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Draft - confidential

CONCESSION AGREEMENT

By and between

THE MINISTRY OF TRANSPORT AND AVIATION

THE SIERRA LEONE ROAD SAFETY AUTHORITY

and

Autospect (SL) Ltd

relating to the

The development, operation and implementation of Vehicle Inspection Stations (VIS) and Systems, the deployment of the Vehicle Registration Cards System (VRC), the Radio Frequency Identification (RFID) windshield stickers and Secure Registration Plates (SP) Systems as well as the automation of the related processes then transferring their ownership to the Sierra Leone state

on a Build-Operate-and-Transfer (BOT)

Sierra Leone

Dated [] 2017



This Concession Agreement ("**Agreement**") is made at Freetown, Sierra Leone on this ___ day of _____ 2017

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SIERRA LEONE, ACTING BY THE MINISTRY OF TRANSPORT AND AVIATION (MoTA);

THE SIERRA LEONE ROAD SAFETY AUTHORITY, the body corporate established under the Sierra Leone Road Safety Authority Act 2016 (as Amended) and having its registered office at Kissy Road Freetown, Sierra Leone (**SLRSA**) hereinafter called the "**The Authority**") which expression unless repugnant to the context shall mean and include its successors, executors, administrators and assigns of the First Part.

AND

Autospect (SL) Limited having its registered office at 30 Siaka Stevers Street, Freetown through its Chairman Muhieddine Itani (hereinafter referred to as "**The Concessionaire / Concessionaire**") of the Second Part.

Terms of the Agreement

- A. Whereas the Government has a mandate to develop and implement policies for the regulation, promotion and facilitation of safe, integrated and efficient transport facilities and services within Sierra Leone including without limitation, the development, operation and implementation of: vehicle inspection stations (VIS) and systems deployment of the vehicle registration cards system (VRC), vehicle secured plates system, radio frequency identification (RFID) windshield stickers. The Transport Department is further authorized to enter into agreements and contracts with local and international entities accordingly.
- B. The Authority received unsolicited proposals from different parties. The Authority considered the proposal and approved the proposal of Autospect SL as provided for in Annex 1 (hereinafter referred to as "**the Proposal**") which was submitted to the Cabinet for approval.
- C. Whereas the Cabinet has approved the proposal on [DATE TO BE INSERTED] and subsequently Autospect SL was awarded the Project.
- D. Whereas Autospect SL shall finance the refurbishment of the current stations and the construction and establishment of all equipment (hardware and software) in all stations; only with respect to Vehicle Inspection, Certification System, RFID, Plate Numbers and VRC and defined in the Services in the present Agreement (hereinafter refers to "**Centers / Stations**"), as per Autospect's technical proposal annexed hereto (Annex 1).
- E. Whereas Autospect SL agrees to operate and maintain all Centers throughout the Concession Period only with respect to the Services to be rendered by Concessionaire
- F. Whereas Autospect SL agrees to transfer the infrastructure, equipment and all other allied facilities including skilled resources to the Authority upon successful completion of the concession period.
- G. Whereas Autospect SL agrees to establish the required number of Stations in Sierra Leone as per the committed construction and operation deadlines as provided in the in the Proposal.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES HERETO, HEREBY MUTUALLY AGREED AS FOLLOWS:

1. This Agreement comprises of:

a) The letter of award dated _____

b) This agreement

c) The Annex 1 – Autospect's Technical Proposal

d) The Annex 2 – Services of third party

1. The Parties understand and agree that the Concessionaire shall refurbish (existing Stations) build (new Stations), operate, maintain, provide all necessary equipment (including hardware and software) and transfer ownership of the Centers to the Authority at the end of the Concession Period; in accordance with the terms and conditions of this Agreement.
2. Autospect SL hereby declares its commitment to the afore-stated objectives and undertakes to honestly, diligently and efficiently perform its obligations under this Agreement to ensure the timely establishment, operation, maintenance and transfer of Centers as per the terms of the present Agreement.
3. In view of the laudable objectives stated above, the Parties affirm their commitment to act in accordance with the terms of this Agreement in good faith towards each other and national interest to ensure the success of the Project.

1. GENERAL CONDITIONS OF THE AGREEMENT

1.1. Agreement Period / Concession Period

- 1.1.1. This Agreement shall enter into force on the date of its signature shall remain in force for a period of Fifteen (15) years (hereinafter referred to as "the **Initial Term**") from the date of full operation of the first Station through the rendering of all Services to the public as provided for in the present Agreement.
- 1.1.2. The Initial Term may be extended after its expiration, twice for five (5) years each (hereinafter referred to as "the **Renewed Term(s)**") by mutual written agreement of the Parties; provided that the Party willing to extend the Agreement has notified the other Party of such six (6) months prior to the expiration of the Initial Term or Renewed Term.

1.2. Establishment of Centers

- 1.2.1. It shall be the responsibility of the Concessionaire to refurbish the existing Stations and to ensure that all necessary equipment (software and hardware) required for the rendering of the Services, as provided in Annex 1, shall be installed and upgraded as may be deemed necessary by the Concessionaire; in order to ensure the rendering of the Services in the Stations throughout the Concession Period.
- 1.2.2. The Concessionaire shall be responsible to build the new Stations and ensure that such Stations are furnished with all necessary equipment (software and hardware) and upgrades of such equipment to ensure that all the Services are rendered in such Stations throughout the Concession Period, as per the terms of the Proposal (Annex 1).
- 1.2.3. Concessionaire shall be responsible to provide throughout the Concession Period, continuous support and maintenance services on the equipment provided.
- 1.2.4. Concessionaire shall be working on a Build, Operate and Transfer basis. The Concessionaire shall bear all costs incurred in the Project planning, designing, land lease, construction / infrastructure development, equipment, and any other cost associated with the Project development and operation.
- 1.2.5. For the avoidance of doubt, and notwithstanding anything to the contrary it is expressly agreed that the Concessionaire's responsibility under this Agreement with respect to the existing Stations and the new Stations is strictly relevant to the Services to be rendered by the Concessionaire. Any other

service rendered in the Stations (existing and new) shall not be the responsibility of the Concessionaire and the latter shall in no event be accountable for the proper rendering of such additional services which are or are to be rendered by others (including without limitation the Authority).

1.3. Services Fees

1.3.1. The Selling Price provided is exclusive of applicable taxes (including VAT)

| Product/Service | Selling Price USD\$ |
|---|-------------------------------------|
| <u>Vehicle Inspection Services</u> | |
| Inland Station - Regular/ Commercial/ Fully Charged LDV | 40 |
| Inland Station - Regular/ Commercial/ Fully Charged HDV | 60 |
| Inland Station - Regular/ Commercial/ Fully Charged MC | 20 |
| Repeat Price | 25.00%(of applicable Selling Price) |
| Ports Stations - LDV | 220 |
| Ports Stations - HDV | 440 |
| Ports Stations - MC | 110 |
| <u>RFID, e-VRC and Secured Plates Production</u> | |
| RFID - Inland Stations | 18 |
| RFID - Port Stations | 34 |
| Vehicle Registration Card | 48 |
| Plate number | 36 |

1.3.2. The Service Fees are fixed towards the public in the local currency, based on the rate of Leone against the US Dollar at the date of signature of this Agreement.

In case of devaluation of the SLL against the USD of 10% or more, Concessionaire shall have the right to increase the fixed prices at the pro-rate of the new SLL value against the USD, in such a way that at all times the price collected by Concessionaire shall be equivalent to the price fixed in USD (in the above table or any amendment to such table throughout the Concession Period). Should the Concessionaire fail, refrain or delay to exercise any of its rights during the Concession Period such shall in no event imply or be construed to imply a waiver by the Concessionaire of such rights and the Concessionaire may exercise his rights at any point in time.

1.3.3. The vehicle inspection test fee, the Vehicle Registration Card issuance fee, the RFID issuance fee and the Vehicle Plate Number production fee will be collected directly by Autospect from the vehicle owners throughout the Period of the Concession and communicated daily to the Authority.

1.4. Authority's Share

1.4.1. The share of the Authority from the Fees collected by the Concessionaire from the Vehicle Owners is of 10% of the Selling Price provided for in the Table in Clause 1.3 above. The below table reflects the Authority's Share (AS) for each Service (the below prices are exclusive of any applicable tax including VAT):

| Product/Service | Selling Price | AS |
|---|-------------------------------------|-----------------------------------|
| <u>Vehicle Inspection Services</u> | | |
| Inland Station - Regular/ Commercial/ Fully Charged LDV | 40 | 4 |
| Inland Station - Regular/ Commercial/ Fully Charged HDV | 60 | 6 |
| Inland Station - Regular/ Commercial/ Fully Charged MC | 20 | 2 |
| Repeat Price | 25.00%(of applicable Selling Price) | 2.5%(of applicable Selling Price) |
| Ports Stations - LDV | 220 | 22 |
| Ports Stations - HDV | 440 | 44 |
| Ports Stations - MC | 110 | 11 |
| <u>RFID, e-VRC and Secured Plates Production</u> | | |
| RFID - Inland Stations | 18 | 1.8 |
| RFID - Port Stations | 34 | 3.4 |
| Vehicle Registration Card | 48 | 4.8 |
| Plate number | 36 | 3.6 |

There are three scenarios for the Concessionaire to pay the Authority Share on gross annual revenue in conjunction with compliance rate based on the current fleet of 350,000 vehicles as detailed below:

Scenario I: when Vehicle Compliance rate is equal to 50%

When the Vehicle Compliance rate is 50%, the Concessionaire shall only pay the Authority Committed Amount (the percentage amount which the bidder has quoted in the Proposal and as reflected in the above table, applied to the gross revenue)

Scenario II: when Vehicle Compliance rate is greater than 50%

When the Vehicle Compliance rate is more than 50%, the Concessionaire shall pay:

the Committed Amount (the percentage amount which the bidder has quoted in the Proposal and as reflected in the above table , applied to the gross revenue of 50% compliance)

PLUS

0.10% on every 1% increase in compliance above 50% based on the revenue generated from compliance above 50%.

Scenario III: when Vehicle Compliance rate is less than 50%

When the Vehicle Compliance rate is less than 50%, the Concessionaire shall be entitled to claim compensation, equivalent to the revenue generated from inspection fee from difference between Committed Amount (the percentage amount which the bidder has quoted in the financial bid) and Actual Compliance rate. The Authority's share on actual revenue shall be subsequently adjusted in line with the compensation.

- 1.4.2. The Parties have agreed that the compliance rate is fixed at 350,000 vehicles at the date of signature of the Agreement and shall increase of --% every five (5) years throughout the Concession Period.
- 1.4.3. Throughout the Concession Period, the Concessionaire shall pay the Authority's Share on monthly basis, on the fifteen (15) of each month for the Services rendered during the preceding. Payment shall be made by bank transfer or as otherwise may be agreed upon by the Parties.
- 1.4.4. The Concessionaire shall provide the Authority with a week from the end of each month with a report attesting the number of Services rendered throughout the preceding month as well as the prices of the Services and the amounts paid by the owners of the concerned vehicles.

1.5. Fee for Re-visits

In case a vehicle fails to pass a fitness test, they will be given a failure report indicating faults and list of necessary repairs to fix before appearing for a retest. The next test (1st re-visit) will be of 25% of the Standard fee and only items highlighted in the failure report will be evaluated. If however, repairs are not performed to the required standards they will be asked to repair and re-appear for fitness tests. The fee for 1st visit and revisits in case of failing test are given below in the table:

| Visit | Time Limit | Fees |
|--------------------------|---------------------------|---------------------|
| 1 st Visit | 6 months or Yearly | Standard fee |
| 1 st Re-visit | 2 weeks | 25% of standard fee |
| 2 nd Re-visit | before 6 months or 1 year | Standard fee |
| | | |

1.6. Late Inspection Penalty

A late inspection penalty of 1%(of the inspection fee) per day will be charged from the customer. The Concessionaire shall, on behalf of the Authority, collect this amount through their invoice and pass on 50% of the late inspection penalty to the Authority.

1.7. The Concessionaire shall prepare and implement the customer care management plan for addressing customer's complaints. The complaints should be resolved within a maximum period of fourteen (14) days. It is agreed that such customer care management plan shall take into account the procedure established by mutual agreement of the Parties, for the Authority to ensure the implementation of such procedure in the Centers.

1.8. Transfer of Stations Infrastructure / Technology to the Authority

1.8.1. Upon the expiration of the Concession Period (including Initial Term and Renewed Term(s)), the Concessionaire shall transfer all assets / infrastructure related to the Stations to the Authority. The infrastructure (hard and soft components) should be in working condition and should have sufficient life (minimum 5 years) for operational use. In addition the Concessionaire should from time to time update infrastructure, equipment (including software and hardware) to keep up with the latest technology and standards in the industry relevant to the Services.

1.8.2. It is agreed that for the software used and installed (including without limitation the applications developed for the purpose of the Project and the rendering of the Services) the Authority shall be granted a license to use the software for as long as such software is being used on the equipment installed by the Concessionaire. However, software upgrades and maintenance support services on the software following the expiration of the Concession Period shall be subject to and service level agreement between the Authority on one part and the Concession and / or its subcontractor(s) on the second part; which shall determine without limitation the fees relevant to such upgrade, maintenance and support services. For the avoidance of doubt the ownership of the software and the rights attached thereto including without limitation Intellectual Property rights shall remain vested in their owner i.e. Concessionaire or any of its subcontractors or suppliers.

1.9. Upgrade of Equipment:

1.9.1. The Concessionaire shall also ensure that the additional demand for Services due to vehicular growth through the Concession Period is catered for, in a manner to ensure that all necessary upgrades are installed in order to have a state of the art technology throughout the Concession Period enabling the Concessionaire to render properly the Services as per the terms of the Proposal (Annex 1). The concessionaire shall be responsible to review and evaluate necessary changes in the equipment (soft and hard components) and applicable procedure to keep up to the date with the latest technological developments in the field of the Services.

1.9.2. The Concessionaire shall also be responsible to calculate the cost associated with the installation of such equipment / technology and determine the impact on Services Fees due to technological upgrade for Authority's approval. In case Authority doesn't approve the increase in the Services Fees, the Concessionaire shall not implement the suggested amendments and shall not install any new equipment.

1.9.3. In case of rejection by the Authority to approve the upgrades the Concessionaire shall be relieved from any obligation of upgrades provided for herein and thus shall not be considered in breach of the present Agreement not shall this be considered as constituting in any way whatsoever a Concessionaire Event of Default. In case the rejection of the Authority caused the Concessionaire damage the Authority shall be responsible to indemnify the Concessionaire against any and all loss and damage incurred.

1.10. Reporting and Monitoring System

1.10.1. The Concessionaire shall establish online reporting and monitoring system for the Services, revenue, penalties, and complaints:

- i. Generating annual and monthly inspection reports for Authority's review (format to be agreed)
- ii. Enabling the Authority a real-time online access 24/7
- iii. The Concessionaire shall make any other information online upon Authority's request pertaining to the vehicle inspections and customer services.

1.10.2. In order for the Concessionaire to be able to implement the reporting and monitoring system referred to above in the Clause 1.10.1, it is agreed that the Concessionaire shall develop a data base which shall be linked electronically to the data base of the Authority. And if the Authority doesn't have a data base yet implemented such shall be done at the cost of the Authority.

1.11. Validity of inspection report

Vehicle Fitness Certificate (VFC) shall be valid for a period of Six (06) months or One (1) year depending on Vehicle, due date for next inspection shall be printed on the VFC. Newly manufactured vehicles shall be exempted for a period of 2 years from the date of its first registration with VICS. Registration with VICS will be mandatory for all Vehicles no matter old or new.

1.12. Levies and Taxes

1.12.1. It shall be the sole responsibility of the Concessionaire to pay all charges relating to the establishment of the Stations in Sierra Leone. The Concessionaire shall pay all taxes, levies and duties as per the rules and laws of the Government of Sierra Leone. In addition to the above all the transportation, clearing and customs duties on imported equipment shall be borne by the Concessionaire.

1.12.2. However in case any indirect taxes are imposed, the same shall be passed on to the customer by the Concessionaire.

1.12.3. Authority shall take all necessary measures to ensure the transfer by the Concessionaire of funds (whether by bank transfer or hard currency transfer) in USD or other foreign currencies as may be deemed necessary by the Concessionaire to its suppliers, service providers, subcontractors, shareholders and other related entities, abroad free from any charges or taxes. The Authority shall take all necessary measures to ensure that such transfers are properly made and that nothing in the applicable laws would prevent such transfers.

1.13. Authority's Responsibilities

The Authority shall be responsible throughout the Concession Period for:

- i. Provide land on lease basis for all sites in Sierra Leone.
- ii. Procure the services of third party Independent Consultant/ Auditor through competitive bidding process and pay the fees of such Consultant.
- iii. To process termination of existing vehicle inspection system and other Services and transfer immediately rights of inspections and all Services to the Concessionaire for vehicle inspections.
- iv. To make necessary changes in the Law and MVR rules for the proposed VICS.
- v. Take all necessary measures including the adoption of all necessary legal and administrative provisions to ensure the proper implementation of the Services. The Authority shall be responsible to impose on all vehicle owners to proceed to the Stations in order to pay all relevant fees and process the Services.
The Authority shall ensure that no permits and / or payment of yearly road tax prior to having ensured that the vehicle owner has paid all relevant Services Fees.
- vi. Take all necessary measures to ensure the implementation of the Procedure (referred to in Clause 1.14 below) in all the Stations and on all the territory of Sierra Leone.

- vii. To make necessary changes in the Law and MVR rules for the proposed Services to render such Services mandatory for all vehicles.
- viii. Take all necessary measures to ensure enforcement of obligation on the vehicle owners of yearly inspection of all vehicles including without limitation through:
 - Enforcement through Token Tax: A valid fitness certificate / registration with VICS shall be required as a mandatory document for obtaining token tax from the Excise and Taxation Department. Failing to provide fitness certificate will result in denial of token tax.
 - Enforcement through Route Permit: A valid Fitness Certificate/ registration with VICS shall be required as a mandatory document for issuance as well as renewal of Route Permit. Failing to provide fitness certificate will result in Route Permit denial.
 - Enforcement through the Authority's personnel: The Authority staff shall be responsible to enforce the vehicle inspections and impound vehicles without valid fitness certificates
 - Enforcement through Traffic Police / Traffic Wardens: The district traffic police / traffic wardens shall enforce the vehicle inspection and shall penalize unfit vehicles on road.
 - Radio frequency identification technology (RFID): The Concessionaire shall establish the system of 'RFID technology' as a tool to assist the enforcement personnel for identification and validation of unfit vehicles on roads. The Concessionaire shall provide at its own cost the RFID bar code readers to the enforcement personnel such as Traffic Police or Authority staff effective enforcement.
- ix. The Authority shall ensure the termination of existing processes relevant to the Services as soon as the Stations (existing and/or new) are ready to operate as per Proposal and transfer immediately the rights relevant to such Services to the Concessionaire. The Authority shall also commence enforcement immediately after the operation of the Stations. However, the Concessionaire shall launch public awareness campaigns prior to commencement of operation through electronic and print media. The associated cost for advertisement / campaign shall be borne by the Concessionaire.
- x. The transport department shall strive to facilitate the concerned Government agencies for making requisite amendments in laws/rules and regulations for implementation of enforcement mechanism by department/agencies other than it.
- xi. Take all necessary measures to ensure that the Stations are safe and protected and guarded on a 24/7 basis to avoid any act of vandalism or theft or damage whatsoever to the Stations and any and all equipment installed therein. In case of non-compliance, the Authority shall indemnify the Concessionaire for any loss incurred due to such acts. If such acts lead to the suspension of the Services then the provisions on suspension shall apply (article 5).

1.14. The Procedure

1.14.1. As of the date of signature of the present Agreement the Authority shall take all necessary measures in order to implement a procedure agreed upon by the Parties hereto and which procedure shall impose on the vehicles owners, the Authority Personnel and the Concessionaire personal specific terms and conditions in the processing of the Services. It is agreed that the foregoing procedure shall be implemented by the Authority within a maximum period of three months from the date of signature of the present Agreement.

1.14.2. Such Procedure shall include without limitation:

- i. For the Vehicle Inspection: The Concessionaire shall be solely responsible to conduct the vehicle inspection and issue an inspection report (within specific standards of security and design approved by the Authority) which shall be delivered to the vehicle owner against payment of the relevant Fees. The Authority shall process the Road Tax only against delivery of inspection report attesting vehicle is compliant with law and that inspection fees were paid.

- ii. For the remaining Services: The Concessionaire shall not proceed to the rendering of the relevant Services prior to having received from the vehicle owner the equivalent document issued by the Authority. Such document shall be agreed upon for each Service, and shall be implemented by the Authority, in such a manner that the document be secured and hold a specific design agreed upon by the Parties.
- iii. Communication Data Base: The Parties shall ensure that the data base of the Concessionaire and that of the Authority are linked in order to ensure the proper implementation of the Procedure to be adopted.

2. Start of Services rendering Construction Conditions of the Agreement

2.1. Commencement of Construction & Operation Timelines

2.1.1. The Concessionaire shall commence the refurbishment of the existing Stations and the installation of equipment within ninety (90) days from the date of signature of the present Agreement, provided that Authority has granted the Concessionaire immediate access to the existing Stations. Any delay by the Authority shall result in an equivalent extension of the start date of refurbishment process by the Concessionaire.

2.1.2. The "go live" of each Service (except for the vehicle inspection) shall be within a maximum period of six (6) months from the date of approval by the Authority on all designs and procedures for implementation. It is expressly agreed that submission by the Concessionaire of the relevant designs for approval should not exceed six (6) months from the expiration of the ninety days provided for under Clause 2.1.1.

Notwithstanding anything to the contrary provided for in the present Agreement or by law, it is expressly agreed that any damage or liability to the Authority or any third party whatsoever which may result from the implementation of the Procedure approved by the authority or any design or drawing or document approved by the authority shall not be the responsibility of the Concessionaire and the latter shall in no event be considered in breach of the present Agreement or as a Concessionaire Event of Default.

2.1.3. For the construction of new Stations as well as the infrastructure for the vehicle inspection services (in the existing Stations and new Stations) the Concessionaire shall commence the construction process within a period of ninety 90 days from (i) signing this Agreement for the existing Stations, or (ii) form delivery by the Authority of the required Land for construction and approval by the Concessionaire of the adequacy of such land, for the new Stations. The construction process shall be completed within a maximum period of 310 days from the date of taking custody of each site. Failure for the concessionaire to comply with foregoing schedules, Authority may impose fines. Construction work shall be carried-out in accordance to the specifications and schedules provided in Annex 1.

2.2. Construction and Operation Deadlines

2.2.1. The Concessionaire shall ensure that Stations are fabricated, erected, installed and completed in accordance with the Authority's approved drawings and specifications as per Annex 1. It shall be the responsibility of the Concessionaire to develop final design and detailed construction drawings from the preliminary drawings Annex 1. The Concessionaire shall ensure the role of a competent engineer/consultant to process the design and construction drawings for Authority's review and approval

2.2.2. The Concessionaire may begin construction work / activities from the date of award of contract for all sites, provided land is acquired by the Authority; ensuring all design and infrastructure activities are in accordance to the required specifications.

2.3. Construction Cost, Quality and Risks

- 2.3.1. The Concessionaire shall complete the construction works at its own cost & risk and achieve the functional date, at each Site, in a manner that is:
- i. in compliance with the Annex 1, the applicable Laws, the Applicable Permits and Good Industry Practice;
 - i. safe and reliable for performance of the Services during the Concession Period subject to normal wear and tear and Force Majeure; and
- 2.3.2. Prior to commencement of the Construction Works, the Concessionaire shall complete planning and design process for the establishment of Stations through a reputed design consultancy and approval from the Authority.
- 2.3.3. During the Construction Period, the Concessionaire shall take all necessary measures to maintain the safety and security of all goods, materials, and personnel.

2.4. Provision of Utilities

The Concessionaire shall be responsible for procuring all utilities, including electricity, water, telecommunications, sanitation and fuel, as required for the completion of the Construction Works and operations of the Centers. It shall also be the responsibility of the Concessionaire to make alternative power arrangement to meet the scheduled and unscheduled load shedding of electricity and gas. Authority shall take all necessary measures to support and assist the Concessionaire in the implementation of the provisions of this Clause 2.4.

2.5. Traffic and Environmental Assessments / Requirements

The Concessionaire shall be responsible for undertaking all necessary surveys, explore environmental constraints and perform soil investigations for the sustainability of the proposed structure. It shall be the Concessionaire's responsibility to perform necessary investigations on their own expense for sites provided by the Authority. If any tests or reports indicate the presence of an unsafe or undesirable condition, the Concessionaire shall either make necessary repairs and/or cleanup of the site, or locate a different site more suitable for intended use, and the Authority shall take all necessary measures to acquire, at its own cost, land in such sites suggested by the Concessionaire. The Concessionaire shall inform the Authority of any such condition or for delays or damages caused by any cleanup, additional testing, or identification of a replacement site. The Concessionaire shall submit the environmental management plan in relation to the construction, commissioning, operations, maintenance and management of the Facilities at the Site for the approval of the relevant Government Authority, prior to commencement of the construction works. Once approved by the relevant Government Authority, the draft environmental management plan shall be the "Environmental Management Plan". The Concessionaire shall be responsible for strict compliance with the Environmental Management Plan during the Concession Period.

The Concessionaire shall review and work in accordance to the assessment recommendation and suggestions to reduce the impact on Environment and Traffic. However, if the Concessionaire desires to make improvements to the existing reports the Authority shall have no objection, but a written request may be produced for approval. The soft copies of the reports shall be provided to the Concessionaire upon request.

3. Services

The Concessionaire will be responsible of and ensure that all the services referred to in the Proposal (Annex) are properly implemented and which services include without limitation:

- Motor Stations will be a centre of excellence and a reference for the Authority.
- Secure electronic vehicle registration card management system, personalization and production solution.
- Secure vehicle plates management system, personalization and distribution solution.
- The Vehicle Owners, the fleet operators and the vehicle dealers will have access to convenient, safe, standardized and transparent state-of-the-art services.
- All available employment opportunities will be offered to the people of Sierra Leone. This is part of the main objective of full transfer of know how to local competences that Concessionaire have designed for this project.
- All staff will be selected and highly trained by an Equal Opportunities Policy.
- Concessionaire will assist the Authority in any possible ways in order to reduce vehicle emissions and the number of accidents in Sierra Leone.
- Economic, Social, Environmental and Political aspects will be well balanced.
- Customer Service will be our main focus guided by clear & transparent Procedures and Standards based on an internationally recognized Quality Management System.
- A sophisticated, interfaced and flexible IT application and online reporting tools will be available to the Authority, so as to facilitate timely retrieval of data and results updates for any of the stations at any given time.
- Most suitable and only the newest vehicle examination/production equipment and IT technology will be used.
- The vehicle inspection test fee, the Vehicle Registration Card issuance fee, the RFID issuance fee and the Vehicle Plate Number production fee will be collected from the vehicle owners during the duration of the concession and communicated daily to the Authority.

The Services as provided in the present Agreement and in the Proposal shall be rendered by the Concessionaire.

It is expressly agreed that any additional services to be rendered on the Stations may be attributed to the Concessionaire subject to a mutual written agreement of the Parties in this respect.

4. INDEPENDENT CONSULTANT/ AUDITOR/ ENGINEER

4.1. Third Party Independent Consultant /Engineer

The Authority shall procure through competitive bidding process the services of the third party independent consultant. The responsibilities of the auditor shall be to review, monitor, and audit the performance of the Concessionaire to achieve project objectives and meet yearly performance targets.

The Independent Consultant/ Auditor shall review the concessionaire performance time to time and on schedule times against establishment and operation of the Stations. The independent consultant/ Auditor shall fulfil its duties and obligations throughout the concession period. The Concessionaire shall allow the Independent Consultant to access all Sites and shall give the said consultant all the relevant data to ensure the proper execution of his mission. The Authority shall ensure that the Consultant shall not integer or hinder in any way whatsoever the execution by the Concessionaire of his obligation hereto.

5. SUSPENSIONS OF SERVICES AND EMERGENCY

5.1. Suspension of the contract

5.1.1. At any time during the Concession Period, the Concessionaire shall have the right to suspend, whether partially or wholly, the O&M (Operations and Maintenance) and performance of any and all Services affected if after assessment of the circumstances, the Concessionaire believes that an Emergency has occurred which has a direct impact on the performance of the related Services, as it relates to public health, safety and environment;

5.1.2. if the Concessionaire is required to suspend the performance of the related Services in compliance with the Applicable Laws or upon the orders of the relevant Government Authorities, provided that such orders are not attributable to the Concessionaire's breach or violation of any Applicable Laws or Applicable Permits:

- In case of suspension for a period not exceeding six (6) months in aggregate over the Concession Period, the Concessionaire shall not be entitled to any compensation for the said period.
- Should the Suspension period exceed six (6) months in aggregate over the Concession Period, the Concessionaire shall be entitled to an extension of the Concession Period for a duration equivalent to the period of the suspension.
- In case the suspension exceeds twelve (12) months in aggregate over the Concession Period, the Concessionaire will be entitled to terminate the Agreement on the responsibility of the Authority. In this latter case, the Authority shall be responsible to pay a penalty. If the termination falls within the first five (5) years of the Concession Period the Authority shall be responsible for the reimbursement of the full investment made by the Concessionaire, in addition to the payment of the foregoing penalty.

5.2. Suspension of Services in case of Emergency

Upon the occurrence of an Emergency or otherwise in national interest, the Authority reserves the right to suspend the performance of the Services by the Concessionaire and to step-in and take control over the O&M and Services on a temporary basis. The Authority may only exercise such right of suspension by issuing a prior written notice of at least thirty (30) working Days.

- i. The Authority shall be responsible for bearing all costs and expenses in relation to the O&M and Services; and
- ii. The Concessionaire shall not be entitled to receive the fee in relation to the Services performed during such period of suspension provided that such suspension shall not exceed thirty (30) days accumulative, beyond such thirty (30) working days, the concessionaire shall be entitled to an extension of the period of the Concession for the duration of the suspended period. In case, the suspension exceeds six (6) months in aggregate over the period of the Concession, the Concessionaire will be entitled to terminate the agreement on the responsibility of the Authority. In this latter case, the Authority shall be responsible to pay a penalty. If the termination falls within the first five (5) years of the Concession Period the Authority shall be responsible for the reimbursement of the full investment made by the Concessionaire, in addition to the payment of the foregoing penalty.

5.3. Suspension of Services in case of Force Majeure

In case of a Force Majeure event (political or non political) the same provisions as those provided for in Clauses 5.1 and 5.2 apply except that the termination shall apply in case the Force majeure event exceeds a period of twelve months. In this latter case the Parties shall agree on the indemnity which shall be paid in addition to the reimbursement of the investment made by the Concessionaire.

5.4. Notwithstanding the provisions of Clause 5.1 and Clause 5.2 it is expressly agreed that failure for the Concessionaire to notify the Authority of the Termination in compliance with clauses 5.1 and 5.2 above shall not affect the right of the Concessionaire to the indemnity, whenever the termination is applied.

6. CHANGES IN LAW

6.1. Occurrence of Material Change in Law

6.1.1. If a Material Change in Law occurs or is shortly to occur, then each Party is obliged to notify the other, expressing its opinion on its likely effects, giving details of its opinion of:

- i. any necessary change in the Construction Works, the O&M or in Services to be performed;
 - ii. whether any changes are required to the terms of this Agreement to deal with such Material Change in Law;
 - iii. whether relief from compliance with obligations is required, including the obligation of the Concessionaire to achieve any schedule functional date and/or to comply with the Performance Standards, on occurrence of any relevant Material Change in Law;
 - iv. any increase in costs (other than any additional capital expenditure), loss of net profits after tax or delay that shall result from the Material Change in Law;
 - v. any estimated change in the Project Cost that directly results from the Material Change in Law;
 - vi. any capital expenditure that is required or no longer required as a result of a Material Change in Law taking effect during the Concession Period;
 - vii. in each case giving in full detail the procedure for implementing the change in the Construction Works, the O&M or in performance of the Services
- 6.1.2. As soon as practicable after receipt of any notice from either Party under Article 6.1.1 above, the Parties shall discuss and agree the issues referred therein and any ways in which the Concessionaire and Authority can mitigate the effect of the Change in Law, including:

- i. Demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Concessionaire;
- ii. Demonstrating to the Authority that the Material Change in Law is the direct cause of the increase in costs and/or loss of net profits after tax or delay and the estimated increase in costs or loss in net profits after tax or delay could not reasonably be expected to be mitigated or recovered by the Concessionaire; and
- 6.1.3. If the Parties mutually agree or it is determined that the Concessionaire is required to incur additional capital expenditure due to a Change in Law, the Service Fees shall be adjusted accordingly for the remaining part of the concession period, which adjustment shall be suggested by the Concessionaire for the approval of the Authority which approval shall not be unreasonably withheld.

6.1.4. If the Concessionaire fails to obtain financing for such additional capital expenditure within such 90 (ninety) Day period and the Authority is satisfied that the Concessionaire has made best endeavors to obtain such financing, then the Concessionaire shall be entitled to receive compensation from the Authority for such additional capital expenditure. Such compensation shall be paid as a lump-sum or as a reimbursement of actual and additional capital expenditure incurred, in either case the quantum of such compensation shall be mutually agreed by the Parties.

6.1.5. If the Parties have complied with the relevant provisions of this Agreement and the Concessionaire suffers any increase in costs (other than an increase in capital expenditure) or loss in net profits after tax or delay as a result of the occurrence of the Material Change in Law, then:

- i. in the case of delay, the Concessionaire shall be entitled to proportionate extension of the Concession Period;
- ii. in the case of increased cost being incurred or reduction in net profit after tax, the Authority shall compensate the Concessionaire for such increased cost or reduced net profit after tax, either by way of a lump-sum payment made by the Authority to cover such cost, or by adjustment to the Service Fees for the remaining period of the Concession Period or by any other means that the Parties mutually agree.

6.2. Consequences of Material Change in Law

6.2.1. If a Material Change in Law occurs or is shortly to occur, then each Party is obliged to notify the other expressing its opinion on:

- i. the likely effects of such Material Change in Law on the validity and enforceability of this Agreement or on the rights and benefits accruing to the Concessionaire; and
 - ii. the ability of the Parties to re-negotiate the terms of this Agreement to mitigate the effects of such Material Change in Law, while adhering to the original commercial and financial position of the Parties, in such a way that the prospected revenues of the Concessionaire and the Authority are met.
- 6.2.2. As soon as practicable after receipt of any notice from either Party, the Parties shall meet as often as it may be necessary to re-negotiate and agree unenforceable terms to the terms of this Agreement.

6.2.3. If the Parties are unable to agree on necessary amendments to the terms of this Agreement to give effect to the original commercial and financial position of the Parties within a period of 60 (sixty) Days from the date on which a notice is issued, then either Party shall be entitled to terminate this Agreement by giving a notice of 30 (thirty) Days.

6.2.4. On termination of this Agreement pursuant to Article 6.2.3 above, the Authority shall pay to the Concessionaire in accordance with the relevant provisions of this Agreement, a compensation equivalent to the foreseen revenues of the Concessionaire throughout the remaining period of the Concession. And if the termination falls before the end of the fifth year of the Concession Period the Authority shall additional pay all investments made by the Concessionaire.

6.2.5. Only for the purpose of determination of the Termination Compensation payable by the Authority, the occurrence of a Material Change in Law shall be treated as an "Authority Event of Default".

6.2.6. All the other consequences of termination that are set out herein shall apply.

6.2.7. The Authority shall ensure that there is no change in the policy and/or rules to carry out the purposes of this Agreement in case of change of Government / political regime and if such change happens, the Authority shall be liable to compensate the Concessionaire vis-à-vis all the cost incurred by it on the project coupled with reasonable profit rate as would have accrued, if there had been no such change in policy/rules based on change of Government / political regime.

7. INDEMNITIES AND INSURANCE

7.1. Indemnity

7.1.1. Subject to Article 7.1.2 below, the Concessionaire shall be responsible for, and release and indemnify the Authority, its employees, agents and contractors on demand from and against, all liability for:

- i. death or personal injury;
- ii. loss of or damage to property; and
- iii. actions, claims, demands, costs, charges and expenses (including legal expenses on an indemnity basis, which may arise out of, or in consequence of, the Construction Works, the O&M of the Stations, non-performance by the Concessionaire of its obligations under this Agreement.

7.1.2. Notwithstanding anything to the contrary, the Concessionaire shall not be responsible or be obliged to indemnify the Authority for:

- i. any of the matters which arises as a direct result of the Concessionaire acting on the instructions of the Authority, or the Independent Consultant/ Auditor;
- ii. any injury, loss, damage, cost and expense caused by the negligence or willful misconduct of the Authority, the Independent Consultant/ Auditor or any other party rendering services in the Stations, its employees, agents or contractors or by the breach by the Authority of its obligations under the Agreement, and/or
- iii. any indirect or consequential loss or damage including without limitation loss of profits, loss of revenues, loss of reputation etc.

7.1.3. In any event, for the liability of the Concessionaire to apply it should be proven that the claimed loss is the direct and strict result of the Concessionaire's acts in compliance with 7.1.2 and 7.1.3.

7.1.4. If any injury or damage results from the joint or concurrent negligent or intentional acts of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault.

7.1.5. Any indemnity of either Party under any other provision of this Agreement shall be without limitation to any other indemnity by that Party under any other provision of this Agreement.

7.1.6. The Authority shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified under this Agreement, and the reasonable costs and expenses thereof shall be subject to the indemnification obligations of the Concessionaire provided that (i) such claim is proven to be strictly due to the Concessionaire's breach of its obligations under the present Agreement and (ii) the claim is notified to the Concessionaire with all relevant documentation to allow the latter to defend it. Should the Authority proceed to a settlement of the case prior to notifying the Concessionaire of such, the latter shall be released from any obligation or liability whatsoever in this respect. If, however, the Concessionaire acknowledges in writing its obligations to indemnify the Authority in respect of Loss to the full extent provided by this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding at its expense and through counsel of its choice if it gives prompt notice of its intention to do so to the Authority and reimburses the Authority for the reasonable costs and expenses incurred by the Authority prior to the assumption by the Concessionaire of such defense. Neither Party shall settle or compromise any such claim, action, and suit or proceeding without the prior

written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Authority shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Authority, as and when incurred.

7.2. Insurance

- 7.2.1. The Concessionaire shall, obtain and maintain throughout the Concession Period the insurance policies to cover the different aspects of the Concession which require such insurance as may be deemed appropriate by the Concessionaire to ensure the good performance and execution of this Agreement set forth below in the minimum coverage amounts set forth therein and during the periods mentioned therein; provided, however, that such minimum amounts may be changed from time to time with the written consent of the Authority, which consent may not be unreasonably withheld. The Concessionaire shall obtain any additional coverage required by the Applicable Laws and/or deemed necessary by the Concessionaire.

In any event and notwithstanding anything to the contrary the Concessionaire shall in no event be liable for any indirect, consequential loss or damage whatsoever including without limitation loss of profits, loss of revenues, loss of reputations etc...

8. FORCE MAJEURE

8.1. Force Majeure Event

- 8.1.1. A "Force Majeure Event" means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof, which is/are:

- i. beyond the reasonable control of any Party (the "Affected Party");
- ii. such that the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence; and
- iii. such that it/they has/have a Material Adverse Effect on the Project.

- 8.1.2. A Force Majeure Event includes the following events and circumstances.

8.1.2.1. Non-Political Force Majeure Events:

- i. Acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements, affecting the Construction Works, the O&M of the Inspection Station or the performance of the Services, but does not include drought or famine;
- ii. fire or explosion caused by reasons not attributable to the Concessionaire or any of the employees or agents of the Concessionaire, chemical or radioactive contamination or ionising radiation;
- iii. epidemic, plague or quarantine; or
- iv. accidents of navigation, air crash, shipwreck, train wreck or other failures or delays of transportation.

- 8.1.2.2. **Non-Political Force Majeure Event** shall expressly not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:

- i. Unavailability, late delivery or changes in cost of plant, machinery, equipment, materials, spare parts for the Station(s);
- ii. a delay in the performance of any Contractor under an EPC Contract;

- iii. non-performance resulting from normal wear and tear typically experienced in power generation materials and equipment;
- iv. non-performance caused by the non-performing Party's (i) negligent or intentional acts, errors or omissions, (ii) failure to comply with the Applicable Laws or Applicable Permits, or (iii) breach of, or default under, this Agreement, as the case may be; or
- v. Mechanical or electrical breakdown or failure of the machinery or plant owned or operated by the Concessionaire.

8.1.2.3. Political Force Majeure Events:

- i. hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism, in each case involving the GoSL or occurring in Sierra Leone; or
- ii. invasion, armed conflict, coup d'etat, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/ explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving the GoSL or occurring in Sierra Leone; or
- iii. strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party; or
- iv. Any other Force Majeure Event that is not a Non-Political Force Majeure Event.

8.1.3. Without prejudice to the provisions of Articles 5, 6, 7 above, any act, event or circumstance which primarily affects any of the concessionaire's Contractors, sub-contractors, employees or agents which prevents, impedes or delays the Concessionaire in the performance of its obligations, shall constitute a Force Majeure Event hereunder as to the Concessionaire as appropriate if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, would have come within the definition of Force Majeure Event within this Article 8.1.

8.1.4. If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute resolution procedure set forth herein, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

8.2. Notice of Force Majeure Event

8.2.1. The Affected Party shall give notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the "FM Notice"), as soon as the same arises or as soon as reasonably practicable and in any event within 10 (ten) Days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of its obligations under this Agreement, the actions being taken and an estimate of the period of time required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).

8.2.2. If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.

8.2.3. Any party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this part

8.3. Performance Excused

8.3.1. The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the obligations, provided that the period shall not exceed 90

(Ninety) Days for a Non-Political Force Majeure Event and 120 (One Hundred and Twenty) Days for a Political Force Majeure Event from the date of issuance of the FM Notice. The Parties may mutually agree to extend the period of excuse from performance, in the event that a Non-Political Force Majeure Event has occurred.

Provided that:

- i. the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event;
- i. nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.
- ii. nothing contained herein shall absolve the Affected Party from any payment obligations in the event of termination under Part 11(Compensation on Termination).

8.4. No Liability for Other Losses

- 8.4.1. Save and except as expressly provided in this Agreement, neither Party shall be liable in any manner whatsoever to the other Party in respect of any Loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this part, except as otherwise provided for in this Agreement.
- 8.4.2. If a Political Force Majeure Event occurs, then the Authority shall compensate the Concessionaire for any reasonable and proper costs directly incurred as a result of such Political Force Majeure Event after deducting the proceeds of insurance received, if any. This obligation to compensate shall continue only for the period that the Political Force Majeure Event subsists, provided that this obligation shall not exceed 120 (One hundred and twenty) Days from the date of issuance of the FM Notice.

8.5. Resumption of Performance

- 8.5.1. During the period that a Force Majeure Event is subsisting, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of such Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

8.6. Termination Due to Force Majeure Event

- 8.6.1. If, prior to the completion of the 90 (Ninety) Days period (or any extended period) commencing from the date of issuance of the FM Notice, the Parties are of the reasonable view that:
 - i. a Non-Political Force Majeure Event is likely to continue beyond such 90 (Ninety) Day period or any extended period agreed ; or
 - ii. that it is uneconomic or impractical to restore the affected Project; then the Parties may mutually decide to terminate this Agreement, which termination shall take effect from the date on which such decision is taken.
- 8.6.2. Without prejudice to the provisions of Article 8.6.1 above, the Affected Party shall, after the expiry of the period of 90 (Ninety) Days after the notification of a Non-Political Force Majeure Event or any other mutually extended period, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect. On termination of this Agreement pursuant to this Article, the consequences of termination that are set out in this Agreement shall apply.

8.6.3. In the event of a termination of this Agreement as a result of a Non-Political Force Majeure Event in accordance with the provisions of Article 8.6.2, the Parties agree that the concessionaire shall not be entitled to the payment of any Termination Compensation provided however that the Concessionaire shall be entitled to retain any or all proceeds received under any insurance policies maintained by it in relation to the Project.

8.6.4. Upon occurrence of a Political Force Majeure Event, the Concessionaire shall, at its discretion, have the right to terminate this Agreement forthwith after the completion of the period of 120 (one hundred and twenty) Days from the date of the FM Notice.

Upon notice of termination being issued by the Concessionaire under this Article 8.6.4, the Authority shall pay the Termination Compensation to the Concessionaire. Only for the purpose of determination of the Termination Compensation payable by the Authority, a Political Force Majeure Event that results in a termination pursuant to this Article 8.6.4 shall be treated as an "Authority Event of Default".

All the other consequences of termination that are set out in this Agreement shall apply.

8.6.5. Notwithstanding anything to the contrary, the Concessionaire shall be entitled to sell, assign, create Security over or otherwise dispose of (or have the land and station disposed of on its behalf) any or all of the land and improvements forming the Station, following termination due to a Force Majeure Event and utilize the proceeds from such disposal (including any transfer or assignment fee or any funds received by the Authority from the re-tendering process) towards any purpose the Concessionaire sees fit. The Authority shall provide reasonable assistance to Concessionaire in completing the transfer of the land and the stations to a third party.

The Authority shall be duly bound to properly and efficiently manage any disruption in the working of the Concessionaire due to strike and/or boycott of the Transporters or a group of Transporters with all the legal force and remedies available under the law without any compromise vis-à-vis the Services as agreed under this Agreement. However, if the Authority remains unable to deal with such like situation with all the available legal force/remedies, it shall compensate the Concessionaire vis-à-vis all the cost incurred by it on the project coupled with reasonable profit rate as would have accrued, if there would not have been any such disruption due to strike and/or boycott of the Transporters or a considerable group of Transporter

9. EVENTS OF DEFAULT

9.1. "Event of Default"

"Event of Default" means a Concessionaire Event of Default or an Authority Event of Default or both as the context may admit or require.

9.2. The Concessionaire Event of Default

9.2.1. "Concessionaire Event of Default" means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred as a consequence of any Authority Event of Default, a Qualifying Change in Law, a Fundamental Change in Law (define in definitions) or a Force Majeure Event and where the Concessionaire has failed to remedy the defects specified in the Remedial Action Notice:

- i. any abandonment by the Concessionaire which shall mean a total cessation of the Construction Works or the performance of the Services or other obligations of the Concessionaire for a continuous period of 90 (ninety) Days;

- ii. failure of the Concessionaire to commence the Construction Works within the time stipulated herein;
- iii. failure of the Concessionaire to complete the construction of a given Station within the period provided for in the present Agreement provided that such failure is solely attributable to the Concessionaire;
- iv. the breach by the Concessionaire of its obligations under this Agreement which materially and adversely affects the performance of the Services;
- v. any material representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading;
- vi. The Concessionaire entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire.

For the avoidance of doubt the execution by the Concessionaire of the Procedure issued by the Authority as well as issuance by the Concessionaire of documents approved by the Authority shall in no event be construed to imply any event of default whatsoever by the Concessionaire and the latter shall not be considered as having breached in any way its obligations under the present Agreement.

9.3. Authority Event of Default

- 9.3.1. "Authority Event of Default" means any events, as a result of failure of the Authority to act in accordance with the provisions of this Agreement, unless such an event has occurred as a consequence of the Concessionaire Event of Default, a Material Change in Law, or a Non-Political Force Majeure Event including without limitation failure for the Authority to take all necessary measures to impose inspection on all vehicles as well as change of vehicle registration card for all vehicles, change of license plates for all vehicles, and usage of RFID for all vehicles within a time frame agreed upon with the Concessionaire.

10. REMEDY OF DEFAULTS AND TERMINATION PROCEDURE

10.1. Performance of Obligations

- 10.1.1. Without prejudice to the other provisions of this Agreement, if at any time either Party reasonably considers that the other Party has failed to perform any of its obligations under this Agreement and that failure is capable of remedy, then either the Authority or the Concessionaire as the case may be, may serve a notice on the other party (a "Remedial Action Notice") requiring such other Party (at its own cost) to remedy that failure (and any damage resulting from that failure) within a reasonable period provided that such reasonable period shall not be less than thirty (30) days (the "Remedial Period").
- 10.1.2. If the Party, on whom a Remedial Action Notice is served, fails to remedy the Event of Default within the Remedial Period following service of a Remedial Action Notice, the non-defaulting Party may initiate termination of this Agreement by delivering a notice to the defaulting Party stating its intention to terminate this Agreement ("Notice of Intent to Terminate"). The Notice of Intent to Terminate shall specify with reasonable detail, the grounds on which termination is sought and any relevant defaults committed by the defaulting Party.
- 10.1.3. If the Remedial Action Notice is served on the Concessionaire, who fails to remedy the failure within the Remedial Period following service of a Remedial Action Notice, then the Authority may (without prejudice to any right or remedy available to it) itself take such steps as are reasonably necessary to remedy that failure, or engage others (who will be others) to take those steps and the Concessionaire shall indemnify the Authority from all losses, costs, liabilities or expenses incurred or claimed against the Authority in taking that action, provided that such loss or costs or liability or expenses are proven to have been incurred strictly out of or in connection with acts of

Concession, and provided that such costs and expenses have been approved by the Concessionaire prior to engaging such by the Authority.

10.2. Consequences of Default

10.2.1. Event of Default Remedy Period

- i. Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of not less than 90 (ninety) Days ("EoD Remedy Period") to cure the Event of Default.
- ii. During the EoD Remedy Period, the defaulting Party may continue to undertake efforts to cure the Event of Default, and the innocent Party shall not, by any act or omission, impede or otherwise interfere with the defaulting Party's endeavours to remedy the Event of Default.
- iii. During the EoD Remedy Period, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project and the continued performance of the Services, failing which the party in breach shall be liable to compensate the other Party for any loss or damage occasioned or suffered on account of breach of conditions of this Agreement, in compliance with the provisions of this Agreement.

10.2.2. Withdrawal of Notice of Intent to Terminate

- i. If, during the EoD Remedy Period, the defaulting Party rectifies or remedies the Event of Default to the satisfaction of the innocent Party or the innocent Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default has ceased to exist, the innocent Party shall withdraw the Notice of Intent to Terminate in writing.
- ii. If following the end of the EoD Remedy Period, the breach has not been remedied or the defaulting Party has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of the innocent Party, then the innocent Party shall be entitled to issue the Termination Notice to the defaulting Party, whereupon this Agreement shall terminate forthwith.

10.3. Concessionaire Event of Default

10.3.1. Re-tendering of the Project

- i. If a Concessionaire Event of Default remains un-remedied at the expiry of the EoD Remedy Period, the Authority shall be entitled to retender the Project. The Authority shall promptly notify its decision to the Concessionaire.
- ii. If the Authority elects to retender the Project, then the objective of such tender shall be to establish and pay to the Concessionaire the highest compliant tender price, which shall be determined after taking into account:
 - a. the market value of assets created by the Concessionaire;
 - b. the price of the license to use the software as may be assessed by the Concessionaire;
 - a. the condition of assets being transferred;
 - b. any liabilities of the Concessionaire to the Authority or other third Persons; and
 - c. the costs of retendering incurred by the Authority and the highest compliant tenderer.

The Parties have agreed that the Authority shall agree with the Concessionaire on such tender price prior to launching the re-tendering process.

- iii. The retendering procedure shall be completed as soon as reasonably possible. If the retendering procedure remains incomplete within 210 (two hundred and ten) Days from the date on which the Authority has notified the Concessionaire in accordance with paragraph (i) above, then the Authority shall abandon the retendering process.

- iv. The Concessionaire shall continue to fulfil its obligations under this Agreement and perform the Inspection Services after the expiry of the Hold Period and until the expiry of the 210 (two hundred and ten) Day period set out at paragraph (iii) above.
 - a. Upon the successful completion of the retendering process, the Concessionaire shall assign and novate all of its rights, obligations and liabilities under this Agreement and the other Project Agreements and transfer all of the assets relating to the Inspection Stations to the successful bidder, against payment of the highest compliant tender price. The Concessionaire shall not be entitled to receive any other amounts from the Authority for such assignment, novation and transfer.
 - b. Retendering may be of all the operational Station(s) collectively or individually, as per decision of the Authority in this regard (can VIS station retender individual is it possible while you are going to award it single party so either give it full project or take back full project).

10.3.2. No or unsuccessful retendering

- 10.3.2.1. If the Authority chooses not to retender the Project or if the re-tendering process is unsuccessful or incomplete at the end of the 210 (two hundred and ten) Day period, the Authority shall have the right to terminate the Agreement forthwith by issuing the termination Notice to the Concessionaire. On such termination, the Authority shall be liable to pay the Termination Compensation.

10.4. Accrued Rights and Liabilities

- 10.4.1. Notwithstanding anything to the contrary contained in this Agreement, any termination of the Agreement pursuant to the provisions contained herein shall be without prejudice to accrued rights of either Party including its right to claim and recover damages and other rights and remedies which it may have in law or contract, provided that the limitations on amounts of damages and the types of damages available shall still apply. All accrued rights and obligations of either Party under this Agreement, including without limitation, all rights and obligations with respect to Termination Compensation, shall survive the termination of this Agreement, to the extent such survival is necessary for giving effect to such rights and obligations.
- 10.4.2. Nothing in this Article shall prevent or restrict the right of the Authority or the Concessionaire to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

10.5. Consequences of Termination

- 10.5.1. Upon the termination of this Agreement, the Concessionaire shall forthwith upon receipt or issuance of the Termination Notice, as the case may be, take all necessary steps to cease performing the Services under this Agreement in an orderly and prompt manner. In case of termination due to the Authority's event of default, termination shall not release the authority from paying the indemnity due to the concessionaire in this case.
- 10.5.2. Upon the issuance or receipt of the Termination Notice, as the case may be, the Concessionaire shall deliver to the Authority all of the Stations in the Concessionaire's custody, possession or control. If the Concessionaire fails to do so forthwith in a reasonable time, the Authority shall have the right to enter the Site and take possession and custody of all of the Stations, provided that Concessionaire shall retain the right to any Termination Compensation as provided in this Agreement.

11. COMPENSATION ON TERMINATION

11.1. Termination Compensation

11.1.1. In case of Concessionaire Event of Default

Upon termination of this Agreement due to Concessionaire Event of Default, the Authority shall pay to the Concessionaire the present market value of the equipment only installed at the Stations as well as all equipment relevant to the Services as on the date of termination of the Agreement as certified by the Independent Consultant/ Auditor, less any amounts due to the Authority from the Concessionaire if any, with respect to the Authority's Share.

11.1.2. In case of Authority's Event of Default, Political Force Majeure Event or Material Change in Law the Termination Compensation payable by the Authority to the Concessionaire the market value of the Stations building and equipment (hardware and software) as well as a lump sum indemnity

11.1.3. The Termination Compensation pursuant to this Agreement shall become due and payable to the Concessionaire by the Authority within 30 (thirty) days of a demand being made by the Concessionaire to the Authority, provided that the Concessionaire shall only be entitled to make a demand for payment of the Termination Compensation after:

- i. in the case of termination for a Political Force Majeure Event or an Authority Event of Default, the issuance of a Termination Notice; and
- ii. In the case of termination for a Concessionaire Event of Default, the expiration of the 30 (thirty) Day period from receipt of Concessionaire's demand
- iii. If, for any reasons other than those attributable to the Concessionaire, the Authority fails to pay the Termination Compensation on the date due, the Authority shall be liable to pay default late fees and interest on the Termination Compensation at the rate of 1 Year LIBOR + up to 3% p.a.

11.2. Full and Final Settlement

Notwithstanding anything to the contrary, it is agreed that the payment of the Termination Compensation shall be without prejudice to the other rights and remedies of the Concessionaire.

12. DISPUTE RESOLUTION

12.1. Amicable Settlement

12.1.1. If any dispute or difference or claims of any kind arises between the Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, or the rights, duties or liabilities of any Party under this Agreement, whether during the Concession Period or on expiry thereof, whether before or after the termination of this Agreement (i.e. the "Dispute"), then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such Dispute by discussion between them.

12.1.2. The senior representatives of both Parties shall meet to resolve such Dispute. The representatives shall meet as and when necessary from time to time and attempt in good faith and use their best endeavors at all times to resolve the Dispute and produce written terms of settlement. The meetings of the representatives shall be conducted in English.

12.1.3. In the event that the Dispute is not resolved by discussion between them, as evidenced by the signing of the written terms, within 30 (thirty) Days of raising such Dispute, the Dispute shall be resolved by mediation

12.2. Dispute Settlement by Mediation

- 12.2.1. If the Parties are unable to reach an amicable settlement of the Dispute within 30 (thirty) Days of raising such Dispute, either Party may ask for the matter to be referred for mediation to an independent and impartial Expert appointed by the PPP Unit (the "Mediator").
- 12.2.2. Each Party may suggest to the PPP Unit the identity of appropriate Expert with the required specialist knowledge and relevant experience to be appointed as Mediator. The costs of the Mediator and associated expenses shall be shared equally between the Parties.
- 12.2.3. In the event that the Dispute is not resolved by the Mediator, as evidenced by the signing of the written terms, within 60 (sixty) Days of the referring of the Dispute to the Mediator, the Dispute shall be resolved by arbitration.

12.3. Dispute Settlement by Arbitration

12.3.1. Appointment of Arbitrator and Rules governing Arbitration

- 12.3.1.1. Failing settlement of the Dispute by Mediator, if each of the Parties unconditionally and irrevocably agrees:
 - i. to the submission of such Dispute to binding arbitration governed by the Arbitration Act of Sierra Leone, by appointment of three arbitrators, one to be appointed by the Authority, one to be appointed by the Concessionaire and one to be appointed jointly by the two arbitrators appointed by the Authority and the Concessionaire ("Arbitrators "). Any arbitration proceedings commenced pursuant to this Article shall be referred to as the Arbitration (" Arbitration");
 - ii. not to claim any right it may have under the laws of any jurisdiction to hinder, obstruct or nullify the submission of the Dispute to the Arbitration; and
 - iii. to accept the Arbitral Award rendered by the Arbitrator and any judgment entered thereon by a court of competent jurisdiction for making it a rule of the court as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any award rendered by the Arbitrator or court of competent jurisdiction.

12.3.2. Place of Arbitration:

The place of the Arbitration shall be [Freetown, Sierra Leone,].

12.3.3. English Language:

The request for the Arbitration, the answer to the request, the terms of reference, any written submissions, any orders and rulings pursuant to the Arbitration shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

12.3.4. Enforcement of the Arbitral Award

- 12.3.4.1. Any decision or award resulting from the Arbitration ("Award") shall be final and binding upon the Parties.
- 12.3.4.2. The Parties hereto, hereby waive, to the extent permitted by Applicable Law, any rights to appeal or to review of such Award by any court or tribunal. The Parties hereto, agree that an Award may be enforced against the Parties to the Arbitration proceeding or their assets, wherever they may be found, and that a judgment upon the Award may be entered in any court having jurisdiction thereof.

12.3.5. Fees and Expenses:

The fees and expenses of the Arbitrator and all other expenses of the Arbitration shall be borne and paid by respective Parties, subject to determination by the Arbitrators. The Arbitrators may provide in the Award for the reimbursement to the prevailing Party of its costs and expenses in bringing or defending the Arbitration claim, including legal fees and expenses incurred by such Party.

12.3.6. Performance during Arbitration:

Pending the submission of and/or decision on a Dispute or until the Award is published, the Parties shall continue to perform all of their obligations under this Agreement, without prejudice to a final adjustment in accordance with such Award, unless this Agreement stands terminated. The Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the Award in any arbitration proceedings hereunder.

12.4. Survival

The provisions of this part 12 shall survive the termination of this Agreement for any reason whatsoever.

12.5. Disputes between

Concessionaire and vehicle owners The Authority shall ensure that all the disputes between the vehicle owners and the Concessionaire shall be dealt with by the Sierra Leone Commercial Court. And the Authority shall ensure that such dispute do not delay the rendering of the Services or the operation of sites due to vehicle Owners' acts.

13. REPRESENTATIONS AND WARRANTIES

13.1. Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- i. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation/establishment;
- ii. it has full power and Authority to execute, deliver and perform its obligations under this Agreement and the other Project Agreements;
- iii. it has taken all necessary action to authorize the execution, delivery and performance of this Agreement and the other Project Agreements; and
- iv. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement.

13.2. Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to the Authority that:

- i. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- ii. this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- iii. it is subject to the laws of Sierra Leone and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- iv. the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, 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;
- v. 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 the GoSL or the GoSL which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- vi. it has complied with Applicable Laws 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 Agreements. However, the Authority shall be bound to make requisite amendments in the Motor PSV Rules and all laws and rules to the Services before the functional date of first Station.
- vii. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to the GoSL in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty; and
- viii. it is a sole purpose corporate entity and the business it is allowed to transact is restricted to that which is necessary and expedient for the proper performance of all of its obligations under this Agreement.

13.3. Authority's Representations and Warranties

The Authority represents and warrants to the Concessionaire that:

- i. it has the financial standing and capacity to perform its obligations under the Agreement;
- ii. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- iii. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of the GoSL which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement; and
- iv. it has complied with Applicable Laws in all material respects;
- v. Will take all necessary measures to ensure the proper implementation of all rules and laws necessary to render the Services mandatory on all vehicle owners in Sierra Leone.

13.4. Acknowledgement

The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.

14. MISCELLANEOUS PROVISIONS

14.1. Survival of Obligations

Any cause or action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the term of the Agreement by efflux of time or otherwise in accordance with the provisions of this Agreement, shall survive the expiry of the Agreement.

14.2. Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement including its Annexes constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project.

14.3. Articles to Survive Termination

The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the term of the Agreement or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

14.4. Non-exhaustive Remedies

- 14.4.1. Save and except as provided in this Agreement, the remedies available to the Concessionaire under this Agreement are not exhaustive and the Concessionaire and third Persons shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- 14.4.2. Save and except as provided in this Agreement, the exercise of any rights by either Party under this Agreement, shall not preclude such Party from availing any other rights or remedies that may be available to it under this Agreement or under the other Project Agreements. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

14.5. Notices

14.5.1. Any notice or request in reference to this Agreement shall be written in English language and shall be sent by registered post and shall be directed to the other Party at the address mentioned below:

Authority:

Attention:

Address

Tel:

Fax:

Email:

Concessionaire:

Attention:

Address:

Fax:

Email:

14.5.2. Any notice or demand served by registered post shall be deemed to be duly served 48 hours after posting and in proving service of the same it shall be sufficient to prove that such letter was sent by Registered Post, addressed and placed in the Post.

14.5.3. Each Party may change the above address by prior written notice to the other Party.

14.6. Governing Law

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

14.7. Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall be an original, and both counterparts together shall constitute one and the same instrument.

14.8. Language

14.8.1. The formal text of this Agreement and the Project Agreements shall be in the English language.

14.8.2. All notices and communications between the Authority, the Concessionaire and the Independent Consultant/ Auditor, required under this Agreement shall be drawn up in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

14.9. Confidentiality

14.9.1. No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Concession Period and for a period of five years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisors, employers, agents and Affiliates who have a legitimate need to know the Confidential Information in order to perform their duties relating to the Agreement.

14.9.2. The Article 14.9.1 shall not apply to Confidential Information:

- i. at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;

- ii. is already in the possession of the Party receiving such Confidential Information before it was received from any other Party and which was not obtained under any obligation of confidentiality from the party which disclosed such information;
- iii. was obtained from a third party (other than one disclosing it on behalf of a party) who was free to divulge the same and who was not under any obligation of confidentiality in relation to such Confidential Information to party, which disclosed the information;
- iv. is disclosed by the Concessionaire to any actual or bona fide potential Shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
- v. is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- vi. is disclosed by the Concessionaire to its Affiliates or the permitted assignees and transferees of the same;
- vii. is disclosed by the Concessionaire to any Contractor, sub-contractor or supplier of goods and services of or to the Concessionaire;
- viii. is disclosed to actual prospective insurers, re-insurers and insurance brokers;
- ix. is disclosed to any professional advisors or consultants of any persons to whom a party is entitled to disclose Confidential Information under this Article;
- x. is disclosed to any Person in connection with the dispute resolution provisions hereunder;
- xi. is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- xii. is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining of renewal of any approval, licence, permit or consent required hereunder or for the Project. Provided that the Party making a disclosure of Confidential Information excluded above shall insure that any person to which it makes such disclosure undertakes to hold such confidential information subject to similar obligations.

14.9.3. A party making a disclosure of Confidential Information

- i. at the time of making such disclosure, shall inform its representatives and Affiliates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
- ii. be liable for any breach of such obligations by such representatives and Affiliates.

14.9.4. In the event that a party is required or requested to make a disclosure of Confidential Information, such party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Affiliate so that appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the party required to make such disclosure may disclose only that portion of the Confidential Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment shall be accorded to the Confidential Information.

14.9.5. The recipient Party agrees that it, its Affiliates and representatives shall, upon request by the disclosing Party promptly:

- i. return, and use all reasonable endeavors to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including, without limitation, Confidential Information contained on computer disks or other electronic storage media or devices) furnished, together with any copies or extracts thereof; and

- ii. destroy, and use all reasonable endeavors to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analyses, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information, provided that the recipient Party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient Party or its Affiliates and which was prepared for the purposes of the review or decision-making process of the recipient Party or such Affiliate and/or which the recipient Party or its Affiliates is required to retain by law or the rules of any Governmental Authority if it continues keep such Confidential Information confidential in accordance with this Agreement.
- 14.9.6. Notwithstanding anything to the contrary, it is agreed that the Concessionaire as well as its parent company and/or its subsidiaries, shall be allowed to disclose the existence of the present Agreement and Concession towards any authority or private entity for the purpose of entering into contract and/or tender for similar services.

14.10. Amendments

- 14.10.1. Any provision of this Agreement, including the Project Requirements, may be amended, supplemented or modified only by an agreement in writing signed by the Parties.
- 14.10.2. Either Party 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 by 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.

14.11. Waivers and Consents

- 14.11.1. 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.
- 14.11.2. 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.
- 14.11.3. 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.
- 14.11.4. Failure for either Party to uphold its rights herein shall not be considered as a waiver by the latter Party to claim such rights, and shall not release the other Party from its obligations as provided for in the present Agreement.

14.12. Severability

- 14.12.1. 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 shall, in any way, be affected or impaired and the legality, validity and enforceability of the remainder of this Agreement shall not be affected.
- 14.12.2. The Parties shall 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 the Concessionaire and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

14.13. Costs and Expenses

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

14.14. Assignment

14.14.1. The rights and obligations of the Concessionaire under this Agreement shall not be assigned, novated or otherwise transferred to any Person, except as otherwise provided in this Agreement.

14.14.2. The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or any scheme pursuant to any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:

- i. is a single entity;
- ii. acquires the whole of the Agreement;
- iii. has the legal capacity, power and Authority to become a party to and to perform the obligations of the Authority under this Agreement; and
- iv. has sufficient financial standing or financial resources to perform the obligations of the Authority under this Agreement

14.14.3. Any assignment made by the authority pursuant to clause 13.14.2 shall in no event release the Authority from its obligations provided for in the present Agreement.

14.15. Subcontracting and Suppliers:

14.15.1. The Concessionaire may refer to any service provider and /or supplier (local and/or international) of its choice for the execution of the present Agreement and the rendering of the Services.

14.15.2. The Concessionaire may refer to subcontractors, local and international, for the execution of the present Agreement. However the Concessionaire shall remain liable towards the Authority for the execution of the present Agreement as per the provisions set forth herein; notwithstanding such subcontracting.

IN WITNESS WHEREOF the Parties hereto have caused these presents to be executed in the manner hereinafter appearing on this [insert date] day of [insert month], 2017:

SIGNED, SEALED AND DELIVERED by [name of Authority] by the hand of Mr./Ms. [insert name], [insert designation] who is authorized by the Govt. of the Sierra Leone **THE COMMON SEAL OF** [insert name of Authority], has been affixed to this Agreement on the [insert date] day of [insert month], 2017, in the presence of Mr./Ms. [insert name], Secretary Transport Department Govt. of the Sierra Leone , who has signed the same in token thereof.

SIGNED, SEALED AND DELIVERED by [name of Concessionaire] by the hand of Mr./Ms. [insert name], [insert designation] who has been authorized pursuant to the resolutions passed by the board of directors at its meeting held on the [insert date] day of [insert month], 2017. **THE COMMON SEAL OF** [insert name of Concessionaire], has been affixed to this Agreement pursuant to the resolution of its board of directors passed in that behalf on the [insert date] day of [insert month] 2017, in the presence of Mr./Ms. [insert name], director, who has signed the same in token thereof.

15. DEFINITIONS AND INTERPRETATION

15.1. Terms Meaning

In this Agreement, unless the context otherwise requires, the terms mentioned in this part in inverted commas shall have the same meanings assigned to them as mentioned herein.

- 15.1.1. **"The Authority"** means the Sierra Leone Road Safety Authority or any other Department having administrative control over the transport sector of the Government of the Sierra Leone in future.
- 15.1.2. **"The Concessionaire / Concessionaire"** means Autospect (SL) Ltd.
- 15.1.3. **BOT" means Build-Operate-and-Transfer (BOT).** A contractual arrangement whereby the private party undertakes the financing and construction of an infrastructure project and the operation and maintenance thereof. The private party operates the facility over a fixed term during which it is allowed to collect from the facility's users appropriate tariffs, tolls, fees, rentals, or charges not exceeding those proposed in the bid or negotiated and incorporated in the PPP agreement, to enable the private party to recover its investment and operating and maintenance expenses for the project (plus reasonable profit). The private party transfers the facility to the Government Agency at the end of the fixed term that shall be specified in the PPP agreement. This shall include a supply-and-operate situation, which is a contractual arrangement whereby the supplier of equipment and machinery for an infrastructure project operates it, providing in the process technology transfer and training of the nominated individuals of the Government Agency.
- 15.1.4. **"EPC Contracts"** means any contracts entered into by the Concessionaire with Contractor(s) for the design, supply of goods and equipment, erection, installation, commissioning and completion of the Facilities in accordance with the Technical Requirements and Good Industry Practice. (EPC is responsibility of private party)
- 15.1.5. **"Customer"** means owner of the vehicles or their authorized representative
- 15.1.6. **"Node"** means the starting and/or end point of a route, as mentioned in the route permit.
- 15.1.7. **"Functional Date"** means the date of becoming functional of a PSV inspection station which shall not be later than 30 days from the date of completion of construction.
- 15.1.8. **"Milestone date"** vis-à-vis a particular component of the project means the date of completion of that component.
- 15.1.9. **"Effective Date"** means the date of start of construction work, after the signing of Agreement.
- 15.1.10. **"GoSL"** means Government of Sierra Leone established according to the provisions of the Constitution of Republic of Sierra Leone.
- 15.1.11. **"FM"** means Force Majeure" as defined in this Agreement.
- 15.1.12. **"Remedial Action Notice"** means a notice by either party to the other to remove the curable default on its part.
- 15.1.13. **"Remedial Period"** means the period allowed in the Remedial Action Notice for the cure of the default by the party upon which such Notice has been served.
- 15.1.14. **"EOD"** means Event of Default as specified in this Agreement.
- 15.1.15. **"Technical requirements"** means technical specifications as set out for a Station.

- 15.1.16. "**Good Industry Practice**" means the usual mode and style of working of Stations in the developed countries.
- 15.1.17. "**Independent Consultant**" refers to the third party consultants hired for Authority's facilitation in Audits, Engineering Evaluation and financial assessments.
- 15.1.18. "**O & M**" means Operations and Maintenance.
- 15.1.19. "**FIR**" means First Information Report by police at accident site.

15.2. Rules of Interpretation

In this Agreement unless the context otherwise requires:

- 15.2.1. The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neutral and vice-versa.
- 15.2.2. Where any word or expression is given a definite meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires.
- 15.2.3. Any word or expression used in this Agreement shall, unless defined or construed in this Agreement, bear its ordinary English meaning.
- 15.2.4. "Article" and " Clause" and "Annex" shall refer, respectively to Articles of and Clauses of and Annexes to this Agreement. The Annexes to this Agreement shall form part and parcel of this Agreement.
- 15.2.5. The headings and sub-headings in this Agreement (and references to them) are included for convenience only and shall not be taken into account in interpreting this Agreement.
- 15.2.6. The references to the word "include" or "including" or to the phrase "in particular", shall be construed without limitation.
- 15.2.7. The references to any agreement or deed or other instrument shall be construed as a reference to such Agreement, deed, or other instrument as the same may, from time to time, be amended, varied, supplemented, or notated.
- 15.2.8. Reference to indebtedness includes any obligation (whether incurred as principal or surety or otherwise) for the payment or repayment of money, whether present or future, actual or contingent.
- 15.2.9. Unless otherwise provided, any late payment charges to be calculated and payable under this Agreement shall accrue prorate on a Monthly basis and from the respective due dates as provided for in this Agreement.
- 15.2.10. A requirement that a payment be made on a Day which is not a business day shall be construed as a requirement that the payment be made on the next following business day.
- 15.2.11. References to costs or expenses are deemed to be references to reasonable costs and expenses.
- 15.2.12. The words "written" and "in writing" includes a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- 15.2.13. whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any person, such notice, etc., shall be

reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by either of the Parties, the notice, consent or approval shall be given on their behalf only by any authorised Persons. Unless expressly provided in this Agreement, the word 'notify', shall not require the Authority to give or issue a notice in writing.

- 15.2.14. The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply to this Agreement.

ANNEX 1 – AUTOSPECT's PROPOSAL

ANNEX 2 - SERVICES OF THIRD PARTY INDEPENDENT CONSULTANT/ AUDITOR

Third Party (Independent Consultant/ Auditor) Validation

1. The third party Independent Consultant/ Auditor shall review, monitor and audit the services rendered at the Centers by the Concessionaire and establishment and operation process to achieve project objectives as provided in the Proposal of the Concessionaire.
2. The Independent Consultant/ Auditor shall be selected and approved through competitive process by the Authority.
3. The Independent Consultant/ Auditor shall have no authority to instruct the Concessionaire directly, the only task of the Consultant is to render reports to the Authority relevant to the work of the Concessionaire with respect to the Services rendered.
4. The Independent Consultant/ Auditor shall fulfil its duties and obligations throughout the Concession Period. The main roles and responsibilities of the Independent Consultant/ Auditor are as below:
 - Review construction design and drawings prepared by Concessionaire
 - Report on construction deadlines to the Authority
 - Report on equipment and specifications compliance to the Authority
 - Report on station and equipment commissioning to the Authority
 - Report on random inspections / surprise visits to the Authority
 - Report the installation of the equipment and development of all applications relevant to the Services.
 - Submit performance monitoring reports of the Stations to the authority
 - Database validation and verification and report on effective communication between Authority's database and Concessionaire's data base.
 - Report on the application of the Procedure agreed upon by the Parties for the rendering of Services.
 - Report on general issues and customer satisfaction.
 - Monthly and annual auditing (review of annual Financial Statements / Performance)
 - Monthly share calculation and verification based on number of inspections performed per month and Services rendered.
 - Production of annual and monthly reports for the Authority.
 - Report on the performance of the Concessionaire in relation to the Customer Care.
 - Any other task assigned by the Authority provided that such task does not hinder the acts of the Concessionaire and does not affect the rendering of the Concessionaire's obligations, otherwise any breach by the Concessionaire

Cost of Services of Third Party (Independent Consultant/ Auditor) Validation.

All fees, costs, charges and expenses payable for the hiring of services of Independent Consultant/ Auditor shall be paid by the Authority.

The Independent Consultant/ Auditor shall be required to act independently, reasonably, fairly and expeditiously in fulfilling its duties and obligations. The Independent Consultant/ Auditor shall at all times during the Concession Period, have the right to enter upon and access the site equipment and the Station. The service of the Independent Consultant/ Auditor may be hired initially for a period of five (05) years after which it may be renewed on annual basis depending on performance and tasks / services required by the Authority.

The Independent Consultant/ Auditor shall have no authority or right or power to instruct the Concessionaire directly. All the instructions to the Concessionaire will be conveyed in writing through the Authority. The Transport Department shall pay the

Independent Consultant/ Auditor on monthly basis the fee (bid for) agreed for their services. The Authority has a sole right to terminate the agreement/ contract at any stage subject to non-obligation and poor performance of the Independent Consultant/ Auditor.

ANNEX 5 - SERVICES OF THIRD PARTY INDEPENDENT CONSULTANT/ AUDITOR

