

Escrow Account
Agreement
Final draft
7/11/2016

ARBITRAL AWARD ESCROW ACCOUNT AGREEMENT

THIS ARBITRAL AWARD ESCROW AGREEMENT is entered into on this theday of 20.....AMONGST

- 1 [_____], a company incorporated under the provisions of the Companies Act, [1956/2013] and having its registered office at _____ (hereinafter referred to as the "[Concessionaire/ Contractor]" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 THE NATIONAL HIGHWAYS AUTHORITY OF INDIA, established under the National Highways Authority of India Act 1988, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075 (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns)
- 3 (insert name and particulars of the Arbitral Award Escrow Bank) and having its registered office at _____ (hereinafter referred to as the "Arbitral Award Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 _____ (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);

WHEREAS:

(A) The ["Concessionaire / Contractor"] and the Authority have entered into a [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] dated (the "Agreement") whereby the Authority agreed to the [Concessionaire / Contractor] undertaking [Two / Four/ Six -Laning of the _____ section of National Highway No. ____ from Km _____ to Km _____ under NHDP in the State of _____ on {build, operate and transfer/design, build, finance, operate and transfer}² [{"DBFOT"}]³ basis (the "Project"), subject to and in accordance with the provisions of the Agreement:

¹ Name of the concessionaire / contractor to be inserted

² Name of the Project to be included

³ Type of project development model to be included.

- (B) During the course of implementation of the Project, disputes/claims arose in respect of the Agreement. As the disputes could not be resolved amicably, the same were referred to Arbitration and accordingly a three member Arbitral Tribunal, as per the terms of the Agreement, was constituted to resolve the disputes between Authority and the [Concessionaire/ Contractor] under the Agreement:
- (C) The Arbitration Tribunal on [Date] passed the Award in favour of the [Concessionaire / Contractor] (hereinafter referred to as the “Arbitral Award”) allowing [claims]⁴ of the [Concessionaire / Contractor] amounting to [Rs. _____]⁵ as on [Date]⁶ [along with interest @ ____% per annum till the date of Award]⁷ and the [total amount along with interest @ ____% as on _____ is Rs. _____ lakhs]⁸;
- (D) The Authority have preferred appeal against the Award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Appeal”) before the [_____]⁹ (hereinafter referred to as the Court), challenging the Arbitral Award;
- (E) Pursuant to NITI Aayog’s OM No. 14070/14/2016- PPPAU dated 5th September 2016, Ministry of Road Transport and Highways, vide its Office Order No. NH-35014/10/2016-H dated 16.09.2016 (the “Office Order”), NITI Aayog has directed the Authority that, in case of claims where the Arbitration Tribunal has passed the Arbitral Award and the Authority has challenged the Arbitral Award, the Authority may pay an amount equal to 75% (seventy five percent) of the Arbitral Award as awarded in favour of the [Concessionaire /Contractor] to the [Concessionaire /Contractor] against Bank Guarantee, without prejudice to the final order of the Court in the matter under challenge;
- (F) The Office Order requires the payment to be made by the Authority into a designated Escrow Account to be opened for this purpose and the amount so released shall be used, *inter alia*, on the terms and conditions stated herein;
- (G) The Concessionaire has approached the Authority and vide letter no. _____ dated _____ has requested the Authority to release the amount equivalent to 75% of the Arbitral Award and has confirmed its acceptance to the terms and conditions as provided in the Office Order, including

⁴ Details of the claims to be inserted

⁵ Amount in Figures and words to be inserted

⁶ Date of Arbitral award to be inserted

⁷ To be inserted, in case applicable.

⁸ Interest rate, date of calculation of amount and total amount to be inserted

⁹ Details of the court, where the appeal has been filed to be provided

but not limited to its obligation of submission of the Bank Guarantee and payment of interest on the said amount:

(H) That Authority has favorably considered the above request of the Concessionaire and vide its letter dated ___ has agreed to deposit the said amount in the Escrow Account subject to the Concessionaire paying interest @ ___ in case the Authority is successful in the Appeal;

(I) The Concessionaire has conveyed its acceptance to the above terms vide its letter No. ___ dated ___.

NOW, THEREFORE, in consideration of the foregoing and as per the general directions of the aforementioned Office Order and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree 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 Arbitral Award Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“Arbitral Award” shall have the meaning ascribed thereto in Recital C;

“Arbitral Award Escrow Account” means an escrow account established in terms of and under this Agreement;

“Arbitral Award Escrow Default” shall have the meaning ascribed thereto in Clause 7.1;

“Bank Guarantee” shall have the meaning ascribed thereto in Clause 4.1;

“[Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract]” means the [Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract] 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 / Contractor], 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 / Contractor] asking the latter to cure the breach or default specified in such notice:

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Title Clause:

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

“**Permitted Investments**” shall mean:

the investments (including encashment, re-investment and change in investment) in:

- (i) treasury bills or debt instruments or other securities issued by the Government of India or backed by full Government of India guarantee;
- (ii) deposits with or certificates of deposits issued by scheduled commercial banks;

1.2 Interpretation

1.2.1 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.

1.2.2 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/Construction Contract / Engineering Procurement Commissioning Contract] shall, unless repugnant to the context, have the meaning ascribed thereto in the [Concession Agreement/Construction Contract / Engineering Procurement Commissioning Contract].

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4¹⁰ [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 ARBITRAL AWARD ESCROW ACCOUNT

2.1 Arbitral Award Escrow Bank to act as trustee

2.1.1 The [Concessionaire / Contractor] hereby appoints the Arbitral Award Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the [Concessionaire / Contractor] in connection herewith and authorizes the Arbitral Award Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Arbitral Award Escrow Bank by the terms hereof, together with all such rights, powers, authorities and discretion as are

¹⁰ To be updated with respect to the Concession Agreement / Contract

reasonably incidental hereto, and the Arbitral Award Escrow Bank accepts such appointment pursuant to the terms hereof.

- 2.1.2 The [Concessionaire / Contractor] hereby declares that all rights, title and interest in and to the Arbitral Award Escrow Account shall be vested in the Arbitral Award Escrow Bank and held in trust for the Authority, the Lenders' Representative and the [Concessionaire / Contractor], and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the [Concessionaire / Contractor] shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Arbitral Award Escrow Bank

The Arbitral Award Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Arbitral Award Escrow Bank pursuant to the provisions of this Agreement. The Arbitral Award Escrow Bank shall hold and safeguard the Arbitral Award Escrow Account during the term of this Agreement and shall treat the amount in the Arbitral Award Escrow Account as monies deposited by the Authority with the Arbitral Award Escrow Bank or any interest thereon. In performing its functions and duties under this Agreement, the Arbitral Award Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the [Concessionaire / Contractor]. For the avoidance of doubt, in case there is a conflict between the interests of Authority, the Lenders' Representative and the [Concessionaire / Contractor] or their nominees, successors or assigns, the Arbitral Award Escrow Bank shall keep the interest of the Authority as paramount.

2.3 Establishment and operation of Arbitral Award Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, the [Concessionaire / Contractor] shall open and establish the Arbitral Award Escrow Account with the (name of Branch) Branch of the Arbitral Award Escrow Bank. The Arbitral Award Escrow Account shall be denominated in Indian Rupees.
- 2.3.2 The Arbitral Award Escrow Bank shall maintain the Arbitral Award 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.
- 2.3.3 The Arbitral Award Escrow Bank and the [Concessionaire / Contractor] shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Arbitral Award 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.

2.4 Arbitral Award Escrow Bank's fee

The Arbitral Award Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Arbitral Award Escrow Bank and the [Concessionaire / Contractor]. For the avoidance of doubt, such fee and expenses shall be paid by the [Concessionaire / Contractor] directly to the Arbitral Award Escrow Bank and shall not seek any reimbursement for the same from the Authority.

2.5 Rights of the Parties

The rights of the Authority, the Lenders' Representative and the [Concessionaire / Contractor] in the monies held in the Arbitral Award Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the [Concessionaire / Contractor] shall have no other rights against or to the monies in the Arbitral Award Escrow Account.

[2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company 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 Company.]

3 DEPOSITS INTO ARBITRAL AWARD ESCROW ACCOUNT

3.1 Deposits by the Authority

The Authority agrees and undertakes that it shall deposit into and/or credit the Arbitral Award Escrow Account with an amount equivalent to 75 % of the amount equivalent to the Arbitral Award. A detailed statement of account on the amount to be deposited and breakup thereof is attached hereto as [Annex - B].

3.2 Interest on deposits

The Arbitral Award Escrow Bank agrees and undertakes that all interest accruing on the balances of the Arbitral Award Escrow Account from the Permitted Investments shall be credited to the Arbitral Award Escrow Account.

4 BANK GUARANTEES

4.1 The [Concessionaire / Contractor] in consideration of the Authority depositing the amount as stated in Clause 3, has provided a bank guarantee bearing No.***** issued by ***** Bank drawn in favour of the Authority, as security against 75% of the Arbitral Award, for a sum of Rs _____ (Rupees *****) (the "Bank Guarantee"). A certified copy of the Bank Guarantee is annexed hereto as [Annex-C].

6/15

- 4.2 The [Concessionaire / Contractor] in consideration of the Authority depositing the amount as stated in Clause 3, has provided a bank guarantee bearing No.***** issued by ***** Bank drawn in favour of the Authority, as security against interest on 75% of the Arbitral Award, for a sum of Rs _____ (Rupees *****) (the "Bank Guarantee"). A certified copy of the Bank Guarantee is annexed hereto as [Annex-D].

5 WITHDRAWALS FROM ARBITRAL AWARD ESCROW ACCOUNT

5.1 Withdrawals during the Agreement

The Arbitral Award Escrow Bank shall withdraw and appropriate the amounts from the Arbitral Award Escrow Account strictly in line with the instructions issued by the Authority to the [Concessionaire / Contractor] as mutually agreed / decided by the Authority, Lenders' Representative and the [Concessionaire / Contractor]; provided that such amounts shall be appropriated in the following order:

- (a) Debt service payments
- (b) All payments relating to construction/completion of the Project;
- (c) All payments relating to construction/completion of other projects of the Authority being undertaken by the [Concessionaire / Contractor]; and
- (d) Balance, if any, in accordance with the instructions of the [Concessionaire / Contractor] after receiving the prior written approval of the Lenders' Representative and the Authority.

5.2 Application of insufficient funds:

Funds in the Arbitral Award Escrow Account shall be applied in the serial order of priority set forth in Clause 5.1. If the funds available are not sufficient to meet all the requirements, the Arbitral Award Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

[5.3 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30¹¹ of the Concession Agreement. Any instructions given by the Authority to the Arbitral Award Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.]

6 OBLIGATIONS OF THE ARBITRAL AWARD ESCROW BANK

6.1 Segregation of funds

Monies and other property received by the Arbitral Award Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Arbitral Award

¹¹To be updated with respect to the Concession Agreement / Contract

Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Arbitral Award Escrow Bank.

6.2 Communications and notices

In discharge of its duties and obligations hereunder, the Arbitral Award 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 / Contractor] upon a certificate signed by or on behalf of the [Concessionaire / Contractor];
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any 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 Arbitral Award Escrow Bank from the [Concessionaire / Contractor] 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 / Contractor] of any notice or document received by it from the Lenders' Representative in connection herewith.

6.3 No set off

The Arbitral Award 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 Arbitral Award Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Arbitral Award Escrow Bank that the monies and properties held by the Arbitral Award Escrow Bank in the Arbitral Award Escrow Account shall not be considered as part of the assets of the Arbitral Award Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Arbitral Award Escrow Bank, be wholly excluded from the assets of the Arbitral Award Escrow Bank in such bankruptcy or liquidation.

6.4 Regulatory approvals

The Arbitral Award 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 Arbitral Award Escrow Account.

7 ARBITRAL AWARD ESCROW DEFAULT

7.1 Arbitral Award Escrow Default

- 7.1.1 Following events shall constitute an event of default by the [Concessionaire / Contractor] (an "Arbitral Award 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 / Contractor] causes the Arbitral Award Escrow Bank to transfer funds to any account of the [Concessionaire / Contractor] in breach of the terms of this Agreement;
- (b) the [Concessionaire / Contractor] fails to make any refund due to the Authority in breach of the terms of this Agreement within 5 (five) business days from the date such refund becomes due; or
- (c) the [Concessionaire / Contractor] 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.
- (d) the [Concessionaire / Contractor] fails to extend the validity of Bank Guarantees, referred to in Clause 4.1 and Clause 4.2 of this Agreement, submitted to the Authority as security for principal as well as for interest thereon, in cases where such extension is required.

7.1.2 Upon occurrence of an Arbitral Award Escrow Default, the Authority shall be entitled to encash and appropriate the relevant amounts from the Bank Guarantee provided under Clauses 4.1 and 4.2 as Damages for such Arbitral Award Escrow Default.

8 TERMINATION OF ARBITRAL AWARD ESCROW AGREEMENT

8.1 Duration of the Arbitral Award Escrow Agreement and Arbitral Award Escrow Account

The Arbitral Award Escrow Bank shall, at the request of the [Concessionaire / Contractor] and the Authority, made after decision on the Appeal by the Hon'ble Court, but subject to any pending proceedings, pay any amount standing to the credit thereof as per the order of the Hon'ble Court and close the Arbitral Award Escrow Account. Upon closure of the Arbitral Award Escrow Account hereunder, this Arbitral Award Escrow Agreement shall be deemed to be terminated.

8.3 Substitution of Arbitral Award Escrow Bank

The [Concessionaire / Contractor] may, by not less than 45 (forty five) days prior notice to the Arbitral Award Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Arbitral Award Escrow Bank, provided that the new Arbitral Award Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Arbitral Award Escrow Account to a new Arbitral Award Escrow Account established with the successor Arbitral Award Escrow Bank pursuant to another Arbitral Award Escrow Agreement entered between such successor Arbitral Award Escrow Bank, the Authority, the [Concessionaire / Contractor] and the Lenders Representative in the same form as this Agreement.

9/15

The termination of this Agreement shall take effect only upon coming into force of an Arbitral Award Escrow Agreement with the substitute Arbitral Award Escrow Bank.

9 SUPPLEMENTARY ARBITRAL AWARD ESCROW AGREEMENT

9.1 Supplementary arbitral award escrow agreement

There shall be no supplementary Arbitral Award Escrow Agreement.

10 INDEMNITIES

10.1 General indemnity

10.1.1 The [Concessionaire / Contractor] will indemnify, defend and hold the Authority, Arbitral Award 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 / Contractor] of any of its obligations under this Agreement or on account of failure of the [Concessionaire / Contractor] to comply with Applicable Laws and Applicable Permits.

10.1.2 The Authority will indemnify, defend and hold the [Concessionaire / Contractor] 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 / Contractor's] obligations under the [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] 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.

10.1.3 The Arbitral Award Escrow Bank will indemnify, defend and hold the [Concessionaire / Contractor] harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Arbitral Award Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the [Concessionaire's / Contractor's] obligations under the [Concession Agreement / Construction Contract / Engineering Procurement Commissioning Contract] other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Arbitral Award Escrow Bank, its officers, servants and agents.

10.2 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 10.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for

indemnifying such claim 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.

11 DISPUTE RESOLUTION

11.1 Dispute resolution

11.1.1 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 Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

11.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Delhi and the language of the arbitration proceedings shall be English.

12. MISCELLANEOUS PROVISIONS

12.1 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 Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

12.2 Waiver of sovereign immunity

The Authority 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) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated

11/15

by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets:

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgment 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 judgment that may be made or given in connection therewith).

12.3 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 authorized representatives of the Parties.

12.4 Waiver

12.4.1 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;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

12.4.2 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.

12.5 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.

12/15

12.6 Survival

12.6.1 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.

12.6.2 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.

12.7 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 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 11.1 of this Agreement or otherwise.

12.8 Successors and assigns

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

12.9 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 are set out under its name on the signing pages hereto. A notice shall be effective upon actual 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.

12.10 Language

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

12.11 Authorized representatives

Each of the Parties shall, by notice in writing, designate their respective authorized 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 authorized representative by similar notice.

12.12 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
[CONCESSIONAIRE / CONTRACTOR]
has been affixed pursuant to the resolution passed
by the Board of Directors of the [Concessionaire /
Contractor] at its meeting held on the day of 20
hereunto, in the presence
of....., Director, who has signed these
presents in token thereof and Company Secretary /
Authorized Officer who has countersigned the same
in token thereof*

AND DELIVERED

For and on behalf of

SENIOR LENDERS by the

Lender's representative:

*To be affixed in accordance with the articles of association of the Concessionaire / Contractor and the resolution passed by its Board of Directors.

14/15

For and on behalf of [Concessionaire / Contractor] pursuant to the resolution passed by the Board of Directors of the [Concessionaire / Contractor]

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)
SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE ARBITRAL AWARD ESCROW BANK by

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(E-mail address)
SIGNED, SEALED
In the presence of:

(Signature)
(Name)
(Designation)
(Address)
(Fax N°)
(E-mail address)
SIGNED, SEALED AND
DELIVERED

for and on behalf of
THE AUTHORITY by:

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

15/15