

GRANT THORNTON

DRAFT CONCESSION AGREEMENT

For Establishment of Technical Education Institutes based on PPP mode in the state of Uttar Pradesh –Engineering Institutes, Polytechnics and ITIs (“Project”)

12/02/2009

Table of Contents

| | |
|--|-----------|
| 1. DEFINITIONS | 9 |
| 1.1 Definitions..... | 9 |
| 1.2 Interpretation | 20 |
| 2. SCOPE OF PROJECT | 21 |
| 2.1 Scope of Project..... | 21 |
| 3. CONCESSION PERIOD | 21 |
| 3.1 The Concession..... | 21 |
| 3.2 Concession Period | 23 |
| 3.3 Action in support of Concession | 23 |
| 4. CONDITIONS PRECEDENT..... | 24 |
| 4.1 Conditions Precedent | 24 |
| 5. POSSESSION & ACCEPTANCE OF PROJECT SITE | 27 |
| 5.1 Handing over possession of Project Site..... | 27 |
| 6. CONSTRUCTION PHASE PERFORMANCE SECURITY & OPERATION PHASE PERFORMANCE SECURITY | 29 |
| 6.1 Construction Phase Performance Security..... | 29 |
| 6.2 Operation Phase Performance Security | 30 |
| 7. GRANT | 31 |
| 7.1 Grant | 31 |
| 7.2 Disbursement of Grant | 31 |
| 8. INDEPENDENT EXPERT | 32 |
| 8.1 Appointment of Independent Expert..... | 32 |
| 8.2 Duties & Functions..... | 32 |
| 8.3 Remuneration..... | 32 |
| 8.4 Termination of Appointment | 32 |
| 8.5 Authorized Signatories | 33 |
| 8.6 Dispute Resolution | 33 |
| 9. OBLIGATIONS OF THE PARTIES..... | 33 |
| 9.1 Obligations of GoUP..... | 33 |

| | |
|---|-----------|
| 9.2 Obligations of the Concessionaire..... | 33 |
| 9.3 Obligations of the Parties..... | 34 |
| 9.2 Obligations of the Lead Member & Other Members..... | 37 |
| 10. REPRESENTATION AND WARRANTIES | 39 |
| 10.1 Mutual Representation and Warranties..... | 41 |
| 10.2 Further Representation and Warranties of Concessionaire..... | 41 |
| 10.3 Further Representation and Warranties of GoUP | 41 |
| 11. AUDITING | 42 |
| 11.1 Requirements..... | 42 |
| 12. CONSTRUCTION PHASE AND OPERATIONS PHASE..... | 42 |
| 12.1 Construction of the Project | 42 |
| 12.2 Operations Phase – Management of the Institute..... | 44 |
| 12.3 Personnel – Staff & Faculty | 45 |
| 12.4 Labour | 45 |
| 13. INFORMATION..... | 46 |
| 13.1 Financial Information..... | 46 |
| 13.2 Construction Phase Reports | 46 |
| 13.3 Operations Phase Reports | 47 |
| 13.4 Additional Information | 47 |
| 13.5 Other Information..... | 47 |
| 14. ADMISSIONS, RESERVATION, SCHOLARSHIPS & ACADEMIC FEE | 48 |
| 14.1 Admission, Reservation & Scholarships..... | 48 |
| 14.2 Levy and Appropriation of Academic Fee | 48 |
| 15. CONCESSION FEE..... | 49 |
| 15.1 Concession Fee | 49 |
| 16. FINANCING | 50 |
| 16.1 Assignment & Creation of Security | 50 |
| 16.2 Accounts of Concessionaire | 50 |
| 17. TRANSFER OF PROJECT..... | 51 |
| 17.1 Scope of Transfer..... | 51 |
| 17.2 Insurance & Contractor Warranties | 51 |

| | |
|--|-----------|
| 17.3 Assignment of Contract | 51 |
| 17.4 Condition of Facility Upon Transfer | 51 |
| 17.5 Passing of Risks | 52 |
| 17.6 Transfer Costs | 52 |
| 17.7 Handing Over Procedure | 52 |
| 17.8 Effect of Transfer | 53 |
| 17.9 Deemed Transfer..... | 54 |
| 18. FORCE MAJEURE | 54 |
| 18.1 Force Majeure..... | 54 |
| 18.2 Non-Political Event | 55 |
| 18.3 Indirect Political Event..... | 55 |
| 18.4 Political Event..... | 55 |
| 18.5 Duty to report Force Majeure Event | 56 |
| 18.6 Effect of Force Majeure Event on Concession | 57 |
| 18.7 | 57 |
| 18.8 | 57 |
| 18.9 Minor & Major Force Majeure Event | 57 |
| 18.10 Termination Notice for Force Majeure Event | 58 |
| 19. EVENTS OF DEFAULT | 58 |
| 19.1 GoUP Event of Default | 58 |
| 19.2 Concessionaire Event of Default | 59 |
| 19.3 Step-in Rights to Lender | 60 |
| 20. TERMINATION | 61 |
| 20.1 Termination by GoUP for Concessionaire Event of Default | 61 |
| 20.2 Transfer of Institutes Project Site, Assets upon Termination..... | 62 |
| 20.3 Distribution of Insurance Proceeds upon Termination | 62 |
| 20.4 Survival of Obligations | 62 |
| 20.5 Termination by Concessionaire for GoUP Event of Default | 63 |
| 21. LIABILITY & INDEMNIFICATION | 63 |
| 21.1 Liability to Third Parties..... | 63 |
| 21.2 Indemnification..... | 63 |

| | |
|---|-----------|
| 21.3 Risk & Liability | 64 |
| 22. INSURANCE | 64 |
| 22.1 Coverage | 64 |
| 22.2 Evidence of Insurance Coverage | 64 |
| 23. INTELLECTUAL PROPERTY & CONFIDENTIALITY | 65 |
| 23.1 Proprietary Material | 65 |
| 23.2 Confidentiality | 65 |
| 24. DISPUTE RESOLUTION | 66 |
| 24.1 Amicable Settlement..... | 66 |
| 24.2 | 66 |
| 24.3 Performance during Dispute Resolution..... | 67 |
| 25. MISCELLANEOUS | 67 |
| 25.1 Amendment..... | 67 |
| 25.2 Severance of Terms | 67 |
| 25.3 Language | 67 |
| 25.4 Notices | 67 |
| 25.5 Governing Law | 68 |
| 25.6 Original Document | 68 |
| 25.7 Relationship | 68 |
| 25.8 Survival | 69 |
| 25.9 Authorized Representative | 69 |
| 25.10 Waivers..... | 69 |
| 25.11 Others | 69 |
| SCHEDULE I List of Bundles | 71 |
| SCHEDULE II Format of Bank Guarantee | 79 |
| SCHEDULE III Format of Bank Guarantee | 82 |
| SCHEDULE IV Format of Bank Guarantee..... | 85 |
| SCHEDULE V Franchisee | 88 |
| SCHEDULE VI Minimum Technical Specifications | 89 |
| SCHEDULE VII Terms of Reference of Independent Expert..... | 91 |
| SCHEDULE VIII List of Litigation | 97 |

DRAFT CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is entered into on this **** day of **** 2009 (hereinafter “**Execution Date**”)

BETWEEN

1. **THE GOVERNOR OF UTTAR PRADESH** represented by Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh, (hereinafter referred to as the “**GoUP**” which expression shall unless repugnant to the context or meaning thereof, include its successors in office) of **First Part**;

AND

2. **The [*****], [a Society/Trust]** under the provisions of [*****] and having its registered office at [*****] (hereinafter referred to as the “**Concessionaire**”) of the **Second Part**;

AND

3. **The [.]**, registered under the [.] having its registered office at [.] represented through its authorized signatory Mr. [.] (hereinafter referred to as “**Lead Member**”), acting as the Confirming Party of the **Third Part**;

AND

4. **The [.]**, registered under the [.] having its registered office at [.] represented through its authorized signatory Mr. [.] (hereinafter referred to as “**Other Member**”), acting as the Confirming Party of the **Fourth Part**;

AND

5. **The [.]**, registered under the [.] having its registered office at [.] represented through its authorized signatory Mr. [.] (hereinafter referred to as “**Other Member**”), acting as the Confirming Party of the **Fifth Part**

AND

6. **The [.]**, registered under the [.] having its registered office at [.] represented through its authorized signatory Mr. [.] (hereinafter referred to as “**Other Member**”), acting as the Confirming Party of the **Sixth Part**

AND

7. **The** [.] , registered under the [.] having its registered office at [.] , represented through its authorized signatory Mr. [.] (hereinafter referred to as “**Other Member**”), acting as the Confirming Party of the **Seventh Part**.

The **Lead Member** and the **Other Member(s)** may collectively be referred to as the “**Consortium**”.

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

WHEREAS

- (A) The **GoUP** is desirous of establishing Technical Education Institutes such as Engineering Colleges, Polytechnics and ITIs on a Public Private Partnership (“**PPP**”) basis with an aim to impart quality technical education in the State of Uttar Pradesh.
- (B) The **GoUP** had accordingly floated a Request for Qualification cum Request for Proposal on January 29th 2009 (“**RFQ cum RFP**”) inviting Bids from interested Bidders to establish and implement the Project.
- (C) After evaluation of the Bids received in response to the RFQ cum RFP, GoUP accepted the Bid of the Consortium and issued a Letter of Intent bearing No. [***] dated [***] (herein “**LOI**”) to the Consortium requiring the Consortium to intimate in writing, its acceptance of the LOI in the form of a letter of acceptance (herein ‘**LOA**’) within 4 days from the date of issue of the LOI and to establish a Society/Trust under the Societies Registration Act, 1860 / Indian Trust Act, 1882, to execute this Concession Agreement in the capacity of the Concessionaire within 2 days from submitting the LOA.
- (D) As per terms of the RFQ cum RFP, the Consortium is required to make payment to the Consultant of an amount equal to the Success Fee as agreed in the Consultant Agreement dated [.] executed between the GoUP and the Consultant on or before the Execution Date..
- (E) In accordance to the provisions of the RFQ cum RFP, the Consortium has submitted its LOA dated [*****] accepting to construct, establish, operate, maintain and transfer the Institutes under the Project to GoUP. The Consortium has also made payment of Success Fee to the Project Consultant, vide a demand draft bearing no. [*****] drawn on [*****] bank, on [date].

- (F) The Consortium has established the Concessionaire, a Society/Trust under the Societies Registration Act, 1860 / Indian Trust Act, 1882, to execute this Concession Agreement and have submitted the constitutional documents/by-laws of the Concessionaire with the GoUP on or prior to the Execution Date.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the sufficiency and adequacy of which is hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Concession 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. Any word and expression with capital letters not specifically defined herein shall have the meaning ascribed to it under the RFQ cum RFP.

‘Academic Session’ shall mean the start of the academic activities of the Institute in a particular month of a year and shall not exceed the period as stipulated for an Institute by the respective Statutory Authority;

‘Academic Related Activities’ shall have the meaning ascribed in clause 9.3 (e) to this Concession Agreement;

‘Academic Fee’ shall mean an annual fee to be determined by the Fee Approval Committee or Alternate Instrumentality in terms of provisions of clause 14.2 to this Concession Agreement;

‘Affected Party’ shall have the meaning as described in clause 18.1 to this Concession Agreement;

‘AICTE’ shall mean All India Council for Technical Education;

‘Applicable Approvals’ shall mean all approvals, affiliations, clearances, consents, permissions, licenses, authorizations, no objection certificates, exemptions, recognitions required to be obtained from the Statutory Authorities prior to commencement of operations of the Institutes under the Applicable Laws;

‘Applicable Laws’ shall mean all laws, brought into force and effect by the GoI or GoUP including rules, regulations, circulars, guidelines, policy initiatives and notifications made there under and judgments, decrees, injunctions, writs and orders of any court, applicable to this Project and the exercise, performance and discharge of the respective rights and obligations of the respective parties hereunder as may be enforced and are in effect during the subsisting of this Project;

‘Assets’ shall mean movable and immovable property which may be built, obtained, purchased and/or acquired by the Concessionaire for the Institutes under the Project;

‘Bid’ shall mean the response to the RFP cum RFQ dated January 29th 2009, submitted by the Bidder on or before the Due Date of Submission;

‘Bidder(s)’ shall mean Person who has submitted his Bid in response to the RFP;

‘Bid Summary’ shall mean an overview of the bid process as specified in RFQ cum RFP dated January 29th 2009;

‘BOT’ shall mean build, operate and transfer;

‘Bundle’ shall mean a total number of 6 Project Sites that were offered under the RFQ cum RFP and pursuant to evaluation of Bids have been awarded to the Concessionaire to construct, establish, operate and transfer 6 ITIs on a BOT model (as specified in **Schedule I** to this Concession Agreement) under this Project.

OR

‘Bundle’ shall mean a total number of 2 Project Sites that were offered under the RFQ cum RFP and pursuant to evaluation of Bids have been awarded to the Concessionaire to construct, establish, operate and transfer 2 Polytechnics

on a BOT model (as specified in **Schedule I** to this Concession Agreement) under this Project.

OR

'Bundle' shall mean a total number of 1 Project Site that was offered under the RFQ cum RFP and pursuant to evaluation of Bids has been awarded to the Concessionaire to construct, establish, operate and transfer 1 Engineering College on a BOT model (as specified in **Schedule I** to this Concession Agreement) under this Project.

'Change in Law' shall mean occurrence of any of the following events after the execution of this Concession Agreement:

- (a) enactment of any new Indian Law or Applicable Law;
- (b) the repeal in whole or in part (unless re-enactment with the same effect);
- (c) or modification of any existing Indian Law or Applicable Law;
- (d) the commencement of any Indian Law or Applicable Law which was not into force;
- (e) change in interpretation or application of any Indian Law or Applicable Law;
- (f) imposition or requirement of a new statutory or regulatory approval;
- (g) or modification in the terms and conditions on which a statutory or regulatory approval has already taken place;
- (h) a fresh imposition of a tax or duty that was not in existence on the Effective Date. It is clarified that a change in the rate of tax or duty that was in existence on the Effective Date shall not be considered a change in law for the purposes of this Article;

'Completion & Operations Date' or 'COD' shall mean the date on which the GoUP issues to the Concessionaire a Operation Commencement Certificate, and such Operation Commencement Certificate shall be issued by GoUP upon the Concessionaire obtaining and submitting with the GoUP a Construction Completion Certificate;

'Concession' shall mean the exclusive right, authority and authorization to use the Project Site to build, operate, manage and maintain the Institutes at a nominal Concession Fee during the Concession Period;

‘Concession Agreement’ shall mean this agreement between the GoUP, Concessionaire and Consortium as the confirming party, for implementation of the Project on the terms and conditions agreed hereunder;

‘Concessionaire Event of Default’ shall have the meaning ascribed to it in clause 19.2 (a) of this Concession Agreement;

‘Compliance Period’ shall have the meaning ascribed to it in clause 4.1.5 (a) of this Concession Agreement.

‘Concession Fee’ shall mean a fee payable annually by the Concessionaire to the GoUP for grant of the Concession as specified in clause 9.2 (m) to this Concession Agreement;

‘Concession Period’ shall mean a period starting from the Effective Date and valid up to 30 years thereafter, unless extended further as per the provisions of this Concession Agreement;

‘Condition Precedent’ shall mean the conditions to be met and fulfilled by the Concessionaire and/or GOUP, as the case may be and are more specifically described in clause 4.1 to this Concession Agreement;

‘Consortium Member(s)’ shall mean [*name of the person*], [*name of the person*], [*name of the person*] and [*name of the person*] who have jointly established the Concessionaire to implement the Project;

‘Construction Completion’ shall mean 100% completion of the construction in accordance with the Drawings submitted by the Concessionaire with GoUP and the Independent Engineer and such completion being certified by the Independent Expert by issuing the Construction Completion Certificate;

‘Construction Completion Certificate’ shall mean a certificate issued by an Independent Expert upon examining and being satisfied about the quality of construction and 100% completion of construction in accordance with the Drawings submitted with the GoUP by the Concessionaire for establishment of Institutes;

‘Construction Phase’ shall mean the period during which the Concessionaire shall carry on the construction of the Institutes and unless extended further in

accordance with the provisions of this Concession Agreement, shall be a period of 24 months starting from the Effective Date;

‘Construction Phase Performance Security’ shall mean an irrevocable & unconditional bank guarantee of an amount equivalent to 1% of the Estimated Project Cost, per Bundle, issued by the State Bank of India or its subsidiary or a nationalized bank having its branch in Lucknow, in the format provided in **Schedule II**, within 30 days from the Execution Date;

‘Contractor’ shall mean a contractor or contractors, if any, with whom the Concessionaire has entered into agreements for design and construction of the Institutes;

‘Cure Period’ shall mean the period specified in this Concession Agreement for curing any breach or default of any provision of this Concession Agreement by the Party responsible for such breach or default and upon failing of which this Concession Agreement may be terminated by the other Party;

‘DGET’ shall mean Directorate General of Employment and Training;

‘Drawing(s)’ shall mean the drawings, construction plan, building layout, material specifications and construction schedule that will be submitted with the GoUP by the Concessionaire within a period of 3 months from the date of handing over the possession of the Project Site to the Concessionaire and modified/ changed/ approved in accordance to provisions of clause 4.1.2 (d) to this Concession Agreement;

‘Due Date of Submission’ shall mean the date for submission of Bids as per the provisions of the RFQ cum RFP;

‘Effective Date’ shall mean the date on which the Conditions Precedent in the Concession Agreement have been satisfied or waived according to the terms hereof and unless extended further shall not be later than 6 (Six) months from the Execution Date;

‘Encumbrances’ shall mean any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having effect of security or other such obligations on the Project

Site, Institutes and Assets if any constructed by the Concessionaire for such Institutes;

‘Estimated Project Cost’ shall include cost of land, material, labour, transport, consumables, testing, commissioning, overheads, sundries, contingencies, insurance, supervision etc. for construction of the Institutes and shall not be an amount **less than Rs. [.] [cost]** ;

‘Execution Date’ shall mean the date on which the Concession Agreement is executed between the GoUP, the Concessionaire and the Consortium;

‘Fee Approval Committee’ or **‘Alternate Instrumentality’** shall mean a committee or alternate instrumentality constituted by the GoUP, to determine the Academic Fee that may be charged from each student for a particular course of study, in an Academic Session by the Concessionaire;

‘Financing Agreements’ shall mean the agreements that shall be executed between Lenders and Concessionaire for financing the Project;

‘Financial Bid’ shall mean the amount of Grant quoted by the Bidder with respect to each Project;

‘Financial Closure’ shall mean the date on which the Financial Agreement between the Lenders and Concessionaire have been duly executed

‘Financial Capacity’ shall have the meaning ascribed to it in the RFQ cum RFP for the purposes of this Concession Agreement;

‘Force Majeure’ shall have the meaning as described in Article 18.1 to this Concession Agreement;

‘Franchisee’ shall mean a Trust and/or Society meeting the criteria prescribed under **Schedule V** to this Concession Agreement and who has been authorized by the Concessionaire to undertake all or any activity relating to implementation of the Project;

‘Good Industry Practice’ shall mean the recognized best practice methods and standards, that are followed in general in every industry and shall be followed by the Concessionaire on any particular issue, requirements or in discharging his obligations here under;

‘GoI’ shall mean Government of India;

‘GoUP Event of Default’ shall have the meaning specified in article 19.1(a) to this Concession Agreement;

‘Grant’ shall mean the amount quoted by the Concessionaire as a support for the operations of the Project and more specifically described Article 7 to this Concession Agreement;

‘Independent Expert’ shall mean an expert appointed in accordance with Article 8 to this Concession Agreement having the requisite expertise and experience to certify the Construction Completion of the Institutes;

‘Indirect Political Event’ shall have the meaning ascribed to it in clause 18.3 to this Concession Agreement;

‘Insurance Policy (ies)’ shall mean the contracts and policies of insurance taken out and maintained by the Concessionaire with respect to the Project Site, Institutes and Assets based on the recommendations of the Independent Expert and requirements of GoUP;

‘Institutes’ shall mean a total number of 6 ITIs (as specified in the Bundle, **Schedule II** to this Concession Agreement) that are required to be developed by the Concessionaire under this Project;

OR

‘Institutes’ shall mean a total number of 2 Polytechnics (as specified in the Bundle, **Schedule II** to this Concession Agreement) that are required to be developed by the Concessionaire under this Project;

OR

‘Institute’ shall mean a total number of 1 Engineering Institute (as specified in the Bundle, **Schedule II** to this Concession Agreement) that is required to be developed by the Concessionaire under this Project.

‘Lead Member’ shall mean [*name of the person*] holding at least 51% of control /voting rights in the Concessionaire;

‘Lease Deed’ shall mean a lease deed executed between the GoUP and the Concessionaire prior to handing over the possession of the Project Site;

‘Lenders’ shall mean the financial institutions, banks from whom the Concessionaire may finance a debt as per the terms of the Financing Agreement for financing the Project;

‘Letter of Acceptance’ or ‘LoA’ shall mean a letter intimating the acceptance by the Successful Bidder to GoUP for implementing the Project in response to the Letter of Intent;

‘Letter of Intent’ or ‘LoI’ shall mean the letter issued by the GoUP to the Successful Bidder intimating its intent to award the Project to the Successful Bidder;

‘Material Adverse Effect’ means circumstances which may or does (a) render any right vested in a Party by the terms of this Concession Agreement ineffective or (b) adversely affects or restricts or frustrates (i) the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement or (ii) the legality, validity, binding nature or enforceability of this Concession Agreement and in case of Concessionaire shall mean a circumstance that leads to reduction in student intake to the extent of 1/3rd of the student intake for the preceding year;

‘Material Breach’ means a breach of the obligations or terms and conditions of this Concession Agreement by a Party, which has a Material Adverse Effect;

‘Minimum Technical Specifications’ shall mean the minimum and prescribed norms and standards of the concerned Statutory Authority, issued from time to time, for establishment and operation of the Institutes;

‘NCVT’ shall mean National Council for Vocational Training;

‘NRI’ shall mean Non Resident Indian

‘Operation Commencement Certificate’ shall mean a certificate to be issued by GoUP to the Concessionaire to commence the operations of the Institutes and such Operation Commencement Certificate shall be issued only upon submitting the Construction Completion Certificate by the Concessionaire;

‘Operation Phase’ shall mean a period starting from the Completion and Operations Date and valid until the Concession Period or any extension or termination thereof in accordance with the terms of this Concession Agreement;

‘Operation Phase Performance Guarantee’ shall mean the irrevocable & unconditional bank guarantee equivalent to 5% of the Estimated Project Cost, per Bundle issued by the State Bank of India or its subsidiary or a nationalized bank having its branch in Lucknow, in the format provided in **Schedule III**, within 15 days from obtaining the Construction Completion Certificate from the Independent Expert by the Concessionaire;

‘Other Member’ shall mean [*name of the person*] holding at least 11% of control/ voting rights in the Concessionaire

‘Permanent Grantee’ shall have the meaning as envisaged under the Easement Act, 1882;

‘Person’ shall mean any natural person, firm, company, governmental authority, Statutory Authority, society, trust or any legal entity;

‘Project’ shall mean the construction, establishment, operation and transfer of Technical Education Institute comprising 1 Engineering College; or

OR

‘Project’ shall mean the construction, establishment, operation and transfer of Technical Education Institutes comprising 2 Polytechnics;

OR

‘Project’ shall mean the construction, establishment and operation of Technical Education Institutes comprising of 6 ITIs;

‘Project Agreements’ shall mean (i) this Concession Agreement, (ii) Lease Deed, (iii) construction agreement executed between the Concessionaire and the Contractor; (iv) any other material contracts or agreements entered into by the Concessionaire for implementing the Project and designated in writing as a project agreement after taking a prior written approval of GoUP;

‘Project Consultants’ or ‘Consultants’ shall mean consultants (Grant Thornton) appointed by GoUP for this Project;

‘Proprietary Material’ shall mean such the material that has been conceived, designed, written, produced or developed by the Party himself or through an external agency for a consideration and on which the Party enjoys and can establish proprietary rights under the Applicable Laws and for this Concession Agreement shall include Drawings;

‘Provisional Permission’ shall mean provisional permission granted by GoUP to the Concessionaire to start courses in the Institutes prior to COD, upon satisfying the conditions specified in the Concession Agreement;

‘Project Site’ shall mean land situated at [.] to be acquired and/or handed over to the Concessionaire as per provisions of this Concession Agreement;

‘Reasons for Refusal’ shall have the meaning ascribed in clause 5.1.2 to this Concession Agreement;

‘RFQ cum RFP’ shall mean the request for qualification cum request for proposal dated January 29th 2009 issued by the GoUP to invite bids from the interested Bidders to implement the Project and shall also include amendments thereto, issued from time to time;

‘Society’ shall mean a society established and registered under the Applicable Laws;

‘SCVT’ shall mean State Council for Vocational Training;

‘Staff and Faculty’ shall mean the teachers, professors, technical instructors, etc. and technical, vocational and administrative staff that may be employed on full time and/or part time basis by the Concessionaire for the Institutes in accordance with the Applicable Laws and norms of GoUP/Statutory Authority;

‘Statutory Authority’ shall mean empowered organizations, Government instrumentalities involved in approval, recognition of courses, programmes offered in the Institutes and shall include AICTE, DGET, NCVT, and SCVT;

‘Substitution Agreement’ shall mean an agreement to be executed between the GoUP, the Lenders and the Substitute Entity in accordance with the provisions of clause 19.3 (a) to discharge the obligations of the Concessionaire under this Concession Agreement;

‘Substitute Entity’ shall mean a legal entity being a Trust or a Society nominated by the Lenders as per the terms of the Financing Agreements to substitute the Concessionaire, and approved and appointed by GoUP for implementing the Project subject to such legal entity meeting the Financial Capacity and Technical Capacity specified in the RFQ cum RFP and undertaking to discharge the obligations of the Concessionaire under this Concession Agreement;

‘Success Fee’ shall mean fee equal to the Success Fee as mentioned in Consultancy Agreement dated [.] executed between GoUP and the Consultants and any amendments thereto;

‘Successful Bidder’ shall mean the Bidder whose Bid is selected based on the bid evaluation parameters specified in the RFQ cum RFP;

‘Technical Capacity’ shall have the meaning ascribed to it in the RFQ cum RFP for the purposes of this Concession Agreement;

‘Termination Notice’ shall have the meaning ascribed to it in clause 18.2 to this Concession Agreement;

‘Third Party’ shall mean any party other than the GoUP and the Concessionaire who is not a party to this Concession Agreement;

‘Transfer Date’ shall mean the date of expiry of the Concession Period or termination of this Concession Agreement and handing over /transfer of the the Institutes along with the Project Site and Assets to GoUP free of any Encumbrances and at zero value;

‘Trust’ shall mean a trust established under the Applicable Laws

1.2 Interpretation

1.2.1 In this Concession Agreement, unless 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 State of Uttar Pradesh, laws of India 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) the table of contents, headings or sub-headings in this Concession Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Concession Agreement;

(d) 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;

(e) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;

(f) references to "clause", "Article" and "Schedules" herein shall mean reference to the Clause, Article and Schedules to this Concession Agreement

(g) this Concession Agreement constitutes the entire agreement between the Parties hereto with respect to the matters dealt with herein and supersedes any previous agreement, Bid documents between the Parties in relation to the Project.

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include during the Concession Period:

- (a) design, build, construct, finance, manage, operate, maintain and transfer the Institutes under the Project, during the Concession Period or such extended periods as may be approved by the GoUP and hand over full and peaceful possession of the Institutes along with Project Site and Assets constructed by the Concessionaire to GoUP at the end of the Concession Period or any extension thereof, without any Encumbrance and/or liability and at zero value, along with a relinquishment deed in favour of GoUP to the effect that the Concessionaire shall have no claim on the aforesaid Institutes.
- (b) perform and fulfill all the obligations of the Concessionaire in accordance with the provisions of this Concession Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 In accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Approvals, the GoUP hereby grants to the Concessionaire and the Concessionaire hereby accepts, the exclusive right, authority and authorization during the Concession Period, including extension thereof, to use the Project Site to construct, establish, operate, manage and transfer the Institutes under the Project (the “**Concession**”), for a period of 30 years and any extension thereof, commencing from the Effective Date, 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 herein. For avoidance of doubt, it is clarified that at all times the Project Site shall be the property of the GoUP and the Concessionaire shall maintain the Project Site in good condition till the end of the Concession Period.

- 3.1.2 Subject to and in accordance with the provisions of this Concession Agreement, the Concession hereby granted shall oblige or entitle the Concessionaire to:
- (a) enjoy complete and uninterrupted right of way, access, and full possession of the Project Site for a period that shall be co-terminus with the Concession Agreement;
 - (b) build, construct, manage, operate, maintain and transfer the Institutes as per the terms of this Concession Agreement;
 - (c) introduce courses in the Institutes in accordance with the terms of this Concession Agreement and the prevailing guidelines of the concerned Statutory Authority;
 - (d) levy, collect, retain and appropriate Academic Fees for the Institutions as specified in clause 14.2 to this Concession Agreement;
 - (e) maintain and use the Project Site and use such Project Site for carrying out any Academic Related Activities on obtaining a prior approval of the GoUP, provided that any revenue generated from such Academic Related Activities shall be declared to GoUP and such revenue shall be ploughed back for operations of the Institutes by the Concessionaire.
 - (f) fulfill its obligations under this Concession Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint Contractors, sub-contractors, agents, advisors and consultants, without in any way discharging or relieving the Concessionaire of its duties and obligations as set out in this Concession Agreement and any liability arising out of appointment of Contractors, sub-contractors, agents, advisors and consultants shall be borne by the Concessionaire;
 - (g) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Concession Agreement;
 - (h) to appoint Franchisee in accordance with clause 12.2 (b) and **Schedule V** to this Concession Agreement to operate and maintain the Institutes, provided that the Franchisee shall not be an assignee of the Concessionaire and appointment of Franchisee shall not relieve or discharge the Concessionaire of its obligations and/or duties under this Concession Agreement.

3.2 Concession Period

3.2.1 The Concession Period shall commence from the Effective Date and shall be valid for a period of 30 (thirty) years from the Effective Date or as extended in accordance with the provisions of this Concession Agreement.

3.3 Actions in Support of the Concession

- (a) GoUP shall on or prior to the Effective Date enter into a Lease Deed with the Concessionaire to lease the Project Site on '*as is where is*' basis to the Concessionaire. Subject to clause 4.1.5 (b), the physical possession of the Project Site shall be handed over to the Concessionaire within 6 (Six) months from the Execution Date. Provided GoUP shall inform the Concessionaire 2 (Two) months in advance, the date on which the physical possession of the Project Site will be handed over to the Concessionaire. The Lease Deed for the Project Site will be co-terminus with the Concession Agreement.
- (b) For the purpose of financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, or otherwise encumber to Lenders its rights and interests in the buildings constructed by the Concessionaire for the Institutes under or pursuant to this Concession Agreement including the cash flows generated by the collection of annual Academic Fee net of the Concession Fee provided that the mortgage, hypothecation or any other Encumbrance created in the buildings constructed by the Concessionaire for the Institutes shall not be for a period beyond the Concession Period. Notwithstanding anything contained herein above, the Concessionaire shall not mortgage, hypothecate or otherwise create Encumbrance in the buildings constructed by the Concessionaire for the Institutes in favour of any third party other than the Lenders.
- (c) It is agreed that the Concessionaire shall solely be responsible to arrange the finance for the Project and the GoUP shall not be liable nor assist in any manner to arrange the finance for the Project. The Concessionaire shall not in any manner enter into any arrangement with the Lenders that shall materially and adversely affect the rights and interests of GoUP hereunder or impose additional liabilities on the Project and any liability arising out of the arrangement with the Lenders shall be solely borne by the Concessionaire. For avoidance of doubt it is clarified that the Concessionaire shall not assign and/or charge and/or mortgage and/or encumber in favour of Lenders or any other party any right, benefit and interest in the Project Site handed over to the Concessionaire as a Concession;

- (d) The GoUP shall render such assistance as the Concessionaire may reasonably require, from time to time, for availing and obtaining all Applicable Approvals and for completion of formalities relating to the Project provided the Concessionaire is in compliance with the rules, regulations and guidelines prescribed by the Statutory Authorities;
- (e) The GoUP shall facilitate and extend the GOI grants for the present and future schemes available for the Institutes, wherever applicable.
- (f) The GoUP undertakes not to terminate or repudiate this Concession Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Concession Agreement;
- (g) The GoUP shall provide all assistance and recommendations to the Statutory Authority, including GoI, in support of the Concessionaire's applications for Applicable Approvals that may be needed from time to time for the implementation of the Project provided that the Concessionaire has made the requisite applications and is in compliance with the necessary norms and regulations of the Statutory Authority for the grant of such Applicable Approvals.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided herein, the respective rights and obligations of the Parties under this Concession Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 prior to the Effective Date.
- 4.1.2 Conditions Precedent to be fulfilled by Concessionaire
 - (a) the Concessionaire shall provide to GoUP a Concession Fee for the Institutes prior to the Effective Date;
 - (b) Subject to clause 4.1.5 (c), the Concessionaire shall before the Effective Date, achieve the Financial Closure of the Project and intimate the same to GoUP;
 - (c) the Concessionaire shall provide to GoUP within 30 days from the Execution Date, a Construction Phase Performance Security in the form of an

irrevocable and unconditional Bank Guarantee (a format of the Bank Guarantee is provided in **Schedule II** to this Concession Agreement) of an amount equal to 1% of the Estimated Project Cost, (submitted by the Concessionaire in its bid summary), per Bundle, in single or multiple form of Bank Guarantees as may be instructed by the GoUP, issued by State Bank of India (SBI) or any of its subsidiary or nationalized bank having its branch in Lucknow, in favour of Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh and such Construction Phase Performance Security shall be released by the GoUP in the manner provided in sub-clause 6.1.2 of this Concession Agreement and shall remain valid from the date of issue until thirty days beyond the COD;

- (d) the Concessionaire shall furnish and submit the Drawings of the Institutes to be built by the Concessionaire under the Project to the GoUP and Independent Expert within 3 months from the date of handing over the possession of the Project Site to the Concessionaire and shall carry out any modifications /additions as suggested by GoUP within 1 month from receipt of such suggestions in writing;

4.1.3 Conditions Precedent to be fulfilled by GoUP

Before the Effective Date GoUP shall

- (a) Subject to clause 5.1.2 to this Concession Agreement execute a Lease Deed with the Concessionaire for the Project Site on a '*as is where is*' basis, in accordance with the terms and conditions of this Concession Agreement, provided that the Concessionaire shall have given to the GoUP, the Construction Phase Performance Security as set forth in sub-clause 4.1.2 above;
- (b) issue government orders or gazette notifications as necessary for setting up the Fee Approval Committee or Alternate Instrumentality for determining the Academic Fee and revision thereof, if any. Such Fee Approval Committee or the Alternate Instrumentality will be governed by the norms, guidelines and notifications of the GoUP in determining and/or revising the Academic Fee;
- (c) issue government orders for disbursing the Grant, in accordance with the provisions of clause 7.2 herein;
- (d) appoint an Independent Expert within 3 months from the Execution Date to supervise and certify the completion of the construction of buildings/Institutes by the Concessionaire as per the Drawings submitted by the Concessionaire with the GoUP and the Independent Expert.

For avoidance of doubt, it is clarified that the fees of the Independent Expert shall be borne by the Concessionaire and GoUP equally. The Concessionaire shall pay his share of the fees as intimated by GoUP on or before the 5th of every month with the GoUP and GoUP in turn shall pay the fees to the Independent Expert.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5 Non – fulfillment of Conditions Precedent

(a) In the event that any of the Conditions Precedent relating to a Party have not been fulfilled within the period from the Execution Date until the Effective Date (“**Compliance Period**”) as prescribed in clause 4.1.2 and 4.1.3 herein above, either Party may, notwithstanding anything to the contrary in this Concession Agreement, extend the time period for satisfying the Conditions Precedent as specified herein below. Provided any extension of a Condition Precedent shall not render this Concession Agreement invalid.

(b) In the event that GoUP is unable to execute a Lease Deed and hand over peaceful possession of the Project Site to the Concessionaire within 6 months from the Execution Date, the Concessionaire agrees that the period of 6 months shall automatically extend for a further period of 3 months beyond the 6 months period, for leasing the Project Site.

However at the end of such extended 3 months, if GoUP is unable to lease and hand over the Project Site to the Concessionaire this shall result in GoUP Event of Default and in such event the Concessionaire shall be entitled to terminate this Concession Agreement. In case of termination of this Concession Agreement by Concessionaire under this clause, GoUP shall be liable to pay a total amount of Rs. 50,000 to the Concessionaire in addition to refunding the Construction Phase Performance Security.

(c) In the event that the Concessionaire is unable to achieve the Financial Closure within 6 (Six) months from the Execution Date, GoUP, in its sole discretion may further extend the period for achieving Financial Closure by 3 months. However, non-achievement of Financial Closure during such extended 3 months shall result in Concessionaire Event of Default and GoUP shall in such event terminate this Concession Agreement. Without prejudice to any rights available under this Concession Agreement, upon termination, GoUP shall

forfeit the Bid Security and invoke the Construction Phase Performance Security furnished by the Concessionaire.

- (d) In the event GoUP has terminated this Concession Agreement due to non fulfillment of any Condition Precedent by the Concessionaire, GoUP shall not be liable in any manner whatsoever to the Concessionaire or its Contractors, agents and employees. Without prejudice to any rights available under this Concession Agreement, upon termination, GoUP shall forfeit the Bid Security and invoke the Construction Phase Performance Security furnished by the Concessionaire.
- (e) Upon termination of this Concession Agreement and in the event GoUP shall have executed and delivered a Lease Deed and handed over the possession of the Project Site to the Concessionaire, the Project Site shall immediately revert to GoUP free of Encumbrances and without any liability whatsoever from any Parties.

ARTICLE 5

POSSESSION & ACCEPTANCE OF PROJECT SITE

5.1 Handing over Possession of the Project Site

5.1.1 The GoUP will hand over the full and peaceful possession of the Project Site on '*as is where is*' basis to the Concessionaire. The physical possession of the Project Site shall be handed over to the Concessionaire within 6 (Six) months from the Execution Date unless the 6 month period is further extended by 3 (Three) months period. Provided GoUP shall inform the Concessionaire 2 (Two) months in advance, the date on which the physical possession of the Project Site will be handed over to the Concessionaire and provided further that the Concessionaire shall have furnished to the GoUP, the Construction Phase Performance Security as set forth in sub-clause 4.1.2 above.

5.1.2 Acceptance of Project Site

- (a) The Concessionaire may within 7 (Seven) days of making available such Project Site express in writing to GoUP and the Independent Expert, its acceptance/refusal to take possession of the Project Site awarded for the Institutes.

- (b) Reasons for Refusal: the Concessionaire may refuse to accept possession of the Project Site in the following circumstances:
 - (i) if the Project Site does not have approach road and the essential facilities i.e power and water;
 - (ii) if the Project Site is not appropriate or suitable for laying foundation and carrying out civil constructions;
 - (iii) if any HT/LT lines are passing over the Project Site.
- (c) On receipt of communication, if any, from the Concessionaire with regard to refusal to accept the Project Site, the Independent Expert shall examine the Project Site and accept or reject such reasons for refusal of possession of Project Site. The decision of the Independent Expert shall be final and binding on both the Parties.
- (d) In the event the Independent Expert accepts the Reasons for Refusal given by the Concessionaire, the GoUP shall provide an alternate Project Site within a period of 30 (Thirty) days from the date of acceptance of Reasons for Refusal by the Independent Expert. In case the GoUP is unable to provide an alternate Project Site within the stipulated time line of 30 days, the Concessionaire shall be entitled to terminate this Concession Agreement.
- (e) In the event the Independent Expert rejects the Reasons for Refusal given by the Concessionaire, the Concessionaire shall be obliged to take possession of the Project Site and implement the Project as per the provisions of the Concession Agreement. In case the Concessionaire fails to take possession of the Project Site within a period of 45 days from the date of refusal of Reasons for Refusal by the Independent Expert, GoUP shall terminate this Concession Agreement and the Construction Phase Performance Security furnished by the Concessionaire shall be invoked by GoUP.

5.1.3 Access to Project Site

Following the handing over of the full and peaceful possession of the Project Site the Concessionaire shall, at all times and upon reasonable notice, afford to the representatives of GoUP/Statutory Authority duly authorized by GoUP to access and inspect the Project Site.

ARTICLE 6
CONSTRUCTION PHASE PERFORMANCE SECURITY,
AND
OPERATION PHASE PERFORMANCE SECURITY

6.1 Construction Phase Performance Security

- 6.1.1 For due and faithful performance of its obligations during the Construction Phase under this Concession Agreement, the Concessionaire shall provide the GoUP within a period of 30 days from the Execution Date, a Construction Phase Performance Security in the form of an irrevocable and unconditional Bank Guarantee of an amount equal to 1% of the Estimated Project Cost, per Bundle, in single or multiple form of Bank Guarantees as may be instructed by the GoUP, issued by SBI or any of its subsidiary or a nationalized bank, having its branch at Lucknow in favour of Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh and such security shall be maintained and valid at all times from the date of issue thereof until 30 days following the COD;
- 6.1.2 On successful completion of the Construction Phase and achieving the COD, the Construction Phase Performance Security shall be released by GoUP to the Concessionaire in the following manner:
- (a) on 90% Construction Completion as certified by the Independent Expert 30% of the amount of Construction Phase Performance Security will be released to the Concessionaire;
 - (b) on 100% Construction Completion as certified by the Independent Expert, 40% of the amount of Construction Phase Performance Security will be released to the Concessionaire ;
 - (c) within 30 days from the Completion and Operations Date and furnishing of the Operations Phase Performance Security by the Concessionaire, the balance 30% of the amount of Construction Phase Performance Security will be released to the Concessionaire by GoUP.

For avoidance of doubt it is clarified that the Construction Completion shall be linked to the approved Drawings building plans, layouts and specifications sanctioned by the concerned Statutory Authority and submitted with the GoUP

by the Concessionaire and the Concessionaire shall furnish the appropriate documents supporting Construction Completion such as Construction Completion Certificate issued by the Independent Expert, as may be required by GoUP, prior to release of such Construction Phase Performance Security.

6.2 Operation Phase Performance Security

- 6.2.1 For due and faithful performance of its obligations during the Operation Phase under this Concession Agreement, the Concessionaire shall provide to GoUP within a period of 15 days from obtaining the Construction Completion Certificate from the Independent Expert , an Operation Phase Performance Security in the form of an irrevocable and unconditional Bank Guarantee of an amount equal to 5% of the Estimated Project Cost, per Bundle, increased by 10% every three years following the first date of furnishing of Operation Phase Performance Security ,issued by SBI or any of its subsidiary or a nationalized bank having its branch at Lucknow, in favour of Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh. Non-increase of the Operation Phase Performance Security in the manner provided herein shall be a Concessionaire Event of Default and GoUP may terminate this Concession Agreement as per the provisions therein. The Operation Phase Performance Security shall be maintained and valid at all times from the date of issue thereof until 6 (Six) months following end of the Concession Period.
- 6.2.2 The Operation Phase Performance Security shall be released by GoUP to the Concessionaire within [.] days after 6 (Six) months from the date of end of the Concession Period. If any amounts due to GoUP from the Concessionaire is not paid off until 30 (Thirty) days prior to the date of end of Concession Period, the Operation Phase Performance Guarantee shall not be returned to the Concessionaire and the GoUP shall have the right to appropriate such amount from the Operation Phase Performance Guarantee, if required.
- 6.2.3 If the Concessionaire fails to run the Institutes under the Bundle to the satisfaction of GoUP for a period of 10 Academic Session from COD, the GoUP shall without prejudice to its rights specified in the other provisions of this Concession Agreement, have the right to invoke the Operation Phase Performance Security by giving 30 days notice to the Concessionaire.
- 6.3 If the Concessionaire fails to provide and/or replenish the Construction Phase Performance Security and the Operation Phase Performance Security by the date required in this Concession Agreement, it shall constitute a

Concessionaire Event of Default that shall entitle the GoUP to terminate this Concession Agreement forthwith.

ARTICLE 7

GRANT

7.1 Grant

7.1.1 The Concessionaire shall be entitled to Grant from the GoUP if the Concessionaire had quoted such Grant in the Financial Bid submitted with the GoUP during the Bid process.

7.2 Disbursement of Grant

7.2.1 The total Grant quoted by the Concessionaire shall be divided into 4 (Four) equal annual payments, each to be disbursed to the Concessionaire during initial 4 (Four) years of operations after the COD.

7.3 Bank Guarantee for Grant

7.3.1 In case the Concessionaire had quoted a Grant in the Financial Bid submitted during the bid process with the GoUP, the Concessionaire shall furnish to GoUP a Bank Guarantee of an amount equivalent to the Grant quoted by the Concessionaire in its Financial Bid, in the form of an irrevocable and unconditional Bank Guarantee issued by State Bank of India or any of its subsidiaries or a nationalized bank having its branch at Lucknow, in the format given in **Schedule IV** to this Concession Agreement. This Bank Guarantee shall be maintained and valid at all times, for a period equivalent to 10 Academic Sessions from the COD or end of first Academic Session, whichever is later.

7.3.2 The Bank Guarantee so furnished against availing the Grant shall be released to the Concessionaire within 6 months from the date of end of 10 Academic Sessions as stated in clause 7.3.1 above.

ARTICLE 8

INDEPENDENT EXPERT

8.1 Appointment of Independent Expert

8.1.1 The GoUP shall appoint a civil engineering firm from a panel of atleast 3 (three) firms or bodies corporate known to have the requisite expertise and experience in monitoring and certifying the Construction Completion and operation, management and maintenance of the Institutes (**'Independent Expert'**).

8.1.2 The appointment shall be made not later than 3 months from the Execution Date and shall be valid for a period of 5 years thereafter. On expiry of the aforesaid period, the Government may in its discretion, if deemed necessary renew the appointment or appoint another firm from a fresh panel to be Independent Expert for a term of 3 (Three) years.

8.2 Duties and Functions

8.2.1 The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule VII** to this Concession Agreement.

8.2.2 The Independent Expert shall submit regular periodic reports (at least once every month) to the GoUP on the progress of the construction of the Institutes during the Construction Phase and thereafter on the functioning, operation and maintenance of the Institutes by the Concessionaire during the Operation Phase.

8.3 Remuneration

8.3.1 The remuneration, cost and expenses of the Independent Expert shall be shared equally by the Concessionaire and GoUP. One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the GoUP within 15 (Fifteen) days of receiving a statement of invoice and expenditure from the Independent Expert/ GoUP .

8.4 Termination of appointment

8.4.1 GoUP may terminate the appointment of the Independent Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 8.1 herein above.

8.5 Authorised signatories

8.5.1 The GoUP shall require the Independent Expert to designate and notify to the GoUP and the Concessionaire up to 2 (Two) persons employed in its firm to sign for and on behalf of the Independent Expert, and any communication or document required to be signed by the Independent Expert shall be valid and effective only if signed by any of the designated persons; provided that the Independent Expert may, by notice in writing, substitute any of the designated persons by any other of its employees.

8.6 Dispute resolution

8.6.1 If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure as provided in Article 24 to this Concession Agreement.

ARTICLE 9

OBLIGATIONS OF THE PARTIES

9.1 Obligations of GoUP:

The GoUP, in addition to and without prejudice to its rights specified in the other provisions of this Concession Agreement, shall, without qualification, during the Concession Period, observe and comply with the following obligations:

- (a) the GoUP shall at its own cost, be responsible for giving full and peaceful possession of the Project Site to the Concessionaire unless extended further, within a period of 6 (Six) months from the Execution Date;
- (b) upon request from the Concessionaire, the GoUP shall facilitate in procuring all Applicable Approvals which are necessary for the implementation of the Project at the appropriate stages of the Project and which are in its authority to grant or cause to be granted subject to the Concessionaire complying with the eligibility criteria or conditions, as the case may be, for such Applicable Approvals; GoUP shall facilitate the process of procuring such Applicable Approvals from the Statutory Authority and give permission and recognition to such courses designed for ITI and Polytechnic level upon the

Concessionaire obtaining a 'no objection certificate' from the Department of Vocational and Technical Education, GoUP prior to introducing such courses;

- (c) set up /establish the Fee Approval Committee or Alternate Instrumentality who shall determine and/or revise the Academic Fee to be levied, charged, collected by the Concessionaire and in doing the Fee Approval Committee or Alternate Instrumentality shall be guided by the principles that (i) while restraining profiteering the Concessionaire shall be allowed a reasonable rate of return on his investments and (ii) revision in Academic Fee shall be on the basis of quality and content of courses and employability of students;
- (d) provide annual Grant if any, quoted by the Concessionaire in its Financial Bid document;
- (e) in the event of a Change in Law, wherein such change has a Material Adverse Effect, the Concessionaire may by notice in writing to the GoUP request the GoUP to make such modifications to the terms of this Concession Agreement as the Concessionaire reasonably believes are necessary to place the Concessionaire in substantially the same legal and economic position as it was prior to such Change in Law and the GoUP may make best endeavours to put in effect such reasonable request of the Concessionaire.
- (f) issue government orders or gazette notifications if necessary, for implementing the Project;

9.2 Obligations of the Concessionaire

The Concessionaire, in addition and without prejudice to its rights specified in the other provisions of this Agreement, shall, during the Concession Period, including extension thereof, without qualification, observe and comply with the following obligations:

- (a) take over possession of the Project Site from the GoUP, provided, however, it has furnished the Construction Phase Performance Security in accordance with the provision of Article 4 above;
- (b) make or cause to be made the necessary applications to the relevant Statutory Authority for all Applicable Approvals and supply the appropriate particulars and details to such Statutory Authority as may be necessary confirming that the Concessionaire fulfils the eligibility criteria or the conditions, as the case may be, to enable the concerned Statutory Authority to consider the request for the grant of the relevant Applicable Approval and, following the grant of any such Applicable Approval, maintain such

Applicable Approval in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder;

- (c) design, finance, build or construct the infrastructure and buildings for the Institutes itself or appoint construction Contractor(s) and enter into construction agreement(s). The Concessionaire shall build and construct a structure as per the Drawings submitted by the Concessionaire and approved by GoUP;
- (d) not assign, transfer or create any lien or Encumbrance on the Project Site or any part thereof, nor transfer, lease or part possession thereof, during the Concession Period;
- (e) levy and charge the Academic Fees as determined by the Fee Approval Committee or Alternate Instrumentality and follow the procedure specified in sub-clause 14.2 to this Concession Agreement;
- (f) undertake and discharge successfully all the liabilities relating to salaries and operational expenses of the Institutes ;
- (g) appoint the Staff & Faculty in accordance with the norms prevailing in the sector and as per the Applicable Laws, if any;
- (h) report to the GoUP during the Construction Phase and Operations Phase as detailed in Article 13 such reports as detailed in clause 13.2 and 13.3, respectively of this Concession Agreement . Such reports should provide the information as is reasonably required to keep the GoUP properly informed of material matters relating to the construction, finance, operation and management of the Institutes.
- (i) achieve Construction Completion of Institutes not later than 24 months from the Effective Date provided that the Concessionaire shall not be in breach of this sub-clause , if any non-fulfillment or delay in fulfillment of its obligations herein are caused by (i) the occurrence of an event of Force Majeure in accordance with Article 18 hereof or (ii) GoUP Event of Default;
- (j) commence Academic Sessions of the Institutes not later than the 24 (Twenty Four) months from the Effective Date . However, if the Concessionaire desires, he may start the classes before aforesaid period by obtaining a Provisional Permission and the requisite Applicable Approvals;
- (k) make adequate standby and backup arrangements for meeting the power requirements for the operation and maintenance of the Project;

- (l) provide the basic amenities such as water supply, canteen facilities, library, etc. and meet the Minimum Technical Specifications stipulated in **Schedule VI** to this Concession Agreement;
- (m) make timely payment of the annual Concession Fee of an amount of Rs. [.] per Institute per annum to the GoUP on or before 15th day of April every year;
- (n) not to transfer or dispose off or otherwise alienate any of the Assets, if any, of the Institutes without the prior written approval of the GoUP. Also, not to transfer or dispose off or otherwise alienate any of assets acquired or developed for the Institutes by the Concessionaire from the funds generated through the functioning of the Institutes;
- (o) maintain the assets, buildings and infrastructure of the Institutes in accordance with the norms prescribed by the Statutory Authority and Good Industry Practices with the objective of providing adequate service standards to the students;
- (p) hand over to GoUP at the end of the Concession Period the Institutes along with the Project Site and any other Assets if created by the Concessionaire on the premises of the Institutes, at zero value in fair condition, subject to normal wear and tear, and without any Encumbrance or liability of any sort created on the same by the Concessionaire;
- (q) allow representatives of GoUP reasonable access to the premises of the Institutes but so as not to interfere unreasonably in the construction, operation and maintenance of the Institutes;
- (r) subject to the provisions of Article 18 i.e. Force Majeure, not abandon the Project;
- (s) provide a security and watch and ward service at the Institutes to maintain the safety and security of the life and property and make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies;
- (t) maintain the requisite insurance on the Project, as specified in this Concession Agreement and/or by GoUP from time to time and provide copies of the same to the GoUP. In case GoUP finds that the Project is not being adequately insured by the Concessionaire, then it shall, at its own discretion, procure the same and receive the costs associated for taking such insurance from the Concessionaire within _____ days of raising of such invoice;

- (u) upon the termination of the Concession Period hand over the Institutes along with Project Site and Assets to GoUP at zero value;
- (v) promptly notify the GoUP and hand over to them any archaeological finds, treasures and precious and semi-precious minerals discovered on the Project Site of the Institutes by the Concessionaire or its employees, agents and Contractors;
- (w) carry Academic Related Activity with the prior approval of the GoUP;
- (x) accept, adhere to and apply the GoUP standards for entrance examination such as the Joint Entrance Examination Council (JEEC) of the GoUP or the GoI, and the admission and reservation policies (both for students and employees);
- (y) adhere and apply the GoUP norms and policies in force for the students of the SC/ST and any other category, during the Concession Period.

9.3 Obligations of the Parties

Each Party shall:

- (a) comply with and perform its respective obligations under this Concession Agreement and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party;
- (b) agree that the title to and ownership of the Institutes along with the Project Site and Assets developed by the Concessionaire during the Concession Period shall at all times vest in GoUP and shall not under any circumstance whatsoever pass over or be deemed to have passed over to the Concessionaire or Persons claiming by, under or through the Concessionaire and shall be handed over at zero value to the GoUP upon the expiry of the Concession Period or prior termination of the Concession Agreement.
- (c) The Concessionaire shall submit the tentative names for the Institutes the GoUP for approval. The name of the Institution, if suggested by the Concessionaire, the same should not be inconsistent with the Emblems and Names (Prevention of Improper Use) Act or any Applicable Laws. Further such a name should not be derogatory to any religion, cast, creed, customs etc and should not be in violation of anybody's intellectual property right. With respect to the aforesaid, the Concessionaire will be solely responsible for any liability and consequences arising out of disputes, if any. However, GoUP

reserves the right to withdraw this benefit if the name jeopardizes National/State/Society/general public interest;

- (d) agree that the Concessionaire shall be allowed to enhance the revenue stream from sources such as job work from industries etc., provided it is necessary for imparting training to the students and other such work of similar nature. However, the job work should not in any way hamper the functioning and learning of the students in the Institutes;
- (e) agree that the Concessionaire shall carry the Academic Related Activities as follows:
 - (i) the Concessionaire may carry in the campus of the Institute, Academic Related Activities including but not limited to industry-interaction cells, industry incubation centre, training related workshops, industry consultancy, book stores selling books relating to academic curriculum, etc. which will generate revenue for the Institute. Provided such Academic Related Activities should be related to technical education and primarily shall be meant for welfare and skill enhancement of students enrolled with the Institutes;
 - (ii) the Concessionaire shall conduct courses for the industry sponsored students/ employees, in-service programs, industry interaction cells, training related workshops etc. with the objective to optimize utilization of resources in a manner that the students enrolled in the Institutes are not adversely affected. The Concessionaire may have the flexibility in deciding the curriculum of the courses that will cater to the students enrolled and sponsored by the industry provided a prior approval of the Statutory Authority, if necessary, is sought by the Concessionaire;
 - (iii) all revenue generated out of the Academic Related Activities shall be ploughed back in the Institutes for running and operation of the Institute by the Concessionaire;
 - (iv) the Concessionaire shall by giving one month prior intimation to GoUP conduct any Academic Related Activities in the campus premises of the Institutes provided that such Academic Related Activities are legally permissible and comply with the Applicable Laws and that the Concessionaire has obtained all the necessary permissions, approvals, and licenses as may be required under the Applicable Laws to operate such Academic Related Activities. However, the Concessionaire shall in every such instance intimate GoUP of its intention to start such Academic Related Activity, one month

prior to commencement of such activities and GoUP shall not unreasonably decline or deny permission for running such Academic Related Activities;

- (v) if during the said one month period, GoUP objects with sufficient reason to such Academic Related Activities, the Concessionaire shall carry discussions with the Department of Vocational and Technical Education, GoUP and put forth its case and justify introduction of such Academic Related Activity in the campus premises of Institutes . Such discussions may be carried for a period not more than 6 (six) months and in the event GoUP does not grant permission to carry the concerned Academic Related Activity within such 6 (six) month period, the Concessionaire shall be bound to carry out the modifications, alterations, changes if any, suggested by GoUP or stop such Academic Related Activities, as per the instructions of GoUP;
- (vi) the Concessionaire shall not allocate more than 15% of the seats /student intake for NRI /management quota seats.

9.4 Obligations of the Lead Member & Other Members of the Consortium

9.4.1 Maintaining the requisite stake and voting rights in Concessionaire

- (a) It is agreed that the Lead Member of the Consortium shall at all times during the Concession Period, hold and maintain at least 51% control and voting rights in the Concessionaire and the Other Members of the Consortium shall at all times during the Concession Period, hold and maintain at least 11% control and voting rights in the Concessionaire.
- (b) The Lead Member holding at least 51% control and voting rights in the Concessionaire may be substituted/replace by another Lead Member who is at least equal or better than the original Lead Member in terms of the Financial Capacity and Technical Capacity as sought by GoUP in the RFQ cum RFP. However, in case of Lead Member such substitution / replacement shall be made only after 5 (Five) years from the Completion and Operations Date. Approval for change in the Consortium shall be required to be obtained in writing and shall be solely at the discretion of GoUP.
- (c) The Other Members of the Consortium holding at least 11% control and voting rights in the Concessionaire may be substituted/ replaced by a new member who is at least equal or better than the original Member and such substitution/replacement shall be permitted only after 3 years from the Completion and Operation Date. Approval for change in the Consortium shall be required to be obtained in writing and shall be solely at the discretion of GoUP.

Provided that the new Consortium Members replacing the Lead Member and Other Members, shall meet the Technical Capacity and Financial Capacity prescribed by GoUP for the Consortium Members in the RFQ cum RFP.

Provided that the new Lead Member and/or Other Member replacing the original Lead Member and/or Other Member should not have been an applicant and/or member of any other Consortium bidding for this Project.

Provided further that such new Lead Member and/or Other Members expressly and in entirety adopt the constitution documents and/or by-laws, obligations and duties of the Concessionaire under this Concession Agreement, as if it were a original Bidder under the Consortium.

- (d) The Concessionaire may be allowed tie ups with third parties having requisite experience and expertise to implement the Project with the prior approval of the GoUP. However such tie ups shall not absolve the Concessionaire from its obligations and duties under this Concession Agreement and the Concessionaire shall be solely responsible for the implementation of the Project.
- (e) Notwithstanding anything contained herein above, substitution/ replacement of the Lead Member and or other Members will require a prior written approval of GoUP, which shall not be unnecessarily withheld. Further until the period of 5 years from the Completion and Operation Date and before applying for such change, the Concessionaire shall have made investments, not less than an amount equal to 80% of its expected investments as per Minimum Technical Specifications specified in the RFQ cum RFP in the construction and establishment of the Institutes.

9.4.2 Obligation to nominate and appoint a Government Nominee

The Lead Member and the Other Members holding stake and voting rights in the Concessionaire shall take all the steps necessary to nominate and appoint one GoUP nominee on the board of the trustees and/or board of the members, as the case may be, of the Concessionaire till the validity of this Concession Agreement.

- 9.4.3 Failure by the Lead Member and the Other Members to fulfill their obligations under sub-clause 10.4.1 and sub-clause 10.4.2 shall constitute a Concessionaire Event of Default and the consequences specified in this Concession Agreement shall follow.

ARTICLE 10

REPRESENTATION AND WARRANTIES

10.1 Mutual Representations and Warranties

- (a) Each Party represents and warrants to the other Party that:
 - (i) in respect to the Concessionaire only, it is duly organized, validly existing and in good standing under the laws of the jurisdiction;
 - (ii) it has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
 - (iii) it has taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement;
 - (iv) this Concession Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with the terms hereof; and
 - (v) it is subject to civil and commercial law with respect to this Concession Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction.

10.2 Further Representations and Warranties of Concessionaire

- (a) The Concessionaire represents that it has sought and provided a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Concession Agreement and the enforceability of the provisions thereof; and
- (b) The Concessionaire represents and warrants that it has paid the Success Fee to the Consultants as specified in the RFQ cum RFP.

10.3 Further Representation and Warranties of GoUP

The GoUP further represents and warrants to the Concessionaire that there is no litigation, claim, demand or any proceeding pending before any authority in respect of the GoUP's title to the Project Site except as provided in **Schedule VIII** to this Concession Agreement.

ARTICLE 11

AUDITING

11.1 Requirements

- (a) The Concessionaire is required to prepare and submit various financial statements as per statutory requirements prevailing and introduced in future.
- (b) The Concessionaire shall get its financial statements and accounts audited by a Chartered Accountant enrolled on the panel of State Bank of India and its allied Banks.
- (c) The GoUP reserves the right to get the accounts related to the Project audited as and when it deems it appropriate. All expenditure towards such audit shall be borne by the Concessionaire.

ARTICLE 12

CONSTRUCTION PHASE AND OPERATIONS PHASE

12.1 Construction of the Project

- (a) The Concessionaire undertakes to incur all expenses in relation to construction of the Institutes from the Effective Date;
 - (b) The Concessionaire undertakes to design, build, construct, finance, manage, operate, maintain and transfer the Institutes at its expenses in accordance with terms of Applicable Approvals and Minimum Technical Specifications specified in **Schedule VI** to this Concession Agreement, or where not so specified, in accordance with Good Industry Practices;
- (c) The Concessionaire undertakes to construct the Institutes on its own or through Contractor(s). The Concessionaire shall ensure that Construction Completion of the Institutes is achieved not later than 24 (Twenty Four) months from the Effective Date, unless the GoUP may in its sole discretion further extend the aforesaid period of 24 (Twenty Four) months respectively, if the Concessionaire requests GoUP to do so and if it deems fit and proper. Provided that any such extension shall not be granted more than once by GoUP and term for extension shall not exceed 3 months (“Cure Period”).

Provided that for each month of the Cure Period, GoUP shall forfeit 10% of the Construction Phase Performance Security for delay in achieving Construction Completion and at the same time replenish the forfeited 10% of Construction Phase Performance Security by furnishing an equivalent Bank Guarantee within 7 days immediately following the month /period of delay in achieving the Construction Completion. Failure to replenish the Construction Phase Performance Security within the time period stipulated above, shall result in Concessionaire Event of Default. Notwithstanding anything contained in this Concession Agreement, failure to achieve Construction Completion within the Cure Period shall result in a Concessionaire Event of Default under this Concession Agreement;

- (d) The Concessionaire may prior to achieving Construction Completion of the Institutes approach the GoUP for grant of Provisional Permission to start course(s) in the Institutes. The GoUP may grant such Provisional Permission that shall be valid for a period of 1 (One) year from the date of Provisional Permission, subject to the Concessionaire meeting the following conditions:
 - (i) the Concessionaire has applied and obtained the Approved Approvals from the concerned Statutory Authority and/or GoUP, as the case may be, to start such course;
 - (ii) the Concessionaire has made investments of at least 30% from its expected investments as per Minimum Technical Specifications specified in the RFQ cum RFP for each Institute;
 - (iii) the Concessionaire has appointed 30% of Staff and Faculty (out of the total requirement as specified in the Minimum Technical Specifications), in the concerned Institute for which the Concessionaire is seeking a Provisional Permission. Provided that at least 50% of such new Staff and Faculty shall be teaching Faculty, employed on full time basis, and the remaining 50% shall be non-teaching/technical Staff;

However, the Provisional Permission shall not be valid beyond the COD.

- (e) The Concessionaire shall ensure that the construction shall comprise only materials and goods which shall be of sound quality and which shall have been manufactured and prepared and all workmanship shall be in accordance with Good Industry Practices and that each part of the works shall be fit for the purpose for which it is required as stated in or as may be reasonably inferred from the plans;

- (f) The Concessionaire acknowledges that all debris and construction and building materials (sand, gravel, stone, rock, loose earth etc.) lying or generated during Construction Phase of the Institutes shall be the property of the GoUP, however the Concessionaire shall dispose of at its cost such debris and construction and building materials in accordance with the written instructions issued by the GoUP from time to time, provided in doing so the Concessionaire shall not be put in adverse position;
- (g) When the Concessionaire reasonably believes that Construction Completion has been achieved, the Concessionaire shall so notify the GoUP and the Independent Expert in writing. Such notice will set out the date and time and place, where the inspection for Construction Completion may be carried out by the Independent Expert. However, such date for inspection shall not be earlier than 7 days following the date of such notice. All costs relating to such inspection shall be borne by the Concessionaire. The authorized representatives of GoUP, Independent Expert and Concessionaire shall have the right to attend such inspection and assessment;
- (h) On issuance of the 100% Construction Completion of the Institutes the Concessionaire shall commence the operations of the Institutes and such date shall be the Completion and Operations Date.

12.2 Operations Phase – Operation and Management of the Institutes

- (a) The Concessionaire would undertake the management of the Institutes at its cost and in compliance with Good Industry Practices and the terms and conditions hereof, including the Minimum Technical Specifications and, provided the Concessionaire shall be obliged to take prior written consent of the GoUP in the form of an affirmative vote of the GoUP nominee appointed on the board of the Concessionaire, before carrying out any change in the functioning, management and operation process of the Institutes;
- (b) The Concessionaire may appoint a Person meeting the criteria specified in the **Schedule V** to this Concession Agreement as the Franchisee to operate and maintain the Institutes. However, the Concessionaire shall not be absolved of its responsibilities and duties in case of appointment of a Franchisee and the GoUP nominee shall at all times during the Concession Period be appointed on the board of the Concessionaire;
- (c) The Concessionaire, shall at all times at its own cost and expense maintain, keep in good operating condition, repair and renew, replace and upgrade to the extent reasonably necessary the buildings, equipments, infrastructure

facilities and systems. All maintenance, repair and works shall be carried out in such a way as to minimize inconvenience to the students, Staff and Faculty and smooth functioning of the Institute.

12.3 Personnel – Staff & Faculty

- (a) The Concessionaire shall prior to obtaining the Provisional Permission employ at least 30% of Staff & Faculty (out of the total requirement as specified in the minimum technical specifications), in the concerned Institute for which the Concessionaire is seeking a Provisional Permission. Provided that at least 50% of such new Staff & Faculty shall be teaching Faculty, employed on full time basis, and the remaining 50% shall be non-teaching/technical Staff;
- (b) The recruitment, appointment, salary and other benefits provided to the Staff & Faculty shall be as per the Applicable Laws and policies of the GoI and GoUP.
- (c) In the event the Concessionaire is required for reasons beyond its control to remove or change any key personnel, Staff & Faculty it shall do so in accordance with the Applicable Laws and shall forthwith provide as replacement another key personnel, Staff & Faculty member having qualifications acceptable as per applicable norms. However, in doing so the Concessionaire shall take into consideration that the students are not adversely affected;
- (e) The Concessionaire shall ensure that at all times during the implementation of this Project each Institute shall have a resident principal, acceptable as per applicable norms, having appropriate experience in like Institutes who shall take charge and monitor, oversee and ensure the development and management of the respective Institutes.

12.4 Labour

- (a) The Concessionaire shall provide and employ at the Institutes for the execution of the construction works such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution and implementation of the Project as per the terms of this Concession Agreement. The Concessionaire shall use its best endeavors to prevent any unlawful, riotous or disorderly conduct or behavior by or amongst its personnel and labour and the labor of its Contractors and/or Franchisee;

- (b) The Concessionaire shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments for its Staff & Faculty and costs whether direct and indirect, incidental thereto and all taxes, charges, levies, duties payable under Applicable Law arising from the respective terms and conditions of employment of its personnel and labour and the labour of its Contractors and/or Franchisee that is engaged and/or employed on or connected with the Concession Agreement under or through whatever legal relationship. The Concessionaire shall be further responsible for obtaining all necessary Applicable Approvals from the Statutory Authority and compliance with all Applicable Laws and regulations pertaining to the employment of labour.

ARTICLE 13

INFORMATION

13.1 Financial Information

The Concessionaire agrees to deliver to the GoUP, during the development and the management period, the following documents and information at the intervals described below:

- (a) annual accounts of the Concessionaire delivered within 180 days of the end of each fiscal year;
- (c) notification of any adverse material change in the financial condition of the Concessionaire or the Project promptly following such occurrence.

13.2 Construction Phase Reports

The Concessionaire shall during the Construction Phase of the Institutes, provide to the GoUP a copy of the construction schedule, and provide them monthly progress reports during the Construction Phase which shall include the following information:

Contents of Progress Report: the summary of the progress made till the date of delivery of such report and shall *inter alia* include the construction progress made as against the initial plan and reasons for deviations, if any, during such period. Report shall also mention any information or issues that shall significantly affect the construction of the Project.

13.3 Operations Phase Reports

The Concessionaire shall provide the GoUP, an annual report during the Operations Period for the Institutes, 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 the number of trainees/ students, which have been enrolled. The GoUP 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 and operations of the Institutes 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).

13.4 Additional Information

The Concessionaire agrees to provide to the GoUP such further information as the GoUP may reasonably request in order to monitor the progress and performance of the Project.

13.5 Other Information

The Concessionaire will provide the following information to the GoUP, promptly after becoming aware of it:

- (a) Force Majeure: details of any event of Force Majeure which has occurred or which is imminent and fortnightly updates with respect to it as long as it continues or is imminent;
- (b) Litigation: details of any actual, pending or threatened material litigation, arbitration, claim or labour dispute relating to the Project; and
- (c) Legislation: details of Change of any Applicable Law and change of condition of any Applicable Approvals and any fines or penalties that have or may thereby be incurred.

ARTICLE 14
ADMISSIONS, RESERVATION, SCHOLARSHIPS
&
ACADEMIC FEE

14.1 Admissions, Reservations & Scholarships

- (a) The Concessionaire shall enroll the students seeking admissions to the Institutes through the Joint Entrance Examination Council (JEEC) of GoUP, which conducts examination at the state level for pursuing studies for degree, diploma and certificate level courses, as applicable and/or modified from time to time.;
- (b) The Concessionaire shall adhere to and follow all the reservation policies (present and future) of the GoUP, GoI, Statutory Authority and/or orders of the Supreme Court of India, as applicable to the Institutes;
- (c) The examinations in the Institutes shall be conducted as per the policies of the GoUP and GoUP shall facilitate such examinations from time to time.
- (d) The Concessionaire shall not allocate more than 15% of the seats for management quota.

14.2 Levy and Appropriation of Academic Fee

The Concessionaire shall levy and charge fee(s) (the “Academic Fee”) from the students in the following manner:

(a) **Academic Fee for Institutes**

Academic Fee for the Institutes shall be determined by the Fee Approval Committee or Alternate Instrumentality, as may be finalized by GoUP. The Fee Approval Committee shall be guided by the procedure set out in 14.2 (b) below for determination of Academic Fee.

(b) **Revision in Academic Fee**

The Concessionaire may periodically revise the Academic Fee in case such a revision is approved by the Fee Approval Committee or Alternate Instrumentality. The revised Academic Fee shall be made applicable from the year subsequent to the year during which the Academic Fee was revised.

The Fee Approval Committee or Alternate Instrumentality shall be guided by then applicable norms, guidelines and policies of the GoUP, Applicable Laws and may consider the following while permitting such revision in the Academic Fee:

- (i) the total investments made and expenditure incurred by the Concessionaire;
- (ii) the quality and content of the Courses; and
- (iii) the facilities and Faculty provided for the courses;

The Academic Fee shall inter alia, include tuition fees, development & welfare charges like professional services, admission fees, library fees, building and campus maintenance and student welfare charges.

The Fee Approval Committee may allow the Concessionaire a reasonable return on his investments but will not allow the Concessionaire to indulge in profiteering.

Notwithstanding anything contained above, revision of the Academic Fee for the courses in the Institutes will be at sole discretion of the Fee Approval Committee or Alternate Instrumentality

ARTICLE 15

CONCESSION FEE

15.1 Concession Fee

- (a) In consideration for the award of the Concession under this Concession Agreement, the Concessionaire shall, with effect from the Effective Date and during the Concession Period pay to the GoUP an annual Concession Fee of Rs. [.] per Institute;
- (b) The Concession Fee shall be payable by the Concessionaire to the GoUP in advance on April 15th of each year of Academic Session and shall be deposited in the designated bank account of the GoUP details of which will be provided by GoUP to the Concessionaire from time to time;
- (c) In the event of delay up to four weeks in payment of the Concession Fee by the

Concessionaire, the Concessionaire shall be required to pay to GoUP an interest at the rate of PLR of State Bank of India prevailing on the date of the last day of the fourth week + 2% per annum. In case of delay beyond such four weeks, it shall be a Concessionaire Event of Default.

ARTICLE 16

FINANCING

16.1 Assignment & Creation of Security

- (a) The Parties agree that the Concessionaire shall not assign or charge or encumber in favour of the Lenders any right, benefit and interest under the Project Site;
- (b) The Concessionaire may with the prior consent of the GoUP create a charge or encumber in favour of the Lenders any benefit, title and interest that it has in the buildings of the Institutes constructed by the Concessionaire for the purposes of enabling financing of the Project and for securing the repayment of the monies which may become payable by the Concessionaire to the Lenders, provided that such charge shall not be for a period beyond the Concession Period. For avoidance of doubt it is clarified that, creation of such charge or Encumbrance in the buildings of the Institutes constructed by the Concessionaire shall not in any way release and absolve the Concessionaire from its obligations under the Concession Agreement and any liability arising out of such Encumbrance/lien shall be solely borne by the Concessionaire.

Notwithstanding anything contained herein above, the Concessionaire shall not mortgage, hypothecate or otherwise create Encumbrance in the buildings constructed for the Institutes in favour of any third party other than the Lenders.

16.2 Accounts of Concessionaire

The Concessionaire shall keep and maintain books of accounts for the Project in accordance with standard practices and statutory requirements consistently applied in accordance with Applicable Laws.

ARTICLE 17

TRANSFER OF PROJECT

17.1 Scope of Transfer

- (a) The Concessionaire shall at the end of the Concession Period hand over to the GoUP, the Institutes, Project Site and Assets created during the Concession Period, free and clear of any liability, charge and/or Encumbrances created or suffered by the Concessionaire after the Effective Date and before the end of Concession Period, all of the Concessionaire's right, title and interest in and to the Institutes, Project Site and Assets constructed by the Concessionaire on the Project Site. The Concessionaire shall also deliver to the GoUP on such date such operating manuals, plans, design drawings and other information as may reasonably be required by the GoUP to enable it to continue the operation of the Institutes;
- (b) All service contracts of the Concessionaire shall specify the Transfer Date & its effect. Failure to specify the Transfer Date & its effect in the service contracts shall not adversely affect GoUP and the Concessionaire shall be solely responsible for handover of the Institute along with Project Site and Assets on the Transfer Date at its own risk & cost.

17.2 Right to GoUP to choose Insurance and Contractor Warranties

- (a) The GoUP shall on the Transfer Date have the right to chose and retain all or any of the unexpired Insurance Policies, contractor warranties in relation to the Institutes. The Concessionaire shall ensure that any rights which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterparty to the Concessionaire.

17.3 Assignment of Contracts

The GoUP shall at its own discretion have the right to choose and retain on the Transfer Date all or any of the contracts, equipment contracts, supply contracts and all other contracts except service contracts with the Staff and Faculty relating to the Institutes, entered into by the Concessionaire and subsisting as on the Transfer Date;

17.4 Condition of the Facility upon Transfer

On the Transfer Date the Institutes shall be in fair, usable/habitable and in a state of good working conditions as per Good Industry Practices, subject to

normal wear and tear, having regard for the nature, construction and life span of the asset.

17.5 Passing of Risk

Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Institutes, Project Site and the Assets created by the Concessionaire during the Concession Period. On and from the Transfer Date all risks except risks arising out of service contracts, if any, in relation to the transferred Institutes, Project Site and the Assets created by the Concessionaire during the Concession Period shall be deemed to have been transferred to and lie with the GoUP.

17.6 Transfer Costs

- (a) The Concessionaire shall transfer the Project Site, Institutes along with all the assets, to the GoUP free of cost and consideration & without any charge, Encumbrance, liability or obligation passing on and as per terms of this Concession Agreement;
- (b) The Concessionaire shall be responsible for the costs and expenses, including stamp duties, taxes, legal fee and expenses incurred in connection with the transfer of the Institutes. The Concessionaire hereby undertakes to indemnify the GoUP against any liability arising out of any non-payment of tax liability till the Transfer Date that may be sought to be or is imposed on a later date on GoUP by the income tax authorities, in relation to the Institutes and the assets there under.

17.7 Handing Over Procedure

- (a) Six months prior to the anticipated expiry of the Concession Period, including any extension thereof, the GoUP and the Concessionaire shall meet and agree by mutual consensus on detailed procedures for the handing over of the Institutes along with the Project Site and Assets. In the event that handing over of the Institutes, is required pursuant to Article 19 hereof, the Parties shall meet to agree on such procedures as soon as possible and in any event within 3 days of either Party giving notice to the other Party requesting such meeting. At the time of such meeting, the Concessionaire shall submit a detailed list of the structures, equipment, Assets created by the Concessionaire and to be handed over and the names of its representatives in charge of the transfer, and the GoUP shall inform the Concessionaire of the identity of its representatives in charge of the handing over procedure;

- (b) During the six month period prior to the anticipated handing over of the Institutes the Concessionaire shall provide such training services to the representatives and employees of the GoUP as may be reasonably necessary for them to operate and maintain the Institutes efficiently and safely following such transfer;
- (c) During the period commencing on the date of transfer of the Institutes together with the Project Site and Assets created till the Transfer Date and date falling twelve months after such Transfer Date, the Concessionaire shall be liable to the GoUP for all costs, expenses and damages suffered or incurred by the GoUP (but excluding indirect or special losses and loss of profit) that are directly caused by a failure of the Concessionaire to maintain the Institutes, Project Site and the Assets created by the Concessionaire till the Transfer Date as provided for under this Concession Agreement. Any claim for payment by the GoUP pursuant to this sub-clause shall be submitted to the Concessionaire no later than 30 days following expiry of such 6 (Six) months. The Concessionaire shall make a payment of any such claim properly made within ten days of receipt of such claim;
- (d) The Operating Phase Performance Security shall constitute security for the Concessionaire's obligations under sub-clause (c) which amount may be redeemed to pay any liability to the GoUP under sub-clause (c) or otherwise only if the Concessionaire has no further liability under sub-clause (c) above;

Notwithstanding anything contained in this Concession Agreement, in the event the Parties do not go through the Transfer Procedure, GoUP shall suo moto re-enter the Project Site and take possession of the Institutes and Assets created by the Concessionaire on the Project Site .

17.8 Effect of Transfer

- (a) on the Transfer Date the Concessionaire shall hand over full and peaceful possession, of the Institutes to the GoUP and the Concessionaire, its Contractors, sub-contractors, agents, employees appointed by the Concessionaire shall vacate the Institutes, the Project Site, Assets if any, constructed on the Project Site of the Institutes;
- (b) From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement except in respect of those outlined in Clauses 17.7 (c) and (d) hereinabove shall terminate vis-à-vis the GoUP and the GoUP shall take over the Institutes and its operation and

maintenance and any other rights or obligations arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement.

17.10 Deemed Transfer

Notwithstanding anything contained in this Concession Agreement, failure of the Concessionaire to

- (i) handover the physical possession of the Institutes along with the Project Site and any other Assets created by the Concessionaire on the Project Site ; and
- (ii) execute a relinquishment deed stating that the Concessionaire shall have no claim on the Institutes along with the Project Site, Assets if any created by the Concessionaire on the Project Site .

shall not adversely affect the transfer of the Institutes along with Project Site and Assets created by the Concessionaire to the GoUP

Notwithstanding anything contained above, on the end of the Concession Period the Institutes along with the Project Site and Assets created by the Concessionaire shall be deemed to have reverted to GoUP on the expiry of the Concession Period or on the date of termination of this Concession Agreement, as the case may be, and from such date GoUP shall be deemed to have assumed full ownership/ charge over such Institutes without any liability and/or Encumbrance, whatsoever.

ARTICLE 18

FORCE MAJEURE

18.1 Force Majeure

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in sub-clauses 18.2, 18.3 and 18.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

18.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the site of the Institute);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services and/or the construction, operation and maintenance of the Institutes for a continuous period of 24 (twenty four) hours and an aggregate period, exceeding 30 (thirty) days in a financial year, and not being an Indirect Political Event set forth in Clause 18.3;
- (c) any judgement 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 GoUP;
- (d) the discovery of geological conditions, toxic contamination or archaeological remains on the premises of the Institutes that could not reasonably have been expected to be discovered through inspection; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

18.3 Indirect Political Event

An Indirect Political Event shall mean an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents operation of the Institutes by the Concessionaire for period exceeding a continuous period of 30 (thirty) days in a financial year.

18.4 Political Event

A Political Event shall mean one or more of the following acts or events by GoUP or GoI:

- (a) compulsory acquisition in national interest or expropriation of the Project Site Assets, if any created by the Concessionaire under the Project or rights of the Concessionaire;
- (b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Concession Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; or
- (c) any event or circumstance of a nature analogous to any of the foregoing.

18.5 Duty to report Force Majeure Event

18.5.1 Upon occurrence of a Force Majeure Event, the Affected Party 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 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.

18.5.2 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 not later than 7 (Seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

18.5.3 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 sub-clause

18.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

18.6 Effect of Force Majeure Event on the Concession

18.6.1 The Concessionaire shall be eligible for extensions as provided hereunder only on the occurrence of Force Majeure Events not resulting in Termination, with respect to the Project.

- (a) at any time after the Effective Date, if any Force Majeure Event occurs:
 - (i) before COD, the Concession Period and the Construction Phase shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (ii) after COD, whereupon the Concessionaire is unable to operate and maintain the Institutes and to collect the Academic Fees despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Academic Fee on account thereof.

18.7 Save and except as expressly provided in this Article 18, 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.

18.8 Notwithstanding anything contained in this Article 18, each Force Majeure Event shall be limited and restricted to the particular Institute whose operations are being affected on account of such Force Majeure Event and shall not be extended to the other Institutes being established under the Project by the Concessionaire. Also, the extension in the Concession Period shall be enjoyed only for the Institution affected by the Force Majeure Event and the Concessionaire shall not have the right to operate any other Institution except the one concerned during such extended Concession Period.

18.9 Minor Force Majeure Event

Any Force Majeure Event subsisting for a period between 7 days and 30 days shall be considered as minor Force Majeure Event and no time extension shall be granted.

18.10 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a continuous period of 365 (three hundred and sixty five) days, GoUP may in its discretion terminate this Concession Agreement by issuing a Termination Notice to the Concessionaire without being liable in any manner whatsoever, save as provided in this Article 18, and upon issue of such Termination Notice, this Concession Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith, provided that before issuing such Termination Notice, the GoUP shall inform the Concessionaire of such intention and grant 30 (thirty) 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.

ARTICLE 19

EVENTS OF DEFAULT

19.1 GoUP Event of Default

- (a) Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, shall be considered for the purposes of this Concession Agreement as events of default of the GoUP (“the GoUP Event of Default”) which, if not cured within the time period permitted, if any, shall provide the Concessionaire with the right to terminate this Concession Agreement in accordance with Article 19 hereof:
 - (i) Failure of GoUP to hand over physical possession of the Project Site beyond the extended 3 (Three) month period;
 - (ii) a Material Breach by GoUP of its obligations under this Concession Agreement which is not remedied within 90 days of receipt of written notice from the Concessionaire specifying such breach and requiring the GoUP to remedy the same;
 - (iii) a breach of any express representation or warranty by the GoUP which has a Material Adverse Effect and such breach is not remedied within 90 (Ninety) days of receipt of written notice from the Concessionaire specifying such breach and requiring the GoUP to remedy the same.

19.2 Concessionaire Event of Default

- (a) Each of the following events or circumstances, to the extent not caused by a default of the GoUP or Force Majeure, shall be considered for the purposes of this Concession Agreement as Events of Default of the Concessionaire (“**Concessionaire Event of Default**”) which, if not cured within the time period permitted, if any, shall provide the GoUP, with the right to terminate this Concession Agreement in accordance with Article 19 hereof:
 - (i) a Material Breach of its obligations under the Concession Agreement which has a Materially Adversely Effect on the GoUP or the Project and such breach is not remedied within 90 (Ninety) days of receipt of written notice from GoUP specifying such breach and requiring the Concessionaire to remedy the same;
 - (ii) such events as have been specified as Concessionaire Events of Default under the provisions of the Concession Agreement;
 - (iii) subject to the provisions of clause 5.1.2 to this Concession Agreement failure to take possession of the Project Site within 45 days of intimation from the GoUP regarding handing over the possession of the Project Site;
 - (iv) a breach of any express representation or warranty by the Concessionaire which has a Material Adverse Effect and such breach is not remedied within 90 (Ninety) days of receipt of written notice from the GoUP specifying such breach and requiring the Concessionaire to remedy the same;
 - (v) any actions or omissions attributable to Concessionaire, including delay on the part of the Concessionaire to discharge any of its obligations, that has a Material Adverse Effect on the implementation of the Project;
 - (vi) failure of the Concessionaire to achieve Construction Completion of the Institutes within 24 (Twenty Four) months from the Effective Date or such further extensions as may be granted by the GoUP ;
 - (vii) dissolution of the Concessionaire pursuant to Applicable Law, except for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Concessionaire under this Concession Agreement and provided further that such resulting entity expressly assumes all such obligations;
 - (viii) declaration of insolvency or the appointment of a liquidator in a proceeding for dissolution of the Concessionaire after lawful notification and due hearing,

which declaration or appointment has not been set aside within 60 (Sixty) days thereof;

- (ix) failure of the Lead Member and other Members holding stake and voting rights in the Concessionaire to discharge and fulfill their obligations;
- (x) failure of the Lead Member and other Members holding stake and voting rights in the Concessionaire to nominate and appoint the GoUP nominee on the board of the Concessionaire;
- (xi) abandonment of the Project by the Concessionaire;
- (xii) the GoUP notifies the Concessionaire of a material failure by the Concessionaire or its employees or agents or Contractor(s) to upgrade and manage the Project in accordance with the terms and conditions of this Concession Agreement and further issues a notification to the Concessionaire of the failure to remedy such non-compliance within the time frame as may reasonably have been specified for rectifying the same; and
- (xiii) if there is a change in the rights of ownership of the Concessionaire or in the powers of any trustee/member of the governing body to direct the management or the policies of the Concessionaire where such change would be reasonably likely to have a Material Adverse Effect on the ability of the Concessionaire to comply in all material respects with its obligation under this Concession Agreement;
- (iv) de-affiliation of a particular course by any Statuary Authority that will have adverse effect on students/trainees, during the Concession Period, unless due to an event of Force Majeure.
- (b) During the Concessionaire Event of Default the GoUP's obligations under this Concession Agreement shall be suspended and the GoUP shall have no liability hereunder during any of the foregoing Cure Periods while the relevant event remains uncured.

19.3 Step in Rights to Lenders

- (a) The Concessionaire and GoUP agree that in case the Concessionaire is in default under the Financing Agreements, the Lenders may approach GoUP to replace the Concessionaire with a Substitute Entity for carrying out the construction, operation, maintenance and transfer of the Institutes and implementing the Project. Provided that GoUP may appoint such Substitute Entity only if such recommended Substitute Entity meets all the eligibility

criteria specified in the RFQ cum RFP and this Concession Agreement. Further the Substitute Entity shall undertake to execute a Substitution Agreement with the GoUP and the Lenders to discharge all the obligations of the Concessionaire under this Concession Agreement and the Financing Agreements;

- (b) Upon the appointment of the Substitute Entity by GoUP, this Concession Agreement shall stand terminated and the Concessionaire shall execute a novation deed in favour of the Substitute Entity to discharge the obligations under this Concession Agreement and the Project Agreements related thereto.
- (c) From the date of such novation, the Substitute Entity shall enjoy the rights of “_____” (**Concessionaire**) under this Concession Agreement and the Project Agreements and shall be liable to discharge and perform all liabilities and obligations of “_____” (**Concessionaire**) under this Concession Agreement and the Project Agreements.
- (d) The Concessionaire shall hand over the peaceful possession of the Project Site to the GoUP and GoUP shall hand over the possession of the Project Site to the Substitute Entity.
- (e) GoUP shall be entitled to terminate this Concession Agreement if the Substitute Entity commits a Material Breach of its obligations under this Concession Agreement after its appointment as a Substitute Entity.

ARTICLE 20

TERMINATION

20.1 Termination by GoUP for Concessionaires Event of Default

In the event the GoUP terminates this Concession Agreement for a Concessionaires Event of Default, the Concessionaire shall subject to sub-clause 19.2 transfer and hand over the Institutes, the Project Site, buildings, and any other assets created by the Concessionaire to the GoUP in accordance with Article 17. However, the GoUP shall not be obliged to compensate the Concessionaire in any manner and form for the construction and establishment of the Institutes on the Project Site under the Project.

20.2 Transfer of Institutes, Project Site and Assets upon Termination

- (a) In the event the Concessionaire Event of Default occurs prior to the Construction Phase and GoUP terminates the Concession Agreement, the Concessionaire shall forthwith transfer and hand over the Project Site to GoUP;
- (b) In the event the Concessionaire Event of Default occurs after the Construction Phase and GoUP terminates this Concession Agreement, the Concessionaire shall forthwith but not later than 60 (Sixty) days from the termination notice transfer and hand over all the Institutes, Project Site and Assets created by the Concessionaire to the GoUP;

20.3 Distribution of Insurance Proceeds upon Termination

Whenever this Concession Agreement is terminated following a Force Majeure event and insurance proceeds are available in connection with the Insurance Policies to which the Concessionaire is entitled or should be entitled pursuant to this Concession Agreement with respect to the Project, such proceeds shall, if not used to effect a restoration or make repairs to the Project, shall be distributed first to clearing any outstanding dues whatsoever of the Concessionaire to the GoUP, then to the payment towards indebtedness (actual or contingent) owing to the Lenders and lastly to the Concessionaire.

20.4 Survival of obligations

- (a) Notwithstanding anything to the contrary contained in this Concession Agreement any termination pursuant to the provisions of this Concession 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 obligations of Concessionaire under this Agreement, shall survive the termination to the extent such survival is necessary for giving effect to such obligations;
- (b) Upon termination for any reason whatsoever the Concessionaire shall not claim any right of Permanent Grantee in respect of Institutes, Project Site Assets if any, created by the Concessionaire on the Project Site.

20.5 Termination by Concessionaire for GoUP event of default

- (a) In case of GoUP Event of Default, the Concessionaire may terminate this Concession Agreement, by giving a prior written notice of 90 (Ninety) days to the GoUP expressing its intention to terminate this Concession Agreement.
- (b) In case of termination of the Concession Agreement in accordance to sub-clause (a) above, the Concessionaire, shall forthwith transfer and hand over the peaceful possession of the Institutes, together with Project Site and Assets created by the Concessionaire to the GoUP without any Encumbrances or lien at zero value.

ARTICLE 21

LIABILITY AND INDEMNIFICATION

21.1 Liability to Third Parties

- (a) A Party shall promptly inform the other Party of any claims or proceedings or anticipated claims or proceedings against the other Party and in respect of which the other Party is entitled to be indemnified under this Article 21 as soon as a Party becomes aware of the same. Each Party shall give reasonable assistance to the other in defending such claims and the Party giving such assistance shall be entitled to be indemnified to the extent of the costs incurred by it in this regard;
- (b) None of the Parties shall permit any claim or proceedings referred to in sub-clause (a) above to be settled without the prior written consent of the other Party;
- (c) The GoUP shall not be liable in any manner whatsoever for the obligations and liabilities incurred by the Concessionaire for the Institutes during the Concession Period and for the Concessionaire's contracts with Third Parties.

21.2 Indemnification

The Concessionaire shall indemnify, defend and hold harmless the GoUP during and after the term of this Concession Agreement from and against all liabilities, damages, losses, expenses, deaths, demands, actions, proceedings, costs and claims of any nature whatsoever, including without limitation legal

fee and expenses, suffered by the GoUP or any Third Party as a result of or arising out of or in any way connected with the acts, omissions, negligence, nuisance, breach of this Concession Agreement and failure to perform obligations hereunder of or by the Concessionaire and its employees, agents, representatives and Contractors, including the use or violation of any copyright work or literary property or patented invention, article or appliance, except to the extent that such injury, damage or loss is attributable to a negligent or willful act or omission of the GoUP.

21.3 Risk and Liability

Except as expressly provided in the Concession Agreement, the Concessionaire shall carry out and perform its rights and obligations under the Concession Agreement at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to the Concession Agreement.

ARTICLE 22

INSURANCE

22.1 Coverage

- (a) The Concessionaire shall, on and from the date of taking over the possession of the Project Site if any, up to the end of Concession Period, maintain or cause to be maintained, at its own expense, the following insurance policies:
- Fire & Theft;
 - Loss or damage to Institutes, Project Site and Assets created by the Concessionaire, due to events like earthquake, floods etc.; and
 - In respect of claims for personal injury to or death of any person employed by the Concessionaire or its Contractor, subcontractors and arising out of such employment.
- (b) The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be borne by the Concessionaire.

22.2 Evidence of Insurance Coverage

The Concessionaire shall furnish to the GoUP copies of certificates of insurance in respect of the Insurance Policies referred to in clause 22.1 as soon

as reasonably practicable after they are received by the Concessionaire and from time to time shall furnish evidence to the GoUP that all premiums have been paid, and that the relevant policies remain in existence. In the event that the Concessionaire fails to maintain the Insurance Policies as required under this Concessionaire Agreement as certified by the Independent Expert, the GoUP may take such required policies and recover the costs and expenses incurred in this regard from the Concessionaire.

ARTICLE 23

INTELLECTUAL PROPERTY & CONFIDENTIALITY

23.1 Proprietary Material

- (a) The Concessionaire and the GoUP hereby grant to each other an irrevocable, royalty-free, non-exclusive license to use Proprietary Material, which have been or are hereafter written, originated, made or owned by any of them or any of their respective employees, Contractors, consultants or agents in connection with this Concession Agreement or the design, construction, operation, maintenance, insurance and financing of the Project. All Proprietary Material shall be clearly marked as such in capital letters and in bold face print;
- (b) Such license shall carry the right to use the Proprietary Material for all purposes connected with the Project; however, it shall not be transferable to any Party under this Concession Agreement.

23.2 Confidentiality

No Party shall, without the prior written consent of the other Party, at any time divulge or disclose or suffer or permit its servants or agents to divulge or disclose to any Person or use for any purpose unconnected with the Project any information which is, by its nature or is marked "Proprietary Material," concerning the other (including any information concerning the contents of this Concession Agreement) except to their respective officers, directors, employers, agents, representatives and professional advisors or as may be required by any law, rule, regulation or any judicial process for period of five years after the Transfer Date; provided, however, that a Party, with the written consent of the other Party, may issue press releases containing non-sensitive information in relation to the progress of the Project. This sub-clause 23.2 shall not apply to information:

- (a) already in the public domain, otherwise than by breach of this Concession Agreement;
- (b) already in the possession of the receiving Party before it was received from the other Party in connection with this Concession Agreement and which was not obtained under any obligation of confidentiality; and
- (c) obtained from a Third Party who is free to divulge the same and which was not obtained under any obligation of confidentiality.

ARTICLE 24

DISPUTE RESOLUTION

24.1 Amicable Settlement

In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Concession Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, the GoUP and the Concessionaire shall appoint one senior representative each, who is not involved in the day-to-day operations relating to the Project and is readily available in the vicinity of Lucknow to serve on a consultation panel and such consultation panel shall meet promptly upon the request of any member thereto or of any Party, in an effort to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives on the consultation panel. The decision of the consultation panel shall be binding upon the Parties. Each Party shall bear all the expenses of its representative. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the consultation panel. The consultation panel shall be situated at Lucknow.

- 24.2 In the event the Parties are unable to resolve any dispute, controversy, or claim in accordance with sub-clause 24.1, such dispute, controversy or claim shall be referred to arbitration, comprising of a three member arbitral tribunal, each Party appointing one arbitrator and both the arbitrators mutually appointing the third arbitrator. The process of arbitration shall be in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The seat of arbitration shall be Lucknow. The arbitration proceedings shall be conducted in English.

24.3 Performance during Dispute Resolution

Pending the submission of a dispute, controversy or claim to the consultation panel or to the arbitral tribunal, and thereafter until the final decision of the consultation panel or the arbitral tribunal, as the case may be, the Parties shall continue to perform all of their obligations under this Concession Agreement, without prejudice to a final adjustment in accordance with such decision. Further, this Concession Agreement shall remain subsisting and operative during the consultation or adjudication proceedings and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

ARTICLE 25

MISCELLANEOUS

25.1 Amendments

Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Concession Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties.

25.2 Severance of Terms

Whenever possible, each provision of this Concession Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Concession Agreement is held to be invalid, illegal or unenforceable in any respect under any Applicable Law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but this Concession Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

25.3 Language

All notices, certificates, correspondence or other communications under or in connection with this Concession Agreement shall be in English.

25.4 Notices

Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail or other means of telecommunication in permanent written

form. The addresses and numbers for service of notice shall be given to the Parties at their respective addresses set forth below:

Concessionaire : _____

The GoUP : _____

or such other address, telex number, or facsimile number as may be notified by that Party to any other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

25.5 Governing Law

This Concession Agreement shall be governed by and construed in accordance with the Laws of India and to the extent possible the courts of Uttar Pradesh shall have jurisdiction over the disputes arising between the Parties.

25.6 Original Document

This Concession Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

25.7 Relationship

Nothing in this Concession Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make or deem to be the agent of the other in any way.

25.8 Survival

The provision relating to liability and indemnification, intellectual property and confidentiality and dispute resolution contained in this Concession Agreement shall survive the termination or expiry of this Concession Agreement.

25.9 Authorized Representative

Any action required or permitted to be taken and any document required or permitted to be executed under this Concession Agreement may be taken or executed

- (a) on behalf of the Governor of Uttar Pradesh by [.]
- (b) on behalf of the Concessionaire by [.]

Each Party hereto undertakes and agrees that in case of replacement of its authorized representative, it shall notify the other Party hereinabove of its name and title at least five days prior to his taking office. In the event of default of this undertaking, all the notices, instructions, correspondences, received from or addressed to the last recorded authorized representative shall be deemed valid for all purposes.

25.10 Waiver

The failure of any Party to insist upon strict adherence to any term of the Agreement on any occasion shall not be considered a waiver of any right hereunder nor shall it deprive such Party of the right thereafter to insist upon strict adherence to that term or any other of the Agreement.

25.11 Others

Prior to executing this Concession Agreement, the Concessionaire has conducted a due diligence audit to its satisfaction in respect of the GoUP, contractual structure for implementing the Project, technical and financial feasibility of the Project, the Applicable Laws and Applicable Approvals and all matters concerning or related to the Project. The Concessionaire is entering into this Concession Agreement on the basis of its own satisfaction based on its due diligence.

IN WITNESS WHEREOF this Concession Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

For and on behalf of Governor of Uttar Pradesh

[NAME _____

[Designation] _____

Signature:

For and on behalf of CONCESSIONAIRE

[NAME] _____

[Designation] _____

Signature:

Witness 1:

[NAME] _____

[Designation] _____

Signature:

Witness 2:

[NAME] _____

[Designation] _____

Signature:

Place[: Lucknow, Uttar Pradesh]

Date: _____

SCHEDULE I

Vocational & Technical Education Department U.P.

List of 60 ITI proposed to be established in unserved blocks under state PPP scheme

Bundle-1

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|-------------|------------|--------------------------|
| 1- | Meerut | Meerut | Jano |
| | | Meerut | Kharkhauda |
| | | Baghpat | Chhaprauli |
| 2- | Shaharanpur | Saharanpur | Nangal |
| | | Saharanpur | Sadholi Karim |
| | | Saharanpur | Punwarka |

Bundle-2

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|-----------|------------|--------------------------|
| 1- | Moradabad | Moradabad | Chhajlait |
| | | J.P. Nagar | Dhanaura |
| | | J.P. Nagar | Joya |
| | | Bijnor | Kiratpur |
| | | Bijnor | Budhanpur Syohara |
| | | Rampur | Milak |

Bundle-3

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|----------|-------------------|--------------------------|
| 1- | Aligarh | Aligarh | Iglaas |
| | | Aligarh | Akrabad |
| 2- | | Etah | Ganjdundwara |
| | | Etah | Soron |
| 3- | | Etah | Patiyali |
| | | Mahamaya Nagar | Sikandra Rau |

Bundle-4

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|-------------|-------------|--------------------------|
| 1- | Bulandsahar | Bulandsahar | Lakhawati |
| | | Bulandsahar | Agauta |
| | Agra | Agra | Akola |
| 2- | | Agra | Barauli |
| | | Agra | Aheer |
| | | Agra | Fatehpur Sikri |

Bundle-5

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|----------|-----------------|--------------------------|
| 1- | Lucknow | Sitapur | Biswan |
| | | Hardoi | Shahabad |
| | | Unnao | Nawabganj |
| 2- | | Lucknow | Maal |
| | | Raebareli | Maharajganj |
| | | Lakhimpur Kheri | Dhaurahara |

Bundle-6

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|----------|----------------|--------------------------|
| 1- | Faizabad | Ambedkar Nagar | Jalalpur |
| | | Ambedkar Nagar | Katehari |
| | | Barabanki | Haidergarh |
| 2- | | Barabanki | Siddhaur |
| | | Sultanpur | Kurwar |
| | | Faizabad | Milkipur |

Bundle-7

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|-----------|-------------|--------------------------|
| 1- | Gorakhpur | Gorakhpur | Sardar Nagar |
| | | Gorakhpur | Piparaich |
| | | Deoria | Rudrapur |
| 2- | | Maharajganj | Siswan |
| | | Kushinagar | Fajil Nagar |
| | | Kushinagar | Sukrauli |

Bundle-8

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|----------|----------|--------------------------|
| 1- | Jhansi | Jhansi | Moth |
| | | Jhansi | Chirgaon |
| | | Jalaun | Rampura |
| | | Jalaun | Konch |
| | | Lalitpur | Marawra |
| | | Lalitpur | Talbehat |

Bundle-9

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|------------|------------|--------------------------|
| 1- | Chitrakoot | Hamirpur | Kurara |
| | | Mahoba | Panwari |
| | | Mahoba | Jaitpur |
| 2- | | Banda | Baberu |
| | | Banda | Mahua |
| | | Chitrakoot | Karvi |

Bundle-10

| Sl. No. | Division | Distt. | Proposed unserved blocks |
|---------|----------|----------------|--------------------------|
| 1- | Azamgarh | Azamgarh | Jahanaganj |
| | | Azamgarh | Ahiraula |
| | | Azamgarh | Martinganj |
| 2- | | Maunathbhanjan | Ghosi |
| | | Ballia | Belahari |
| | | Ballia | Chilkahar |

**List of 20 Polytechnics proposed to be established under state PPP
scheme**

| S. No | District | Preferred place |
|-------|---------------------|-----------------|
| | Bundle 1 | |
| 1 | Agra | Baah |
| 2 | Aligarh | Aligarh |
| | Bundle 2 | |
| 1 | Mathura | Kosikalan |
| 2 | Gautam Buddha Nagar | Dankaur |
| | Bundle 3 | |
| 1 | Jyotiba Phule Nagar | Gajraula |
| 2 | Moradabad | Chandausi |
| | Bundle 4 | |
| 1 | Bulandshahar | Bulandshahar |
| 2 | Ghaziabad | Hapur |
| | Bundle 5 | |
| 1 | Meerut | Mawana |
| 2 | Bijnor | Dhampur |
| | | |

| | | |
|---|------------------|------------|
| | Bundle 6 | |
| 1 | Lucknow | Malihabad |
| 2 | Raebareilly | Unchahar |
| | Bundle 7 | |
| 1 | Sitapur | Sitapur |
| 2 | Bareilly | Aonla |
| | Bundle 8 | |
| 1 | Varanasi | Pindra |
| 2 | Allahabad | Saidabad |
| | Bundle 9 | |
| 1 | Gorakhpur | Sahjanawa |
| 2 | Kushinagar | Padrauna |
| | Bundle 10 | |
| 1 | Jhansi | Mauranipur |
| 2 | Kanpur | Billor |

**List of Engineering Colleges proposed to be established under state
PPP scheme**

Bundle 1 - Bijnor

Bundle 2 – Banda (Bundelkhand)

Bundle 3 - Aazamgarh

Bundle 4 – Ambedkar Nagar

SCHEDULE II

FORM OF BANK GUARANTEE (CONSTRUCTION PHASE PERFORMANCE SECURITY)

This deed of guarantee made this day of _____ between Bank of *[SBI or any of its subsidiary or any Nationalized Bank]* (hereinafter called the “Bank”) of the one part, and Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh (hereinafter referred to as “GoUP”) of the other part.

Whereas GoUP has awarded the Concession Agreement for establishment, operation and maintenance of the Institutes, as the case may be, on PPP mode, (hereinafter called the Concession Agreement) to *[Name of the Concessionaire]* (hereinafter referred to as “the Concessionaire”).

AND WHEREAS the Concessionaire is bound by the said Concession Agreement to submit to GoUP a Construction Period Performance Security for an amount equal to Rs. _____ Lakhs per Bundle in single or multiples.

1. Now we, the undersigned _____ (Name of the Bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of _____ (Full name of Bank), hereby declare that the said Bank will guarantee the Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh, the full amount of Rs. _____ Lakhs _____ (Rupees [.] Lakhs) in form of Bank Guarantee.
2. After the Concessionaire has signed the aforementioned Concession Agreement with the GoUP, the Bank is engaged to pay Principal Secretary, Department of Vocational and Technical Education, GoUP, any amount up to and inclusive of the aforementioned full amount upon written order from Principal Secretary, Department of Vocational and Technical Education, GoUP to indemnify Principal Secretary, Department of Vocational and Technical Education, GoUP for any liability of damage resulting from any defects or shortcomings of the Concessionaire or the debts he may have incurred to any parties involved in the works under the Concession Agreement, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Principal Secretary, Department of Vocational and Technical Education, GoUP, immediately on demand without delay, without reference to the Concessionaire and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the failure in achieving the Construction Completion, the liability or damages resulting from any defects or shortcomings or debts of the Concessionaire. The Bank shall pay to Principal Secretary, Department of Vocational and Technical Education, GoUP any money so demanded notwithstanding any dispute/disputes raised by the Concessionaire in any suit or proceedings pending before any Court, Tribunal or Arbitrator/s relating thereto and the liability under this guarantee shall be absolute and unequivocal.

3. The Construction Phase Performance Security shall be valid from the Execution Date until six months after the Completion and Operations Date.
4. At any time during the period in which this Guarantee is still valid, if GoUP agrees to grant a time extension to the Concessionaire or if the Concessionaire fails to achieve Construction Completion within the time period stipulated in the Concession Agreement, or fails to discharge himself of the liability or damages or debts under the Concession Agreement, it is understood that the Bank will extend this Guarantee under the same conditions for the required time on demand by Principal Secretary, Department of Vocational and Technical Education, GoUP and any cost arising out of such extension shall be to the account of the Concessionaire.
5. The Guarantee hereinbefore contained shall not be affected by any change in the constitution of the Bank or of the Concessionaire.
6. The neglect or forbearance of GoUP in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by GoUP for the payment hereof shall in no way relieve the Bank of their liability under this deed.
7. The expressions "GoUP", "the Bank" and "Concessionaire" hereinbefore used shall include their successors in office and permitted assigns.

In witness whereof I/We of the bank have signed and sealed this Guarantee on the ----- day of ----- **2009** being herewith duly authorized.

For and on behalf of
The.....Bank.

Signature of authorized bank official
Name:.....
Designation:
Stamp/Seal of the Bank:

Signed, sealed and delivered for and on behalf of the Bank by the above named _____ in the presence of:

| | |
|------------------------------|------------------------------|
| Witness 1 Signature | Witness 2 Signature |
| Name | Name |
| Address | Address |

| | |
|--|--|
| | |
|--|--|

SCHEDULE III

FORM OF BANK GUARANTEE (OPERATION PHASE PERFORMANCE SECURITY)

FORM OF BANK GUARANTEE

This deed of guarantee made this day of _____ between Bank of *[SBI or any of its subsidiary or any Nationalized Bank]* (hereinafter called the “Bank”) of the one part, and Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh (hereinafter referred to as “GoUP”) of the other part.

Whereas GoUP has awarded the Concession Agreement for establishment, operation and maintenance of Institutes, as the case may be, on PPP mode, (hereinafter called the Concession Agreement) to *[Name of the Concessionaire]* (hereinafter referred to as “the Concessionaire”).

AND WHEREAS the Concessionaire is bound by the said Concession Agreement to submit to GoUP a Operations Period Performance Security for an amount equal to Rs. _____ Lakhs per Bundle in single or multiples.

1. Now we, the undersigned _____ (Name of the Bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of _____ (Full name of Bank), hereby declare that the said Bank will guarantee the Principal Secretary, Department of Vocational and Technical Education, GoUP, the full amount of Rs. _____ Lakhs _____ (Rupees [.] Lakhs) in form of Bank Guarantee.

2. After the Concessionaire has signed the aforementioned Concession Agreement with the GoUP, the Bank is engaged to pay Principal Secretary, Department of Vocational and Technical Education, GoUP, any amount up to and inclusive of the aforementioned full amount upon written order from Principal Secretary, Department of Vocational and Technical Education, GoUP to indemnify Principal Secretary, Department of Vocational and Technical Education, GoUP for any liability of damage resulting from any defects or shortcomings of the Concessionaire or the debts he may have incurred to any parties involved in the works under the Concession Agreement, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Principal Secretary, Department of Vocational and Technical Education, GoUP, immediately on demand without delay, without reference to the Concessionaire and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the failure to discharge his obligations in the Operations Period as per the terms of Concession Agreement , the liability or damages resulting from any defects or

shortcomings or debts of the Concessionaire. The Bank shall pay to Principal Secretary, Department of Vocational and Technical Education, GoUP any money so demanded notwithstanding any dispute/disputes raised by the Concessionaire in any suit or proceedings pending before any Court, Tribunal or Arbitrator/s relating thereto and the liability under this guarantee shall be absolute and unequivocal.

3. The Operations Period Performance Security shall be valid from the Commercial Operations Date until six months before the Concession Period.
4. The Operations Period Performance Security shall be escalated by 10% for every three years during the Concession Period.
5. At any time during the period in which this Guarantee is still valid, if GoUP agrees to grant a time extension to the Concessionaire or if the Concessionaire fails to discharge his obligations in the Operations Period as per the terms of Concession Agreement, or fails to discharge himself of the liability or damages or debts under the Concession Agreement, it is understood that the Bank will extend this Guarantee under the same conditions for the required time on demand by Principal Secretary, Department of Vocational and Technical Education, GoUP and any cost arising out of such extension shall be to the account of the Concessionaire.
6. The Guarantee hereinbefore contained shall not be affected by any change in the constitution of the Bank or of the Concessionaire.
7. The neglect or forbearance of GoUP in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by GoUP for the payment hereof shall in no way relieve the Bank of their liability under this deed.
8. The expressions "GoUP", "the Bank" and "Concessionaire" hereinbefore used shall include their successors in office and permitted assigns.

In witness whereof I/We of the bank have signed and sealed this Guarantee on the --
----- day of ----- **2009** being herewith duly authorized.

For and on behalf of

The.....Bank.

Signature of authorized bank official

Name:.....

Designation:

Stamp/Seal of the Bank:

Signed, sealed and delivered for and on behalf of the Bank by the above named _____ in the presence of:

| | |
|------------------------------|------------------------------|
| Witness 1 Signature | Witness 2 Signature |
| Name | Name |
| Address | Address |

SCHEDULE IV

FORM OF BANK GUARANTEE FOR GRANT

This deed of guarantee made this day of _____ between Bank of *[SBI or any of its subsidiary or any Nationalized Bank]* (hereinafter called the “Bank”) of the one part, and Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh (hereinafter referred to as “GoUP”) of the other part.

Whereas GoUP has awarded the Concession Agreement for establishment, operation and maintenance of the Institutes, as the case may be, on PPP mode, (hereinafter called the Concession Agreement) to *[Name of the Concessionaire]* (hereinafter referred to as “the Concessionaire”).

AND WHEREAS the Concessionaire is bound by the said Concession Agreement to submit to GoUP a Security for Grant for an amount equal to Rs. _____ Lakhs per Bundle in single or multiples.

1. Now _____ we, _____ the _____ undersigned _____ (Name of the Bank) being fully authorized to sign and to incur obligations for and on behalf of and in the name of _____ (Full name of Bank), hereby declare that the said Bank will guarantee the Principal Secretary, Department of Vocational and Technical Education, Government of Uttar Pradesh, the full amount of Rs. _____ Lakhs _____ (Rupees [.] Lakhs) in form of Bank Guarantee.
2. After the Concessionaire has drawn the aforementioned Concession Agreement with the GoUP, the Bank is engaged to pay Principal Secretary, Department of Vocational and Technical Education, GoUP, any amount up to and inclusive of the aforementioned full amount upon written order from Principal Secretary, Department of Vocational and Technical Education, GoUP to indemnify Principal Secretary, Department of Vocational and Technical Education, GoUP for any liability of damage resulting from any defects or shortcomings of the Concessionaire or the debts he may have incurred to any parties involved in the works under the Concession Agreement, whether these defects or shortcomings or debts are actual or estimated or expected. The Bank will deliver the money required by the Principal Secretary, Department of Vocational and Technical Education, GoUP, immediately on demand without delay, without reference to the Concessionaire and without the necessity of a previous notice or of judicial or administrative procedures and without it being necessary to prove to the Bank the failure in continuing the operations of the Project after receipt of Grant, the liability or damages resulting from any defects or shortcomings or debts of the Concessionaire. The Bank shall pay to Principal Secretary, Department of Vocational and Technical Education, GoUP any money so demanded notwithstanding any dispute/disputes raised by the Concessionaire in any suit or proceedings pending before any Court, Tribunal or Arbitrator/s relating thereto and the liability under this guarantee shall be absolute and unequivocal.

3. The Security for Grant shall be valid from the Commercial Operation Date for a Period of 10 Academic Sessions.
4. At any time during the period in which this Guarantee is still valid, if GoUP agrees to grant a time extension to the Concessionaire stipulated in the Concession Agreement, or fails to discharge himself of the liability or damages or debts under the Concession Agreement, it is understood that the Bank will extend this Guarantee under the same conditions for the required time on demand by Principal Secretary, Department of Vocational and Technical Education, GoUP and any cost arising out of such extension shall be to the account of the Concessionaire.
5. The Guarantee hereinbefore contained shall not be affected by any change in the constitution of the Bank or of the Concessionaire.
6. The neglect or forbearance of GoUP in enforcement of payment of any moneys, the payment whereof is intended to be hereby secured or the giving of time by GoUP for the payment hereof shall in no way relieve the Bank of their liability under this deed.
7. The expressions "GoUP", "the Bank" and "Concessionaire" hereinbefore used shall include their successors in office and permitted assigns.

In witness whereof I/We of the bank have signed and sealed this Guarantee on the --
 ----- day of ----- **2009** being herewith duly authorized.

For and on behalf of

The.....Bank.

Signature of authorized bank official

Name:.....

Designation:

Stamp/Seal of the Bank:

Signed, sealed and delivered for and on behalf of the Bank by the above
 named _____ in the presence of:

| | |
|------------------------------|------------------------------|
| Witness 1 Signature | Witness 2 Signature |
| Name | Name |
| Address | Address |

SCHEDULE V

FRANCHISEE

| Type of Institute(s) | Minimum Net Worth of the Franchisee per Institute (latest audited financials in Rs. Lacs) | Minimum Turnover of the Franchisee per Institute (latest audited financials in Rs. Lacs) |
|----------------------|--|---|
| it is | 100 | 125 |
| Polytechnics | 500 | 625 |

SCHEDULE VI
TECHNICAL SPECIFICATIONS

Minimum Technical Specifications for Technical Education Institutes

| Items | it is | Polytechnics | Engineering College |
|--|--|--|--|
| Land requirement (in acres) | 1-2 | 2-5 | 5-10 |
| Built up area | 3600 | 37,700 | 34,200 |
| Type of academic programmes | Certificate & Short Diploma | Diploma & Post Diploma | Graduate & Post Graduate |
| Affiliation and recognitions of academic programmes | SCVT/ NCVT, UP Technical Education Board | AICTE, GoUP | AICTE, UP Technical University, GoUP |
| Minimum Number of courses | 6 Engg. trades 3 Non- Engg. Trades | 4 Traditional 3 Modern areas | 6 UG 3 PG |
| Governance | Promoted by Society/ Trust | Promoted by Society/ Trust | Promoted by Society/ Trust |
| | | | Board of Management for directing academic activities |
| Norms and standards | Norms of statutory bodies such as DGET/ NCVT/ SCVT/ ILO (if any) | AICTE, GoUP | AICTE based on need for GoUP |
| Student admission | GoUP | GoUP | GoUP |
| | Joint Council of Entrance Exam ranked students | Joint Council of Entrance Exam ranked students | Joint Council of Entrance Exam ranked students, Exams of GoI (AIEEE) |

| Items | it is | Polytechnics | Engineering College |
|--|------------------------|------------------------|--|
| Total student strength (by end of 5th year) | 384 | 1680 | 1800 |
| Fee regulations | Govt. prescribed fees | Govt. prescribed fees | Govt. prescribed fees |
| | | | |
| Reservation Policy | GoUP guidelines | GoUP guidelines | GoUP guidelines |
| Faculty staff ratio | 1:20 – 1:25 | 1:19 | 1:15 |
| Courses/ Curriculum | NCVT/ DGET regulations | As prescribed by AICTE | As prescribed by AICTE |
| Faculty & support staff | 1:1.30 | 1: 1.20 | 1:1.25 |
| Estimated Capital Expenditure (as also detailed in the Financial model) | Rs.4 Cr. | Rs.20 Cr. | Engineering Institute: Rs.50 Crores |
| | | | |

SCHEDULE VII

TERMS OF REFERENCE OF INDEPENDENT EXPERT

A. Background

The Government of Uttar Pradesh is Establishing Technical Education Institutes – Engineering Colleges/ Institutes, Polytechnics and ITIs offering Graduate, Diploma and Certificate programmes respectively based on PPP mode. These institutions are being set up with the aim to offer quality technical education in the State to meet the skill needs of sector not only in India but also the global skill sets in variety of areas/ trades. These institutions are expected to meet the skill sets at levels leading to employability of youth in rural and under served areas of the state on sustainable basis.

The Technical Education Institutions and their respective bundles are as under:

| S. No. | Institutes * | Nos. | Bundles |
|--------|-------------------------------|------|---------|
| 1. | Engineering Colleges | 4 | 4 |
| 2. | Establishment of Polytechnics | 20 | 10 |
| 3. | Establishment of it is | 60 | 10 |

**Details of districts/ blocks identified for setting up Polytechnics/ ITIs/ Engineering Institutes respectively are enclosed in Annexure – A9 of RFP document.*

The Successful Bidders for each of the bundles shall be responsible for turnkey development and implementation of technical education institutions including design, development, finance, build, operate and maintenance as per the provisions of the Concession Agreement executed between the Government of Uttar Pradesh and Successful Bidders.

For establishment of these Institutions, several parameters, properties including norms and standards of the respective statutory bodies needs to be adhered. The technical specifications as per the prevailing norms shall be followed. Section 6 of RFP is indicative of the norms and standards for conducting various technical education programmes.

Broadly, the scope of the work for an Independent Engineer/ Expert shall be to conduct review, scrutiny, monitor the development of technical education Institutes considered under the scope of this project viz., design, construction, establishment of

infrastructure facilities, physical resource, human resource and academic related activities of each of the Institute, formulation of monitoring and evaluation reports for consideration and approval of the Government of Uttar Pradesh as per the agreed objectives and specified in the Concession Agreement. The specific terms of reference include as under:

B. Specific Terms of Reference

The Terms of Reference for the Independent Engineer shall include: -

(i) Physical and Infrastructure Resources for Establishment of new Institutions

- a) Assess the suitability of the land and provide inputs on the selection of land for the Institutes in respect of their appropriateness.
- b) Review the Designs and Drawings submitted by the Concessionaire to GoUP and ensure that they are in accordance/ compliance to the norms of statutory bodies and meet the development proposal submitted by the Concessionaire in their Bid/ specifications listed.
- c) Certify the Designs and Drawings indicated are suitable for the academic and academic related activities and meet the objectives for which these institutions are being set up/ established. The Independent Engineer/ Expert shall advise/ provide inputs on the Designs and Drawings to the GoUP and the Concessionaire within period stipulated for any rectification/ improvement and finalization.
- d) Independently review, monitor and where required as stipulated in the Agreement, to approve activities associated with the physical resource development, design, construction, operation and maintenance of the respective Institutes and their facilities to ensure compliance. S/he shall ensure they meet the norms and standards of statutory body regulations, which shall be applicable from time to time.
- e) Concurrently monitor and report to the GoUP, development of the Institute and Institute activities, objections or corrections if any required for amendments, changes, in the physical resource plan with the aim to implement the project as per the provisions of the Concession Agreement and Best Practices adopted for establishment and operations of such Technical Education Institutions.
- f) Independent Engineer shall ensure that the provisions of the physical and infrastructure resources do not adversely obstruct any development plans of the GoUP as also stipulated in the Concession Agreement.
- g) Independent Engineer shall upon the request of the Concessionaire on completion of the construction of various phases in each Institute set out in the Concession Agreement carry out building and civil works inspections to ensure that the entire construction as per the provisions of the Concession Agreement has been achieved and issue a Construction Completion Certificate. S/he shall forward the same for approval of GoUP as per the reporting arrangements in this regard.

- h) In addition to above, the Independent Engineer would cover similar activity connected with the Establishment of Technical Education Institutes functions as are required to be undertaken pursuant to specific provisions of the Concession Agreement as well.
- i) The Independent Engineer/ Expert shall review any changes to original design, drawings, concept, vision and academic related activities, the same shall be ensured conformity to the Project requirements. The review shall include:
 - Institute Design, engineering drawings of building, civil works, external development, development plans including landscape plan, horticulture, sewage & public health, electrical structures and its sub-components activities within the Institutes
 - Physical resources such as workshops, laboratory, library facilities, central computing facilities, class room and lecture theatres their capacity & required areas for academic and academic related areas,
 - Project implementation plan in the form of PERT, CPM and line of action for design, development and establishment of infrastructure facilities for establishment of Institutions.

ii. Concurrent monitoring and evaluation of the development of physical resource plan:

For this purpose the Independent Engineer shall undertake the following activities and where appropriate make appropriate suggestions:

- a. Monitor the progress of implementation of the physical resource plan of each of the Institutes as per the estimated project cost indicated by the Concessionaire and the Investment Plan submitted.
- b. Review and approve Final designs and drawings for various physical resource plan envisaged for each of the Institute/ bundle as the case may be.
- c. Review and monitor the quality of physical resource plan for these institutes and systems being adopted by the Concessionaire.
- d. Monitor the development and Construction completion works in conformity to the plan submitted to respective statutory authority with the Approved DPR/ feasibility report formulated by the Concessionaire.

iii. Academic & related activities

- a. Review of the academic activities in each of the Institutes offering Certificate, Diploma and Graduate level programmes envisaged under this project.
- b. The academic related activities shall include the academic programmes offered in each of the Institute, student intake, and related curricular and lab exercises
- c. Review the number of academic programmes offered as agreed in the Concession Agreement, norms and standards followed in all the academic and related activities offered in these Institutes.

- d. Monitor the progress of the institutes including the overall academic processes in each of the Institutes such as student output, training and placement, alumni relations, entrepreneurships and industry placement.
- e. Review and monitor the faculty and staff availability, quality and related issues including training and faculty development in each of the Institutes.
- f. Link and match the norms and standards for each level of the Institutes in all academic matters, student affairs, faculty norms and facilities.

iv. Monitoring of the operation phase of the Institutes under the project

The Independent Engineer shall review, assess, monitor the operations and implementation of the Institute activities, in accordance with norms, standards and regulations of the respective statutory bodies and regulations laid by the Government of Uttar Pradesh and Government of India, the operations, implementation of academic and related activities, the performance standards, repair and maintenance activities undertaken by the Concessionaire so as to ensure compliance with the project requirements and objectives.

Formulate progress, monitoring, assessment and review reports as per the provisions laid down in the Concession Agreement and the Executing Agency of the Government of Uttar Pradesh. The specific activities to be undertaken would include formulation of reports, preparation of summary for various committees and scrutiny committees for feedback and progress review, status, positioning of the project institutions and final decision by the authorities.

v. Meetings, records and reporting arrangements

The formulation of reports, reporting and submission and progress of the system shall be as under:

- a) The Independent Engineer/ Expert would be part of the review, monitoring and progress assessment of PPP projects in Technical Education for this specific projects and institutions covered in the project.
- b) The Independent Engineer shall participate in the project review meetings held periodically by the Executing Agency of the Government of Uttar Pradesh from time to time by the Parties, as also

to participate in emergency or extraordinary meetings of the Parties held to deal with any emergency, Force Majeure event or other exigencies.

- c) The Independent Engineer/ Expert shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities and submit periodic reports to the GoUP.
- d) The Independent Engineer/ Expert shall share all the information, data and records collected during the review, evaluation, assessment of the Institutes covered under this project and make available to key officials of the Government and statutory body concerned with recognitions, approval of academic and academic related activities in relation to the discharge of institute academic activities, functions, roles and responsibilities, with an authorized person designated by the GoUP in this regard.
- e) The Independent Engineer/ Expert shall convey to the GoUP and the Concessionaire the justifications in writing for its decisions in the course of discharging its functions and responsibilities.

17. Any other activity as mentioned in the Concession Agreement and as required.

Reporting Arrangements

The Independent Engineer/ Expert shall report to the Key official of the Executing Agency of the Government of Uttar Pradesh for all activities during the review, monitoring, assessment and progress of the project covered in the present assignment.

Duration and Timelines

The services of the Independent Engineer shall be hired for period of 3 years from the start of the project and upon signing contract with an Individual having qualifications and experience illustrated below.

Qualifications and Experience

The Independent Engineer/ Expert shall have the following qualifications and experience:

- a. A Graduate in Engineering and Technology in any related areas
- b. Having experience of more than 10 years in the relevant areas of project monitoring, evaluation, assessment, institutional visioning, assessment, impact assessment, having implemented projects in the technical education sector.
- c. Experience in preparing, monitoring and evaluation reports, preparation of review formats, collection and collation of data and information as required by the Government of UP and various committees.

Remuneration, total emoluments and Payment terms

The Independent Engineer/ Expert shall be paid emoluments as per the laid norms of the Executing Agency of the Government of Uttar Pradesh.

The payment terms shall be as per the provisions of the GoUP laid norms. The payments and total emoluments shall be commensurate with the qualification, experience and roles, responsibilities laid for the Independent Engineer/ Expert engaged in the particular assignment.

The executing agency of the GoUP will enter into an agreement for hiring the services of the Independent Engineer detailing the above terms, conditions and payment terms.

Withdrawal and Termination of the Services of Independent Engineer

The Services of the Independent Engineer shall be terminated with 3 months notice from either side upon mutual consent.

SCHEDULE VIII
LIST OF LITIGATION