

CONCESSION AGREEMENT

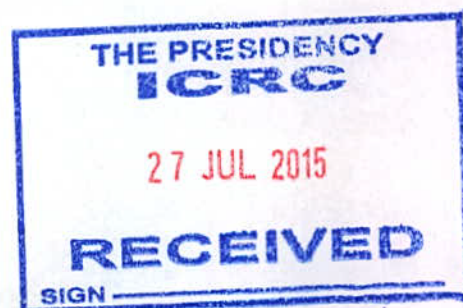
TO DESIGN, FINANCE, BUILD, OPERATE, MAINTAIN
AND TRANSFER THE DEBT MANAGEMENT OFFICE'S
CORPORATE OFFICE BUILDING

BETWEEN

THE DEBT MANAGEMENT OFFICE (DMO)
(Implementing Agency)

AND


LOH & OR CONSTRUCTION (NIGERIA) LIMITED
(Concessionaire)



27/7/15

TABLE OF CONTENTS

1. CONCESSION AGREEMENT.....	3
2. DEFINITIONS AND INTERPRETATION.....	4
3. GRANT OF CONCESSION RIGHTS.....	8
4. CONCESSIONAIRE COVENANTS.....	9
5. IMPLEMENTING AGENCY'S UNDERTAKING.....	10
6. INDEPENDENT ENGINEERING.....	11
7. CONSTRUCTION WORKS.....	12
8. FACILITY MANAGEMENT AND MAINTENANCE.....	14
9. LIABILITY WITH RESPECT TO USERS AND THIRD PARTIES.....	15
10. INSURANCE.....	16
11. FINANCIAL ACCOUNTS AND REPORTS: MANAGEMENT.....	17
12. MATERIAL ADVERSE GOVERNMENTAL ACTION.....	18
13. FORCE MAJEURE.....	20
14. TERMINATION.....	22
15. GOVERNING LAW AND RESOLUTION OF DISPUTE.....	24
16. GOVERNANCE AND STATUTORY FEES.....	26
17. MISCELLANEOUS PROVISIONS.....	26
18. REPRESENTATION AND WARRANTIES.....	28
19. STEP-IN CLAUSE.....	30
20. HAND-BACK AND TRANSFER.....	30
21. ATTESTATION.....	31
22. ANNEXURE.....	32



CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** is made on this.....day of.....2015,

BETWEEN

THE DEBT MANAGEMENT OFFICE (hereinafter referred to as the **Implementing Agency**), a body established under the Debt Management Office (Establishment, etc.) Cap D12, Laws of the Federation of Nigeria 2004 (hereinafter referred to as the "**DMO Act**") of NDIC Building (1st Floor), Plot No. 447/448 Constitution Avenue, Central Business District, Abuja, Nigeria, which expression shall include its legal successors and assigns, of the first part.

AND

LOH& OR CONSTRUCTION (NIGERIA) LIMITED (hereinafter referred to as the **Concessionaire**) is a company incorporated under the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004 and having its registered office at No. 7 Vistula Close, Panama Street, Maitama, Abuja, Nigeria, which expression shall include its legal successors and assigns, of the second part.

Hereinafter referred to individually as a 'party' and collectively as 'parties'.

RECITALS:

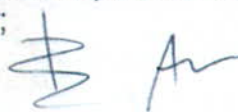
- A. The Implementing Agency is an agency of the Federal Government of Nigeria (FGN) established in 2000 with the mandate to manage Nigeria's domestic and external debt as set out in Sections 6 and 7 of the DMO Act.
- B. The expanding scope of activities of the Implementing Agency has given rise to the need for a more conducive and enabling environment, which the current rented floor space at the Nigerian Deposit Insurance Corporation Head Office, Abuja, cannot provide.
- C. The Implementing Agency is desirous of developing a Corporate Office Complex comprising of two world-class twin towers having twenty (20) floors each with 2-level underground car parking facility to be located at its own land measuring 5025.99 sq. metres known as Plot 1242 Cadastral Zone in the Central Business District of the FCT, Abuja (hereinafter refer to as the 'Site').
- D. The Implementing Agency has decided that the Project will be developed under a Public-Private Partnership (PPP) arrangement in line with the National Policy on Public Private Partnership (NP4), as well as the terms and conditions expressed in this Concession Agreement.
- E. The Concessionaire has been duly selected by the Implementing Agency following the procurement procedures stipulated by the Public Procurement Act, 2007 and Infrastructure Concession Regulatory Commission

(Establishment, Etc.) Act, 2005 and the rules and regulations made pursuant to these Acts, especially the National Policy on PPP.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises contained herein, for good and valuable consideration, the sufficiency of which is acknowledged and intended to be legally binding, it is hereby agreed by the Parties as follows:

2. DEFINITIONS AND INTERPRETATION

- i. **"Act"** means the Debt Management Office (Establishment, Etc.) Act Cap D12, Laws of the Federation of Nigeria 2004;
- ii. **"Additional Construction Works"** means all Construction Works other than those included within the original Construction Works;
- iii. **"Annexure"** means any attachment hereto;
- iv. **"Approved Design"** means the design provided by the Concessionaire during the tendering process, which was approved by the Implementing Agency as detailed in Annexure XXX;
- v. **"Business Day"** means any day other than a Saturday, Sunday or a day, which has been declared/gazetted as a public holiday by the FGN;
- vi. **"Concession Agreement"** means this Concession Agreement between the Implementing Agency and the Concessionaire including the Annexure hereto;
- vii. **"Concession Period"** means the period beginning on the Effective Date and ending on its anniversary 30 years from then XXX;
- viii. **"Concessionaire"** means [LOH & OR Nigeria Limited], a company incorporated with under the Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004 and its legal successors and assigns;
- ix. **"Concessionaire's Contractor"** means any Contractor engaged by the Concessionaire for the purpose of the Project;
- x. **"Construction Commencement"** means the commencement of any Construction Works as certified by the Independent Engineer;
- xi. **"Construction Completion"** in respect of any Construction Works means the completion of such Construction Works as certified by the issue of the Taking Over Certificate by the Independent Engineer;



- xii. **"Construction Contracts"** means any contracts entered into by the Concessionaire in relation to Construction Works;
- xiii. **"Construction Documents"** is any written (in hard copy or electronic form) correspondence exchanged by the Parties in the course of the constructing the Project;
- xiv. **"Construction Works"** means the designing, construction, equipping, management and maintenance works required to be undertaken by the Concessionaire so as to meet its obligations under this Concession Agreement;
- "Contractor"** means the party or parties designated as Contractor pursuant to any Construction Contract by the Concessionaire;
- xv. **"Days"** shall mean Business days as defined above;
- xvi. **"Detailed Design"** means the detailed design for the Construction Works prepared or procured by the Concessionaire and reviewed and approved by the Implementing Agency;
- xvii. **"Development Period"** means the period of 36 months from the date of this Concession Agreement and the Effective Date;
- xviii. **"Effective date"** means the date of actual completion of all Construction Works on the Project and on which the building is formally commissioned by the Implementing Agency;
- xix. **"Entry Fee"** means the sum of money payable by the Concessionaire to the Implementing Agency for the grant of the Concession rights which shall be 0.5% of the Construction as stated in this Concession Agreement;
- xx. **"Expected Equity Value"** means the fair market value of the Project at any given time during the construction period;
- xxi. **"Financial Closure"** shall be achieved upon payment of the Entry Fee and financial documents providing for financing the project by lenders have become effective and the Concessionaire has access to the funds;
- xxii. **"Force Majeure"** shall have the meaning set forth in Clause 13.1;
- xxiii. **"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional seeking in good faith to comply with its contractual obligations, complying with all applicable legislations and Government policies as required of similar organisations that are engaged in the same type of undertaking and

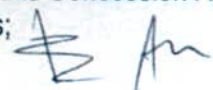
under the same or similar circumstances and conditions as those stipulated by this Concession Agreement;

- xxiv. **"Hand-Back Expert"** is the person who supervises the process of transferring the property back to the Implementing Agency.
- xxv. **"Implementing Agency"** means the Debt Management Office;
- xxvi. **Infrastructure Concession Regulatory Commission** (hereinafter referred to as **"ICRC"**) is a Commission established by the Infrastructure Concession Regulatory Commission (Establishment, Etc.) Act of 2005 (hereinafter referred to as the **"ICRC Act"**) to accelerate investment in national infrastructure through private sector funding by assisting the Federal Government of Nigeria and its Ministries, Departments, and Agencies (MDA) for the implementation and establishment of effective Public Private Partnership's (PPP) procurement.
- xxvii. **"Independent Engineer"** means the consulting expert(s) as may be appointed from time to time by the Implementing Agency and whose duties are set forth in this Concession Agreement;
- xxviii. **"Independent Engineer's Agreement"** means the contract(s) to be entered into by the Implementing Agency and the Independent Engineer for the purpose of this Concession Agreement;
- xxix. **"Letter of Award"** is the written confirmation notifying winning bidder to proceed with the Project, prior to signing this Concession Agreement.
- xxx. **"NIBOR" (Nigerian Inter-Bank Offered Rate)** is the Inter-bank market with credible interest rates fixing, on which pricing and acceptance of coupon onlong tenored instruments could be indexed.
- xxxi. **"Request for Proposal"** means the Invitation to Tender for the Project issued by the Implementing Agency together with all its associated documents, annexure and appendices as supplemented from time to time;
- xxxii. **"Project"** means to design, finance, build operate, maintain and transfer of the proposed Corporate Office Complex of the DMO, having twenty (20) floors each with adequate car parking facility (based on design control) to be located at its property measuring 5025.99 sq. metres known as Plot 1242 Cadastral Zone in the Central Business District of the FCT, Abuja in accordance with this Concession Agreement;
- xxxiii. **"Project Cost"** shall be the sum of ₦41,506,944,557.03 (Forty-One Billion, Five-Hundred and Six Million, Nine-Hundred and Forty-Four

- xii. **"Construction Contracts"** means any contracts entered into by the Concessionaire in relation to Construction Works;
- xiii. **"Construction Documents"** is any written (in hard copy or electronic form) correspondence exchanged by the Parties in the course of the constructing the Project;
- xiv. **"Construction Works"** means the designing, construction, equipping, management and maintenance works required to be undertaken by the Concessionaire so as to meet its obligations under this Concession Agreement;
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- xxii. **"Force Majeure"** shall have the meaning set forth in Clause 13.1;
- xxiii. **"Good Industry Practice"** means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor or professional seeking in good faith to comply with its contractual obligations, complying with all applicable legislations and Government policies as required of similar organisations that are engaged in the same type of undertaking and

Thousand, Five-Hundred and Fifty-Seven Naira and Three-Kobo) as negotiated with the Concessionaire and submitted in its final bid document and accepted by the Implementing Agency.

- xxxiv. **"Project Documentation"** means (i) the records, plans, specifications, engineering documents, soil data and analysis, systems, procedures, software, property acquisition documents, insurance policies, diaries, utility relocation plans, record maps, other reports and samples relating to the Project and in the possession of the Concessionaire and (ii) the licences, permits, contracts, warranties and contract rights of the Concessionaire relating to the Project;
- xxxv. **"Relevant Authority"** means any ministry, department, provincial or local agency, authority or body of the Federal, State, Federal Capital Authority and Local Governments or any other public authority, body, entity or Person having jurisdiction under the laws of the country over any matter which may affect the Concessionaire or the Project;
- xxxvi. **"Remedy Period"** means a period of 14 days within which in the opinion of the parties it would take to initiate remedy on such a breach or default;
- xxxvii. **"Rent"** means the amount payable periodically (annually) as a medium of furnishing consideration for the use of the Property.
- xxxviii. **"Reserved Bidder"** means the Bidder with the second most acceptable Bid in the opinion of the Implementing Agency bid after the Concessionaire
- xxxix. **"Tax"** means any present or future income, franchise, excise, stamp duties or other tax, fee, duty or other levy, imposed or charged by the relevant authority but excluding bank charges of any kind;
- xl. **"Site"** means the land on which the Project will be situate and more particularly described in Annexure 3.
- xli. **"Substituted Entity"** means any Person selected by the Implementing Agency to replace the Concessionaire in this Concession Agreement and who has entered into the requisite agreements;



3 GRANT OF CONCESSION RIGHTS

3.1 Rights of the Concessionaire

Subject to the terms of this Concession Agreement, the Concessionaire is hereby granted exclusive rights to:

- 3.1.1 Design, finance, build, operate, maintain and transfer of the Project; and,
- 3.1.2 Receive rent and service charges derived from the lease of fifteen floors of the 1st Tower and all 20 (Twenty) floors of the 2nd Tower.
- 3.1.3 The remaining 5 (Five) floors of the 1st Tower shall be occupied by the Implementing Agency free of any rent or charges whatsoever.

3.2 Obligations of the Concessionaire

- 3.2.1 The Concessionaire will undertake the Project at its own cost and risk in accordance with the Project Cost, the specifications detailed in the various Annexures to this Concession Agreement, as well as all terms and conditions contained herein.
- 3.2.2 The Concessionaire undertakes to complete the Construction Works within the Development period subject to any extensions thereof as may be approved by the Implementing Agency in accordance with this Concession Agreement.
- 3.2.3 No instructions or approvals given by the Implementing Agency in accordance with the law and the provisions of this Concession Agreement shall affect the Concessionaire's responsibility to undertake the Project. Notwithstanding that this Concession Agreement permits or requires the Concessionaire to engage third parties to perform part of the Project, such engagements shall not release the Concessionaire from any of its obligations and responsibilities to the Implementing Agency hereunder, and the Concessionaire shall be fully responsible to the Implementing Agency for the acts and omissions of such third parties in relation to the Project.

3.3 Tenor of Concession

The Concession Period shall be for a tenor of 30 years from the Effective Date, subject to extension and/or termination in accordance with this Concession Agreement.

3.4 Payments

- 3.4.1 The Concessionaire shall pay the Entry Fee to the Implementing Agency within 7 (Seven) days after receipt of the Letter of Award of the Concession.
- 3.4.2 The Concessionaire shall pay an annual base fee amounting to 15% of rental income accruable from the Project to the Implementing Agency.



- 3.4.3 The Concessionaire shall be responsible for all taxes of general application and, without limiting the generality of the foregoing, any duties, fees or taxes assessed by any Relevant Authority in respect of this Concession Agreement and/or the Site.

4 CONCESSIONAIRE'S COVENANTS

4.1 Registration

- 4.1.1 The Concessionaire is a company incorporated under the Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004.
- 4.1.2 During the Concession Period, the Concessionaire shall not alter its ownership structure by the transfer to any third party(ies) of more than 25% of its Authorised Share Capital or otherwise amend, restate, supplement, modify its Certificate of Incorporation, Memorandum of Association or Articles of Association without prior consent of the Implementing Agency in writing and such consent not to be unreasonably withheld except where such change in ownership structure is a consequence of due legal process including mergers and acquisitions and conversion from limited liability to public liability company.

4.2 Compliance with Laws, Regulations and Standards

The Concessionaire shall comply with all laws, regulations and standards having the force of law of any Relevant Authority as defined in this Concession Agreement during the Development Period and Concession Period.

4.3 Consents and Approvals

The Concessionaire shall at its cost, obtain the necessary permits and approvals from the Relevant Authorities in accordance with any applicable laws and regulations for the implementation of the Project. The Implementing Agency may use its best efforts to assist the Concessionaire in procuring the Permits and approvals as may be appropriate from time to time.

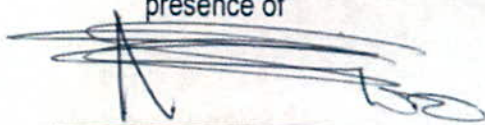
4.4 Compliance with Requirements

The Concessionaire shall comply and shall ensure compliance to Good Industry Practice and the Project shall be carried out in conformity with the Implementing Agency's Requirements using equipment and materials which are of suitable quality for the purpose and uses intended, free of defects and deficiencies. All such work shall be completed to the satisfaction of the Independent Engineer.



21 WHEREOF the Common Seals of the Parties were affixed on the date set out above:

THE COMMON SEAL OF THE IMPLEMENTING AGENCY was affixed in the presence of



DIRECTOR-GENERAL

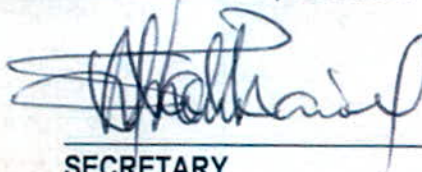


DIRECTOR

THE COMMON SEAL OF THE CONCESSIONAIRE was affixed in the presence of



DIRECTOR



SECRETARY



ANNEXURE 1

ICRC CONCESSION FEES STRUCTURE

S/N	DETAIL	DESCRIPTION	FEE
1	Review of Outline Business Case (OBC)	A fixed fee charge for the review and issuance of a certificate of compliance for Outline Business Cases (OBCs) as well as for the Commission's regulatory role during a project Development phase.	N5,000,000
2	Review of Full Business Case (FBC)	A fixed fee charged for the review and approval of Full Business Case (FBCs) and the Commission's regulatory role during a project Procurement phase	N7,500,000
3	Concession Project Pre-commissioning fee	A percentage the project's cost charged for all the Commission's regulatory roles for Brownfield projects that will involve design, procurement, construction, rehabilitation, re-modelling, upgrading and subsequent commissioning. The Concessionaire will pay the sum.	0.001%
4	Concession Project Operations & Maintenance (Implementation Fee)	A percentage of the Project's revenue to be paid by the concessionaire and charged for all the Commission's regulatory roles for projects that will involve operations and maintenance over the life of the Concession.	1-3 years 0.25% of revenue 4-6 years 0.5%-0.75% of revenue 7-9 years 0.75%-0.95% of revenue 10 th year-1% of revenue 11 th year- 2% of revenue 12 th year- 3% of revenue 13 th year- 4% of revenue nth year -x% of revenue (where x is the equivalent arithmetic graduation in number of years relative to n)
5	Concession Project Close-out Fee	A percentage of the project's cost charged for all the Commission's regulatory roles during the Concession Close-out phase. The Concessionaire will pay the project cost.	0.002%

4.5 The Concessionaire to Make Documents Available to the Implementing Agency

The Concessionaire shall, upon the written request of the Implementing Agency and at no cost to the Implementing Agency, make available at all times documents which are or were acquired or brought into existence by the Concessionaire or supplied to the Concessionaire in relation to this Project. However, the Concessionaire shall not be obliged to disclose any document in respect of which the Concessionaire can claim legal privilege against the Implementing Agency. The Implementing Agency shall hold documents in respect of which the Concessionaire can claim legal privilege against third parties in confidence as if the Implementing Agency was bound by the document, provided always that this restriction shall not prevent any disclosure by the Implementing Agency as required by law.

4.6 Contracts and Employment

The Concessionaire shall: -

- 4.6.1 Enter into such other contracts as are necessary to ensure the timely and proper completion of the Preliminary Design, Detailed Design, Construction Works, Financing, Management and Maintenance of the Project, and such future design and construction as may be necessary to meet the Concessionaire's obligations under this Concession Agreement.
- 4.6.2 Not enter into any contract or agreement unless the form of such contract or agreement has been approved by the Implementing Agency, provided that the Concessionaire is not required to obtain such approval in relation to any such contract or agreement, which is of an immaterial nature. For the purposes of this clause a contract or agreement is immaterial if the contract or agreement is not material in financial terms or not material to the performance of the Concessionaire's obligations hereunder;

5 IMPLEMENTING AGENCY'S UNDERTAKINGS

5.1 Implementing Agency Assistance

Except as otherwise provided in this Concession Agreement, the Implementing Agency shall:

- 5.1.1 Give reasonable assistance to the Concessionaire in its dealings with the Relevant Authorities in connection with implementing the Project in accordance with the terms and conditions set forth herein;
- 5.1.2 Make every reasonable effort to assist the Concessionaire to obtain necessary permits and approvals provided, however, the Implementing Agency shall bear no liability for any failure of the Concessionaire to obtain any permit or approval required for the Project. Where the Concessionaire fails, other than through its negligence or default, to obtain any such permit, the Implementing

19.5 Although these step-in rights only take effect when there is a Concessionaire's default, it may also be exercised without the Concessionaire's default in case of an emergency.

20. HAND-BACK AND TRANSFER OF FACILITIES

Parties agree that the Concessionaire shall transfer to the Implementing Agency possession of the Project at the end of the Concession Period, free and clear of all debts, liens, encumbrances, mortgages, security interests, environmental contamination and claims of whatever kind or nature other than encumbrances of a routine nature that do not materially adversely affect the value of the property or interfere with its operation. The Concessionaire shall also deliver to the Implementing Agency all operation and maintenance manuals, logs, registers, design drawings, technology and know-how relevant to the operation and maintenance of the property and other information as may reasonably be necessary or requested by the Implementing Agency to enable it continue the operation of the property. The Concessionaire shall, at its own cost, remove all objects it owns which are not included within the scope of this Agreement from the property.

Six (6) months prior to the expected date of the expiry of this Agreement, the Hand-Back Expert appointed jointly by the parties shall conduct an inspection of all elements of the property (initial inspection). If any defect is indicated in the course of the inspection, the Hand-Back Expert shall give a notice to both parties specifying the defect and requiring the Concessionaire to remedy the same within a reasonable time. The Concessionaire shall remedy the defect accordingly at its own cost. If the Concessionaire fails or refuses to correct the defect within a reasonable time then the Implementing Agency shall be entitled to remedy the defect itself or engage a third party to do so. In such case the Concessionaire shall reimburse the Implementing Agency for the reasonable costs incurred within thirty (30) days of a request for payment from the Implementing Agency. On the day on which this Agreement expires, the Hand-Back Expert shall conduct a further inspection of the property (expiry date inspection) for the purpose of smooth handing over of the property to the Implementing Agency.

The Hand-Back shall be concluded after a joint inspection (by the Implementing Agency, Concessionaire and the Hand Back Expert) and the assessment of any renovation works and compensation (if applicable). The failure by the Implementing Agency or the Independent Engineer to detect any defect or item shall not relieve the Concessionaire of its obligations as contained in this Agreement.

Upon satisfaction of this procedure the Implementing Agency shall take over full ownership of the property from the Concessionaire.



physical and legal status of the Site, the provisions of this Concession Agreement and its ability to fulfil all of its obligations under this Concession Agreement adequately and in a timely manner.

- VI. The Concessionaire has conducted a full inquiry and has satisfied itself, and accordingly accepts responsibility for the fact that the execution of the Project or any part thereof shall not involve any infringement of any patent or trade secret or know how or copyright belonging to any third party.
- VII. The Concessionaire has evaluated all factors that may reasonably be deemed to affect the carrying out of its obligations under this Concession Agreement, including geological conditions, technical risks and any other risk involved herein, and such other conditions that may reasonably be deemed to affect the progress or completion of the Project in accordance with the terms of this Concession Agreement.
- VIII. All representations, warranties, information and data of the Concessionaire contained in any written statement (including financial statements), certificate, exhibit or schedule or any other document delivered pursuant to the pre-qualification questionnaire or in connection with this Concession Agreement, shall be true and correct in all material respects as of the date hereof.

18.2 Representations and Warranties of the Implementing Agency

The Implementing Agency hereby represents and warrants to the Concessionaire as follows:

- I. In executing this Concession Agreement for the purposes of accepting the benefits hereof and the granting of the Concession Rights, the Director-General is acting for and on behalf of the Implementing Agency and in accordance with the enabling law.
- II. The Implementing Agency is duly established under the law of the Federal Republic of Nigeria and this Concession Agreement is legally valid and binding upon the Implementing Agency and enforceable in accordance with its terms.

19. STEP-IN CLAUSE

The Implementing Agency or any other Relevant Authority may step in to perform the obligations of the Concessionaire herein in following event or for the following purpose

- 19.1 to prevent or mitigate a serious risk to: the environment, public health and the safety of people or property.
- 19.2 to guarantee continuity of service
- 19.3 to discharge a statutory duty and
- 19.4 otherwise deal with a default by the Concessionaire under the contract.



17.10 Representatives

- I. The Concessionaire shall be represented by the Managing Director/Chief Executive Officer and where the Concessionaire is a Consortium, a duly appointed representative with the appropriate authorization, preferably a Power of Attorney from the Members of the Consortium or such other representative as shall from time to time be notified to the Implementing Agency.
- II. The representatives of the Implementing Agency shall be The Director General or such other representative(s) as shall be nominated from time to time with due notice to the Concessionaire.

18. REPRESENTATIONS AND WARRANTIES

18.1 Representations and Warranties by the Concessionaire

The Concessionaire hereby represents and warrants to the Implementing Agency as follows:

- I. The Concessionaire is a company duly registered under the laws of the Federal Republic of Nigeria with all requisite corporate power to carry out its obligations under this Concession Agreement and to execute and deliver this Concession Contract, and acknowledges that, except as the Implementing Agency may notify in writing, its sole purpose is to implement the project.
- II. This Concession Agreement has been duly authorised by all necessary corporate action, is legally valid and binding upon the Concessionaire and does not require approval in any form in order to give full effect thereto.
- III. The Concessionaire is not prevented or restrained legally, or suffering from any known legal disability, commercially or otherwise from entering into and undertaking the provisions of this Concession Agreement in accordance with its terms.
- IV. The Concessionaire has fully familiarised itself with all aspects of the Project and has all the knowledge, experience, ability (particularly financial ability) to carry out the Project in accordance with the terms of this Concession Agreement and all relevant laws and regulations.
- V. The Concessionaire has reviewed and checked as an expert the Site and its surroundings, and the physical condition of the Site and its surroundings and is fully familiar with the terms of all relevant laws and regulations including without limitation all laws and regulations relating to the Project and its rights and obligations therein and pursuant to such review the Concessionaire finds the Site suitable for the fulfilment of its obligations and undertakings under this Concession Agreement, including without limitation, the completion of the design and construction of the Project. The Concessionaire further acknowledges its willingness to enter into this Concession Agreement with full awareness of, among other things, the rights and obligations derived from the

17.5 No Waiver

No waiver by either Party of any default or variation by the other in the performance of any of the provisions of this Concession Agreement shall operate or be construed as a waiver of any other or further default or variation whether of a like or different character, or shall such waiver be deemed to be effective, unless in writing and duly executed by an authorised representative of such Party.

17.6 Time and Indulgence

Any time or other indulgence allowed by one Party to the other in which to perform its duties and obligations hereunder or to remedy any breach hereof shall not be construed as, a waiver by the Party giving such time or indulgence of any of its rights hereunder, except to the extent of such time or indulgence.

17.7 No Third Party Beneficiaries

This Concession Agreement is made exclusively for the benefit of the Implementing Agency and the Concessionaire and no third party shall have any rights thereto or be deemed to be a beneficiary hereof except as may be expressly provided herein.

17.8 Notices

Any notice or correspondence to be given under this Concession Agreement shall be in writing in English unless otherwise agreed and shall be delivered personally or sent by registered or certified mail, return receipt requested, or sent by fax or other electronic device followed by the original delivered by hand or sent by registered or certified mail, return receipt requested, shall be delivered by hand to the physical address of the Party to whom such notice is being given and such Party shall sign a receipt for such notice. For the purposes thereof, the addresses of the Parties hereto (until a notice of the change thereof is given) shall be the addresses stated at the commencement clause of this Agreement.

17.9 Severability

If anyone or more of the covenants, agreements, provisions or terms of this Concession Agreement shall be held wholly or partly invalid, illegal or unenforceable for any reason whatsoever, then those covenants, agreements, provisions or terms shall be deemed severable from the remaining covenants, agreements, provisions or terms of this Concession Agreement and shall in no way affect the validity, legality or enforceability of this Concession Agreement. The Parties shall meet as soon as possible and negotiate in good faith upon a replacement provision that is legally valid and that achieves as nearly as possible the objective of this Concession Agreement and produces an equivalent economic and financial effect.



not be entitled to any extension of time, additional payment, compensation or other relief in respect of the relevant claim.

16. GOVERNANCE AND STATUTORY FEES

- 16.1 This Agreement and its provisions are subject to the provisions of the ICRC Act.
- 16.2 Further to the foregoing, the Concessionaire shall pay to the ICRC Fees as detailed under the ICRC Act and approved by the Board of the Commission as may be reviewed from time to time. For avoidance of doubt, the current rates are those detailed in 'ANNEXURE 1' herewith.

17. MISCELLANEOUS PROVISIONS

17.1 Primacy of this Concession Agreement

This Concession Agreement shall govern all aspects of and all contractual relationships relating to the Project as between the Parties. In the event of conflict between this Concession Agreement on a matter affecting the Parties, including all questions of interpretation, this Concession Agreement shall prevail.

17.2 Confidentiality

Each Party shall, subject to applicable law, keep in confidence all information, data or other records. In each case such rights will only be used in connection with the operation and maintenance of the Project.

17.3 Variations in Writing

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

17.4 Entire Agreement

This Concession Agreement represents the entire agreement between the Parties in relation to the subject matter thereof and any or all previous agreements or arrangements, whether oral or written, between the Parties in respect of the Project. No representations, warranties or other terms and conditions of whatever nature not contained or recorded herein have been made or agreed to.



the Arbitration Law, the arbitrators shall act in accordance with the spirit of the Arbitration Law. The arbitrators shall have the power to issue an award by default if any Party fails to make submissions on any due date and/or fails to appear at the arbitration.

- 15.2.4 All and any awards or other decisions of the arbitrators shall be made in accordance with the Arbitration Law in writing and shall be final and binding on the Parties. Either Party shall be entitled to apply for any arbitration award pursuant to this Concession Agreement to be made an order of court.
- 15.2.5 The parties shall pay the costs of and incidental to any such arbitration proceedings equally. The provisions of this clause are severable from the rest of this Agreement and shall remain in force even if this Agreement is terminated for any reason.
- 15.2.6 The provisions of this Clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any proceedings that it is not bound by such provisions.

15.3 Obligations During Arbitration

Pending any attempt at amicable settlement or any award of an arbitral panel, the Concessionaire shall continue to perform its obligations hereunder unless otherwise instructed in writing by the Implementing Agency. Pending any such settlement or award, the Implementing Agency shall continue to perform its obligations under this Concession Agreement.

15.4 Claim

Where the Concessionaire intends to claim any extension of time and/or additional payment or other compensation pursuant to or relating to this Concession Agreement and from whatsoever cause arising (other than compensation following termination), it shall give notice of its intention to the Implementing Agency, with a copy to the Independent Engineer, within 30 (thirty) Business Days after the event giving rise to the claim has first arisen or should reasonably have come to the knowledge of the Concessionaire, whichever is the earlier. Such claim shall be accompanied by such documentation and contemporaneous records as are appropriate to substantiate the same within 30 (thirty) Business Days after the date of the notice of intention to claim, save that if the Concessionaire cannot submit all relevant details within that period, the Concessionaire shall submit interim details at intervals of not more than 30 (thirty) days from the date of the notice of intention of the Concessionaire to apply for an extension of time and/or additional payment or other relief and shall submit full and final supporting details of its application by such date as may be determined by the Independent Engineer as appropriate and reasonable having regard to the nature and consequences of the event giving rise to such claim. If the Concessionaire fails to comply with the requirements of this Clause, it shall

15 GOVERNING LAW AND RESOLUTION OF DISPUTES

15.1 Governing Law

The laws of the Federal Republic of Nigeria shall govern this Concession Agreement.

15.2 Resolution of Disputes

15.2.1 If a dispute of any kind whatsoever arises between the Implementing Agency and the Concessionaire in connection with or arising out of this Concession Agreement, including, but not limited to, any dispute as to any opinion, instruction, determination, certification or valuation of the Independent Engineer, then an attempt shall be made by the Parties to settle such dispute amicably in good faith. For this purpose, the relevant Parties may, within a reasonable period of time and before the matter is submitted to arbitration, agree to a programme of consultation or negotiation, to take place with a view to resolving the dispute without prejudice to any relevant Party's rights. If after a period of 30 days of notification of a dispute by one of the Parties to the other, the Parties have not resolved the dispute, then either Party may submit the dispute to arbitration. No Party may rely on any alleged failure of such process as a bar to the commencement of arbitration proceedings.

15.2.2 Without prejudice to the rights of the Parties to apply to any court of competent jurisdiction to seek interim relief against another Party through the Nigerian courts for the protection of its rights and interests, or to enforce the obligations of the other Party, any dispute which is not resolved in accordance with consultation or negotiation outline in Clause 15.2.1 shall be finally settled by arbitration in accordance with the Arbitration Law. Such dispute shall be submitted to arbitration at the request of a Party upon written notice to that effect, in accordance with the Arbitration and Conciliation Act, Cap 18, Laws of the Federation of Nigeria 2004 (hereinafter referred to as the "Arbitration Law"). The arbitration shall be conducted in the English language before a panel of three arbitrators. The Implementing Agency and the Concessionaire shall each select one arbitrator within 30 (thirty) days after commencement of the arbitration process. There shall be a single Arbitrator appointed at the written request of the relevant Party, made to the President of the Nigerian chapter of the Chartered Institute of Arbitrators or the High Court of the Federal Capital Territory, Abuja.

15.2.3 The Place of Arbitration, seat or legal place of arbitration shall be Abuja, Nigeria and the procedural law of the arbitration shall be Nigerian law. The language to be used in the arbitral proceedings shall be English. In all matters not expressly provided for herein or in

14.3.5 Upon termination of this Concession Agreement, the Implementing Agency shall have the right to:

- I. Enter and take immediate operational control of the property and all related Construction Works; and
- II. Select a Substituted Entity in place of the Concessionaire.

14.4 Payment Procedure

14.4.1 Except as otherwise provided for expressly in this Concession Agreement, whenever under this Concession Agreement an amount is required to be paid by any Party, such Party shall make the payment to the other Party within 10 Business Days of demand to such account with such bank in the Federal Republic of Nigeria as the other Party may have specified for this purpose.

14.4.2 Without prejudice to any other right or remedy contained in this Concession Agreement, each Party shall be entitled to receive interest on an amount due under this Concession Agreement, calculated from the due date for payment of such amount to the date of actual payment of such amount. Interest that has accrued on an amount due under this Concession Agreement shall be paid on the same date as payment of such amount.

Except as expressly provided for in this Concession Agreement, Interest shall accrue at a rate of 2% above the publicly quoted Monetary Policy Rate of the Central Bank of Nigeria per annum and calculated on a 365 day year basis. Such interest shall be computed on a daily basis from the due date of payment until the relevant amount together with accrued interest is fully paid by the defaulting Party.

14.4.3 All payments shall be made in Local Currency.



- 14.2.4 The Concessionaire shall, before exercising its rights to terminate this Concession Agreement give written notice to the Implementing Agency requiring the Implementing Agency to remedy the event and if the said event is not remedied before the expiry of the Remedy Period, the Concessionaire may, upon expiry of the Remedy Period, terminate this Concession Agreement.
- 14.2.5 If this Concession Agreement is terminated, the Implementing Agency shall pay to the Concessionaire an amount (the "Implementing Agency Default Compensation Sum") equal to the aggregate of:-
- I. The Expected Equity Value at the date of termination (taking no account of the event which gave rise to such termination or of such termination); and
 - II. all amounts properly due and payable under any contracts (including without limitation employment contracts) entered into by the Concessionaire in connection with the Project, for the purpose of discharging its obligations under this Concession Agreement, prior to the date of such termination.
- 14.2.6 The amount payable by the Implementing Agency shall accrue interest at the prevailing NIBOR (Nigerian Inter-Bank Offered Rate) rate from the date of termination to the due date for payment and be paid on the due date for payment.

14.3 Effect of Termination

- 14.3.1 On the expiry or termination of this Concession Agreement for whatever reason and without prejudice to any rights of the Parties hereto this Concession Agreement shall cease to have effect, but without prejudice to all rights and obligations of the Parties which have accrued prior to or upon, but remain undercharged as at the date of termination; or arises as a consequence of such termination, except to the extent that such rights and obligations are included in any compensation payable and actually paid as a result of such termination under this Concession Agreement.
- 14.3.2 The Concessionaire shall forthwith relinquish any interest in the property in favour of the Implementing Agency and shall convey such immovable property free of all liens, charges, claims or encumbrances of any kind to the Implementing Agency.
- 14.3.3 The Concessionaire shall deliver all Project Documentation to the Implementing Agency;
- 14.3.4 All movable property of the Concessionaire which is required for or integral to the continuing operation and maintenance of the property shall be transferred to the Implementing Agency free of all liens, charges, claims or encumbrances of any kind together with all requisite licences (other than licences of software which are freely commercially available) which shall be royalty free;



14 TERMINATION

14.1 Termination by Implementing Agency

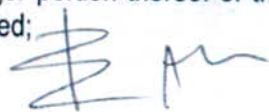
The Implementing Agency shall have the right to terminate this Concession Agreement upon the occurrence of any of the following events:

- 14.1.1 The granting of any judgement or the passing of any resolution, for the dissolution and/or judicial management and/or liquidation of the Concessionaire (except for the purposes of amalgamation or reconstruction on terms approved in advance by the Implementing Agency in writing);
- 14.1.2 The Concessionaire commences voluntary liquidation proceedings or files for bankruptcy;
- 14.1.3 The Concessionaire fails to commence the Constructions Works within the period stipulated herein or fails to complete the Construction Works within the Development Period;
- 14.1.4 The Concessionaire commits a material breach of this Concession Agreement including but not limited to, a material breach of its obligations to perform the Facility Management and Maintenance of the Project, as provided for herein;
- 14.1.1 Provided that the Implementing Agency shall, prior to any termination of this Concession Agreement send a written notice to the Concessionaire notifying them of the event giving rise to its right to terminate and stipulating that the notice is given and requesting the Concessionaire to remedy the event giving rise to such right of termination within 14 Business Days of the notice (the Remedy Period); and
- 14.1.2 If, following notice by the Implementing Agency, the Concessionaire fail or neglect to remedy the relevant events by the expiry of the Remedy Period the Implementing Agency shall terminate this Concession Agreement forthwith by notice in writing to the Concessionaire.

14.2 Termination by the Concessionaire

The Concessionaire shall have the right to terminate this Concession Agreement if:

- 14.2.1 The Implementing Agency commits a material breach in respect of the performance of any of its material obligations hereunder or is in material breach of the warranty;
- 14.2.2 Any Material Adverse Governmental Action that renders the exercise by the Concessionaire of any of its material rights under this Concession Agreement, or the performance by the Implementing Agency of any of its material obligations herein, illegal, void or unenforceable; or cannot be adequately compensated;
- 14.2.3 The assets or rights or a major portion thereof of the Concessionaire are nationalised or expropriated;



hostile act of foreign enemy, act of terrorism, sabotage, radiation or chemical contamination, ionising radiation, Act of God, plague or other serious epidemic; which

13.1.1 Causes material physical damage or destruction to all or any portion of the Project or

13.1.2 Materially delays the scheduled Time for Completion of all or any portion of the Project; or

13.1.3 Materially interrupts the full and regular operation of all or any portion of the Project or

13.1.4 Provided that any event, which constitutes a Material Adverse Governmental Action, shall not be events of Force Majeure.

13.2 Where a party is affected by an event of Force Majeure:

13.2.1 it shall take reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours' to remedy its failure to perform;

13.2.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform or has not in fact performed its obligations under this Agreement due to its failure to comply with its obligations.

13.3 Notice of Force Majeure

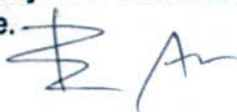
Notice of Force Majeure The Concessionaire shall, not later than two (2) weeks from the date of first occurrence of such event and as is reasonably permissible, promptly notify the Implementing Agency of the occurrence of an event of Force Majeure and when such event has ceased.

13.4 Compensation

If an event of Force Majeure occurs prior to the Actual Completion Date, the Concessionaire shall not be entitled to receive any compensation other than as expressly provided.

13.5 Modification

The Parties shall endeavour to agree on any modifications to the Agreement which may be equitable having regards to the nature of an event or events of Force Majeure. Dispute Resolution shall not apply to a failure of the Authority and Concessionaire to reach agreement pursuant to this Clause.



12.3 Acts or Omissions of Concessionaire

A Material Adverse Governmental Action shall not be deemed to have occurred under circumstances where action, failure or omission of the State or any Relevant Authority is in direct response to any act or omission on the part of the Concessionaire which is illegal (other than an act or omission rendered illegal by virtue of such action by the State or any Relevant Authority) or in violation of agreements to which the Concessionaire is a party and is for the purpose of properly enforcing compliance therewith or remedying the consequences of such act or omission.

12.4 Acts Deemed Not to be Material Adverse Governmental Action

A Material Adverse Governmental Action shall not be deemed to have occurred if such action, failure or omission by the Implementing Agency or any Relevant Authority is required as a result of an event of Force Majeure and is reasonably proportionate thereto; or for the proper discharge and performance by the Implementing Agency or such Relevant Authority of its statutory duties; or on the grounds of national security or public safety and such action, failure or omission is reasonable in relation thereto; but only if such action, failure or omission is not taken under legislation which:-

- a) comes into force after the date hereof; and
- b) is a legislation which itself constitutes a Material Adverse Governmental Action and provided further that any such action, failure or omission may, where it does not constitute Material Adverse Governmental Action, constitute Force Majeure.

12.5 No Breach of Concession Agreement

If the performance by the Concessionaire of any obligation under this Concession Agreement is prevented or adversely affected by reason of any Material Adverse Governmental Action, the Concessionaire shall not be considered to be in breach of such obligation to the extent the Concessionaire is so prevented or adversely affected.

13 FORCE MAJEURE

13.1 Force Majeure Defined

"Force Majeure" shall mean any event beyond the reasonable control of the Party claiming the occurrence of Force Majeure the occurrence of which could not have been reasonably foreseen at the date of execution of this Concession Agreement and includes, but is not limited to, war whether declared or not, revolution, riot, strikes or other protestor action (except strikes or protestor action by or affecting employees of the Concessionaire or any other Person undertaking any part of the Construction Works directly related to any more widespread or general strike or other industrial action) and including any act of insurrection, civil commotion, invasion, armed conflict,

shall ensure that key personnel positions are always filled as soon as reasonably possible.

- 11.3.2 The Implementing Agency may require the Concessionaire to remove any employee or other personnel of the Concessionaire, from the Site if, in the reasonable opinion of the Implementing Agency, such employee or personnel are incompetent or have committed acts amounting to gross misconducts and the Concessionaire shall immediately comply and replace such employee or personnel with suitable appropriately qualified and competent replacements, within the constraints of applicable labour legislation.

12 MATERIAL ADVERSE GOVERNMENTAL ACTION

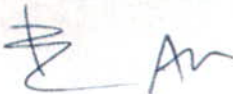
12.1 Consequences of Material Adverse Governmental Action

Should any Material Adverse Governmental Action occur, the Concessionaire shall be entitled to such extension of time and/or monetary relief from the Implementing Agency as shall place the Concessionaire in the same economic position that the Concessionaire would have been in but for such action. The Concessionaire shall give written notice to the Implementing Agency containing reasonable particulars of such actions and its likely material, economic and financial consequences to the Concessionaire. The Implementing Agency shall use its best effort to restore the general economic and financial position of the Concessionaire to that which it would have been in if such Material Adverse Governmental Action had not occurred. The Concessionaire shall reasonably be required to minimise or mitigate the effect of any Material Adverse Governmental Action on the Project as may be appropriate.

12.2 Definition of Material Adverse Governmental Action

A "Material Adverse Governmental Action" shall occur if:

- 12.2.1 The Implementing Agency or any other Relevant Authority takes any action of any nature whatsoever, including without limitation the introduction, application, or change of any law, decree, order, regulation, or bylaw having the force of law after the date of this Concession Agreement so as to expropriate, annex, takeover or take such action deliberately aimed at frustrating Concessionaire (or any of its Contractors) in performing their function under the relevant sub-contracts and which failure renders the performance by the Concessionaire or the Implementing Agency of any or all of the obligations under this Concession Agreement illegal, void or unenforceable.



condition or terms or level of the insurance cover and pointing out the deficiency thereof. The Implementing Agency may as its own discretion procure the necessary insurance policy required to cover the gap provided that failure to do so shall not absolve the Concessionaire of the consequence of inadequate or limited insurance cover thereto.

11 FINANCIAL ACCOUNTS AND REPORTS: MANAGEMENT

11.1 Appointment of Auditors

The Concessionaire shall arrange at its own expense for the Project, an accounting and cost control system consistent with Generally Accepted Accounting Principles and for the appointment as its auditors, a firm of internationally recognised independent accountants. The accounts of the Concessionaire shall be kept in Nigerian Local Currency, the Naira or as may be determined from time to time. The Concessionaire shall keep all such books and records of accounts as required by law. The Concessionaire shall provide the audited accounts and the reports of the accountants to the Implementing Agency not later than two (2) weeks after coming into the possession of the Concessionaire. The Implementing Agency may meet with the Concessionaire's auditors regarding the Concessionaire's accounts and operations from time to time. The Implementing Agency may also conduct or require that officers of the appropriate departments or a firm of independent accountants conduct reasonable additional audits of the Concessionaire, such audits to be carried out at the Implementing Agency's expense save where any such audit reveals material irregularities in which case the cost of such audit shall be borne by the Concessionaire.

11.2 Right of Inspection

The Concessionaire shall furnish to the Implementing Agency any information the Implementing Agency or ICRC may reasonably request and shall permit their representatives to visit the Construction Works, the Project and any of the other offices where the business of the Concessionaire relating to the Project is conducted and to have access to its books of accounts and records, designs, drawings and all other data assembled in connection with the Project and shall cause such information to be made available to the Implementing Agency.

11.3 Management of Concessionaire

11.3.1 The Concessionaire shall at all times ensure that it has sufficient suitable appropriately qualified personnel to undertake the responsibilities vested in the Concessionaire herein and that such personnel shall be located in Abuja, FCT, Federal Republic of Nigeria. Without limiting the generality of the foregoing, the Concessionaire

Agency. If the Concessionaire fails to defend, deal with or negotiate any such action or claim diligently, the Implementing Agency may, after first giving the Concessionaire reasonable notice to so act, settle such action or claim without the consent of the Concessionaire and without relieving the Concessionaire of the obligation to indemnify the Implementing Agency.

10 INSURANCE

10.1 Construction

During the period of the Construction Works, the Concessionaire shall to the reasonable satisfaction of the Implementing Agency maintain in relation to the Project without limitation, including Construction All Risks Insurance, Third Party Liability insurance, Employer's Liability insurance and, where appropriate, consequential loss/completion delay insurance.

10.2 Operation

During the period starting at the Effective Date and ending on the date of the termination or expiry of this Concession Agreement, the Concessionaire shall, to the reasonable satisfaction of the Implementing Agency maintain or procure maintenance of insurance on the Project without limitation, including Assets All Risk Insurance, Business Interruption Insurance, Third Party Liability Insurance and Employer's Liability Insurance.

10.3 Covenants Relating to Insurance

- 10.3.1 The Concessionaire shall procure the insurance policies for the benefit of the Concessionaire and all relevant Contractors and consultants engaged in the Construction Works and Management and Maintenance of the Project.
- 10.3.2 The Concessionaire shall maintain the Insurance at all times throughout the Development Period and the Concession Period.
- 10.3.3 The Implementing Agency, its officials, officers and employees, together with the Lenders, shall be named as additional beneficiaries or as part of the insured. The Concessionaire shall provide the Implementing Agency with certified copies of the certificates of all such insurance and shall periodically review the extent and adequacy of the coverage provided by such insurance policies.
- 10.3.4 The proceeds of any insurance claim under the Insurance policies shall be deposited into an account in the joint names of the Implementing Agency and the Concessionaire and shall be applied solely to restore the subject matter that gave rise to the claim or to the restoration of the Project as appropriate.
- 10.3.5 If the Concessionaire is unable to obtain insurance in the sums or on the terms required at a reasonable commercial rate, it shall immediately notify the Implementing Agency of any material adverse

give notice thereof and, if any such failure is not remedied within a reasonably period as determined by the Independent Engineer, the Implementing Agency shall be entitled to remedy such failure, either itself or through a third party, (and shall have access to the Site for such purpose) at the expense of the Concessionaire, which shall promptly make payment to the Implementing Agency for its costs, expenses and other damages suffered or incurred in connection with such remedial acts.

8.5 Modifications during Concession Period

Modifications to the Project shall be subject to the prior written consent of the Implementing Agency with recommendation from the Independent Engineer.

9 LIABILITY WITH RESPECT TO USERS AND THIRD PARTIES

9.1 Concessionaire Indemnification

The Concessionaire shall indemnify the Implementing Agency against, and hold the Implementing Agency harmless from any responsibility to third parties for any third party claim, liability, loss or cost of any kind whatsoever incurred by the Implementing Agency which arises on or after the date of execution this Concession Agreement (including any claim against the Implementing Agency by a Relevant Authority) as a result of any act or omission of the Concessionaire (including, without limitation, any default or failure by the Concessionaire to comply with any of its obligations under this Concession Agreement).

Without limiting the generality of the foregoing, the Concessionaire shall, indemnify the Implementing Agency against all losses and claims in respect of:

- I. Death or injury to any person; or
- II. Loss of or damage to any property,

Which may arise out of or in consequence of any act or omission of the Concessionaire and against all claims, proceedings, liabilities, costs, charges and expenses whatsoever incurred or suffered by the Implementing Agency in respect thereof or in relation thereto.

9.2 Defence against Indemnified Claims and Actions

If any legal action is brought or claim is made against the Implementing Agency and the Implementing Agency is entitled to be indemnified, the Concessionaire shall be promptly notified by the Implementing Agency and the Concessionaire shall be entitled, at its own expense, to defend, have conduct of, or settle any such action or claim and the Implementing Agency shall take such action as the Concessionaire may reasonably direct. The Implementing Agency shall be entitled to engage its own legal counsel and the Concessionaire may elect to co-ordinate its defence with the Implementing

required by the Concessionaire to perform the Project and its obligations under this Concession Agreement provided, however, that the Implementing Agency shall bear no liability for any failure of the Concessionaire to obtain such permits.

- 7.4.3 In the course of the execution of the Project and performing its functions under this Concession Agreement, the Concessionaire shall take all necessary steps to ensure that appropriate pollution control and other environmental protection measures are taken by itself and its agents, servants, employees and sub-contractors in accordance with any applicable laws or regulations.

8 FACILITY MANAGEMENT AND MAINTENANCE

8.1 Ownership of the Property

The Parties hereby agree and acknowledge that all legal rights in and ownership of the Property are and shall be vested in the Implementing Agency throughout the tenor of this Concession Agreement.

8.2 Facility Management and Maintenance by the Concessionaire and Service Level Agreement

The Concessionaire shall be responsible for the Facility Management and Maintenance of the Project during the Concession Period.

8.3 Standards of Facility Management and Maintenance

Facility Management and Maintenance shall be carried out in accordance with the laws, regulations and standards having the force of law of the Federal Republic of Nigeria, in conformity with Good Industry Practice and using equipment and materials which are of suitable quality for the purposes and uses intended and free of defects and deficiencies. Management and Maintenance Manuals and registers shall be prepared and maintained by the Concessionaire, based on the foregoing and shall be in conformity to such laws, regulations and standards in relation thereof and as may be changed from time to time. Any manual for Management and Maintenance procedures and activities relating thereto and any changes, which are required to be made by the Concessionaire from time to time thereafter, shall be made available to the Implementing Agency.

8.4 Inspection by the Implementing Agency

- 8.4.1 The Implementing Agency, ICRC and/or the Independent Engineer may at any time during the Concession Period inspect the Property to ensure that the Concessionaire's obligations in respect of Management and Maintenance are being discharged in accordance with the terms of this Concession Agreement.

- 8.4.2 If the Concessionaire has failed to Manage and Maintain the Property in accordance with the terms hereof, the Implementing Agency may

- a) Delays the Effective Date, Construction Commencement, any Construction Completion or any Opening Date(s).
- b) Causes an increase in costs of Construction Works or Management and Maintenance or loss of or delay in receipt of revenues.
- c) If the Implementing Agency withdraws its requirement for any such change prior to its implementation, the Concessionaire shall be entitled to recover from the Implementing Agency all reasonable costs incurred in preparing or procuring detailed costing and design prior to such withdrawal.
- d) The Concessionaire shall give notice of any claim to the Implementing Agency. Following receipt of such notice, the Independent Engineer shall make a determination, with respect to:
 - I. Any extension of the Effective Date, any date for Construction Commencement, any Time for Completion, any Opening Date to which the Concessionaire is entitled; and/or
 - II. Any monetary compensation to which the Concessionaire is entitled; and/or
 - III. Any relief from penalties to which the Concessionaire is entitled.

The Concessionaire shall be required to minimise, mitigate or avoid, and shall also reasonably ensure that its subcontractors and any other relevant third parties minimise, mitigate or avoid to the maximum extent reasonably possible any such delay and/or increased costs and/or reduction in revenues.

7.2 Commencement of Construction

Subject and without prejudice to the Implementing Agency's obligations, the Concessionaire shall commence the Construction Works within 30 Business Days of the execution of this Concession Agreement.

7.3 Completion of Construction

Completion of the Construction Works on the Project shall be effected not later than 36 months (the Development Period) except otherwise extended as may be mutually agreed in writing by the parties pursuant to this Concession Agreement.

7.4 Environmental Regulations

7.4.1 The Concessionaire shall, at its cost, comply with the Environmental Requirements of the Abuja Environmental Protection Board (AEPB) Act 1997 and any other Relevant Authority.

7.4.2 The Implementing Agency shall use all reasonable endeavours in assisting the Concessionaire to obtain any environmental permits

the Project, insofar as such information relates to the functions of the Independent Engineer.

6.5 The remuneration of the Independent Engineer shall form part of the Construction Cost and paid by the Concessionaire into a designated account to be nominated by the Implementing Agency from which disbursement shall be made.

6.6 The disbursement to the Independent Engineer by the Implementing Agency shall be made subject to the contract between the Independent Engineer and the Implementing Agency.

7 CONSTRUCTION WORKS

These shall include but not limited to the Architectural design of the buildings and detailed design including structural, mechanical and electrical works.

7.1 Design and Construction

7.1.1 The Concessionaire shall undertake or procure all Construction Works according to the Approved Design and to meet the structural, mechanical and electrical specifications, as well as all other requirements detailed in this Concession Agreement, in so far as they relate to the Construction Works, in accordance with Good Industry Practice. The Concessionaire bears sole responsibility for the procurement of all construction materials and their adequacy in terms of quality and safety.

7.1.2 If the Implementing Agency requires:

- a) Any suspension of any Construction Works;
- b) Any variation to the Construction Works or any new construction works;
- c) Any change to the Approved Design after it has been approved by the Implementing Agency;

7.1.3 The Concessionaire shall suspend the relevant Construction Works or procure the relevant Construction works in accordance with such variation or with the Approved Design as modified by such changes.

7.1.4 Provided that the Concessionaire shall be entitled to an extension of time and/or compensation from the Implementing Agency for all reasonable increased costs and/or loss of revenue and/or delay in receipt of revenue and/or relief from penalties if any such suspension (except for a suspension required as a result of illegal actions or omissions or breach of this Concession Agreement by the Concessionaire) or change (except if such change is required for the correction of an error in the Concessionaire's performance of its design obligations):



Agency and the Concessionaire shall discuss mutually acceptable solutions to overcome that failure.

5.2 Undertakings by the Implementing Agency

- 5.2.1 The Implementing Agency hereby represents and warrants that it has been duly empowered and authorised to implement the Project and to enter into and perform all its obligations under this Concession Agreement.
- 5.2.2 All decisions, determinations, instructions, inspections, examinations, tests, consents, approvals, certifications, expressions of satisfaction, acceptances, agreements, exercises of discretion (whether sole or otherwise), nominations or similar acts of the Implementing Agency shall be given, made and done in writing, and if given, made and done by the Chief Executive Officer (or such other person or persons as he or she may duly authorise and notify to the Concessionaire for such purpose from time to time) may be relied upon by the Concessionaire.

6 INDEPENDENTENGINEER

6.1 Appointment of the Independent Engineer

The Implementing Agency shall appoint an IndependentEngineer through an Independent Consultant to review the work and performance of the Concessionaire and its Contractors during the Development Period.

- 6.2 The scope of activities of the Independent Engineer shall include but not be limited to advising, recommending, informing,reviewing, inspecting, testing and certificating each Concessionaire's Contractor's work to ensure proper performance and completion of the Approved Design and the Construction Works in accordance with the terms of this Concession Agreement and the relevant Construction Contracts. The scope of activities of the Independent Engineer as may be appointed from time to time shall also include but not be limited to reviewing, inspecting and testing of the Concessionaire's work as well as the technical aspects of the project for effective performance and to ensure the Management and Maintenance is carried out in accordance with the terms of this Concession Agreement and the relevant Management and Maintenance Contracts.

- 6.3 Wherever under this Concession Agreement a determination is required to be made with respect to any request of the Concessionaire for extension of time, the Independent Engineer shall make recommendations to the Implementing Agency, who shall make such determination.

- 6.4 The Concessionaire shall ensure that the Independent Engineer is timeously provided with copies of all information received from any party in relation to