure**

- 21.1 In this Agreement, Force Majeure means any event or circumstance or a combination of events and circumstances, which satisfies all the following conditions:
- (a) Materially and adversely affects the performance of an obligation;
  - (b) are beyond the reasonable control of the affected Party;
  - (c) such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
  - (d) do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
  - (e) or any consequence of which), have an effect described in Clause 21.1.

### **21.2 Force Majeure Event**

- 21.2 Force Majeure Event includes the following events and / or circumstances to the extent that they, or their consequences satisfy the requirements set forth in Clause 21.1:
- (a) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting India;
  - (b) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India;
  - (c) nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Airport, unless the source or cause of the explosion, contamination, radiation or hazardous thing is brought to or near the Project Site by the Concessionaire or any Associate of the Concessionaire or any contractor or sub-contractor of the Concessionaire or any such affiliate or any of their respective employees, servants or agents;
  - (d) strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political
  - (e) any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within India;
  - (f) explosion (other than Clause 21.1 (a) and Clause 21.1(c)) within India;
  - (g) epidemic or plague within India;
  - (h) any judgment or order of any court of competent jurisdiction or statutory Authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
  - (i) any event or circumstances of a nature analogous to any events set forth in paragraphs (i) to (h) of this

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Clause 21.2 above within India.

Save and except as expressly provided in this Agreement, the Concessionaire or the Authority as the case may be, shall be entitled to suspend or excuse performance of its respective obligations under this Agreement to the extent that the Parties is unable to render such performance by an event of Force Majeure (a "**Force Majeure**").

### **21.3 Duty to report Force Majeure Event**

21.3.1 Upon occurrence of a Force Majeure Event, the Party claiming to be affected shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
- (b) 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;
- (c) the measures which the affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the affected Party's claim.

21.3.2 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 no 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.

21.3.3 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 Clause 21.3.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### **21.4 Effect of Force Majeure Event on the Concession**

21.4.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 10 for delivery of the Performance Security by the Concessionaire shall be extended by a period equal in length to the duration of the Force Majeure Event.

21.4.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before Project SCOD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after Project SCOD, whereupon the Concessionaire is unable to operate the Institute for a cumulative period exceeding 180 (one hundred and eighty) days in any year despite making best efforts or it is directed by the Authority to suspend operations of the Institute during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal to the duration for which such Force Majeure Event subsists;

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**21.5 Allocation of costs arising out of Force Majeure**

- 21.5.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof
- 21.5.2 Save and except as expressly provided in this Article , neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

**21.6 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, Authority may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 21.6, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant [15 (fifteen)] days' time to make a representation, and may after the expiry of such [15 (fifteen)] days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

**21.7 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

**21.8 Excuse from performance of obligations**

If the affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence. of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

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## **ARTICLE 22: COMPENSATION FOR BREACH OF AGREEMENT**

### **22.1 Compensation for default by the Concessionaire**

In the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 22.1 for any Material Breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

### **22.2 Extension of Concession Period**

In the event that a material default or breach of this Agreement, causes delay in achieving SCOD, the Authority shall, in addition to payment of compensation under Clause 22.1, extend the Concession Period, such extension being equal in duration to the period by which SCOD of the Institute was delayed for a period exceeding 120 (one hundred and twenty) days on account thereof.

### **22.3 Compensation to be in addition**

Compensation payable under this Article 22 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

### **22.4 Mitigation of costs and damage**

The affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

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## **ARTICLE 23: SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

### **231 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to: (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee and any other revenues pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**").

### **232 Authority to act on behalf of Concessionaire**

232.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fees under and in accordance with this Agreement. The Authority shall be entitled to use the Fees collected in accordance with this Clause 23.2 for meeting the O&M Expenses and for the costs incurred by it for remedying and rectifying the cause of Suspension.

232.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Institute and its operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **233 Revocation of Suspension**

233.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

233.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding [90 (ninety)] days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

### **234 Termination**

234.1 At any time during the period of Suspension under this Article 23, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within [15 (fifteen)] days of receipt of such notice, terminate this Agreement under and in accordance with Article 24 as if it is a Concessionaire Default under Article 24.

234.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within [180 (one hundred and eighty)] days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 23.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this

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Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

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## ARTICLE 24: TERMINATION

### 24.1 Termination for Concessionaire Default

24.1.1 Subject to Applicable Laws and save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within a Cure Period of [60 (sixty) days], the Concessionaire shall be deemed to be in default of the Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with the provisions of Clause 10.2, and the Concessionaire fails to replenish or provide fresh Performance Security, within a Cure Period of [15 (fifteen) days];
- (b) subsequent to the replenishment or furnishing of fresh Performance Security, in accordance with the provisions of Clause 10.2, or cure the Concessionaire Default, as the case maybe, for which whole or part of the Performance Security was appropriated, within a Cure Period of [120 (one hundred and twenty)] days;
- (c) the Concessionaire continues to be in “severe default” for 3(three) consecutive years on any specific KPIs as listed in the “ARTICLE 15: KEY PERFORMANCE INDICATORS”;
- (d) the Concessionaire abandons or manifests intention to abandon the operation or maintenance of the Institute without the prior written consent of the Authority;
- (e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the O&M obligations ;
- (f) the Concessionaire fails to make any payment to the Authority within the period specified in this Agreement;
- (g) the Concessionaire fails to pay Damages equivalent to the amount of Performance Security within a period of [30 (thirty)] days from the date of demand thereof by the Authority;
- (h) termination of the registration or recognition of the Institute under Applicable Laws;
- (i) an Escrow Default has occurred under the Escrow Agreement and the Concessionaire fails to cure the default within a Cure Period of [15 (fifteen)] days;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (l) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred;
- (n) there is a transfer, pursuant to law either of: (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

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- (o) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
  - (p) the Concessionaire company is adjudged bankrupt or insolvent, or if a liquidator or receiver or similar official is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
  - (q) the Concessionaire company has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that
    - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
    - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
    - (iii) each of the Project Agreements remains in full force and effect;
  - (r) occurrence of any Insolvency Event;
  - (s) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
  - (t) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
  - (u) Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
  - (v) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement;
  - (w) the Concessionaire commits a default-in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority or on the Users of the Institute;
  - (x) the Concessionaire has made an application for cancellation of its registration or an enquiry for suspension or cancellation of its registration under Applicable Law has been commenced by a Governmental Instrumentality or its registration under Applicable Laws is cancelled or suspended; or
  - (y) an administrator is appointed by a competent Government Instrumentality to manage and supervise the affairs of the Concessionaire in a manner so as to supersede the management committee or such body of the Concessionaire.

24.12 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant [15

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(fifteen)] days to the Concessionaire to make a representation, and may after the expiry of such [15 (fifteen)] days, whether or not it is in receipt of such representation, issue the Termination Notice. subject to the provisions of this Article.

- 24.13 Upon Termination on account of a Concessionaire Default, the Authority shall, without prejudice to any other rights or remedies which it may have under this Agreement, be entitled to encash and appropriate the Performance Security, by way of Damages payable by the Concessionaire to the Authority for and in respect of such Concessionaire Default. Upon Termination on account of a Concessionaire Default during the Concession Period, the Concessionaire shall pay to the Authority, by way of Termination Payment, an amount equal to 100% of the Institute's operating expenses incurred during the previous financial year, as determined from the audited financial statements. For the avoidance of doubt, Institute's operating expenses will include all expenses incurred by concessionaire other than towards procurement of Equipment. In addition to this, the Authority shall forfeit the Performance Security submitted by the Concessionaire.

#### **242 Termination for convenience**

- 24.21 The Authority may, by written notice of maximum upto 90 (ninety) days sent to the Concessionaire, terminate the Agreement, at any time for its convenience. The notice of Termination shall specify that Termination is for the Authority's convenience, the extent to which performance of Services under the Agreement is terminated, and the date upon which such Termination becomes effective. The Authority may, at its discretion, relax or absolve the Concessionaire from the timelines and/or obligations in relation to provisions of the Agreement upon such termination for convenience. For the avoidance of doubt, any defaults/outstanding amounts of the Concessionaire shall continue to subsist and be recovered by the Authority for the terms of this Agreement even after termination under this Clause 24.2.

#### **243 Extension of Concession Period**

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than [5 (five) years], but no later than [2 (two) years] prior to the completion of the Concession Period, by a notice issued to the Authority in accordance with the proviso of Clause 3.2.1 require an extension of the Concession Period as specified therein. Upon expiry of the extended Concession Period hereunder, the Institute shall vest in the Authority under and in accordance with the provisions of this Agreement.. Provided that in the event of an extension hereunder, the provisions of this Agreement, save and except the provisions for extension under Clause 3.2.1 and this Clause 24.3 shall apply *mutatis mutandis* to the extended Concession Period.

#### **244 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Institute forthwith;
- (b) take possession and control of all materials, stores, implements, and Equipment on or about the Institute;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Institute;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in [Clause 25.1]; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the

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Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

## **245 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

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## ARTICLE 25: DIVESTMENT OF RIGHTS AND INTEREST

### 251 Divestment requirements

25.1.1 Upon Termination, the Concessionaire shall, comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) in the event the Authority wishes to procure the Assets at fair market value, the Concessionaire shall cure all Assets of all defects and deficiencies so that the Institute is compliant with the Maintenance Requirements;
- (c) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its operation and maintenance, including all programmes and manuals pertaining thereto. provided that in the event the Concessionaire has used the brand name and/or logo of the Selected Bidder, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- (d) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (e) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Institute, and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (f) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Institute, free from all Encumbrances, absolutely unto the Authority or to its nominee.

25.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the issuance of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

### 252 Inspection and cure

Not earlier than [90 (ninety)] days prior to Termination or the timelines prescribed in the Termination notice but not later than [15 (fifteen)] days prior to the effective Date of such Termination, the Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 22 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 25.

### 253 Cooperation and assistance on transfer of Project

25.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a

smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

- 2532 The Parties shall provide to each other, [9 (nine) months] prior to the Transfer Date in the event of Termination by efflux of time or immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the completion of the academic year [insert year] after the Transfer Date.
- 2533 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any encumbrance all or any part of the Equipments used in connection with the Project.

**254 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule K (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Institute, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Institute on the footing that all Divestment Requirements have been complied with by the Concessionaire.

**255 Divestment costs**

- 2551 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination.
- 2552 In the event of any dispute relating to matters covered by and under this Article 25, the Dispute Resolution Procedure shall apply.

## **PART VII – OTHER PROVISIONS**

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**ARTICLE 26: ASSIGNMENT AND CHARGES**

**261 Restrictions on assignment and charges**

- 261.1 This Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 261.2 The Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

**262 Permitted assignment and charges**

- 262.1 The restraints set forth in Clause 26.1 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Institute;
  - (b) liens or encumbrances required by any Applicable Law.
- 262.2 The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Institute or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written consent of the Authority.

**263 Assignment by the Authority**

- 263.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving [60 (sixty) days'] notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.
- 263.2 Any assignment under this Article 26 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

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## ARTICLE 27: LIABILITY AND INDEMNITY

### 27.1 General indemnity

**27.1.1** The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and GoUP owned and/ or controlled entities/ enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to the Authority, GoUP or to any User, or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

**27.1.2** The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Authority of any of its obligations under this Agreement which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

### 27.2 Indemnity by the Concessionaire

**27.2.1** Without limiting the generality of Clause 27.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors;
- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

**27.2.2** Without limiting the generality of the provisions of this Article 27, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the

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Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Institute, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **273 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 27 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within [15 (fifteen) days] of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **274 Defence of claims**

**2741** The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 27, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

**2742** If the Indemnifying Party has exercised its rights under Clause 27.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

**2743** If the Indemnifying Party exercises its rights under Clause 27.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the Fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between

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the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if sub-Clauses (b) (c) or (d) of this Clause 27.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## **27.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 27, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement

## **27.6 Limitation of Liability**

27.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed Total Project Cost plus 1000% of the Institute's operating expenses incurred during the previous financial year, as determined from the audited financial statements. For the avoidance of doubt, Institute's operating expenses will include all expenses incurred by concessionaire other than towards procurement of Equipment. The limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to the Authority due to Concessionaire and its acts or omissions or fraud, gross negligence and wilful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of the GoUP or Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

## **27.7 Survival on Termination**

The Provisions of this Article 27 shall survive Termination.

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## ARTICLE 28: DISPUTE RESOLUTION

### 281 Dispute Resolution

**281.1** Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 28.2.

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

### 282 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Authority to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Authority or without the intervention of the Authority, as the case may be, either Party may require such Dispute to be referred to Principal Secretary to the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven) days] from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven) days] period or the Dispute is not amicably settled within [15 (fifteen) days] of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty) days] of the notice in writing referred to in Clause 28.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 28.3.

### 283 Arbitration

**283.1** Any Dispute which is not resolved amicably by conciliation, as provided in Clause 28.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 28.3.2. Such arbitration shall be held in accordance with the Arbitration Act and the rules issued thereunder. The venue of such arbitration shall be [Lucknow], and the language of arbitration proceedings shall be English.

**283.2** There shall be a Board of 3 (three) arbitrators, of whom each Party shall appoint 1(one), and in the event of disagreement between the 2(two) arbitrators, a 3(third) arbitrator shall be appointed by both the Parties, the appointment shall be made in accordance with the Arbitration Act and the rules issued thereunder.

**283.3** The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 28 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

**283.4** The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

**283.5** This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

### 284 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon

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disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 28.3 be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

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## ARTICLE 29: DISCLOSURE

### **291 Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire's registered office and the Institute. The Concessionaire shall prominently display at the Project Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

### **292 Disclosure of Documents relating to safety**

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Institute, free of charge, during normal business hours on all working days, at the Concessionaire's registered office and the Institute. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

### **293 Withholding disclosure of Protected Documents**

Notwithstanding the provisions of Articles 29.1 and 29.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Articles.

#### *Explanation:*

The expression “Protected Documents” shall mean such of the Specified Documents or documents referred to in Clauses 29.1 and 29.2, or portions thereof, the disclosure of which the GoUP/Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

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## **ARTICLE 30: REDRESSAL OF PUBLIC GRIEVANCES**

### **301 Complaints Register**

- 301.1** The Concessionaire shall maintain a public relations office at the Institute where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”) in compliance with the minimum standards set out in this Agreement. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Institute and its Website so as to bring it to the attention of all Users.
- 301.2** The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 301.3** Without prejudice to the provisions of Clause 30.1.1 and 30.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### **302 Redressal of complaints**

- 302.1** The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 302.2** Within [7 (seven)] days of the close of each month, the Concessionaire shall send to the Authority a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

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## **ARTICLE 31: MISCELLANEOUS**

### **31.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Lucknow shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

### **31.2 Waiver of immunity**

31.2.1 Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **31.3 Depreciation**

**31.3.1** For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

**31.3.2** Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rates.

### **31.4 Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within [30 (thirty)] days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to [5% (five per cent)] above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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**315 Waiver**

**3151** Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

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

**3152** Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

**316 Liability for review of Documents and Drawings**

**3161** No review, comment or approval by the Authority or the GoUP of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

**3162** The Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub-Clause 31.6.1 above.

**317 Exclusion of implied warranties**

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

**318 Survival**

**3181** Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

**3182** All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

**319 Entire Agreement**

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This Agreement and the Schedules together constitute a complete and exclusive statement 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 such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the RFP, shall be deemed to form part of this Agreement and treated as such.

### **31.10 Severability**

If for any reason whatever, any provision of this 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

### **31.11 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **31.12 Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **31.13 Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

### **31.14 Notices**

31.14.1 Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the city specified. if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e- mail to the number as the Concessionaire may from time to time designate by notice to the Authority.

Name: [●]

Designation: [●]

Address: [●]

Fax No: [●]

Email: [●]

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

Name: [●]

Designation: [●]

Address: [●]

Fax No: [●]

Email: [●]

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

### **31.15 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

### **31.16 Counterparts**

This Agreement may be executed in 2(two) counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

### **31.17 Confidentiality**

**31.17.1** Each Party shall keep the Confidential Information confidential, and shall not disclose the same to any other person without the prior written consent of the other Party.

**31.17.2** Sub-Clause 31.17.1 shall not apply in the following circumstances:

- (a) any disclosure required by Applicable Laws or in respect of information already in the public domain;
- (b) any disclosure required by any applicable stock exchange listing rule; and
- (c) disclosure to under a Financing Agreement, to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.

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- 31.173** Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.
- 31.174** In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.
- 31.175** Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.
- 31.176** Confidential Information disclosed shall be and remain the property of the disclosing Party. The obligations of the Parties to protect Confidential Information shall survive 3 (three) years from Termination.

**31.18 Stamp Duty**

Any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

*[this space has been intentionally left blank]*

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**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

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SIGNED, SEALED AND DELIVERED

For and on behalf of

The Governor of Uttar Pradesh:

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THE COMMON SEAL OF CONCESSIONAIRE

has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... Day of ..

hereunto affixed in the presence of

....., ..... who has signed

there presents in token thereof and.....,

Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature) (Name) (Designation) (Address) (Fax No.)

(Signature) (Name) (Designation) (Address)  
(Fax No.)

(e-mail address)

(e-mail address)

In the presence of: 1.-----

Name and Address

2.-----

Name and Address

## **PART VIII: SCHEDULES TO THE AGREEMENT**

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**SCHEDULE A : SITE OF THE PROJECT**


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## I. The list of 15 Polytechnics

S.no	Type of institution	Name of proposed Polytechnics	Address
1.	Polytechnic	Government Girls Polytechnic, Barabanki	Village - Fatehpur, Pargana and Tehsil - Fatehpur
2.	Polytechnic	Government Girls Polytechnic, Mirzapur	Village - Badhua, Pargana – Chaurasi, Tehsil - Sadar
3.	Polytechnic	Government Polytechnic, Hardoi	Village - Malkana, Pargana and Tehsil - Sandila
4.	Polytechnic	Maharshi Patanjali Polytechnic, Gonda	Village - Sakraura Gramin, Pargana – Gwarich, Tehsil - Karnail ganj
5.	Polytechnic	Government Polytechnic, Mahoba	Village - Kulpahad, Pargana and Tehsil - Kulpahad
6.	Polytechnic	Government Polytechnic, Azamgarh	Village - Makraha, Pargana and Tehsil - Atrauliya, Budanpur
7.	Polytechnic	Government Girls Polytechnic, Kannauj	Village - Fatehpur, Pargana and Tehsil - Kannauj
8.	Polytechnic	Government Girls Polytechnic, Bahraich	Village and Pargana -Salarpur, Tehsil - Bahraich
9.	Polytechnic	Government Polytechnic, Ballia	Village- Husainabad, Pargana – Khareed, Tehsil - Bansh Deeh
10.	Polytechnic	Government Polytechnic, Gorakhpur	Village- Hardi, Pargana – Hasanpur Maghar, Tehsil -Sahjanwa
11.	Polytechnic	Government Polytechnic, Shahjahanpur	Village - Noorpur Tarsaura, Pargana and Tehsil - Jalalabad
12.	Polytechnic	Government Polytechnic, Bareilly	Village - Saithal, Pargana and Tehsil - Nababganj
13.	Polytechnic	Government Polytechnic, Bijnore	Village - Rahatpur Khurd, Tehsil - Nazibabad
14.	Polytechnic	Government Polytechnic, Saharanpur	Village -Gopali, Pargana and Tehsil - Devband
15.	Polytechnic	Government Polytechnic, Meerut	Village – Jasad Sultanpur Nagar, Pargana and Tehsil - Sardhana

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**SCHEDULE B: FACILITIES AND SERVICES TO BE PROVIDED**

- I. Electricity connection: Institutions would be equipped with electricity connection with the minimum electrical load needed for trades and branches to operates.
- II. Water connection: Institutions would be equipped with the water connection
- III. Parking area: There is a parking area provided in the premise of the institutions.

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**SCHEDULE C: SPECIFICATIONS AND STANDARDS**

1. The Concessionaire shall comply with the Specifications and Standards set forth in this **Schedule C** for operation of the Institute
2. The Institute shall fulfill the requirements of adequacy, functionality and aesthetics.
3. In case the Institute uses a backup generator in addition to the main source, it should be of a muffler type and placed into a closed and safe room and away from students.
4. All electrical panels should be placed inside ventilated closed rooms, or inside key-locked cupboards away from students.
5. All electrical supply panels should be labeled for easier maintenance and repair in case of emergency or disconnection of power.
6. Electricity room should not be used, as a storage area as to avoid catching fire that will result from short circuit in the panels that are placed inside the room.

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**SCHEDULE D: PERFORMANCE SECURITY**

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The .....

WHEREAS:

- A. ....(the "**Concessionaire**") and the Department of Vocational Education, Skill Development & Technical Education (UPVESD&TE), Government of Uttar Pradesh (the "**Authority**") have entered into a Concession Agreement dated ..... (the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking the upgradation, operation, maintenance and management of the ..... Institute at ..... in ..... district ..... in the state of ..... on < > basis, subject to and in accordance with the provisions of the Agreement.
- B. The Agreement requires the Concessionaire to furnish a Performance Guarantee in accordance with the Agreement to the Authority for a sum equal to Rs. .... (Rupees . ....) and for which this Performance Guarantee is being executed (the "**Guarantee Amount**") as security for the due and faithful performance of its obligations, under and in accordance with the Agreement, during the entire Concession Period (as defined in the Agreement) and for a period of 12 (twelve) months days after the Transfer Date (as defined in the Agreement) (the "**Guarantee Period**").
- C. We, ..... through our Branch at ..... (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Guarantee.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows

- 1 The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful performance of all or any of the Concessionaire's obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein
- 2 A letter from the Authority, under the hand of an Officer not below the rank of Joint Secretary to the Authority that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Guarantee Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
- 3 In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
- 4 It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

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- 5 The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
- 6 This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
- 7 Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of the Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder
- 8 Subject to paragraph 7 above, the Performance Guarantee shall cease to be in force and effect upon the expiry of the Guarantee Period. Upon request made by the Concessionaire for release of the Performance Guarantee along with the particulars required to satisfy the expiry of Guarantee Period, the Authority shall release the Performance Guarantee forthwith.
- 9 The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank
- 10 Any notice by way of request, demand or otherwise hereunder maybe sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
- 11 This Guarantee shall come into force with immediate effect and shall remain in force during the Guarantee Period pursuant to the provisions of the Agreement

Signed and sealed this ..... day of ....., 20..... at .....

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SIGNED, SEALED AND DELIVERED

For and on behalf of  
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

1. The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
2. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

### **SCHEDULE E: LAYOUT PLAN**

1. In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Authority, free of cost, all Drawings listed below:

- (a) Layout plan of the Institute;

2. Additional drawings

If the Authority determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed above, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Authority, as if such drawings formed part of this Schedule E.

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## **SCHEDULE F: TESTS**

### **1. Schedule for Tests**

- 1.1. The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Project, notify the Authority of its intent to subject the Project to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Authority and the Authority detailed inventory and particulars of all works and equipment forming part of the Project.
- 1.2. The Concessionaire shall notify the Authority of its readiness to subject the Project to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Authority shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Authority shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule F.

### **2. Tests**

- 2.1. In pursuance of the provisions of Article 25.2 of this Agreement, the Authority and Concessionaire shall jointly conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

- 2.2. Visual and Physical Test

The Authority shall jointly with the Concessionaire conduct a visual and physical check of the Project, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

- 2.3. Trial run

The Authority shall require the Concessionaire to carry out or cause to be carried out a trial run of all equipment, facilities and systems to determine that the Project is in conformity with the provisions of this Agreement.

- 2.4. Tests for equipment

The Authority shall jointly with the Concessionaire conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project and described in Schedule-B.

- 2.5. Environmental audit:

The Authority shall jointly with the Concessionaire carry out a check to determine conformity of the Project with the environmental requirements set forth in Applicable Laws and Applicable Permits.

- 2.6. Safety review:

The Authority shall jointly with the Concessionaire carry out a safety audit of the Project to determine its compliance with the provisions of Schedule-K and this Agreement.

### **3. Agency for conducting Tests**

- 3.1. All Tests set forth in this Schedule G shall be conducted by the Authority jointly with the Concessionaire or such other agency or person as it may specify in consultation with the Authority.

- 3.2. Upon successful completion of Tests, the Authority and the Concessionaire shall prepare an Inspection Report in accordance with the provisions of Article 11.

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## SCHEDULE G: MAINTENANCE REQUIREMENTS

### 1. Maintenance Requirements

The Concessionaire shall, at all times, operate and maintain the Institute in accordance with the provisions of the Agreement. In particular, the Concessionaire shall, at all times, conform to the maintenance requirements set forth in this Schedule G (the "**Maintenance Requirements**").

The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule G within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement, whereupon the Authority P shall be entitled to recover Damages as set forth in Clause 22.1 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

### 2. Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified below in this clause within the time limit set forth therein. If the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. For the avoidance of doubt, any defect or deficiency not specified in this Article shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

Repair / Rectification of Defects and Deficiencies time limit:

<b>Nature of defect or deficiency</b>	<b>Time limit for repair/rectification</b>
Damage to floor, walls	30 Days
Breakage of furniture	30 Days
Choking/blocking of sewer lines, drains or rain water pipes	5 Days
Repair/Maintenance of malfunctioning training equipment	7 Days

### 3. Other defects and deficiencies

- (a) In respect of any defect or deficiency not specified in Annex - I of this Schedule G, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Authority.
- (b) In respect of any defect or deficiency not specified in Annex - 1 of this Schedule G, the Authority may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Authority .

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**4. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule G, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good industry Practice. Such additional time shall be determined by the Authority and conveyed to the Concessionaire with reasons thereof.

**5. Maintenance of equipment**

The Concessionaire shall operate and maintain all equipment in accordance with the manufacturer's guidelines, Applicable Laws and Good Industry Practice so that it is available for use in accordance with the provisions of this Agreement.

**6. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this ScheduleG, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

**7. Daily inspection by the Concessionaire**

The Concessionaire shall, through its caretaker, undertake a daily visual inspection of the Institute and maintain a record thereof in a register to be kept for this purpose. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority at any time during office hours.

**8. Divestment Requirements**

All defects and deficiencies specified in this Schedule Gshall be repaired and rectified by the Concessionaire so that the Project conforms to the Maintenance Requirements on the Transfer Date.

## **Other Maintenance Requirements**

The Concessionaire shall at all times procure that:

- (a) all the Services, as may be required in accordance with Good Industry Practice and Applicable Laws, shall be available [during business hours] and on all days in a year [except public holidays];
- (b) the Institute is clean, hygienic and ensure pleasant and healthy environment for its Users;
- (c) all research facilities and infrastructure services are in working condition and are readily available for use to its Users.
- (d) there is adequate lighting within the Project in conformity with the Specifications and Standards;
- (e) Services are carried out in a manner that it conforms to the environment standards prescribed under Applicable Laws and Applicable Permits and does not lead to pollution in any way of the Project Site.

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## **SCHEDULE – H: SAFETY REQUIREMENTS**

### **1. Guiding Principles**

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents in or around the Institute, irrespective of the person(s) at fault.
- 1.2 Users of the Institute include Students and staff of the Concessionaire and its Contractors working at the Institute.
- 1.3 Safety Requirements apply to all phases of operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, fire safety, emergency response, with particular reference to the Safety Guidelines specified in Annex-I of this Schedule-H.

### **2. Obligations of the Concessionaire**

The Concessionaire shall abide by the following insofar as they relate to safety of the Students, staff and visitors:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement; and
- (c) relevant standards/guidelines contained in internationally accepted codes including the National Building Code; and
- (d) Good Industry Practice.

### **3. Safety measures**

- 3.1 The Concessionaire shall develop, implement and administer safety programme for Students, staff and visitors, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2 The Concessionaire shall submit to the Authority before the 30th (thirtieth) June of each year, an annual report containing a detailed listing and analysis of all unusual occurrences as specified in Clause 11.7, for and in respect of the preceding year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.1 of Schedule – H for averting or minimizing such unusual occurrences in future.
- 3.3 Once every year, a safety audit of the Institute shall be carried out by the Authority or its nominee. It shall review and analyze the annual report and unusual occurrences data of the preceding year, and undertake an inspection of the Institute, if necessary. The Authority or its nominee shall submit a Safety Report recommending specific improvements, if any, required to be made in the Institute.
- 3.4 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Project. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.

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- 35 Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Article 2 of this Schedule-H, shall be borne by the Concessionaire.

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**Annex - I (Schedule-H) [Safety Guidelines]**

**1 Safe movement**

In the operation of the Institute, particular care shall be taken to ensure safety of the faculty, Students, staff and visitors. This shall include facilities for safe and efficient evacuation in case of emergency.

**2 System integrity**

In the design of power supply, lifts and equipment, particular care shall be taken to minimise the likely incidence of failure.

**3 Safety management**

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of safety standards and checks, and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such safety standard checks and compliances. Two copies of the statement shall be sent to the Authority within 15 (fifteen) days of the close of every year.

**4 Safety equipment**

The following equipment shall be provided at the Institute:

- (a) Fire extinguishers and fire alarms at the appropriate locations; and
- (b) such other equipment as may be required in conformity with Good Industry Practice.

**5 Emergency**

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the "**Disaster Management Manual**") to be prepared and published by the Concessionaire prior to SCOD. The Concessionaire shall provide 2 (two) copies each of the Disaster Management Manual to the Authority no later than 30 (thirty) days prior to SCOD.

**6 Fire safety**

- 6.1 The Concessionaire shall adopt and comply with fire safety requirements prescribed under Applicable Laws.
- 6.2 Emergency exits should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Institute in case of emergency.
- 6.3 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. All notices and signages shall be uniform and standardized.

**7 Surveillance and Safety Manual**

The Concessionaire shall, no later than 60 (sixty) days prior to [Project SCOD], evolve and adopt a manual for surveillance and safety of the Project, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project, including its gate control, sanitation, fire prevention, environment protection.

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**8 Watch and Ward**

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety of the Project and all persons affected by it.

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## SCHEDULE I: ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the..... day of ..... 20.....

AMONGST

1. .... a company/ trust / society incorporated / registered under the provisions of the Companies Act, 1956/2013 / the Indian Trusts Act, 1882 / the Societies Registration Act, 1860 and having its registered office at....., (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes);
2. .... (Insert name and particulars of Lenders' Representative) and having its registered office at. . . . .  
. . . . . acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. .... (Insert name and particulars of the Escrow Bank) and having its registered office at. . . . .  
. . . . . (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. The ..... of ..... represented by..... and having its principal offices at .....  
(Hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- A. The Authority has entered into a concession agreement dated ..... with the Concessionaires (the "**Concession Agreement**") for < Authority > in the State of Uttar Pradesh on Operate, Maintenance, Finance, and Transfer ("**OMFT**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

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

**"Agreement"** means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

**"Concession Agreement"** means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

**"Escrow Account"** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

**"Escrow Default"** shall have the meaning ascribed thereto in Clause 6.1;

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals; .

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

**"Payment Date"** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

**"Sub-Accounts"** means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub- accounts and paid out therefrom on the Payment Date(s).

## **12. Definitions**

121. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders
122. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement
123. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement
124. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement

## **2. ESCROW AGREEMENT**

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**21. Escrow Bank to act as trustee**

- 21.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 21.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement

**22. Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

**23. Establishment and operation of Escrow Account**

- 23.1. Within [30 (thirty)] days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ..... (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 23.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 23.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

**24. Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

**25. Rights of the Parties**

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire

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shall have no other rights against or to the monies in the Escrow Account.

## **26. Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Entity, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Entity is a Party hereto and the Nominated Entity shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Entity.

## **3. DEPOSITS INTO ESCROW ACCOUNT**

### **3.1. Deposits by the Concessionaire**

3.1.1. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all Fees as defined in the Concession Agreement;
- (b) all funds received by the Concessionaire from its shareholders, trustees or members, in any manner or form;
- (c) all payments by the Authority;
- (d) all proceeds received pursuant to any insurance claims.

3.1.2. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### **3.2. Deposits by Senior Lenders**

The Lenders' Representatives agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all the disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this agreement, the Senior Lenders shall be entitled to make direct payments to the Concessionaire under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **3.3. Interest on Deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## **4. WITHDRAWALS FROM THE ESCROW ACCOUNT**

### **4.1. Withdrawals during Concession Period**

4.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then

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retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) Monthly emoluments payable to Faculty Members and salaries of other staff;
  - (b) all taxes due and payable by the Concessionaire for and in respect of the Institute;
  - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
  - (e) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
  - (f) any reserve requirements set forth in the Financing Agreements; and
  - (g) balance, if any, in accordance with the instructions of the Concessionaire
- 4.12. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### **42. Withdrawals for payment of Monthly Emoluments**

- 42.1. The Escrow Bank shall withdraw from the Escrow Account and deposit into a sub- account all sums required and necessary for payment of Monthly Emoluments to Faculty Members
- 42.2. All payments for and in respect of Monthly Emoluments of Faculty Members shall be made by the Escrow Bank through direct electronic transfer to the respective bank accounts of Faculty Member on or before the 7<sup>th</sup> (seventh) day of a month for and in respect of the immediately preceding month. The Monthly Emoluments payable hereunder shall be certified by the Concessionaire at least once every 6 (six) months as due and payable to each of the Faculty Members in accordance with the provisions of the Concession Agreement and the Escrow Bank shall have the obligation to make full and timely payment thereof in conformity with the order of appropriation specified in Article 4.1.1.
- 42.3. The Parties expressly agree that the Escrow Account shall, at all times, retain and reserve an amount equal to the total Monthly Emoluments payable to all Faculty Members for 2 (two) months and only the balance remaining shall be withdrawn for any other purpose in accordance with the provisions of Article 4.1.1.

#### **43. Withdrawals upon Termination**

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Institute;
- (b) Outstanding Fee

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- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement and any claims in connection with or arising out of Termination;
  - (d) Incurred or accrued O&M expenses;
  - (e) Any other payments required to be made under the Concession Agreement; and
  - (f) Balance if any, in accordance with the instructions of the Concessionaire.

Provided that the disbursements specified in Sub-clause (viii) of this Clause 4.3 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **44. Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 or 4.2 or 4.3, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### **45. Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement of the Institute, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

### **5. WITHDRAWALS FROM THE ESCROW ACCOUNT**

#### **5.1. Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank;

#### **5.2. Notification of balances**

Within 7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### **5.3. Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any

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communication or document believed by it to be authentic;

- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### **54. No set-off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### **55. Regulatory Approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### **6. ESCROW DEFAULT**

#### **6.1. Escrow Default**

6.1.1. Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

### **7. TERMINATION OF THE ESCROW AGREEMENT**

#### **7.1. Duration of the Escrow Agreement**

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This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

**72. Substitution of the Escrow Bank**

The Concessionaire may not less than 45 (forty five) days prior to the Escrow Bank, the Authority, and the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

**73. Closure of the Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.3, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

**8. INDEMNITY**

**8.1. General indemnity**

- 8.1.1. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 8.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 8.1.3. The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

**8.2. Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 8.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim

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hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **9. DISPUTE RESOLUTION**

### **9.1. Dispute Resolution**

- 9.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and the rules issued thereunder.
- 9.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

## **10. MISCELLANEOUS PROVISIONS**

### **10.1. Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State of Uttar Pradesh shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **10.2.**

(DELETED)

### **10.3. Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **10.4. Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **10.5. Waiver**

- 10.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:
- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

1052. Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder

#### **10.6. No third party beneficiaries**

This agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **10.7. Survival**

107.1. Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this 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.

1072. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

#### **10.8. Severability**

If for any reason whatsoever any provision of this 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 will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

#### **10.9. Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

#### **10.10. Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual

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receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### **10.11. Language**

All notices, certificates, correspondence and proceedings, under or in connection with this Agreement shall be in English

#### **10.12. Authorized Representatives**

Each of the parties shall, by notices in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### **10.13. Original Document**

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN**

THE COMMON SEAL	OF	SIGNED, SEALED AND DELIVERED
CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the .....day of		For and on behalf of SENIOR LENDERS by the
20..... hereunto affixed in the presence of		Lenders' Representative:
....., Director, who has signed these presents in token thereof and		
....., Company Secretary /		

Authorised Officer who has countersigned the  
same in token thereof :

(Signature) (Name) (Designation) (Address) (Fax  
No.)

(e-mail address)

(Signature) (Name) (Designation) (Address) (Fax  
No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THE ESCROW BANK by:

(Signature) (Name) (Designation) (Address) (Fax  
No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of THE CONCESSIONING  
AUTHORITY:

(Signature) (Name) (Designation) (Address) (Fax  
No.)

(e-mail address)

In the presence of: 1.

2.

*[this space has been intentionally left blank]*

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**SCHEDULE J: PROJECT SITE LEASE DEED**

This Project Site Lease Deed is executed this day of ....., (insert year), by and among:

Lessor ....., having its Office at ....., and being represented herein by (authorized in this behalf) (hereinafter referred to as "[●]"; acting through its Chief Administrator, hereinafter referred to as "**Authority**" (which expression shall, unless the context otherwise require, include its successors and assigns);

AND

Lessee: M/s ....., a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ....., (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes);

WHEREAS

- A. The Authority has entered into a Concession Agreement dated .....(hereinafter "**Concession Agreement**") with .....(the Concessionaire or the Lessee herein) to implement the Project at Project Site, involving development, finance, design, operation and maintenance of the Project on the Operate, Maintenance, Finance, and Transfer ("**OMFT**") and the charging, demanding, collection, retention and appropriation of Fee from Users by the Concessionaire in accordance with the provisions of the Concession Agreement
- B. Pursuant to and under the Concession Agreement the Lessor is required to vest with the Lessee the land comprising the Project Site and all rights relating thereto for a period co-terminus with the term of the Agreement under a valid and binding Project Site Lease Deed for the purpose of implementing the Project.
- C. Being the owner of the Project Site with a good title thereto and having lawful possession thereof, the Lessor is desirous of leasing the Project Site unto the Lessee and vesting unencumbered possession thereof with the Lessee, on the terms and conditions hereinafter contained.

**Lessor and Lessee hereby agree as follows:**

- 1 The words and expressions used in this Project Site Lease Deed but not defined shall, unless the context otherwise requires, have the meaning as defined/assigned to them respectively in the Concession Agreement.
- 2 The following words and expressions shall, except where the context otherwise requires, have the meaning as hereunder:
  - (a) "**Project Site Lease Deed**" or "**Deed**" or "**Land Lease Deed**" means this Project Site Lease Deed;
  - (b) "**Concession Agreement**" shall mean the Concession Agreement dated entered into between the Authority and Concessionaire;
  - (c) "**Term of the Agreement**" means the period specified under Article 3 of the Concession Agreement;
  - (d) "**Premises**" means all the lands comprising the Project Site, more particularly delineated in the Schedule A of the Concession Agreement;
  - (e) Parties shall mean Lessor and Lessee herein;

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(f) “**Annexure**” means any of the Annexure, supplements and documents annexed to this Agreement.

- 3 The Authority hereby leases the Premises unto the Concessionaire on an “as is where is basis” under the terms of this Deed from the \_\_\_\_\_ day of \_\_\_\_\_ for a period of \_\_\_\_\_ (\_\_\_\_\_) years, which period shall be co-terminus with the Concession Period and shall be terminated at a date to coincide with the Concession Period. The Authority hereby undertakes that it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement.
- 4 In consideration of the Concession Agreement between the Authority and the Concessionaire, and in consideration of the lease rental herein reserved and the covenants on the part of the Concessionaire, the GoUP hereby leases unto the Concessionaire the Premises without interruption or interference, free from Encumbrances and together with the full and free right and liberty of way and passage, the easementary rights and other rights in relation thereto with delivery of vacant possession thereof.
- 5 The Lessee shall observe and perform all terms, covenants, conditions and stipulations of this Deed and the Concession Agreement and keep the Premises free from encroachments during the Concession Period and carry out its maintenance and repairs in accordance with the provisions of the Concession Agreement.
- 6 The Lessee shall operate and maintain the Institute or cause it to be operated and maintained in accordance with the Concession Agreement.
- 7 The GoUP hereby agrees that for the purpose of raising financial assistance for the Project, the Concessionaire may assign all its rights, title, interest and benefits under the Concession Agreement, limited to the extent of such rights therein, to or in favor of the Lenders in accordance with the provisions of the Concession Agreement, provided that in the event of the termination of the Concession Agreement such assignment shall stand extinguished.
- 8 Upon the occurrence of an Event of Default under the Concession Agreement, the Parties shall in consultation with the Lenders and in accordance with the provisions of the Concession Agreement have the right to replace the Concessionaire by the substitute entity for performing the Concessionaire’s obligations hereunder. Upon appointment of the substitute entity, the substitute entity shall be deemed to be the Concessionaire for all the purposes and shall be entitled to all the rights and be bound by all the representations, covenants and obligations of the Concessionaire under this Deed.
- 9 **Rent Payment** - Lessee agrees to pay Lessor, as per the provisions of the Concession Agreement, an annual lease rental @5% of the value arrived after applying applicable circle rate for constructed building on the built up space provided and an annual lease rental @0.5% of the value arrived after applying applicable circle rate for land on the available land area. The circle rates are prescribed by local district administration and subject to revise from time to time as per notification issued by the district administration, Lessee to pay annual lease rent accordingly.
- 10 **Advance Lease Rentals:** Lessee agrees to pay the Lessor and maintain at all times during the Concession Period, a deposit with the lessor of an amount equal to 6 (six) months Advance Lease Rentals calculated on the basis of applicable annual lease rental for that particular year ("Security Deposit") towards which the lessor shall remit a fixed deposit in favor of the lessor for an amount equivalent to lease rental for six months along with the first lease payment. Such deposit shall be in addition to the first lease rental. [Every 6th year, the Concessionaire shall increase the amount of Security Deposit based on the escalated annual lease rental, by making an additional cash deposit with the Authority. The advance lease rentals payable shall be as per the Annexure – I to the Lease Deed that shall be finalized during the execution of the Lease Deed.]
- 11 **Delivery of Exclusive Possession.** Lessor shall deliver exclusive and lawful possession of the entire Site to Lessee on or before the Appointed Date (“Date of Delivery”)
- 12 **Taxes:** In respect of the Premises the Lessee shall pay/cause payment of all municipal rates (other than

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property tax, the payment of which shall be exempted), levies, taxes, rents, including penalties etc. for late payment, at the applicable rates from time to time, to the concerned Competent authorities / persons and be liable for payments of all rates and charges for the use of utilities and services at the Premises.

- 13 **Sub-leasing:** The Concessionaire shall not sub-lease the whole or any part of the land comprising the Project Site, leased to it by Authority under this Deed, to any person in any form or under any arrangement.
- 14 **Lessee Compliance with Indian Laws.** Without limiting the general requirements under Indian law, Lessee while using the Site shall ensure, during the Concession Period the following:
- (a) Compliance with the laws and regulations on hygiene.
  - (b) Compliance with the laws and regulations on environmental protection and security.
  - (c) Compliance with the laws and regulations on fire, explosion prevention and fire extinguishment.
- 15 **Lessee Undertakings**
- (a) Lessee undertakes to maintain the Site in good condition at Lessee's own risks and expense and to keep all Lessee's belongings inside the Site at all time during the Concession Period.
  - (b) Lessee undertakes to procure and maintain insurance covering any damages occurring within the Site to third parties and its personal property from fire and other risks.
  - (c) Lessee undertakes that there will be no illegal or prohibited matters, objects, substances materials, products and/or the like allowed to operate, manufactured or held inside the Site.
  - (d) Lessee agrees that the rights under this Agreement shall not be transferred to any third party by any means without written approval from Lessor.
  - (e) Lessee shall return the Site to Lessor upon termination of the Agreement in good condition.
- 16 **Property of Buildings Erected by Lessee.** Subject to the terms of the Concession Agreement, the erected buildings and all works and developments carried out by Lessee or its legal successors will remain the property of Lessee to the extent permitted by law, during the Concession Period only.
- 17 **Assignment.** Lessee shall not have the right to assign or transfer the Site in whole or in part.
- 18 **Termination of Lease.** In the event of termination of the Concession Agreement by efflux of time or otherwise, this Deed shall be terminated and the lease of the Premises and all rights in relation thereto shall be determined, the Concessionaire, the Transferees and Persons claiming through or under it/them shall hand over the vacant possession of the Premises to the Authority and forthwith vacate the Premises without any demur or delay.
- 19 **Registration of the Lease.** The parties shall, to the extent required by law and practice, properly register this Lease Agreement with the relevant Land Registry Office, and any other relevant government office that may serve as a place for registering or recording leases, within 45 days from the date that this Lease Agreement is executed. The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Lessee in accordance with the provisions of the Applicable Laws.
- 20 **Force Majeure.** An event of Force Majeure, as defined in the Concession Agreement, shall have the same effect in relation to this Lease Agreement.

- 21 **Ambiguity:** In case of ambiguities, conflicts or discrepancies between the Concession Agreement and this Deed, the Concession Agreement shall prevail.
- 22 **Language.** This Lease Agreement and any amendments to it shall be executed in 4 originals in the English language. All notices required herein shall be written in the English language.
- 23 **Arbitration.** Any dispute arising out of or in connection with this Lease Agreement shall be resolved as provided in the dispute resolution provision of the Concession Agreement.

IN WITNESS WHEREOF, Lessor and Lessee hereby execute and agree to the terms and conditions of this Lease Deed on the date first set out above.

SIGNED, SEALED AND DELIVERED

For and on behalf of

THE CONCESSIONING AUTHORITY by:

(Signature) (Name) (Designation)  
(Address) (Fax No.)  
(e-mail address)

In the presence of:

THE COMMON SEAL OF CONCESSIONAIRE

has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... Day of 20..

hererunto affixed in the presence of

..... who has signed

there presents in token thereof and.....,

Company Secretary / Authorised Officer who has countersigned the same in token thereof:

(Signature) (Name)  
(Designation)  
(Address) (Fax No.)  
(e-mail address)

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**SCHEDULE K: VESTING CERTIFICATE**

[The [●] represented by (the “**Authority**”) refers to the Concession Agreement dated ..... (the “**Agreement**”) entered into between the Authority and ..... (the “**Concessionaire**”) for a Project, at ..... in .....  
.....on Operate, Maintenance, Finance, and Transfer (“**OMFT**”)basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 25.1] of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this .....day of....., 20.... at.....

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of Concessionaire by:	For and on behalf of Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

In the presence of:

1.

2.

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**SCHEDULE L: LIST OF COURSES**

The PSPs to operates minimum 3 engineering and 1 Non engineering course from the list of courses provided below:

SN	Diploma/PG Diploma Courses
1	Architectural Assistantship
2	Civil Engineering
3	Civil Engineering (Environment & Pollution Control)
4	Civil Engineering (Construction Technology)
5	Civil Engineering (Public Health Engineering)
6	Electrical Engineering
7	Electrical Engineering (Industrial Control)
8	Electronics Engineering
9	Electronics Engineering (Modern Consumer Electronic Appliances)
10	Electronics Engineering (Micro Electronics)
11	Electronics Engineering (Advance Micro Processor and Interface)
12	Instrumentation & Control
13	Mechanical Engineering (Automobile)
14	Mechanical Engineering (Production)
15	Mechanical Engineering (Maintenance)
16	Mechanical Engineering (Refrigeration & Air Conditioning)
17	Mechanical Engineering (Computer Aided Designing)
18	Mechanical Engineering (Plastic Engineering)
19	Mechanical Engineering (Tube well Engineering)
20	Mechanical Engineering (Power Plant Engineering)
21	Mechanical Engineering (Tool Engineering)
22	Information Technology
23	Computer Science & Engineering
24	Chemical Engineering
25	Chemical Engineering (Petro Chemicals)
26	Chemical Technology (Fertilizer)
27	Chemical Technology (Rubber & Plastic)
28	Dairy Engineering
29	Textile Technology
30	Textile Chemistry
31	Glass and Ceramic Engineering
32	Printing Technology
33	Leather Technology (Tanning)
34	Leather Technology (Footwear)
35	Leather Technology
36	Interior Decoration & Design
37	Agriculture Engineering

SN	Diploma/PG Diploma Courses
38	Fashion Designing and Garment Technology
39	Paint Technology
40	Plastic & Mould Technology
41	Textile Design
42	Textile Design (Printing)
43	Modern Office Management & Secretarial Practice
44	Library and Information Science
45	Pharmacy
46	Post Graduate Diploma in Computer Application
47	Material Management
48	Commercial Practice
49	Mass Communication
50	Post Graduate Diploma in Bio-Technology (Tissue Culture)
51	Post Graduate Diploma in Marketing & Sales Management
52	Post Graduate Diploma in Beauty & Health Care
53	Post Graduate Diploma in Computer Hardware & Networking
54	Post Graduate Diploma in Accountancy with Taxation
55	Post Graduate Diploma in Retail Management
56	Post Graduate Diploma in Web designing
57	Post Diploma in Industrial Safety
58	Electrical and Electronics Engineering
59	Food Technology
60	Carpet Technology
61	Paper and Pulp Technology
62	Mining Engineering
63	Mechanical Engineering
64	Textile Engineering