

Government of Pakistan
Ministry of Law and Justice
Law-II Section

F.No.1 (285)/2023-Law-II

Islamabad, the 7th September, 2023

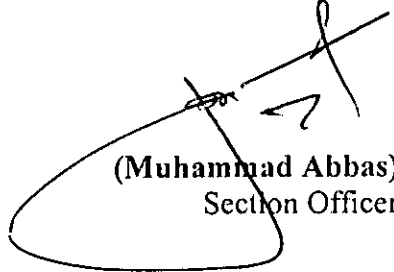
OFFICE MEMORANDUM

Subject: - **DRAFT CONTRACT AGREEMENT PUBLIC PRIVATE PARTNERSHIP
MODEL SCHOOL.**

The undersigned has been directed to refer to the Ministry of Federal Education and Professional Training's O.M No. 2-187/2022-23 (Dev), dated 04-09-2023 on the subject, noted above and to convey that the text of the draft final version Contract Agreement has been vetted from its legal point of view, as in pencil and is cleared, subject to fulfillment of all codal formalities by the referring Ministry. However, the referring Ministry is advised to examine the technical and financial aspects at its own end.

Encl: As above

Mr. Yasir Irfan,
Director (Dev),
Ministry of Federal Education and Professional Training,
Islamabad.


(Muhammad Abbas)
Section Officer

5862
Dated 7-09-2023

Concession Agreement

Between

The Ministry of Federal Education & Professional Training, Islamabad
Through Federal Directorate of Education

And

DNK Education Services LLP (Running American Lycetuff Dnk School) ~~a company~~
~~incorporated under laws of Pakistan (SECP Incorporation number: 0134077)~~ through Dr.
Nadeem Kiani

Dated: ~~_____~~

CONCESSION AGREEMENT

(specify new date)

This CONCESSION AGREEMENT is made on ~~06th~~ 06th July 2023 at Islamabad, Pakistan.

BY & BETWEEN

The ~~Government of Pakistan~~, Ministry of Federal Education & Professional Training, Through Federal Directorate of Education, (hereinafter referred to as the "Authority", which expression shall, where the context so permits, include its successors and permitted assigns),

AND

DNK Education Services LLP (Running American Lycetuff Dnk School) a company incorporated under laws of Pakistan (SECP Incorporation number: - 0134077) through Nadeem Kiani (Partner) son of Raja Aurangzeb Khan, CNIC# 35202-8913674-3, (authorized by all DNK education services LLP partners to be authorized partner for this agreement, a Private Party, having its registered office at Ali Farm Plot no.11, Sector H-9/3, Islamabad, Pakistan (hereinafter referred to as the ^{Operator} "Party", which expression shall include its successors-in-interest and permitted assigns),

(the Authority and the ^{Operator} ~~Party~~ shall collectively be referred to as the "Parties" and individually as a "Party").

Recitals

The
A. Ministry of Federal Education & Professional Training, Through Federal Directorate of
^

10/28
(FDE)

Education, is aiming to provide quality of education in the Islamabad Capital Territory by collaborating with the private sector to develop, design, finance, construct, manage, operate, maintain and, at the end of the Concession Period (if not specifically extended for another equal term), transfer to FDE all the Project Assets (the "Project").

- B. The Authority has decided to implement the Project by engaging the ^{Operator} Party for inter alia managing and operating the school in accordance with the ^{Operator's} Party's bid, and governed by the KPIs and Good Industry Practice, such that the school is equipped with appropriate facilities, infrastructure and other services that are generally required for their smooth operation.
- C. The Authority invited competitive bids for the Project by issuing an Invitation for Bids dated 28th May 2023 via PPRA Rules (the "Invitation for Bids").
- D. Pursuant to the terms of the Invitation for Bids, the ^{Operator} Party submitted its bid for the Project subject to the terms of the Invitation for Bids (the "Bid"), which Bid has been accepted by the Authority.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below:

Article 1. Definitions and Interpretation

1.1. Definition

"Agreement" or "Concession Agreement" means this ^A agreement as of date hereof together with the Annexes hereto;

"Agreement Year" shall mean a period of twenty-two (22) consecutive Years (in case of single shift /morning shift class) or twelve (12) consecutive Years (in case of Morning shift & Afternoon/Evening Shift) commencing on each consecutive anniversary of the Effective Date and ending as of the end of the day preceding the next anniversary of the Effective Date, except for the first Agreement Year which shall start on the approval of school building plans by CDA (Capital Development Authority). ^{This A} The agreement may be extended with mutual consent for an equal term or specific term;

"Applicable Laws" means any laws, promulgated or brought into force and effect by the GoP or any local government having jurisdiction over the Project, as well as rules, regulations, orders and notifications made pursuant to such laws, as well as, inter alia, judgments, decrees, injunctions, writs and orders of any Pakistan court, as may be applicable;

"Applicable Permits" means any permissions, clearances, concessions, authorizations, consents, licenses, permits, waiver, privileges, rulings, exemptions, no objections, resolutions, filings, orders, notarizations, lodgments or registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement in accordance with the Applicable Laws;

"Arbitration" In the event that the Parties fail to resolve their difference in terms of using all reasonable endeavors, all disputes, controversies or claims arising out of or in connection with this Agreement, including the breach, termination or invalidity of it, shall be referred to a panel of two arbitrators, with one arbitrator each to be nominated by each ~~Parties~~ ^{Party} and, in the event of a disagreement between the arbitrators by an umpire to be nominated by the arbitrators prior to entering upon the reference. Arbitration shall be governed by the Arbitration Act, 1940. The venue of arbitration shall be Islamabad and the award of the arbitrators or umpire, as the case may be, shall be final and binding on the Parties;

"Arbitration Act" means the Pakistan Arbitration Act, 1940;

"Arbitrator" An arbitrator is a neutral third party that oversees the alternative dispute resolution method of arbitration. An arbitrator shall be appointed by each ~~parties~~ ^{Party} when arbitration clause is invoked mutually;

"Authority" means the Ministry of Federal Education & Professional Training represented by the Federal Directorate of Education, and its legal successors and assigns;

"Board of Governor" consists of three members i.e. one representative each of M/o FE&PT, Authority & ~~Party~~ ^{Operator};

"Concession" means all of the rights granted by the Authority to the ~~Party~~ ^{Operator} in terms of this Agreement for implementing the Project and providing the Services to the Authority;

10

"Concession Period" means the period of the Concession specified in Article 3.2 of this Agreement;

"Conditions Precedent" means the obligations of the Authority and the Operator that are set out at Article 2_x of this Agreement;

"Corrupt Practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

"Collusive Practice" means collusion between two or more parties for the purpose of bid rigging or simulating competition, in connection with the Bid and/or the award of this Concession to the ~~Party~~ Operator;

"Dispute" If any dispute arises between the Lessor and the Lessee in connection with this Agreement, both Parties shall use all reasonable endeavors to resolve the matter amicably through mutual consultation;

"Expiry Date" means the last day of the Services Period;

"Financial Bid" means the financial bid submitted by the ~~Party~~ Operator at the time of the bidding process. And any subsequent revisions as permitted under the law, if any.

"Force Majeure Period" means the period commencing from, the date of occurrence of a Force Majeure Event and ending on the earlier of:

- a) the date on which the Affected Party resumes or should have resumed such of its obligations the performance of which it was excused in terms of Article 6_x of this Agreement;
- b) the Termination Date of ~~the~~ this Agreement; as applicable.

"Fraudulent Practice" means any action or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

"Fundamental Change in Law" means any Change in Law that is not a Qualifying Change of Law and that:

- a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Operator under this Agreement; or
- b) results in the Operator being deprived of the whole or a substantial part of the benefit of this Agreement; or
- c) has a Material Adverse Effect on the ~~Party~~ ^{Operator.} ;

"GoP" means the Government of Pakistan;

"Good Industry Practice" Means in view of Construction and infrastructure side:

- i. All infrastructures shall be special person friendly and environment friendly;
- ii. Marble flooring in all the classrooms, offices/Admin block may be provided except in bath rooms where ceramics tile may be provided;
- iii. Solid wood /teak wood/deodar wood doors shall be provided in all classrooms, offices. In washrooms, door shall be of UPVC material. The wood work shall be painted instead of polishing;
- iv. The windows shall be of Aluminum best quality with 5 mm glass;
- v. The iron grill shall be provided in all classrooms, offices;
- vi. All the sanitary wares shall be of local make;
- vii. Bathrooms in offices/staffrooms shall be provided with a mirror, glass shelf, a towel rail, a wash-basin, a Muslim shower, a tap while the bath rooms for students shall be provided one tap only in each;
- viii. A sink, wash-basin, gas pipe line, exhaust fan in Kitchen shall be provided ;
- ix. Ceiling fans shall be provided in all rooms of all offices / class rooms ;
- x. A geyser shall be provided for Admin Block/Principal office, Staff room;
- xi. Electric cooler with filter will be provided (one per one hundred student) ; and
- xii. Fire Fighting Appliance shall be provided at or near Electric and Gas Points.

Minimum Facilities Required for Establishment of Educational Institutions

- i. The ~~party~~ ^{Operator} will ensure that the school building is constructed as per PC-I and according to ICT Building codes. The Authority can inspect the building through a third party during and after construction;
- ii. 07 Classrooms (2 ECE+5) ;
- iii. Installation of Solar System as per government Policy ;
- iv. Head / Faculty / Admin offices with washrooms & Kitchen ;

- 1/20
- v. Activity Room / IT Lab with Multimedia, projector & Latest Laptop ;
 - vi. Play ground with Assembly area and Stage and playing gadgets (if the space is available) ;
 - vii. Boundary wall with razor wire ;
 - viii. Water Supply Connection (Deep well boring in Rural Area) ;
 - ix. Store ;
 - x. Sports Room ;
 - xi. Library ;
 - xii. Infirmary (first aid box and equipment) ;
 - xiii. Multipurpose Room / Hall ;
 - xiv. Lavatory and ramps for disabled ; and
 - xv. Baby daycare room (In case of Girls school) ;

Scholastic areas

Implementation of Academic Calendar duly issued by the Federal Directorate of Education at the beginning of the session incorporating and integrating both scholastic and co scholastic activities. • Issue of Academic Circulars/ write ups/ formats to Teachers on: Co- Scholastic assessment, diagnosing deficient areas of students learning, Remediation measures, Record keeping. o Preparing evidences of assessments. o Open Text-based Assessment o Any other Circular issued by the Federal Directorate of Education for their better comprehension. • Presentation and sharing of best practices adopted by the mentee schools in an interactive session with the mentor for further discussion, refinement and implementation in their respective schools. • Helping every student move from one level to the next higher level with the active support and guidance of the teacher. • Issue of Examination Circulars on conduct of Formative Assessment, Summative Assessment, of answer sheets, etc. • Maintaining teachers' records like lesson plan, teacher's diary, students' attendance registers and students' progress efficiently at school level and periodically monitored by principal. • • Bringing out lesson plan booklets based on Bloom's taxonomy covering multiple intelligences and incorporating the same in regular lesson planning to cater to the needs of every child. • Regular analysis of results, regular monitoring and follow up in class room. • Adoption of the digital classrooms. • Identification of learning deficiencies and undertaking regular remedial measures.

CO-SCHOLASTIC ACTIVITIES • Celebration of the special weeks, special days and camps (Environment Day, Eye donation camps, international year of water

conservation, health is wealth, My Country, My pride, National Day etc.). • Facilitating sports, yoga, and meditation to encourage healthy competition, character building, concentration and physical stamina in students. • Integrating activities like theatre, literary activities, Interior decoration, flower making, best out of waste, Health and hygiene, General awareness, etc. • Utilization of morning assemblies on themes based on moral values, mathematical games, enactment of science concepts, street plays on social issues. • Integration of life skills and other Co-scholastic activities with the regular teaching learning process • Promoting critical thinking through symposiums. • Involvement and counselling of parents through regular meetings. • Integrating ICT with different subjects.

Operator's
 "KPIs" means the Key Performance Indicators regarding the ~~Party's~~ performance of Services under this Agreement. The KPIs can be mutually changed by mutual agreement of both parties. Which are as follows:

Here are the Key Indicators of School Performance:

- Student Achievement ;
- Discipline Referrals ;
- Attendance Rates ;
- Graduation Rates ;
- Student enrolment ;
- Student retention ;
- Graduation rate ;
- Student satisfaction ;
- Administrative expenses as a percentage of educational and general expenditures ;
- Admission test scores for entering students ;
- Average daily attendance ;
- Average daily participation percentages ;
- Average endowment distribution by student ;

- Average net academic cost and average percent discount ;
- Average percentage consistently absents ;
- Average tenure or tenure track faculty salaries by college compared to peer benchmarks ;
- Class attendance ;
- Classroom and laboratory utilization ;
- Expenditures per student ;
- Instructional expenses per student ;
- Number of students per teacher ;
- Number of vocational degrees awarded ;
- Percentage of academic staff with a doctorate ;
- Percentage of full-time faculty who are women, are ethnic minorities, or have terminal degrees ;

"M/o FE&PT" means Ministry of Federal Education & Professional Training ;

"O&M" means the operation and maintenance of the Facility during the Services Period and includes, all matters connected with or incidental to operations and maintenance of the Facility and provision of Services to the Authority, in accordance with the terms of ^{this} Agreement ;

"Operator" means the successful Bidder ;
Authority and Operator individually
Operator "Party" means the ~~Successful Bidder~~ ^{Authority and Operator} and "Parties" means the Authority and the ~~Party~~ collectively ;

"PKR" or "Pakistani Rupees" means the lawful currency of Pakistan ;

"Project" has the meaning given in Recital A ;

"Taxes" means all taxes, levies, imposts, cesses, duties and other forms of taxation, including (but without limitation) income tax, sales tax, value added tax, service tax, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the ~~Party~~ Operator;

"Technical Proposal" means a proposal submitted by the ~~Party~~ Operator in respect of the Invitation for Bids dated [a] ^(please specify)

"Termination" means the termination of this Agreement and the Concession hereunder upon the issuance of a Termination Notice in accordance with the terms hereof;

"Termination Compensation" means the compensation payable to the ~~Party~~ Operator on the Termination Date, in accordance with this Agreement;

"Termination Date" means the date on which this Agreement and the Concession hereunder are terminated by a Termination Notice; and

"Termination Notice" means a notice issued by a Party to the other Party terminating ^{this} the Agreement in accordance with the terms hereof.

1.2. Rules of Interpretation

1.2.1. In this ^A agreement unless the context otherwise requires:

- i. The words importing the singular means the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa;
- ii. Where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires;
- iii. "Article" and "Annex" shall refer, respectively to Articles of and Annexes to this Agreement. The Annexes to this Agreement shall form part and parcel of this Agreement;
- iv. 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;
- v. The references to any agreement or deed or other instrument shall be

1/20

construed as a reference to such agreement, deed, or other instrument as the same may, from time to time, be amended, varied, supplemented or novated;

- vi. 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; *and*
- vii. The words "written" and "in writing" includes a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

ARTICLE 2. Conditions Precedent

2.1. Effectiveness of the Agreement

The Article 1, 2, 5, 14, 15, ^{and} ~~16, 17, 18, 19~~ and ~~20~~ and the related Annexes (if any), shall come into force on the date of execution of this Agreement. The other provisions of this Agreement shall come into force on the Effective Date. This ~~Agreement~~ ^A is subject to the provision of No Objection Certificate (NOC) from CDA and which is the sole responsibility of the ~~Party~~ ^{Operator}.

2.2. ^{Operator's} ~~Party's~~ Conditions Precedent

2.2.1 The Conditions Precedent to be satisfied by the Operator are as follows:

- a. submitting to the Authority certified true copies of all resolutions adopted by the board of directors (or other equivalent body) of the ~~Party~~ ^{Operator} authorizing execution, delivery and performance of this Agreement;
- b. certified copies of all Applicable Permits that are required for all activities contemplated under this Agreement including operation of the Facility, if applicable;

in each case, in such form as may be satisfactory to the Authority (acting responsibility).

2.3. Authority Conditions Precedent

The Conditions Precedent to be satisfied by the Authority are as follows:

- a. the Authority will hand over possession of the land to the ^{Operator} ~~Party~~ in accordance with the Handing Over Criteria, subject to the provision of NOC for the purpose from CDA & , which is the sole responsibility of ^{Operator} ~~Party~~;
- b. the Authority has notified the Project Steering Committee, ^(PSC) to oversight the project progress and monitoring overall implementation as per standards practices and procedures under the regulations set by ^(PEIRA) quarterly or annually depending upon its discretion and has appointed its representatives on such PSC; and
- c. the Authority has issued a notification, notifying the handing over of the land to the ^{Operator} ~~Party~~; in each case, in such form as may be satisfactory to the ^{Operator} ~~Part~~ (acting reasonably).
- d. The Authority shall provide all possible assistance to the ^{Operator} ~~party~~ in obtaining the relevant permissions for map and building design approval from CDA as well as assistance in getting NOC's from relevant government organizations for utilities and for smooth functioning of school.

(write full form before abbreviation)

2.4. Consequences of Failure to Fulfill the Conditions Precedent

2.4.1. If any of the Parties fails to fulfill any of the Conditions Precedent that it is required to fulfill under Article 2.2 and 2.3 (unless waived or deferred by the Authority in its absolute discretion), The Party which is not in default may issue a notice of redressal of complaint which provided it shall be mandatory on the Party which is not in default to serve on the Party in default a notice in writing specifying therein the alleged default committed by the Party in default and providing a reasonable time to the other Party in default to rectify any such default, not being less than Sixty (60) days from date of the notice (the "cure period"). In case the Party in default fails to remedy the default or take measures to remedy the default to the satisfaction of the Party not in default within the cure period, the matter will than be given for mediation for the school management committee to cure the matter within 90 ninety days. And if further not resolved through the mediation phase than will be referred for arbitration before either ^P Party can send notice of termination of this ^A Agreement.

2.4.2. In the event that the Parties fail to resolve their difference in terms of Clause 2.4.1 above, all disputes, controversies or claims arising out of or in connection with this Agreement, including the breach, termination or invalidity of it, shall be referred to a panel of two arbitrators, with one arbitrator each to be nominated by each Party

1/3
8

and, in the event of a disagreement between the arbitrators by an umpire to be nominated by the arbitrators prior to entering upon the reference. Arbitration shall be governed by the Arbitration Act, 1940. The venue of arbitration shall be Islamabad.

2.4.3. Upon the early termination or expiry of the lease or such other extended period if any in terms of this Agreement, the ~~Party~~^{Operator} shall handover vacant possession of the Land and Building thereon to the Authority along with any immovable assets attached thereto. The students studying in the Institution shall at all times remain the students of the "Authority".

2.4.4. In the event of early termination of ~~the~~^{this} Agreement by the Authority on account of default by the ~~Party~~^{Operator}, the Authority shall not pay to the ~~Party~~^{Operator} any compensation.

ARTICLE: 3. Grant of Concession and Concession Period

3.1. Grant of the Concession

3.1.1. In consideration of the ~~Party's~~^{Operator's} obligations contained in this Agreement and relying on the ~~Party's~~^{Operator's} warranties contained herein, the M/o FE&PT, subject to the terms of this Agreement, hereby grants to the ~~Party~~^{Operator} and authorizes it, for the duration of the Services Period, to manage and run the Project, including the construction of school, and to exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement subject to the provision of NOC from CDA & for the purpose which is the sole responsibility of the ~~Party~~^{Operator}.

3.1.2. The ~~Party~~^{Operator} agrees that the Authority shall have the sole and exclusive right to require from the ~~Party~~^{Operator} full availability of the Facility throughout the Services Period and in accordance with the Good Industry Practice.

3.2. Concession Period

3.2.1. ~~The~~^{Operator} Concession is granted for a period of 22 (Twenty-Two) years. The ~~Party~~^{Operator} is bound to share the enrollment data as and when required by the Authority. Enrollment beyond agreed slots/ proposed capacity in PC-I or initiation of Afternoon/Evening Shift shall subject to prior written approval of Authority as duration of Concession period is dependent/linked on/with the annual enrollment. The ~~Party~~^{Operator} is not allowed to start any other training, teaching, tuition or coaching activity on the premises, except regular pre-primary and primary classes as per purpose of land allotted by the CDA. ~~The~~^{This A} agreement may be extended with mutual consent for an equal term or specific term.

3.2.2 Signing of contract: ^(please state) 2023 is contract signing date

- Contract Effectiveness period would be w.e.f from commencement of land approval and possession from Capital development authority planning department of the school design maps and building maps of the school project, which is the sole responsibility of ~~Party~~ Operator.
- Construction period will be twenty four months commencing from date of delivery of Vacant possession of land in accordance with the terms of, this Concession agreement and The execution period will start once ~~the~~ CDA approves the building map of the school building.
- Total Execution period should be after two years of construction period for rest twenty years from commencement period after possession of land period to ^(please state date).

3.2.3 Project Steering Committee will keep oversight/monitor the project two year execution construction period of the Project from? to? subject to first approval of maps and designs from Capital Development Authority as well as vacant possession of land handed over to ~~Party~~ ^{Operator} for construction.

3.2.4 ~~4.1.1~~ Notwithstanding anything to the contrary stated in this Agreement, the ~~Party~~ ^{Operator} may request an extension of the Concession Period for an equal term at any time at least one (01) year prior to the Expiry of Concession Period; provided that at the time of the request the ~~Party~~ ^{Operator} is materially in compliance with its obligations under this Agreement and is not otherwise facing a default therein. The Authority has a right to accept it for an equal term or specific period or reject this request for extension. The Authority shall not bound to explain the reasons for rejection.

3.3 ~~4.2~~ Right, Title and Interest in School

3.3.1 ~~4.2.1~~ The Parties acknowledge that full ownership, rights and title to the Facility (including any additions, modifications or construction thereon carried out by the ~~Party~~ ^{Operator} pursuant to this Agreement) shall be vested with the Authority throughout the Services Period and thereafter the assets of the Project will be handed over to the Authority. The ~~Party~~ ^{Operator} shall not create any encumbrance or other third party rights over the Facility or any part thereof or otherwise sub-let or part with the possession of the Facility at any time during the Services Period.

3.3.2 ~~4.2.2~~ The Authority shall be entitled to use the Facility at any time and from time to time in accordance with the Applicable Laws, in particular during national emergencies, elections and other similar events where it is customary to use the Facility for such

- (iii) ~~1.2.3~~ Playground for students;
- (iv) ~~1.2.4~~ Equipped classrooms and staff-room
- (v) ~~1.2.5~~ Teaching and non-teaching staff;
- (vi) ~~1.2.6~~ School Management System; and
- (vii) ~~1.2.7~~ Any other facility mentioned by the ~~Party~~ ^{Operator} in Technical Bid;

3.6 ~~1.3~~ Authority's Assistance

The Authority may provide and may seek the co-operation of other relevant Government Authorities for providing such reasonable assistance as may be reasonably requested by the ~~Party~~ ^{Operator} for obtaining the grant or renewal of the Applicable Permits (if any) required for the performance of the ~~Party's~~ ^{Operator's} obligations or the exercise of the ~~Party's~~ ^{Operator's} rights under this Agreement.

3.7 ~~1.4~~ Expiry of Concession Period *

Upon occurrence of the Expiry Date, the ~~Party~~ ^{Operator} shall hand-over the Facility to the Authority on the Transfer Date and in accordance with the Taking-Over Criteria unless If this ~~Agreement~~ ^{Agreement} and concession period is not extended.

ARTICLE 4

~~2~~ General Covenants

4.1 ~~2.1~~ Covenants during Service Period

4.1.1 ~~2.1.1~~ The ~~Party~~ ^{Operator} agrees and undertakes that throughout the term of this Agreement:

- (a) it shall retain and maintain the Facility in peaceful possession, in accordance with Good Industry Practices, and enjoy the benefits of the Facility in accordance with this Agreement;
- (b) it shall perform all its obligations under this Agreement and in pursuance with the technical proposal provided during the bidding stage and ensure that it meets the KPIs;
- (c) except as specifically permitted under this Agreement, it shall not vacate or part with the possession of the Facility;
- (d) during the entire Services Period, the ~~Party~~ ^{Operator} shall obtain all Applicable Permits

that are required for all activities contemplated under this Agreement including the operation of the Facility unconditionally, or if such Applicable Permits are subject to conditions, then complying with all such conditions such that such Applicable Permits are and shall be kept in full force and effect for the entire Services Period;

- (e) it shall not, without the prior written consent of the Authority or otherwise as stated in ANNEX XV, change the level of education being provided at the Facility (i.e. if a Facility is providing primary level education, it would continue to do so);
- (f) it shall follow the national curriculum prescribed by the Government Authorities and shall use the reading materials and other books prescribed and/or provided by the Government Authorities, including the Authority. Without prejudice to the foregoing, the ^{Operator} Party shall be free to assign any additional reading materials, books or methods of learning that are permitted under the Applicable Laws;
- (g) it shall as reasonably possible ensure expenditure and costs associated with the performance of the obligations as contemplated under the ~~Concession~~ ^{this} Agreement in pursuance of the Financial Bid having taking into account the existing and anticipated enrollment of students in the School;
- (h) it shall ensure compliance with all Applicable Laws; and
- (i) it shall undertake, at its own cost and expense, the responsibility of provision of security of the School.

4.1.2 ~~2.1.2~~ At all times before, during or after the Services Period, the ^{Operator} ~~Party~~ shall hold harmless and indemnify the Authority from and against all loss, liability, damage, cost, expense, interest, fines, penalties, claims and amounts paid in settlement, suffered, incurred, paid or payable by the Authority in relation to or arising from the ^{Operator's} ~~Party's~~ use of the School or any part thereof. Notwithstanding anything to the contrary, all risks (including any claims and liabilities) relating to the right, title and interests of the Authority in the School or any part thereof shall, during or after the Services Period, vest with the Authority.

4.1.3 ~~2.1.3~~ Notwithstanding anything to the contrary contained in Article 4.1.1 above, the Operator agrees that:

- (a) the Authority and its representatives/nominees shall have full rights to enter upon, access and utilize the Facility, for the purpose of monitoring the performance and activities of the ^{Operator} Party under this Agreement or pursuant to this Agreement;
- (b) the Authority shall have full rights to enter upon, access and utilize the School, for the purpose of exercising their rights and fulfillment of their duties under this Agreement; and

(c) Government Authorities shall have the right to enter upon and access the School in accordance with the Applicable Law, provided that such access does not unreasonably interfere with or hinder the performance of the ~~Party's~~ ^{Operator's} obligations under this Agreement. The Authority shall use its best endeavors to notify the Operator prior to exercising any rights under this Article 4.1.3.

4.1.4 ~~2.1.4~~ ^{Operator} The ~~Party~~ shall not engage in (and shall not authorize or permit any Affiliate or any other Person acting on its behalf to engage in), with respect to the Project or any transaction contemplated by this Agreement, any Sanctionable Practices.

ARTICLE 5
5. Performance Security

5.1 ~~3.1~~ ^{Operator} On or prior to the start Date, the ~~Party~~ shall submit to the Authority an unconditional and irrevocable on demand bank guarantee or standby letter of credit, issued by a scheduled bank operating in Pakistan that is reasonably acceptable to the Authority, having a long-term credit rating of at least "A-" according to the PACRA rating scale for financial institutions, for an amount that is equal to 1% (one percent) of the total Project Cost of PKR [342,300,090/-] /- (three hundred and forty two million, three hundred and ninety thousand.) 3, to secure the due performance of the ~~Party's~~ ^{Operator's} obligations during the Services Period and for the purposes set out in Article ~~2.6~~ ^{3.1.1} and this Article 5 (the "Performance Security").

5.2 ~~3.2~~ ^{Operator} The ~~Party~~ shall maintain the Performance Security in full force and effect from the date on which it is issued until the date falling 90 (Ninety) Days following the last Day of the Services Period (the "Performance Security Expiry Date"), at which date the Performance Security shall be released.

5.3 ~~3.3~~ ^{Operator} If the Performance Security is scheduled to expire prior to the Performance Security Expiry Date, then the ~~Party~~ ^{Operator} shall notify the Authority of the same at least 30 (Thirty) Days prior to the scheduled expiry of the Performance Security, and the ~~Party~~ ^{Operator} shall (notwithstanding such notification) arrange for an extension of the Performance Security such that it remains valid and in full force and effect until the Performance Security Expiry Date. If the ~~Party~~ ^{Operator} fails to extend the Performance Security in terms of this Article 5.2, the Authority shall be entitled to drawdown the Performance Security (without any notice, reference or prior recourse to the ~~Party~~ ^{Operator} or any other Person) in full. The amount so received shall be treated as a cash-retention and to the extent that there are no outstanding claims thereto, shall be released upon submission of a new Performance Security acceptable to the Authority or upon the Performance Security Expiry Date.

5.4 ~~3.4~~ The Authority shall have the right to draw on the Performance Security (without

94

any notice, reference or prior recourse to the ^{Operator} Party or any other Person) upon the ^{Operator's} Party's failure to honor any of its obligations, responsibilities or commitments under this Agreement. In addition, the Authority shall have the right to draw on the Performance Security (without any notice, reference or prior recourse to the ^{Operator} Party or any other Person), as applicable, in accordance with Article ~~26~~ 5.3.

ARTICLE 6 ~~4~~ Services Period

6.1 ~~4.1~~ Commencement of Performance Period

^{Operator}
The ~~Party~~ shall be obligated to commence the Services in respect of the School as and from the Effective Date.

6.2 ~~4.2~~ General Requirements

^{Operator}
6.2.1. The ~~Party~~, in order to convert the land into Successful School, shall undertake and be responsible for the O&M of the School and shall perform the Services in a manner that is in compliance with the KPIs, the Applicable Laws, the Applicable Permits, the technical proposal provided during the bidding stage and Good Industry Practice.

^{Operator}
6.2.2. The ~~Party~~ may undertake the O&M of the School and perform the Services itself and/or through its employees and agents possessing the requisite technical, financial, managerial and teaching expertise and capability.

^{Operator}
6.2.3. The ~~Party~~ shall at all times during the Services Period, provide the Authority, the Independent Expert and their representatives with reasonable access to the School for monitoring of the Services and for conducting inspections and audits in accordance with this Agreement.

^{Operator}
6.2.4. The School shall develop and implement a safety and surveillance program for the School, comply with the Safety Regulations and adopt appropriate safeguards and measures for security of environment, human life and property at the School in accordance with the Applicable Laws and Good Industry Practice.

6.3 ~~4.3~~ Repair and Maintenance of the School

^{Operator}
6.3.1. The ~~Party~~ shall maintain the School in line with Good Industry Practice and shall ensure that the School is fully operational throughout the Concession Period.

45

6
4.3.2. When the need arises for an unscheduled outage in order to undertake emergency maintenance during an Academic Year ("Unscheduled Outage"), the ~~Party~~^{Operator} shall advise the Authority of such need and the commencement and estimated duration of such work. The Authority shall allow the ~~Party~~^{Operator} to schedule such outage within a period of time that is reasonable under the circumstances and not exceeding the time required by Good Industry Practice.

6
4.3.3. All major Repair and Maintenance of school will be done with mutual consent of both ~~Parties~~^P, minor day to day maintenance can be performed by the ~~Party~~^{Operator} on their own.

6.4 ~~4.4~~ Applicable Permits and Applicable Laws

6
4.4.1. The ~~Party~~^{Operator} shall make any applications required in respect of and obtain all Applicable Permits for the performance of the Services to the Authority, in accordance with the provisions of the Applicable Laws. The costs of complying with this requirement shall be borne solely by the ~~Party~~^{Operator}.

6
4.4.2. The Authority may use reasonable endeavors to assist the ~~Party~~^{Operator} in obtaining the Applicable Permits from the relevant Government Authorities, provided that the ~~Party~~^{Operator} has complied with all the requirements contained in the Applicable Laws for applying for such Applicable Permits.

6
4.4.3. The ~~Party~~^{Operator} shall make ensure the required services to the ~~Authority~~^A would be regulated in accordance with the procedures laid down under the regulations made by PEIRA .

6.5 ~~4.5~~ Records, Reporting, Accounts and Audits

6
4.5.1. The ~~Party~~^{Operator} shall maintain records (in both, soft and hard format) of all students, teachers, staff, books, resources, equipment and compliance with the KPIs during the Services Period.

6
4.5.2. The ~~Party~~^{Operator} shall maintain books of accounts recording all payments received from the students and other revenues derived/collected by it from or on account of the School and the Services.

6
4.5.3. The ~~Party~~^{Operator} shall make available to the Authority all books and records maintained by the ~~Party~~^{Operator} upon a request being made by any of them. The ~~Party~~^{Operator} shall and shall cause its employees and agents to fully co-operate and provide all assistance to the Authority.

6
4.5.4. The Authority will have the right to access, make copies of and audit, all such books, records, accounts, financial statements, reports, evaluations and any other information relating to the performance of the Services.

48
6.5.5. ^{Operator} The ~~Party~~ shall also provide the Authority with 2 (two) copies of the Annual KPI's report, duly reviewed and certified by the Independent Expert, within 30 (Thirty) Days of the end of each Academic Year to which they pertain.

6.6. ~~4.6.~~ Provision of Utilities

6.6.1. ^{Operator} The ~~Party~~ shall be solely responsible for arranging for all utilities for the operation and maintenance of the School.

6.6.2. ^{Operator} Where the ~~Party~~ seeks to procure any utilities from Government Authorities, the Authority may use reasonable endeavors to assist the ~~Party~~ ^{Operator} in obtaining rates from such Government Authorities that are no higher than the rates offered to commercial or industrial users of such utilities.

6.7. ~~4.7.~~ Employees

~~4.7.1.~~ All teaching and non-teaching staff will be provided by the ~~Party~~ ^{Operator} appointed through Board of Governors having at least minimum wages as decided/declared by the Government of Pakistan from time to time and their salaries must be routed through their respective bank accounts of schedule banks.

6.8. ~~4.8.~~ Appraisal of the Employees

^{Operator} The ~~Party~~ shall evaluate all employees working at the School, including the teaching and non-teaching staff (collectively the Employees), on an annual basis in accordance with the timelines agreed upon between the Parties. The evaluation and appraisal of the Employees shall be based on the Employment Criteria. The ~~Party~~ ^{Operator} shall provide the report containing the evaluation of all Employees, carried out at the end of each year, to project steering committee within 30 (Thirty) days of the end of each such year.

6.9. ~~4.9.~~ Training of Employees

6.9.1. ~~4.9.1.~~ The Operator shall ensure that the Employees are at all times properly trained in accordance with Good Industry Practice, for their respective functions.

6.9.2. ~~4.9.2.~~ Notwithstanding the foregoing, the ~~Party~~ ^{Operator} shall be responsible to conduct at least two (2) training session each of at least 18 hours for each Employee, in particular the teaching staff, in each Financial Year. Such training can be provided in-house. The costs of such training sessions shall be borne by the ~~Party~~ ^{Operator}.

6.9.3 Operator

~~4.7.5.~~ The ~~Party~~ shall ensure that all teacher Trainings are scheduled during the Vacations; provided that any Trainings scheduled during the Vacations should not exceed sixty (60) hours in aggregate; provided further that if any teacher Trainings are required to be conducted during a period other than the Vacations, the ~~Party~~ Operator shall ensure that there is minimum disruption to the Services.

ARTICLE 7 ~~is~~ Enrolment

- 7.1 ~~5.1.~~ Operator The ~~Party~~ will enroll at least 20% of children free of cost. The Authority shall provide the list of such students residing in the locality of the school to be enrolled by the ~~Party~~ Operator
- 7.2 ~~5.2.~~ Operator The ~~Party~~ will maintain 1:30 Pupil Teacher Ratio, however in certain case this ratio may be increased prior approval of the Authority;
- 7.3 ~~5.3.~~ Operator The ~~Party~~ will maintain students' number in each class/section as per provisions in PC-I;
- 7.4 ~~5.4.~~ Operator The ~~Party~~ shall provide the data of enrolled students on biannual basis to FDE; and,
- 7.5 ~~5.5.~~ Operator The ~~Party~~ shall follow the academic Calander of the Authority meant for its own institutions i.e right from admission to terminal examinations.

ARTICLE 8 ~~is~~ Force Majeure

Where, by reason of events or circumstances beyond the reasonable control of and not reasonably foreseeable by a Party, the Party is prevented from performing an obligation under this Agreement, the said Party will be granted an extension of time for so long as it is prevented from performing the obligation if:-

8.1 The Party notifies the other Party as soon as is reasonably practicable of such events or circumstances and of the period for which the Party expects to be prevented from performing its obligations.

8.2 The Party takes all reasonable steps to avoid or limit the effects of such events or circumstances or to render to the other Party the equivalent of performance of the obligation in a manner acceptable to the other Party, ~~and~~

8.3 The Party takes all reasonable steps to resume performance of its obligations

45
as quickly as reasonably possible; and

8.4 ~~and~~ the Concession Period shall, subject to the satisfaction of the Lessor qua the adequacy of the Force Majeure events, accordingly stand extended by the aforementioned period.

ARTICLE 9 ~~is~~ Entire Agreement:

This Agreement sets out the entire agreement and understanding between the Parties with respect to its subject matter and in case, there is any ambiguity in any term of this ~~agreement~~ or any condition thereof is repugnant to the terms and conditions in bidding documents, the analogy of terms and condition in the relevant "Request for Proposal" shall prevail or taken both the terms in this ~~agreement~~ and bidding documents jointly for interpretation and resolution of the issue.

ARTICLE 10 ~~is~~ NOTICES

10.1 Any notice or order formal communication to be given under this Agreement shall be in writing and signed by or on behalf of the ~~party~~ party giving it. It shall be:

a. delivered by hand or sent by prepaid recorded delivery, courier, special delivery; ~~or~~ or

b. registered post to the relevant address in clause ~~10(2)~~ 10.2.

10.2 In such case it shall be marked for the attention of the relevant ~~party~~ party set out in clause ~~10(2)~~ (or as otherwise notified from time to time under this Agreement). Any notice given by hand delivery, fax or post shall be deemed to have been duly given;

a. If hand delivered, when delivered;

b. If sent by recorded delivery, special delivery or registered post, at 10:00 a.m. on the second business day from the date of posting.

Unless there is an evidence that it was received earlier and provided that, where (in the case of delivery by hand or by fax) the delivery or transmission occurs after 6:00 p.m. on a business day or on a day which is not a business day, service shall be deemed to occur at 9.00 a.m. on the next following business day.

10.2 The addresses and fax numbers of the Parties for the purpose of clause 10(1) are as follows:-

a.

Attention: Office of Director General, Federal Directorate of Education,

Address:- Rohtas Road , Sector G-9/4 Islamabad.

b. Attention: Mr. Nadeem Afzal (designation?)

Address: 17-A, Tariq Block New Garden Town, Lahore

042- 111-257-257 or 03218436217

Any change in the address notified to the other party in writing.

ARTICLE 11. SEVERABILITY AND CONFIDENTIALITY

11.1 Should any provision of this Agreement be found to be invalid, illegal or unenforceable under the laws of any relevant jurisdiction, the invalid or unenforceable provision shall not be given effect but the remaining provisions of this agreement

150

shall remain in full force and effect. The Parties shall forthwith enter into good faith negotiations to amend ^{this} the Agreement so that the invalid, illegal or unenforceable provision is replaced by a valid, legal and enforceable provision, which conforms, to the extent possible, to the intended purpose of the former provision.

11.2 The Parties shall keep confidential all information with regard to this Agreement however, the obligation to maintain confidentiality shall not apply to information that is already in the public domain or to information which either Party is obliged to disclose under the law or any judgment/decision of a court of competent jurisdiction.

ARTICLE 12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the Public Private Partnership Act 2017 & amendments made thereafter and other laws of Pakistan. The said agreement has been approved by M/o FE&PT and got vetted from the authorities concerned.

ARTICLE 13. Modification Clause:

This Agreement shall not be modified or amended except by a written instrument signed by both Parties mutually. The Parties hereby agree that this document contains the entire agreement between the Parties and this Agreement shall not be modified, changed, altered or amended in any way except through a written amendment signed by all of the Parties hereto. Which shall be for the betterment of the project.

ARTICLE 14. COPIES OF AGREEMENT

This Agreement has been executed in two counterparts, one to be kept with the Authority and one to be kept with the ^{Operator} Party. Both counterparts shall be an original but together shall constitute one and the same instrument.

ARTICLE 15. REGISTRATION

5)

Operator

The ~~Party~~ shall be entitled to get this Agreement registered at its sole cost and expense and Authority agrees to cooperate with the ~~Party~~ in this regard.

Operator

In witness where of this ^AAgreement has been signed by the duly authorized representatives of the ^PParties the day and year specified hereinbelow.

1st Party

2nd Party

American Lycetuff Dnk school System
through Dr.Nadeem Kiani
CNIC: 35202-8913674-3
Planning & Development

*Federal Directorate of Education,
Ministry of Federal Education & Professional
Training*
~~FBE~~ Through Director

This ^AAgreement has been signed and executed in the presence of witnesses mentioned below: -

Witness No.1

Witness No.2
