



Concession Agreement

**for the Financing, Development, Construction,
Operation and Maintenance of the Two (2)
International Airports & Smart Cities and Six (6) Local
Airports**

between

Government of Ghana

and

**IIB Development Group
Consortium**

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THIS AGREEMENT is made on the ____ of February, 2022.

BETWEEN:

- (1) **THE GOVERNMENT OF GHANA** (hereinafter referred to as "government", this expression its context or its meaning, includes its administrators, its successors and its assigns) of a single party; (hereinafter referred to as "Government" which expression shall include its successors and assigns); and
- (2) **IIB DEVELOPMENT GROUP CONSORTIUM**, a company incorporated with limited liability under IIB Development Group, LLC, a District of Columbia limited liability company having principal offices located at 1050 Connecticut Ave., N.W., 5th Floor, Washington D.C. 20036 (hereinafter referred to as "IIB-DG" which expression shall include its successors and permitted assigns).

Government and IIB-DG will be collectively referred to below as the "Parties" and individually the "Party".

WHEREAS:

- (A) In the context of a project being undertaken through a public/private sector approach, it is critical that the terms and conditions upon which such a project will be implemented are set out and therefore the parties are entering into this concession agreement (the "Agreement" or the "Concession Agreement").
- (B) It is the endeavour of the Parties to develop an international standard airport where all airport activities are carried out in a timely manner with requisite performance standards.

NOW IT IS HEREBY AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement, except to the extent that the context otherwise requires:

"Airport Activities" means the provision, at or in relation to the Airport, of

the activities set out at Schedule 3, Part 1 as amended from time to time, pursuant to ICAO guidelines, provided that any activities that are not materially similar to those contemplated in Schedule 3, Part 1 shall require the mutual agreement of the Parties;

"Airport" means the international airport comprising of the Initial Phase, to be constructed and operated by IIB-DG and includes all its buildings, equipment, facilities and systems and including, where the circumstances so require, any Expansion thereof as per the Master Plan;

"Airport Charges" means:

- (i) amounts charged or imposed by IIB-DG in respect of the provision or use of the facilities and services which are included within Airport Activities;
- (ii) amounts charged or imposed by IIB-DG on or in respect of passenger and cargo movement or aircraft traffic into, on, at or from the Airport; and
- (iii) any other amounts deemed by this Agreement to be Airport Charges and further including any amounts to be collected by IIB-DG on behalf of Government

"Airport Opening" means the commencement of the commercial operation of the Initial Phase;

"Airport Opening Date" means the date upon which Airport Opening occurs;

"Airport Opening Target Date" means the date falling thirty-six (36) months immediately after Financial Close, as extended in accordance with the terms of this Agreement;

"Applicable Law" means all laws, brought into force and effect by Government or the state governments including rules, regulations and notifications made thereunder and judgements, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement;

"Approvals" means all authorizations, consents, approvals, notifications and permissions and any license, permit, ruling, exemption or other authorization of whatsoever nature which is required to be granted by, or any registration or filing with, any authority under Applicable Law for or in respect of this Agreement including for performance of any obligation or

exercise of any right by a Party herein but excluding a Clearance;

"Business Day" means (a day other than a Saturday or Sunday, on which the principal commercial banks are open for business during normal banking hours.

"Change in Law" means the occurrence of any of the following (other than in respect of any laws of Government or any Tax laws (except for those that relate to any Tax benefits provided to IIB-DG and/or the Airport pursuant to Government's infrastructure policy and as more specifically set out in Schedule 12) or any environmental laws or Labour Laws) after the date of this Agreement having direct bearing on the implementation of the project:

- (i) the modification, amendment, variation, alteration or repeal of any existing Government law or the enactment of any new Government law;
- (ii) the commencement of any Government law which has not yet entered into effect except to the extent where such Government law was enacted prior to the date hereof with a commencement date after the date hereof and such Government law takes effect on that commencement date without any material amendment
- (iii) after the date of grant of any Clearance a material changes in the terms and conditions attaching to such Clearance or the attachment of any new material terms or conditions or such Clearance ceasing in part or in whole to remain in full force and effect;

Provided that the creation or introduction of an Independent Regulatory Authority (including the framing of rules and regulations in relation thereto or thereunder but, for the avoidance of doubt, shall exclude any amendments and/or changes relating to the Regulated Charges) having jurisdiction over all Major Airports shall not constitute a Change in Law;

"Chicago Convention" means the Chicago Convention 1944, as amended and/or supplemented from time to time; and references to an **"Annex"** to the Chicago Convention shall mean such Annex as amended and/or supplemented from time to time;

"Clearance" means the written consent, license, approval, permit, ruling, exemption, notification, no objection certificate or other authorization or permission of whatsoever nature which is required to be obtained from and/or granted by Government from time to time in connection with the

Project, including those set out in Schedule 1 attached hereto;

"CNS/ATM Agreement" means the agreement entered into or to be entered into between IIB-DG and GCAA in respect of the provision by GCAA to IIB-DG and GOVPAMA for communication navigation surveillance/air traffic management services;

"Compensation" means compensation payable by GOVERNEMENT as per Article 15.4; **"Completion Certificate"** means the completion certificate as defined in Article 7.3; **"Concession Fee"** shall have the meaning given to it in Article 3.3.1;

"Debt" means the outstanding debt due to the Lenders of IIB-DG under the Financing Agreements for the Project and for the purposes of this Agreement, it does not include any debt payable by IIB-DG to Government under the State Support Agreement;

"Deferred Payment" shall have the meaning given to it in Article 3.3.5;

"DGCA" means the Director General of Civil Aviation, Government of Country;

"Domestic Airport" means an airport serving any commercially operated aircraft flying to the relevant airport from a point of origin, or flying from the relevant airport to a point of destination, both inside Country;

"Effective Date" has the meaning set out in Article 4.4;

"Existing Airport" means the existing airport in the country;

"Expansion" means the expansion of the facilities at the Airport from time to time as per the Master Plan;

"Financial Close" means the date upon which the Financing Agreements (insofar as they relate to the development and construction of the Initial Phase) have been executed and delivered by all the parties thereto and conditions precedent thereunder shall have been fulfilled to such extent as may be necessary to permit IIB-DG to, have immediate access, subject only to giving the notices of drawdown required thereby, to funding required by IIB-DG;

"Financial Year" shall have the meaning given to it in Article 3.3.3;

"Financing Agreements" means any of (i) IIB-DG's agreements with Lenders for the making available to IIB-DG of Debt and (ii) the security documents, direct agreements and other ancillary undertakings in favor of Lenders required pursuant to the agreements referred to in (i) above;

"Force Majeure" has the meaning set out in Schedule 4;

"GCAA" means **Ghana Civil Aviation Authority**;

"General Aviation Services" means an aircraft operation other than commercial air transport operation;

"Government" means the Government of Country and any of its duly authorized agency, authority, department, inspectorate, ministry or person (whether autonomous or not) under the lawful and effective control and direction of the Ministry of Transport;

"Government Default Event" shall have the meaning given to it in Article 13.3.2;

"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking and (in the case of IIB-DG) applying the standards generally adopted by international airport operators in the construction of the Airport adhering to the practices generally followed by such utilities (except as regards terms and conditions of employment of operating personnel) in the operation and maintenance of the Airport, and except insofar as inconsistent with any Applicable Law or the construction, operation, and maintenance of the systems or equipment to be operated and maintained by GCAA;

"Gross Revenue" shall have the meaning given to it in Article

3.3.2; **"IIB-DG"** means IIB Development Group Consortium;

"IIB-DG Default Event" shall have the meaning given to it in Article 13.3.1;

"ICAO" means the International Civil Aviation Organization formed by the Chicago Convention or any successor thereof;

"ICAO Policies" means the first statement of the ICAO Council contained in the "ICAO Policies on Charges for Airports and Air Navigation Services" which was adopted by the Council of ICAO on 22 June 1992, at the 14th Meeting of its 136th Session, and subsequently amended on 8 December 2000, at the 18th Meeting of the 161st Session, and which is published as ICAO document 9082/6 as may be amended from time to time;

"Independent Engineer" means the independent engineer appointed by the Lenders under the terms of the Financing Agreements;

"Independent Regulatory Authority" or "IRA" means the Airports Economic Regulatory Authority or any other regulatory authority set up to regulate any aspect of Airport Activities set up (i) by way of an executive order provided the functioning of the IRA is not within the control of Government, or (ii) by an Act of Parliament or an ordinance or any rules made thereunder.

"Indexed" means the adjustment of the relevant amount by reference to the index value of the "Wholesale Price Index" published by the Ministry of Industry, Government and shall include any index which substitutes such index, and any reference to Indexed shall, unless the context otherwise requires, be construed as a reference to adjustment taking into account the Wholesale Price Index for the period ending with the month preceding the month in which such Index is to be used;

"Initial Phase" means the design, financing, construction, completion and commissioning of the facilities described in Schedule 2, as may be amended from time to time in accordance with Applicable Law and/or ICAO standards as accepted and/or adopted by Government;

"International Airport" means an airport serving any commercially operated aircraft flying to a relevant airport in Country from a point of origin outside Country, or flying from a relevant airport in Country to a point of destination outside Country;

"Land Lease Agreement" means the document and/or instrument entered into on 30th September 2003 pursuant to which Government has granted to IIB-DG leasehold rights and interests in the Site;

"Lenders" means the banks, financial institutions, and similar bodies to whom debt is owed under the Financing Agreements for financing (which shall for these purposes include any refinancing) the Initial Phase and any Expansion;

"Major Airport" means any airport which has or is designed to have an

annual passenger throughput in excess of one and a half (1.5) million;

"Master Plan" means the master plan prepared by IIB-DG annexed hereto as Attachment 1 as may be revised from time to time in accordance with this Agreement;

"Non-Airport Activities" means the provision, at or in relation to the Airport, of the services set out at Schedule 3, Part 2;

"Party" means either Government or IIB-DG (as the context may require) and its successor and permitted assigns in terms of this Agreement and **"Parties"** shall be construed accordingly;

"Person" includes (as the context requires) any natural and/or juridical entity (including Government);

"Project" means the design, financing, construction, completion, commissioning, maintenance, operation, management and development of the Airport;

"Reference Date" shall have the meaning given to it in Article

3.3.5; **"Regulated Charges"** shall be as defined in Article 10.2.1;

"Relevant Authority" includes the Government, Department of Immigration of the Ministry of Home Affairs, Department of Customs of the Ministry of Finance or any other subdivision or instrumentality thereof, any local authority or any other authority empowered by the Applicable Laws;

"Reserved Activities" means those functions and activities that are to be carried out at the Airport by any Relevant Authority pursuant to and including those set out at Articles 8.4, 8.5 and 8.6;

"Security" includes any mortgage, pledge, lien, security interest or other charge or encumbrance and any other agreement or arrangement having substantially the same economic effect;

"Service Provider Right" means any privilege, right, franchise, lease or other right or sub-right granted by IIB-DG or by any Service Provider Right Holder pursuant to Article 3.2.2;

"Service Provider Right Holder" means any Person holding from time to time any Service Provider Right;

"Settlement Amount" means an amount calculated in accordance with

Schedule 7;

"Shareholders Agreement" means the agreement and IIB-DG;

"Site" means the land in which IIB-DG has or shall have a leasehold interest pursuant to the Land Lease Agreement, and measuring approximately..... acres in area, on, under and over which the Airport is to be constructed;

"Specifications" means the specifications for the construction of the Airport as set forth in Part 1 of Schedule 9;

"Standards" means the performance standards for the operation and maintenance of the Airport as set out in Part 2 of Schedule 9;

"State Support Agreement" means the agreement between Government and IIB-DG;

"Tax" or **"Taxes"** shall mean any and all taxes, levies, imposts, duties, charges, fees, deductions or withholdings that are, or that are to be, imposed, levied, collected, withheld or assessed, together with any and all interest, penalties, claims or other liabilities arising under or relating thereto;

"Termination Amount" means an amount calculated in accordance with Article 13.4.1;

"Transfer Date" shall be the date on which IIB-DG transfers legal and beneficial ownership and hands over possession of the Airport to GOVPAMA or its nominees in accordance with Article 13.5;

"User Development Fee" means a fee collected, as per rules laid down by Government, from the embarking passengers for the provision of passenger amenities, services and facilities and will be used for the development, management, maintenance, operation and expansion of facilities at the Airport directly or as a part of the cost of tickets in accordance with Article 10.2;

"VIP Lounge" shall have the meaning given to it in Article 8.7;

"Works" means the works required for, or to be carried out or executed in or in relation to or in connection with, the design, construction, completion, commissioning and/or development of the Initial Phase and/or any Expansion.

1.2 Interpretation

In this Agreement, except to the extent that the context requires otherwise:

- 1.2.1 any reference to an Act of Parliament or any Section of, or Schedule to, or other provision of, an Act of Parliament shall be construed, at the particular time, as including a reference to any modification, extension or re-enactment thereof then in force and to all rules, orders or regulations then in force and made under or deriving validity from the relevant Act or provision;
- 1.2.2 reference to a "judgment" includes any order, injunction, determination, decree or other judicial or arbitral tribunal measure in the Country n jurisdiction which is final and binding;
- 1.2.3 a reference to a "law" includes common law, the Constitution of Country and any decree, judgment, legislation, direction, order, ordinance, regulation, by-law, statute, notification, circular, guideline, rule, statutory instrument or other legislative measure, with which IIB-DG is required to comply by law (and "lawful" and "unlawful" shall be construed accordingly);
- 1.2.4 references in the singular shall include references in the plural and vice versa;
- 1.2.5 a reference to a "day" means a calendar day;
- 1.2.6 references to a particular Article, paragraph, sub-paragraph, Schedule or Attachment shall, except where the context otherwise requires, be a reference to that Article, paragraph, sub-paragraph, Schedule or Attachment in or to this Agreement;
- 1.2.7 the headings are inserted for convenience and are to be ignored for the purposes of construction;
- 1.2.8 terms defined in the Schedules hereto shall have the meanings ascribed thereto in the Schedules when used elsewhere in this Agreement;
- 1.2.9 the Schedules to this Agreement form part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- 1.2.10 any reference to any agreement, deed, instrument, license code or other document of any description shall be construed, at the particular time, as a reference to that agreement, deed, instrument, license code or other document as the same may then have been amended, varied, supplemented, modified,

suspended or novated;

- 1.2.11 the words "written" and "in writing" includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form with confirmation of the transmission;
- 1.2.12 the words "include" and "including" are to be construed without limitation;
- 1.2.13 in case of any ambiguity or discrepancy between the Articles and the Schedules, the Articles shall prevail.

2. **THE CONCESSION**

2.1 **Scope of the Project**

The scope of the Project (the "**Scope of the Project**") shall mean:

- 2.1.1 the development and construction of the Airport on the Site in accordance with the provisions of this Agreement;
- 2.1.2 the operation and maintenance of the Airport and performance of the Airport Activities and Non-Airport Activities in accordance with the provisions of this Agreement; and
- 2.1.3 the performance and fulfilment of all other obligations of IIB-DG in accordance with the provisions of this Agreement.

- 2.2 Any variation in the Scope of the Project subsequent to the Effective Date, except in respect of matters of sovereign right of Government subject to Article 18.13, shall be subject to the Applicable Law and/or mutual agreement of the Parties.

3. **GRANT OF CONCESSION**

3.1 **Concession**

- 3.1.1 Subject to and in accordance with the provisions of this Agreement and Applicable Law, GOVPAMA hereby grants IIB-DG the exclusive rights , irrevocable and privilege to carry out the development, design, financing, construction, commissioning, maintenance, operation and management of the Airport (but excluding the right to carry out the Reserved Activities and to provide communication and navigation surveillance/air traffic management services which are required to be provided by

Government represented by Ghana Civil Aviation Authority (GCAA)).

- 3.1.2 IIB-DG hereby accepts the concession granted to it by GOVPAMA and GCAA pursuant to Article 3.1.1 of this Agreement.

3.2 Recognition of Rights

- 3.2.1 Subject to Applicable Law and in accordance with the provisions of this Agreement, GOVPAMA and GCAA recognizes that IIB-DG may carry out:

- (a) any activity or business related or ancillary to the activities referred to in Article 3.1 or which IIB-DG considers desirable or appropriate to be carried on or engaged in connection therewith (including any infrastructure service considered by IIB-DG to be reasonably necessary for the activities referred to in Article 3.1); and
- (b) any activity or business in connection with or related to the arrival, departure and/or handling of aircraft, passengers, baggage, cargo and/or mail at the Airport; and
- (c) any activity or business in connection with or related to the development of the Site or operation of the Airport to generate revenues including the development of commercial ventures such as hotels, restaurants, conference venues, meeting facilities, business centers, trade fairs, real estate, theme parks, amusement arcades, golf courses and other sports and/or entertainment facilities, banks and exchanges and shopping malls.

- 3.2.2 For the purpose of exercising its rights pursuant to Article 3.2.1 IIB-DG may, subject to and in accordance with the terms of this Agreement, at any time, grant Service Provider Rights (including the right of the Service Provider Right Holders to grant sub-rights) to any Person for the purpose of carrying out the activities and businesses described in Article 3.2.1 on such terms and conditions as IIB-DG may determine are reasonably appropriate, subject to the same being within the framework of this Agreement and not being contrary to the terms and conditions of this Agreement provided that, if and to the extent required by any Applicable Law related to security clearance in the interest of national

security, such Service Provider Right Holders operating at the Airport shall have obtained the necessary and requisite security clearance.

The grant by IIB-DG of a Service Provider Right shall not relieve IIB-DG of any of its responsibilities, duties and obligations under this Agreement.

3.3 Concession Fee

3.3.1 Fee

The Parties agree that IIB-DG shall, in consideration for the grant by GOVPAMA of the Concession pursuant to Article 3.1, pay to GOVPAMA a fee amounting to twenty five percent (25%) of Net Profit annually on the terms specified in this Article 3.3 (the "**Concession Fee**").

Net profit (profit after deduction of costs, costs, taxes, interest, depreciation) (**the "Net Profit"**), from which IIB-DG benefits on a Project.

3.3.2 Gross Revenue

For the purposes of this Article 3.3 the term "**Gross Revenue**" means all pre- tax revenue of IIB-DG, excluding the following: (a) payments made by IIB-DG, if any, for the activities undertaken by Relevant Authorities pursuant to Articles 8.4, 8.5 and 8.6; (b) Insurance proceeds; (c) any amount that accrues to IIB-DG from sale of any capital assets or items; (d) payments and/or monies received in respect of air navigation and air traffic management services; (e) Payments and/or monies collected by IIB-DG for and on behalf of any governmental authorities under Applicable Law;

3.3.3 Payment

The Concession Fee shall be determined in respect of each financial year of IIB-DG ("Financial Year") occurring on and after the Airport Opening Date. A Financial Year shall, except in the circumstances outlined in this Article 3.3.3, commence on 1 April and end on 31 March. If the Airport Opening Date occurs in the first six (6) months of a Financial Year, the first Financial Year shall be deemed to commence on the Airport Opening Date and end on the first 31 March falling after the Airport Opening Date. If the Airport Opening Date occurs in the last six (6) months of a Financial Year the first Financial Year shall be deemed to

commence on the Airport Opening Date and end on the second successive 31 March falling after the Airport Opening Date.

3.3.4 **Payment Account**

The Concession Fee shall be calculated and paid in Ghana Cedis. Each payment due from IIB-DG shall be paid into an account at the Commercial Bank of Country, Accra, by wire transfer or bank draft in favor of the GOVPAMA or such other account as may be designated in writing from time to time by GOVPAMA to IIB-DG.

3.3.5 **Provisional Payment**

The Concession Fee in respect of the first ten (10) Financial Years (the "**Deferred Payment**") shall be payable in twenty (20) equal half-yearly instalments the first such instalment being due and payable on the 30th of June and the second such instalment being due and payable on 31st of December (each of these dates the "**Reference Date**") in the eleventh (11th) Financial Year after the Airport Opening Date with the remaining instalments each payable on each Reference Date falling thereafter.

Subject to Article 3.3.3 the Concession Fee in respect of the eleventh (11th) Financial Year and each succeeding Financial Year shall be payable annually in arrears on the Reference Date.

The Concession Fee shall be calculated by reference to IIB-DG's audited annual financial statements for the relevant Financial Year. If no such audited financial statements are available by the Reference Date falling after the end of the relevant Financial Year IIB-DG shall make a provisional payment to GOVPAMA based on the unaudited financial statements in respect of the relevant Financial Year. Within thirty (30) days of audited financial statements being made available to Government (a) if the provisional payment is less than the amount which should have been paid, IIB-DG shall pay GOVPAMA the outstanding amount, or (b) if the provisional payment is greater than the amount which should have been paid, the same shall be adjusted in the Concession Fee payable for the succeeding Financial Year.

3.3.6 **Interest and Taxes**

- (a) Payments made under Article 3.3 shall be treated as part of the operating expenses of the Airport with the

exception of deferred payment under Article 3.3.5, which are in lieu of payments to be accounted for in the relevant year.

- (b) Other than in the case of late payment in which case Article 18.14 shall apply, no interest shall be levied or due in respect of any amount or payment to be made pursuant to this Article 3.3.

4. CONDITIONS PRECEDENT

4.1 Conditions Precedent to Project

The provisions of this Agreement (other than those contained in Articles 1, 4, 6, 14, 16 and 18 inclusive which are, accordingly, binding on the Parties as from the date of this Agreement) shall take effect and become binding on the Parties from the date upon which the following conditions precedent shall have been satisfied in full:

4.2. Effective Date

Subject to Article 4.1, this Agreement will become effective on the date of signature hereof by the Parties hereto.

5. OBLIGATIONS OF GOVERNEMENT

5.1 Obligations of Government

5.1.1 Government shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement and shall not instruct any statutory body under the direct control and direction of the Ghana Civil Aviation Authority to take any action that would constitute a breach of this Agreement if such body were party to this Agreement in place of Government.

- (i) Upon application made therefor by IIB-DG or its shareholders or their respective contractors, servants or agents and subject to full compliance and sustenance by such parties with Applicable Law, the Ghana Civil Aviation Authority shall endeavor that all Clearances to be granted by it or that are within its direct control and as are required for or in connection with the Project, are granted by it within a period ending on the later of (i) the end of the relevant statutory period (if any), and (ii) forty-five (45) days after the relevant application duly completed having been

submitted. The Ghana Civil Aviation Authority shall use its good offices to procure that all other Clearances as are required for or in connection with the Project are granted within a period ending on the later of the end of the relevant statutory period (if any), and (ii) forty-five (45) days after the relevant application duly completed having been submitted.

Notwithstanding the above, Government shall limit its responsibilities to the permissions within its domain and not take any responsibility for the permission within the domain of Government.

5.2 Exclusivity

5.2.1 International

No new or existing airport shall be permitted by Government to be developed as, or improved or upgraded into, an International Airport within an aerial distance of 30 kilometers of the Airport before the twenty-fifth anniversary of the Airport Opening Date.

5.2.2 Domestic

No new or existing airport shall be permitted by Government to be developed as, or improved or upgraded into, a Domestic Airport within an aerial distance of 30 kilometers of the Airport before the twenty-fifth anniversary of the Airport Opening Date.

5.3 Equivalent Treatment

Post commencement of operations of the Airport Government shall not act, or omit to act, in a manner which discriminates against the Airport or IIB-DG in a way that provides other Major Airports with an unfair competitive advantage when compared to the Airport or IIB-DG, as the case may be. For the purpose of this Article, "discrimination" refers only to the passage of administrative or executive orders that are discriminatory in nature in relation to the Airport and/or IIB-DG vis-a-vis other Major Airports and/or other airport operators but does not include the passage of laws or statutory administrative or executive orders in relation to fiscal or tax matters. It is clarified that if for facilitating the establishment of another Major Airport the Government (or any of its ministries and departments) provides concessions or grants of finance, land or other facilitation to establish such Major Airport the same shall not constitute discrimination for this Article.

5.4 Support

- 5.4.1 Government acknowledges and supports the implementation of the project

5.5 Existing Airport

5.5.1 Existing Airport

- (a) IIB-DG shall, six (6) months prior to the anticipated Airport Opening Date, notify Government of the date it expects Airport Opening to occur.
- (b) From and with effect from the date on which Airport Opening occurs Government will ensure that the Existing Airport shall not be open or available for use for civil aviation operations.
- (c) From and with effect from the date on which Airport Opening occurs Government will issue and publish an Existing Airport is no longer open or available for civil aviation operations (which shall, for these purposes, not include use for Airport Activity at times of national emergency or (at any time) by aircraft owned or operated by or for the Country n Air Force or other Armed Forces of Country or Para-Military Forces of Country or Police or such other authorities or for transportation of dignitaries by special government owned, leased or hired VIP aircraft) and also for ensuring that the international code (HYD) of the Existing Airport is transferred to the Airport subject to the compliance of the requisite terms and conditions, if any, for the same by IIB-DG.
- (d) General Aviation Services (other than those relating to commercial aircraft, charter flights, aircraft hired or operated under commercial arrangements) may continue to be provided at the Existing Airport notwithstanding its closure to commercial aircraft pursuant to paragraphs (b) and (c) above.

5.5.2 Responsibilities

The Parties acknowledge and agree that the closure of the Existing Airport to commercial civil aviation operations may result in costs, expenses, liabilities, loss of profit, and/or claims made by third parties in connection with or pursuant to such closure.

The Parties hereby agree that neither IIB-DG nor GOVPAMA nor Government shall be responsible for or made to account for such costs, expenses, liabilities, loss of profit and/or claims made by third parties in connection with or pursuant to such closure. Government shall direct that GCAA will provide an undertaking regarding the cost of closure of Existing Airport, in so far, such costs relate to the existing concession/other agreements entered into by GCAA with third parties at the Existing Airport.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties

6.1.1 Subject to the provisions of Articles 13.3.1 (f) and 13.3.2 (c) of this Agreement, each Party represents and warrants to the other Party that as of the Effective Date and during the term of this Agreement

- (a) it has the power and authority and has taken all actions necessary to validly execute and deliver this Agreement;
- (b) its obligations under this Agreement will be legally valid and binding and enforceable against it;
- (c) it is subject to the laws of Country, and subject to Article 18.13 hereby expressly and irrevocably waives any immunity in respect of this Agreement;
- (d) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required under the terms of any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected and does not result in a violation of any Applicable Law;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Relevant Authority which may result in any material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) it has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement.

6.1.2 In addition, IIB-DG represents and warrants to Government that:

- (a) as at the date of this Agreement, the shareholding pattern of IIB-DG as per the Shareholders Agreement is as follows:

Sponsors and/or their Affiliates and/or Other Investors.	Percentage Shareholding
IIB-DG	70%
GOVPAMA	15%
Ghana Government	10%
SISGA	5%
Total	100%

- (b) as at the date of this Agreement, 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 before any other judicial, quasi-judicial or other authority, the outcome of which may result in a breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement; and
- (c) as at the date of this Agreement, no sums, in cash or kind, have been paid to, or accepted by, any person or will be paid to, or accepted by, any person or on its behalf by way of fees, commission or otherwise to induce Government to enter into this Agreement.

6.1.3 With regard to the representation and warranties made by either party in the Article 6.1.1 and 6.1.2 above, each party undertakes to disclose to the other party any alteration/ change in the Representation and Warranties made in the said Articles within a period of seven days of the occurrence of such change/ alteration. This disclosure by the parties shall be without prejudice to their respective rights and contention.

6.2 Approvals

IIB-DG shall at all times obtain and maintain all Clearances and Approvals, including registrations, licenses and permits (including immigration, temporary residence, work and exit permits), which are required by

Applicable Law for the performance of the Project.

6.3 Disclaimer

6.3.1 IIB-DG acknowledges that prior to the execution of this Agreement, it has, after a complete and careful examination, made an independent evaluation of the Scope of the Project and has determined the nature and extent of the difficulties, risks and hazards that are likely to arise or may be faced by it in the course of the performance of its obligations in this Agreement.

6.3.2 IIB-DG acknowledges and hereby accepts the difficulties, risks and hazards (including any inadequacies, mistakes or errors in or relating to any of the matters set forth in Article 6.4.1 above) associated with the Scope of the Project and hereby agrees that Government shall not be liable for the same in any manner whatsoever to IIB-DG.

6.3.3 For the avoidance of doubt the difficulties, risks and hazards accepted by IIB-DG pursuant to this Article 6.4 shall exclude any obligations for which Government is responsible pursuant to the terms of this Agreement.

7. CONSTRUCTION OF THE AIRPORT

7.1 Master Plan

IIB-DG shall review the Master Plan every five (5) years. If, on such review, IIB-DG considers it necessary to revise the Master Plan to reflect changed circumstances at the Airport, IIB-DG shall revise the Master Plan and provide Government with a copy of such revised Master Plan.

7.2 Construction and Expansion

IIB-DG shall design, procure, construct, complete, test and commission the Initial Phase, and remedy any defects in respect thereof, in accordance with the Master Plan, Good Industry Practice and Applicable Law. IIB-DG shall ensure that the Works shall conform with the Specifications and Good Industry Practice.

IIB-DG shall, taking into account and subject to increased demand, the availability of funding, the economic and profitable operation of the Airport at that time and the reasonable requirements of users of the Airport, develop and implement detailed proposals for the Expansion of the Airport.

To the extent that IIB-DG incurs any capital investments, amounts or costs in relation to the provision of Non-Airport Activities and requires such investments, amounts or costs to be included in the calculation of the Termination Amount, Debt or Settlement Mountain-DG shall seek the prior written consent of Government.

Notwithstanding anything contained to the contrary in the Agreement, Government does not guarantee the obligations of the Government in any manner whatsoever, and it is merely responsible to the extent provided in the Agreement.

7.3 Independent Engineer

IIB-DG shall procure that any reports and certificates prepared by the Independent Engineer and submitted to the Lenders pursuant to the terms of the Financing Agreements and any report from any independent engineer appointed pursuant to any future financing shall also be copied to the Government to enable the Government to monitor progress of construction and commissioning of the Airport.

IIB-DG shall also procure that the Independent Engineer furnishes to Government a "Completion Certificate" in form and substance as per Schedule 10 hereto prior to the Airport Opening Date.

7.4. Site and Materials

7.4.1 Organization of Site

IIB-DG will organize the Site during the period of construction with regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, plant and equipment, control of pollution, maintenance of competent personnel and labor and industrial relations and general site services including, without limitation, access to and on the Site, allocation of space for contractors' and sub-contractors' offices and compounds and the restriction of access to the Site to authorized Persons only.

7.4.2 Materials

IIB-DG will ensure that the Works will comprise only materials and goods which are of sound and merchantable quality and which are manufactured and prepared in accordance with Applicable Law and that all workmanship shall be in accordance with Applicable Law and with Good Industry Practice applicable at the time of construction and/or installation.

7.5 Airport Opening

IIB-DG will ensure that the Airport Opening Date shall occur by the Airport Opening Target Date, provided that such date shall be adjusted by reference to any delays arising due to or as a result of:

- 7.5.1 an event of Force Majeure; and/or
- 7.5.2 a failure or any delay by Government in the performance of its obligations under this Agreement; and/or
- 7.5.3 any interruption or intervention by Government pursuant to its rights under Article 8.14 of this Agreement; and/or
- 7.5.4 a failure or any delay by Government in the performance of its obligations under the State Support Agreement; and/or
- 7.5.5 a failure or any delay by Government in the performance of its obligations under the Land Lease Agreement; and/or
- 7.5.6 a failure or any delay by GCAA in the performance of its obligations under the CNS/ATM Agreement; and/or
- 7.5.7 a failure or any delay by GCAA or the Government in the performance of their obligations under the Shareholders Agreement; and/or
- 7.5.8 a failure or any delay by any Relevant Authority in the performance of its services; and/or
- 7.5.9 a change in the Scope of the Project pursuant to Article 2.2.
- 7.5.10 change in law that materially prevents IIB-DG from performing its obligations under this Agreement
- 7.5.11 any change, cessation or introduction of an environmental law that materially prevents IIB-DG from performing its obligations under this Agreement
- 7.5.12 the discovery of any archaeological remains of national importance at the Site that materially prevents IIB-DG from performing its obligations under this Agreement
- 7.5.13 change in interpretation and application or enforcement of such Government law by the Supreme Court of Country or the Government that materially prevents IIB-DG from performing its

obligations under this Agreement

In the event of IIB-DG failing to achieve Airport Opening by the date falling 12 months after the Airport Opening Target Date for any reason other than the conditions stated above, then IIB-DG shall pay to GOVPAMA as agreed liquidated damages of an amount of \$50,000 for every day of delay calculated for the period commencing on the date occurring six months after the Airport Opening Target Date and ending on the earlier of the Airport Opening Date or the date occurring twelve months after the Airport Opening Target Date, unless such period is extended by Government.

7.6 License

7.6.1 Grant of License

Government shall use its good offices and assist IIB-DG for grant of any airport license to IIB-DG initially for a period of 30 years to enable the work, provided that IIB-DG shall have completed construction of the Airport in accordance with the terms of this Agreement and shall have complied with (i) the requirements of Rule 86 and Section A of Schedule V of the Aircraft Rules 1937, (ii) any special directions or guidelines issued by DGCA pursuant to Rule 133A of the Aircraft Rules 1937 and (iii) any other standard requirement of DGCA in connection with the issuance of an airport license for a Major Airport.

7.6.2 Continuing License

Subsequent to the issue of Airport license under Article 7.6.1 above, Government shall use its good offices and assist IIB-DG for DGCA's renewal of said Airport license issued to IIB-DG for a further period of 30 years prior to the expiry of the Airport license issued for the immediately preceding two year period no later than Sixty (60) days from the date of IIB-DG's application to DGCA, provided that IIB-DG continues to comply in all material respects with (i) Applicable Law and the Aircraft Rules 1937, (ii) any special directions or guidelines issued by DGCA pursuant to Rule 133A of the Aircraft Rules 1937,

(i) the provisions of this Agreement and (iv) any other standard requirement of DGCA in connection with the issuance of an airport license for a Major Airport (including the payment of all past dues owed to DGCA in connection with such license) and provided that there are no outstanding breaches by IIB-DG under the current license.

7.7 Commissioning

Government shall use its good offices to persuade that GCAA and DGCA shall, at IIB-DG's cost and in a timely manner, carry out all tests and procedures as are necessary to be undertaken for the grant of the license referred to in Article 7.6 above and/or for the safe operation of the Airport.

8. OPERATION AND MAINTENANCE

8.1 Airport Operation and Maintenance

IIB-DG shall at all times comply with Applicable Law in the operation and maintenance of the Airport and will operate, maintain, keep in good operating repair and condition in accordance with Good Industry Practice and, in accordance with the Standards and renew, replace and upgrade to the extent reasonably necessary, the Airport which for these purposes shall exclude any systems or equipment to be operated and maintained by GCAA. All maintenance, repair and other works shall be carried out in such a way as to minimize inconvenience to users of the Airport.

8.2 Joint Co-ordination Committee

The Parties wish to develop, maintain and operate the Airport to high standards consistent with standards achieved at other leading international airports. The Reserved Activities will be carried out by Government or under the direction of Government. In order to assist IIB-DG, GOVPAMA, and Government achieve their objectives under this Agreement a joint coordination committee shall be formed comprising IIB-DG, GOVPAMA, Government and the other Relevant Authorities providing the Reserved Activities. The joint coordination committee shall meet at least once in three months commencing with the first month following the Effective Date provided that the Parties shall not be bound by the decisions of such committee. The Ministry of Transport / Civil Aviation shall use its good offices to assist in this process but shall not, for the avoidance of doubt, chair the joint coordination committee.

8.3 Reserved Activities

Government shall undertake the Reserved Activities in accordance with this Article 8 and shall exercise all rights available to them under Applicable Law requiring the continual provision of essential services to enable continuous flow of passengers, baggage and cargo at the Airport.

8.4 Customs, Immigration and Quarantine

- 8.4.1 The Parties wish to develop and operate the Airport to standards consistent with those achieved at other leading international airports and in this regard, customs, immigration and quarantine procedures shall be established by Government, at its own cost. The Parties intention is to use reasonable endeavors to try and agree appropriate service level standards in respect of customs and immigration procedures and quarantine services established by Government pursuant to this Agreement and the GCAA will use its best efforts to assist accordingly when requested by IIB-DG.
- 8.4.2 IIB-DG shall at all times provide the Relevant Authority with (i) such access and facilities at the Airport and (ii) the space requirements set out in Schedule 8 to this Agreement so as to enable the Relevant Authority to perform the Reserved Activities at the Airport, on terms and conditions that are generally consistent with the terms and conditions applicable at other Major Airports.
- 8.4.3 IIB-DG shall not be entitled to reduce the space and facilities provided to a Relevant Authority at the Airport without the consent of that Relevant Authority.
- 8.4.4 In the event of any expansion, modernization or redevelopment at the Airport which involves the movement or reconfiguration of any space or facilities used by a Relevant Authority for any of the purposes referred to above, IIB-DG shall duly inform the Relevant Authority and IIB-DG and the Relevant Authority shall discuss and agree any suitable amendments to the space requirements of the Relevant Authority that may be required as a result of such expansion, modernization or redevelopment at the Airport.

8.5 Security

- 8.5.1 Government confirms that unless otherwise agreed under this Agreement it shall, on the same terms as it provides such security at all other Major Airports, provide all aviation security at the Airport. Provided that Government and IIB-DG may, following mutual discussions, if it is considered appropriate, enter into arrangements to jointly provide aviation security services at the Airport. The Parties recognize that as at the date of this Agreement the fee levied for security per departing passenger may be set following mutual discussions and such fee may be revised uniformly for all Major Airports.

- 8.5.2 Without prejudice to the other provisions of this Agreement, IIB-DG shall comply with such rules and regulations established by GCAA in connection with the security of the Airport provided that IIB-DG shall not be so obliged if such rules and regulations are not generally and consistently applied to airports having the same or similar sensitivity classification.
- 8.5.3 IIB-DG shall be responsible for procuring, installing maintaining and replacing all such security equipment as required as per the norms and standards laid down by GCAA or any other Relevant Authority from time to time. In so far as the equipment relate to anti-hijacking and anti-sabotage functions (door frame metal detector (DFMD), hand held metal detector (HHMD), X-ray scan machines for screening carry on passenger baggage and walky-talkies) shall be operated by the agency designated by GCAA.
- 8.5.4 The procedures to be adopted for the security of the Airport building, passengers, persons working at the Airport and other visitors to the Airport, and aircraft, freight and other property at the Airport shall also be prescribed by GCAA. IIB-DG shall be obliged to comply with all such procedures and directions as issued by GCAA from time to time provided that such procedures and directions are consistently applied to airports having the same or similar sensitivity classification
- 8.5.5 The personnel for undertaking security duty shall be provided by the security agency designated by IIB-DG and approved by Government.
- 8.5.6 IIB-DG shall co-operate fully with the officers of the designated security agencies and other security agencies at all times.
- 8.5.7 IIB-DG shall provide the designated security agency with (I) such access and facilities at the Airport and (ii) the space requirements set out in Schedule 8 to this Agreement so as to enable the designated security agency to perform its functions under this Agreement, on terms and conditions that are generally consistent with the terms and conditions applicable to airports having the same or similar sensitivity classification.
- 8.5.8 IIB-DG shall not be entitled to reduce the space and facilities provided to the designated security agency at the Airport without the consent of the designated security agency.

- 8.5.9 In the event of any expansion modernization or redevelopment at the Airport which involves the movement or reconfiguration of any space or facilities used by the designated security agency for any of the purposes referred to above, IIB-DG shall duly inform the designated security agency and IIB-DG and the designated security agency shall discuss and agree any suitable amendments to the space requirements of the designated security agency that may be required as a result of such expansion, modernization or redevelopment at the Airport.

8.6 Meteorological Service

- 8.6.1 Government confirms that it shall provide meteorological services at the Airport in accordance with the practices established or recommended from time to time pursuant to the Chicago Convention and on the same terms as it provides such services at all other Major Airports.
- 8.6.2 IIB-DG shall in connection with the provision of meteorological services provide the Relevant Authority with (i) such access and (ii) the space requirements set out in Schedule 8 to this Agreement so as to enable the Relevant Authority to perform its functions under this Agreement. The functions provided by the Relevant Authority and the access and space provided by IIB-DG under this Article 8.6 shall be provided on terms and conditions that are generally consistent with the terms and conditions applicable at other Major Airports.
- 8.6.3 IIB-DG shall not be entitled to reduce the space and facilities provided to a Relevant Authority at the Airport without the consent of that Relevant Authority.
- 8.6.4 In the event of any expansion modernization or redevelopment at the Airport which involves the movement or reconfiguration of any space or facilities used by a Relevant Authority for any of the purposes referred to above, IIB-DG shall duly inform the Relevant Authority and IIB-DG and the Relevant Authority shall discuss and agree any suitable amendments to the space requirements of the Relevant Authority that may be required as a result of such expansion, modernization or redevelopment at the Airport.

8.7 VIP Lounge

IIB-DG shall at its cost provide and maintain to international standards at

all times at the Airport a VIP Lounge for the use and comfort of state guests and state dignitaries.

8.8 Standards

Nothing in this Article 8 shall be construed as entitling IIB-DG to reduce or prejudice the standards in relation to space or facilities required at the Airport under this Concession Agreement.

8.9 Management of the Airport Business

IIB-DG shall, in accordance with Good Industry Practice and Applicable Law and as contemplated by the terms of this Agreement:

- 8.9.1 manage and operate the Airport in a competitive, efficient and economic manner as a commercial undertaking;
- 8.9.2 without limiting any other obligation or right of IIB-DG under this Agreement, provide or secure the provision at the Airport of the Airport Activities; and
- 8.9.3 take proper account of the reasonable requirements of users of the Airport.

8.10 General obligations

8.10.1 IIB-DG shall, subject to Applicable Law:

- (a) keep the Airport open at all times for the take-off and landing of aircraft unless and so long as IIB-DG is unable to do so as a result of a failure by any Relevant Authority to provide a Reserved Activity; and
- (b) be responsible for, and promptly pay, all expenses incurred by it in respect of the operation of the Airport including, without limitation, in respect of Tax, insurance and the provision of all services or utilities to or at the Airport such as electricity, water, gas, refuse collection, sewerage, foul water, drainage and telephone.

8.11 Slots

IIB-DG shall have the final right to allocate slots at the Airport, subject to the same being allocated fairly and not arbitrarily and shall use reasonable endeavors to accommodate the relevant airline operators in the slots allocated at the Existing Airport at the time of its closure. On-

discrimination

8.12 Non-discrimination

Subject to any law, regulation or international treaty obligations as in force from time to time, Government shall follow a policy of non-discrimination with regard to the classes or descriptions of air traffic that are permitted to use the Airport and subject to regulation by Regulatory Authority or under Independent Regulatory Legislation, shall not impose limitations on aircraft movements at the Airport or otherwise restrict the capacity at the Airport.

8.12 Interruption of Operation

If following the Airport Opening Date, IIB-DG ceases or substantially ceases the operation of the Airport for more than forty-eight (48) hours, other than in accordance with its rights under this Agreement and not being due to Government or any Relevant Authority, without the written consent of Government, at the request of either Party Government will meet with IIB-DG to discuss and agree a plan and the appointment of a joint operation and management committee (and the terms and conditions upon which such committee is to be appointed), to procure that operation of the Airport recommences as soon as practicable. If Government and IIB-DG are unable to agree a plan and appoint a joint operation and management committee within twelve (12) hours of the expiry of the period referred to above, Government shall be entitled to operate the Airport until such time as IIB-DG is able to resume operation of the Airport.

8.13 Interruption of Construction or Operation

Except as otherwise provided in this Agreement and/or except in the case of national emergency and/or as provided in any law existing at the date of this Agreement Government shall not intervene in or interrupt the design, construction, completion, commissioning, maintenance, financing, operation, management and/or development of the Airport by or on behalf of IIB-DG. In case of any other emergency or for reason of public safety, Government shall be entitled to intervene in or interrupt the construction or operation of the Airport for a period to be mutually agreed between the Parties.

8.14 Bi laterals

Without impinging on or in any way restricting the sovereign rights of the Government of Country, Government shall, where feasible, endeavor to

renew all existing air services agreements and endeavor not to revoke or terminate any existing air services agreements as affecting the Airport. For the avoidance of doubt, Government shall be entitled to revoke or terminate any air services agreement for reason of the failure of another state or its designated carrier(s) to comply with their obligations under, or as a result of a breach by or default of the other party to, such air services agreement.

8.15 Daytime and Night time Operation

Subject to installing appropriate facilities and compliance with all Applicable Law and standards including environmental laws and provided that substantially similar restrictions are placed on all other Major Airports, IIB-DG shall be entitled to operate the Airport and to permit the take-off and landing of aircraft at any time during both day and night hours.

8.16 Access for Officials

8.16.1 Access

Subject to the provisions of Article 8.17.2 and subject to GCAA' guidelines, IIB-DG shall have the right to grant access to all parts of the Site and/or the Airport to such Persons as it shall determine.

8.16.2 Minimum Disruption

To the extent that such access has been granted to Government and/or GCAA such access and facilities shall be used and exercised by the relevant Persons in such manner so as not to cause any disruption to the construction, commissioning, completion, development, maintenance and operation of the Airport.

9. MONITORING OF OPERATION AND MAINTENANCE

9.1 Performance Standards

The Parties wish to ensure satisfaction on the part of passengers with the overall experience of travelling through the Airport and acknowledge that this experience is a result of a number of bodies interacting in order to provide various services and facilities. IIB-DG is primarily responsible for the provision of services at the Airport and shall work to improve the facilities, standards and services at the Airport.

9.2 Monitoring of Performance Standards

- 9.2.1 Throughout the term of this Agreement the Airport's performance shall be monitored by passenger surveys in accordance with this Article 9. The criteria used to measure the Airport's performance shall be the IATA Global Airport Monitor service standards set out in Schedule 9, Part 2 or such criteria as may be mutually agreed upon from time to time (the "Standards").
- 9.2.2 IIB-DG shall participate in IATA surveys and shall ensure that a survey is conducted each year in accordance with Lata's requirements to determine the Airport's performance. The first such survey shall be conducted during the third (3rd) year after Airport Opening.
- 9.2.3 If three (3) consecutive surveys show that the Airport is consistently rated as lower than IATA rating of three and a half (3.5) (in the current IATA scale of 1 to 5) for the service standards under IIB-DG's direct control, IIB-DG will produce an action plan in order to improve the Airport's performance which must be implemented within one (1) year.
- 9.2.4 If the Airport continues for a further one (1) year to be rated as lower than IATA rating of three and a half (3.5) (in the current IATA scale of 1 to 5) for the service standards under IIB-DG's direct control, the Government may direct IIB-DG to produce a further action plan to improve the Airport's performance which must be implemented within one (1) year.
- 9.2.5 Should IIB-DG fail to produce such an action plan or if the Airport continues to be rated as lower than IATA rating of three and a half (3.5) (in the current IATA scale of 1 to 5) for the service standards under IIB-DG's direct control, in the survey conducted in respect of the year after implementation of such action plan, Government shall have the right to impose liquidated damages and/or to give directives to Relevant Authorities participating in the joint coordination committee referred to in Article 8.2 to assist IIB-DG in improving the rating. The quantum of liquidated damages will, taking into account factors leading to the drop in ratings, be discussed and agreed between the Parties.
- 9.2.6 Any liquidated damages pursuant to Article 9.2.5 above shall be paid into an Airport development fund. Monies from the Airport development fund shall be utilized to fund improvements at the Airport at the direction of the Government.
- 9.2.7 If the Airport continues to be rated as lower than three and a half

(3.5) (in the current IATA scale of 1 to 5) due to IIB-DG's poor performance in the survey, unless caused due to Government or Relevant Authority, conducted in respect of the two (2) years following the date that IIB-DG first becomes liable to pay such liquidated damages, Government shall have the right to terminate this Agreement.

- 9.2.8 In the event that the current IATA scale changes, the Parties agree that equivalent levels of ratings contemplated in this Article 9.2 shall be applied. IIB-DG would make best endeavor to achieve performance standard higher than three and a half (3.5) (in the current IATA scale of 1 to 5).
- 9.2.9 From the date the IRA has power to review, monitor and set standards and penalties and regulate any such related activities at the Airport, IIB-DG shall be required, instead of the provisions of Articles 9.2.1 to 9.2.7, to comply with all such regulations framed by IRA.
- 9.2.10 Notwithstanding anything contained in Articles 9.2.3, 9.2.4, 9.2.5 and 9.2.7 above, in the event GOVERNEMENT concludes concession agreement(s) in respect of any other Major Airport(s) with 3.5 as the rating for the purposes of termination of the Concession Agreement by GOVERNEMENT, then the rating for the purposes of this Article 9 shall continue to be 3.5. However, in the event GOVERNEMENT concludes concession agreement(s) in respect of any other Major Airport(s) with ratings lower than 3.5 and not lower than 3 as the rating for the purposes of termination of the concession agreement by GOVERNEMENT, then such lower rating shall be made applicable for this Article 9.

9.3 Records

Subject to compliance with all Applicable Law, IIB-DG shall keep full records in respect of the design, construction, completion, commissioning, maintenance, operation, management and development of the Airport including a maintenance manual and "as built" drawings of all aspects of the Airport and shall make them available for inspection on reasonable notice and during normal business hours to Government for the purpose of verification by Government of IIB-DG's compliance with the terms and conditions hereof and shall furnish copies thereof to Government (at Government's cost) if called for.

10. CHARGES

10.1 **Parties having right to impose charges**

Subject to Applicable Law, no Person (other than IIB-DG, any Service Provider Right Holder granted a relevant Service Provider Right or the GCAA) may impose any charge or fee (a) in respect of the provision at the Airport of any facilities and/or services which are included within Airport Activities or (b) in respect of the movement of passenger, or vehicular traffic on the Airport or the Site.

10.2 **Airport Charges**

10.2.1 The Airport Charges specified in Schedule 6 ("Regulated Charges") shall be consistent with ICAO Policies.

10.2.2 The Regulated Charges set out in Schedule 6 shall be the indicative charges at the Airport. Prior to Airport Opening IIB-DG shall seek approval from the GCAA for the Regulated Charges, which shall be based on the final audited Project cost. The GCAA shall, subject to the proposed Regulated Charges being in compliance with the principles set out in Article 10.2.1, grant its approval thereto within a period of forty-five (45) days of the date of the application being submitted by IIB-DG. Within 120 days after the Airport Opening Date, IIB-DG shall submit the final audited Project cost to the GCAA.

10.2.3 If at any time prior to the date the IRA has the power to approve the Regulated Charges IIB-DG wishes to amend such charges it shall seek consent from the GCAA for such amendments. The GCAA shall, subject to the proposed charges being in compliance with the principles set out in Article 10.2.1, grant its approval of such amendments within a period of forty-five (45) days of the date of the application being submitted by IIB-DG.

10.2.4 From the date the IRA has the power to approve the Regulated Charges, IIB-DG shall be required to obtain approval thereof from the IRA. In this regard IIB-DG shall submit to the IRA, in accordance with any regulations framed by the IRA, details of the Regulated Charges proposed to be imposed for the next succeeding relevant period together with such information as the IRA may require for review. Unless otherwise agreed in writing between the Parties such approved Regulated Charges shall comply with the principles referred to in Article 10.2.1 until the earlier of (i) the date that outstanding Debt in respect of the Initial Phase has been repaid and (ii) fifteen (15) years from Airport Opening Date.

10.3 Other Charges

IIB-DG and/or Service Provider Right Holders shall be free without any restriction to determine the charges to be imposed in respect of the facilities and services provided at the Airport or on the Site, other than the facilities and services in respect of which Regulated Charges are levied.

10.4 Payment of Taxes

All Taxes as may be due and payable by IIB-DG pursuant to Applicable Law, shall be paid on a priority basis prior to any disbursements by IIB-DG to any party including Lenders.

11. MAINTENANCE OF INSURANCE

11.1 Insurance during Concession Period

IIB-DG shall affect and maintain at its own cost, at all times the insurances set out in Schedule 11, the insurances required under the Financing Agreements and such additional insurances, as IIB-DG may reasonably consider necessary or prudent in accordance with Good Industry Practice.

11.2 Policies

Within thirty (30) days of receiving any insurance policy certificates in respect of insurances required to be obtained and maintained under Article 11.1, IIB-DG shall furnish to Government, copies of such policy certificates, copies of the insurance policies and evidence that the insurance premia have been paid in respect of such insurance. No insurance shall be cancelled, modified or allowed to expire or lapse until the expiration of at least forty-five (45) days' notice of such cancellation, modification or non-renewal has been provided by IIB-DG to Government.

11.3 Remedy for Failure to Insure

If IIB-DG fails to effect and keep in force all insurances for which it is responsible pursuant hereto, Government shall have the option to keep in force any such insurances, and pay such premia and recover the costs thereof from IIB-DG.

11.4 Application of Insurance Proceeds

Subject to any agreement with the Lenders, all insurance claims paid to IIB-DG shall be applied for reconstruction of the Airport except for insurance proceeds unrelated to physical damage.

12. **ACCOUNTS AND AUDIT**

ILB-DG shall maintain books of accounts recording its income and expenditure, receipts and payments, and assets and liabilities, in accordance with Applicable Law. It shall provide to Government two (2) copies of its Balance Sheet and Profit and Loss Account along with a report thereon by its Statutory Auditors, as soon as reasonably available.

13. **FORCE MAJEURE AND TERMINATION**

13.1 **Force Majeure**

Article 13 shall apply if the performance by any Party (the "**Affected Party**") of its obligations under this Agreement is prevented, hindered or delayed in whole or in part by reason of Force Majeure. Consequences of Force Majeure

13.2.1 **Performance Obligation**

Provided it complies with Article 13.2.2, neither Party shall be liable for any failure to comply, or delay in complying, with any obligation under or pursuant to this Agreement and they shall not be required to perform their obligations to the extent that the performance by either Party of its obligations under this Agreement is prevented, hindered, impeded or delayed in whole or in part by reason of Force Majeure and in particular, but without limitation, the time allowed for the performance of any such obligations (including, without limitation, achieving the Airport Opening Date as required by Article 7.5) shall be extended accordingly.

13.2.2 **Notification**

As soon as reasonably practicable but not more than 72 hours following the date of commencement of any event of Force Majeure, if either Party desires to invoke such event of Force Majeure as a cause for delay or failure in the performance of any obligation hereunder, it shall notify the other Party in writing of such date and the nature and expected duration of such event of Force Majeure. Within a reasonable time following the date of such notice of such event of Force Majeure, the Party having invoked such event of Force Majeure as a cause for such delay shall submit to the other Party sufficient proof of the nature of such delay or failure and its anticipated effect upon the time for performance.

13.2.3 Mitigation

The Affected Party shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of the event of Force Majeure.

13.3 Default

13.3.1 IIB-DG Default Events

Each of the following events shall constitute an "**IIB-DG Default Event**":

- (a) Except as otherwise provided in this Article 13.3.1, if IIB-DG is in material breach of the terms of this Agreement and such breach has not, if capable of remedy, been remedied within one hundred and twenty (120) consecutive days from the date upon which IIB-DG receives a notice from Government specifying that such breach has occurred. The Parties expressly agree that any transfer of shares in breach of Article 6.2 shall constitute an IIB-DG Default Event, unless the transfer is to Government pursuant to the Shareholders Agreement;
- (b) If Airport Opening has not occurred by the date falling twelve (12) months after the Airport Opening Target Date;
- (c) Subject to Articles 13.1 and 13.2, and unless caused due to Government and/or Relevant Authority, if, following Airport Opening, IIB-DG ceases to operate (whether by act or omission) for more than fourteen (14) consecutive days or for an aggregate of more than thirty (30) days in any calendar year without the written consent of Government;
- (d) If any sum due and payable under this Agreement from IIB-DG is not paid within thirty (30) days of a request therefor from or on behalf of Government;
- (e) An order being made or a resolution being passed for the liquidation, bankruptcy or dissolution of IIB-DG which is not, if capable of being so, discharged or, as the case, may be, revoked within one hundred and twenty (120) days thereafter;

- (f) If any material representation or warranty given by IIB-DG under Articles 6.1.1 (d), (e) or (f) is incorrect and the same is not remedied within sixty (60) days of the date of receipt of notice of such event; and
- (g) IIB-DG's failure to achieve the agreed Standards pursuant to Article 9.2.7.

Provided that the events outlined in paragraphs (a) to (c) and (g) above shall not constitute an IIB-DG Default Event if they are the result and/or consequence of any of the events specified in the proviso to Article 7.5 except those set forth in paragraphs 7.5.4 and 7.5.5 of the said proviso.

13.3.2 **Government Default Events**

Each of the following events shall constitute a "**Government Default Event**":

- (a) Except as otherwise provided in this Article 13.3.2, if Government is in breach of the terms of this Agreement to an extent which has a material and adverse effect on the rights or obligations of IIB-DG, and such breach has not, if capable of remedy, been remedied within one hundred and twenty (120) consecutive days from the date upon which Government receives a notice from IIB-DG specifying that such breach has occurred;
- (b) If any sum due and payable under this Agreement from Government is not paid within thirty (30) days of a request therefor from or on behalf of IIB-DG;
- (c) If any material representation or warranty given by Government under Articles 6.1.1 (d), (e) or (f) is incorrect and the same is not remedied within sixty (60) days of the date of receipt of notice of such event;
- (d) following the occurrence of any of the events set out in Article 15.4 and Article 15.5, if the aggregate outstanding claims by IIB-DG for compensation pursuant to Article 15.4 and Article 15.5 exceed the maximum compensation amount set out in Article 15.6. For the purpose of this paragraph (d), the aggregate outstanding claims by IIB-DG shall exclude any claims in respect of which IIB-DG has been fully compensated in accordance with Article

15.4 and Article 15.5. Following the occurrence of any of the events set out in Article 15.4 and Article 15.5 Government shall have the right at any time to request termination of the Agreement pursuant to this Article 13.3.2 in lieu of paying compensation to IIB-DG pursuant to those Articles;

13.4 Consequences of Default

- 13.4.1 In the event of an IIB-DG Default Event occurring Government shall have the right to notify IIB-DG that such an event has occurred and (if it is capable of remedy) requiring the remedy of the same within a reasonable period not less than one hundred and twenty (120) days. If, following the end of such period, the breach has not been remedied, then Government or any entity designated by it shall have the right, but shall not be required, to issue a notice to IIB-DG terminating this Agreement. In the event of Government exercising such right of termination, Government shall acquire all of IIB-DG's rights, title and interests in and to the Airport and in any Non-Airport Activities Which Government opts to take over pursuant to Article 13.5.2 in the manner set out in Article 13.5 below, on payment, which shall be no later than 180 days following issue of such termination notice, of an amount equal to the Termination Amount. "**Termination Amount**" shall mean one hundred per cent (100%) of the Debt plus the value of IIB-DG's investment in any Non-Airport Activities which Government opts to take over pursuant to Article 13.5.2, less any insurance monies received by IIB-DG or due and paid to IIB-DG in respect of claims made since the occurrence of the IIB-DG Default Event which led to termination under this Article 13.4.1. For the avoidance of doubt the transfer costs and taxes, if applicable, for the transfer of the airport consequent to termination of this agreement due to IIB-DG's Default Events, shall be borne by IIB-DG.
- 13.4.2 In the event of a Government Default Event IIB-DG shall have the right to notify Government that such an event has occurred and (if it is capable of remedy) requiring the remedy of the same within a reasonable period not less than one hundred and twenty (120) days. If, following the end of the period stated in such notice the event giving rise to the Government Default Event has not been remedied, IIB-DG shall have the right, but shall not be required, to issue a notice to Government terminating this Agreement. In the event of IIB-DG exercising such right of

termination, Government shall acquire all of IIB-DG's rights, title and interests in and to the Airport and in any Non-Airport Activities which Government opts to take over pursuant to Article 13.5.2 in the manner set out in Article 13.5 below, on payment, which shall be no later than 180 days following issue of such termination notice, of an amount equal to the higher of (i) the Settlement Amount or (ii) one hundred per cent (100%) of the Debt, less any insurance monies received by IIB-DG or due and paid to IIB-DG in respect of claims made since the occurrence of the Government Default Event which led to termination under this Article 13.4.2, plus transfer costs and taxes, if applicable.

13.5 Transfer of Airport

13.5.1 On exercise of a right of termination by Government or IIB-DG under Article 13.4 of this Agreement, and without prejudice to any rights of IIB-DG to compensation all assets relating to Airport Activities of IIB-DG shall be transferred to GOVPAMA or its nominee on the Transfer Date pending payment followed by Non-Airport Activities subject to Article 13.5.2, clear of any Security and without any encumbrances and liabilities as provided in Article 13.5.3 below. . For the avoidance of doubt this shall include but not be limited to:

- (a) all immovable, movable and intangible property (including intellectual property, plans, designs and drawings), stocks, materials, vehicles and spares of IIB-DG;
- (b) the rights and obligations under or pursuant to all contracts and other arrangements entered into in accordance with the provisions of this Agreement between IIB-DG and any Service Provider Right Holder (in consideration of GOVPAMA's assumption of the obligations under or pursuant to such contracts and other arrangements); and
- (c) the rights and obligations under or pursuant to all other contracts entered into by IIB-DG (including for the avoidance of doubt insurance contracts, guarantees and warranties) (in consideration of GOVERNMENT's assumption of the obligations under or pursuant to such contracts).

Notwithstanding the provisions of this Article, the payments contemplated under Articles 13.4.1 and 13.4.2, as the case may be, shall be made by the GOVERNMENT within 180 days following

the issue of termination notice under the respective Articles

- 13.5.2 Notwithstanding anything contained in Article 13.5.1 prior to any transfer of the Airport, GOVERNMENT shall have the right to conduct a due diligence of the contracts and agreements pertaining to Non-Airport Activities, the rights and obligations of which it is assuming and shall not be bound to assume the rights and obligations of contracts that, in the sole opinion of GOVERNMENT are unreasonably onerous, and would be considered onerous at the time that the contracts were entered into. GOVERNMENT shall conduct the due diligence and identify the contracts and agreements that it is prepared to assume within 45 days of the opening of a data room by IIB-DG for these purposes following the exercise of a right of termination by Government or IIB-DG under Article 13.4. For the avoidance of doubt, to the extent Government opts to take over Non-Airport Activities calculation of Termination Amount or Settlement Amount shall include investments amounts or costs of such Non-Airport Activities.
- 13.5.3 Other than as agreed in this Article 13.5, no liability (accrued or contingent) of IIB-DG or relating to the Airport arising on account of actions or inactions prior to the Transfer Date shall be assumed or transferred to GOVPAMA or its nominees. GOVPAMA or its nominees shall only be liable for liabilities in relation to the Airport or the Non-Airport Activities that Government opts to take over pursuant to Article 13.5.2 arising subsequent to the Transfer Date.
- 13.5.4 Save to the extent caused by a Government Default Event, IIB-DG shall in accordance with Good Industry Practice ensure that all property, assets, rights and other items referred to in Article 13.5.1 which are vested in or transferred to GOVPAMA shall be in good working order and in a good state of repair and that the Airport is transferred to GOVPAMA as a GOVPAMA concern in good operating order, but this provision shall be deemed to be satisfied if IIB-DG is for the time being complying with its maintenance obligations.

13.6 Pre-termination Obligations

Expiry or termination of this Agreement shall be without prejudice to all rights and obligations then having accrued to Government and/or IIB-DG (or which may thereafter accrue in respect of any act or omission prior to such expiry or termination) and without prejudice to those provisions which expressly provide for continuing obligations or which are required to give effect to such expiry or termination or the consequences of such

expiry or termination.

13.7 Term

13.7.1 Unless terminated earlier in accordance with Article 4.3.1, Article 13.4, or by mutual agreement between the Parties in writing, this Agreement shall continue in full force and effect from its commencement in accordance with Article 4 until the thirtieth (30th) anniversary of the Airport Opening Date whereupon the term of the Agreement shall at the option of IIB-DG be extended for a further period of thirty (30) years, provided that the following Articles of this Agreement shall have no further force and effect from the thirtieth (30th) anniversary of the Airport Opening Date: 5.1.2 (Obligations of Government), 5.5 (Existing Airport), 7.7 (Commissioning), 8.17.2 (Minimum Disruption), 10.2 (Airport Charges), and 15.5 (Change in Law). IIB-DG may at any time prior to the twenty-seventh (27th) anniversary of the Airport Opening Date, exercise the aforesaid option of extending the term of this Concession Agreement by another thirty (30) years. In the event of IIB-DG not exercising its option of extending the term of this Concession Agreement, then the Concession Agreement shall expire on the thirtieth (30th) anniversary of the Airport Opening Date and Government or its nominee shall acquire all of IIB-DG's rights, title and interests in and to the Airport in the manner set forth in Article 13.5 on payment on the Transfer Date to IIB-DG the aggregate of (a) and (b):

(a) the lowest of the following:

- i) one hundred per cent (100%) of the par value of the equity; or
- ii) 100% of the equity of IIB-DG subscribed and paid-up on the Transfer Date; or
- iii) the Net Worth of the Company;

(b) one hundred per cent (100%) of the Debt.

less any proceeds from insurance claims, including political risk insurance, if any, raised by IIB-DG, Sponsor and Lenders in respect of claims made in respect of the Airport before the expiry of the term.

13.7.2 In the event of extension of the term of this Agreement under Article 13.7.1, the Parties shall commence from the expiry of the fifty-fifth (55th) anniversary of the Airport Opening Date, initiate dialogue to extend the term of this Agreement on mutually acceptable terms and conditions. If the Parties are unable to agree upon the revised terms and condition of extension of the

Airport by the expiry of the fifty-seventh (57th) anniversary of the Airport Opening Date, then, save as provided in Article 13.7.3 below, the Agreement shall expire on the sixtieth (60th) anniversary of the Airport Opening Date and GOVERNMENT or its nominee shall acquire all of IIB-DG's rights, title and interests in and to the Airport in the manner set forth in Article 13.5 on payment on the Transfer Date to IIB-DG one hundred per cent (100%) of the Debt less any proceeds from insurance claims, including political risk insurance, if any, received by IIB-DG, Sponsor and Lenders after the expiry of the term in respect of claims made in respect of the Airport before the expiry of the term . .

- 13.7.3 If IIB-DG and GOVERNMENT are unable to agree terms for the renewal of this Agreement by the expiry of the fifty-seventh (57th) anniversary of the Airport Opening Date Government shall be entitled to commence discussions with third parties provided that Government shall not enter into a concession agreement in respect of the Airport with a third party on more favorable terms than those offered to IIB-DG.

13.8 Other Rights of Termination

The Parties' rights to terminate this Agreement shall be limited to those expressly set out in this Agreement.

13.9 Survival

Articles 3.2, 16 and 18 shall continue to bind the Parties notwithstanding the termination of this Agreement.

13.10 Suspension

Subject to giving prior written notice to Government, IIB-DG shall be entitled to suspend the construction and/or operation and maintenance of the Airport upon the occurrence of any of the events specified in the proviso to Article 7.5.

14. OTHER PROVISIONS

14.1 Assignment and Security

- 14.1.1 Notwithstanding any change in the law of Country after the date hereof which might otherwise permit the assignment of this Agreement, no party may (save as permitted pursuant to Article 14.1.2) assign this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest herein or create

or permit to subsist any Security over this Agreement or any right or obligation arising under or pursuant to it or any benefit or interest in it.

14.1.2 For the purposes of providing Security to the Lenders, IIB-DG may assign and transfer certain or all of its rights and obligations under this Agreement provided that IIB-DG shall first notify Government of the identity of any Lenders to whom it intends to assign and transfer its rights and obligations under this Agreement in accordance with this Article. Government, acting reasonably, shall be entitled, within a period of ten (10) days of such notice to notify IIB-DG that it objects to the assignment or transfer to one or more of the Lenders so notified by IIB-DG in which event IIB-DG shall not be permitted to assign and transfer its rights and obligations under this Agreement to those Lenders so notified by Government.

14.1.3 IIB-DG covenants that it will not delegate, whether by sub-concession or otherwise, all of its rights and obligations under this Agreement; provided however IIB-DG may employ contractors for construction, operation and maintenance and for discharging some of its obligations under this Agreement. For the avoidance of doubt, it is stated that engagement of contractors by IIB-DG for discharging some of its obligations shall not absolve the principal obligations of IIB-DG as contemplated in this Agreement.

15. **LIABILITY AND INDEMNITY**

15.1 **IIB-DG Liability**

Subject to Article 15.2 and Article 13.3.2, as between IIB-DG and Government (and their respective employees, servants and agents), IIB-DG alone will bear any responsibility there may be for any cost, expense, loss, liability or damage suffered for incurred by any user(s) at the Airport or any other Person(s) or otherwise and arising out of or in connection with the design, construction, maintenance and operation of the Airport and Non-Airport Activities without recourse to Government (or any of its respective employees, agents and/or servants) to the extent that such cost, expense, loss, liability or damage arises as a result of the negligence of IIB-DG (and its employees, servants and agents).

Neither GOVPAMA nor Government nor IIB-DG shall be liable for any special, indirect, incidental or consequential damages arising out of or in connection with this Concession Agreement.

15.2 **Government Liability**

Government and IIB-DG will be obliged to give information to the other party, if any legal proceeding is initiated in any court or tribunal against them relating to this Concession Agreement.

15.3 **Information**

Government and IIB-DG shall promptly, as soon as reasonably practicable after either party becomes aware of the same, inform each other of any demand, claim, action or proceeding or anticipated demand, claim, action or proceeding against it, in respect of which the other party is entitled to be indemnified under Articles 15.1 or 15.2, as applicable. They shall give reasonable assistance to one another in the defense of any such demand, claim, action or proceeding.

15.4 **Compensation payable by Government**

Subject as provided in this Agreement, in the event of the occurrence of any breach of or default, under Articles 8.11 (Slots), 8.16 (Daytime and Night time Operation) or 10 (Charges) Government will, upon a request in writing from IIB-DG, indemnify IIB-DG against the consequences of each of the events listed above and shall, subject to Article 15.6 pay to IIB-DG within thirty (30) days of such request for payment, sums equal to the loss, cost, expense, liability or damage suffered directly by IIB-DG as a result of such event, which shall for the avoidance of doubt include:

- 15.4.1 all amounts payable or due and paid by IIB-DG to any of its contractors or Service Provider Right Holders as a result of such event;
- 15.4.2 all additional interest, fees and other sums owing to Lenders for borrowed money of IIB-DG as a result of such event; and
- 15.4.3 all additional overheads and operating costs and expenses payable or due and paid as a result of such event.

Provided that Government may set off from payments due to IIB-DG under this Article such amounts as constitute any liability to Government that has previously been admitted by IIB-DG.

Provided further that IIB-DG shall notify Government of the occurrence of an event listed above for which it seeks to claim compensation within a period of ten (10) days from IIB-DG becoming aware of the occurrence of such event.

15.5 Change in Law

If as a result of Change in Law, IIB-DG suffers an increase in costs or reduction in net after tax return or other financial burden, loss, liability or damage in connection with its development or operation of the Airport, the aggregate financial effect of which exceeds Ghana Cedis ten million (10,000,000) in any financial year, IIB-DG may notify Government and propose amendments to this Agreement so as to put IIB-DG in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden, loss, liability or damage as aforesaid. Upon notification by IIB-DG as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days following notification from IIB-DG and either agree on amendments to this Agreement or on alternative arrangements to implement.

Provided that if no agreement is reached as aforesaid by the Parties within ninety (90) days of the meeting pursuant to this Article, IIB-DG may by notice in writing require Government to pay an amount that would put IIB-DG in the same financial position it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden, loss, liability or damage as aforesaid. Such notice shall be accompanied by such supporting documents and evidences by IIB-DG to Government to evaluate such claim. Government shall make payment of such compensation within 15 (fifteen) days of receiving such notice and evidences. If Government shall dispute the quantum of such compensation claim of IIB-DG, the same shall be finally settled in accordance with the Dispute Resolution mechanism contained herein.

15.6 Maximum Compensation Amount

During the term of this Agreement the aggregate liability of Government in respect of any and all claims under Articles 15.4 and 15.5 shall not exceed Ghana Cedis one hundred (100) million.

15.7 Liability

The Parties intend that the rights, obligations and liabilities contained in this Agreement shall be an exhaustive description of the rights, obligations and liabilities of the Parties arising out of or in connection with this Agreement. Accordingly, the remedies expressly stated in this Agreement and any document entered into pursuant to it shall be the sole and exclusive remedies of the Parties for liabilities to one another arising out of or in connection with this Agreement, including any representation, warranty or undertaking given in connection with it,

notwithstanding any remedy otherwise available at law or in equity.

15.8 Mitigation

Notwithstanding the provisions of Article 15.5, IIB-DG shall in the first instance and in accordance with Applicable Law, take all reasonable steps including, to the extent feasible, an increase in the charge to be levied on users of Airport to mitigate the adverse effect of a Change in Law.

16. DISPUTE RESOLUTION

16.1 Negotiation and Conciliation

The Parties shall use their respective reasonable endeavors to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement ("Dispute") amicably between themselves through negotiation.

16.2 Reference to Arbitrator

Subject to anything contained in the relevant Independent Regulatory Authority legislation regarding the settlement of disputes, any Dispute which the Parties are unable to resolve pursuant to Article 16.1 within sixty (60) days (or such longer period as the Parties may agree) of the written notification by one Party to the other of the existence of a Dispute shall be finally determined by arbitration in accordance with the Country in Arbitration and Conciliation Act, 1996 and in accordance with the UNCITRAL rules (the "Rules") by three arbitrators appointed in accordance with the Rules. In case of conflict between Country in Arbitration and Conciliation Act, 1996 and the Rules, the provisions of the former will prevail.

The Parties agree that any Dispute relating to compensation payable by Government pursuant to Article 15.4 in respect of a breach of Article 10 (Charges) shall be determined by Arbitration in accordance with this Article 16.2 only, and not by reference to the IRA.

16.3 Miscellaneous

The venue of arbitration shall be State of New York. Each Party shall pay the expenses of the arbitration in accordance with the Rules and the eventual liability for the costs shall be in terms of the arbitral award. No arbitrator shall be the present or former employee or agent of, or consultant or counsel to either Party or in any way related or closely connected with the Parties. The language of the arbitration shall be

English.

16.4 **Decision/Award**

Any decision or award of an arbitral tribunal appointed pursuant to this Article 16 shall be final and binding upon the Parties. The Parties agree that any arbitration award made may be enforced by the Parties against assets (excluding those in respect of Government referred to in the exclusion to Article 18.13) of the relevant Party, wherever those assets are located or may be found, and judgement upon any arbitration award (wherever necessary) may be entered by any court of competent jurisdiction thereof. The Parties expressly submit to the jurisdiction of any such court for the purposes of enforcement of any arbitration award.

- 16.5 Notwithstanding the above, in the event of any dispute between the Parties in respect of Article 3.3 the Parties shall use their respective reasonable endeavors to settle any such dispute amicably between themselves through negotiation. In the event that the Parties are unable to resolve any such dispute following negotiation, they shall appoint an independent chartered accountant whose identity is to be mutually agreed by the Parties, who shall act as a conciliator. In the event that such independent chartered accountant is unable to reach a conclusion within two (2) months of being appointed, the dispute shall be resolved in accordance with Articles 16.2, 16.3 and 16.4.

17. **REDRESSAL OF PUBLIC GRIEVANCES**

17.1 **Complaints Register**

17.1.1 IIB-DG shall maintain a public relations office at the Airport where it shall keep a register (the "**Complaint Register**") with access at all times for recording of complaints by any person (the "**Complainant**"). Immediately, after a complaint is registered, IIB-DG shall give a receipt to the Complainant stating the date and complaint number.

17.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by IIB-DG. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by IIB-DG at the Airport.

17.2 Redressal of Complaints

Subject to Article 17.3, IIB-DG shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by IIB-DG to the Complainant under a certificate of posting or by fax with confirmation of transmission.

17.3 Reserved Activities

To the extent that the complaints made by any Complainant relate to the performance or otherwise of the Reserved Activities IIB-DG shall notify the Relevant Authority which shall, upon receipt of such notice, take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Relevant Authority to the Complainant under a certificate of posting or by fax.

18. MISCELLANEOUS

18.1 Remedies, Waivers, Amendments and Consents

No failure on the part of the Government or IIB-DG to exercise, and no delay on their part in exercising, any right, power, privilege or remedy under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

18.2 Amendments, Waivers and Consents

18.2.1 Amendments

- (a) Any provision of this Agreement may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- (b) Government or IIB-DG may at any time request the other to enter into discussions to review the operation of any part of this Agreement and, but without commitment on either Party, to determine whether it should be amended by mutual agreement provided that, unless there is such mutual agreement, the provisions of this Agreement (as then most recently, if at all, amended) shall continue to apply whatever the outcome of any such discussions or

review and whether or not any such discussions or review take place.

- (c) Notwithstanding the terms of any other provision of this Agreement, it shall not be a breach of this Agreement if any amendment, supplement or modification to any provision of this Agreement requires ratification by law.

18.2.2 **Waivers and Consents**

- (a) Any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the Person(s) giving it and shall be effective only in the instance and for the purpose for which it is given.

18.2.3 **Amendment on IIB-DG Listing**

- (a) IIB-DG may at an appropriate stage during the term of this Agreement consider the possibility of having an IPO.

- (b) Prior to any such IPO, the Parties shall agree any amendments to this Agreement as may be required by the relevant Stock Exchange authority and shall make public any relevant information as may be required by the relevant Stock Exchange authority.

18.3 Entire Agreement

This Agreement and the documents to be entered into pursuant to it constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersede any prior written or oral agreement between them with respect to such subject matter.

18.4 Further Assurance

18.4.1 Further Assurance

Each Party shall, and shall use all reasonable endeavors to procure that any relevant third party shall, execute such documents and do such acts and things as the requesting Party may reasonably require for the purpose of giving to the requesting Party the full benefit of all the provisions of this Agreement. Provided it is without any detriment to the requested Party and at the cost and risks of the requesting Party.

18.4.2 Direct Agreement

Government shall, upon a request from the Lenders, enter into a direct agreement with the Lenders substantially in the form attached as Schedule 5 to this Agreement whereby, amongst other things, Government agrees to give prior notice of any intention it may have to exercise its rights under the Agreement, to allow such Lenders the right to cure a default on the part of IIB-DG, and/or to allow such Lenders under certain circumstances to substitute themselves or appoint a third party substitute with requisite eligibility and prior consent of GOVERNEMENT to carry out the obligations and enjoy the benefits of IIB-DG under the Agreement.

18.5 Partial Invalidity

- 18.5.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of

such provision under the law of any other jurisdiction will, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

18.5.2 The Parties will negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which are satisfactory to Government and IIB-DG and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

18.6 No Partnership

Neither this Agreement nor any other agreement or arrangement of which it forms part, nor the performance by the Parties of their respective obligations under any such agreement or arrangement, shall constitute a partnership between the Parties. No Party shall have any authority (unless expressly conferred in writing by virtue of this Agreement or otherwise and not revoked) to bind any other Party as its agent or otherwise.

18.7 Time is of the Essence

Time shall be of the essence of this Agreement, both as regards the dates, periods or times of day mentioned and as regards any dates, periods or times of day which may be substituted for them in accordance with this Agreement.

18.8 Computation of Time

Times referred to in this Agreement are times of the capital of the Country. In computing any period of time prescribed or allowed under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included. If the last day of the period so computed is not a Business Day, then the period shall run until the end of the next Business Day.

18.9 Notices

18.9.1 Communications in Writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or registered letter.

18.9.2 **Addresses**

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement is as follows:

Government of Ghana represented by

Ministry of National Security
Attention: Hon. Albert Kan-Dapaah
Address: Private Mail Bag, Ministries, Accra
Tel: +233 21 664631

The KAK GOVPAMA Group of Companies Limited (GOVPAMA)

Attention: Professor Nana Kofi Onipa-Ntira
Address: Liberation Road, Airport City, Accra
Digital Address: GL-126-4914
Tel: +233 54-5051155

IIB DEVELOPMENT

1050 CONNECTICUT AVE NW, 5TH FLOOR
WASHINGTON, DC 20036
Office: 571-207-0211
info@iibdevelopmentgroup.com
www.iibdevelopmentgroup.com

or any substitute address, fax number or department or officer as the Party may notify to the other Party, by not less than five (5) Business Days' notice.

18.10 **Deemed Delivery**

Subject as otherwise provided in this Agreement, any communication under or pursuant to this Agreement shall be deemed to be received by the recipient (if sent by fax with confirmation of transmission) on the next working day in the place to which it is sent or (in any other case) when left at the address required by Article 18.9.2 or within ten (10) such working days after being sent by registered post (by airmail it to another country) postage prepaid and addressed to that address. For these purposes, working days are days other than Saturdays, Sundays and bank holidays.

18.11 **Governing Language**

The language which governs the interpretation of this Agreement is the English language. All notices required to be given by either Party to the other and all other communications and documentation which is in any

way relevant to this Agreement and which is relevant to the execution, implementation and termination of this Agreement, including but not restricted to any dispute resolution proceedings, shall be in the English language.

18.12 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of Country.

18.13 Sovereign Immunity

Government unconditionally and irrevocably:

18.13.1 agrees that the execution, delivery and performance by it of this Agreement and those agreements and other documents comprising the Security to which it is a party constitute private and commercial acts rather than public or governmental acts;

18.13.2 agrees that, should any proceedings be brought against it or its assets in relation to this Agreement or any transaction contemplated by this Agreement, no sovereign immunity from such proceedings shall be claimed by or on behalf of itself or with respect to its assets.

For the purposes of this Article 18.13, "assets" shall be taken as excluding present or future "premises of the mission" as defined in the Vienna Convention on Diplomatic Relations signed in 1961, "consular premises" as defined in the Vienna Convention on Consular Relations signed in 1963 and military property or military assets or property or assets related thereto of Government, premises and offices of the constitutional authorities of Country and national heritages.

18.14 Default Interest

Any amounts due and payable under the terms of this Agreement and not paid on their due date shall bear interest at the State Bank of Country Prime Lending Rate plus two per cent (2%).

IN WITNESS whereof Government of Ghana, GOVPAMA, and IIB-DG have signed this Agreement through their authorized representatives, as above stated, as of the date first hereinabove mentioned.

On Behalf of The Government of Ghana

Name: Hon. Albert Kan-Dapaah
Designation: Minister of National Security

Signature:

Date:

Signed by:

Ministry of Transport

Hon. Kwaku Ofori Asiamah
Designation: Minister of Transport

Signature:

Date:

Signed by:

Ambassador At Large

Amb. Michael Ofori-Attta
Designation: Ambassador At Large

Signature:

Date:

On Behalf of IIB Development Group

Name: Eng. Phillip C. Bama
Title: Chairman

Signature

Date:

Witnessed by:

SISGA

Name: David Ruben Nzo Enama Angono
Title: President

Signature:

Date:

**Witnessed by: KAK GOVPAMA Group of
Company Limited (GOVPAMA)**

Professor Nana Kofi Onipa-Ntira
Designation: Chairman

Signature:

Date:

List of Annexes

The documents listed below are annexed to the Specifications on the date of signature or will be annexed when they are drawn up.

1. ANNEXE1.: CLEARANCES BY GOVERNMENT
2. ANNEXE 2: DESCRIPTION OF THE INITIAL PHASE OF THE AIRPORT
3. SCHEDULE 3: PART 1 – AIRPORT ACTIVITIES
4. SCHEDULE 3: PART 2 – NON-AIRPORT ACTIVITIES
5. SCHEDULE 4: DEFINITION OF FORCE MAJEURE
6. SCHEDULE 6: REGULATED CHARGES
7. SCHEDULE 7: SETTLEMENT AMOUNT
8. SCHEDULE 8: PART 1 – SPECIFICATIONS
9. Annex: list of goods initially incorporated into the basis of the Concession,
10. Scope of the concession area,