

Annexure V

Tripartite Agreement^{1 2}

This Tripartite Agreement is made at New Delhi on this [.....] day of [.....], [20....]

AMONGST

[... ..] acting through [Shri.....]
Department of Ministry of Government of India, New
Delhi (hereinafter referred to as “Empowered Committee”),

[... ..], acting for itself and for the Lenders listed in Schedule as Lender,
(hereinafter referred to as the “Lead Institution”) and having its registered office at [... ..]
... ..] and its principal administrative offices at [.....]

AND

[... .. LIMITED], a company incorporated and existing under
the Companies Act, 1956 /2013and having its registered office at [], acting through its
Director [Shri] duly authorised by the resolution passed at the meeting
of its Board of Directors held on [... ..] (hereinafter referred to as the
“Concessionaire”).

(The expressions “Empowered Committee”, the “Lead Institution” and the Concessionaire
shall include their respective successors, and are hereinafter collectively referred to as the
“Parties” and individually as “Party”)

AND WITH

[... .. a statutory body constituted under the provisions of the Act,
... /... .. a government company within the meaning of the Companies Act, 1956/2013/the
State of through its]* (the “Owner”) as confirming Party.

* Delete whichever is inapplicable

WHEREAS

- A. The Owner had pursuant to the Notice Inviting Prospectus No. dated
(the “Tender Notice”) laid down and prescribed the technical and commercial terms and
conditions and invited bids for construction, operation and maintenance of [Name of
the Project] on Build-Operate-Transfer (BOT) basis (the “Project”).

¹ In case of Sub Scheme 1 and 2 where projects are entirely funded by Equity, the role and responsibilities
of LFI shall be undertaken by the Project Authority.

² In case of Sub Scheme 1 and 2, if the project is entirely funded through equity, then the Tripartite
Agreement shall be entered into by the Empowered Committee, the Project Sponsoring Authority (Owner
of the asset) and the Private Sector Company.

- B. After evaluation of the bids so received the Owner had accepted the bid of the Consortium comprising of [... ..], [... ..] and [... ..] and has consequent thereto entered into the Concession Agreement (as defined hereinafter), a true copy of which is annexed hereto and marked as Annexure 'A'; with the Concessionaire which has been promoted by the Consortium to undertake the Project.
- C. The Central Government has notified a Scheme called the "Scheme for Financial Support to Public Private Partnerships in Infrastructure" (the "Scheme") for financial support to infrastructure projects that are to be undertaken through Public Private Partnerships ("PPP").
- D. On an application made by the Owner ("the Proposal") for the Project to be considered for viability gap funding ("VGF") under the Scheme, the Empowered Committee has agreed to provide to the Concessionaire VGF by way of grant under and in accordance with the Scheme to the extent and in the manner set forth hereinafter.
- E. The Scheme requires certain representations by the Owner and entering into the tripartite agreement setting forth, inter alia, the terms and conditions of VGF grant.

Now therefore the parties hereto hereby agree and this Agreement witnesseth as follows:

1. Definitions and Interpretations

1.1. For the purposes of this Agreement, the following terms shall have the meaning hereinafter respectively assigned to them:

- 1.1.1. "Agreement" means this tripartite agreement, and amendments if any thereto made in accordance with the provisions contained herein in this behalf.
- 1.1.2. "Balance Debt" shall mean the balance principal amount of the debt agreed to be provided by the Lenders to the Concessionaire under the Financing Agreements for financing the Total Project Cost and which remains to be disbursed by the Lenders to the Concessionaire after the Concessionaire has subscribed and expended the equity contribution required for the Project.
- 1.1.3. "Capital Grant" shall have the meaning ascribed to it under clause 2.1 of this Agreement.
- 1.1.4. "Concession Agreement" means the Concession Agreement dated [... ..] entered into between the Owner and the Concessionaire, and shall include all annexures and appendices thereto and any amendments thereto made in accordance with the provisions contained in this behalf therein provided any amendments thereto made hereafter which materially alter any of the terms and conditions thereof shall not be binding on the Empowered Committee and the Central Government unless previously approved by the Empowered Committee.
- 1.1.5. "Indemnified Party" shall have the meaning ascribed to it under clause 8.4 of the

Agreement.

1.1.6. “Indemnifying Party” shall have the meaning ascribed to it under clause 8.4 of the Agreement.

1.1.7. “PPP” shall have the meaning ascribed to under Recital C.

1.1.8. “Project” shall have the meaning ascribed to under Recital A.

1.1.9. “Proposal” shall have the meaning ascribed to under Recital D.

1.1.10. “Scheme” shall have the meaning ascribed to under Recital C.

1.1.11. “Tender Notice” shall have the meaning ascribed to it under Recital A.

1.1.12. “Total Project Cost” means the lower of the following total capital cost of the Project:

- a) [Rs. (Rupees)] as estimated by the Owner;
- b) [Rs. (Rupees)] as contained in the financial package approved, inter alia, by the Lead Institution; and
- c) The amount as actually expended on the Project as certified by the Statutory Auditors, but shall not include the cost of the land comprised in the Project.

1.1.13. [Operation and Maintenance Cost or (“O&M Cost”) shall include the cost of [salary and consumables unless Empowered Committee excluded/included any components of O&M Cost as deemed fit depending on the project structuring.]³

1.1.14. “O&M Grant” shall have the meaning ascribed to it under clause 2.1 of the Agreement.

1.1.15. “VGF” shall have the meaning ascribed to it under Recital D;

1.1.16. “VGF Default” shall have the meaning ascribed to it under clause 6.1 of the Agreement.

1.1.17. “VGF Grant” means the Capital Grant [and the O&M Grant]⁴ payable by the Central Government under and in accordance with the Scheme as set forth in the Guidelines for Financial Support to Public Private Partnerships in Infrastructure notified by the Finance Ministry on 07.12.2020 vide OM No. 10/3/2018-PPP and as referred to in clause of this Agreement.

1.2. The words and expressions beginning with or in capital letters used in this Agreement and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Concession Agreement.

1.3. In this Agreement, unless the context, otherwise requires:

³ Applicable only for Sub-Scheme 2 projects

⁴ Applicable only for Sub-Scheme 2 projects

- a) Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b) The words importing singular shall include plural and vice versa, and words denoting natural persons shall include all genders, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity)
- c) The headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- d) Terms beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein;
- e) The words “include” and “including” are to be construed without limitation;
- f) Any reference to a “day” shall mean reference to a calendar day;
- g) Any reference to “month” shall mean reference to a calendar month;
- h) Any reference to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the Empowered Committee hereunder or pursuant hereto in any manner whatsoever;
- i) References to Recitals, clauses, sub-clauses, paragraphs, Annexures or appendices in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, clauses, sub-clauses, paragraphs, Annexures and appendices of this Agreement;
- j) Any agreement, consent, approval, authorisation, proposal, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and
- k) Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates.

1.4. Priority of Agreements:

In the event of any conflict between this Agreement and

- i. the Concession Agreement; or
- ii. any of the Project Agreements,

the provisions of this Agreement shall prevail.

2. Grant

2.1. Relying on the representations made by the Concessionaire and the Owner as set forth hereinafter and believing them to be true, the Empowered Committee hereby grants to the Concessionaire and the Concessionaire hereby accepts from the Empowered Committee the VGF Grant, i.e., the capital grant in a sum of [Rs (Rupees)] (“Capital Grant”) , [and operation and maintenance grant in a sum of [Rs (Rupees)] (“O&M Grant”) for first-five years after COD]⁵ , or the Project under the Scheme subject to and on the terms and conditions set forth in this Agreement and the Scheme. The VGF Grant shall be disbursed to the Concessionaire by Lead Institution for and on behalf of the Empowered Committee in the manner as set out in Clause 2.2 [and Clause 2.3]⁶.

2.2. The Lead Institution shall disburse the Capital Grant in the manner set forth herein to the Concessionaire for and on behalf of the Empowered Committee in proportion to the disbursements of the Balance Debt, and shall after each such disbursement of Capital Grant to the Concessionaire, notify the Empowered Committee of the same.

2.3. The Lead Institution shall along with the disbursement of the Balance Debt disburse in proportion thereto the Capital Grant to the Concessionaire in the same manner as such Balance Debt and, upon such disbursement, shall be deemed to have been received by the Concessionaire.

[The Lead Institution shall disburse the O&M grant annually for the first 5 (five) years post achieving commercial operation date (cod) based on audited annual accounts and shall after each such disbursement of the O&M grant to the Concessionaire, notify the Empowered Committee of the same. The annual O&M Grant shall be subject to the lower of the following: -

- i. O&M Grant for the year finally approved by the Empowered Committee as stated in annexure B;
- ii. 25% of the actual O&M Cost incurred during such Financial Year as certified by the Statutory Auditor of the Concessionaire]⁷

2.4. Notwithstanding anything to the contrary contained in this Agreement in the event of

⁵ Applicable only for Sub-Scheme 2 projects

⁶ Applicable only for sub-scheme 2 projects

⁷ Applicable only for Sub-scheme 2 projects

- a) Any suspension of the Concessionaire's rights under the Concession Agreement or termination of the Concession Agreement; or;
- b) Any suspension of the rights of the Concessionaire under this Agreement or termination of this Agreement; or
- c) Occurrence of any VGF Default,

The disbursement of the balance of the undisbursed amount of VGF Grant shall be suspended or terminated, as the case may be, in the sole discretion of the Empowered Committee without the Empowered Committee or the Lead Institution being liable to the Concessionaire or the Owner in any manner whatsoever for the same. Such suspension or termination as the case may be, of the undisbursed portion of the VGF Grant shall be deemed to be with mutual agreement of the Parties.

2.5. The Concessionaire and the Lead Institution agree and acknowledge that the Capital grant is for and shall solely be used to fund such part of the Total Project Cost [and the O&M Grant is for and shall solely be used to fund the O&M Cost pursuant to Rule 2 of the Scheme]⁸ as is on account of viability gap which necessitated the VGF Grant and for no other purpose whatsoever.

2.6. The Concessionaire and the Lead Institution acknowledge, and the Owner confirms that:

2.6.1. The Capital Grant under this Scheme shall be disbursed only after the Concessionaire subscribes to and has expended the equity contribution required for the Project from the Concessionaire under the Financial Package.

2.6.2. [The O&M Grant under this Scheme shall be disbursed only after submission of the following by the Lead Institution to the Empowered Committee in the prescribed format: (a) annual performance report by the Lead Institution; and (b) actual incurred O&M cost certified by the Statutory Auditor based on the audited annual accounts⁹]¹⁰

3. Representations and Warranties

3.1. The Owner represents, warrants and confirms to the Empowered Committee and the Lead Institution respectively the following:

- a) The Total Project Cost does not include the cost of the land comprised in the Project incurred by the Owner; and [the O&M Cost does not include any component excluded

⁸ Applicable only for Sub-scheme 2 projects

⁹ As prescribed at Annexure D and revised from time to time.

¹⁰ Applicable only for Sub-scheme 2 projects

pursuant to Rule 2 of the Scheme;]¹¹

- b) The Concessionaire has been selected through a transparent and open competitive bidding process conforming to the provisions of the Scheme;
- c) The Project shall provide service against payment of predetermined tariff/user charge as set forth in the Concession Agreement;
- d) The pre-determined tariff/user charges payable pursuant to the Concession Agreement to the Concessionaire for provision of services pursuant thereto, cannot be increased to eliminate or reduce the viability gap, which necessitated the application for the VGF Grant for the Project under the Scheme by the Owner;
- e) The Concession Period under the Concession Agreement cannot be increased for reducing the viability gap, which necessitated the application for the VGF Grant under the Scheme;
- f) The Total Project Cost [and O&M Cost] is reasonable and based on the standards and specifications normally applicable to such projects as the Project and the same cannot be restricted for reducing the viability gap, which necessitated application by the Owner for VGF Grant under the Scheme; and
- g) The VGF Grant made or which may hereafter be made by the Owner to the Concessionaire for meeting the Total Project Cost [and O&M Cost] or any part thereof shall not exceed in aggregate the provisions as given in Rule 4.1 of the Scheme.

3.2. The Concessionaire represents and warrants to the Empowered Committee and the Lead Institution that:

- a) It is duly organised and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transaction hereby contemplated;
- b) It has taken all necessary corporate and other actions under applicable laws to authorise the execution and delivery of this Agreement and to perform its obligations under this Agreement;
- c) This Agreement constitutes its legal, valid and binding obligation, enforceable against it the Concessionaire in accordance with the terms hereof;
- d) The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the Concessionaire or any

¹¹ Applicable only for Sub-scheme 2 projects

applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;

- e) All information furnished to the Empowered Committee, the Lead Institution and the Owner and as updated on or before the date of this Agreement is true and accurate in all material respect;
- f) There are no actions, suits, proceedings or investigations pending or to its knowledge threatened against it at law or in equity before any court or any other judicial, quasi-judicial or other authority or body, the outcome of which may result in the breach of this Agreement;
- g) It has complied with all Applicable Laws and Applicable Permits in all material respects;
- h) It is not in breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and no representation or warranty contained herein or in the Concession Agreement or any other document furnished by it to the Empowered Committee or the Owner or the Lead Financial Institution contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

3.3. In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time during the subsistence of this Agreement, such Party shall immediately notify the other Parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

4. Project Monitoring

4.1. Lead Institution agrees and undertakes that subject to the provisions of this Agreement, the Lead Institution shall undertake regular monitoring and periodic evaluation of Project compliance with the agreed milestones and performance levels as set forth in the Concession Agreement and it shall, through periodic reports, advise and keep informed the Empowered Committee about the slippages or otherwise in Project compliances with the agreed milestones and performance levels as set forth in the Concession Agreement together with brief description of the causes of slippages or non-compliances, if any, therein. Without prejudice to the generality of the foregoing, the Lead Institution shall as part of its monitoring obligation hereunder undertake the following:

4.1.1. From the date of this Agreement, the Lead Institution shall through its representative, inspect the Project Site on a monthly basis and shall keep a regular

inspection log recording progress of the Project; and

4.1.2. The Lead Institution shall send on a quarterly basis, progress reports during construction of the Project, to the Empowered Committee together with brief description of the causes of slippages or non-compliances, if any, as per the format attached at annexure C.

4.1.3. [The Lead Institution shall send an annual performance report for the five years post achieving commercial operation date (cod) of the Project to the Empowered Committee as per the format attached at annexure D.]¹²

5. Role of Lead Institution

5.1. The Concessionaire and the Lead Institution acknowledge that the Lead Institution is only acting as trustee for the Empowered Committee in respect of the VGF Grant and has no rights to the VGF Grant in any manner whatsoever.

5.2. The Empowered Committee hereby authorises the Lead Institution to exercise such rights, powers, authorities and discretion as are conferred by this Agreement on the Lead Institution together with all such rights, powers, authorities and discretion as are reasonably incidental hereto.

5.3. In performing its functions and duties under this Agreement, the Lead Institution shall act in trust for the benefit of, and as agent for the Empowered Committee or its nominees, successors or assigns, in accordance with the provisions of this Agreement.

5.4. The Lead Institution shall maintain accurate account of all Capital Grant disbursements made by it pursuant to this Agreement and shall by the 15th day of every month furnish a copy thereof as at the close of the immediately preceding month, duly certified under the hands of an officer of the Lead Institution duly authorised in this behalf, to the Empowered Committee together with statement showing the tentative disbursement schedule of the balance of the Capital Grant remaining to be disbursed.

5.5. In discharge of its duties and obligations hereunder, the Lead Institution:

- a) May, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by and on behalf of the Concessionaire by an officer of the Concessionaire duly authorised in this behalf by the Board of Directors of the Concessionaire;

¹² Applicable only for Sub-scheme 2 projects.

- b) May, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) Shall, within 5 (five) business days of its receipt, deliver to the Empowered Committee a copy of any notice or document received by the Lead Institution in its capacity as the trustee for the Empowered Committee from the Concessionaire or any other person hereunder or in connection herewith; and
- d) Shall, within 5 (five) business days of its receipt, deliver to the Concessionaire a copy of any notice or document received by the Lead Institution from the Empowered Committee in connection herewith.

5.6. The Lead Institution agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to any amount of the VGF Grant pending disbursement to the Concessionaire. For the avoidance of doubt, it is hereby acknowledged and agreed by the Lead Institution that the monies, if any, received from the Empowered Committee and held by the Lead Institution on account of the VGF Grant and awaiting disbursement to the Concessionaire shall not be considered as part of the assets of the Concessionaire and being trust property held in trust for the Empowered Committee, and shall, in the case of bankruptcy or liquidation of the Lead Institution, be wholly excluded from the assets of the Lead Institution in such bankruptcy or liquidation and shall be made over to the Empowered Committee or its nominee.

6. VGF Default

- 6.1. Following events shall constitute an event of default by the Concessionaire ("VGF Default") under this Agreement unless such event of default has occurred as a result of Force Majeure or any act or omission of the Empowered Committee:
- a) The Concessionaire causes the Lead Institution to transfer the VGF Grant to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the designated account or any sub-account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
 - b) The Concessionaire commits or causes any other breach of the provisions of this Agreement; or
 - c) Any of the representation and warranties of the Concessionaire are found at any time to be false or incorrect and fails to cure the same, within a Cure Period of 5 (five) business days; or
 - d) Any of the representation and warranties of the Owner are found at any time to be false

or incorrect and the Owner fails to cure the same, within a Cure Period of 5 (five) business days; or

- e) The Concessionaire commits Concessionaire Default under the Concession Agreement unless such default has occurred solely as a result of any breach of the Concession Agreement by the Owner or due to Force Majeure; or
- f) The Concessionaire is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the Concessionaire or for the whole or a material part of its assets.

6.2. Upon occurrence of a VGF Default, the consequences thereof shall be deemed to be a material breach of the Concession Agreement by the Concessionaire and treated as a Concessionaire Default under the Concession Agreement, and shall be accordingly dealt with under and in accordance with the provisions of the Concession Agreement for such breach under the Concession Agreement.

7. Term of the Agreement

7.1. This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as any of the Lead Institution or the Concessionaire obligations to the Empowered Committee remain to be discharged, or a period of 5 (five) years from the commercial operation date (cod) hereof, whichever is later.

8. Indemnity

8.1. The Concessionaire will indemnify, defend and hold harmless the Empowered Committee and Lead Institution against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of this Agreement, or the Concession Agreement of any of Project Agreement or the Financing Agreements, or on account of failure of the Concessionaire to comply with Applicable Laws or Applicable Permits, or on account of disbursement or failure to disburse the VGF Grant or any part thereof.

8.2. The Lead Institution will indemnify, defend and hold the Empowered Committee harmless at all times against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of failure of the Lead Institution to fulfil its obligations under this Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lead Institution, its officers, servants and agents.

8.3. The Empowered Committee will indemnify, defend and hold harmless the Lead Institution at all times against any and all proceedings, action and third party claims for any loss, damage, cost and expense arising on account of disbursement of the VGF Grant pursuant

hereto for and on behalf of the Empowered Committee or on account of failure of the Empowered Committee to fulfil its obligations under this Agreement or the Lead Institution complying with any direction of the Empowered Committee given pursuant to this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful function by the Empowered Committee, its officers, servants and agents.

- 8.4. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity hereunder or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

9. Dispute Resolution

- 9.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably within [.....] of communication thereof shall be decided finally by reference to arbitration to a Board of three Arbitrators comprising of one nominee of the Party which is the claimant in such dispute, one nominee of the Empowered Committee and the third to be appointed in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”). Such arbitration shall be held in accordance with the said Rules and shall be subject to the provisions of the Arbitration and Conciliation (Amendment) Act, 2019.
- 9.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.
- 9.3. This Clause of the Tripartite Agreement shall not be invoked by the Concessionaire to settle any claims against the Owner or the Empowered Committee pertaining to any matter under the Concession Agreement. For avoidance of doubt, this Agreement deals only with matters related to disbursement of VGF Grant by the Empowered Committee.

10. Miscellaneous Provisions

- 10.1. Governing Law and Jurisdiction

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

10.2. Rights of the Concessionaire

The rights and remedies of the Concessionaire in the VGF Grant, including in any balance thereof awaiting disbursement to the Concessionaire, are set forth in their entirety in this Agreement and the Lead Institution and the Concessionaire shall have no other rights or remedy against or to such VGF Grant including in any balance thereof awaiting disbursement to the Concessionaire.

10.3. Amendments

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

10.4. Waiver

10.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

10.5. No Third-Party Beneficiaries

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

10.6. Survival

10.7.1. Termination of this Agreement: a. shall not relieve the Parties of any obligations

hereunder which expressly or by implication survive termination hereof; and b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

10.7. Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause ~~10.4~~ 9.1 of this Agreement or otherwise.

10.8. Successors and Assigns

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

10.9. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

10.10. Language

All notices, certificates, correspondence and proceedings under or in connection with

this Agreement shall be in English.

10.11. Authorised Representatives

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

10.12. Original Document

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

10.13. Recovery of VGF in case of terminated projects

If the Project is terminated at any point of time during the Concession period, the VGF may not be recovered from the Owner, if it is re-bid and continued as PPP. However, if the Project is terminated at any point of time during the Concession period and not continued as PPP project, then 90% of Capital Grant disbursed under this Scheme may be payable by the Owner to the Ministry of Finance.

10.14. Confirming Party

The Owner has signed this Agreement as confirming party in token confirmation of the representations and warranties of the Owner set forth herein and in ratification of the terms hereof.

In witness whereof the parties hereto have executed these presents on the day, month and year first above written.

For and on behalf of the Lead Institution By:

Name:

Designation:

For and on behalf of the Concessionaire By:

Name:

Designation:

For and on behalf of the Empowered Committee By:

Name:

Designation:

In the presence of:

1. _____

2. _____

In token confirmation and ratification of the Owner's representations and warranties and of the terms hereof

For and on behalf of the Owner By:

Name:

Designation

In the presence of:

1. _____
2. _____

Annexure A

(Copy of Signed Concession Agreement)

[Annexure B]

(Annual O&M Grant Approved by the Empowered Committee)]

Year	Annual GoI O&M grant Approved by the Empowered Committee (Rs. In Cr)	Annual O&M grant quoted by the bidder (Rs. In Cr)	Annual GoI share of O&M grant out of the O&M grant Quoted by the bidder (Rs. In Cr)
1 st year			
2 nd year			
3 rd year			
4 th year			
5 th year			
Total			

Annexure C

Quarterly Progress Report for disbursing Capital Grant

Format to be submitted along with request for release of Capital Grant

SN.	Items	Description
Details of the project		
1.	Project Name:	
2.	Project Sponsoring Authority:	
3.	Lead Financial Institution:	
4.	Concessionaire:	
5.	Date of Signing of Concession Agreement:	
6.	Total Project Cost as Approved at the time of Final Approval (in INR CR):	
7.	Total Project Cost as Approved by the LFI (in INR CR):	
8.	Total Project Cost as actually expended till date (in INR CR):	
9.	Concession Period:	
10.	Construction Period:	
11.	Appointed Date:	
12.	Scheduled COD:	
13.	Amount of Equity as per Financial Model at the time of Financial Close basis which Final Approval was granted (in INR CR):	
14.	Amount of Debt as per Financial Model at the time of Financial Close basis which Final Approval was granted (in INR CR):	

15.	Details of Capital Grant Approval	Date and details of Total amount of Capital Grant Approved:
16.	Performance security (in INR CR):	
17.	Tripartite Agreement Date:	
18.	Escrow Account Details:	Opened on: Account Name: Escrow Account Number: IFSC Code: Name of the Bank:
Status of debt/equity/grant actually spent on the project		
19.	Whether equity amount has been fully expended in the project? (Attach Certificate from Auditor certifying amount of expended equity contribution by the concessionaire as on date:	
20.	Total debt sanctioned by the LFI	
21.	Date and Amount of debt disbursement made by LFI (Attach Bank Statement/certificate):	
22.	Details of subordinate debt (unsecured debt) expended by the Concessionaire, if any.:	
23.	Any other source of financing, if any:	
Progress of the Project		
24.	Whether Project Sponsoring Authority and LFI are regularly monitoring the project?	
25.	Whether the project has achieved its milestones?	
26.	If no to question above, explain the problems faced in executing the project:	
27.	Steps taken by the Project Sponsoring Authority/ Concessionaire in resolving the issues:	

28.	Details of Physical Progress of the Project:	
29.	Details of Financial Progress of the Project:	
30.	Attach copy of Progress Report submitted by the LFI	
31.	Slippages mentioned in the Quarterly Progress Report, if any:	
Details of Capital Grant amount disbursed by GoI		
32.	Date and amount of Capital Grant amount Disbursed by GoI till date:	
33.	Whether the disbursed Capital Grant amount has been fully expended on the project and the details thereof (certificate from Auditor):	
34.	If not, what portion of disbursed Capital Grant amount was utilized in the project:	
Details of Capital Grant sought		
35.	Amount of Capital Grant sought:	
36.	Proportion of Capital Grant sought to total debt disbursed by LFI:	
37.	Account details in which VGF is to be deposited:	
38.	Whether the concessionaire is in VGF Default as per Clause 6 of the Tripartite Agreement:	

Signed by LFI

Signed by Project

Signed by

Sponsoring Authority

Concessionaire

Annexure D

Annual Performance Report from the LFI for disbursing O&M Grant

SN.	Items	Description
Details of the project		
1.	Project Name:	
2.	Project Sponsoring Authority:	
3.	Lead Financial Institution:	
4.	Concessionaire:	
5.	Date of Signing of Concession Agreement:	
6.	Total Project Cost as Approved at the time of Final Approval (in INR CR):	
7.	Total Project Cost as Approved by the LFI (in INR CR):	
8.	Actual TPC certified by LFI and Statutory Auditors (in INR CR):	
9.	Concession Period:	
10.	Construction Period:	
11.	Appointed Date:	
12.	Commercial Operations Date (COD):	a) Scheduled CoD: b) Actual COD:
13.	Details of O&M Grant Approval	Date and details of Total amount of O&M Grant Approved (Rs Cr):
14.	Tripartite Agreement Date:	
15.	Escrow Account Details:	Opened on: Account Name: Escrow Account Number: IFSC Code: Name of the Bank:
Status of O&M Grant released to the project		

16.	For which financial year, the O&M Grant has been sought?																												
17.	Year-wise O&M Cost & O&M Grant (Attach certificate from Statutory Auditor of the Concessionaire for actual O&M Cost)	<table border="1"> <tr> <th rowspan="2">Year</th> <th colspan="3">O&M Grant</th> </tr> <tr> <th>Final Approved O&M Grant amount</th> <th>25% of Actual O&M Cost</th> <th>O&M Grant Sought</th> </tr> <tr> <td>1</td> <td></td> <td></td> <td></td> </tr> <tr> <td>2</td> <td></td> <td></td> <td></td> </tr> <tr> <td>3</td> <td></td> <td></td> <td></td> </tr> <tr> <td>4</td> <td></td> <td></td> <td></td> </tr> <tr> <td>5</td> <td></td> <td></td> <td></td> </tr> </table>	Year	O&M Grant			Final Approved O&M Grant amount	25% of Actual O&M Cost	O&M Grant Sought	1				2				3				4				5			
Year	O&M Grant																												
	Final Approved O&M Grant amount	25% of Actual O&M Cost	O&M Grant Sought																										
1																													
2																													
3																													
4																													
5																													
18.	Details of Components considered in actual O&M Cost																												
19.	Whether the entire amount of Central O&M Grant has been released?																												
20.	Whether the entire amount of State O&M Grant has been released?																												
21.	Date and amount of O&M Grant disbursed by GoI till date:																												
22.	Whether the disbursed O&M Grant amount has been fully expended on the project and the details thereof (certificate from Auditor):																												
23.	If not, what portion of disbursed O&M Grant was utilised in the project:																												
Performance of the Project																													
24.	Whether Project Sponsoring Authority and LFI are regularly monitoring the project?																												
25.	Whether the project is performing well in terms of KPIs?																												
26.	If no to question above, explain the problems faced in the operation of the project:																												
27.	Steps taken by the Project Sponsoring Authority/ Concessionaire for resolving the issues:																												
28.	Whether the concessionaire is in VGF Default as per Clause 6 of the Tripartite Agreement:																												