

DRAFT  
MODEL CONCESSION AGREEMENT

Between  
Department of [●]<sup>1</sup>  
&

----- [●]<sup>2</sup>  
(Selected Private Partner)  
/ Consortium &

----- [●]<sup>3</sup>  
Concessionaire (Special Purpose Vehicle)

For

**Public Private Partnership for Treatment of Non-Communicable Diseases (NCD) in District  
Hospital.....[●]<sup>4</sup>**

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<sup>1</sup> Insert name of the Department of the State Government that will enter into this Concession Agreement with the selected Private Partner

<sup>2</sup> Insert full name of the selected Private Partner

<sup>3</sup> Insert full name of the Special Purpose Vehicle set up for the purpose of managing this Concession – APPLICABLE ONLY IF AN SPV IS BEING SET UP, else delete

<sup>4</sup> Insert name of the District Hospital in which this Project will be developed and implemented for which this Agreement is being signed.

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## CONCESSION AGREEMENT

**THIS AGREEMENT** is made and entered into at [●]<sup>5</sup> on this the [●]<sup>6</sup> day of [●]<sup>7</sup>, [●]<sup>8</sup> by and between:

1. **THE GOVERNOR OF [●]<sup>9</sup> acting through the [●]<sup>10</sup>, Department of [●]<sup>11</sup> having its offices at [●]<sup>12</sup> (hereinafter referred to as the "**State Government**"), which expression shall unless excluded by or repugnant to the context or meaning thereof, be deemed to include its officers, successors, assigns, representatives and constituents); of the **FIRST PART**,**

AND

2. [●]<sup>13</sup>, a company incorporated under the Indian Companies Act 1956 having its registered office at [●]<sup>14</sup>, (hereinafter referred to as the "**Private Partner**"), represented by [●]<sup>15</sup> which expression shall unless excluded by or repugnant to the context or meaning thereof, be deemed to include its successors, representatives and permitted assigns), of the **SECOND PART**.
3. [●]<sup>16</sup>, Special Purpose Vehicle, a company incorporated under the Indian Companies Act 1956 or 2013<sup>17</sup> having its registered office at [●], represented by [●] (hereinafter referred to as the "**Concessionaire**"), which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, representatives and permitted assigns), of the **THIRD PART**.

**WHEREAS:**

- A. The State Government desires to improve access to quality screening, diagnostic and treatment services related to cardiology, oncology and pulmonology specialties in district hospitals in Tier 2 and Tier 3 through public private partnerships.
- B. The State Government desires to contribute towards (i) improving access to non-communicable diseases (NCD) services at the district level and also decongesting tertiary facilities at the state level; (ii) reducing out-of-pocket expenditures on diagnosis, treatment

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<sup>5</sup> Insert name of the capital city of the state for which this Concession Agreement will be signed.

<sup>6</sup> Insert the calendar date on which this Concession Agreement will be signed.

<sup>7</sup> Insert the number of the month in which this Concession Agreement will be signed.

<sup>8</sup> Insert the calendar year in which this Concession Agreement will be signed.

<sup>9</sup> Insert the name of the state for which this Concession Agreement will be signed.

<sup>10</sup> Insert the designation of the head of the Department: Additional Chief Secretary / Principal Secretary as the case may be.

<sup>11</sup> Insert full name of the Department, e.g Department of Health and Family Welfare or as the concerned department may be called in the state.

<sup>12</sup> Insert complete address of the office of the concerned Department that is signatory to this Concession Agreement

<sup>13</sup> Insert name of the selected Private Partner

<sup>14</sup> Insert registered address and the corporate communication address of the selected Private Partner

<sup>15</sup> Insert full name of the authorised representative of the selected Private Partner

<sup>16</sup> Insert registered name of the Special Purpose Vehicle set up by the Private Partner for the purpose of managing this Project as the Concessionaire.

<sup>17</sup> Delete whatever is not applicable.

and care; and (iii) creating infrastructure and developing capacity at district hospitals to provide at least basic tertiary care and advanced secondary care related to the three NCD specialties (cardiology, oncology and pulmonology) in the medium and long term.

- C. The State Government intends to undertake this effort through **Public Private Partnerships for NCDs in District Hospitals** (hereinafter referred to as the '**Project**').
- D. Vide [●]<sup>18</sup>, the State Government has empowered the [●]<sup>19</sup> as the **Implementing Authority** for the purpose of this Project and for selecting Private Partners for undertaking the up-gradation, expansion, management, operation and maintenance of Project facility as per the scope of work provided in this Concession Agreement in the identified District Hospital in the state of [●]<sup>20</sup>; and for managing and supervising the implementation of this Agreement.
- E. Pursuant to the above, the Implementing Authority invited proposals by its Notice No. [●]<sup>21</sup> dated [●]<sup>22</sup> (the "**Tender Notice**") for short listing of bidders for the Project and had shortlisted certain bidders including, *inter alia*, the [●]<sup>23</sup> **OR** the consortium comprising [●]<sup>24</sup> (collectively the "**Consortium**") with [●]<sup>25</sup> as its leader]. ~~(delete whatever is not applicable)~~
- F. The Implementing Authority also prescribed the technical and commercial terms and conditions, and invited bids from the shortlisted bidders pursuant to the Tender Notice for undertaking the Project.
- G. After evaluation of the bids received, the Implementing Authority accepted the bid of the Private Partner **OR** Consortium<sup>26</sup> and issued its Letter of Acceptance No. [●]<sup>27</sup> dated [●]<sup>28</sup> (hereinafter called the "Letter of Acceptance or the LOA") to the Private Partner **OR** Consortium<sup>29</sup> requiring, *inter alia*, the execution of this Agreement within 21 days of the date of issue thereof.
- H. The Private Partner **OR** Consortium<sup>30</sup> has since promoted and incorporated a Special Purpose Vehicle under the Indian Company's Act 2013, and has requested the Implementing Authority to accept this Special Purpose Company as the **Concessionaire** which shall undertake and perform the obligations and exercise the rights of the Private Partner **OR**

<sup>18</sup> Insert reference to the relevant Letter / Government Order no. and date.

<sup>19</sup> Insert name of the arm / unit within the Department (State Health Society / State NCD Cell / Directorate of Health Services, etc.) which will be designated as the focal agency for managing this Agreement.

<sup>20</sup> Insert the name of the state where the Project will be implemented.

<sup>21</sup> Insert Notice Number as issued by the Implementing Authority

<sup>22</sup> Insert date of issue of the Tender Notice by the Implementing Authority

<sup>23</sup> Insert name of the selected Private Partner in case of a single agency application

<sup>24</sup> Insert names of all consortium member if the selected Private Partner applied as a Consortium

<sup>25</sup> Insert name of the leader of the Consortium if the selected Private Partner applied as a Consortium

<sup>26</sup> Delete whatever is not applicable

<sup>27</sup> Insert letter no.

<sup>28</sup> Insert date of the LOA

<sup>29</sup> Delete whatever is not applicable

<sup>30</sup> Delete whatever is not applicable

Consortium<sup>31</sup> under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.

- I. Vide its letter dated [●], the Concessionaire has accepted the LOA issued by the Implementing Authority and has accepted to perform the obligations including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Private Partner OR Consortium<sup>32</sup> for the purposes hereof.
- J. The Implementing Authority has agreed to the said request of the Private Partner OR Consortium<sup>33</sup> and the Concessionaire, and has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project subject to and on the terms and conditions set forth hereinafter.

**NOW THEREFORE** in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy whereof is hereby acknowledged, and intending to be legally bound hereby, the Parties agree on the following terms and conditions as set out below:

## ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

### 1.1 Definitions

The following words and expressions used in this Concession Agreement and beginning with capital letters shall, unless the context otherwise requires, have the meaning ascribed to them below.

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<sup>31</sup> Delete whatever is not applicable

<sup>32</sup> Delete whatever is not applicable

<sup>33</sup> Delete whatever is not applicable



1. **"Accounting Year"** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year; or any duration specified by a Government of India/ State notification which amends the period of accounting year or the financial year.
2. **"Adjusted Equity"** shall have the meaning set forth in [Clause 24.2.5](#)
3. **"Affected Party"** shall have the meaning as set forth in [Clause 19.1.1](#);
4. **"Affiliate"** shall mean the same as Associate.
5. **"Agreement"** shall mean this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;
6. **"Annual Maintenance Plan"** shall have the meaning as set forth in [Clause 13.3.4](#);
7. **"Applicable Laws"** shall mean all laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which are in force and effect, or may be amended from time to time, as on the date hereof and which may be promulgated or brought into force in territory of India, including judgments, decrees, injunctions, writs or orders of any court, as may be in force and effect, during the subsistence of this Agreement and applicable to the Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect on the date of this Agreement and during the subsistence thereof.
8. **"Applicable Permits"** shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;
9. **"Appointed Date"** shall have the meaning set forth in [Clause 3.3](#);
10. **"Arbitration Act"** shall mean the Arbitration and Conciliation Act, 1996 or any successor thereof and shall include modifications to or any re-enactment thereof, as in force from time to time;
11. **"Assigned District Hospital Authorities"** shall mean and include the Head / Chief Medical Officer/ Medical Superintendent or her / his authorised representative of the Assigned District Hospital.
12. **"Assigned District Hospital"** shall mean the district hospital identified and handed over by the Implementing Authority to the Concessionaire as per [Article 10](#) for developing the Site as per [Article 11](#) and offering the services as per Article 2 and all the terms and conditions and provisions of this Agreement.
13. **"Assigned District Hospital"** shall mean the District Hospital where the Project shall be set up and located as defined in [Clause 2.2.1](#).
14. **"Associate"** shall mean, in relation to either Party [and/or promoter/Consortium Members], a person who controls, is controlled by, or is under the common control with such Party [or promoter/Consortium Member] (as used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company

- or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);
15. **"Award"** shall have the meaning as set forth in [Clause 28.2.2](#);
  16. **"Bid Security"** shall mean the security provided by the [Private Partner/Consortium] to the Implementing Authority along with the Bid, in accordance with the Tender Notice, and which is to remain in force until substituted by the *Performance Security*;
  17. **"Bid"** means the documents in their entirety comprised in the bid submitted by the [Concessionaire/Consortium] in response to the Tender Notice in accordance with the provisions thereof;
  18. **"Conditions Precedent"** shall have the meaning as set forth in [Article 5](#);
  19. **"Certificate of Compliance"** shall have the meaning as set forth in [Clause 5.3.4](#);
  20. **"Change in Law"** shall mean the occurrence of any of the following after the date of Bid: (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the date of Bid; (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or (e) any change in the rates of any of the Taxes that have a direct effect on the Project.
  21. **"Change of Scope Order"** shall have the meaning as set forth in [Clause 12.1.3](#);
  22. **"Change of Scope"** shall have the meaning as defined in [Clause 12.2.1](#).
  23. **"Commercial Operation Date" or "COD"** shall have the meaning set forth in [Clause 3.3](#);
  24. **"Completion Certificate"** shall have the meaning set forth in [Clause 5.3.4](#);
  25. **"Concession Agreement"** shall mean this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;
  26. **"Concession Period"** shall have the meaning as set forth in [Clause 3.2](#) and [Clause 3.3](#).
  27. **"Concession"** shall have the meaning as set forth in [Clause 3.1.1](#).
  28. **"Concessionaire"** shall mean the special purpose company set up by the Private Partner as the majority shareholder with consortium members as other shareholders as set forth in [Clause 4.1.1](#).
  29. **"Conditions Precedent"** shall have the meaning set forth in [Article 5](#);
  30. **"Confidential Information"** shall have the meaning set forth in [Clause 8.2.9](#);
  31. **"Consortium"** shall have the meaning set forth in [Recital E](#).
  32. **"Construction"** shall mean, unless the context requires otherwise, investigation, designs and drawings, developing, monitoring, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to new construction or expansion or upgradation of existing civil structure of the District Hospital, and **"construct"** shall be construed accordingly;
  33. **"Construction Works"** shall mean all works and things necessary to complete the Construction of the New Facilities and expansion, rehabilitation and upgradation of the Existing Facilities and subsequent development and augmentation in accordance with this Agreement;

34. **"Corporate Office"** shall mean the registered office of the Private Partner.
35. **"Cure Period"** shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall: (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire.
36. **"Damages"** shall have the meaning set forth in [Clause 24.1](#).
37. **"Debt Due"** shall have the meaning set forth in [Clause 24.2.4](#).
38. **"Defect Liability Performance Security"** shall have the meaning as set forth in [Clause 24.5](#);
39. **"Defect Liability Period"** shall have the meaning as set forth in [Clause 24.5.1](#);
40. **"Dispute"** shall have the meaning as set forth in [Clause 28.2.1](#);
41. **"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in [Clause 25.2](#);
42. **"Drawings"** means all of the drawings, calculations and documents pertaining to the Project as set forth in [Schedule-2](#), and shall include 'as built' drawings of the Project;
43. **"Duration of the Agreement"** shall have the meaning as set forth in [Clause 3.2](#).
44. **"Effective Date"** shall mean the date, falling on the 120<sup>th</sup> calendar day from the Appointed Date or completion of all Conditions Precedent of both the Parties as per the provisions of [Clauses 5.1](#) and [5.2](#), whichever falls later, which shall be the date on which the Concessionaire shall commence full implementation of the *Project* in accordance with the provisions of this Agreement.
45. **"Encumbrances"** shall mean, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein;
46. **"Equity"** shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;
47. **"Escrow Account"** shall mean an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;
48. **"Escrow Agreement"** shall have the meaning as set forth in [Clause 14.6.2](#).
49. **"Financial Year"** shall mean the same as the "Accounting Year".

50. **"Force Majeure"** or **"Force Majeure Event"** shall have the meaning ascribed to it in [Clause 19.1.1](#);
51. **"Good Clinical Practice"** shall mean that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient, and experienced clinical service provider and a person providing such services.
52. **"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;
53. **"Government Confidential Information"** shall have the meaning as defined in [Clause 8.2.8](#) and [Clause 8.2.9](#).
54. **"Government Confidential Information"** shall have the meaning set forth in [Clause 8.2.9](#);
55. **"Government Instrumentality"** shall mean any department, division or sub-division of the Government of India or the *State Government* and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the *State Government*, as the case may be, and having jurisdiction over all or any part of the *Project* or the performance of all or any of the services or obligations of the *Concessionaire* under or pursuant to this Agreement;
56. **"Government Insured Patients"** shall have the meaning as defined in [Clause 14.1.1\(b\)](#).
57. **"Government referred patients"** shall have the meaning as defined in [Clause 14.1.1\(a\)](#).
58. **"Identified NCDs"** shall mean non-communicable diseases (NCDs) related to cardiology, oncology and pulmonology and shall include co-morbidities associated with these three diseases.
59. **"Implementing Authority Conditions Precedent"** shall mean the obligations and the conditions that the Implementing Authority shall fulfil as set forth in [Clause 5.1](#).
60. **"Implementing Authority Default"** shall have the meaning as defined in [Clause 23.2](#).
61. **"Implementing Authority Indemnified Persons"** shall have the meaning as defined in [Clause 18.1.1](#).
62. **"Implementing Authority Representative"** shall mean the authorised representative appointed by the Implementing Authority for any purpose specified by the Implementing Authority related to this Agreement.
63. **"Implementing Authority"** shall mean and have the meaning as attributed thereto in the array of Parties hereinabove set forth in the Recitals.
64. **"Independent Monitor[s]"** means an Independent Engineers or an Independent Healthcare /Hospital Consultants as may be applicable in accordance with the terms of this Agreement and may be either externally hired by the Implementing Authority or designated from among the State Government personnel provided such state

government personnel are not members of the PMC or posted at the Assigned District Hospital;

65. **"Inspection Report"** shall have the same meaning as *O&M Inspection Report*.
66. **"Insurance Cover"** shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to [Article 15](#), and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;
67. **"Intellectual Property"** shall have the meaning set forth and defined in [Article 17](#).
68. **"Key Performance Indicators"** or **KPIs** shall mean and have the meaning as attributed and set forth in the [Clause 20.2.1](#) and [Schedule 12](#).
69. **"Letter of Acceptance"** shall have the meaning set forth in Recital G.
70. **"Licensed Premises"** shall have the meaning ascribed to it in [Clause 10.2.2](#);
71. **"Maintenance Manual"** shall have the meaning ascribed to it in [Clause 13.3.1](#);
72. **"Maintenance Program"** shall have the same meaning as *Annual Maintenance Plan*.
73. **"Maintenance Requirements"** shall have the meaning set forth in [Clause 13.2.1](#);
74. **"Material Adverse Effect"** shall mean the circumstances that may effect on (a) the ability of the SPC to perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) frustrate the legality, validity, binding nature or enforceability of this Agreement.
75. **"Material Breach"** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the delivery of services under the Project, implementation of the Project or on any part of the Project Facilities, and which such Party shall have failed to cure.
76. **"Medico-Legal Cases"** means medical cases where the User is a victim of a criminal offence;
77. **"O&M Inspection Report"** shall have the meaning as set forth in [Clause 20.3.2](#).
78. **"O&M"** shall mean the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement;
79. **"Parties"** shall mean the parties to this Agreement and "Party" shall mean any one of them, as the context may admit or require.
80. **"Partnership Management Cell"** or **"PMC"** shall have the meaning set forth in [Clause 20.1](#);
81. **"Patients Referred by the Government"** shall have the meaning as defined in [Clause 14.1.1\(a\)](#).
82. **"Performance Security"** shall have the meaning set forth in [Article 6](#);
83. **"Pre COD Conditions Precedent"** shall mean and refer to the conditions that the Concessionaire shall be obliged to fulfilled as set forth in [Clause 5.1.2](#), without which this Agreement shall not enter into the *COD*.
84. **"Pre Effective Date Conditions Precedent"** shall mean and refer to the conditions that the Concessionaire shall be obliged to fulfilled as set forth in [Clause 5.1.1](#), without which this Agreement shall not enter into the *Effective Date*.

85. **"Private Partner"** shall mean the selected bidder who is a signatory to the Concession Agreement and who holds at least 26 percent of the equity shares in the Special Purpose Vehicle (SPV).
86. **"Project Coordination Committee"** or **"PCC"** shall have the meaning set forth in **Clause 20.1**;
87. **"Project Facility"** shall mean all facilities including infrastructure, medical and non-medical equipment, services, personnel, systems and processes put in place for offering services under the *Project* as per the provisions of this Agreement.
88. **"Project Monitoring Indicators"** shall mean and have the meaning as attributed and set forth in the **Clause 20.2.1** and **Schedule 11**.
89. **"Project Site"** shall have the meaning set forth in **Article 10**.
90. **"Project Steering Committee"** or **"PSC"** shall have the meaning set forth in **Clause 20.1**;
91. **"Project"** shall mean and have the meaning as attributed and set forth in the Recital C of this Agreement.
92. **"Provisional Certificate"** shall have the meaning set forth in **Clause 11.3.5**;
93. **"Punch List"** shall have the meaning ascribed to it in **Clause 11.3.5**;
94. **"Right of Way"** means the constructive possession of the *Site*, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the *Project* in accordance with this Agreement;
95. **"Rupees"** or **"Rs."** or **"INR"** or **"Re"** or **"Rupee"** refers to the lawful currency of the Republic of India.
96. **"Selected Private Partner"** shall mean
97. **"Self-Paying Patients"** shall have the meaning as defined in **Clause 14.1.1(b)**.
98. **"Service Continuity"** shall have the meaning as defined in **Clause 25.1.1**.
99. **"Service Norms"** shall mean the norms laid down by the State Government or the Government of India for NCD services at the District Hospitals.
100. **"Services"** means the services that are offered from the Project Facility in accordance with **Schedule 1** of this Agreement.
101. **"Special Purpose Company"** shall mean the company set up under the Indian Company's Act 2013 by the Private Partner along with the consortium members who were a part of the bidding along with the Private Partner for the Project.
102. **"Specifications and Standards"** shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in the Project Development Plan in **Schedule-2**, **Schedule 9**, **Schedule 10**, **Clause 5.1.2** and any modifications thereof, or additions thereto, as included in the design and monitoring for the Project submitted by the Concessionaire to, and expressly approved by, the Implementing Authority;
103. **"State Government"** shall mean elected Government of the state of [●]<sup>34</sup> represented by the Governor acting through the Department of Health and Family Welfare<sup>35</sup>, which has delegated its functions to the Implementing Authority.

<sup>34</sup> Insert name of the state where the Project will be implemented.

<sup>35</sup> Or whichever other name by which the Department may be called in the state.

- 104. **"Total Project Cost"** shall have the meaning as defined in [Clause 14.2.1](#).
- 105. **"User charges"** shall mean the charges paid by the self-paying patients in lieu of services received from the *Project Facility*.
- 106. **"Vesting Certificate"** shall have the meaning as defined in [Clause 25.4](#).
- 107. **"Viability Gap Fund"** shall have the meaning as defined in [Clause 14.2.2](#)
- 108. **"Good Clinical Practice"** means degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider and a person providing services;
- 109. **"Good Healthcare Practice"** means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services.

## 1.2 Interpretations

### 1.2.1 In this Agreement, unless the context otherwise requires:

- a. To ensure that inconsistencies and ambiguities are removed any reference to a statutory provision or any legislation or any provision thereof shall include such provision as is from time to time enacted, amended, modified or re-enacted or consolidated, with such modification or re-enactment or consolidation that applies to, or is capable of being applied to any transactions entered into hereunder;
- b. references to Applicable Law, Laws of India or Indian Law shall include the laws, acts, ordinances, rules, regulations, bye-laws, notifications, guidelines or bye-laws which have the force of law in the territory of India and as, from time to time, may be amended, modified, supplemented, extended or re- enacted;
- c. the words importing singular shall include plural and vice versa;
- d. all references to a 'person' the words denoting a natural person shall be construed as a reference to include person, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity) and shall include successors and assigns;
- e. the headings and sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- f. the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- g. any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively as per the Gregorian calendar and all references to any period of time shall mean a reference to that according to Indian Standard Time;



- h. all references to a "business day" shall be construed as a reference to a day (other than a Sunday) and on which nationalized banks in the state of [●]<sup>36</sup> are generally open for business;
  - i. the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
  - j. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
  - k. references to recitals, Articles, sub-articles, sections, clauses, sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, sections, clauses and Schedules of this Agreement;
  - l. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement, from or by any Party, shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party and not otherwise;
  - m. any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates, provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
  - n. references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors in accordance with the Insolvency and Bankruptcy Code 2016;
- 1.2.2 The rule of construction, if any, that an Agreement should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply.
- 1.2.3 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall apply.
- 1.2.4 All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### 1.3 Ambiguities and priority of documents

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<sup>36</sup> Insert name of the state where the Project will be implemented.



- 1.3.1 The following principles shall apply in case of ambiguities within this Agreement:
- a. Between different Articles and Clauses of this Agreement, the provisions of specific Articles and Clauses relevant to the issue under consideration shall prevail over those in other Articles and Clauses;
  - b. Between the Articles / Clauses and the Schedules / Annexes, the Articles / Clauses shall prevail, save and except as expressly provided in the Articles / Clauses or the Schedules / Annexes;
  - c. Between any value written in numerals and that in words, the latter shall prevail.
  - d. Between two or more Articles / Clauses of this Agreement, the provisions of a specific Article / Clause relevant to the issue under consideration shall prevail over those in other Articles / Clauses;
  - e. Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
  - f. Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail.
- 1.3.2 Unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, shall be interpreted in the following order of priority:
- a. this Agreement; and
  - b. all other agreements and documents forming part hereof

## ARTICLE 2 SCOPE OF THE PROJECT

### 2.1 Objectives

- 2.1.1 The objective of the *Project* is to improve access to quality screening, diagnostic and treatment services related to cardiology, oncology and pulmonology in district hospitals through public private partnerships.
- 2.1.2 It is expected that by implementing the *Project* the *State Government* shall:
- a. improve access to *NCD services* in the Assigned District Hospital and also decongesting tertiary facilities at the state level;
  - b. reduce out-of-pocket expenditures for the patient / consumer on diagnosis, treatment and care; and
  - c. create infrastructure and develop capacity in the Assigned District Hospital to provide at least basic tertiary care and advanced secondary care related to the three *NCD* specialties (cardiology, oncology and pulmonology) in the medium and long term.

### 2.2 Area of Operation

- 2.2.1 The *Project* shall be implemented in the [●]<sup>37</sup> located in the district of [●]<sup>38</sup> in [●]<sup>39</sup>, hereinafter referred to as the '**Assigned District Hospital**'.
- 2.2.2 The *Concessionaire* shall set up and construct and procure for the *Project* facility in the *Assigned District Hospital* referred to in **Clause 2.2.1** above and offering Services as defined.

### 2.3 Scope of the Project

The scope of the *Project* (the "**Scope of the Project**") shall mean and include, during the Concession Period:

#### Civil works and Equipment

- a. Construction, development, procurement, installation and/or upgradation of the *Project Facilities* in conformity with the Specifications and Standards and other provisions of this Agreement; as detailed in Schedule 2.
- b. Procurement and installation of the Equipment in conformity with the Specifications and Standards as prescribed and other provisions of this Agreement;
- c. Setting up the *Project* in conformity with the Specifications and Standards as prescribed and other provisions of this Agreement.

#### Human Resource

- d. Plan, recruit, deploy, manage and maintain all human resources required for the *Project*.

#### Services, Operation and maintenance

- e. Operation and maintenance of the Project Facilities in conformity with the Specifications and Standards and other provisions of this Agreement;
- f. Provide Services in conformity with **Clause 2.4** the Specifications and Standards and other provisions of this Agreement.

#### User Fee

- g. User Fee may be fixed as the package rates discovered periodically through States/ Centre Health Insurance Scheme(s). States which do not have any such health insurance packages, could use Central Government Health Services (CGHS) package rates for period when such insurance rates are not available.

#### Miscellaneous

- h. Subject to necessary approvals and terms and conditions, the Concessionaire may be permitted to provide additional medical and non-medical commercial activities such as an out-patient pharmacy; concession stand, cafeteria, and other such facilities within a

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<sup>37</sup> Insert full name of the District Hospital where the Project will be located.

<sup>38</sup> Insert name of the district where the Project will be located.

<sup>39</sup> Insert name of the state where the Project will be located.

designated area identified by the Implementing Authority within the project site for the duration of the concession agreement.

- i. Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the *Concessionaire* under this Agreement.

## 2.4 Services to be offered under the *Project*

2.4.1 Under the *Project*, the *Concessionaire* shall set up, offer and manage the following services related to the identified *NCDs* through the continuum of care from screening to treatment at all times during the *Concession Period*:

- a. **Clinical and clinical support services** (advanced secondary and basic tertiary) related to oncology, cardiology and pulmonology. Clinical services shall at the minimum include:
  - i. Out-Patient services,
  - ii. In-Patient services
  - iii. Emergency management services (surgical and non-surgical) related to the three specialties mentioned above.
  - iv. Patient stabilisation and referral of co-morbidities associated with the three specialties under the *Project* to the extent possible within the *Project facility*.
  - v. Critical care, Intensive Care Unit (ICU), emergency beds,
  - vi. Pharmacy, pathology / laboratory services and radiology.
- b. **Associated non-clinical support services**, if required, including but not limited to food and beverage, housekeeping and laundry services, Central Sterile Supply Department (CSSD), infection control system, bio-medical engineering and utilities management and all such services required for functioning of the facility as per the provisions of this Agreement.
- c. Under the *Project* the **minimum level of services** for the three specialisations shall be as follows:
  - i. For Cardiology: Emergency management, up to coronary angiography and angioplasty;
  - ii. For Oncology: Emergency management and surgical (up to laparoscopy surgery, palliative surgery and management), medical (chemotherapy, hormone therapy and growth inhibitors);
  - iii. For Pulmonology: Emergency management and referrals, up to interstitial lung disease management, Chronic Obstructive Pulmonary Disease (COPD) and bronchial asthma management;
- d. The minimum set of screening, diagnostic and treatment procedures / services for the three specialties that the *Concessionaire* shall be obliged to provide under this Agreement is set forth in **Schedule 1** 'Minimum Service Package'.

## 2.5 Facilities to be Provided under the *Project*<sup>40</sup>

- 2.5.1 The *Concessionaire* shall under this *Project* set up and manage the following facilities in conformity with the Specifications and Standards and other provisions of this Agreement:
- a. General out-patient services functional and available as per timings of the Assigned District Hospital;
  - b. Specialist Out Patient services functional and available as per timings of the Assigned District Hospital;
  - c. In-patient department (IPD) with at least 35<sup>41</sup> functional patient beds ;
  - d. Intensive Care Unit (ICU) with at least 15<sup>42</sup> functional fully equipped ICU beds initially;
  - e. Fully equipped 2 (two) operational theatres capable of performing surgeries as per the Scope of Work set forth in **Schedule 1** of this Agreement;
  - f. Fully equipped 1 (one) cath lab capable of performing procedures as per the Scope of Work set forth in **Schedule 1** of this Agreement;
  - g. Full range of laboratory and diagnostic services required for investigations related to the Scope of Work set forth in **Schedule 1** of this Agreement;
  - h. Round the clock emergency services functional and available for all 365 (three hundred and sixty-five) days a year;
  - i. At least 1 (one) Advanced Life Support and 1 (one) Basic Life Support Ambulance functional and exclusively available for the *Project Facility* round the clock for all 365 (three hundred and sixty-five) days a year.
  - j. Subject to necessary approvals and terms and conditions, Pharmacy within the *Project Facility* functional, open and accessible round the clock for all 365 (three hundred and sixty-five) days a year.
  - k. Access to blood bank and other support services as required for delivering the services as specified in **Clause 2.4**.

## 2.6 Services to be shared with the Assigned District Hospital

<sup>40</sup> The specifications set forth in this Clause are for 50-bed Project Facility. If the Government decides to set up a 100-bed PPP facility, the relevant specifications in some of the sub-clauses needs to be modified as indicated in those specific sub-clauses vide footnotes.

<sup>41</sup> Change to 70 beds for the 100-bed Project facility option. In this option, the Concessionaire shall have the right to set up private wards which shall under any circumstances not be more than 10 percent of the non-ICU beds (that is 7 beds).

<sup>42</sup> Change to 30 beds for the 100-bed Project facility option.

- 2.6.1 The *Concessionaire* hereby agrees that the services to be offered under this *Project* as set forth in **Clauses 2.3, 2.4 and 2.5**, may be the support of certain services which will be shared with the *Assigned District Hospital*.
- 2.6.2 Such shared services / facility may include but not be limited to, unless the *Concessionaire* decides to set up its own services except **sub clause (g)** of this **Clause 2.6.2**:
- a. Ambulance services
  - b. Blood Bank
  - c. Physiotherapy services
  - d. Bio medical waste disposal
  - e. Mortuary services
  - f. Parking facilities
  - g. In-patient payment counter
  - h. Hospital security services
- 2.6.3 The *Concessionaire* shall determine the list of such shared services after a detailed site assessment during the Project Development Period and at the time of developing the *Project Development Plan* as per **Clause 5.1.1(b)**.
- 2.6.4 The *Concessionaire* shall develop a Standard Operating Procedure (SOP) in consultation with the *Assigned District Hospital Authorities* documenting the process of accessing the support services.
- 2.6.5 The *Assigned District Hospital Authorities* shall approve this SOP and shall be binding on all the Parties.
- 2.6.6 The Implementing Authority shall set up a *Project Coordination Committee* as set forth in **Clause 20.1** which shall meet monthly, or as deemed necessary, to update on progress and to resolve any operational challenges in smooth operations and accessing shared services for the *Project*.

## ARTICLE 3 CONCESSION

### 3.1 Grant of Concession

- 3.1.1 Subject to and in accordance with the provisions, terms and conditions of this Agreement, the *Applicable Laws*, the *Applicable Permits* and *Good Industry Practice*, the Implementing Authority hereby grants to the *Concessionaire* and the *Concessionaire* hereby accepts the exclusive right, license and authority to develop, design, engineer, monitor, procure, finance, construct, upgrade, equip, operate, maintain and manage the Project at the Site (the "**Concession**") for a period of 30 [●]<sup>43</sup> years (or early termination by a Termination Notice in accordance with this Agreement), commencing from the **Commercial Operation Date** (COD) and ending on the Transfer Date (the "**Concession Period**"), and to exercise and/or enjoy the

<sup>43</sup> Insert number of years for which the Implementing Authority intends to award the Concession. It is estimated that the likely Concessional Period may be around 30 years. States Government shall need to determine this based on the estimated capital cost, revenue forecast, operational costs, and allowing a reasonable rate of return to the Concessionaire.

rights, power, privileges and entitlements as set forth in this Agreement and implement the *Project* subject to and in accordance with the terms and conditions set forth in this Agreement.

- 3.1.2 The *Concessionaire* shall under this Agreement be obliged to offer all services and fulfill all obligations set forth hereunder.

### 3.2 Concession Period

Under this Agreement, the Implementing Authority hereby grants a concession for a period of [XX years with 50 bed (initially, which can be increased subsequently) OR XX years with 100 bed facility] [●]<sup>44</sup> from the *Commercial Operation Date* and shall hereinafter be referred to as the '**Concession Period**' and the time between the *Appointed Date* and the end of the *Concession period* shall be referred to as the "**Duration of the Agreement**" or the "**Term**" or the "**Duration**"

### 3.3 Milestones during the Concession Period

- 3.3.1 The Parties shall ensure through mutual cooperation that the following project milestones are complied with as per the provisions of this Agreement:

No.	Milestones	Allotted Time	Cumulative Timeframe
1	Date of signing the contract – 'Appointed date'	X	X
2	Fulfilment of Conditions Precedent of the Implementing Authority (Clause 5.1)	1 month	X + 1 month
3	Fulfilment of the pre-Effective Date Conditions Precedent of the Concessionaire (Clause 5.2.1)	3 month's after the Implementing Authority fulfils its Conditions Precedent	X + 4 months
4	Effective Date	<b>Effective Date</b> which shall be the date, falling on the 120 <sup>th</sup> calendar day from the Appointed Date or completion of all Conditions Precedent of both the Parties as per the provisions of <b>Clauses 5.1</b> and <b>5.2</b> , whichever falls later, which shall be the date on which the Concessionaire shall commence full implementation of the <i>Project</i> in accordance with the provisions of this Agreement.	X + 4 months

<sup>44</sup> Insert number of years for which the Implementing Authority intends to award the Concession.

5	Commercial Operation Date	<b>Commercial Operation Date</b> shall be the date falling the next calendar day after the <b>Pre COD Conditions Precedent have been fulfilled by the Concessionaire</b> as per the provisions of <b>Clause 5.1.2.</b> [●] <sup>45</sup> months	X +18 months
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## ARTICLE 4 STRUCTURE OF THE CONCESSIONAIRE

### 4.1 Special Purpose Vehicle and Equity Holding Pattern

4.1.1 The *Private Partner*, either through a wholly owned subsidiary, or as part of consortium, where it holds a minimum of 26 percent equity shares, and is registered under the Indian Companies Act 2013; shall form an SPV which shall be the Concessionaire for this Project.

4.1.2 The *Concessionaire through the* above-mentioned SPV, shall be for the sole purpose of rendering services as per the Scope of this Project and this Agreement and the SPV shall not be involved in any function, tasks, services which are not related to the Scope of this *Project* and this Agreement.

4.1.3 The equity holding pattern in the *Concessionaire* shall be as follows:

#### *If Private Partner bid as a consortium*<sup>46</sup>

- a. The *Private Partner* shall hold at least 26 (twenty six) percent shares in the SPV throughout the Term of this Agreement.
- b. The *Private Partner* hereby commits to a lock-in period of minimum 5 (five) years from the *Effective Date* before which no change in the equity holding pattern shall be permissible under any circumstances.
- c. *Provided that* the Implementing Authority may either upon mutually agreed terms, or in case of *Concessionaire* default, or upon determination by the Implementing Authority, that it may be in the best interest of the *Project* allow replacement of the *Private Partner* or any member of the Consortium, with any legal entity with same technical and financial qualifications any point in time during the Term of Concession Agreement.

<sup>45</sup> The timeframe here shall depend on the condition of the Project Site in the Assigned District Hospital at the time of handover and shall be estimated by the Concessionaire in the Project Development Plan (Clause 5.2.1b) and Schedule 4. This could be anywhere between 9 months and up to a maximum of 14 months.

<sup>46</sup> Delete if not applicable

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- d. After the expiry of the lock-in period and during the Term of the *Concession*, the SPV may in the best interest of *Project* and obligations of the *Private Partner* and the *Concessionaire* under this Agreement, including but not limited to, infusing additional capital investments in the Project, change the equity holding pattern among the existing shareholders or bring in additional equity financing through dilution of shares of existing shareholders, provided that at no point in time the shareholding of the *Private Partner* shall be diluted below 26 (twenty six) percent.

*If Private Partner bid as a single entity*<sup>47</sup>

- a. The *Private Partner* shall hold all 100 (hundred) percent paid up equity shares in the SPV for a lock-in period of minimum 5 (five) years from the *Effective Date* before which no change in the equity holding pattern shall be permissible under any circumstances.
- b. After the expiry of the lock-in period as set forth in **Clause 4.1.3(a)** and during the Term of the *Concession*, the *Private Partner* may in the best interest of the *Project* and its obligations under this Agreement, including but not limited to, infusing additional capital investments in the *Project*, dilute its equity holding by bringing in new shareholders, provided that the shareholding of the *Private Partner* shall not be diluted below 26 (twenty six) percent at any point in time.

## 4.2 Procedures for Changes in Equity Holding Pattern

- 4.2.1 The *Concessionaire* and the *Private Partner* shall jointly submit a proposal for any such change as provided for in *Clause 4.1* above with justification for the change in the equity holding pattern and the complete corporate profile and collaterals of the proposed shareholder to be inducted.
- 4.2.2 The Implementing Authority shall have the right to undertake its due diligence of such investor, ask for any additional information and / or documents to establish the credibility and competency of such investor.
- 4.2.3 The Implementing Authority shall undertake such due diligence and communicate its final decision to the *Concessionaire* within a period of not more than 30 (thirty) days from the date of receiving such proposal.
- 4.2.4 Approval related to such proposal for change in equity holding shall be at the sole discretion of the Implementing Authority and the *Concessionaire* hereby agrees and grants to the Implementing Authority all such rights related to this decision. This approval may not be unreasonably withheld by the Implementing Authority.

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<sup>47</sup> Delete if not applicable



- 4.2.5 The *Concessionaire* shall induct the new shareholder only on receiving the approval in writing from the Implementing Authority which may not be unreasonably withheld by the Implementing Authority.
- 4.2.6 If the approval for change in ownership structure of the SPV is granted by the Implementing Authority, the *Private Partner* shall fulfill all necessary tasks and obligations as required under the Indian Companies Act 2013 and submit the revised shareholder's agreement and necessary documentary evidence of the change ownership structure from Ministry of Corporate Affairs, Government of India.
- 4.2.7 The *Private Partner* shall ensure that the new shareholder shall be committed and obliged to all the provisions, terms and conditions of this Agreement through the remaining Term of the Concession.
- 4.2.8 The *Private Partner* and the *Concessionaire* shall ensure that any such change in ownership structure of the SVC shall not in any way affect the functioning of the *Concessionaire* nor in any way affect the services and obligations of the *Private Partner* and the *Concessionaire* under this Agreement.

## ARTICLE 5 CONDITIONS PRECEDENT

### 5.1 Conditions Precedent of the Implementing Authority

- 5.1.1 **IMPLEMENTING AUTHORITY CONDITIONS PRECEDENT** required to be satisfied by the Implementing Authority, within 30 (thirty) days of the *Appointed Date*, shall be deemed to have been fulfilled when the Implementing Authority shall have:
- Allotted and handed over to the *Concessionaire* the *Project Site* as per **Article 10** without any *encumbrance* and without any access barriers;
  - Provided to the *Concessionaire* access to all information, drawings and documents, to the extent available, related to existing structure of the *Assigned District Hospital* including, but not limited to, civil, electric and plumbing drawings and details;
  - Provided to the *Concessionaire* the Right of Way to the *Project Site* in accordance with the provisions of **Clause 10.1**;
  - Established the *Project Steering Committee*, *Partnership Management Cell*, *Project Coordination Committee* as per **Clause 20.1** of the Agreement; and
  - Appointed an *Independent Monitor*[s] in accordance with the terms of this Agreement.
  - Provided to the *Concessionaire* access to electricity of the required load with separate sub-meter; and
  - Provided to the *Concessionaire* access to water supply.

### 5.2 Conditions Precedent of the Private Partner

5.2.1 PRE EFFECTIVE DATE **CONDITIONS PRECEDENT** would have to be satisfied by the private partner within 90 (ninety) days of the **IMPLEMENTING AUTHORITY CONDITIONS PRECEDENT** and shall be deemed to have been fulfilled when the Concessionaire shall have:

- a. Provided evidence to the Implementing Authority that the *Performance Security* as furnished by the *Private Partner* on execution of this Agreement is in full force and effect on the *Effective Date* as set forth in **Article 6**;
- b. Prepared, finalized and submitted the Upgradation / Expansion Plan (including the design, Construction Completion Schedule and the Construction Quality Plan)- (hereinafter called the **Project Development Plan**) , and received the approval of the Implementing Authority **(Schedule 2)**<sup>48</sup>. The plan shall include but not be limited to:
  - i. Architectural drawings including civil, electrical and plumbing specifications and implementation schedule.
  - ii. Bio medical equipment plan along with load specifications including details of procurement, installation and testing, downtime of equipment and alternate plan during downtime to ensure continuity of services to patients at no addition cost.
  - iii. Plan for quality control and inspections during upgradation.
  - iv. Plan for ring-fencing the existing services at the district hospital, prepared in consultation with the district hospital authorities to ensure continuity of services being offered at the district hospital.
  - v. Project Development and implementation timelines
  - vi. Detailed financial plan for the project including capex estimation leading to the Total Project Cost.
- c. delivered a copy of all the Project Agreements (specified by the Implementing Authority) to the *Independent Monitor[s]*; and
- d. executed the Escrow Agreement and opened and established an Escrow Account in accordance with **Clause 14.6.2** of this Agreement.
- e. Set up the Project Office at the Project Site and appointed a full time Project Manager.
- f. Designated a nodal person for all communication and coordination from the Corporate Office.

5.2.2 **PRE COD CONDITIONS PRECEDENT** shall be deemed to have been fulfilled when the *Concessionaire* shall have:

- a. provided an evidence to the Implementing Authority that the *Performance Security* as furnished by the *Private Partner* on execution of this Agreement is in full force and effect on the *COD*;
- b. procured all the Applicable Permits specified in **Schedule-2** unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
- c. submitted a Service Quality Manual in accordance with **Clause 13.1.2(a)**;
- d. submitted an Annual Maintenance Plan in accordance with **Clause 13.3.4**;
- e. submitted a repair and Maintenance Manual in accordance with **Clause 13.3.1**; and

<sup>48</sup> Approved Project Development Plan shall be annexed as **Schedule 2**.

- f. submitted a human resource plan including the positions, minimum qualifications and experience, job profiles and the number of personnel in each position that the Concessionaire proposed to deploy for the operations and management of the service and the Project Facility under the Agreement as per the provisions set forth in [Clause 8.2.5](#).
  - g. The company should have achieved Financial Closure and all Financing Agreements should have been approved by the Implementing Authority and such approval shall not be unreasonably withheld.
  - h. Pre COD Conditions Precedent shall be deemed to be completed and fulfilled on the receipt of completion certificate from the *Independent Monitor(s)*.
- 5.2.3 Provided that upon request in writing by the *Concessionaire*, the Implementing Authority may, in its discretion, waive any of the Conditions Precedent set forth in this [Clause 5.2.1](#) and [Clause 5.2.2](#).

### 5.3 Fulfilling Conditions Precedent and Compliance Certificate

- 5.3.1 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation, as may be required to assist that Party, in satisfying the Conditions Precedent for which that Party is responsible
- 5.3.2 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent.
- 5.3.3 Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 5.3.4 Upon satisfaction in full of all Conditions Precedent to be satisfied by a Party, the other Party shall forthwith issue to such Party, a certificate setting out the compliances of all Conditions Precedent required to be satisfied by such Party (the “**Certificate of Compliance to Conditions Precedent**”).
- 5.3.5 Concerned Parties may mutually agree upon an extension of the duration for *Conditions Precedent*.
- 5.3.6 If the duration of the fulfillment of conditions precedent is extended by the Parties, the revised *Effective Date* for this Agreement shall begin on the day falling after the last day of the extended period for fulfillment of conditions precedent.

### 5.4 Consequences of Non-fulfillment of Conditions Precedent

- 5.4.1 The *Concessionaire* hereby agrees and undertakes that it shall ensure fulfillment of all Conditions Precedent set out in Clause 5.2.1, within 90 (ninety) days of the Implementing

Authority fulfilling its Condition Precedent as set out in [Clause 5.1](#) and shall issue a Completion Certificate to the Implementing Authority to that effect as per the provisions of [Clause 5.3.4](#).

- 5.4.2 In the event that the *Concessionaire* does not ensure fulfilment of any or all of the Conditions Precedent set forth in [Clause 5.1](#), for any reason whatsoever, within the prescribed timeframe as stated in [Clause 5.4.1](#), and the delay has not occurred as a result of breach of this Agreement by the Implementing Authority or due to *Force Majeure*, the *Concessionaire* shall be entitled to a further period not exceeding 45 (forty five) days, subject to payment of *Damages* to the Implementing Authority in a sum calculated at the rate of 0.1 (zero point one) per cent of the Performance Security for each day of delay until the fulfilment of such Conditions Precedent; provided that the *Damages* specified herein shall be payable every week in advance and the period beyond the original time frame set forth in [Clause 5.1.1](#) and subject to fulfilment of the provisions of [Clause 5.3.4](#) shall be granted only to the extent of *Damages* so paid;
- 5.4.3 Provided further that no *Damages* shall be payable by the *Concessionaire* if such delay in fulfilment of Conditions Precedent has occurred solely as a result of any default or delay by the Implementing Authority in ensuring fulfilment of Implementing Authority's Conditions Precedent set forth in [Clause 5.2](#) or due to *Force Majeure*.
- 5.4.4 Notwithstanding anything to the contrary contained in this Agreement, but subject to [Clause 5.4.3](#), in the event that Conditions Precedent are not fulfilled, for any reason whatsoever, within the period set forth in this [Clause 5.4.1](#), all rights, privileges, claims and entitlements of the *Concessionaire* and the *Private Partner* under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the *Concessionaire*, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 5.4.5 Upon Termination under [Clause 5.4.4](#), the Implementing Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as *Damages*; provided,
- 5.4.6 However, if fulfilment of Conditions Precedent set forth in [Clause 5.1](#) has not been fulfilled by the *Concessionaire* within the period specified in respect thereof, solely as a result of the Implementing Authority being in default of any of its obligations under [Clause 5.2](#), the Implementing Authority shall, upon such Termination, return the Performance Security to the *Concessionaire* without any deductions or *damages*.

## ARTICLE 6 PERFORMANCE SECURITY

### 6.1 Performance Security

- 6.1.1 The *Concessionaire* shall have, for due and punctual performance of its obligations hereunder relating to the Project during the Concession Period, provided to the Implementing Authority on the Appointed Date simultaneously with the execution of this

Agreement, an irrevocable and unconditional bank guarantee from a scheduled nationalized bank for a sum equivalent to normally 5 (five) percent of the total project cost i.e. Rs. [●] (Rupees [●])<sup>49</sup> in the form set forth in **Schedule-3** (the "**Performance Security**"),).

- 6.1.2 Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the *Bid Security* normally equivalent to 2.5% of the total project cost shall remain in force and effect, and upon such provision of the *Performance Security* pursuant hereto, the Implementing Authority shall release the *Bid Security* to the *Concessionaire*.

## 6.2 Appropriation of Performance Security

- 6.2.1 Upon occurrence of a *Concessionaire Default*, the Implementing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amount equivalent to quantified damages / penalties from the *Performance Security* as *Damages* for such *Concessionaire Default*.
- 6.2.2 Upon such encashment and appropriation from the *Performance Security*, the *Concessionaire* shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the *Performance Security*, and in case of appropriation of the entire *Performance Security* provide a fresh *Performance Security*, as the case may be, and the *Concessionaire* shall, within the time so granted, replenish or furnish fresh *Performance Security* as aforesaid failing which the Implementing Authority shall be entitled to terminate this Agreement in accordance with **Article 24**.
- 6.2.3 Upon replenishment or furnishing of a fresh *Performance Security*, as the case may be, as aforesaid, the *Concessionaire* shall be entitled to an additional *Cure Period* of 30 (thirty) days for remedying the *Concessionaire Default*, and in the event of the *Concessionaire* not curing its default within such *Cure Period*, the Implementing Authority shall be entitled to encash and appropriate the *Performance Security* as *Damages*, and to terminate this Agreement in accordance with **Article 24**.

## 6.3 Release of Performance Security

- 6.3.1 The *Performance Security* shall remain in force and effect from the *Appointed Date* for the entire *duration* of the Agreement until the Service Continuity and Divestment Requirements have been fulfilled in accordance with **Article 25** of this Agreement, and shall be released pursuant to this **Article 6** after Defect Liability Performance Security is provided by the *Concessionaire* pursuant to **Clause 24.6.3** hereto and the same comes into effect; provided

<sup>49</sup> Insert the amount of Performance Security in figures and words. Depending on the Project financials, the Implementing Authority shall calculate the performance security at 5 (five) per cent of the amount specified in the definition of Total Project Cost. The Implementing Authority may also benchmark the quantum of Performance Guarantee to the provisions of the State General Financial Rules.

the *Concessionaire* is not in breach of this Agreement.

- 6.3.2 Upon request made by the *Concessionaire* for release of the *Performance Security* along with the particulars which establish satisfaction of the requirements specified under this [Article 6](#), the Implementing Authority shall release the *Performance Security* forthwith.

## ARTICLE 7 OBLIGATIONS OF THE PRIVATE PARTNER

- a. The Obligations of the *Private Partner* under this Agreement would be concomitant with those of the *Concessionaire*.

## ARTICLE 8 OBLIGATIONS OF THE CONCESSIONAIRE

### 8.1 General Obligations

- 8.1.1 The *Concessionaire* shall hereby upgrade, operate, manage and maintain the Project Facilities for the entire duration of this Agreement, safely, diligently, reliably, economically and efficiently. Without prejudice to the generality of the foregoing, the *Concessionaire* shall:
- a. apply and obtain all necessary valid Permits and Licenses from the concerned authorities at its cost and expense and be in compliance thereof at all times during the *Duration* of this Agreement;
  - b. comply with *Applicable Laws* at all times during the *Duration* of this Agreement and in particular shall conform, abide and adhere to the laws pertaining to employees and their environment, health and safety aspects;
  - c. adhere to all legal requirements and formalities relating to employees and labor, as per as the *Applicable Laws*;
  - d. throughout the *Duration* of the Agreement, at its cost and expense, insure all *Project Facilities* and equipment and material required for the implementation of the *Project* in accordance with [Article 15](#) of this Agreement and those that may be required under *Applicable Law*.
  - e. provide uninterrupted and quality service to all patients 24 (twenty-four) hours per day, seven (7) days per week, fifty-two (52) weeks per year, for the entire *Concession Period*, without any regard to patients' social, economic and HIV status in accordance with the terms of this Agreement.
  - f. be responsible for all clinical services, non-clinical support services, operations and management of the *Project Facility* including maintenance of infrastructure and equipment, alternate sources and backup for power and electricity, and all administrative

office communication tools and facilities like phone, fax, email, internet to ensure continuity of high quality services. This may include replacement of medical and non-medical equipment as and when required to ensure that medical equipment being used are updated by the *Concessionaire* as per the latest plan developed under Clause 8.2.2(m).

- g. The *Concessionaire* may engage in providing patient amenity such as cafeteria, book shop, ATM etc., that add value for the visitors at the hospital, for which a one-time time approval shall need to be sought by the *Concessionaire* from the Implementing Authority.
- h. indemnify the Implementing Authority and the State Government against all suits, claims, actions and legal proceedings in accordance with **Article 18** of this Agreement.
- i. ensure that each of the *Project Facilities* and equipment and materials are maintained properly and diligently and shall ensure its proper working condition at all times and shall enter into suitable annual maintenance contracts, in accordance with **Article 13** of this Agreement, with appropriate qualified agencies in this regard.
- j. maintain daily records of service utilization, patient records, and other such relevant information, and provide the same to Implementing Authority;
- k. Ensure and maintain integrity, confidentiality and non-transferability of patient data;
- l. maintain a complaint register / web-based system for registering the grievances of service seekers and other stakeholders;
- m. not to assign or sub-let or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Implementing Authority;
- n. bear all capital costs, operation costs and expenses including expenses incurred towards salaries to its employees and any other related expenses;
- o. ensure wide publicity and marketing of the *Project in the catchment area*;
- p. pay all Taxes and Duties under the *Applicable Laws*;
- q. ensure that the work place for its personnel and or any authorised visitor is safe and free from hazards and in accordance with *Applicable Laws*;
- r. ensure that the *Project Facilities* are in good working condition at all times in accordance with the provisions of this Agreement including, without any limitation, at the time of handing over to the Implementing Authority;
- s. ensure due compliance and implementation of the *Project Implementation Plan (Schedule 4)* which is a part of this Agreement;

- t. fully cooperate and participate in activities that relate to disaster preparedness organised by the Implementing Authority and / or the *State Government* or any of its agencies, whenever required, at no cost to the Implementing Authority or the *State Government*; and conduct the *State Government* approved exercises and disaster drills and other interagency training in preparation for this type of response;
- u. at all times perform the obligations under this Agreement subject to the policy directions and reasonable policy and strategic control of the Implementing Authority and comply with the *terms* of this Agreement,
- v. ensure compliance to all statutory requirements related to medical and non-medical waste management, radiation control and occupational safety of the personnel deployed by the *Concessionaire* in the *Project Facility*.
- w. Ensure complete Insurance / theft protection of the *Project Facility* as per **Article 15**.
- x. Ensure to the extent possible continuity of services at all times during the *Term* of the Agreement.

## 8.2 Specific Obligations

In addition to what has been provided for in **Clause 5.1**, **Clause 5.3** and **Clause 8.1**, for managing, upgrading, operating and maintaining the *Project* and services thereunder in the *Project Site* as per as per **Schedule 1**, the *Concessionaire* shall:

### 8.2.1 Specific obligations related to Procurement

- a. The *Concessionaire* shall procure personnel, services, equipment (medical and non-medical), and supplies following its own procurement norms as per the schedule provided in the Project Implementation Plan.
- b. The Implementing Authority shall not intervene in any manner in the procurement process.
- c. The *Concessionaire* shall inform and periodically the Implementing Authority a list of equipment with specifications of all equipment, software or technology has been procured.
- d. The *Concessionaire* shall ensure that all equipment, software and technology are procured under this *Project* only for the purpose of providing Services and implementation of the *Project* and is available to the Implementing Authority without any limitation and any additional burden after the expiry of the *Term* of this Agreement.



### 8.2.2 Specific obligations related to Maintenance, Repair and Replacement

- a. The *Concessionaire* shall provide to the Implementing Authority a list of all such equipment and material acquired for the Project Facilities and their corresponding warranties within thirty (30) days of such procurement.
- b. The *Concessionaire* shall not remove from the *Project Facilities* any asset without the prior written consent of the Implementing Authority or its representative.
- c. The *Concessionaire* shall at its own cost and expense arrange for any other material, equipment and personnel for the operation, maintenance and management of the *Project Facilities* and the implementation of the *Project*.
- d. The *Concessionaire* shall also bear the cost of transport, loading and unloading, stacking and proper storage for all equipment and materials.
- e. The *Concessionaire* shall maintain and complete accurate records of all equipment, materials, consumables and spare parts procured and shall provide access to copies of such records to the Implementing Authority upon request.
- f. The *Concessionaire* at its own cost and expense has to repair and replace or make good any damage to the equipment or material during the Term of this Agreement.
- g. All equipment and materials procured by the *Concessionaire* shall conform to the technical requirements and test certificates and licenses as per the standard business and industry practices and statutory requirements and all such documents and certificates shall be provided upon request by the *Concessionaire* to the Implementing Authority. The Implementing Authority shall also have the right to inspect and check the equipment and materials and their storage and also to such equipment and materials tested. All costs and expenses associated with any such test shall be borne by the *Concessionaire*.
- h. The *Concessionaire* shall with due diligence carry out all necessary and periodical Tests and calibration for quality in accordance with and as per the instructions of the equipment supplier and such Tests shall be carried out under the supervision of qualified staff. The *Concessionaire* shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- i. In the event the *Concessionaire* has failed to operate and maintain the *Project Facility* including equipment in accordance with the *Project* objectives, and such failure has not been remedied despite a notice to that effect issued by the Implementing Authority ("Notice to Remedy"), the Implementing Authority may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and

maintenance of the *Project Facility* at the risk and cost of the *Concessionaire*. The *Concessionaire* shall reimburse one and half times the costs incurred by the Implementing Authority on account of such repair and maintenance within 15 (fifteen) days of receipt of Implementing Authority's claim thereof; or the Implementing Authority may set off such claims against payments due to the *Concessionaire* through Escrow.

- j. The *Concessionaire* shall be deemed to be in material breach of operations and maintenance requirements, if the Implementing Authority, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the *Concessionaire*, the maintenance of the *Project Facility* or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the *O&M Requirements*; and that there has been a serious or persistent breach in adhering to the *O&M Requirements* and thereby the *Project Facility* or any part thereof is not safe for operations;
- k. For avoidance of doubt, *persistent breach* shall mean:
  - i. any breach of operations and maintenance requirements by the *Concessionaire*, which has not been remedied by the *Concessionaire* despite a Notice to Remedy in respect thereof issued by the Implementing Authority;
  - ii. recurrence of a breach by the *Concessionaire*, during the pendency of Notice to Remedy by the Implementing Authority requiring the *Concessionaire* to remedy a breach, and
  - iii. repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.
- l. Upon occurrence of *Material Breach* of operations and maintenance requirements, Implementing Authority shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, may initiate corrective actions under the provisions of this Agreement, including Termination.
- m. Within one quarter of the completion of every five years from the COD, the *Concessionaire* hereby agrees to share the update the bio medical updated plan with replacement(s) and changes in specifications as and if required, and submit such updated plan to the Implementing Authority as set forth in [Clause 5.2.1.b\(ii\)](#), to ensure availability of quality services at all times during the *Concession Period*.

### 8.2.3 Specific obligations related to Annual Maintenance Contract

- a. The *Concessionaire* shall procure and maintain an *Annual Maintenance Contract* ("**AMC**") at its own cost and expense for the entire *Duration* in respect of all the *Project Facilities* (including all software, hardware, equipment) used for providing the *Services* and implementation of the *Project*.

- b. The *Concessionaire* shall maintain a complete record of all the *AMCs* and furnish these records and any related information to the Implementing Authority when such records and information is required by the Implementing Authority.

#### **8.2.4 Specific obligations related to personnel recruitment and training**

- a. The *Concessionaire*, at its cost and expenses, shall recruit and train all personnel required for the operation, management and maintenance of the *Project Facilities* and providing Services under this Agreement.
- b. The minimum expertise required and the indicative numbers of personnel that the *Concessionaire* shall deploy are set forth in [Schedule 5](#). The human resource plan submitted by the *Concessionaire* to the Implementing Authority vide [Clause 5.1.2\(f\)](#) shall be deemed as [Schedule 6](#) of this Agreement and shall be deemed to be an integral part of this Agreement.
- c. The recruitment of the personnel including but not limited to Consultants and Specialists required for the operation, maintenance and management of Services under this Agreement shall be as per the human resource plan submitted by the *Concessionaire* ([Schedule 6](#)) and be in compliance with all statutory provisions enacted under the Labour and other *Applicable Laws*.
- d. Provided, however, no personnel, staff or employee under the *Concessionaire*, whether temporary or permanently employed for the purposes of implementation of this *Project* shall, under any circumstances, be deemed to be in employment with the *State Government* and the *Concessionaire* shall ensure that its operations are conducted in a manner so as to prevent any employer-employee relationship being imputed between the *State Government* and the employees, personnel and staff of the *Concessionaire*.
- e. The credentials of all such medical staff and paramedical staff have to be notified to the Implementing Authority within thirty (30) days of such employment.
- f. The *Concessionaire* shall retain on file at all times, copies of all current and valid licenses, certifications and all personnel records including but not limited to attendance, pay slips, deductions and statutory compliances of all personnel performing services under this Agreement and shall make them available to the Implementing Authority as and when asked for.

#### **8.2.5 Specific obligations related to establishing referral linkages**

- a. The *Concessionaire* shall maintain referral linkages with government health facilities at the sub-district levels within the catchment area for in-referral of patients and with tertiary facilities within and outside the state for referral of cases for services not offered under the *Project*.

- b. The *Concessionaire* shall devise mechanisms to receive patients from different government or facilities or government schemes for seeking services under the *Project*.

#### **8.2.6 Specific obligations related to medical records and data**

The *Concessionaire* shall:

- a. maintain all medical records and service utilization data as per the standard industry norms and statutory requirements.
- b. maintain all such data on a centralized server based computerized system using a professional software.
- c. The entire data base created by the books and records relating to the *Project* and provision of Services in the *Project Facility* shall be the property of the Implementing Authority;
- d. All *Project Facilities* books and records shall be the property of the Implementing Authority and shall not be removed from the *Project Facilities* (except as necessary because of an emergency) without the prior written consent of the Implementing Authority.
- e. The *Concessionaire* shall be deemed to have a limited license to use the data base so created for the limited and specific purpose of providing the Services under this *Project*, which license shall terminate and cease to be effective on the termination of this Agreement.
- f. The *Concessionaire* shall retain all documents pertaining to this Agreement for entire duration of this Agreement; for any further period required by Law; and until all audits are completed and exceptions resolved for the *Duration* of the Agreement.
- g. Upon request and except as otherwise restricted by Law, the *Concessionaire* shall make these records available to authorised representatives of the Implementing Authority.

#### **8.2.7 Specific obligations related to Quality Assurance**

- a. The *Concessionaire* shall prepare a *Service Quality Manual* as per the provisions of **Clause 5.2.1(c)** which shall include but not be limited to the parameters provided in **Schedule 10**
- b. The *Concessionaire* hereby agrees to set up an Internal Quality Control Committee responsible for full compliance with the approved *Service Quality Manual* and its

implementation at all times during the Term of this Agreement; and liaise with and follow all instructions issued by the Quality Assurance Cell set up the Project Steering Committee on behalf of the Implementing Authority as per the provisions of [Clause 20.1.4](#).

- c. The *Concessionaire* shall develop a 'Patient Charter' in local language and in English and ensure that it is prominently displayed in the OPD area, in-patient wards and the Emergency Department.
- d. The *Concessionaire* shall be obliged to ensure that, if the total space allotted by the Implementing Authority for setting up the Project Facility as per [Article 10](#) fulfils the minimum space requirement as laid down under the latest National Accreditation Board of Hospitals (NABH) guidelines, within two years of the *COD*, the Project facility is NABH accredited having 'Full Accreditation' Status along with other relevant accreditations such as the National Accreditation Board of Laboratories (NABL) and will take all appropriate measures to ensure recertification at required intervals to ensure continuity in the accreditation status of the *Project Facility*. The scope of such accreditation will include clinical services, laboratory services, diagnostic services, transfusion services, pharmacy, professions allied to medicine (dietetics and physiotherapy, if set up) and support services (ambulances).

## 8.2.8 Specific obligations related to Management Information and General Reporting

### ***Obligations related to hospital management information system:***

- a. The *Concessionaire* shall:
  - i. Set a web-based Hospital Management Information System (HMIS) integrated within the architecture of the Project website with appropriate levels of data security and access rights. Notwithstanding any provisions hereof, the *Concessionaire* here agrees to grant the Implementing Authority full access rights to the *Project* website and the HMIS.
  - ii. The HMIS shall provide all patient data including socio-demographic profile, disease history and any other medical and non-medical information that the Implementing Authority may desire to know for the purpose of HMIS.

### ***Obligations related to other reporting requirements:***

- b. The *Concessionaire* shall:
  - i. provide a copy of its annual audited accounts to the Implementing Authority within one hundred and eighty (180) days of the end of the relevant financial year.
  - ii. provide to the Implementing Authority a self-certified audit report of existing infrastructure and equipment on an annual basis.
  - iii. report to the Implementing Authority information regarding any litigation or material claims, disputes or actions, threatened or filed, concerning the *Project*

- Facility* or the obligations to be performed by the *Concessionaire* under this Agreement;
- iv. report to the Implementing Authority all penalties or notices of violation issued by any *Competent Authority*; and
  - v. report to the Implementing Authority any material information concerning new or significant aspects of the operations, maintenance and management of the *Project Facilities*, any material complaint about the *Project Facilities* from any person or any other information received by the *Concessionaire* which is material to the operation, maintenance and maintenance of the *Project Facilities*.
- c. The *Concessionaire* shall comply with the orders of the Implementing Authority from time to time regarding any change to be made to the format of any report or information required thereunder.
- d. Notwithstanding the reporting requirements of this Article, the *Concessionaire* shall provide an accurate, complete and up-to-date record, report or document in relation to any aspect of operation, maintenance and management of the *Project Facilities* to the Implementing Authority as and when a request is made as soon as reasonably practicable and in any event within any time limit prescribed by the Implementing Authority for the production of such record, report or other document.
- e. If under any *Applicable Law* or a clearance or approval it is required to produce any report or any other document, the *Concessionaire* shall retain on file at all times, copies of all current and valid licenses, certifications and / or accreditations of all personnel performing services under this Agreement and shall make them available to the Implementing Authority as and when asked for.
- f. The *Concessionaire* shall prepare such report as diligently as possible thereafter. Wherever feasible, such reports shall be submitted to the Implementing Authority for review 15 (fifteen) days before the same is to be provided to the relevant *Competent Authority*. The *Concessionaire* shall take into account any comments or revisions proposed by the Implementing Authority thereon.

#### **8.2.9 Specific obligations related to Confidentiality**

- a. *Confidential Information* defined: During the *Term* of this Agreement the Implementing Authority may disclose to the *Concessionaire* certain confidential, proprietary information and/or trade secrets OR the *Concessionaire* may have or be given access to certain confidential, proprietary information and/or trade secrets of the State Government (collectively called "*Government Confidential Information*"). Unless otherwise excluded in this Agreement, *Government Confidential Information* shall mean any all such information provided to the *Concessionaire*, or to which the *Concessionaire* has or is given access, in whatever form, verbal or otherwise, including but not limited to, patient database, business plans, marketing plans, financial records

and analysis, medical records and other information of patients, management information systems, research, technical specifications, marketing data, designs, Agreements, trade secrets, software or other intellectual property, whether or not identified as “*Government Confidential Information*”, in whatever media, electronic or otherwise, and any other materials identified in writing as “*Government Confidential Information*”.

- b. *Non-Disclosure*: The *Concessionaire* will not, without the prior written consent of the Implementing Authority, remove or disclose any *Government Confidential Information* to any third party, other than those of *Concessionaire’s* employees, directors and officers with a need to know for performance hereunder; and the *Concessionaire* shall not use such *Government Confidential Information* other than for the purposes of this Agreement.
- c. *Concessionaire* agrees that all *Government Confidential Information* will be held in strictest confidence by the *Concessionaire* and that such *Government Confidential Information* will not be copied, reproduced or altered either in whole or in any part by any method whatsoever, unless agreed upon in writing by the Implementing Authority.
- d. The *Concessionaire* shall cause its employees, officers, directors, sub-contractors to whom the *Government Confidential Information* is disclosed to be informed of and agree to be bound by the restrictions upon disclosure and use of *Government Confidential Information* as contained in this Agreement.
- e. *Exceptions*: The terms “*Government Confidential Information*” shall not apply to information that:
  - i. has been legally in the recipient Party’s possession prior to disclosure by the disclosing party and is not subject to any disclosure obligations
  - ii. has become a part of public domain through no fault of the recipient party,
  - iii. has been developed subsequent to, and independent of, disclosure to the recipient party; or
  - iv. has been released in writing by the disclosing party so that the recipient party may make public disclosure, or is otherwise deemed by the disclosing party, in writing, to be no longer confidential.
- f. *Required disclosure*: Notwithstanding anything to the contrary in this Clause, if the recipient party learns that it is or may be required by any applicable court order, law or regulation to disclose any confidential information, then recipient party shall: (i) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify disclosing party of the disclosure requirement so that disclosing party or the appropriate party may seek a protective order(s) or other appropriate relief; (ii) provide such co-operation and assistance as disclosing party may reasonably request in any effort by disclosing party or the appropriate party

to obtain such relief, and (iii) take reasonable steps to limit the amount of Confidential Information so disclosed and to protect its confidentiality.

- g. *Injunctive relief*: *Concessionaire* acknowledges that breach of any provisions of this **Clause 8.2.9** or disclosure of other information which, at law or in good conscience, ought to remain confidential, will give rise to irreparable injury to the Implementing Authority. Accordingly, the Implementing Authority or such other party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies, which may be available. *Concessionaire* hereby acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate social interests of the *State Government* and are reasonable in scope and content.
- h. *No License*: Nothing contained in this Agreement shall be construed to grant to the *Concessionaire* any right or license under any Intellectual Property Right of Government. "Intellectual Property Rights" shall mean copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress) trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, trade secrets, moral rights, author's rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and/or hereafter come into existence, and all renewals and extensions thereof.
- i. *Return of confidential information*: Upon the earlier of (i) a request of the disclosing party; or (ii) the expiration or termination of this Agreement, the recipient party will return all confidential information, in whatever form or media, retaining no copies of the same in any form whatsoever. Recipient Party's obligations hereunder regarding *Confidential Information* shall survive the return of such *Confidential Information* or termination of this Agreement or completion of the services.
- j. *Termination of Agreement*: In the event the *Private Partner*, *Concessionaire*, its officers, directors, employees or a sub-contractor commits breach of this **Clause 8.2.9**, zero-tolerance will be shown towards *Private Partner* and / or the *Concessionaire*. The breach of this Clause would render the Agreement void as per the provisions set forth in **Clause 24**, the Performance Guarantee would stand forfeited and the *Concessionaire* will not be entitled for any compensation thereof.

#### 8.2.10 Specific Obligations Related to Assistance in Monitoring



- a. The *Concessionaire* shall provide all forms of assistance and support to the Implementing Authority so that effective monitoring and review by the Implementing Authority or by any of its appointed agency / individual can take place. This includes but is not limited to providing access to the *Project Facilities* at any time when a request for inspection or a visit by the *Implementing Authority* or its authorised representative is made.
- b. The *Concessionaire* shall provide all information recorded and maintained in relation to the operation, maintenance and management of the *Project Facilities* to the Implementing Authority or its authorised representatives at any time when the request for furnishing such information is made by the Implementing Authority or its authorised representative.

#### **8.2.11 Specific Obligations Related to Compliance with Labor Laws**

- a. The *Concessionaire* shall obtain all relevant labour registrations and comply with all relevant Indian labour laws and applicable local labour laws applying to its employees, and shall duly pay and accord to them all their legal rights.
- b. Copies of the documents affirming such compliance shall be given to the Implementing Authority or its authorised representative upon request.
- c. The *Concessionaire* shall make all deductions of Tax at source as may be required by applicable laws.
- d. The *Concessionaire* shall require all employees to obey all *Applicable Laws* concerning safety at work.

#### **8.2.12 Specific Obligations Related to Medico Legal Cases**

- a. In the event of Medico-Legal Cases including emergencies referred to or reporting to the Project Facility, the *Concessionaire* shall only be responsible for care of the patient.
- b. All medico legal aspects of the case shall be directly dealt with the by the Implementing Authority except where the law requires certificates from the treating clinician / hospital where the patient sought care.
- c. Any judicial obligation to participate in legal proceedings as a witness or expert relating to Medico-Legal Cases or providing certificates from the treating clinician / hospital, shall be the responsibility of *Concessionaire*, except where exempted by a Court of law.

#### **8.2.13 Sole Purpose of the Concessionaire**

The *Concessionaire* having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the *Concessionaire* or any of its subsidiaries shall not, except with the previous written consent of the Implementing Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## ARTICLE 9 OBLIGATIONS OF THE IMPLEMENTING AUTHORITY

### 9.1 General Obligations

- 9.1.1 The Implementing Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 9.1.2 The Implementing Authority agrees to provide support to the *Concessionaire* and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the *Applicable Laws*.
- 9.1.3 The Implementing Authority not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- 9.1.4 The Implementing Authority shall be responsible for delineating Scope of Services under the Project Facility from all existing PPP projects / schemes operational in the Assigned District Hospital or in its vicinity.

### 9.2 Specific Obligations

In addition to what has been provided for in [Clause 5.2](#), [Clause 5.3](#) and [Clause 9.1](#), the Implementing Authority shall have following specific obligations:

#### 9.2.1 Specific Obligations related to Project Site Allocation and Handover:

The Implementing Authority shall:

- a. allocate and handover built-up space and / or vacant land to the Concessionaire in as-is condition as per the specifications set forth in [Clause 10.1](#) and within the agreed time frame.
- b. Allocate designated constructed area for establishment of allied commercial services such as cafeteria, book shop, ATM etc., that add value for the visitors at the hospital, or approve the same as part of the construction plans if the vacant land is being allotted to the Concessionaire
- c. ensure that the allotted space is without any access barriers and free of all encumbrances.

**9.2.2 Specific Obligations related to Project Site Upgradation / Expansion Plan and Approvals:**

The Implementing Authority shall:

- a. review and approve upgradation plan submitted by the *Concessionaire* as a part of *Concessionaire's* Conditions Precedent set forth in **Clause 5.1.1(b)** within the time frame specified in **Schedule 4**.
- b. use its best efforts to assist the *Concessionaire* in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favorable to the *Concessionaire* than those generally available to commercial customers receiving substantially equivalent services;
- c. upon written request from the *Concessionaire*, and subject to the *Concessionaire* complying with *Applicable Laws*, provide all reasonable support and assistance to the *Concessionaire* in procuring *Applicable Permits* required from any *Government Instrumentality* for implementation and operation of the *Project*.

**9.2.3 Specific Obligations related to managing the Assigned District Hospital services shared with the Project Facility and the Concessionaire:**

The Implementing Authority shall:

- a. provide the *Concessionaire* unhindered access to the *Assigned District Hospital* amenities as referred to in **Clause 2.6**
- b. Set up a *Project Coordination Committee* in the *Assigned District Hospital* as set forth in **Clause 20.1.2(c)** to ensure smooth and unhindered access.
- c. provide appropriate instructions to the *Assigned District Hospital* authorities to provide all possible support and coordination to the *Concessionaire* in fulfilling its obligations under this Agreement.

**9.2.4 Specific Obligations related to Setting up Referral Linkages:**

The Implementing Authority shall:

- a. develop a detailed referral plan which shall include but not be limited to:
  - i. referral of cases from all community health centers and primary health centers within the district in which the *Project Facility* is located and to the government health facilities within the neighboring districts of the *Project Facility*;
  - ii. referral of complicated cases or cases handled by the outpatient and / or in-patient departments of the *Project Facility*, which need medical intervention that are not available within the scope of services under this Agreement, to higher tertiary level government facilities / government medical colleges / others government owned centers of excellence or to private hospital empanelled by the

*State Government* under one of the government health insurance schemes operational in the state of [●]<sup>50</sup> in that order of preference; and

- iii. Linkages with patient transportation / emergency transportation / ambulance services operational within the state either directly managed by the *State Government* or under public private partnerships.
- b. share a copy of the referral plan with the *Concessionaire*; and
- c. issue appropriate instructions to in-charges of all concerned facility / project / scheme identified in the plan with copies of all such communication to the *Concessionaire* for follow up and further action.

#### **9.2.5 Specific Obligations related to Revenue Collection and Payment Administration:**

The Implementing Authority shall:

- a. provide *Viability Gap Funding* in form of capital grant as set forth in [Clause 14.2.2](#).
- b. set up and manage a counter for collection of all payments for services from the self-paying patients.
- c. ensure depositing of all such revenues collected into the designated Escrow account as set forth in [Article 14](#).
- d. undertake verification of all reimbursement claims made by the *Concessionaire*.
- e. ensure that payments are reimbursed by the Implementing Authority to the *Concessionaire* in a timely manner, in accordance with the reimbursement mechanism set forth in [Clause 14.6](#);

#### **9.2.6 Specific Obligations related to Setting up of Governance and Management structures and coordination:**

The Implementing Authority shall:

- a. Ensure smooth coordination between the district hospital authorities, the *Concessionaire* and other entities such as the District NCD Cell, State NCD Cell, and the Partnership Management Cell.
- b. Set up the governance and management structures for smooth functioning of the *Project* and timely redressal of grievances as set forth in [Clause 20.1](#).

#### **9.2.7 Specific Obligations related to Monitoring and Audits:**

The Implementing Authority shall be responsible for

- a. overall *Project* monitoring, audits and quality control as set forth in [Article 20](#).
- b. Designating Independent Monitors with appropriate skills mix and experience required for monitoring the *Project Facility* and services including but not limited to hospital engineering (civil, electrical, plumbing), bio medical engineering, hospital administration and management).
- c. Setting up grievance redressal mechanisms as set forth in [Article 28](#) to redress grievances related to monitoring and audit findings.

<sup>50</sup> Insert name of the state where the Project is being implemented

### 9.2.8 Specific Obligations related to Medico-Legal Cases:

The Implementing Authority shall be directly responsible for handling and responding to all medico-legal obligations and formalities subject to the provisions of clause 8.2.12.

### 9.2.9 Other Specific Obligations:

The Implementing Authority shall:

- a. develop eligibility criteria for determining the patients who would be referred by the *State Government* for cashless services under the *Project* and system for and pre-authorisation of patients.
- b. undertake period verification of medical records.
- c. Undertake all other tasks as required within the provisions of this Agreement.

## ARTICLE 10 PROJECT SITE

### 10.1 The Site

The site of the *Project* shall comprise of the real estate described in **Schedule 7** granted by the Implementing Authority to the *Concessionaire* as a licensee under and in accordance with this Agreement (the "**Site**" or the "**Project Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the *Site* shall be construed as references to the real estate required for the *Project* as set forth in **Schedule 7**.

### 10.2 Rights, Title and Use of *Project Site*

10.2.1 The Implementing Authority hereby grants to the *Concessionaire* access to the *Site* including the Existing Facilities of the *Assigned District Hospital* as described for carrying out any site inspections, surveys and investigations that the *Concessionaire* may deem necessary during the *Project Development Period*, it being expressly agreed and understood that the Implementing Authority shall have no liability whatsoever in respect of site inspections, survey and investigations carried out or work undertaken by the *Concessionaire* on or about the *Site* pursuant hereto in the event of Termination or otherwise.

10.2.2 This Agreement and the covenants and warranties on the part of the *Concessionaire* herein contained, the Implementing Authority, in accordance with the terms and conditions set forth herein, hereby grants to the *Concessionaire*, commencing from the COD, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets thereon) comprising the *Site* and the Existing Facilities of the *Assigned District Hospital* which is described, delineated and shown in **Schedule 7** respectively hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any *Encumbrances*, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, for the duration of

the *Concession Period* and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

- 10.2.3 The Site shall be made available by the Implementing Authority to the *Concessionaire* pursuant hereto free from all *Encumbrances* and occupations and without the *Concessionaire* being required to make any payment to the Implementing Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such *Site* including the Existing Facilities of the *Assigned District Hospital* for the duration of the *Concession Period*, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be *Encumbrances*.
- 10.2.4 The Implementing Authority shall allow access to and use of the *Site* for laying/ installing/ maintaining telephone lines, electric lines, water piping, sewage, bio-medical waste management or for such other public purposes as *Concessionaire* may specify.
- 10.2.5 The *Concessionaire* may enter into sub-contracting, licensing, franchising or similar contractual arrangements with any person of its choice to set up, operate and manage the amenities and ancillary services provided that all such arrangement shall be in the nature of a license and shall not create any tenancy rights in favor of the Licensee.
- 10.2.6 The *Concessionaire* shall not carry out any commercial activity or use the *Project Facilities* for any purpose other than for fulfilling the objectives of this *Project* and to implement the *Project* pursuant to this Agreement. Any deviation from the permitted usage as provided for under this Agreement would be an event of default on part of the *Concessionaire*.
- 10.2.7 The *Concessionaire* cannot construct any structure, permanent or temporary, at the *Project Facilities* at any time during the *Duration* of this Agreement, other than as agreed mutually agreed upon in the Site Up-gradation Plan (Schedule 2) and in the form of a proposal submitted by the *Concessionaire* thereafter as required from time to time and be subsequently approved by the Implementing Authority. All such subsequently approved proposals shall form a part of Schedule 2 of this Agreement and shall be numbered Schedule 2A, Schedule 2B, and so on.
- 10.2.8 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Implementing Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever.
- 10.2.9 The *Concessionaire* hereby irrevocably appoints the Implementing Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the *Concessionaire* a transfer or surrender of the license granted hereunder at any time after the *Concession Period* has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Implementing Authority, and the *Concessionaire* consents to it being registered for this purpose.

10.2.10 The space provided including the *Project Facility* developed thereon belongs to *State Government* and shall continue to be the property of the *State Government*.

### 10.3 Handover of the *Site* to the *Concessionaire*

10.3.1 Pursuant to the provisions of **Clause 5.2.1(a)**, the *Implementing Authority Representative* and the *Concessionaire* shall, on a mutually agreed date and time, inspect the *Site* including the Existing Facilities of the *Assigned District Hospital* and prepare a memorandum containing an inventory of the *Site* including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the *Site*.

10.3.2 Such memorandum shall have appended thereto as **Schedule 8** specifying in reasonable detail those parts of the *Site* to which vacant access and Right of Way has not been granted to the *Concessionaire*. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid license and Right of Way to the *Concessionaire* for free and unrestricted use and development of the unencumbered *Site* including the Existing Facilities of the *Assigned District Hospital* during the Concession Period under and in accordance with the provisions of this Agreement, and for no other purpose whatsoever.

10.3.3 For the avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the *Site* and the Existing Facilities of the *Assigned District Hospital* as set forth in **Schedule 8** shall be deemed to have been granted to the *Concessionaire* upon vacant access thereto being provided by the Implementing Authority to the *Concessionaire*.

10.3.4 On and after signing the memorandum and until the Transfer Date, the *Concessionaire* shall maintain a round-the-clock vigil over the *Site* and the Existing Facilities of the Project Facility and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the *Concessionaire* shall report such encroachment or occupation forthwith to the Implementing Authority and undertake its removal at its cost and expenses.

10.3.5 The *Concessionaire* shall ensure at its cost and consequence that during such period the *Site* is protected from any hazardous or contaminated material, and that no damage is caused by its activities thereat.

### 10.4 Peaceful Possession

10.4.1 The Implementing Authority hereby warrants that the *Site* together with the necessary right of way

- a. has been acquired through the due process of law
- b. belongs to and is vested in the *State Government* and that the Implementing Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with

the provisions of this Agreement and that the Concessionaire shall, in respect of the *Project Site*, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.

10.4.2 The *Concessionaire* shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the *Project Site* or part thereof until expiry of the *Concession Period*/ completion of Handback Requirements. In the event, the *Concessionaire* is obstructed by any Person claiming any right, title or interest in or over the *Project Site* or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the *Project Site* or any part thereof, the Implementing Authority shall, if called upon by the *Concessionaire*, defend such claims and proceedings and also keep the *Concessionaire* indemnified against any consequential loss or damages which the *Concessionaire* may suffer, on account of any such right, title, interest or charge.

## 10.5 Ownership

10.5.1 At all times all infrastructure, site, equipment and such other materials as present and available at the signing of this Agreement is the property of the *State Government* and all rights thereof shall remain vested with the *State Government*.

10.5.2 The *Private Partner* and the *Concessionaire* have no right, title or interest or any form of ownership rights over any of the existing *Project Facilities*. It is hereby clarified that the *Private Partner* or the *Concessionaire* shall not get any right, title or interest in any equipment and material provided by the *State Government* under this Agreement and the *Private Partner* and the *Concessionaire* has no right to create any right, interest or title or any encumbrance in relation to the *Site, Project Facilities* in favor of any Third Person.

10.5.3 The ownership of all equipment and material that are procured by the *Concessionaire* for the purposes of the implementation of the *Project* shall vest with the *Concessionaire*.

10.5.4 In the event that the *Concessionaire* develops any software for the purposes of the *Project*, then it shall ensure that the *State Government* is given an irrevocable perpetual user license, in accordance with the provisions of this Agreement, for the purposes of using the said software for the *Project*.

10.5.5 On termination or expiry of this Agreement, The *Concessionaire* shall divest and transfer ownership of all such *Project Facilities* to the Implementing Authority as set forth in [Article 25](#).

## ARTICLE 11 PROJECT SITE UPGRADATION AND NEW CONSTRUCTION



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## 11.1 Project Site Design and Planning

- 11.1.1 Prior to the commencement of *Project Development*, the *Concessionaire* shall submit to the Implementing Authority and the *Independent Monitor[s]* its detailed design, construction methodology, quality assurance procedures, and the procurement, monitoring and construction time schedule for construction and completion of the construction of new Facilities/up gradation of existing facilities and the operation and maintenance of the *Project Facilities*, in accordance with the *Project Development Completion Schedule*.
- 11.1.2 In respect of the *Concessionaire's* obligations with respect to the Drawings of the Construction Works/Project, the following shall apply:
- a. The *Concessionaire* shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the *Project Development Completion Schedule*, 3 (three) copies each of all Drawings to the *Independent Monitor[s]* for review;
  - b. By submitting the Drawings for review to the *Independent Monitor[s]*, the *Concessionaire* shall be deemed to have represented that it has determined and verified that the design and monitoring, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
  - c. Within 15 (fifteen) days of the receipt of the Drawings, the *Independent Monitor[s]* shall review the same and convey observations to the *Concessionaire* with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The *Concessionaire* shall not be obliged to await the observations of the *Independent Monitor[s]* on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue *Construction Works* at its own discretion and risk;
  - d. If the aforesaid observations of the *Independent Monitor[s]* indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the *Concessionaire* and resubmitted to the *Independent Monitor[s]* for review. The *Independent Monitor[s]* shall give its observations, if any, within 15 (fifteen) days of receipt of the revised Drawings;
  - e. No review and/or observation of the *Independent Monitor[s]* and/or its failure to review and/or convey its observations on any Drawings shall relieve the *Concessionaire* of its obligations and liabilities under this Agreement in any manner nor shall the *Independent Monitor[s]* or the Implementing Authority be liable for the same in any manner;
  - f. Without prejudice to the foregoing provisions of this **Clause 11.1.2**, the *Concessionaire* shall submit to the Implementing Authority for review and comments, its Drawings relating to the *Construction Works/Project Facilities*, and the Implementing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 15 (fifteen) days of the receipt of such Drawings.
  - g. The provisions of this **Clause 11.1.2** shall apply mutatis mutandis to the review and comments hereunder; and

## 11.2 Implementing Project Development Plan and Updating Progress

- 11.2.1 The *Concessionaire* shall be responsible for the complete upgradation and construction of the Project Site as per the approved *Project Development Plan* within the approved timelines.
- 11.2.2 During the *Project Development Period*, the *Concessionaire* shall ensure:
- a. that services in the existing *Assigned District Hospital* are ring-fenced in a manner that there is no disruption in existing services and that patients are not inconvenienced.
  - b. for any part of phase of upgradation or construction work if any disruption in *Assigned District Hospital* services or inconvenience to patients are anticipated, it shall, in discussion and in agreement with the *Assigned District Hospital* Authorities, arrive at a plan to minimize such disruption and inconvenience.
  - c. that all such plans shall be mutually agreed upon in writing between the *Concessionaire* and the *Assigned District Hospital* Authorities and copies of such agreement shared with the Implementing Authority.
  - d. Internal monitoring, quality check and supervision to ensure quality of materials, supplies and workmanship.
  - e. Submission of monthly progress reports to the Implementing Authority with copies to the *Project Coordination Committee*.

### 11.3 Completion and Verification

- 11.3.1 **Notifying Completion and Tests:** At least 30 (thirty) days prior to the likely completion of the *Construction Works*, the *Concessionaire* shall notify the *Independent Monitor[s]* of its intent to subject the *Construction Works* to Tests. The date and time of each of the Tests shall be determined by the *Independent Monitor[s]* in consultation with the *Concessionaire*, and notified to the Implementing Authority who may designate its representative to witness the Tests. The *Concessionaire* shall provide such assistance as the *Independent Monitor[s]* may reasonably require for conducting the Tests.
- 11.3.2 All Tests shall be conducted in accordance with *Good Industry Practice*. The *Independent Monitor[s]* shall observe, monitor and review the results of the Tests to determine compliance of the *Project Facilities* with Specifications and Standards and if it is reasonably anticipated or determined by the *Independent Monitor[s]* during the course of any Test that the performance of the *Project Facilities* or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the *Concessionaire* to remedy and rectify the defects or deficiencies. Upon completion of each Test, the *Independent Monitor[s]* shall provide to the *Concessionaire* and the Implementing Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the *Independent Monitor[s]* may require the *Concessionaire* to carry out or cause to be carried out additional Tests, in accordance with *Good Industry Practice*, for determining the compliance of the *Project Facilities* with Specifications and Standards.
- 11.3.3 Within 90 (ninety) days of the *Project Development Completion Date*, the *Concessionaire* shall furnish to the Implementing Authority and the *Independent Monitor[s]* a complete set of as-

built Drawings, in 3 (three) hard copies and in micro film form or in such other medium as may be acceptable to the Implementing Authority, reflecting the *Project Facilities* as actually designed and constructed, including an as-built survey illustrating the layout of the *Project Facilities* and setback lines, if any, of the buildings and structures forming part of the *Project Facilities*.

- 11.3.4 **Completion Certificate:** Upon completion of *Construction Works* and *Construction Works*, the *Independent Monitor[s]* determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Implementing Authority a certificate substantially in the form set forth in [Schedule-8A](#) (the "**Completion Certificate**").
- 11.3.5 **Provisional Certificate:** The *Independent Monitor[s]* may, at the request of the *Concessionaire*, issue a provisional certificate of completion substantially in the form set forth in [Schedule-8B](#) (the "**Provisional Certificate**") if the Tests are successful and the New Facility/ Existing Facility in relation to which *Construction Works* is being carried out, can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the *Independent Monitor[s]* and the *Concessionaire* (the "**Punch List**"); provided that the *Independent Monitor[s]* shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Implementing Authority.
- 11.3.6 **Completion of *Punch List* items:** All items in the *Punch List* shall be completed by the *Concessionaire* within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Implementing Authority or due to *Force Majeure*, the Implementing Authority shall be entitled to recover *Damages* from the *Concessionaire* to be calculated and paid for each day of delay until all items are completed, at the lower of [(a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the *Independent Monitor[s]*]. Subject to payment of such *Damages*, the *Concessionaire* shall be entitled to a further period not exceeding 90 (ninety) days for completion of the *Punch List* items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Implementing Authority or due to *Force Majeure*, the completion date thereof shall be determined by the *Independent Monitor[s]* in accordance with *Good Industry Practice*, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of *Damages*, if any, payable for such item under this [Clause 11.3.6](#).
- 11.3.7 Upon completion of all *Punch List* items, the *Independent Monitor[s]* shall issue the Completion Certificate. Failure of the *Concessionaire* to complete all the *Punch List* items within the time set forth in *Clause 11.3.6* for any reason, other than conditions constituting *Force Majeure* or for reasons solely attributable to the Implementing Authority, shall entitle the Implementing Authority to terminate this Agreement.

- 11.3.8 **Withholding of Provisional Certificate:** If the *Independent Monitor[s]* determines that the *Project* or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Implementing Authority and the *Concessionaire*. Upon receipt of such a report from the *Independent Monitor[s]* and after conducting its own inspection, if the Implementing Authority is of the opinion that the *Project Facilities* are not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the *Concessionaire* of the defects and deficiencies in the *Project Facilities* and direct the *Independent Monitor[s]* to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the *Concessionaire* shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 11.3.9 Notwithstanding anything to the contrary contained in **Clause 11.3.8**, the Implementing Authority may, at any time after receiving a report from **the Independent Monitor[s]** under that Clause, direct the *Independent Monitor[s]* to issue a Provisional Certificate, and such direction shall be complied forthwith.
- 11.3.10 **Rescheduling of Tests:** If the *Independent Monitor[s]* certifies to the Implementing Authority and the *Concessionaire* that it is because of events or circumstances on account of which the Tests could not be held or had to be suspended, the *Concessionaire* shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## ARTICLE 12 CHANGE OF SCOPE

### 12.1 Change of Scope

- 12.1.1 The Implementing Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement ("**Change of Scope**").
- 12.1.2 Any such *Change of Scope* shall be made in accordance with the provisions of this Article 12 and the costs thereof shall be expended by the *Concessionaire* and reimbursed to it by the Implementing Authority in accordance with **Clause 12.3**.
- 12.1.3 If the *Concessionaire* determines at any time that a *Change of Scope* is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Implementing Authority to consider such *Change of Scope*. The Implementing Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such *Change of Scope* with modifications, if any, and initiate proceedings therefor in accordance with this **Article 12** or inform the *Concessionaire* in writing of its reasons for not accepting such *Change of Scope*.

### 12.2 Procedure for Change of Scope

- 12.2.1 In the event of the Implementing Authority determining that a *Change of Scope* is necessary, it shall issue to the *Concessionaire* a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 12.2.2 Upon receipt of a *Change of Scope Notice*, the *Concessionaire* shall, with due diligence, provide to the Implementing Authority such information as is necessary, together with preliminary documentation in support of:
- a. the impact, if any, which the *Change of Scope* is likely to have on the *Project Development Completion Schedule* if the works or services are required to be carried out during the *Concession Period*, and
  - b. the options for implementing the proposed *Change of Scope* and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labor costs calculated in accordance with the schedule of rates applicable to the works assigned by the Implementing Authority to its contractors, along with the proposed premium/discount on such rates; [provided that the cost incurred by the *Concessionaire* in providing such information shall be reimbursed by the Implementing Authority to the extent such cost is certified by the *Independent Monitor[s]* as reasonable.
- 12.2.3 Upon receipt of information set forth in **Clause 12.2.2**, if the Implementing Authority decides to proceed with the *Change of Scope*, it shall convey its preferred option to the *Concessionaire*, and the Parties shall, with assistance of the *Independent Monitor[s]*, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Implementing Authority shall issue an order (the "**Change of Scope Order**") requiring the *Concessionaire* to proceed with the performance thereof. In the event that the Parties are unable to agree, the Implementing Authority may, by issuing a *Change of Scope Order*, require the *Concessionaire* to proceed with the performance thereof pending resolution of the *Dispute*, or carry out the works in accordance with **Clause 12.5**.

### 12.3 Payment for *Change of Scope*

- 12.3.1 Within 7 (seven) days of issuing a *Change of Scope Order*, the Implementing Authority shall make an advance payment to the *Concessionaire* in a sum equal to 20 (twenty) per cent of the cost of *Change of Scope* as agreed hereunder, and in the event of a *Dispute*, 20 (twenty per cent) per cent of the cost assessed by the *Independent Monitor[s]*. The *Concessionaire* shall, after commencement of work, present to the Implementing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for the Implementing Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Implementing Authority shall disburse to the *Concessionaire* additional VGF support which is equivalent to the

percentage<sup>51</sup> of the additional capital requirement such amounts as are certified by the *Independent Monitor[s]* as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any *Dispute*, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

- 12.3.2 Notwithstanding anything to the contrary contained in [Clause 12.3.1](#), all costs arising out of any *Change of Scope Order* issued during the *Term* shall be borne by the *Concessionaire*, subject to an aggregate ceiling of [0.25% (zero point two five per cent) of the Total Project Cost]. Any costs in excess of the ceiling shall be reimbursed by the Implementing Authority in accordance with [Clause 12.3.1](#).

## 12.4 Restriction on Certain Works

- 12.4.1 Notwithstanding anything to the contrary contained in this [Article 12](#), the Implementing Authority shall not require the *Concessionaire* to undertake any works or services if such works or services are likely to delay completion of the *Project Development*; provided that in the event that the Implementing Authority considers such works or services to be essential, it may issue a *Change of Scope Order*, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of *Project Development* and issuing the *Provisional Certificate*.

- 12.4.2 Notwithstanding anything to the contrary contained in this [Article 12](#), the *Concessionaire* shall be entitled to nullify any *Change of Scope Order* if it causes the cumulative costs relating to all the *Change of Scope Orders* to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the *Term*.

## 12.5 Powers of Implementing Authority to Undertake Works

- 12.5.1 Notwithstanding anything to the contrary contained in [Clause 12.2](#) and [Clause 12.3](#), the Implementing Authority may, after giving notice to the *Concessionaire* and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the *Concessionaire* shall have the option of matching the first ranked bid in terms of the selection criteria, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the *Concessionaire* shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10 (ten) per cent thereof.

- 15.1.1 The works undertaken in accordance with this [Clause 12.5](#) shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the

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<sup>51</sup> Same percentage as accepted by the State government at the bidding stage for VGF for the entire project

disruption in operation of the *Project*. The provisions of this Agreement, insofar as they relate to *Construction Works* and Tests, shall apply mutatis mutandis to the works carried out under this [Clause 12.5](#).

## 12.6 Reduction in Scope of Work

- 12.6.1 If the *Concessionaire* shall have failed to complete any *Construction Works* on account of *Force Majeure* or for reasons solely attributable to the Implementing Authority, the Implementing Authority may, in its discretion, require the *Concessionaire* to pay 80 (eighty) per cent of the sum saved therefrom, and upon such payment to the Implementing Authority, the obligations of the *Concessionaire* in respect of such works shall be deemed to have been fulfilled.
- 12.6.2 For determining the obligations of the *Concessionaire* under this [Clause 12.6](#), the provisions of [Clauses 12.1, 12.2 and 12.4](#) shall apply mutatis mutandis, and upon issue of *Change of Scope Order* by the Implementing Authority hereunder, the *Concessionaire* shall pay forthwith the sum specified.

## ARTICLE 13 OPERATIONS AND MAINTENANCE

### 13.1 O&M Obligations of the Concessionaire

- 13.1.1 During the *Concession Period*, the *Concessionaire* shall operate and maintain the *Project Facilities* and provide Services to Users, in accordance with this Agreement either by itself, [or through the O&M Contractor who may be appointed only after taking prior written approval of the Implementing Authority; and if required, modify, repair or otherwise make improvements to the *Project Facilities* to comply with the provisions of this Agreement including the Specifications and Standards, *Applicable Laws* and *Applicable Permits*, and conform to *Good Industry Practice*.
- 13.1.2 The obligations of the *Concessionaire* hereunder shall include the following:
- a. prepare and submit, in consultation with the Implementing Authority and *Independent Monitor(s)*, a *Service Quality Manual* (the “**Service Quality Manual**”) outlining strategy to achieve services specification including the Specifications and Standards outlined and shall ensure and procure that at all times during the *Concession Period*, the *Project Facilities* are operated and maintained in accordance with the provisions the *Service Quality Manual*;
  - b. undertake, in compliance with the terms and conditions of this Agreement, including the Specifications and Standards, *Applicable Laws*, *Applicable Permits*, Clearances, the *Maintenance Manual*, the *Service Quality Manual* and *Good Industry Practice*, *Good Clinical Practice* and *Good Healthcare Practice*.
  - c. the operation of the *Project Facility* and provide Services to Users by itself, and (ii) the maintenance of the *Project Facilities* by itself or through an O&M Contractor(s) who may



- be appointed only after taking prior written approval of the Implementing Authority; and
- d. other obligations pertaining to other allowed commercial activities to be specified by the Implementing Authority from time to time.

## 13.2 Maintenance and Service Requirements

- 13.2.1 The *Concessionaire* shall procure that at all times during the *Concession Period*, the *Project Facilities* conform to the maintenance requirements including facility management, infrastructure maintenance and Equipment maintenance set forth in **Schedule-9** (the "**Maintenance Requirements**").
- 13.2.2 The *Concessionaire* shall ensure that at all times during the *Concession Period*, the *Project Facilities* conform to the Service requirements as set forth in **Schedule-9** (the "**Service Requirements**").

## 13.3 Maintenance Manual and Program

- 13.3.1 The *Concessionaire* shall, in consultation with the *Independent Monitor[s]*, evolve a repair and maintenance manual (the "**Maintenance Manual**"), for the regular and preventive maintenance of the *Project Facilities* in conformity with the *Maintenance Requirements*, *Safety Requirements* and *Good Industry Practice* and shall provide 1(one) copy thereof, to the Implementing Authority.
- 13.3.2 Within 30 (thirty) days of receipt of the Maintenance Manual, the Implementing Authority shall review and convey its comments to the *Concessionaire*. The *Concessionaire* shall modify the Maintenance Manual, in accordance with the comments provided by the Implementing Authority and provide 5 (five) copies thereof to the Implementing Authority and 2 (two) copies to the *Independent Monitor[s]*.
- 13.3.3 The Maintenance Manual, which shall outline the preventive, scheduled and reactive maintenance provisions, shall be revised and updated once every 2 (two) years.
- 13.3.4 Not later than 45 (forty-five) days prior to the beginning of each *Accounting Year* during the *Concession Period*, the *Concessionaire* shall provide to the Implementing Authority and the *Independent Monitor[s]*, its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Annual Maintenance Plan**") to comply with the *Maintenance Requirements*, *Service Requirements*, *Service Quality Manual*, *Maintenance Manual* and *Safety Requirements*. Such Maintenance Program shall include:
  - a. preventive maintenance schedule;
  - b. arrangements and procedures for carrying out urgent repairs;
  - c. criteria to be adopted for deciding maintenance needs;
  - d. intervals and procedures for carrying out inspection of all elements of the *Project Facility*;
  - e. intervals at which the *Concessionaire* shall carry out periodic maintenance;
  - f. arrangements and procedures for carrying out safety related measures; and
  - g. intervals for major maintenance works and the scope thereof.



- 13.3.5 Within 15 (fifteen) days of receipt of the *Annual Maintenance Plan*, the *Independent Monitor[s]* shall review the same and convey its comments to the *Concessionaire* with particular reference to its conformity with the *Service Requirements* and *Maintenance Requirements, Service Quality Manual, Maintenance Manual* and *Safety Requirements*.
- 13.3.6 The *Concessionaire* may modify *Annual Maintenance Plan* as may be reasonable in the circumstances, and the procedure specified in **Clauses 13.3.4 and 13.3.5** shall apply mutatis mutandis to such modifications.

#### 13.4 Damages for Breach of Maintenance Obligation

- 13.4.1 In the event that the *Concessionaire* fails to repair or rectify any defect or deficiency set forth in the *Safety Requirements, Service Requirements* and *Maintenance Requirements* within the period specified therein, it shall be deemed to be in breach of this Agreement and the Implementing Authority shall be entitled to recover *Damages*, to be calculated and paid for each day of delay until the breach is cured, at 0.1 (zero point one) percent of the total performance security.
- 13.4.2 Recovery of such *Damages* shall be without prejudice to the rights of the Implementing Authority under this Agreement, including the right of Termination thereof.

#### 13.5 Implementing Authority's Right to Take Remedial Measures

- 13.5.1 In the event the *Concessionaire* does not maintain and/or repair the *Project Facilities* or any part thereof in conformity with the *Safety Requirements, Service Requirements, Maintenance Requirements, Service Quality Manual, the Maintenance Manual* or the *Maintenance Program*, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Implementing Authority or the *Independent Monitor[s]*, as the case may be, the Implementing Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the *Concessionaire*, and to recover its cost from the *Concessionaire*. In addition to recovery of the aforesaid cost, a sum equal to 20 (twenty) per cent of such cost shall be paid by the *Concessionaire* to the Authority as *Damages*.
- 13.5.2 The Implementing Authority shall have the right, and the *Concessionaire* hereby expressly grants to the Implementing Authority the right, to recover the costs and *Damages* specified in **Clause 13.5.1** directly from the Escrow Account as if such costs and *Damages* were O&M Expenses, and for that purpose, the *Concessionaire* hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Implementing Authority under this **Clause 13.5.2** and debit the same to O&M Expenses.

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### 13.6 Overriding Powers of the Implementing Authority

- 13.6.1 If in the reasonable opinion of the Implementing Authority, the *Concessionaire* is in material breach of its obligations under this Agreement and, in particular, the *Safety Requirements*, *Service Requirements* and *Maintenance Requirements*, and such breach is causing or likely to cause material hardship or danger to the *Users*, the Implementing Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the *Concessionaire* to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 13.6.2 In the event that the *Concessionaire*, upon notice under [Clause 13.6.1](#), fails to rectify or remove any hardship or danger within a reasonable period, the Implementing Authority may exercise overriding powers under this [Clause 13.6.2](#) and take over the performance of any or all the obligations of the *Concessionaire* to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Implementing Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Implementing Authority in discharge of its Obligations hereunder shall be deemed to be O&M Expenses, and the Implementing Authority shall be entitled to recover them from the *Concessionaire* in accordance with the provisions of [Clause 13.5](#) along with the *Damages* specified therein.
- 13.6.3 In the event of a national emergency, civil commotion or any other act specified in [Article 19](#), the Implementing Authority may take over the performance of any or all the obligations of the *Concessionaire* to the extent deemed necessary by it or as directed by the *State Government*, and exercise such control over the *Project* and *Project Facilities* or give such directions to the *Concessionaire* as may be deemed necessary; provided that the exercise of such overriding powers by the Implementing Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Implementing Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of [Article 19](#).

### 13.7 Restoration of loss or damage to the *Project Facilities*

- 13.7.1 Save and except as otherwise expressly provided in this Agreement, in the event that the *Project Facilities* or any part thereof suffers any loss or damage during the *Term* from any cause whatsoever, the *Concessionaire* shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the *Project Facilities* conform to the provisions of this Agreement.

### 13.8 Modifications to the *Project Facilities*

- 13.8.1 The *Concessionaire* shall not carry out any material modifications to the *Project Facilities* save and except where such modifications are necessary for the *Project* to operate in conformity with the *Safety Requirements*, *Service Requirements*, *Maintenance Requirements* and *Good Industry Practice*; provided that the *Concessionaire* shall notify the *Independent Monitor[s]* of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the *Independent Monitor[s]* may make within 15 (fifteen) days of receiving the *Concessionaire's* proposal.

### 13.9 Safety Requirements

- 13.9.1 The *Concessionaire* shall comply with the provisions of this Agreement, *Applicable Laws* and *Applicable Permits* and conform to *Good Industry Practice*, *Good Clinical Practice* and *Good Healthcare Practice* for securing the safety of the *Users* or any individual on or about the *Project*. In particular, the *Concessionaire* shall develop, implement and administer a surveillance and safety program for providing a safe environment on or about the *Project*, and shall comply with the safety requirements as required by *Applicable Laws*.

## ARTICLE 14 FINANCIAL TERMS AND CONDITIONS

### 14.1 Principles and Patient Types

- 14.1.1 On and from the COD, the *Concessionaire* shall make available services to the following category of *Users*:

a. **Patients referred by the Government:**

- i. '*Patients referred by the Government*' will be those patients who are identified by the State Government and authorised by it to receive cashless services under this *Project* and on whose behalf the Implementing Authority shall reimburse the *Concessionaire* at the tariff structure set forth in [Clause 14.5](#).
- ii. The Implementing Authority shall set up a mechanism to ensure that all such patients referred by the *State Government* receive prior authorization by the designated government official of the *Assigned District Hospital*.

b. **Self-paying Patients:**

All other patients who are not government referred patients or who are not enrolled under any government health insurance scheme may receive services under the *Project* against direct out-of-pocket payments at the at the tariff structure set forth in [Clause 14.5](#) and all such patients will be referred to as '*self-paying patients*'.

c. **Government Insured Patients:**

All patients enrolled under any government health insurance scheme shall be entitled to receive cashless services under the *Project* without having to make any direct out-of-pocket payment to the *Concessionaire*.

14.1.2 The *Concessionaire* hereby unconditionally agrees on the following principles which have a bearing on the revenue receipts.

- a. The *patients referred by the Government* as well as the *self-paying patients* and *government insured patients* shall receive the same standard of clinical care.
- b. There shall be no reserved beds or no quota of beds for free services.
- c. The *State Government* or any of its agencies shall have the right to refer as many patients as it can up to the capacity available in the *Project Facility* under this *Project*.
- d. *Self-paying patients* shall be able to seek all services at the *Project Facility*.
- e. The Implementing Authority shall reimburse the *Concessionaire* for the patients referred /approved by designated authority of the *Assigned District Hospital*.
- f. All patients except those reimbursed by the *State Government* shall pay out-of-pocket at the tariff structure set forth in **Clause 14.5**.

## 14.2 Project Cost and Viability Gap Financing

14.2.1 The Total Project Cost to be reckoned for the purpose of this Agreement is Rs. [●]<sup>52</sup> (Rupees....).

14.2.2 The Implementing Authority agrees to provide to the *Concessionaire* a Viability Gap Financing<sup>53</sup> (VGF) Support equivalent to [●]<sup>54</sup> percent of the Total Project Cost as defined in **Clause 14.2.1**.

14.2.3 The *Concessionaire* shall be responsible and liable for the ensuring the remaining funds are available within time to ensure availability of funds for the capital requirements of the *Project*.

## 14.3 VGF Support and its Administration

14.3.1 The Implementing Authority shall disburse the VGF support in form of grant in the following manner:

*If Private Partner's capital contribution is through 100 percent equity, no debt.*<sup>55</sup>

- a. The Implementing Authority will disburse the VGF pursuant only to the *Concessionaire* having expended 100 (hundred) percent of its capital contribution required for the *Project*.

<sup>52</sup> Insert the Total Project Cost as stated in the Tender Document for 50-beds project or 100-bed project, as the case may be

<sup>53</sup> Viability Gap Funding (VGF) to be provided by the government(s) should have been used as the parameter for bidding in the project.

<sup>54</sup> Insert percentage of VGF support needed by the *Concessionaire* which shall be equal to its financial quote and the agreement arrived at with the Implementing Authority.

<sup>55</sup> Delete if the *Concessionaire* proposes to secure debt for capital financing.

- b. In all such cases, the *Concessionaire* shall provide documentary evidence to the Implementing Authority about the expenditure incurred in form of utilization certificates duly signed by the auditor of the *Concessionaire* along with a certificate from the Chartered Accountant and countersigned by the Managing Director of the *Concessionaire* stating that all funds have been spent for the sole purpose of the *Project* and as per the approved plan.
- c. Within 21 (twenty-one) days of receiving the Certificates as specified in [Clause 14.3.1\(b\)](#), the Implementing Authority shall undertake its due diligence, seek clarifications as required and cause to pay in full the VGF support as indicated in [Clause 14.2.2](#).
- d. All such funds shall be transferred by the Implementing Authority to the Escrow Account set up for the purposes of the *Project*.

*If Private Partner's capital contribution is through a mix of equity and debt:*<sup>56</sup>

- a. The Implementing Authority will disburse the VGF pursuant only to the *Concessionaire* having expended 100 (hundred) percent of its equity contribution required for the *Project*.
- b. In all such cases, the *Concessionaire* shall provide documentary evidence to the Implementing Authority about the expenditure incurred in form of utilization certificates duly signed by the auditor of the *Concessionaire* along with a certificate from the Chartered Accountant and countersigned by the Managing Director of the *Concessionaire* stating that all funds have been spent for the sole purpose of the *Project* and as per the approved plan.
- c. In addition to the submissions in [Clause 14.3.1 \(b\)](#), the *Concessionaire* shall submit evidence of the debt instruments used to disburse debt funds into the Escrow Account.
- d. Pursuant to the receipt of evidences as set forth in [Clause 14.3.1\(c\)](#), within 21 days the Implementing Authority shall cause of transfer the VGF support to the designated Escrow Account in proportion to debt disbursements remaining to be disbursed thereafter.

#### 14.3.2 Delays in release of VGF by the Implementing Authority:

- a. For delays in receipt of the VGF, the Implementing Authority will pay a penal interest equivalent to State Bank of India's prime lending rate applicable at that point in time plus 2 (two) percent penal charges for every one month of delay or part thereof.
- b. The *Concessionaire* shall not be held responsible for any delays in *Project* commissioning in the event that there are delays in the release of VGF by the Implementing Authority, provided the delay is not on account of the private partner's non-compliance to any of the terms and conditions of the Concession Agreement.

## 14.4 Operational Expenses

<sup>56</sup> Delete if the Concessionaire proposes to fund capital expenditure through 100 percent equity contribution.

14.4.1 The *Concessionaire* shall be responsibility for ensuring adequate liquidity and reserves to incur all required operational expenses for the *Project* including but not limited to:

- a. Salaries of all staff, consultants, contractors
- b. Electricity and water charges
- c. Medicines
- d. Medical supplies, consumables, reagents, films, etc.
- e. Administrative supplies
- f. Communication Cost
- g. Transportation cost
- h. Annual Maintenance Contracts
- i. Insurance Premium
- j. Costs for ensuring appropriate security services for the allotted hospitals
- k. Establishment maintenance cost
- l. Taxes and duties
- m. Statutory License fees
- n. Accounting and Auditing charges / costs
- o. Certification and Accreditation fees / charges

#### 14.5 Tariff Level Applicable for Services under the Project

14.5.1 The starting tariff for services offered by the *Concessionaire* under the *Project* shall be equivalent to the package rate of procedures and rates for non-package services for [●]<sup>57</sup> applicable in the state of [●]<sup>58</sup>.

14.5.2 Any change in the Tariff level as provided in **Clause 14.5.1** under the [●]<sup>59</sup> shall be applicable from the date on which the revised tariff of [●]<sup>60</sup> comes into force.

14.5.3 At any point in time during the Term of this Concession, the *Concessionaire* shall have no right to demand reimbursement/ charge from the self-paying patients at the rate which is higher than the levels at which the tariff structure for this *Project* has been benchmarked as set forth in **Clause 14.5.1**.

14.5.4 The tariff at which the *Concessionaire* shall be reimbursed by the Implementing Authority shall be uniform for both the government referred patients and the self-paying patients.

<sup>57</sup> Insert the name of the Government Insurance Scheme against which the tariff will be benchmarked.

<sup>58</sup> Insert the name of the state where the Scheme is being implemented.

<sup>59</sup> Insert the name of the Scheme against which the tariff will be benchmarked. This could be the following in decreasing order of preference: (a) National Health Protection Scheme, or (b) any state government health insurance operational in the state, or (c) the Central Government Health Scheme.

<sup>60</sup> Insert the name of the Scheme against which the tariff will be benchmarked.

## 14.6 Collecting User Charges and Administration of Payments

### 14.6.1 Responsibility for collection of User Charges

- a. All responsibility of collecting *User Charges* from *self-paying patients* at the tariff levels set forth in **Clause 14.5** shall vest with the Concessionaire.
- b. The Implementing Authority shall have the right to designate the authorities of the *Assigned District Hospital* or to any other entity it considers appropriate to handle this function and set up a counter within the *Project Facility* for collecting all OPD, IPD, emergency and hospital services revenues from *self-paying patients*.
- c. All collections shall be recorded through payment software and receipts generated from the software as mutually agreed upon between both the Parties.
- d. The *Concessionaire* hereby agrees that it shall at its own cost procure / update such software and issue the license exclusively in the name of the Implementing Authority. All costs related to renewal of software license, if any and its maintenance shall be borne by the *Concessionaire*.

### 14.6.2 Setting up an Escrow Account

- a. The *Concessionaire* shall, for the exclusive purpose of this *Project* set up an Escrow Account in a nationalized bank indicated by the Implementing Authority.
- b. The *Concessionaire* shall develop an Escrow Agreement stating the terms of payment and eligibility conditions and submit the same to the Implementing Authority for approval in consultation with the officials of the nationalized bank as identified by the Implementing Authority.
- c. **Withdrawals during the Concession Period:** The *Concessionaire* shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
  - i. all taxes due and payable by the *Concessionaire*;
  - ii. all payments relating to construction of the *Project*, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
  - iii. O&M expenses and other costs and expenses incurred by the Implementing Authority, if any, in accordance with the provisions of this Agreement, and certified by the Implementing Authority as due and payable to it;
  - iv. all payments and *Damages* certified by the Implementing Authority as due and payable to it by the *Concessionaire*; and
  - v. any reserve requirements set forth in any Financing Agreement of the *Concessionaire* for the *Project*; and

- d. The *Concessionaire* shall not in any manner modify the order of payment specified in **Clause 14.6.2(c)**, except with the prior written approval of the Implementing Authority.
- e. **Withdrawals upon Termination:** Notwithstanding: anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
  - i. all taxes due including standard deductions payable by the *Concessionaire*;
  - ii. all payments and *Damages* certified by the Implementing Authority as due and payable to it by the *Concessionaire*;
  - iii. retention and payments relating to the liability for defects and deficiencies set forth in **Clause 24.5**;
  - iv. incurred or accrued O&M Expenses;
  - v. any other payments required to be made under this Agreement; and
  - vi. balance, if any, in accordance with the instructions of the *Concessionaire*.

Provided that no appropriations shall be made under this **Clause 14.6.2 (e)** until a *Vesting Certificate* has been issued by the Implementing Authority under the provisions of **Clause 25.4**.

- f. The provisions of this **Clause 14.6.2(e)** and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in **Clause 14.6.2** have been discharged.
- g. Based on the approved Escrow Agreement, the *Concessionaire* shall be set up the Escrow Account.
- h. For the first three months from the COD, the Implementing Authority shall, prior to the COD, transfer into the Escrow Account funds equivalent to three months of estimated revenues under the *Project*. For the purposes of this **Clause 14.6.2(h)**, revenues shall include both revenues from the *self-paying patients*, *government insured patients* and from the *government referred patients*. Thereafter, the minimum balance that the Implementing Authority shall maintain in the Escrow Account shall be equivalent to last three months of actual receipts by the *Concessionaire* from the Escrow Account for the services offered under the *Project*.

**14.6.3 Administration of revenues collected by the Implementing Authority from the self-paying patients:**

- a. All revenues collected by the *Concessionaire* from the *self-paying patients* for all services sought by such patients from the *Project Facility* shall be transferred into the designated Escrow Account within 5 (five) business days.

**14.6.4 Administration of payments by the Implementing Authority on behalf of government referred patients:**



- a. Not later than 5 (five) business days after the last business day of the previous month the *Concessionaire* shall submit a payment request to the Implementing Authority. All such requests shall be submitted online through the Project Portal.
- b. Release of payments on behalf of government referred payments shall be linked to the performance of the Concessionaire against the Key Performance Indicators (KPIs) specified in **Schedule 12** and shall be administered subject to the following:
  - i. In 90 (ninety) percent of the total claims shall be released if the Concessionaire scores maximum achievable score of 90 against the composite score of KPIs 1 (one) to 7 (seven) in **Schedule 12**.
  - ii. For every 1 (one) percent reduction in composite KPI score, the maximum eligible payment as set forth in **Clause 14.6.b(i)** shall be reduced by 1 (one) percent and payable within 10 business days of submitting the claim by the Concessionaire.
  - iii. The composite KPI performance score against KPIs 1 to 7 in **Schedule 12** shall be automatically generated through the HMIS portal and the dashboard page shall be available to the Escrow bank for determining the eligibility of payment and the quantum of payment to be released.
  - iv. The remaining 10 (ten) percent of the total claim shall be withheld for quarterly releases against the results of KPI 8 and shall be released within 30 days of the end of the quarter; and if the quarterly O&M report has adverse observations, the withheld claim shall be released within 30 days of the Concessionaire rectifying all the observations in the O&M report and after the Implementing Authority has undertaken due verification of claims.
- c. In the event of any default or delay in payment by the Implementing Authority beyond the timelines set forth in Clause 14.6.4 (iii), the *Concessionaire* can withdraw such amount from the Escrow Account without notice. In such an eventuality, the Implementing Authority shall replenish the Escrow Account within 30 (thirty) days of such withdrawal.

**14.6.5 Administration of payments for those patients enrolled under one or the other government health insurance scheme:**

- a. The *Concessionaire* shall ensure that the *Project Facility* is empanelled under one or more government health insurance schemes operational in the state of [●]<sup>61</sup>.
- b. For all patients who are enrolled under any government health insurance scheme, the *Concessionaire* hereby agrees to abide by all the terms and conditions of empanelment, pre-authorization of procedures, providing cashless service, claims submission and reimbursement applicable from time to time under such government health insurance scheme.
- c. The *Concessionaire* hereby agrees that all complaints and grievances that it may have related to reimbursement of payments for government insured payments shall be

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<sup>61</sup> Insert name of the state where this Project will be implemented.

addressed through the grievance redressal mechanisms made available by the *State Government* under such insurance scheme(s).

#### 14.6.6 Bank accounts

- a. Apart from setting up the Escrow Account as per the provisions of [Clause 14.6.2](#), the Concessionaire shall set up a bank account which shall be exclusively used for all inward and outward remittances of the Concessionaire and the *Project*.
- b. The Concessionaire shall ensure that all financial transactions related to the *Project* shall be routed only through either the Escrow Account set up vide [Clause 14.6.2](#) or the bank account set up vide [Clause 14.6.6\(a\)](#).
- c. Any transaction related to the *Project* through any bank account other than the bank accounts specified in [Clause 14.6.6\(b\)](#) shall be deemed as a *Material Breach* of the Agreement.

### 14.7 Payments to cover all costs

- 14.7.1 Payments made by the Implementing Authority to the *Concessionaire* as per the provisions of [Clause 14.3.1](#), [Clause 14.6.3](#), [Clause 14.6.4](#) and [Clause 14.6.5](#) shall cover all costs of upgrading, managing, maintaining and operating the *Project* and the *Project Facility* including but not limited to:
  - a. All capital investments for the *Project*;
  - b. All recurring and non-recurring operational expenses as per [Clause 14.4](#) of this Agreement;
  - c. All others costs / expenses that the *Concessionaire* may incur for the *Project*;
  - d. All returns on investments for the *Concessionaire*.
- 14.7.2 Beyond the provisions of payments set forth in [Clause 14.7.1](#) and after appropriating the provisions of [Clause 23.2 Events of Default](#), the Implementing Authority shall not make any further payments to the *Concessionaire* and the *Concessionaire* shall have no right under this Agreement or under *Applicable Laws* to claim any such payment.

### 14.8 Accounts and Audits

- 14.8.1 The *Concessionaire* shall open and operate a separate bank account in any scheduled bank.
- 14.8.2 All transactions related to this *Project* including but not limited to investments made by the Concessionaire for the *Project*, receipts from all sources for this *Project*, all expenses/recurring expenses as mentioned in different clauses of [Article 14](#) shall be made out of this account only.
- 14.8.3 The *Concessionaire* shall record and maintain separate books of accounts for this *Project* maintaining all documents, records of all transactions, including but not limited to up-gradation, new construction, equipping, operation and maintenance of the *Project Facilities*

and expenses in accordance with the standard accounting practices within India and complying to all statutory requirements and *Applicable Laws*.

- 14.8.4 The *Concessionaire* shall undertake internal and external audit of its accounts for the *Project* as per the standard practices in the industry.
- 14.8.5 The *Concessionaire* shall, within 30 (thirty) days of the close of each quarter of an *Accounting Year*, furnish to the Implementing Authority its unaudited financial results in respect of the preceding quarter.
- 14.8.6 The *Concessionaire* shall appoint statutory auditors which will be a firm of reputed Chartered Accountants having requisite license to practice in India. This firm will be chosen by the *Concessionaire* from a list of reputed firms of Chartered Accountants provided to the *Concessionaire* by the Implementing Authority.
- 14.8.7 The *Concessionaire* shall bear all costs related to the appointment of Auditors including but not limited to their fees.
- 14.8.8 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Authority shall have the right, but not the obligation, to audit the Project at any point of time during the Concession Period subject to reasonable advance notice given by the Implementing Authority. The Implementing Authority may at its sole discretion undertake such task on its own or through any of its appointed agencies or may appoint an independent third party firm of Chartered Accountants for this purpose. The Implementing Authority shall bear all the costs related to such independent inspections and audits.
- 14.8.9 The *Concessionaire* shall diligently extend all cooperation and make available all documents, and records as necessary that all such independent auditors / agencies may need for conducting their audits.
- 14.8.10 The *Concessionaire* shall submit to the Implementing Authority three copies of its audited annual balance sheet, cash flow statements and profit and loss account and the audit report duly certified by the statutory auditors within 180 days of the close of the financial year.

## ARTICLE 15      INSURANCE

### 15.1 Insurance During the Concession Period

The *Concessionaire* shall effect and maintain at its own cost, during the *Concession Period*, in respect of: (i) the *Project Facilities*, including equipment and materials used in the *Project Facilities*, (ii) professional and medical negligence claims; and (iii) third party claims for personal injury to or death of any person employed by the *Concessionaire* and arising out of such employment, third party liability insurance and all insurance policies that are required by *Applicable Law*.

### 15.2 Notice to the Implementing Authority

Not later than 45 (forty-five) days prior to commencement of the *Term*, the *Concessionaire* shall by notice furnish to the Implementing Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this [Article 15](#). Within 30 (thirty) days of receipt of such notice, the Implementing Authority may require the *Concessionaire* to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### 15.3 General Requirements of Concessionaire's Policies

The *Concessionaire* shall whenever required by the Implementing Authority, the *Concessionaire* shall produce the policies or certificates of any insurance which it is required to effect under this Agreement together with receipts for the premium; which may also be publicly displayed.

### 15.4 Remedy for Failure to Insure

If at any time and for whatever reason any of the insurances required to be maintained pursuant to [Article 15](#) shall not be in full force and effect, then, without prejudice to any other right of the *State Government*, the Implementing Authority may at any time whilst such failure is continuing, procure such insurances at the expense of the *Concessionaire* and take such steps with respect of such insurances as the *State Government* may consider expedient or necessary. Any amounts expended by the Implementing Authority in procuring any such insurance or taking any such steps shall become immediately due and payable by the *Concessionaire* to the Implementing Authority, and the Implementing Authority shall have unconditional rights to recover the costs thereof from the *Concessionaire*, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the *Concessionaire*.

### 15.5 Notification of Claim

The Implementing Authority and the *Concessionaire* shall give each other prompt notice of any claim relating to any insurance affecting the *Project Facilities* together with full details of the incident giving rise to such claim and shall afford to the other all such assistance and information as may be reasonably required for the preparation and negotiation of insurance claims.

### 15.6 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the *Concessionaire* and it shall, notwithstanding anything to the contrary contained in [Clause 14.6.2\(c\)](#) apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the *Project* and *Project Facilities*, and the balance remaining, if any, shall be applied in accordance with the policies of the

*Concessionaire.*

## 15.7 No breach of insurance obligation

- 15.7.1 If during the *Duration* of this Agreement, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained / re-instated in respect of such risk, the *Concessionaire* shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.
- 15.7.2 The *Concessionaire* shall procure any additional insurance policy as may be required by the Implementing Authority from time to time in light of any new circumstances or risks being identified by the Implementing Authority.

## ARTICLE 16 PROJECT IMPLEMENTATION SCHEDULE

- a. The *Concessionaire* shall strictly abide by the *Project Implementation Schedule* as per the timeframe indicated in **Schedule 4** of this Agreement.
- b. Any deviation from the time frame indicated in the *Project Implementation Schedule* will be considered as a breach of the conditions of this Agreement.

## ARTICLE 17 INTELLECTUAL PROPERTY

- a. "*Intellectual Property*" shall mean any information, inventions, computer software designs (registered and unregistered) and any works, whether electronic or otherwise including but not limited to medical or other related information gathered from Patients by the *Concessionaire* or any person working under the *Concessionaire* directly or indirectly at the Project Facility, and any material or information relevant for the proper operation, maintenance up-gradation and management of the *Project Facilities* and any information required for using any software and technology related to the implementation of the *Project*.
- b. The Parties agree that all *Intellectual Property*, whether individually developed by the *Concessionaire* or acquired by the *Concessionaire* while undertaking the *Project*, shall constitute the absolute property of the *State Government*. All such *Intellectual Property* shall be fully and promptly disclosed in writing and in confidence by the *Concessionaire* to the Implementing Authority, within seven (7) days from the date of acquiring/development of such *Intellectual Property*. The *State Government* shall have the exclusive right to take any action necessary to obtain intellectual property protection of such *Intellectual Property*, including the selection of appropriate attorney to file and execute such protection. The *State Government* shall hold the newly disclosed *Intellectual Property* in confidence for a period of

ninety days from the date of disclosure in order to secure patent, copyright or other intellectual property protections, applications or registrations.

- c. The Parties agree that in the event that ownership rights of the Intellectual property are deemed to vest with the *Concessionaire* under any applicable laws, the *Concessionaire* shall be obliged to take all steps to ensure that the ownership rights to the Intellectual Property are transferred to and vested in the *State Government*, free of all costs, within a period of thirty (30) days from the date of acquiring/development of such *Intellectual Property*.
- d. The *State Government* agrees to grant to the *Concessionaire* a royalty free non-exclusive license of the *Intellectual Property* for research, usage rights for a period of two years from the date of disclosure of any *Intellectual Property* under **Clause 15(b)** above where such *Intellectual Property* has been developed in the course of the Project. The *Concessionaire* shall not grant any sub-license or assign any rights to any third party under such limited license granted by the *State Government* under this **Clause 15(c)**.
- e. In the event that the *Concessionaire* brings in any prior *Intellectual Property*, owned by it or any of its researchers/personnel for the *Project*, the *Concessionaire* agrees that it shall provide royalty free licenses of such *Intellectual Property* to the *State Government* for the purposes of this *Project*, or to the extent that such prior *Intellectual Property* is related to the *Project* or becomes a part of the *Intellectual Property*.

## ARTICLE 18 INDEMNITY

### 18.1 General Indemnity

- 18.1.1 The *Concessionaire* will indemnify, defend, save and hold harmless the Implementing Authority and its officers, servants, agents, *Government Instrumentalities* and Government owned and/or controlled entities/enterprises, (the "**Implementing Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the *Concessionaire* of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the *Concessionaire* to any *User*, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the *Authority Indemnified Persons*.
- 18.1.2 The Implementing Authority will indemnify, defend, save and hold harmless the *Concessionaire* against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Implementing Authority in the land comprised in the *Site*, and/or (ii) breach by the Implementing Authority of any of its obligations under this

Agreement or any related agreement, which materially and adversely affect the performance by the *Concessionaire* of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the *Concessionaire*, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the *Concessionaire*.

- 18.1.3 Notwithstanding the occurrence of the Termination Date, the *Concessionaire* shall indemnify and hold the *State Government* harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature that may accrue or may be incurred by the *State Government* under this **Clause 18.1** of the Agreement.

## 18.2 Indemnity by the Concessionaire

- 18.2.1 Without prejudice to the generality of **Clause 18.1** of this Agreement, the *Concessionaire* shall indemnify and hold the *Implementing Authority Indemnified Persons* harmless, from any and all from all action, claims, suits and/or legal proceedings initiated by any person, third party or otherwise, that may be initiated or raised against the *Implementing Authority Indemnified Persons* that may be in the nature of criminal, civil, medico-legal proceedings, proceedings under the Consumer Protection Act, 1968 or in the nature of tortuous claims and that may arise under this Agreement.
- 18.2.2 The *Concessionaire* shall also indemnify and hold the *Implementing Authority Indemnified Persons* harmless from any and all actions, claims, liabilities, costs, damages and expenses of any and every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the *Concessionaire* or any subcontractor and their respective employees and damage to or destruction of any property or equipment of the *Concessionaire* or its subcontractors and their respective employees arising during or as a result of the performances or non-performance of this Agreement from any cause whatsoever provided that this Article shall not apply to injury, death, damage or destruction to the extent caused by the negligence, default or omission of the *Implementing Authority Indemnified Persons*.

## 18.3 Indemnity – Third Party

- 18.3.1 Without prejudice to the generality of **Clause 18.1** of this Agreement, the *Concessionaire* shall indemnify and hold the *Implementing Authority Indemnified Persons* harmless from any and all claims, liabilities, costs, damages, and expenses of any and every kind and nature in respect of the sickness, injury or death of any third party and the damage to or destruction of any property of any third party arising directly or indirectly as a result of any negligence, default or omission of the *Concessionaire* or its employees.

## 18.4 Non-Compliance with Laws

- 18.4.1 Without prejudice to the generality of **Clause 18.1** of this Agreement, the *Concessionaire* shall indemnify and hold the *Implementing Authority Indemnified Persons* harmless from any fines, penalties and similar charges which may be attributed to or imposed or assessed against the *State Government* by reason of the failure of the *Concessionaire* to comply fully with all *Applicable Laws* save to the extent such failure was caused by the negligence, default or omission of the *Implementing Authority Indemnified Persons*.

## 18.5 Concessionaire Not Liable

- 18.5.1 Subject to the provisions of **Article 2** of this Agreement, the *Private Partner* or the *Concessionaire* shall not be made liable for its services during this period until the commencement of all services from the *COD*.
- 18.5.2 However, in case of medical negligence by its employees or doctors or personnel employed within this period, all such employees or doctors shall be liable for the same and the *Implementing Authority Indemnified Persons* shall be kept indemnified from such acts of negligence.

## 18.6 Acknowledgement

- 18.6.1 The *Concessionaire* acknowledges and agrees that the *State Government* holds the benefit of **Clauses 18.1, 18.2, 18.3 and 18.4** for itself and as a trustee and agent for its officers, employees and agents.

## 18.7 Notice and Contest of Claims

- 18.7.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this **Article 18** (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed.
- 18.7.2 In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

## 18.8 Defense of Claims

- 18.8.1 The Indemnified Party 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 such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its



obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 18, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

18.8.2 If the Indemnifying Party has exercised its rights under Clause 18.7, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

18.8.3 If the Indemnifying Party exercises its rights under Clause 18.7, the Indemnified Party shall nevertheless 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 Indemnified Party, when and as incurred, unless:

- a. the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- b. the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - i. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - ii. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 18.8.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### 18.9 No consequential Claims

Notwithstanding anything to the contrary contained in this **Article 18**, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### 18.10 Survival

The provisions of this **Article 18** shall survive even after expiry or earlier termination of this Agreement for the acts and/or claims arising during the period of Agreement irrespective of its coming to the knowledge of the *State Government* even after the Agreement period.

## ARTICLE 19 FORCE MAJEURE

### 19.1 Force Majeure Event

19.1.1 As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any event, if it affects the performance by the Party claiming the benefit of *Force Majeure* (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the *Affected Party*, (ii) the *Affected Party* could not have prevented or overcome by exercise of due diligence and following *Good Industry Practice*, and (iii) has *Material Adverse Effect* on the *Affected Party*. Such events, resulting in material adverse effect, may include but not be limited to:

- i. Earthquake, flood, inundation, landslide;
- ii. Storm, tempest, hurricane, cyclone, lightning, volcanic eruptions, thunder or other extreme atmospheric disturbances;
- iii. Fire caused by reasons not attributable to the *Concessionaire*;
- iv. Acts of terrorism;
- v. War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war
- vi. Strikes or boycotts, other than those involving the concessionaire, its contractors or their employees, agents, etc.; and
- vii. Any other similar things beyond the control of the Party.

### 19.2 Notice of Force Majeure Event

19.2.1 Upon occurrence of a *Force Majeure Event*, the *Affected Party* shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a. the nature and extent of each *Force Majeure Event* which is the subject of any claim for relief under this **Article 19** with evidence in support thereof;
- b. the estimated duration and the effect or probable effect which such *Force Majeure*

*Event* is having or will have on the *Affected Party's* performance of its obligations under this Agreement;

- c. the measures which the *Affected Party* is taking or proposes to take for alleviating the impact of such *Force Majeure Event*; and
- d. any other relevant information concerning the *Force Majeure Event*, and/or the rights and obligations of the Parties under this Agreement.

19.2.2 The *Affected Party* shall not be entitled to any relief for or in respect of a *Force Majeure Event* unless it shall have notified the other Party of the occurrence of the *Force Majeure Event* as soon as reasonably practicable, and in any event not later than 7 (seven) days after the *Affected Party* knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the *Force Majeure Event* is likely to have on the performance of its obligations under this Agreement.

19.2.3 For so long as the *Affected Party* continues to claim to be materially affected by such *Force Majeure Event*, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by [Clause 19.3.1](#), and such other information as the other Party may reasonably request the *Affected Party* to provide.

### 19.3 Performance Obligations

19.3.1 The *Affected Party* shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such *Force Majeure Event* provided that:

- a. Due notice of the *Force Majeure Event* has been given to the other party as required by [Clause 19.3](#);
- b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the *Force Majeure Event*;
- c. There shall be no Termination of the *Concessionaire* except as provided in [Clause 19.4](#);
- d. Where the concessionaire is the *Affected Party*, the various deadlines set forth in this agreement and the Concession Period shall be extended by the period for which such *Force Majeure Event* shall subsist;
- e. Where the concessionaire is the *Affected Party*, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the *Project Facilities* as a result of the *Force Majeure Event* and to restore the *Project Facilities*, in accordance with the *Good Industry Practice* and its relative obligations under this Agreement.
- f. When the affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance.
- g. The affected Party shall continue to perform such of its obligations which are not affected by the *Force Majeure Event* and which are capable of being performed in accordance with this Agreement; and

- h. Any insurance proceeds received by the *Concessionaire* shall be entirely applied to repair, replace or restore the assets damaged on account of the *Force Majeure Event*, in accordance with *Good Industry Practice*, unless otherwise agreed to by the Implementing Authority.

## 19.4 Termination Due to Force Majeure Event

- 19.4.1 If a *Force Majeure Event* subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this [Article 19](#), and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.
- 19.4.2 All obligations during termination and payments post termination shall be dealt with as per the provisions set forth in [Article 24](#).

## ARTICLE 20 MONITORING

### 20.1 Structures and Responsibilities for monitoring

- 20.1.1 The Implementing Authority shall have the right to set up governance and management structures which shall be engaged in monitoring of the *Project* activities:
- 20.1.2 Such structures shall include but may not be limited to setting up of:
- Project Steering Committee* (PSC) chaired by the Principal Secretary of the Department of Health and Family Welfare of the State Government or any other officer as nominated by the State Government and also include among other members, representatives from the Concessionaire.
  - Partnership Management Cell* (PMC) headed by [●]<sup>62</sup>
  - Project Coordination Committee* (PCC) chaired by the Medical Superintendent<sup>63</sup> of the District Hospital, and also include among other members, representatives from the Concessionaire.

<sup>62</sup> Insert the designation of the officer of the State Government who will be heading the Contracts Management Cell.

<sup>63</sup> Update, if required, with the exact designation of the overall in-charge of the District Hospital where the Project will be collocated.

- d. *Independent Monitor(s)* for approvals, testing and verification of all civil construction work under the *Project* including all medical and non-medical equipment procured and installed by the *Concessionaire* under the *Project*.

- 20.1.3 The *PSC* shall be responsible for overall monitoring of the *Project*.
- 20.1.4 The *PSC* shall set up a Quality Assurance Cell for monitoring quality assurance initiatives of the *Concessionaire*.
- 20.1.5 The *PMC* shall be responsible for regular monitoring of the *Project* including monitoring compliance to the provisions of the Agreement.
- 20.1.6 The *PCC* shall be responsible for day-to-day operational coordination with the *Concessionaire* and facilitating and monitoring the shared services and patient referrals to and from the *Project Facility*.
- 20.1.7 The *Concessionaire* hereby agrees to provide access to the *Project Facility* and to all necessary documents and information to the *PSC*, *PMC* and the *PCC* and provide all reasonable support to ensure that the *PSC*, *PMC* and the *PCC* may fulfil its monitoring obligations.
- 20.1.8 The Implementing Authority shall have the right to, either directly or through any consultant(s) or third party appointed by it, undertake process audits, service audits, medical audits, patient satisfaction surveys, beneficiary audits (during and post hospitalization), death audits and any other task it may deem appropriate to monitor the *Project Facility* and the services rendered by the *Concessionaire* from the *Project Facility* under this Agreement.
- 20.1.9 All monitoring will be undertaken against a set of key performance indicators and a set of process indicators.
- 20.1.10 Monitoring results will be discussed with the *Concessionaire* in a participatory way and corrective actions shall be initiated by the *Concessionaire* as and when required within the rectification period stated by the CMC.

## 20.2 Indicators for monitoring

- 20.2.1 The Implementing Authority shall monitor the performance of the *Concessionaire* on a set of general *Project Monitoring Indicators* and *Key Performance Indicators* as set forth in **Schedule 11** and **Schedule 12** respectively.
- 20.2.2 The *Concessionaire* hereby acknowledges the right of the Implementing Authority to review the *Project Monitoring Indicators* at least once every two years.

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## 20.3 Monitoring of Operations and Maintenance

- 20.3.1 **Monthly status Reports:** During Concession Period, the *Concessionaire* shall, no later than 7 (seven) days after the close of each month, furnish to the Implementing Authority and the *Independent Monitor(s)*, a monthly report stating in reasonable detail the condition of the *Project* including its compliance or otherwise with the *Service Requirements*, *Maintenance Requirements*, *Maintenance Manual*, *Service Quality Manual*, *Maintenance Program* and *Safety Requirements*, and shall promptly give such other relevant information as may be required by the *Independent Monitor(s)*.
- 20.3.2 **Quarterly Inspections:** The *Independent Monitor(s)* shall inspect the *Project* at least once a Quarter. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the *Service Requirements*, *Maintenance Requirements*, *Maintenance Manual*, *Service Quality Manual*, *the Maintenance Program* and *Safety Requirements*, including microbial testing for infection control and send a copy thereof to the Implementing Authority and the *Concessionaire* within 7 (seven) days of such inspection.
- 20.3.3 **Tests:** For determining that the *Project* conforms to the *Service Requirements*, *Maintenance Requirements* and *Safety Requirements*, the *Independent Monitor(s)* may require the *Concessionaire* to carry out, or cause to be carried out, tests specified by it in accordance with *Good Industry Practice*. The *Concessionaire* shall, with due diligence, carry out all such tests in accordance with the instructions of the *Independent Monitor(s)* and furnish the results of such tests forthwith to the *Independent Monitor[s]*. The costs incurred on such tests shall be borne by the *Concessionaire*.
- 20.3.4 **Remedial measures:** The *Concessionaire* shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in [Clause 20.3.2](#) or in the test results referred to in [Clause 20.3.3](#) and furnish a report in respect thereof to the *Independent Monitor[s]* and the Implementing Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the *Concessionaire* shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 20.3.5 The *Independent Monitor[s]* shall require the *Concessionaire* to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures as referred to in [Clause 20.3.4](#) have brought the *Project* into compliance with the *Safety Requirements*, *Service Requirement* and *Maintenance Requirements*.
- 20.3.6 In the event that remedial measures are not completed by the *Concessionaire* in conformity with the provisions of this Agreement, the Implementing Authority shall be entitled to recover *Damages* from the *Concessionaire* under and in accordance with the provisions of [Clause 13.7](#).

## ARTICLE 21 BENEFICIARY GRIEVANCE REDRESSAL

- a. The *Concessionaire* shall
  - i. Develop a protocol for beneficiary grievance redressal system.
  - ii. be responsible for setting up a web-based Grievance Management System (**GMS**) integrated within the architecture of the *Project* website for handling an efficient tracking of all beneficiary grievances.
  - iii. allow the Implementing Authority and its representatives including the designated authorities of the *Assigned District Hospital* full access rights to the GMS.
  - iv. designated a Nodal Grievance Officer within the *Project Facility* with the name and the contact number of the Officer prominently displayed in local and English language in the OPD area, the Emergency ward and in all patient wards in a manner that it is visible and easily identifiable to all beneficiaries accessing the *Project Facility*.
  - v. ensure that all grievances are entered into the GMS,
  - vi. ensure that all grievances are settled within the timeframe mentioned in the protocol set forth in **Clause 21.a.(i)**, failing which the Nodal Grievance Officer of the *Concessionaire* shall be obliged to escalate the matter to the Medical Superintendent of the *Assigned District Hospital*.
- b. All complaints received by the Nodal Grievance Officer shall be entered within the GMS and registered with a Unique Complaints Identification Number along with ensuring that the real time updates on the status of the grievance are provided on the GMS.
- c. The Medical Superintendent of the *Assigned District Hospital*, shall on behalf of the *Concessionaire* monitor and track the GMS and shall investigate and facilitate redressal of those beneficiary complaints not redressed within the prescribed timeframe.
- d. The Medical Superintendent of the *Assigned District Hospital* shall at her / his sole discretion determine whether any beneficiary complaint needs to be escalated to the *Partnership Management Cell*.
- e. Refusal by the Nodal Grievance Officer to register any complaints shall be deemed as a Material Breach of this Agreement.

## ARTICLE 22 REPRESENTATIONS AND WARRANTIES

### 22.1 Representatives and Warranties of the *Concessionaire*

The *Concessionaire* represents and warrants to the *State Government* that:

- a. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- c. It has the financial standing and capacity to undertake the *Project*;
- d. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of the *Concessionaire's* Memorandum and Articles of Association or any *Applicable Laws* or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- f. There are no actions, suits, proceedings or investigations pending any of the shareholders of the *Concessionaire* or against any of the Directors on the Board of any of the shareholders of the *Concessionaire* known to the *Concessionaire* and threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute *Concessionaire's* Event of Default or which individually or in the aggregate may result in *Material Adverse Effect*;
- g. 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 any Government Agency which may result in *Material Adverse Effect*;
- h. It has complied with all *Applicable Laws* and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in aggregate have or may have *Material Adverse Effect*;
- i. Subject to receipt by the *Concessionaire* from the Implementing Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the *Concessionaire* in and to the *Project Facilities* shall pass to and vest in the *State Government* on the Termination Date free and clear of all *Encumbrances* without any further act or deed on the part of the *Private Partner* and / or the *Concessionaire*;
- j. No representation or warranty by the *Concessionaire* contained herein or in any other document furnished by it to the Implementing Authority or to any Government Agency in relation to *Applicable Permits* contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- k. No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the *Concessionaire* or any of its shareholders to any person to procure the operation, maintenance and management of the *Project Facilities*;
- l. Without prejudice to any express provision contained in this Agreement, the *Private Partner* and the *Concessionaire* acknowledges that prior to the execution of this Agreement, the *Private Partner* has, after a complete and careful examination, made an independent



evaluation of the *Project*, and the information provided by the Implementing Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the *Concessionaire* and its shareholders in the course of performance of its obligations hereunder.

- m. The *Private Partner* and the *Concessionaire* also acknowledge and hereby accept the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the *State Government* shall not be liable for the same in any manner whatsoever to the *Private Partner* or the *Concessionaire*.

## 22.2 Representatives and Warranties of the Implementing Authority

The Implementing Authority represents and warrants to the *Concessionaire* that:

- a. The Implementing Authority has full power and authority to grant the rights and authority under this Agreement;
- b. The Implementing Authority has taken all necessary actions to authorise the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes the *State Government's* legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d. There are no suits or other legal proceedings pending or threatened against the *State Government* in respect of the *Assigned District Hospital* or the *Project*.

## 22.3 Obligations to Notify Change

22.3.1 In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

22.3.2 Failure to notify change within 15 days of its occurrence shall be deemed as *Material Breach* of the provisions of this Agreement.

# ARTICLE 23 EVENTS OF DEFAULT

## 23.1 Concessionaire's Events of Default

23.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the *Concessionaire* fails to cure the default within the *Cure Period* set forth below, or where no *Cure Period* is specified, then within a *Cure Period* of 60 (sixty) days, the *Concessionaire* shall be deemed to be in default of this Agreement (a "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Implementing Authority or due to *Force Majeure*. The defaults referred to herein shall include but not be limited to:

Related to performance security

- a. the *Performance Security* has been encashed and appropriated in accordance with [Clause 6.2](#) and the *Concessionaire* fails to replenish or provide fresh *Performance Security* within a *Cure Period* of 30 (thirty) days;
- b. subsequent to the replenishment or furnishing of fresh *Performance Security* in accordance with sub-clauses of [Clause 6.2](#), the *Concessionaire* fails to cure, within a *Cure Period* of 90 (ninety) days, the *Concessionaire Default* for which whole or part of the *Performance Security* was appropriated;

Related to Project Development and Site Usage

- c. the *Concessionaire* does not achieve the latest outstanding *Project Development* Milestone due in accordance with the provisions of [Schedule-2](#) and continues to be in default for 90 (ninety) days;
- d. the *Concessionaire* abandons or manifests intention to abandon the *Project Development* or operation of the *Project* without the prior written consent of the Implementing Authority;
- e. the *Punch List* items have not been completed within the period set forth in [Clause 11.3.5](#);
- f. The *Concessionaire* has utilized the *Project Site* or *Project Facilities* for any purpose in contravention with the provisions of [Clause 10.2](#).

Related to Project Operations and Management

- g. the *Concessionaire* is in breach of the *Maintenance Requirements* as set forth in [Clause 13.2.1](#) and *Service Requirements* as set forth in [Clause 13.2.2](#);
- h. an Escrow Default has occurred and the *Concessionaire* fails to cure the default within a *Cure Period* of 15 (fifteen) days;
- i. if at any time any payment, assessment, charge, lien, penalty or damage herein specified to be paid by the *Concessionaire* to Implementing Authority, or any part thereof, shall be in arrears and unpaid;
- j. a breach of any of the Project Agreements by the *Concessionaire* has caused a *Material Adverse Effect*;

Related to Key Performance Indicators

- k. the composite KPI score for KPIs 1 to 7 in [Schedule 12](#) is below 70 (seventy) percent for two consecutive months;

Related to overall provisions of this Agreement

- l. the *Concessionaire* creates any *Encumbrance* in breach of this Agreement;
- m. the *Concessionaire* repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- n. a Change in Ownership has occurred in breach of the provisions of [Article 4](#);
- o. an execution levied on any of the assets of the *Concessionaire* has caused a *Material Adverse Effect* on the *Project*;

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- p. The *Concessionaire* engaging or knowingly has allowed any of its employees, agents, tenants, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;
  - q. the *Concessionaire* is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the *Concessionaire* or for the whole or material part of its assets that has a material bearing on the *Project*;
  - r. the *Concessionaire* has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Implementing Authority, a *Material Adverse Effect*;
  - s. a resolution for winding up of the *Concessionaire* is passed, or any petition for winding up of the *Concessionaire* is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the *Concessionaire* is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the *Concessionaire* are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the *Concessionaire* under this Agreement and the Project Agreements; and provided that:
    - i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
    - ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the *Concessionaire* as at the *COD*; and
    - iii. each of the Project Agreements remains in full force and effect;
  - t. any representation or warranty of the *Concessionaire* herein contained which is, as of the date hereof, found to be materially false or the *Concessionaire* is at any time hereafter found to be in breach thereof;
  - u. the *Concessionaire* submits to the Implementing Authority any statement which has a material effect on the Implementing Authority's rights, obligations or interests and which is false in material particulars;
  - v. the *Concessionaire* has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
  - w. the *Concessionaire* commits a default in complying with any other provision of this Agreement if such a default causes a *Material Adverse Effect* on the Implementing Authority.
  - x. The *Concessionaire* has abandoned the *Project Facility*;

## 23.2 Implementing Authority's Events of Default

23.2.1 The following events, to the extent not caused by a default of the *Concessionaire* or *Force Majeure*, shall be considered for the purposes of this Agreement as Event of Default of the Implementing Authority which, if not rectified within the time period shall provide the Concessionaire the right to invoke termination proceedings are per the provisions of [Article 24](#).

- a. The Implementing Authority has failed to hand over of the *Project Site* within 30 (thirty) days of the *Appointed Date* as per the provisions set forth in [Article 10](#);
- b. The Implementing Authority has failed to make any payments due to the *Concessionaire* and more than 90 (ninety) days have elapsed since such default;
- c. The Implementing Authority has failed to abide by the terms of the Escrow Agreement;
- d. The Implementing Authority has failed to abide by the payment administration terms as per the provisions set forth in [Clause 14.6](#).

## 23.3 Rights of Parties

Upon occurrence of either Party's Event of Default, the other Party shall, without prejudice to any other rights and remedies available to it under this Agreement or law, have the following right to seek recourse to the Dispute Resolution provisions as laid down in [Article 28](#) of this Agreement.

## 23.4 Intimation of Events of Default

23.4.1 The aggrieved Party shall formally intimate the other Party about the Event of Default along with explanation and evidence for the same also indicating the consequences it may have on Project by sending a 14 (fourteen) days' notice from the day of knowledge of such Event of Default.

23.4.2 Such notice shall be issued in the spirit of true partnership and with suggestions for consultation meeting to address the issue concerned and make good the Event of Default.

## 23.5 Remedial Measures Post Event of Default

Following the receipt of such a notice, the Parties shall endeavor to arrive at a reasonable and amicable solution to arrive at an agreement for rectifying the Event of Default within the shortest possible time mutually agreeable to the Parties concerned and documented in writing duly signed by the authorized representatives of both the Parties.

## 23.6 Rectification Period

The period mutually agreed upon as described in [Clause 23.5](#) for rectifying the Event of Default to the mutual satisfaction of all the Parties shall be called the Rectification Period.

### 23.7 Obligations During the Rectification Period

The Parties shall continue to perform their respective obligations and duties during the Rectification Period with the objective that services under the Project are not disrupted in any manner whatsoever, failing which the Party in breach shall compensate the other Party for all such loss, damages on account of such breach.

### 23.8 Termination Pursuant to Events of Default

23.8.1 Either party shall have the right to initiate termination proceedings pursuant to the other Party's Events of default.

23.8.2 As such termination proceedings and termination payments shall be as per the provisions set forth in [Clause 24.3](#) and [Clause 24.5](#).

## ARTICLE 24 TERMINATION

### 24.1 Conditions for Termination of the Agreement

Without prejudice to any other rights or remedies which the Parties may have under this Agreement, upon occurrence of one Party's Default ("**Defaulted Party**") as per the provisions of [Clause 23.1](#) or [Clause 23.2](#), the other Party shall be entitled to terminate this Agreement by issuing a Termination Notice to the defaulted Party; provided that before issuing the Termination Notice, the concerned Party shall by a notice inform the *Defaulted Party* of its intention to issue such Termination Notice and grant 15 (fifteen) days to the *Defaulted Party* to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### 24.2 Termination Payments

24.2.1 Upon Termination on account of a *Concessionaire Default* during the *Term* of this Agreement, the Implementing Authority shall pay to the *Concessionaire*, by way of Termination Payment, an amount equal to 90 (ninety) percent of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80 (eighty) percent of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the *Concessionaire* hereby acknowledges that no Termination Payment shall be due or payable on account of a *Concessionaire Default* occurring prior to *COD*.

24.2.2 Upon Termination on account of a *Concessionaire* default during the *Term*, the Implementing Authority shall pay to the *Concessionaire*, by way of Termination Payment, an amount equal to 90 (ninety) percent of *Debt Due* less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80 (eighty) percent of such unpaid claims shall be included in the computation of *Debt Due*. For the avoidance of

doubt, the *Concessionaire* hereby acknowledges that no Termination Payment shall be due or payable on account of a *Concessionaire* Default occurring prior to COD.

24.2.3 Upon Termination on account of an Implementing Authority Default, the Implementing Authority shall pay to the *Concessionaire*, by way of Termination Payment, an amount equal to:

- i. Debt Due as set forth in Clause 24.2.4; and
- ii. 150% (one hundred and fifty per cent) of the Adjusted Equity as set forth in Clause 24.2.5.

24.2.4 “*Debt Due*” shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a. the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- b. all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Implementing Authority Default; and
- c. any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

Provided that if all or any part of the *Debt Due* is convertible into Equity at the option of Senior Lenders and/or the *Concessionaire*, it shall for the purposes of this Agreement be deemed to be *Debt Due* even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.

24.2.5 “**Adjusted Equity**” shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “Reference Date”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the *Project*, revised to the extent of one half of the variation in WPI occurring between the first day of the month of *Appointed Date* and the Reference Date;
- b. from COD and until the 4th (fourth) anniversary thereof, an amount equal to the *Adjusted Equity* as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the *Adjusted Equity* hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- c. after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42 (zero point four two)

percent. This number shall be substituted in each case by the product of 100 divided by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be  $100/240 = 0.416$  rounded off to two decimal points i.e. 0.42.) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the *Adjusted Equity* shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

24.2.6 Termination Payment shall become due and payable to the *Concessionaire* within 30 (thirty) days of a demand being made by the *Concessionaire* to the Implementing Authority with the necessary particulars, and in the event of any delay, the Implementing Authority shall pay interest at a rate equal to 2 (two) per cent above the prime lending rate of the State Bank of India on amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For avoidance of doubt, it is expressly agreed that termination Payment shall constitute full discharge by the Implementing Authority of its payment obligations in respect therefore hereunder.

**24.2.7 Realization of Debt Due**

The Implementing authority and the *Concessionaire* hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lender's Representative is entitled to receive from the *Concessionaire*, the *Debt Due* upon Termination of the *Concession* agreement. For realization of the *Debt Due*, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the *Concession* Agreement and the Escrow Agreement.

## 24.3 Rights and Obligations of the Implementing Authority

24.3.1 Upon Termination for any reason whatsoever, the Implementing Authority shall:

- a. be deemed to have taken possession and control of the *Project* forthwith;
- b. take possession and control of all materials, stores, implements, construction plants and Equipment and all other *Project Facilities* on or about the *Site*;
- c. be entitled to restrain the *Concessionaire* and any person claiming through or under the *Concessionaire* from entering upon the *Site* or any part of the *Project*;
- d. require the *Concessionaire* to comply with the Service Continuity and Divestment Requirements set forth in **Article 26**; and

24.3.2 Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights

of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract.

- 24.3.3 All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

#### 24.4 Survival of Rights

Notwithstanding anything to the contrary contained in this Agreement, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

#### 24.5 Liability of Defects and Damages after Termination

- 24.5.1 The *Concessionaire* shall be responsible for all defects and deficiencies in the *Project* for a period of 180 (One hundred and eighty) days (“**Defect and Damages Liability Period**” or the “**Defects Liability Period**”) after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Monitor[s] in the *Project* during the aforesaid period.
- 24.5.2 In the event that the *Concessionaire* fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Implementing Authority in this behalf, the Implementing Authority shall be entitled to get the same repaired or rectified at the *Concessionaire's* risk and cost so as to make the *Project* conform to the *Safety Requirements, Service Requirements and Maintenance Requirements*. All costs incurred by the Implementing Authority hereunder shall be reimbursed by the *Concessionaire* to the Implementing Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Implementing Authority shall be entitled to recover the same from the Escrow Account.

#### 24.6 Retention in Escrow Account

- 24.6.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of [Clause 24.6.3](#), a sum equal to 100 (hundred) percent of the total revenue receipt in the year immediately preceding the Transfer Date shall be retained by the *Concessionaire* in the Escrow Account for a period of 180 (One hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of [Clause 24.5](#).
- 24.6.2 Without prejudice to the provisions of [Clause 24.6.1](#), the *Independent Monitor[s]* shall carry



out an inspection of the *Project* at any time within 30 days of the issue of the Termination and if it recommends that the status of the *Project* is such that a sum larger than the amount stipulated in [Clause 24.6.1](#) should be retained in the Escrow Account and for a period longer than the aforesaid 180 (One hundred and eighty) days, the amount recommended by the *Independent Monitor[s]* shall be retained in the Escrow Account for the period specified by it.

- 24.6.3 The *Concessionaire* may, for the performance of its obligations under the [Clause 24.5](#), provide to the Implementing Authority, a Bank guarantee for a sum equivalent to the amount determined under [Clause 24.6.1 or 24.6.2](#), as the case may be, and for the period specified therein, substantially in the form set forth in [Schedule 13](#) (the "**Defect Liability Performance Security**"), to be modified, mutatis mutandis, for this purpose, and the Implementing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Defect Liability Performance Security for undertaking the repairs or rectification at the *Concessionaire's* risk and cost in accordance with the provisions of [Clause 24.5](#) and [Clause 24.6](#). Upon furnishing of a *Defect Liability Performance Security* under Clause 24.6.3, the retention of funds in the Escrow Account in terms of Clause 24.6.1 or Clause 24.6.2, as the case may be, shall be dispensed with.

## ARTICLE 25 SERVICE CONTINUITY AND DIVESTMENTS OF RIGHTS AND INTERESTS

### 25.1 Service Continuity

- 25.1.1 Notwithstanding [Article 24](#), upon Termination, the *Concessionaire* shall comply with and conform to the following Divestment Requirements:
- submit to the Implementing Authority, a plan outlining the handover procedures, training of Implementing Authority's staff and plan for management of human resources (the "**Service Continuity Plan**");
  - the *Concessionaire* shall continue operation of the *Project* for a period of 90 (ninety) days from the date of Termination of this Agreement ("**Service Continuity**"), and during this period all payments shall continue to be made to the *Concessionaire*, in accordance with the provisions set forth in [Article 14](#).

### 25.2 Divestment Requirements

Upon Termination, the *Concessionaire* shall comply with and conform to the following Divestment Requirements and its obligations and rights therein:

- Without prejudice to the generality of the foregoing provisions and subject to the terms and conditions of the Agreement the all shareholders of the *Concessionaire* shall transfer

100 (hundred) percent of their respective shares in *Concessionaire* to the *State Government* at a notional cost of Re 1/- (Rupee One only) per share and thereafter not claim any ownership of the *Project Facilities*, including all improvements made therein by the *Concessionaire*.

- b. notify to the Implementing Authority forthwith the location and particulars of all *Project Assets*;
- c. deliver forthwith the actual or constructive possession of the *Project* free and clear of all *Encumbrances*;
- d. cure all *Project* assets, including all defects and deficiencies so that the *Project* is compliant with the *Safety Requirements*, *Service Requirements* and *Maintenance Requirements*; provided that in the event of Termination during the *Term* of the Agreement, all *Project* assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- e. deliver relevant records and reports pertaining to the *Project* and *Project Facilities* and its design, monitoring, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- f. be responsible for removal of all staff recruited by the *Concessionaire* including the medical personnel and officers/staff/representatives, who shall not be transferred to the Implementing Authority upon termination of this Agreement. Sole responsibility of any resultant legal liabilities or disputes shall vest with the *Concessionaire*.
- g. transfer and/or deliver all *Applicable Permits* to the extent permissible under *Applicable Laws*;
- h. ensure that all software and the technology used in the implementation of the *Project* shall be made irrevocably and perpetually available to the Implementing Authority on the same terms and conditions as was present during the *Duration* so as to ensure continued and effective implementation of this Agreement. The *Concessionaire* shall train personnel as identified by the Implementing Authority in usage and operation of such software and technology so that there is no lack of trained personnel after the end of the *Duration*. The costs of all such training shall be borne by the Implementing Authority.
- i. execute such deeds of conveyance, documents and other writings as the Implementing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the *Concessionaire* in the *Project*, including the right to receive outstanding insurance claims to the extent due and payable to the Implementing Authority, absolutely unto the Implementing Authority or its nominee; and
- j. comply with all other requirements as may be prescribed or required under *Applicable Laws* for completing the divestment and assignment of all rights, title and interest of the *Concessionaire* in the *Project*, free from all *Encumbrances*, absolutely unto the Implementing Authority or to its nominee.

### 25.3 Inspection and cure

- 25.3.1 Within 30 days of the issue of the Termination Notice or not earlier than 90 (ninety) days before expiry of the Agreement, the *Independent Monitor[s]* shall verify, after giving due notice to the *Concessionaire* of the time, date and venue of such verification, compliance by the *Concessionaire* with the *Safety Requirements*, *Service Requirements* and *Maintenance*

*Requirements*, and if required, cause appropriate tests to be carried out at the *Concessionaire's* cost for this purpose.

- 25.3.2 Defaults, if any, in the *Safety Requirements*, *Service Requirements* and *Maintenance Requirements* shall be cured by the *Concessionaire* at its cost and the provisions of **Article 13** in general and **Clause 13.7** in particular shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under **Clause 24.5**.

#### 25.4 Vesting Certificate

The divestment of all rights, title and interest in the *Project* shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Implementing Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule 14** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the *Concessionaire* of all of its rights, title and interest in the *Project*, and their vesting in the Implementing Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Implementing Authority or its nominee on, or in respect of, the *Project* on the footing that all Divestment Requirements have been complied with by the *Concessionaire*.

#### 25.5 Divestment costs

The *Concessionaire* shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the *Concessionaire* in the *Project* in favor of the Implementing Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the *Concessionaire* in connection with such divestment shall be borne by the Implementing Authority.

### ARTICLE 26 EXPIRY OF CONCESSIONAIRE'S AGREEMENT

- a. This Agreement between the Implementing Authority, the *Concessionaire* and the *Private Partner* shall be deemed to have been expired and thereby null and void at the end of the duration of the Agreement as per **Clause 3.1**, unless the duration of this Agreement has been mutually extended by the concerned Parties and such decision has been recorded, issued as an amendment to this Agreement and mutually signed by both the Parties.
- b. Upon expiry of the Agreement Period, the both the Parties agree that they will abide by the relevant provisions of this Agreement, including but not limited to the provisions of **Clauses 24.3, 24.4, 24.5, 24.6** and all the clauses of **Article 25**, to ensure smooth handover of the **Project Facility** in full compliance with all required obligations and duties without affecting services to patients in any manner whatsoever.

### ARTICLE 27 ASSIGNMENTS AND CHARGES

## 27.1 Restriction on Assignments and Charges

- 27.1.1 Subject to **Clauses 27.2 and 27.3**, this Agreement shall not be assigned by the *Concessionaire* to any person, save and except with the prior consent in writing of the Implementing Authority, which consent the Implementing Authority shall be entitled to decline without assigning any reason.
- 27.1.2 Subject to the provisions of **Clause 27.2**, the *Concessionaire* shall not create nor permit to subsist any *Encumbrance*, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the *Concessionaire* is a party except with prior consent in writing of the Implementing Authority, which consent the Implementing Authority shall be entitled to decline without assigning any reason.

## 27.2 Assignment by the Project Authority

- 27.2.1 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Authority may, after giving 30 (thirty) days' notice to the *Concessionaire*, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is, in the reasonable opinion of the Implementing Authority, capable of fulfilling all of the Implementing Authority's then outstanding obligations under this Agreement.

# ARTICLE 28 CONCESSIONAIRE GRIEVANCES & DISPUTE RESOLUTION

## 28.1 Concessionaire Grievances

- 28.1.1 Grievances, if any, that the Concessionaire may have related to day-to-day operations of the Project Facility shall be addressed with the PCC.
- 28.1.2 Grievances, if any, that the Concessionaire may have related to aspects aspect of the partnership management shall be addressed with the PMC.
- 28.1.3 Any grievances that remain unaddressed or unresolved for 30 (thirty) days or even earlier if the nature of the grievances is affecting services from the Project Facility, may be become a Dispute and the Concessionaire shall have the right to exercise the provisions of **Clause 28.2** followed by **Clause 28.3**, as required.

## 28.2 Amicable Resolution

- 28.2.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, (the "**Dispute or Difference**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in this **Clause 28.2**.

- 28.2.2 The aggrieved Party shall send a notice to the other Party about the dispute and its views on the same along with recommendations for settling the dispute.
- 28.2.3 The parties shall mutually agree upon a venue, date and time for the negotiation meeting with the intent of amicably resolving the dispute.
- 28.2.4 In the event that the Parties are unable to amicably resolve the dispute within 30 (thirty) days of the receipt of notice of dispute, they shall refer the dispute to the *Project Steering Committee* for amicable settlement. Upon such reference, the *Project Steering Committee* shall meet at the earliest mutual convenience and attempt to resolve the dispute within 30 (thirty) days of such reference.
- 28.2.5 If the *Dispute* or Difference is still not amicably settled within 30 (thirty) days of the dispute being referred to the *Project Steering Committee*, either Party may refer the *Dispute* or Difference to arbitration in accordance with the provisions of [Clause 28.3](#).

### 28.3 Arbitration

- 28.3.1 Subject to the provisions of [Clause 28.1](#) and [Clause 28.2](#) any grievance, *Dispute* or Difference, if not settled through the Project Steering Committee, within 30(thirty) days of a reference to it as provided in Clause 28.2.4 of the Concession Agreement, shall be finally settled by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), under the prevailing International Centre for Alternate Dispute Resolution Arbitration Rules, 1996 ("ICADR Rules") and the Arbitration & Conciliation Act (Amendment) Act, 2015
- 28.1.1 **Arbitral Panel:** The arbitration proceedings shall be conducted by an Arbitral Panel consisting of three arbitrators, of which one shall be appointed by the Implementing Authority, one by the Concessionaire, and the presiding arbitrator shall be mutually appointed by the two arbitrator nominated by the respective parties.
- 28.1.2 **Place of Arbitration:** The place of conducting arbitration proceedings shall ordinarily be the city of [●]<sup>64</sup> in the State of [●]<sup>65</sup>.
- 28.1.3 **Language of arbitration:** The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.
- 28.1.4 **Enforcement of Award:** The Parties agree that the decision or award resulting from

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<sup>64</sup> Insert name of the capital city of the state where the Project will be implemented.

<sup>65</sup> Insert name of the state where the Project will be implemented.

arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any Court within the jurisdiction of this Agreement.

28.1.5 **Cost of Arbitration:** All costs related to arbitration shall be equally borne by both the Parties. The arbitration panel may provide in its arbitral award for the reimbursement to the prevailing Party of its costs and expenses incurred towards bringing and defending the arbitration claim.

28.1.6 **Performance during dispute:** Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to its rights, interest and entitlements, till the final decision /award.

## ARTICLE 29 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by the laws of India. Further, only the Courts in [●]<sup>66</sup> shall have jurisdiction to try all disputes and matters arising out of and under this Agreement, after reference to Arbitration.

## ARTICLE 30 MISCELLANEOUS

### 30.1 Co-branding

30.1.1 The *Project* or any part thereof shall not be branded in any manner to solely advertise, display or reflect the name or identity of the Concessionaire or its shareholders.

30.1.2 The *Concessionaire* further undertakes that it shall not, in any manner, use the name or identity of the Implementing Authority to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business.

30.1.3 For the avoidance of doubt, it is agreed that the *Concessionaire* may, at the *Project Facility* prominently display its own name jointly with that of the Implementing Authority or in signage as approved by it at a location where other public notices and signage is prominently displayed for the patients, beneficiaries and general public.

30.1.4 It is further agreed that the *Project* shall be known, promoted, displayed and advertised by the name of [●]<sup>67</sup>.

<sup>66</sup> Insert the name of the capital city of the state where the Project will be implemented.

<sup>67</sup> Insert the con-branded name with which the Implementing Authority may desire the Project to be known and identified.

## 30.2 Display of Information, Certificates and Licenses

- 30.2.1 The Concessionaire shall, at all times during the Term of this Agreement, ensure
- a. that those permits and licenses that are required to be publicly displayed within the Project Facility as per Applicable Laws, are displayed in prominent locations within the *Project Facility*.
  - b. that all fire safety and fire-fighting norms and guidelines are publicly displayed within the *Project Facility* in vernacular and English language.

## 30.3 Waiver

- 30.3.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement
- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
  - b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - c. shall not affect the validity or enforceability of this Agreement in any manner.
- 30.3.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## 30.2 Renegotiation or Amendment Due to Change in Law

- 30.2.1 The Concessionaire shall have the right to renegotiate or seek amendment to the terms and conditions on account of a “Change in Law”. For the purpose hereunder “*Change in Law*” means any of the following events which, as a direct consequence thereof, has a *Material Adverse Effect*:
- a. adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement of any *Applicable Law*; or
  - b. the imposition by any Government Agency of any material condition (other than a condition which has been imposed as a consequence of a violation by the *Concessionaire* of any Applicable Approval or *Applicable Law*) in connection with the issuance, renewal or modification of any clearance after the date of this Agreement; or

- c. any clearance previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the *Concessionaire* or if granted for a limited period, being renewed on terms different from those previously stipulated.
- d. Provided nothing contained in this **Clause 30.2** shall be deemed to mean or construe any increase in taxes, duties, cess and the like effected from time to time by any Government Agency, as *Change in Law*.

30.2.2 In the event of *Change in Law* the *Concessionaire* may propose to the Implementing Authority modifications to the relevant terms of this Agreement, which are reasonable and intended to mitigate the effect of the *Change in Law*. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement so as to place the *Concessionaire* in substantially the same legal, commercial and economic position as it were prior to such *Change in Law*.

- a. Provided, *however*, that if the resultant *Material Adverse Effect* is such that this Agreement is frustrated or is rendered illegal or impossible of performance in accordance with the provisions hereof, this Agreement shall stand terminated.
- b. Promulgation of any legislation relating to Public Private Partnership Development and Regulation will not be considered as a *Change in Law* for the purposes of this provision.

### 30.3 Survival

#### Termination of this Agreement

- a. shall not relieve the *Concessionaire* or the *Implementing Authority* of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

### 30.4 Amendment

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

### 30.5 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their



respective successors and permitted assigns.

### 30.6 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below<sup>68</sup>:

If to the Implementing Authority:

[Insert name and address]

Phone No.

Fax No.

Email:

If to the *Concessionaire*:

[Insert name and address]

Phone No.

Fax No.

Email:

If to the *Private Partner*:

[Insert name and address]

Phone No.

Fax No.

Email:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

### 30.7 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable; the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

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<sup>68</sup> Insert complete contact details for the purposes of all communication under this Agreement

### 30.8 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### 30.9 Third Party

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### 30.11 Media Policy

30.11.1 Under any circumstances whatsoever the *Concessionaire* shall not have any right to speak to any media, print, electronic or otherwise, on any aspect related to the *Project* or the services rendered thereunder, without prior written consent from the Implementing Authority, which the Implementing Authority shall have the right to deny at its sole discretion.

30.11.2 If approached by any media, the *Concessionaire* shall refer such media personnel and requests to the Implementing Authority and with immediate effect update the Implementing Authority in writing of such requests received.

### 30.12 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language only.

### 30.13 Exclusion of Implied Warranties

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

### 30.14 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

### 30.15 Execution and Counterparts

This Agreement shall be executed in three counterparts, on non-judicial stamp papers of Rs. \_\_\_\_\_/- each, duly notarised by a notary. Each of the agreements when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

**IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

**SIGNED SEALED AND DELIVERED**

## Schedule 1 Minimum Service Package

Under the *Project*, the *Concessionaire* shall at all times during the Term of this Agreement offer the following minimum services out of the Project Facility:

ONCOLOGY SERVICES		
Screening	Diagnostic	Treatment
<ul style="list-style-type: none"> <li>Pap smear</li> <li>Mammography</li> <li>Clinical examination</li> <li>FNAC</li> <li>Biopsy (CT and USG guided)</li> </ul>	<ul style="list-style-type: none"> <li>X-ray</li> <li>Colonoscopy</li> <li>CT Scan (16 slice)</li> <li>Pathology, histopathology, cytology, hematology and biochemistry</li> </ul>	<ul style="list-style-type: none"> <li>Excision of benign cancer</li> <li>Laparoscopy</li> <li>Tracheostomy</li> <li>Palliative management</li> <li>Medical Oncology (chemotherapy, hormone therapy and growth inhibitors)</li> </ul>

### Minimum services related to Cardiology

CARDIOLOGY SERVICES		
Screening	Diagnostic	Treatment
<ul style="list-style-type: none"> <li>Body Mass Index</li> <li>BP estimation</li> <li>Clinical examination</li> </ul>	<ul style="list-style-type: none"> <li>Hematology and biochemistry</li> <li>ECG</li> <li>X-ray</li> <li>ECHO</li> <li>TMT</li> <li>USD (with Doppler)</li> <li>CT (16 slice)</li> <li>Coronary angiography</li> </ul>	<ul style="list-style-type: none"> <li>Coronary angioplasty</li> </ul>

### Minimum services related to Pulmonology

PULMONOLOGY SERVICES		
Screening	Diagnostic	Treatment
<ul style="list-style-type: none"> <li>Clinical examination</li> <li>Spirometry</li> <li>Sputum examination</li> </ul>	<ul style="list-style-type: none"> <li>Pathology, histopathology, cytology, hematology and biochemistry</li> <li>X-ray</li> <li>USD (with Doppler)</li> <li>CT (16 slice)</li> <li>PFT</li> <li>Bronchoscopy</li> </ul>	<ul style="list-style-type: none"> <li>Emergency management of acute syndromes</li> <li>Tracheostomy</li> <li>COPD management</li> </ul>

### Note on Pathology and Radiology services

- The same *Concessionaire* managing the NCD services, will either directly or through one or more of its consortium partners set up and manage the pathology and radiology services within the hospital premises as per the scope defined earlier.

- b. The pathology and radiology department shall offer a full range of nationally accredited services responding to the need of the entire District Hospital and not just the NCD PPP facility.
- c. If there is any development in technology/ services provided, the same shall be considered for incorporating in the existing level of services.
- d. In addition, IEC activities, as finalized with the State Government, may be undertaken.

## Schedule 2 Project Development Plan and Applicable Permits

*(attach the approved Project Development Plan prepared as per the provisions of [Clause 5.1.1\(b\)](#) of this Agreement)*

1. The *Project Development Plan* will also include the complete list of all *Applicable Permits* that the *Concessionaire* shall obtain, maintain and comply with, as required under the *Applicable Laws*.
  2. An indicative list of *Applicable laws* is provided hereunder:
    - i. Consumer Protection Act, 1986
    - ii. Air (Prevention and Control of Pollution) Act, 1981
    - iii. Atomic Energy Act, 1962
    - iv. Bio-Medical Waste (Management and Handling) Rules, 1998
    - v. The Clinical Establishments (Registration and Establishments) Act, 2010
    - vi. Drugs and Cosmetics Act, 1940
    - vii. The Environment (Protection) Act, 1986
    - viii. Excise permit to Store Spirit
    - ix. Hazardous Waste (Management and Handling) Rules, 1989
    - x. Indian Medical Council Act, 1956
    - xi. Medical Termination of Pregnancy Act, 1971
    - xii. Narcotic Drugs and Psychotropic Substances Act, 1985
    - xiii. No-Objection Certificate under Chief Fire Officer
    - xiv. Nurses and Midwives Act (applicable to specific states)
    - xv. The Pharmacy Act, 1948
    - xvi. Pre-Natal Diagnostic Techniques Act, 1994
    - xvii. Registration of Births and Deaths Act, 1969
    - xviii. Water (Prevention and Control of Pollution) Act, 1974.
    - xix. Atomic Energy Regulatory Board
- 1.3 This List is indicative and it is the duty of the *Concessionaire* to obtain all the *Applicable Permits* as required under the *Applicable Laws*.

### Schedule 3 Performance Security

[Place]

WHEREAS:

- (A) [<sup>69</sup>](the "**Concessionaire**"), the [<sup>70</sup>](the "**Private Partner**") and the [<sup>71</sup>] (the "Implementing Authority") have entered into a Concession Agreement dated [<sup>72</sup>] (the "**Agreement**") whereby the Implementing Authority has agreed to the Concessionaire undertaking [<sup>73</sup>] on design, build, finance, operate and transfer ("**DBFOT**") basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the *Concessionaire* to furnish a Performance Security to the Implementing Authority equivalent to 5% of the Total Project Cost, that is for a sum of [Rs. [<sup>74</sup>] (Rupees [<sup>75</sup>])] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the / Term of the Agreement (as defined in the Agreement).
- (C) We, [<sup>74</sup>] through our Branch at [<sup>75</sup>] (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

**NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:**

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the *Concessionaire's* obligations during the *Term* of the Agreement, including *Development Period, Concession Period, Defect Liability Period*, under and in accordance with the Agreement, and agrees and undertakes to pay to the Implementing Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the *Concessionaire*, such sum or sums up to an aggregate sum of the **Guarantee Amount** as the Implementing Authority shall claim, without the Implementing Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

<sup>69</sup> Insert full name of the Concessionaire

<sup>70</sup> Insert full name of the Private Partner

<sup>71</sup> Insert full name of the Signatory to the Agreement on behalf of the Implementing Authority

<sup>72</sup> Insert date of signing the Concession Agreement

<sup>73</sup> Insert the amount in figures and words for which this Bank Guarantee is being issued.

<sup>74</sup> Insert full name of the Bank issuing this Bank Guarantee.

<sup>75</sup> Insert details of the Branch of the Bank issuing this Bank Guarantee.

2. A letter from the Implementing Authority, under the hand of an Officer not below the rank of [●]<sup>76</sup>, that the *Concessionaire* has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Implementing Authority shall be the sole judge as to whether the *Concessionaire* is in default in due and faithful performance of its obligations under the Agreement and its decision that the *Concessionaire* is in default shall be final, and binding on the Bank, notwithstanding any differences between the Implementing Authority and the *Concessionaire*, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the *Concessionaire* for any reason whatsoever.
3. In order to give effect to this Guarantee, the Implementing Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the *Concessionaire* and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Implementing Authority to proceed against the *Concessionaire* before presenting to the Bank its demand under this Guarantee.
5. The Implementing Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the *Concessionaire* contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Implementing Authority against the *Concessionaire*, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Implementing Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Implementing Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the *Concessionaire* or any other forbearance, indulgence, act or omission on the part of the Implementing Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Implementing Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the *Concessionaire* under the Agreement.

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<sup>76</sup> Principal Secretary to the Department – the State Government may decide on the level.



7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Implementing Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Implementing Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the *Concessionaire* shall have fulfilled all its obligations under this Agreement, and provided the *Concessionaire* is not in breach of this Agreement. Upon request made by the *Concessionaire* for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the *Concessionaire*, the Implementing Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Implementing Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this [•] day of [•], 20[•] at [•].

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)



#### Schedule 4 Project Implementation Plan

*(attach the approved Project Implementation Plan prepared by the Concessionaire indicating detailed list of activities and their completion timelines of completion of different tasks as per the provisions of this Agreement.)*

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## Schedule 5 List of human resources required for the Project

*Attach the list of minimum Human Resources required for the Project that the State Government expects the Concessionaire to deploy.*

*The list of indicative core competencies that are needed in the human resources deployed under the PPP Project facility are provided below.*

*The Implementing Authority shall ensure that a detailed survey of the catchment area is done to estimate demand for services related to the identified disease specialties, based on which the minimum numbers of staff / consultants for each of the positions can be estimated and specified in the tender document.*

1. Onco-surgeon
2. General Surgeons
3. Clinical Cardiologist
4. Pulmonologist
5. Internal Medicine Specialist
6. ICU Intensivist
7. OT anesthetist
8. Radiologist
9. Pathologist
10. Staff for ICU and Emergency room
11. Junior Residents
12. ICU Nurses
13. Nurses trained in OT
14. OT Technicians
15. Cath lab technicians
16. Perfusionist
17. Radiology Technicians
18. Pharmacist
19. Pharmacy Assistance
20. Onco Pharmacist
21. Front office staff
22. Management Staff
23. Other administrative staff (accounts, HR, IT, etc.)

## Schedule 6 Human Resource Deployment Plan

*Attach the Human Resource plan submitted by the Concessionaire to the Implementing Authority vide **Clause 5.2.2(f)** of this Agreement.*

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## Schedule 7 Details of the Licensed Premises

*(to be attached by the Implementing Authority)*

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## Schedule 8A Completion Certificate

### COMPLETION CERTIFICATE

I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•] (the "**Agreement**"), for the Project titled ".....", through [Name of Concessionaire], hereby certify that all Tests as per Good Industry Practice have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
INDEPENDENT MONITOR[S] by:

## Schedule 8B Provisional Completion Certificate

### PROVISIONAL COMPLETION CERTIFICATE

I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•] (the "**Agreement**"), for the Project titled ".....", through [Name of Concessionaire], hereby certify that all Tests as per Good Industry Practice have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

This Provisional Certificate is Valid for only 90 days from the date of issue of this Certificate within which period, the Concessionaire shall be obliged to undertake and satisfactorily complete the following outstanding tasks:

*(annex a list of outstanding tasks)*

SIGNED, SEALED AND DELIVERED  
For and on behalf of  
INDEPENDENT MONITOR[S] by:

## Schedule 9 Service Requirements and Maintenance Requirements

### NOTE:

*The plan prepared by the Concessionaire and approved by the Implementing Authority shall be annexed here.*

*The service and maintenance requirement plan will include civil infrastructure and medical and non-medical equipment and corresponding maintenance schedules.*



## Schedule 10 Service Quality Manual

Attach the Service Quality Manual developed by the Concessionaire as per Clause 8.2.7 and approved by the Implementing Authority:

Note: The Service Quality Manual shall include guidelines related to but not be limited to the following:

### **Module 1: Related to access, treatment and continuity of care**

1. Displaying of health care services offered by the Concessionaire in the *Project Facility*.
2. Documented policies and procedures for registering and admitting patients.
3. Documented procedures for managing and handling of out-patients, in-patients and emergency patients.
4. Protocols for generating unique identification number of registration of each patient.
5. Documented procedure for managing patients during non-availability of beds.
6. Documented policies and procedures for transfer out / referral of unstable patients to another facility in an appropriate manner if the Project Facility is not fully equipped to handle the case.
7. Guidelines and content for initial assessment and overall management for the out-patients, in-patients and emergency patients.
8. Documented laboratory quality assurance plan including, but not limited to, verification and validation of test methods, surveillance of test results, periodic calibration and maintenance of all equipment.
9. Documented procedures for ordering of tests, collection, identification, handling, safe transportation, processing and disposal of specimen.
10. Clearly defined time for availability of laboratory and radiology test reports.
11. Documented laboratory safety program including handling and disposal of infectious and hazardous materials and the list of minimum required safety equipment and devices for personnel including pre and post exposure protocols.
12. Quality assurance program for imaging services.
13. Radiation safety program in accordance with the standard guidelines of India Atomic Energy Agency.
14. Guidelines for appropriate screening of safety and risk prior to undergoing an imaging service.
15. Handling, usage and disposal of radioactive and hazardous materials as per statutory requirements.
16. Periodic testing of radiation safety and monitoring devices and documenting results of such tests.
17. Antibiotics policy.

### **Module 2: Related to care of patients**

18. Policies and procedures for emergency care in consonance with statutory requirements and *Applicable Laws*.
19. Policies and procedures for handling medico-legal cases.
20. Policies and procedures for guiding the triage of patients for initiation of appropriate care.
21. Policies and procedures for patient found dead on arrival to the hospital.
22. Documented Disaster Management Plan

23. Guidelines for processes to be followed which offering ALS and BLS ambulance services.
24. Policies and procedures for all activities of nursing care and services.
25. Policies and procedures for rational use of blood and blood components.
26. Documented admission and discharge criteria for intensive care and high dependency units within the *Project Facility*.
27. Documented policy and procedure for administration of anesthesia.
28. Documented policy and procedure for patients undergoing surgical procedures.
29. Documented policy and procedure for pain management.
30. Documented discharge process.

### **Module 3: Related to Management of Medication**

31. Documented policy and procedure for management of medication including but not limited to pharmacy services, usage of medication, storage of medicines, safe and rational prescription of medicines, use of narcotic drugs and psychotropic substances, chemotherapeutic agents, radioactive drugs, implantable prosthesis and medical devices.
32. Guidelines for monitoring of patients after administration of medication.

### **Module 4: Related to Patient's Rights and Education**

33. Guidelines for informing patients of their rights and responsibilities.
34. Guidelines for ensuring personal dignity and privacy of patients during examination, procedures and treatment.
35. Guidelines for seeking informed consent.
36. Guidelines for capturing patient feedback.
37. Patient's Chart of Rights.

### **Module 5: Related to Hospital Infection Control**

38. Documented policy and procedure for infection control including but not limited to full range of Hospital Infection Prevention and Control Program, controlling hospital acquired infections, sterilization activities and bio medical waste management.

### **Module 6: Related to Continuous Quality Improvement**

39. Guidelines for internal clinical and process audit covering medical and administrative aspects of the functioning of the Project Facility.

### **Module 7: Related to Responsibilities of Management**

40. Documented guidelines for services to be provided by each department.
41. Documented job profiles for each position with *Project Facility*.

### **Module 8: Related to Facility Management and Safety**

42. Documented guidelines for engineering support services and utility system.
43. Documented guidelines for bio-medical equipment management.
44. Documented guidelines for medical gases, vacuum and compressed air management.
45. Documented guidelines for handling fire and non-fire emergencies.
46. Documented guidelines for managing hazardous materials.

**Module 9: Related to Human Resource (HR) Management**

47. Documented HR policy in compliance with the Applicable Laws which guide recruitment, compensations, appraisals and all other aspects of HR management within the Project Facility.

**Module 10: Related to Information Management System**

48. Documented policies and procedures to meet the information needs of the care providers, management of the *Project Facility*, as well as other agencies including statutory bodies and government instrumentalities that require data and information as per Applicable Laws.
49. Document policies and procedures for maintaining confidentiality, integrity and security of records, data and information.

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## Schedule 11 General Monitoring Indicators

Project Monitoring Indicators shall be as follows:

- i. Number of patients treated
- ii. Percentage of government referred patients to total inpatients
- iii. Percentage of government insured patients to total inpatients
- iv. Percentage of government referred patients to total outpatients
- v. Percentage of government insured patients to total outpatients
- vi. No. of repeat visits in the OPD for the same illness
- vii. Average Length of Stay (ALOS) disaggregated by disease specialties
- viii. ALOS of different categories of patients
- ix. Rate of unscheduled returns to the operation theatre
- x. Elective surgery cancellations
- xi. Leave against medical advice
- xii. Hospital acquired infection rates (urinary tract infection, blood stream infection, respiratory tract infection, surgical site infection, unplanned returns with 48 hours, etc.)
- xiii. Post treatment infection rate
- xiv. Out-patient / inpatient conversion rate
- xv. Emergency / IP conversion rate
- xvi. In-patient mortality rate
- xvii. Complaints redressal government referred patients and of self paying patients
- xviii. Patient satisfaction index which may include but not be limited to service availability and waiting time, hygiene and cleanliness, behaviour and promptness of hospital staff, Facilities, amenities and infrastructure, doctor patient communication

## Schedule 12 Key Performance Indicators

1. Key Performance Indicators (KPIs) shall have 8 indicators as set forth in the table below in this Schedule 12.
2. KPIs 1 to 7 have a combined weightage of 90% and KPI 8 has a weightage of 10%.

No .	Category	Indicator	Numerator (N)	Denominator (D)	Calculation (C)	Threshold	Weightage (W)
1	Human Resource	Availability of Service Providers-specialists	Total no. of person days (FTEs) of specialists - present against required in the Project Facility	Total no. of specialists to be present (as per plan) X no. of days in the month	$(N / D) * 100$	85%	20%
2		Availability of support staff-nurses	Total no. of person days (FTEs) of nurses present against required in the Project Facility	Total no. of nurses to be present (as per plan) X no. of days in the month	$(N / D) * 100$	90%	10%
3	Quality of care	Unscheduled visits post discharge	No. of patients making unscheduled revisit to the Project Facility within 48 hours after discharge	Total number of discharges in the month	$(N / D) * 100$	95%	10%
4		Rate of unscheduled returns to the operation theater (OT)	No. of unscheduled returns to the OT in the month	Total number of surgeries conducted by the Concessionaire out of the Project Facility in the month	$(N / D) * 100$	95%	10%
5		Patient satisfaction levels	No. of beneficiaries with $\geq 85\%$ satisfaction score from tele-survey	Total beneficiaries who responded to the tele-survey	$(N / D) * 100$	85%	20%
6	Financials	Timely submission of claims	NA	NA			10%
7		Error ratio in claims submission	No. of claims in the previous month for which the Implementing Authority asked for clarifications	Total number of claims submitted by the Concessionaire in the previous month	$(N / D) * 100$	90%	10%
8	Facility maintenance	No. of adverse observations related to adherence	NA	NA		No adverse observations	10%

No .	Category	Indicator	Numerator (N)	Denominator (D)	Calculation (C)	Threshold	Weightage (W)
		to rectification / remedial measures/ incidents of defaults in the quarterly O&M Inspection Report					
						<b>Total</b>	<b>100 %</b>



### Schedule 13 Defects Liability Performance Security

*Text to be the same as the Schedule 3 with changes in title and the amount. The amount to be included here shall be as per the provisions of [Clause 24.5](#)*



## Schedule 14 Vesting Certificate

1. The [●]<sup>77</sup> (the "**Implementing Authority**") refers to the Concession Agreement dated [●]<sup>78</sup> (the "**Agreement**") entered into between the Implementing Authority and [●]<sup>79</sup> (the "**Concessionaire**") for [●]<sup>80</sup> (the "Project").
2. The Implementing Authority hereby acknowledges compliance and fulfilment by the *Concessionaire* of the Divestment Requirements set forth in **Clauses 25.2, 25.3, 25.4 and 25.5** of the Agreement on the basis that upon issue of this *Vesting Certificate*, the Implementing Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the *Project* shall be deemed to have vested unto the Implementing Authority, free from any *encumbrances*, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this *Vesting Certificate* that nothing contained herein shall be construed or interpreted as waiving the obligation of the *Concessionaire* to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this [●] day of [●], 20[●] at [●].

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<sup>77</sup> Insert details of the signatory on behalf of the Implementing Authority.

<sup>78</sup> Insert date of signing this Agreement.

<sup>79</sup> Insert details of the Concessionaire and the Private Partner.

<sup>80</sup> Insert title of the Project.