



TA-7691 (BAN):

Public Private Partnership Program Operationalization

Draft Model Concession Agreement

Part II – Special Conditions – Urban Rail Mass Transit

20 December 2011



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Special Conditions

SECTION 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these Special Conditions, unless the context otherwise requires the following terms shall have the following meanings assigned thereto:

"Fare" means any charge by the Concessionaire for conveying passengers on the Project Facilities;

"Fare Collection System" means the systems and associated equipment for fare collection to be procured by the Concessionaire to collect Fares;

"Rolling Stock" includes a locomotive, an engine car, a passenger car and any car or railway equipment that is designed for movement on its wheels on the rails of a railway.

SECTION 3

CONDITIONS PRECEDENT

3.1 Conditions Precedent

- (1) The Concessionaire is not required to satisfy any additional conditions under Section 3.1(a)(xi) of the General Conditions.
- (2) The Concessioning Authority is not required to satisfy any additional conditions under Section 3.1(b)(iv) of the General Conditions.

SECTION 7

OPERATIONS AND MAINTENANCE

Part A – Rolling Stock

7.1 Acquisition of Rolling Stock by the Concessionaire

The Concessionaire shall purchase or lease, at its own cost and risk, all the Rolling Stock specified in Annex G on or before Commencement Date.

7.2 Specifications of the Rolling Stock

Any Rolling Stock to be leased or purchased by the Concessionaire under Section 7.1, or purchased or leased thereafter by the Concessionaire as needed to provide the Project Services, shall conform to the requirements of Applicable Laws. The Concessionaire, however, remains fully responsible at all times for the suitability and safety of any Rolling Stock used by it in providing the Project Services.

7.3 Rolling Stock Lease Agreements' Assignments in Favour of the Concessioneing Authority

Lease agreements, if any, for the (a) lease of Rolling Stock under Section 7.1 or (b) the lease of Rolling Stock thereafter by the Concessionaire as needed to provide the Project Services, shall contain an assignment clause, to be approved by the Concessioneing Authority, in favour of the Concessioneing Authority.

7.4 The Concessioneing Authority's Right to Purchase the Concessionaire's Rolling Stock

- (1) The Concessionaire must prior to the end of the Term if requested by the Concessioneing Authority, and at a time advised by the Concessioneing Authority, where the Concessioneing Authority advises, negotiate with the Concessioneing Authority for the sale to the Concessioneing Authority of the Rolling Stock owned by it, if any, at a reasonable book value price and on reasonable market terms, using all endeavours to cause the completion of negotiations in advance of the end of the Term so that the Concessioneing Authority can continue to operate the Project Facilities without any interruption.
- (2) Where the Concessioneing Authority and the Concessionaire are unable to agree on a reasonable book value price or terms for the sale of the Rolling Stock to the Concessioneing Authority by the date which is 36 months before the end of the Term, then the Parties agree that the question of what a reasonable book value price and terms for the sale of the Rolling Stock is will be referred for resolution to an Independent Expert pursuant to Section 19.2 of the General Conditions. The Concessioneing Authority may decline to enter into a contract for the sale and purchase of the Rolling Stock if it considers, at its sole discretion, that the book value

price determined by the Independent Expert is not reasonable. Where the Concessioneing Authority declines to purchase the Rolling Stock on the ground that the Independent Expert's resolution on the price is unreasonable, the Concessionaire may thereafter may sell the Rolling Stock to any third party provided that sale price is not lower than the price in the original offer made to the Concessioneing Authority.

- (3) Where a negotiation under Subsection (2) above between the Concessionaire and the Concessioneing Authority ends in agreement for the transfer of the Rolling Stock (or where there has been a determination pursuant to the dispute resolution procedure as referred to in Subsection (2) that the Concessioneing Authority does not consider unreasonable), the Concessionaire shall contemporaneously with the end of the Term:
- (a) transfer or procure the transfer to the Concessioneing Authority or its nominee ownership of the Rolling Stock, free from all security interests; and
 - (b) deliver or procure the delivery to the Concessioneing Authority or its nominee all records relating to the Rolling Stock; and
 - (c) do or procure all other acts and things reasonably requested by the Concessioneing Authority or its nominee to effect an orderly hand over of the Rolling Stock.

Part B – Operation, Maintenance and Safety of the Project Facilities and Services

7.5 Main Obligations of the Concessionaire With Respect to Operation

The Concessionaire shall, as of Commencement Date and for the entire Concession Period, operate the Project Facilities and provide the Project Services thereon safely, efficiently and in a timely manner and without limiting the generality of the foregoing:

- (a) carry out the operation of the Project Facilities in a manner consistent with this Agreement, Good Industry Practice, and in accordance with Applicable Laws, relevant Permits and Clearances under Annex F and the Project Requirements;
- (b) employ on the Project Facilities all safety devices and safety practices required by Applicable Laws, the Project Requirements, Insurance Policies and Good Industry Practice;
- (c) operate and maintain the Project Facilities and the Rolling Stock so as to prevent the release or leaching of any hazardous substances over, under or outside of the Project Facilities or otherwise affecting the surrounding environments (including the air, soil, subsoil, surface water and groundwater); and
- (d) consistent with Good Industry Practice and the requirements of Applicable Laws, keep accurate and up to date records of any accident or other occurrence on the Project Facilities that results in injury to persons or damage to property.

7.6 Main Obligations of the Concessionaire With Respect to Maintenance

The Concessionaire must maintain the Project Facilities, including all fixed infrastructure and all Rolling Stock:

- (a) to keep the Project Facilities in good and substantial repair and condition (subject to fair wear and tear) so that it is suitable for use as a railway providing the Project Services; and
- (b) in accordance with the Project Requirements.

7.7 Maintenance Reports

Within 3 (three) months of the end of each calendar year, the Concessionaire must give the Concessioneing Authority a written maintenance report detailing:

- (a) the results of any inspections carried out on the Project Facilities during the previous year; and
- (b) all maintenance and repairs carried out on the Project Facilities during the previous year.

7.8 Register of Maintenance Works and Inspection

The Concessionaire must maintain a true, up to date and complete register of all maintenance work undertaken by the Concessionaire in respect of the Project Facilities and all inspections carried out on the Project Facilities. The Concessionaire must, following reasonable notice from the Concessioneing Authority, make available to the Concessioneing Authority the aforesaid register for inspection and if, requested to do so by the Concessioneing Authority, provide it with a full copy of the aforesaid register or extracts thereof.

7.9 Maintenance Inspections by the Concessioneing Authority

- (1) The Concessioneing Authority shall be entitled upon giving reasonable written notice to the Concessionaire to inspect the Project Facilities to determine the Concessionaire's compliance with this Agreement. In addition, the Concessioneing Authority may require that a representative of the Concessionaire jointly inspect the Project Facilities with a representative of the Concessioneing Authority.
- (2) The Concessionaire shall give prior notice to the Concessioneing Authority of any running of the track recording car to check the track quality index and shall permit representatives of the Concessioneing Authority to attend and inspect the result of such running.

7.10 Updating the Operations and Maintenance Standards and the Safety Standards

- (1) The Concessionaire acknowledges and agrees that the Operations and Maintenance Standards and the Safety Standards set out in the Annexure to Annex C will require ongoing development, amendment and updating throughout the Term to take into account:
 - (i) changes in Applicable Laws;
 - (ii) changes to the manner in which the Project Facilities is being used and operated;
 - (iii) the development in the railway industry of new techniques for the operation and maintenance of railways and the provision of passenger services; and
 - (iv) deficiencies in or omissions from the Operations and Maintenance Standards and the Safety Standards of which the Concessionaire becomes aware.
- (2) The Concessionaire must:
 - (a) continue to develop and promptly amend or update the Operations and Maintenance Standards and the Safety Standards to take into account the occurrence of the events and circumstances referred to in Subsection (1); and
 - (b) promptly submit each revised Operations and Maintenance Standards and the Safety Standards to the Concessioneing Authority as it is further developed, amended or replaced.
- (3) Without limiting any other rights the Concessioneing Authority may have, if the Concessioneing Authority reasonably considers that:
 - (a) any part of the Operations and Maintenance Standards and the Safety Standards has ceased to comply with the requirements of this Agreement; or
 - (b) the Concessionaire has not further developed, updated or amended the Operations and Maintenance Standards and the Safety Standards in accordance with the requirements of Subsection (2) above, the Concessioneing Authority may by written notice direct the Concessionaire to further develop, update or amend the Operations and Maintenance Standards and the Safety Standards specifying:
 - (i) the reasons why such development, updating or amending is required; and
 - (ii) such reasonable time within which such development, updating or amending must occur,and the Concessionaire must:
 - (iii) further develop, update or amend the Operations and Maintenance Standards and the Safety Standards as directed by the Concessioneing Authority; and

- (iv) submit the further developed, updated or amended Operations and Maintenance Standards and the Safety Standards to the Concessioneing Authority within the time specified in the Concessioneing Authority's notice.
- (4) The Concessionaire:
 - (a) must comply with the Operations and Maintenance Standards and the Safety Standards submitted to the Concessioneing Authority;
 - (b) agrees that compliance by it with the Operations and Maintenance Standards and the Safety Standards will not in any way lessen or affect:
 - (i) its liabilities or responsibilities under this Agreement or otherwise according to Applicable Laws; or
 - (ii) the Concessioneing Authority's rights against it, whether under this Agreement or otherwise according to Applicable Laws.
- (5) The Concessioneing Authority will have the right at any time to audit at the Concessioneing Authority's cost the Concessionaire's compliance with the Operations and Maintenance Standards and the Safety Standards. The Concessioneing Authority must give the Concessionaire at least 28 days' notice of its intention to exercise this right.

Part D – Fares

7.11 Freedom to Set Fares

The Concessionaire shall freely:

- (a) fix all fares, subject to such upper limits as prescribed under Section 7.12;
- (b) fix charges other than fares; and
- (c) convey passengers at fares lower than the fares fixed under paragraph (a) above but subject to such conditions, if any, as the Concessionaire deems fit.

7.12 Upper Limits of Fares

- (1) The fares set in Section 7.11 are subject to the following upper limits for the year 2012:

Category of Passengers	Maximum Fare per Trip
Children	BDT [●]
Students	BDT [●]
Adults	BDT [●]

Seniors	BDT [●]
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- (2) The maximum fares specified in Subsection (1) for the year 2012 shall be adjusted for each of the subsequent calendar years of the Term to reflect the percentage change in the Consumer Price Index (CPI) in accordance with the following formula:

$$NR = 1 + \left(\frac{NI - OI}{100} \right) \times IR$$

Where –

NR is the new rate to be effective on January 1 of the calendar year;

NI is the CPI published for the month of January immediately preceding the calendar year;

OI is the CPI published for January 2012; and

IR is the initial rate for the year 2012.

7.13 Timetables and Schedules

The Concessionaire shall keep and exhibit at each station of the Project Facilities a copy of timetables indicating the passenger train services for the time being in operation on the Project Facilities and the applicable schedule of fares.

7.14 Regulation of Passengers

The Concessionaire may issue, once approved by the Concessioneing Authority, bye-laws or guidelines governing the conduct of passengers on the trains and stations of the Project Facilities and enforce them through specially mandated and trained agents.

7.15 Fare Collection Systems

- (1) The Concessionaire shall, at its own expense, procure, install, commission and operate the:
- (a) Fare Collection System; and
 - (b) automatic fare gates at each Station.
- (2) The Concessionaire may sell Fares by machines, from staffed ticket offices, through third party retailers, and by other means including through the internet and mobile phones.

Part E – Obligations of the Concessions Authority

7.16 Approvals

The Concessions Authority shall promptly grant any approval or consent sought by the Concessionaire as required under this Agreement subject to the Concessionaire having complied with all relevant requirements under Applicable Laws.

7.17 Exclusivity

- (1) For the duration of the Concession Period, the Concessions Authority shall not oblige the Concessionaire, either directly or through Applicable Laws, to grant access to the Project Facilities to any other rail operator or third party.
- (2) The Concessions Authority shall compensate the Concessionaire for any reasonable loss of profit incurred by it in the event that under future Applicable Laws the Concessionaire were to be obliged to grant access to the Project Facilities to any other rail operator or third party.

7.18 Utilities and Services

The Concessions Authority shall during the Concession Period provide access to the Concessionaire to all infrastructure facilities and utilities including water, electricity and telecommunication facilities necessary for the implementation, operations and maintenance of the Project/Project Facilities and Services in accordance with this Agreement, at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers availing substantially equivalent facilities and utilities.

SECTION 9

PAYMENTS TO THE CONCESSIONING AUTHORITY

9.1 License Fee

None.

9.2 Payments of Royalty

None.

9.3 Other Payments

(1) Concession Fees Owed by the Concessionaire

The Concessionaire, in consideration of the rights and privileges granted to it by the Concessioneing Authority under this Agreement, shall pay Concessioneing Authority the following concession fees:

- (a) a Fixed Concession Fee in accordance with Section 9.3(2)(a); and
- (b) a Variable Concession Fee in accordance with Section 9.3(3).

(2) Fixed Concession Fee

(a) The Concessionaire shall pay to Concessioneing Authority on or prior to the 90th day following the signing of this Agreement a sum of sum of BDT [●] (Takas [●] Only)

(b) In the event this Agreement is terminated prior to its entering into force as a result of a Concessioneing Authority Event of Default, Concessioneing Authority shall repay to the Concessionaire within 60 (sixty) days of the date of termination the Fixed Concession Fee. Where this payment is delayed beyond 60 (sixty) days, the Concessioneing Authority shall be charged with interest at BB PLR plus 2% (two percent) per annum from the 61st day of the date of termination to the date when the amount of the Fixed Concession Fee is repaid. As of Commencement Date, the payment by the Concessionaire of the Fixed Concession Fee to Concessioneing Authority shall become absolute and unconditional.

(3) Variable Concession Fee

The Concessionaire shall pay to Concessioneing Authority the Variable Concession Fee set out in Part 1 of Annex I in such manner, at such times and subject to such terms as set out in Part 2 and Part 3 of Annex I.

SECTION 15

EVENTS OF DEFAULT

15.1 The Concessionaire Event of Default

There is no additional Concessionaire Event of Default under Section 15.1(xxvii) of the General Conditions.

15.2 The Concessioneing Authority Event of Default

There is no additional Concessioneing Authority Event of Default under Section 15.2(v) of the General Conditions.

Annexes

ANNEX A

PROJECT SITE

[Description of Project Site will be included here.]

ANNEX B

PROJECTS ASSETS

[The Project Assets handed over by the Concession Authority to the Concessionaire will be identified and described here.]

ANNEX C

PROJECT REQUIREMENTS

[This Annex will set out the key project requirements and the Construction Standards, Operations and Maintenance Standards and Safety Standards. The indicative standards and norms in this regard will be included in the annexure.]

Part I – Project Facilities

[Description of the rail lines, stations and other facilities to be built and operated by the Concessionaire.]

Part II – Project Services

The Concessionaire shall provide, as of Commencement Date and for the whole duration of the Concession, the following minimum Project Services:

(1) Hours of Operation

- (a) Train service is to be provided from [●] to [●] on Sunday through Thursday, and [●] to [●] on Friday, Saturday and public holidays.
- (b) Train service outside of the specified hours of operation is at the discretion of the Concessionaire, and subject to the approval of the Concessioneing Authority.

(2) Minimum Train Service

- (a) Minimum Operating Days: 365 days per year;
- (b) Maximum Headways: [●] minutes headways during peak hours, [●] minutes headways during off-peak hours:
 - (i) Peak hours are deemed to be on Sunday through Thursday, 3 (three) hours during the morning and 3 (three) hours during the afternoon, approximate times [●] to [●] and [●] to [●];
 - (ii) All hours outside of peak hours are deemed to be off-peak hours. On Fridays, Saturdays and public holidays, all hours of operation are deemed to be off-peak.
- (c) Maximum running time between [●] and [●] (including stops at intermediate stations): [●] minutes.
- (d) Minimum Passenger Capacity: The minimum passenger capacity, based on fully-loaded trains (seated plus standing) is set out in the table below:

Year [●]	Peak Hours [●]	Off-Peak Hours [●]
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ANNEXURE TO ANNEX C

CONSTRUCTION STANDARDS, OPERATIONS AND MAINTENANCE STANDARDS AND SAFETY STANDARDS

Indicative and minimum standards and norms for various kinds of projects will be prescribed here to suit project requirements.

A. Construction Standards

[.....]

B. Operations and Maintenance Standards

B.1 General

The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out.

While carrying out the repairing, maintaining and replacing the project facilities, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, project facilities in trust for eventual transfer to the Concessioneing Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Project Assets and Project Facilities and Services is diminished.

The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the concessionaire premises and /or the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.

While carrying out the repair, maintenance and replacement of the project facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Bangladeshi Standards or in its absence ISO/OISD Standards. In the event that the concessionaire, by necessity or otherwise need to follow any other country standard and it shall be equal or superior to the standard specified above.

The repairs and maintenance shall generally conform to the following specifications.

B.2 Particular Specifications

[...]

C. Safety Standards

The Concessionaire shall ensure compliance with the safety standards set out under Applicable Laws, as relevant, from time to time including [●] and also those standards set out below:

[....]

ANNEX D

PROJECT SCHEDULE

[Project Specific – key milestones shall be specified by the Concessioneing Authority for milestone dates for completion of Construction Works including installation of equipments etc. These should be easily identifiable and measurable. Following is an example table.]

Milestone date	Activity/level of completion of project
[●] Days from Date of Award of Concession	[25% of Construction Works should have been completed]
[●] Days from Date of Award of Concession	[50% of Construction Works should have been completed]
[●] Days from Date of Award of Concession	[100% of Construction Works should have been completed]

ANNEX E

DESIGNS AND DRAWINGS

[The Concessioneing Authority to stipulate the Designs and Drawings that the Concessionaire will be expected to submit for review by the Independent Engineer as per the Project Requirements.]

ANNEX F

PERMITS AND CLEARANCES

- A. [Applicable Permits to be obtained by the Concessionaire before commencement of Construction Works.]
- B. [Such permits and clearances under Environmental Law/other Applicable Laws as will be procured by the Concessioneing Authority before the commencement of the Project, to be specified by the Concessioneing Authority.]

ANNEX G

ROLLING STOCK

[List of all the Rolling Stock which the Concessionaire will need to purchase before Commencement Date.]

ANNEX H

RATES APPLICABLE IN RESPECT OF LAND, UTILITIES AND SERVICES

[Scale of Rates.]

ANNEX I**VARIABLE CONCESSION FEE****Part 1 – Amount of the Variable Concession Fee****1.1 Percentage**

The Concessionaire shall pay to the Concessioneing Authority, for each Payment Period, a Variable Concession Fee based on the percentage of the Concessionaire's Gross Revenue set out herein-below:

Years	Percentage
1-6	[●] %
7-[●]	[●] %

1.2 Definition of Concession Payment and Payment Period

For the purpose of this Annex:

- (a) "Concession Payment" means the sum owed by the Concessionaire under Section 1.1 of this Annex I;
- (b) "Payment Period" means each period of 3 (three) calendar months beginning on Commencement Date until the end of the Term (including any part of this period of 3 (three) months between the beginning of the final 3 (three) months and the end of the Term); and
- (c) "Gross Revenue", means the following revenue received by the Concessionaire (which for the avoidance of doubt, includes any Bangladeshi subsidiary of the Concessionaire, if any, engaged in providing goods or services which would otherwise have had to be provided by the Concessionaire under this Agreement):
 - (i) revenue from Fares, including the Concessionaire's portion of joint all rail or multi-modal carriage of passengers;
 - (ii) revenue from the lease and rental of property, including land, buildings, sidings, grounds, and station stalls; and
 - (iii) any other revenue incidental to or connected (directly or indirectly) with the rights and privileges granted under this Agreement,

but excluding Value Added Tax, bank interest, investment grants and revenue which is in the nature of compensation or a refund of expenditure (e.g. insurance claims, commissions for timely payment of bills, etc.);

Part 2 – Manner and Timing of Concession Payments

2.1 Delivery of Certificate

- (1) Within 30 days following the end of each Payment Period the Concessionaire shall deliver to the Concessioneing Authority a certificate providing the information set out in Subsection (2) (to the extent it can be reasonably determined at such time) in relation to the preceding Payment Period. Any such information which cannot be delivered at such time shall be delivered to the Concessioneing Authority by the Concessionaire as soon as reasonably practicable thereafter.
- (2) The certificate in Subsection (1) ("a Certificate") shall show:
 - (a) the Gross Revenue earned in the preceding Payment Period, broken out according to the categories specified in the definition of Gross Revenue in Section 1.1 of the Agreement; and
 - (b) any information or data required for the purpose of calculating any Adjustment Payment,and shall contain such details of the calculations used to ascertain such sums together with all relevant supporting information on which such calculations have been based.

2.2 Delivery of Statement

Within 14 days following receipt from the Concessionaire of a Certificate, the Concessioneing Authority shall (in respect of the Payment Period covered by that Certificate) deliver to the Concessionaire a statement showing:

- (a) the proposed payment in respect of that Payment Period;
- (b) any proposed Adjustment Payments to be made in respect of a Concession Payment which was paid in relation to a previous Payment Period,

and shall supply with such statement details of the calculations used to ascertain such sums together with all relevant supporting information on which such calculations have been based (each a "Statement").

2.3 Estimates by the Concessioneing Authority

If any of the information or data required for the purpose of calculation of the Concession Payments (or any element thereof) is not available to the Concessioneing Authority, the Concessioneing Authority shall, in its sole discretion, estimate such information or data for the purposes of calculation of the Concession Payments (in this Section "Estimated Information"). Any Concession Payments (or any element thereof) calculated on the basis of Estimated Information shall be the subject of an Adjustment Payment. The Concessionaire

shall not be entitled to raise any disagreement or dispute in connection with any Estimated Information, save by reference to any Adjustment Payment payable in relation thereto in accordance with Part 3 of this Annex.

2.4 Approval of Calculations

Subject to Section 2.3, within 14 days of receipt of any Statement, the Concessionaire shall notify the Concessioneing Authority whether or not it agrees with the calculations contained in the Statement. Subject to Section 2.3, if the Concessionaire disagrees with anything in the Statement it shall with its notice give reasons for such disagreement and state what it considers to be the correct amount of any Concession Payment. If there is a Dispute as to the amount of the Concession Payment, Section 19 of the General Conditions shall apply.

2.5 Invoicing for Concession Payments

Together with or at any time after the delivery of a Statement, the Concessioneing Authority shall submit an invoice detailing each of the Concession Payment or Adjustment Payment set out in such Statement (or such other sum as may have been agreed between the parties prior to submission of such invoice) notwithstanding any Dispute as to the amount of any such Concession Payment (an "Invoice"). Each Invoice shall state the total amount payable by the Concessionaire in respect of the relevant Statement.

2.6 Payments to the Concessioneing Authority

All Concession Payments or Adjustment Payments to be paid by the Concessionaire to the Concessioneing Authority pursuant to this Annex shall be paid in Takas in cleared funds for value on the due date to the account of the Concessioneing Authority – Variable Concession Fee Payment Receipts Account, account number [●] with [●] Bank, [Bank address] quoting reference [●] or to such other bank account in Bangladesh or in such other manner as the Concessioneing Authority may from time to time designate by not less than ten Business Days' notice to the Concessionaire.

2.7 Time for Payment and Interest

- (1) All Concession Payments or Adjustment Payments amounts properly included in Invoices shall be paid within 14 days of invoice notwithstanding any Dispute as to the amount of any Payment. Time shall be of the essence.
- (2) Interest rate at BB PLR plus 2% (two percent) per annum shall be charged on late or unpaid amounts under Subsection (1).

Part 3 – Adjustments to Concession Payments

3.1 Situations Where Adjustments Payments are Payable

An Adjustment Payment shall be determined and shall become payable in the following circumstances:

- (a) where Estimated Information is used in the calculation of any Concession Payment, the Concessioneing Authority shall, within 14 days of receiving the actual data or information previously estimated, determine the amount of any Adjustment Payment payable; or
- (b) if the Concessioneing Authority, or the Concessionaire, becomes aware that there has been a mistake in the calculation or payment of a Concession Payment under the terms and provisions of this Annex, other than any Concession Payment determined pursuant to arbitration under Section 19.3 of the General Conditions (including any mistake which becomes evident to either of them upon reconciliation of the information and data provided at the end of each Payment Period pursuant to Section 2.1 and the equivalent information and data relating to the Concession Year into which the Payment Periods fall) (a "Mistake") then the party becoming aware of the Mistake shall provided to the other party details of the Mistake. Within 14 days following provision of such details, the Concessioneing Authority shall notify the Concessionaire of any further information which it reasonably requires to determine the amount of any Adjustment Payment required to take account of such Mistake (or if no such information is reasonably required, it shall notify the Concessionaire of that fact). Within 14 days of such notification, the Concessioneing Authority shall determine the amount of any Adjustment Payment payable.

3.2 Calculation

Any Adjustment Payment payable under Section 3.1 shall be calculated as follows:

- (a) in the case of an Adjustment Payment payable under Section 3.1(a), the Adjustment Payment shall be calculated as the amount by which the Concession Payment(s) affected by the Estimated Information would have differed had the actual information or data been used in the calculation of such Concession Payments; and
- (b) in the case of an Adjustment Payment payable under Section 3.1(b), the Adjustment Payment shall be calculated as the amount by which the Concession Payment(s) affected by such Mistake would have differed had such Mistake not been made at the time of calculation or payment of such payment(s).

3.3 Inclusion in Statement

the Concessioneing Authority shall include the amount of any Adjustment Payment which it has determined in accordance with Section 3.2 in the next Statement delivered to the Concessionaire following the date of such determination or, if there is no such subsequent Statement due (including because this Agreement has terminated), the Adjustment Payment will become payable 28 days after the date upon which it was determined by the Concessioneing Authority in accordance with Section 3.2.

ANNEX J

PERFORMANCE STANDARDS

[This Annex will prescribe project-specific minimum Performance Standards.

A. Performance Standards

As per Part II (“Project Services”) of Annex C.

B. Performance Evaluation and calculation of liquidated damages

Performance evaluation shall be made on a quarterly review of the reports furnished by the Concessionaire and/or the records of the Concessionaire and/or by an enquiry by the Concessioneing Authority. The Concessionaire shall be liable to pay liquidated damages determined at the rate of [1% (one per cent) of the Gross Revenue of the respective quarter for every shortfall of 10% (ten per cent)] in the average performance which shall be assessed in the following manner [●].]

]

ANNEX K

YEARLY INFORMATION LIST

[List of information to be provided by the Concessionaire to the Concessioneing Authority pursuant to Section 9.4(3) of the General Conditions.]