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Chapter 15.

Model heads of terms for healthcare non-concession PPP agreement

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These Heads of Terms (HoT) are designed as a simple introduction to a typical non-concession PPP agreement for a healthcare PPP project. Clearly, significant specifics are attributable to non-concession PPPs in education, sports, tourism, cultural heritage and other social sectors. Even within the healthcare sector, there are different facilities/assets such as neo-natal centres, dialysis centres, laboratories, cancer treatment centres and hospitals, which obviously require different approaches and a number of specific provisions in the Agreement. It is not the purpose of the HoT to cover all these particularities.

The HoT assume that a (build-operate-transfer (BOT) PPP structure is used for the project just like the Heads of Terms for a concession-based seaport project where the BOT model is discussed in more detail.

That said, either the Public Partner or the Private Partner may own the Contracted Assets during the term of the Agreement. At the end the Public Partner usually owns the Contracted Assets. Rarely the title to the Contracted Assets is vested into the Private Partner upon the termination of the Agreement (so-called BOO model).

However, unlike the concession-based seaport project, these HoT assume that the Private Partner's revenues will be derived not from direct charges to users, but rather from a government payment stream. Specific parameters and conditions for the payment of the Operation Fee depend on the project's financial model and the country's healthcare system and are to be developed by financial experts (in the relevant appendices to the Agreement).

Based on the international experience in implementing PPP projects in healthcare sector, it should be noted that common forms of payments from the government are 1) availability payment, such as a payment for the facility maintenance that depends on key performance indicators (if not achieved, the payment is reduced) and 2) services charge pro rata to the ancillary services provided (volume-based fees), such as catering and parking. There are projects where the private investor operates and maintains the facility and in particular provides medical services, whereas the government pays to it a fixed annual fee (subject to indexation), with the private investor also earning additional income through commercial medical services (for example, the Queen Mamohato Memorial Hospital PPP, Maseru, Lesotho). There are also schemes, in which the government pays to a private investor for the delivery of each individual medical service, while services remain free to the population

(for example, B. Braun Dialysis Centers, Andhra Pradesh, India).

The wording of the subject matter and some other key provisions of the Agreement depends on the following parameters of the relevant project: 1) which Party will take the ownership of the Contracted Assets; 2) whether the Private Partner will be responsible for the Design or the Private Partner will be provided with the Design Documentation and the Private Partner will then only be responsible for building/renovating the Contracted Assets; 3) which Party will be responsible for the delivery of medical services: the Private Partner may both operate the Contracted Assets for intended purpose (delivery of clinical services) and maintain it, or the Private Partner may only be responsible for the facility maintenance; and 4) whether the Public Partner will participate in the financing of the project from the outset.

Early termination provisions and payments are absolutely key for project bankability and should take into account the local market consensus for compensating financiers upon early termination. The termination amount payable by the Public Partner will vary depending on the grounds for early termination.

Specific provisions may need to be included in the Agreement for the host country's healthcare-regulatory regime, for example, in relation to certain operational matters or permits, or where revisions to that regime are known to be imminent.

The HoT are intended to give readers a clear idea of the typical practical and commercial contents of a non-concession agreement of this type, with much of the difficult legal terminology removed. It is designed to be used with relative ease by lawyers and non-lawyers alike, to focus discussion on the project's structural elements and risk allocation, as well as the respective responsibilities of the parties.



¹ https://www.unece.org/fileadmin/DAM/ceci/images/lcoE/PPPHealthcareSector_DiscPaper.pdf

Model heads of terms

(A) PARTIES

(1) [Public Partner] [Insert details] ("Public Party")

(2) [Private Partner, a Project Company (usually SPV)]
[Insert details] ("Private Party")

(3) [[] [Insert details of any additional party (if any) e.g., government guarantor] ("Government")]

(each a "Party" and together the "Parties")

(B) RECITALS

WHEREAS:

(1) [the Agreement is entered into pursuant to the [decision on the conclusion of the Agreement [decision details, date]], adopted by [authority description] based on the results of [the consideration of the Private Partner's proposal on entering into the Agreement dated [●]].

OR

(2) the tender for the right to conclude the Agreement (minutes approving the tender results dated [●]), in accordance with which the Private Partner was named a winning bidder].

(3) [INSERT ANY OTHER RELEVANT RECITALS]

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the Parties hereto hereby agree as follows:

(C) TERMS AND CONDITIONS

1. Definitions and interpretation.

1.1 Definitions. Unless the context requires otherwise, the words and expressions used in this Agreement shall have the meanings assigned to them in Appendix 1.

Affected Party has the meaning assigned to it in Clause 9.4(a)

Agreement means this Public-Private Partnership Agreement, including all Appendices

Arbitration means [●]

Building means the (re)construction of the Contracted Assets, the completion of all preparation, construction, installation, commissioning and other works, and also of all business management, administrative and other activities as required for obtaining the relevant Contracted Assets commissioning Permits

Building Commencement Conditions Precedent has the meaning assigned to it in Clause 5.3(a)

Construction Period means the period from the Building Commencement Date through the Contracted Assets Acceptance Date

Building Commencement Notice has the meaning assigned to it in Clause 5.3(b)

Business Day means a business day in [□] in accordance with the work calendar based on 5-day working week for the relevant year

[Capital Grant] [means sums of money to be paid by the Public Partner to the Private Partner for the purposes of financing a portion of (re)construction costs in the manner provided for in the Agreement]

Contractor means an entity/entities, with whom the Private Partner has entered into the Contractor Agreement(s)

Contractor Agreement means an agreement to be entered into between the Private Partner and the Contractor for the purposes of completing the Contracted Assets

Court means [□]

Debt Financing means any borrowed funds that may be raised by the Private Partner under agreement(s) with the Lenders for the purposes of the performance of the obligations assumed by it to partially finance the [Design and] Building activities, which include the Principal Debt

[Design] [means the Private Partner's activities, carried out in accordance with the requirements of the Law and the Agreement, to develop the Design Documentation]

Design Documentation means the documentation, defining architectural, functional, structural, engineering and other Design needed to proceed to Building, that is developed by the Private Partner in accordance with the Law the requirements of the Agreement in respect of Contracted Assets

OR

means the documentation, defining architectural, functional, structural, engineering and other Design solutions needed to proceed to Building, developed by the Private Partner in accordance with the Law and in respect of which the relevant Permits have been obtained, to be delivered by the Public Partner to the Private Partner on the Execution Date

[Design Stage] [means the period from the Financial Close Date through the Building Commencement Date]

Direct Agreement means an agreement entered into between the Public Partner, Private Partner and Lenders in accordance with the heads of terms, agreed in Appendix 11 (Heads of Terms in Relation to Direct Agreement)

Dispute has the meaning assigned to it in Clause 11.1(a)

Dispute Resolution means Dispute Resolution under the Agreement, as set forth in Appendix 23 (Dispute Resolution)

Encumbrance means third-party rights in respect of the Site, including lease (sublease) rights to the Site, pledge (mortgage) or attachment, as well as rights of owners of and other legal holders of rights in respect of the immovable property located on the Site

Equipment means [□]²

Equity Financing [the Private Partner's own funds, provided by its investors as shareholder loans, subordinated notes, subordinated financing, mezzanine debt financing or other quasi-equity financing, as contributions into the Private Partner's share capital, by way of contribution of assets to a simple partnership, as well as in other forms in accordance with the Law for the purposes of the performance of its obligations assumed under the Agreement]³

Execution Date means the date of the execution of the Agreement by the authorised signatories of the Parties

Expiry Date has the meaning assigned to it in Clause 2.3(b)

Extra Costs means any extra costs, expenses or actual damages, incurred by the Private Partner as a result of the occurrence of the special events, including financing costs, and further including any additional payments towards taxes and other mandatory levies payable to the budget, as well as the Private Partner's extra costs under any agreements with third parties and/or in connection with the third-party claims, to the extent such costs and indemnities are not provided for under the terms of the Agreement

Contracted Assets means collectively all movable and immovable assets to be developed in accordance with the Agreement as described in Appendix 2 (Contracted Assets Description and its Technical and Economic Performance)

Contracted Assets Acceptance Date means the date of the execution by the Public Partner of the Investment Stage Completion Certificate, showing

that the relevant commissioning Permits have been obtained in respect of Contracted Assets in the manner prescribed by the Agreement

Contracted Assets Transfer Certificate has the meaning assigned to it in Appendix 20 (Contracted Assets Transfer)

Financial Close means the date on which all Financing Documents have been signed and funds thereunder have become available, all conditions precedent having been satisfied

Financial Close Certificate has the meaning assigned to it in Clause 3.2(a)

Financial Close Stage means the period from the Execution Date to the Financial Close Date

Financing Documents means all documents relating to the Debt Financing of the Project, including security documents and any Direct Agreement

Force Majeure Events has the meaning assigned to it in Clause 9.4(a)

Good Industry Practice means that degree of skill, care, diligence, prudence and foresight reasonably to be expected of an experienced international developer/operator performing similar responsibilities to the Private Partner's to the specified standards

Government Authorities means any legislative, executive or judicial authority in [specify country]

Investment Stage means the period comprising the Financial Close Stage [, Design Stage] and Construction Period

Investment Stage Completion Certificate has the meaning assigned to it in Clause 5.6(a)

Investment Stage Schedule means the schedule of [Design and] Build activities, attached as Appendix 3 (Investment Stage Schedule)

Site means any of the land plots listed in Appendix 8 (Allocation of Land Plots)

Law means any laws, subordinate legislation and any other regulations of [specify country] that have come into and remain in force

Lenders means the lenders under the Financing Documents

Maintenance means the Private Partner's operations relating to the Contracted Assets maintenance, carried out in accordance with the terms of the Agreement either itself or by contracting third parties,

² Equipment descriptions to be prepared based on specific features of each particular project.

³ The definition may be revised in accordance with applicable law.

and including activities intended to maintain the Contracted Assets in safe operational conditions fit for the Operation

Maintenance Services Provider means an entity/entities, contracted by the Private Partner in accordance with Clause 7(b) of the Agreement for the performance of the Maintenance obligations

Monitoring means the Public Partner's monitoring of the performance by the Private Partner of the requirements under the Agreement, to be carried out in the manner provided for in Clause 10.1 and Appendix 6 (Reporting and Monitoring)

Operation means the use of the Contracted Assets for the delivery of clinical services, listed in Appendix 5 (Operation and Maintenance Requirements), to users

Operation Commencement Date means the date, on which all required commissioning Permits in respect of Contracted Assets will have been obtained in the manner, provided for by the Agreement

Operation Fee a sum to be paid by the Public Partner to the Private Partner during the Operation Period for the Private Partner to recover certain costs, subject to the terms and conditions set forth in the Agreement

Operation Period means the period from the Operation Commencement Date through the Termination Date

Operation Period Schedule means the Schedule of Maintenance and Operation activities, attached as Appendix 4 (Operation Period Schedule)

Operator means an entity/entities, engaged by the Public Partner for the performance of the Operation obligations as set forth in Appendix 16 (List of Bodies and Entities Acting on Behalf of the Public Partner, Scope and Composition of Certain Public Partner's Obligations to Be Performed by Them)

OR⁴

means an entity/entities, engaged by the Private Partner for the performance of the Operation obligations in accordance with the provisions of this Agreement

Party means the Public Partner or Private Partner

Permits means permits, approvals, certificates, clearances, licences and other permitting documents (including permits, approvals and licences of the Contractor and other Private Partner Persons), required in accordance with the Law in order to [Design,] Build [, Operate] and Maintain the

Contracted Assets, to employ foreign workers (if any) and to perform any other obligations under the Agreement, including, but not limited to: [□]⁵

Principal Debt means the total outstanding debt of the Private Partner (current balance under loans), obtained pursuant to Financing Agreement(s) with the Lenders to finance the costs associated with the performance of the obligations under the Agreement

Private Partner has the meaning assigned to it in the Preamble

Private Partner Persons means the Contractor, Maintenance Services Provider, [Operator] and any other persons, with whom the Private Partner, Contractor or Maintenance Services Provider enter into an agreement for the performance of obligations of the Contractor or the Maintenance Services Provider, as well as the employees of the said persons, including the employees and representatives of the Private Partner

Project means the Development, Financing, [Design], Construction, Completion, [Operation] and Maintenance of the Contracted Assets and the provision of medical services.

Public Partner has the meaning assigned to it in Preamble

Public Partner Persons means entities and bodies, that exercise, pursuant to the Agreement or the Law, the authority directly related to the Project implementation, the list of which is attached as Appendix 16 (List of Bodies and Entities Acting on Behalf of the Public Partner, Scope and Composition of Certain Public Partner's Obligations to Be Performed by Them), as well as representatives (individuals) and employees of the Public Partner, exercising, pursuant to the Agreement or the Law, the authority directly related to the Project implementation

Refinancing means the amendment of the financing terms entered into in the Financing Agreement

Reports means any report, which is to be prepared and submitted by the Private Partner in accordance with Appendix 6 (Reporting and Monitoring)

Required Insurance Coverage means all insurance contracts, which shall be concluded by the Private Partner in accordance with the requirements of Appendix 9 (Required Insurance Coverage)

Review and Approval Procedure means the procedure for review and approval as between the Parties of certificates, schedules and other documents

⁴ Depending on which Party is responsible for the Operation

⁵ The definition may be revised in accordance with applicable law.

that need to be approved in accordance with the Agreement, as set forth in Appendix 19 (Review and Approval);

Site Preparation means site preparation activities for Building roll-out, as contemplated in the Design Documentation;

Special Events has the meaning assigned to it in Clause 9.1;

Terminating Party has the meaning assigned to it in Clause 14.12(a);

Termination Date means any of the following dates:

- (i) Expiry Date or
- (ii) a date of the execution by the Parties of an agreement to terminate this Agreement prematurely, except where a different date is specified in such agreement or
- (iii) a date, set forth in a judicial ruling to terminate the Agreement or
- (iv) other date of termination of this Agreement, as determined in accordance with the Law

Termination Fee means the sum to be paid by the Public Partner to the Private Partner in the event of the premature termination of the Agreement, which may consist of different amounts depending on the reason for the termination of Agreement, in accordance with Clauses 14.1–14.12

Term of Agreement has the meaning assigned to it in Clause 2.3(b)

1.2 Interpretation: Standard interpretation clause, including document prioritisation clause. Consents and approvals not to be unreasonably withheld or delayed unless specifically provided otherwise.

2. General provisions

2.1 Subject of the agreement

[The wording of the subject matter depends on the following parameters of the relevant project: 1) which Party will take the ownership of the Contracted Assets; 2) whether the Private Partner will be responsible for the Design; 3) which Party will be responsible for the Operation (delivery of medical services) and 4) whether the Public Partner will participate in the financing of the project. Typical examples of the language for the subject matter are provided below.]

(a) In accordance with this Agreement the Private Partner undertakes, using its own and/or borrowed funds, to Finance, [Design,] Build [, Operate] and Maintain the Contracted Assets, the ownership of which will be taken by the Public Partner, whereas the Public Partner undertakes to transfer the Contracted Assets into the Private Partner's possession and use within the period of time, stipulated in the Agreement, for carrying out the activity specified in the Agreement, [to take care of the Operation], and to pay to the Private Partner [the Capital Grant and] the [Operation and] Maintenance Fee.

OR⁸

In accordance with this Agreement the Private Partner undertakes, using its own and/or borrowed funds, to Finance, [Design,] Build and also to [Operate and] Maintain the Contracted Assets, whereas the Public Partner undertakes to [take care of the Operation of the Contracted Assets,] to pay to the Private Partner [the Capital Grant] and the Operation Fee, and also to take the Contracted Assets into ownership in the manner and subject to the conditions provided for in the Agreement.

(b) [The Public Partner shall hand over to the Private Partner by way of a delivery and acceptance certificate the Contracted Assets intended for [re]construction in the following manner: [to be specified: timing of hand-over to the Private Partner of the property to be reconstructed, the list of assets and hand-over

⁶ The following option is contemplated hereinafter in the model Agreement: either the Private Partner will complete the Design or the Private Partner will be provided with the Design Documentation and the Private Partner will then only be responsible for building/renovating the Contracted Assets.

⁷ The following option is contemplated hereinafter in the model Agreement: the Private Partner will both Operate the Contracted Assets for intended purpose (delivery of clinical services) and Maintain it, or the Private Partner will only be responsible for the Facility Maintenance.

⁸ Option 1 – Public Partner owns the Contracted Assets. Option 2 – Private Partner owns the Contracted Assets.

procedure, any encumbrances. If as at the Execution Date the Parties lack the understanding in respect of all specified aspects, it may be possible to refer to the Review and Approval Procedure].]⁹

(c) The Parties undertake further to perform other obligations provided for under the Agreement.

[If the Private Partner is entitled to carry out commercial activity for the purposes of earning additional income through the use of the Contracted Assets, then this Clause should address the conditions, on which the Private Partner would be authorised to do so, including, but not limited to, the need to have an authorisation from the Public Partner and the distribution of income from such activity of the Private Partner.]

(d) [The immovable assets built by the Private Partner with the consent of the Public Partner while carrying out the activity, provided for under the Agreement, that are unrelated to the Contracted Assets shall be owned by the Private Partner, whereas the immovable assets built by the Private Partner without the consent of the Public Partner while carrying out the activity, provided for under the Agreement, that are unrelated to the Contracted Assets shall be owned by the Public Partner and the value of such assets shall not be recoverable.

(e) The movable assets built or purchased by the Private Partner with the consent of the Public Partner while carrying out the activity, provided for under the Agreement, that are not part of the Contracted Assets shall be owned by the Private Partner and shall not be transferred to the Public Partner after the Expiry Date, unless the Parties agree otherwise.^{10]}

2.2 Contracted assets

(a) The Contracted Assets comprise movable and immovable assets to be developed in accordance with the Agreement, intended for [●], the description of which, including technical and economic features and requirements, is set out in Appendix 2 (Contracted Assets Description and Technical and Economic Performance) to this Agreement.

(b) The risk of incidental destruction of or damage to (loss of) the Contracted Assets shall be borne by the Private Partner throughout the entire Term of Agreement.

2.3 Term of agreement

(a) The Agreement shall come into effect as of the Execution Date.

(b) Unless the Agreement is terminated prematurely, the term of this Agreement shall be equal to the period commencing on the Execution Date and ending [□] years/months after the Execution Date (hereinafter – “Expiry Date” and “Term of Agreement”, respectively).

2.4 Security for performance of the private partner's obligations under the agreement

(a) The Private Partner shall provide security for performance of its obligations under this Agreement in accordance with the provisions of Appendix 7 (Security).

2.5 Required insurance coverage

(a) The Private Partner shall procure that the Required Insurance Coverage is maintained continuously in such amounts and on such terms, as defined in Appendix 9 (Required Insurance Coverage).

2.6 Allocation of the site

(a) For the purposes of the [Design], Building and Operation/Maintenance, the Public Partner shall provide to the Private Partner the Site owned by the Public Partner free of Encumbrances, as listed in Appendix 8 (Allocation of the Site), necessary for the conduct of activities provided for under the Agreement in accordance with the process and terms set forth in Appendix 8 (Allocation of the Site).

(b) The Site shall be provided to the Private Partner within/by [specify period/date].



⁹ The Clause will apply, if the project involves reconstruction rather than greenfield construction.

¹⁰ Clauses 2.1(d) and 2.1(e) are optional, depending on the project structure and law of the project jurisdiction.

3. Financial close

3.1 Conditions precedent to financial close

(a) The Financial Close shall be achieved upon the satisfaction of the following conditions:

[Conditions for the Project's financial close consistent with its financial model need to be specified. Such conditions may include the execution by the Private Partner of financing agreements with banks for amounts, defined in the Agreement/Project financial model (in terms of debt financing), the amount of own funds to be invested (in terms of equity financing)].

(b) For the avoidance of doubt, the Private Partner shall not be held liable for failure to meet the Financial Close deadlines, if such failure results from the Public Partner's failure to comply with obligation in relation to transfer to the Private Partner of the Site in accordance with the requirements of Clause 2.6.

3.2 Financial close certificate

(a) Upon the satisfaction of conditions listed in Clause 3.1(a), but in any event no later than [] days after the Execution Date the Parties shall sign a certificate of the Financial Close (hereinafter – "Financial Close Certificate") in accordance with Appendix 13 (Principal Forms of Certificates under Agreement).

(b) The approval and signing of the Financial Close Certificate shall comply with the Review and Approval Procedure.

4. Design

4.1 Term of the design stage

(a) The term of the Design Stage and the key interim milestones of the Design Stage shall be as set out in Appendix 3 (Investment Stage Schedule).

4.2 [Design documentation]

(a) The Private Partner shall develop the Design Documentation within the period contemplated by the Investment Stage Schedule and shall submit such documentation to the Public Partner for approval. The Public Partner shall be required to either approve the submitted Design Documentation, or respond with reasoned objections in accordance with the Review and Approval Procedure. For the avoidance of doubt, the Public Partner may decline approving the Design

Documentation solely with reference to one or more of the following reasons:

i. the Design Documentation does not comply with Appendix 2 (Contracted Assets Description and Technical and Economic Performance)

ii. the Design Documentation does not comply with the Law

iii. the Design Documentation does not comply with the provisions of Appendix 21 (Arrangements for Cooperation between Parties at Investment Stage)

OR¹¹

(b) On the Execution Date the Public Partner shall deliver to the Private Partner the Design Documentation, (i) sufficient and suitable in all respects for the performance all of the Private Partner's Building obligations, (ii) in respect of which all Permits required in accordance with the Law have been obtained. The Private Partner shall perform its Building obligations in accordance with the Design Documentation provided by the Public Partner.]

4.3 Other engineering documentation

(a) The Private Partner shall develop and approve, in the manner provided for by Appendix 21 (Arrangements for Cooperation between Parties at Investment Stage), the following engineering documentation: [documentation needs to be specified that is to be developed in accordance with the law of the project jurisdiction for the (re)construction].

5. Construction

5.1 Term of the construction period

(a) The term of the Construction Period and the key interim milestones of the Construction Period shall be as set out in Appendix 3 (Investment Stage Schedule).

5.2 Site preparation

(a) The Parties shall carry out the Site Preparation activities in accordance with the Design Documentation, the Law and the requirements of Appendix 21 (Arrangements for Cooperation between Parties at Investment Stage).

[The Site Preparation comprises the activities relating to the preparation of site (Site) for the Building activities. The Site Preparation activities may be

¹¹ Depending on whether the Private Partner is responsible for developing the Design Documentation.

assigned either to the Private Partner, or to the Public Partner, or allocated between the Parties depending on which Party is better prepared to take the relevant risk.]

5.3 Building commencement conditions precedent

(a) Except where the Parties agree otherwise, the Private Partner may not proceed to the performance of its Building obligations until the following conditions precedent to the Building have been satisfied (hereinafter – “Building Commencement Conditions Precedent”): [conditions to the commencement of (re) construction need be specified, such as the permits required in accordance with applicable law, security for the performance of the Private Partner during the Construction Period, the Required Insurance Coverage in respect of construction risks.].

(b) Within [] Business Days following the date of satisfaction of the last of the Building Commencement Conditions Precedent the Private Partner shall give to the Public Partner a notice of the Building commencement, prepared according to the form in Appendix 13 (Principal Forms of Certificates under Agreement) (hereinafter – “Building Commencement Notice”).

5.4 General building requirements

(a) During the Construction Period, the Private Partner shall have an obligation to Build the Contracted Assets and to arrange for the Equipment to be installed within the period of time provided for in Appendix 3 (Investment Stage Schedule) and in accordance with the technical and economic performance requirements set out in Appendix 2 (Contracted Assets Description and Technical and Economic Performance) and the Contracted Assets requirements in accordance with the Agreement, the Design Documentation and the Law.

(b) While building, the Private Partner shall have an obligation to ensure that the Contracted Assets is in compliance with:

- i. the Agreement, including Appendix 2 (Contracted Assets Description and Technical and Economic Performance)
- ii. the Design Documentation
- iii. the Law

(c) While building, the Private Partner shall have an obligation to: [the main Private Partner’s obligations at the Building Stage in accordance with the project’s technical parameters need to be described].

5.5 Facility equipment

(a) The medical Equipment to be procured by the Private Partner and the medical technologies employed should be allowed for the application (should have state registration and/or certification, where necessary) in the territory of [specify country] in the manner prescribed by the Law with appropriate Permits obtained.

(b) The requirements to the quality of the Equipment shall be set forth in Appendix 2 (Contracted Assets Description and Technical and Economic Performance)¹² / Appendix 21 (Arrangements for Cooperation between Parties at Investment Stage).

5.6 Contracted assets acceptance

(a) Within [] [per the Investment Stage Schedule] the Private Partner shall submit to the Public Partner a draft of the investment stage completion certificate, prepared according to the form of Appendix 13 (Principal Forms of Certificates under Agreement) (hereinafter – the “Investment Stage Completion Certificate”), evidencing the satisfaction of the following conditions: [conditions to the Contracted Assets acceptance need be specified, depending on the technical parameters of the relevant project and the law of the project jurisdiction, such as conditions regarding absence/correction of any defects, all Permits required under the Law for the purposes of the Contracted Assets’ commissioning into operation].

(b) For the avoidance of doubt, the Investment Stage Completion Certificate shall evidence the proper performance by the Private Partner of its Building obligations in full. The Investment Stage Completion Certificate shall be approved in accordance with the Review and Approval Procedure.

5.7 Ownership right to the contracted assets

(a) The ownership right to the completed Contracted Assets shall arise in accordance with Appendix 24 (Contracted Assets Ownership).

[In the event that the Contracted Assets is built to be owned by the Private Partner: prohibition to dispose of

¹² Requirements to the Equipment that will be part of the Contracted Assets are to be set forth in Appendix 2. If the Private Partner’s obligations include only the supply of Equipment that will not be part of the Facility, then requirements to such Equipment are to be set forth in Appendix 21.

the Contracted Assets, indication if encumbrances on the Contracted Assets are allowed.

In the event that the Contracted Assets are built to be owned by the Public Partner, the procedure for transfer of lease rights to Contracted Assets to the Private Partner for the latter to carry out the Maintenance/Operation will need to be included].

6. Operation

6.1 Term of the operation period

(a) The term of the Operation Period and the key interim milestones of the Operation Period shall be as set out in Appendix 4 (Operation Period Schedule).

6.2 Maintenance

(a) The Private Partner shall maintain, repair and replace the Contracted Assets as necessary in accordance with Good Industry Practice and any specific schedule.

7. Subcontracting

(a) The Private Partner may subcontract any of its Design, Construction, Operation and Maintenance responsibilities to third parties with suitable experience, skills and resources. Contract terms must be consistent with this Agreement. The Private Partner shall keep the Public Partner regularly and properly informed about subcontracting activities and notify it in advance of the identity and credentials of any material subcontract. [DEFINE MATERIALITY – e.g., annual expenditure of at least US\$ 500,000]. [The Public Partner can raise reasonable objections to any material subcontractor which it reasonably believes [will not be able to perform or] would be harmful to national interest.]

(b) No subcontracting shall relieve the Private Partner

of any of its obligations hereunder. The Public Partner shall ensure that all subcontractors perform to the requisite standards and shall be fully liable for any failures or breaches of contract on their part. Copies of material subcontracts to be provided to Public Partner.

8. Financial obligations

8.1 General

(a) The Private Partner shall provide [partial/full] financing of the [Design,] Building [and Maintaining/ Operating] of the Contracted Assets, including the Equity Financing and/or the Debt Financing in the amounts set out in Appendix 25 (Private Partner Financing).

(b) [Appendix should contain provisions in respect of amounts of and timing for providing the Private Partner's financing depending on the project financial model.]

8.2 [Capital grant¹³]

(a) [The Public Partner shall make the Capital Grant disbursements to the Private Partner in such a manner, within such time and on such terms, as provided for in Appendix 14 (Capital Grant Procedure and Disbursement Schedule).]

(b) The Parties hereby agree that a Dispute shall not relieve the Public Partner from the obligation to pay the Capital Grant to the extent not disputed.]

8.3 [Operation fee¹⁴]

(a) [The Public Partner shall have an obligation, beginning with the Operation Commencement Date, to pay to the Private Partner the Operation Fee in the manner and on the terms provided for by the Law and the Agreement.

¹³ The Clause is optional. It will be applicable to projects, in which the Public Partner will be partially financing the Design/(re) construction of the Facility.

¹⁴ Specific parameters and conditions for the payment of the Operation Fee depend on the project's financial model and the country's healthcare system and are to be developed by financial experts (in the relevant appendices to the Agreement). Based on the international experience in implementing PPP projects in healthcare sector, it should be noted that common forms of payments from the government are: 1) availability payment, i.e., a payment for the facility maintenance that depends on key performance indicators (if not achieved, the payment is reduced); 2) services charge pro rata to the ancillary services provided (volume-based fees), such as catering, parking. There are projects where the private investor operates and maintains the facility and in particular provides medical services, whereas the government pays to it a fixed annual fee (subject to indexation), with the private investor also earning additional income through commercial medical services (example: the Queen Mamohato Memorial Hospital PPP, Maseru, Lesotho). There are also schemes, in which the government pays to a private investor for the delivery of each individual medical service, while services remain free to the population (example: B. Braun Dialysis Centers, Andhra Pradesh, India). Reference source: https://www.unece.org/fileadmin/DAM/ceci/images/ICoE/PPPHealthcareSector_DiscPaper.pdf

¹⁵ This Clause will be relevant if the Private Partner raises debt financing.

(b) The payments of the Operation Fee shall be made in the manner, within the periods of time and on the terms, provided for in Appendix 15 (Operation Fee).

(c) The Parties hereby agree that a Dispute shall not relieve the Public Partner from the obligation to pay the Operation Fee to the extent not disputed.]

8.4 [Direct agreement¹⁵]

(a) [If the Private Partner raises the Debt Financing, the Private Partner, the Public Partner and the Lender shall enter into the Direct Agreement by [] in accordance with heads of terms set out in Appendix 11 (Heads of Terms in Relation to Direct Agreement).]

8.5 [Refinancing]

(a) [Any refinancing shall be arranged in accordance with Appendix 26 (Refinancing), unless provided otherwise in the Direct Agreement.]

9. Special events, force majeure events

9.1 Definition of special event

(a) The special events shall be deemed to include any of the events listed in Clause 9.1(b), which become known after the execution of the Agreement, except for cases, when actions or omissions of the Private Partner (or any Private Partner Person) have caused such event, and if at least one of the following conditions is met for the special event:

- i. the occurrence of this event prevents the performance by the Private Partner of the obligations under the Agreement, including in respect of the Financial Close, and results in the inability of the Private Partner to perform in a timely manner its obligations with respect to the Financing [, Design], Building [, Operation] and/or Maintenance or a significant delay in the performance of such obligations (for longer than [] days, unless a different period is provided for the relevant special event); and/or
- ii. the occurrence of this event has entailed or will entail Extra Costs in amount exceeding [] during the Investment Stage, or [] during the Operation Period.

(b) The special events are listed in Appendix 27 (Special Events and Force Majeure Events). [The events to be treated as special events are those that significantly impede the performance by the Private Partner of its obligations under the Agreement with such events being at the same time a consequence of actions of the Public Partner, government authorities

and other factors beyond the control of the Private Partner, such as discovery on the Site of archeological sites, the Public Partner's failure to allocate the Site in due time, Pre-Existing Environmental Conditions, Material Adverse Government Actions, Qualifying Change in Law, etc. The list of special events depends on a particular project.]

9.2 Consequences of special event

(a) Upon a special event, the Public Partner shall in the manner and on the terms provided for in the Agreement:

- i. provide to the Private Partner additional time, as may be necessary for the performance of its obligations under the Agreement; and/or
- ii. reimburse to the Private Partner the Extra Costs incurred by it; and/or
- iii. carry out other obligations, provided for by the Agreement.

(b) For the avoidance of doubt, if as a result of a special event the Agreement needs to be amended, the Parties undertake to approve such amendments to the extent permitted under the Agreement and the Law.

9.3 Actions of the parties upon special event

(a) The procedures for actions by the Parties upon the special events are set out in Appendix 27 (Special Events and Force Majeure Events).

9.4 Definition of force majeure event

(a) A force majeure Event means any extraordinary and unavoidable event under the existing circumstances that is beyond reasonable control or influence of the affected party, which results in a delay or the impossibility of the performance or improper performance by a Party (hereinafter – the “Affected Party”) of its obligations. The force majeure events are listed in Appendix 27 (Special Events and Force Majeure Events). [Force majeure events include those force majeure conditions that neither party is able to control, such as wars, strikes, acts of terrorism.]

(b) Any event that can be considered a force majeure event in accordance with Clause 9.4(a) shall not be deemed as such for the relevant Affected Party, if:

- i. the occurrence of such event could have been prevented by the Affected Party by use of reasonable good faith effort for the purposes of the performance of its obligations in accordance with the Agreement; or

ii. the occurrence of such event has been caused in full or in part by a breach by the Affected Party of any of its obligations under the Agreement or any action of or omission by the Affected Party.

9.5 Consequences of the occurrence of a force majeure event

(a) A force majeure event shall release the Affected Party from liability for the non-performance or improper performance of its obligations under the Agreement, but only to the extent that such non-performance or improper performance have been caused by the force majeure event.

9.6 Actions of the parties upon a force majeure event

(a) The procedures for actions by the Parties upon a force majeure event are set out in Appendix 27 (Special Events and Force Majeure Events).

9.7 Correlation between force majeure events and special events

(a) To the extent that any force majeure event is also a special event, such force majeure event and also its consequences shall be deemed as a special event. If, however, any event can be divided into several events, some of which constitute special events, while others constitute force majeure events, the Private Partner should have the right to be released from obligations, depending on and to the extent that each such isolated event constitutes a special event or a force majeure event.

10. Reporting and monitoring

10.1 General

(a) The Public Partner shall monitor the compliance of the Private Partner with the terms of this Agreement, including the obligation to carry out the [Design], Building, [Operation] and Maintenance in accordance with the purposes set out in the Agreement, the compliance with timing requirements for the performance of the above obligations in the manner provided for in Appendix 6 (Reporting and Monitoring).

(b) The Private Partner shall provide for the representatives of the Public Partner's relevant bodies carrying out the monitoring of the Private Partner's compliance with the terms of this Agreement an unobstructed access to the Contracted Assets and also to the documentation relating to the Financing [, Design], Building [, Operation] and Maintenance activities, in the manner provided for in Appendix 6 (Reporting and Monitoring).

(c) The Public Partner shall have the right to request information from the Private Partner on the performance by the Private Partner of the obligations under this Agreement. The procedure for the submission by the Private Partner and review by the Public Partner of the said information is set forth in Appendix 6 (Reporting and Monitoring).

(d) The Private Partner shall provide the Reports to the Public Partner in the manner and within such time periods as set forth in the Agreement and Appendix 6 (Reporting and Monitoring).

(e) The Public Partner may not interfere with the performance of the business activities by the Private Partner.

11. Dispute resolution

11.1 Dispute resolution

(a) Except where (if at all) the Agreement provides for final determination by an Expert, all disputes, controversies or claims, arising out of or in connection with this Agreement, including with respect to its existence, performance, breach, termination, invalidity or interpretation (each hereinafter – the “Dispute”), shall be resolved in accordance with the Dispute Resolution Procedure whereby Disputes shall be referred initially to Parties' representatives, who shall meet and discuss them within [30] days of notice at [location] in attempt to resolve them. Failing agreement within [90] days, either Party may refer any Dispute for final determination to arbitration under [specify system (e.g., ICC/LCIA/ ICSID)].

(b) The place of arbitration shall be [] and the language [].

[The Dispute Resolution clause should address the pre-judicial dispute resolution process (through negotiations), the procedure for the Parties to refer a dispute to Court/Arbitration (as applicable) for the resolution, as well as the role of the Technical Expert (if applicable) in the dispute resolution.]

12. Liability

[INSERT AS APPROPRIATE e.g., against third-party claims resulting from breach of contract; liquidated damages in the event the Private Partner fails to meet the contractual commissioning date or the levels of services to be provided for in the Agreement; Warranty Obligations with respect to the Facility Equipment as well as liability exclusions]

13. Amendment of the agreement

13.1 Amendment

(a) All modifications of and amendments to the Agreement shall be valid if made in writing and signed by the recognised representatives of the Parties.

(b) The Parties acknowledge that any condition of this Agreement, including its essential conditions, may be amended by an agreement of the Parties in accordance with Clause 13.1(a), unless provided otherwise by the Law.

13.2 Amendment procedure

[This Clause is to describe the procedure for the amendment of the Agreement in accordance with law of the project jurisdiction.]

14. Agreement termination

14.1 Grounds for termination of the agreement

(a) This Agreement shall terminate:

- i. On the Expiry Date;
- ii. prematurely prior to the Expiry Date:
 - pursuant to an agreement of the Parties;
 - by the Public Partner on any ground contemplated in Clauses 14.2, 14.4 or 14.5;
 - by the Private Partner on any ground contemplated in Clauses 14.3, 14.4 or 14.5.

14.2 Termination for reasons attributable to the private partner

(a) This Agreement may be terminated, if so requested by the Public Partner in case of the occurrence of the following events, except when such events arise as a consequence of the special events and/or force majeure events and/or as a consequence of a breach by the Public Partner of its obligations under the Agreement: [specify breaches of obligations under the Agreement by the Private Partner that entail the termination of the Agreement].

14.3 Termination for reasons attributable to the public partner

(a) This Agreement may be terminated, if so requested by the Private Partner in case of the occurrence of the following events, except when such events arise as a consequence of the special events and/or force

majeure events and/or as a consequence of a breach by the Private Partner of its obligations under the Agreement: [specify breaches of obligations under the Agreement by the Public Partner that entail the termination of the Agreement].

14.4 Termination of the agreement due to special event

(a) This Agreement may be terminated, if so requested by any of the Parties upon a special event, if the special event:

- i. clearly cannot be remedied or prevents the proper performance of the Agreement by the Private Partner for longer than [] days;
- ii. results in the payments of the Public Partner to the Private Partner in relation to the relevant special event exceeding [].
- iii. entitles the Parties to extend the period for the performance of the obligations under the Agreement and/or to receive reimbursements of certain expenses, but such entitlement cannot be exercised by them within [] days from the date it came to the existence for the reason of a failure to obtain the required approval of the relevant government authority in the manner provided for under the Law;
- iv. [other grounds may be included in respect of a particular project].

14.5 Termination of the agreement related to force majeure events

(a) This Agreement may be terminated, if so requested by any of the Parties, if:

- i. a force majeure event or its consequences prevent the performance by either Party of its obligations under the Agreement for longer than [] days and/or several force majeure events prevent the performance of the Agreement for longer than [] days in total during [] year;
- ii. [other grounds may be included in respect of a particular project].

14.6 Termination by agreement of the parties

(a) This Agreement may be terminated prior to the Expiry Date pursuant to an agreement of the Parties executed in writing. Such agreement between the Parties terminating this Agreement should set forth either the amount, or the procedure for determining the amount of the Termination Fee and the procedure for its payment, agreed by the Parties, but the amount of the Termination Fee, however, cannot in any event be less than the amount determined in accordance with Clause 14.8(a).

14.7 General provisions on the termination fee

(a) The payment of the Termination Fee in the event of the termination of this Agreement in accordance with Clauses 14.2 to 14.6 shall be effected by the Public Partner no later than within [] days after the Expiry Date.

(b) The procedures of and timing for the recognition and/or conservation of the Contracted Assets upon the Agreement being terminated prematurely shall be set forth by the Parties in the Approval Procedure.

14.8 Termination fee related to reasons attributable to the private partner

(a) If the Agreement is terminated for any reason listed in Clause 14.2, the Public Partner shall then pay the Termination Fee, consisting of: [the composition of the fee payable to the Private Partner needs to be described, which may include 100 per cent of the outstanding amounts under the Debt Financing as well as other expenses relating to obtaining the Debt Financing, etc., LESS any amounts the Public Party is entitled to deduct or offset to rectify the Private Party's breach or redo defective work but PROVIDED THAT deductions do not reduce compensation below the amount under the Debt Financing – depending on the project's financial model and arrangements between the Parties.]

14.9 Termination fee related to reasons attributable to the public partner

(a) If the Agreement is terminated for any reason listed in Clause 14.3, the Public Partner shall then pay the Termination Fee, consisting of: [composition of the fee payable to the Private Partner needs to be described, which should include 100 per cent of the outstanding amounts under the Debt Financing and a portion of the outstanding amounts under the Equity Financing as well as other expenses relating to raising the Debt Financing, Equity Financing, the costs of Building, recognizing and conserving the Contracted Assets, etc. – depending on the project's financial model

and arrangements between the Parties. The items included in the fee in connection with the termination on this basis cannot be less in scope than the items included in the fee in connection with the termination for reasons attributable to the Private Partner].

14.10 Termination fee related to special events

(a) If the Agreement is terminated for any reason listed in Clause 14.4, the Public Partner shall then pay the Termination Fee, consisting of: [composition of the fee payable to the Private Partner needs to be described, which should include 100 per cent of the outstanding amounts under the Debt Financing and a portion of the outstanding amounts under the Equity Financing as well as other expenses relating to raising the Debt Financing, Equity Financing, the costs of Building, recognizing and conserving the Contracted Assets, etc. – depending on the project's financial model and arrangements between the Parties. The items included in the fee in connection with the termination on this basis cannot be less in scope than the items included in the fee in connection with the termination for reasons attributable to the Private Partner].

14.11 Termination fee related to force majeure events

(a) If the Agreement is terminated for any reason listed in Clause 14.5, the Public Partner shall then pay the Termination Fee, consisting of: [composition of the fee payable to the Private Partner needs to be described, which may include 100 per cent of the outstanding amounts under the Debt Financing as well as other expenses relating to raising the Debt Financing, Equity Financing, the costs of Building, recognizing and conserving the Contracted Assets, etc. – depending on the project's financial model and arrangements between the Parties. The items included in the fee in connection with the termination on this basis cannot be less in scope than the items included in the fee in connection with the termination for reasons attributable to the Private Partner].

14.12 Procedure for premature termination of the agreement

(a) The procedure for terminating the Agreement prematurely shall be set forth in Appendix 20 (Premature Termination and Contracted Assets Transfer Procedure).

14.13 Transfer of rights to the contracted assets

Transfer of Ownership Right to the Contracted Assets

(a) The Contracted Assets shall be transferred pursuant to the procedure set forth in Appendix 20 (Premature Termination and Contracted Assets Transfer Procedure). If in accordance with the Law the Contracted Assets transfer into the Public Partner's ownership requires the execution of a supplementary agreement, the Parties shall execute such agreement within a reasonable period of time.

(b) If the Agreement terminates on the Expiry Date, the Private Partner shall transfer the right of ownership to the Contracted Assets to the Public Partner no later than [] days prior to the Expiry Date.

(c) If the Agreement is terminated prematurely, the Private Partner shall transfer the right of ownership to the Contracted Assets to the Public Partner no later than [] Business Days following the date of the Termination Fee payment in full in accordance with the requirements Clauses 14.6, 14.8, 14.9, 14.10 or 14.11 (as applicable).

(d) For the avoidance of doubt, the responsibility for the maintenance of the Contracted Assets shall pass to the Public Partner as of the date of the execution of the Contracted Assets Hand-Over Certificate.

OR¹⁶

Hand-Over of the Contracted Assets to the Public Partner

(e) The hand-over of the Contracted Assets to the Public Partner shall be performed pursuant to the procedure set forth in Appendix 20 (Premature Termination and Contracted Assets Transfer Procedure).

15. Miscellaneous provisions

[STANDARD LEGAL BOILERPLATE incl. entire agreement/ amendments/ no waiver/ severance of terms/ language/ notices/ confidentiality/ Interest on late payments/ further assurance etc.]
Representations, Warranties and Sovereign Immunity].

15.1 Reps and warranties

[INSERT AS APPROPRIATE FOR EACH PARTY. To include capacity and standing, power and authority, due execution and recognition, valid, binding and enforceable obligations, no immunity from legal process, no conflict with other documents, no existing claims or proceedings which could materially prejudice Project, etc.]

15.2 Waiver of sovereign immunity

[STANDARD WAIVER] The Public Partner [and Government] unconditionally and irrevocably waive[s] any sovereign or governmental immunity from suit or legal process, to the maximum extent permitted under Applicable Law, such that Agreement's provisions can be treated as private commercial acts fully enforceable in accordance with their terms, etc. Consents generally to the bringing and enforcement of proceedings, judgments or awards against it and relief and remedies granted, etc.

15.3 Assignment and enforcement

(a) No transfer of the Private Partner's rights and obligations under the Agreement shall be permitted, except in cases provided for under the Law and the Direct Agreement.

[The provisions of this Clause may be supplemented in accordance with the law of the project jurisdiction and the project financial arrangements: the replacement of the Private Partner in case of restructuring, consent to replace the Private Partner on request of the Lenders.]

15.4 Governing law

(a) This Agreement, including the rights and obligations of the Parties, its validity and the consequences of its invalidity, shall be governed by and construed in accordance with the law of [specify the project jurisdiction].

[EXECUTION CLAUSES]

¹⁶ The provisions of Clause 14.13(e) shall apply if the Facility was built into the Public Partner's ownership.

Appendices

The following Appendices shall form the integral part of the Agreement:

i. Appendix 1 (Terms and Definitions)

[Containing definitions of all key terms, including Affected Party, Agreement, Arbitration, Building, Building Commencement Conditions Precedent, Building Commencement Notice, Business Day, [Capital Grant], Construction Period, Contractor, Contractor Agreement, Court, Debt Financing, [Design], Design Documentation, [Design Stage], Direct Agreement, Dispute, Dispute Resolution, Encumbrance, Equipment, Equity Financing, Execution Date, Expiry Date, Extra Costs, Contracted Assets, Contracted Assets Acceptance Date, Contracted Assets Transfer Certificate, Financial Close, Financial Close Certificate, Financial Close Stage, Financing Documents, Force Majeure Events, Good Industry Practice, Government Authorities, Investment Stage, Investment Stage Completion Certificate, Investment Stage Schedule, Site, Law, Lenders, Maintenance, Maintenance Services Provider, Monitoring, Operation, Operation Commencement Date, Operation Fee, Operation Period, Operation Period Schedule, Operator, Party, Permits, Principal Debt, Private Partner, Private Partner Persons, Project, Public Partner, Public Partner Persons, Refinancing, Reports, Required Insurance Coverage, Review and Approval Procedure, Site Preparation, Special Events, Terminating Party, Termination Date, Termination Fee, Term of Agreement.]

ii. Appendix 2 (Contracted Assets Description and Technical and Economic Performance)

[List of all movable and immovable assets to be developed in accordance with the Agreement along with their sufficient description and output specifications.]

iii. Appendix 3 (Investment Stage Schedule)

[The schedule of [Design and] Build activities.]

iv. Appendix 4 (Operation Period Schedule)

[The Schedule of Maintenance and Operation activities.]

v. Appendix 5 (Operation and Maintenance Requirements)

[The list of medical services, which the Private Partner shall itself or by contracting the Operator carry out for the duration of the Operation Stage, as well as other requirements to maintenance of the Contracted Assets.]

vi. Appendix 6 (Reporting and Monitoring)

[Procedure for the Public Partner's monitoring of the performance by the Private Partner of the requirements under the Agreement and forms of reports by the Private Partner.]

vii. Appendix 7 (Security)

[Describes requirements with regard to security for performance of the Private Partner's obligations. In particular, it will be necessary to specify: the term for which security is to be provided, its amount, the requirements to entities providing security (such as banks in case of bank guarantees), etc. As a matter of practice, the Private Partner is typically expected to provide separate security for each type of the Private Partner's obligations under the Agreement – [Design], Build, Maintenance [, Operation].]

viii. Appendix 8 (Allocation of the Site)

[Sets forth the procedures for and conditions of the allocation to the Private Partner of the Site required for the performance by the Private Partner of its obligations under the Agreement, including: how the Site will be provided to the Private Partner (lease is most frequent); the condition, in which the Site are to be handed over; the period of lease (depending on the law of the project jurisdiction, if it is impossible to transfer lease rights to the Site for the entire term of the Agreement, then the Public Partner's obligation to renew/extend agreements/contracts, on the basis of which the Site are provided to the Private Partner, is to be included so that the period of validity of the Private Partner's rights to the Site is the same as the term of the Agreement); payment amount/procedure for determining the payment for possession and use of the Site; procedure for granting access to the Site to the Private Partner's contractors.]

ix. Appendix 9 (Required Insurance Coverage)

[The Required Insurance Coverage refers to contracts of insurance that the Private Partner is required to enter into for the purposes of covering certain Project-related risks. In particular, as a matter of practice insurance is to be obtained for construction risks (Construction All Risks) and third-party liability risks (health, life and property), arising out of the activities, provided for under the Agreement. Appendix 9 should include the requirements as to insurers, types of insurance, insurance amounts, beneficiaries and other terms of insurance.]

x. Appendix 10 (Liability)

[A Party shall be entitled to the compensation of losses that have been incurred as a result of the non-performance or improper performance by the other

Party of the obligations under the Agreement, and also to the payment of penalties, in the manner and on the grounds, set forth in Appendix 10.]

xi. Appendix 11 (Heads of Terms in Relation to Direct Agreement)

[Contains the heads of terms of an agreement to be entered into between the Public Partner, Private Partner and Lenders. It is better to set out the key heads of terms as different banks may have different forms of direct agreement whereas the key terms ensuring the bankability of the project should largely remain the same.]

xii. Appendix 12 (Heads of Terms in Relation to Contracted Assets Lease Agreement)

[Contains all key terms and conditions of the Contracted Assets Lease Agreement, pursuant to which the Private Partner shall transfer the rights of possession and use in respect of the Contracted Assets to the Operator.]

xiii. Appendix 13 (Principal Forms of Certificates under Agreement)

[Contains the forms of Financial Close Certificate, Building Commencement Notice, Investment Stage Completion Certificate, etc.]

xiv. Appendix 14 (Capital Grant Procedure and Disbursement Schedule)

[Describes the manner, time and terms for the Public Partner to make the Capital Grant disbursements to the Private Partner.]

xv. Appendix 15 (Operation Fee)

[Describes the manner, time and terms for the payments of the Operation Fee to be made.]

xvi. Appendix 16 (List of Bodies and Entities Acting on Behalf of the Public Partner, Scope and Composition of Certain Public Partner's Obligations to Be Performed by Them)

[Lists the entities and bodies that exercise, pursuant to the Agreement or the Law, the authority directly related to the Project implementation.]

xvii. [Appendix 17 (List of Expert Entities)]

[Lists recognised expert entities from among which the Technical Expert may be selected by the Private Partner.]

xviii. [Appendix 18 (Heads of Terms in Relation to Technical Expert Agreement)]

[Contains all key terms and conditions of the Technical

Expert Agreement, pursuant to which the Technical Expert is appointed by the Private Partner.]

xix. Appendix 19 (Review and Approval)

[The procedure for review and approval as between the Parties of certificates, schedules and other documents that need to be approved in accordance with the Agreement.]

xx. Appendix 20 (Premature Termination and Contracted Assets Transfer Procedure)

[Sets forth: (i) information to be provided in the termination notice to defaulting Party, (ii) the duration of the cure period at the expiry of which the Agreement may be terminated, (iii) the condition of the exercise of the Lenders' and Public Party's step-in right, (iv) technical requirements and condition, in which the Contracted Assets should be handed over to the Public Partner and the procedure for inspection of the Contracted Assets to check whether it conforms to those requirements.]

xxi. Appendix 21 (Arrangements for Cooperation between Parties at Investment Stage)

[Contains (i) additional requirements to the Design Documentation and specific arrangements with regard to its approval and obtaining Permits in respect of the Design Documentation – in accordance with technical parameters of the relevant project and provisions of the law of the project jurisdiction, and (ii) the requirements to the engineering documentation to be developed by the Private Partner, in accordance with the law of the project jurisdiction and the technical features of the relevant project and the procedure for its approval].

xxii. Appendix 22 (Arrangements for Cooperation between Parties at Operation Period)

[Procedure for cooperation between the Parties at the Operation Stage, including for the purposes of ensuring the proper Operation and Maintenance, in particular for approval of the Operator / the Maintenance Services Provider.]

xxiii. Appendix 23 (Dispute Resolution)

[Includes any specific provisions or procedures that may need to be set out in the Agreement, e.g., depending on a jurisdiction and applicable laws / market practice a mediation mechanism, specific details (if any) relating to the arbitration procedure, and the procedures applicable to any expert determination of disputes, such as those including the Technical Expert / an "Expert Panel".]

xxiv. Appendix 24 (Contracted Assets Ownership)

[Addresses the following: which Party will have the ownership of the Contracted Assets, the procedure for the registration of the ownership right to the Contracted Assets, other provisions on dealings between the Parties in connection with the ownership of the Contracted Assets.]

xxv. Appendix 25 (Private Partner Financing)

[Specifies the amounts of Equity Financing and/or the Debt Financing of the [Design,] Building [and Maintaining/Operating] of the Contracted Assets to be provided / arranged by the Private Partner.]

xxvi. Appendix 26 (Refinancing)

[Provides which Party, under which circumstances and within what time will be entitled to initiate the Refinancing, and also what is the procedure for the approval of the Refinancing by the other Party, including the grounds for refusing to approve the Refinancing.]

xxvii. Appendix 27 (Special Circumstances and Force Majeure Circumstances)

[Contains (i) the lists of special events and force majeure events, (ii) procedures for giving a notice of a special event, for the identification of costs to be reimbursed, and also of measures to be undertaken for the purposes of mitigating the consequences of a special event and procedures for actions by the Parties if a special event is a continuing event, and (iii) procedures for giving a notice of a force majeure event and procedures for actions by the Parties, if force majeure event is a continuing event.]

xxviii. [More appendices can be added as an Agreement is drafted for a specific Project.]