

**DEPARTMENT OF HEALTH AND FAMILY WELFARE
GOVERNMENT OF ODISHA**



DRAFT CONCESSION AGREEMENT

[●]

**DEVELOPMENT, OPERATION AND MAINTENANCE OF AFFORDABLE
HEALTHCARE FACILITIES
ON PUBLIC PRIVATE PARTNERSHIP MODE**

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PART I
PRELIMINARY

CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (“**Agreement**”) is entered into on this [●] day of [●] 2022.

BETWEEN

1. **THE GOVERNOR OF ODISHA** represented by Secretary to Government , Department of Health and Family Welfare, Government of Odisha with its principal office at [*insert address*] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the **ONE PART**;

AND

2. [*Insert the name of the Concessionaire*], a company incorporated under the provisions of the Companies Act, 2013 with corporate identification number [●] and its registered office at [●] (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **OTHER PART**.

The Authority and the Concessionaire shall collectively be referred to as “**Parties**” and individually as a “**Party**”.

WHEREAS:

- (A) The Government of Odisha is considering private sector participation to augment the healthcare facilities in the State and develop affordable healthcare facilities accessible to all sections of the society with special emphasis on higher secondary care and critical care services. For this purpose it has empowered the Authority to develop, operate and maintain the Project (*as defined hereinafter*) on a public private partnership mode, *inter alia*, in [●], Odisha.
- (B) The Authority had accordingly invited proposals under its Request for Proposal No. [●] dated [●] (the “**Request for Proposal**” or “**RFP**”) for the selection of developers for undertaking the development, operation and maintenance of affordable hospitals in the state of Odisha, on design, build, finance, operate and transfer (“**DBFOT**”) basis.
- (C) Pursuant to the terms of the RFP, bids were received by the Authority on or before [*insert Bid Due Date*] (“**Bid Due Date**”). Following the evaluation of the bids submitted by bidders for the Project, including that of {Selected Bidder/ Selected Bidder being the consortium comprising and (collectively, the “**Consortium**”) with as its lead technical member (the “**Lead Technical Member**”) and as its lead financial member (the “**Lead Financial Member**”) } and issued its Letter of Award dated [●] (hereinafter called the “**LOA**” or “**Letter of Award**”) to the Selected Bidder requiring it, *inter alia*, to incorporate a limited liability company under the Companies Act, 2013 for the Project and the execution of this Concession Agreement within [●] days of the date of issue thereof.

- (D) The Selected Bidder has since incorporated the Concessionaire and has requested the Authority, by its letter dated [●], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement.
- (E) The Authority, through its letter dated [●], had agreed to the request of the Selected Bidder, and accordingly intends 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 promises and mutual covenants herein contained, the adequacy of which is hereby acknowledged and confirmed, the terms and conditions of this Agreement are set out below.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context requires otherwise, capitalised terms shall have the meaning given to them in Article 43.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications 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) references to a person and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) 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;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (h) reference to "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

- (i) references to the “**liquidation**”, “**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;
- (j) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (k) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (l) any reference to day shall mean a reference to a calendar day and reference to a year shall mean a calendar year;
- (m) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the State Government) on which Scheduled Banks in Bhubaneswar, Odisha are generally open for business;
- (n) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (o) references to any date, period, Payment Milestone or Project Milestone shall mean and include such date, period, Payment Milestone or Project Milestone as may be extended pursuant to this Agreement;
- (p) the words importing singular shall include plural and vice versa;
- (q) references to any gender shall include the other and the neutral gender;
- (r) save where stated to the contrary, any references to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
- (s) references to any documents being 'in the agreed form' means such document has been initialed by or on behalf of each of the Parties for the purposes of identification;
- (t) unless otherwise stated, any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or dates;
- (u) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall bear the ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply;

- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement; and
- (w) references to Recitals, Articles, Clauses, Sub-Clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-Clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears.

1.3 **Measurements and arithmetic conventions**

- (a) 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.
- (b) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000).

1.4 **Payment in Rupees**

All payments under this Agreement shall be made in Rupees.

1.5 **Approval**

Neither giving of an approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any obligations under it or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.6 **Succession**

References to a public authority shall be deemed to include a reference to any successor to such public authority or any organisation or entity which has taken over either or both the functions and responsibilities of such public authority.

1.7 **Damages**

The damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).

1.8 **Documentation**

Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority, the Independent Engineer, Clinical Panel and/or the Monitoring Agency shall be

provided free of cost and in 3 (three) copies, and if the Authority, the Independent Engineer, Clinical Panel and/or the Monitoring Agency is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.9 **Priority of agreements, clauses and schedules**

(a) This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (i) this Agreement; and
- (ii) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (i) above shall prevail over the agreements and documents at (ii) above.

(b) Subject to the provisions of Clause 1.9(a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (i) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (ii) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail;
- (iii) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
- (iv) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (v) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (vi) between any value written in numerals and that in words, the latter shall prevail.

PART II
THE CONCESSION

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project during the Concession Period shall mean and include the following (the “**Scope of the Project**”):

- (a) to design, finance, construct and equip the Hospital on the Site set forth in Schedule 1 in accordance with the requirements specified in Schedule 2 in conformity with the Specifications and Standards set forth in Schedule 4, and other provisions of the Agreement;
- (b) to procure and install the Equipment in conformity with the Specifications and Standards, Equipment specifications as specified in Schedule 6, and other provisions of this Agreement;
- (c) to provide the Project Facilities as specified in Schedule 3, and other provisions of this Agreement;
- (d) to operate and maintain the Hospital in accordance with the provisions of this Agreement, including the Key Performance Indicators as specified in Article 21 and Schedule 14;
- (e) to provide the Healthcare Services and undertake Ancillary Facilities in accordance with the terms of this Agreement;
- (f) to transfer the Project to the Authority upon Termination in accordance with the terms of this Agreement; and
- (g) to perform and fulfil 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.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of 32 (thirty two) years commencing from the Effective Date (“**Term of Concession**”) in accordance with the provisions of this Agreement, the Lease Deed and the Escrow Agreement, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2 The Authority shall, at any time prior to the date of expiry of the Concession Period, have the right to grant concession with respect to the Project for a period which it may determine (“**Additional Concession**”), in its sole discretion, after the expiry of the Concession Period, through competitive bidding process. The Authority further agrees that the Concessionaire shall have the right to participate in such competitive bidding process and submit its bid in accordance with the terms thereof. In the event that the Concessionaire is not the highest/ lowest bidder, as the case may be, based on the bidding criteria for such Additional Concession, the Concessionaire shall have the right to match the bid of such highest/ lowest bidder and accept the Additional Concession by exercising such right of first refusal, if the amount quoted by the Concessionaire in the bid is 10% (ten per cent) below or above the amount quoted by the highest/ lowest bidder for the Additional Concession. *Provided that* the grant of such Additional Concession to the Concessionaire shall be subject to the following conditions:

- (a) the aggregate amounts paid by the Concessionaire to the Authority during the Concession Period in the nature of Damages in accordance with the terms of this Agreement, are not more than 15% (fifteen per cent) of the amount of the Deemed Performance Security; or
- (b) not more than 5 (five) incidents of Concessionaire Default shall have occurred for 6 (six) consecutive months during the entire Concession Period.

For the purposes of this Clause 3.1.2, the aggregate amounts of Damages paid by the Concessionaire to the Authority during the Concession Period shall be calculated at the present value, which shall be taken as on the Execution Date.

3.1.3 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire, during the Concession Period to:

- (a) access to and lease of the Site to the extent conferred by the provisions of this Agreement and the Lease Deed;

- (b) design, finance, construct and equip the Hospital during the Construction Period;
- (c) achieve COD in accordance with the provisions of Clause 15.1 and subsequently, manage, operate and maintain the Hospital throughout the Concession Period in accordance with Applicable Law, Applicable Permits, Good Industry Practice, and this Agreement;
- (d) provide Healthcare Services in accordance with the standards and terms set out in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits;
- (e) demand, collect and appropriate Fee from Patients and/or the Insurers and/or the Authority, as the case may be, for availing of the Healthcare Services, in accordance with this Agreement;
- (f) to receive, retain and utilize the Capital Grant and {Operational Grant}¹ in accordance with Article 26;
- (g) {pay the Premium to the Authority in accordance with Article 26, if applicable;}
- (h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (i) appoint contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its terms;
- (j) upon Termination of the Concession, transfer the Project to the Authority in accordance with the terms of this Agreement;
- (k) perform and fulfil all the obligations of the Concessionaire under and in accordance with this Agreement; and
- (l) do all things incidental and necessary to implement, manage, operate and maintain the Project.

3.1.4 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, this Agreement shall, from the Effective Date, entitle the Concessionaire to undertake designing, construction, finance, development, operation and maintenance of the following additional facilities (the “**Ancillary Facilities**”) as part of the Project; *provided however*, that the Concessionaire shall not, in any event, commence the operation and/or use of the Ancillary Facilities prior to the COD of Phase- I:

- (a) cafeteria;

¹ *Note: To be retained only if any Operational Grant is payable as per the bidding documents.*

- (b) boarding and lodging facilities for the Patients and their attendants;
- (c) pharmacy shops and surgical equipment shops;
- (d) creche facilities and entertainment facilities for doctors, nurses and other staff employed by the Hospital;
- (e) nursing colleges and paramedical clinics and training centers, with the prior approval of the Authority;
- (f) ATMs and banks;
- (g) other shops or stores of a commercial nature *provided that* the use of such premises shall be for a purpose which is in compliance with Applicable Laws and is not likely to adversely affect the provision of the Healthcare Services in the Hospital any manner; and
- (h) any other facilities that may be approved and/or notified, in writing, by the Authority from time to time during the Concession Period.

Subject to the provisions of this Agreement, Applicable Laws and Applicable Permits, the Concessionaire shall have the right to license part of the Site for the purpose of Ancillary Facilities and shall be entitled to receive and retain all revenues that may be generated from the Ancillary Facilities.

- 3.1.5 The Concessionaire shall be entitled to undertake provision of Ancillary Facilities on and from COD of Phase-I only if such Ancillary Facilities form part of the Construction Documents approved by the Authority in accordance with this Agreement. For any Ancillary Facilities undertaken after the COD of Phase-I, the Concessionaire shall submit the applicable Drawings for the Ancillary Facilities to the Authority and the Independent Engineer (if present at such time) for their approval and the provisions of Article 12 shall apply *mutatis mutandis* to such Drawings.
- 3.1.6 Upon the Termination of this Agreement, the Concessionaire shall comply with obligations provided in Article 33.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Effectiveness

Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 23, 24, 26, 28, 31, 32, 33, 35, 37, 38, 39, 40, 42, 43 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction or waiver of the conditions precedent specified in Clause 4.2 (the “**Conditions Precedent**”).

4.2 Conditions Precedent

4.2.1 Authority's Conditions Precedent

The Concessionaire may, upon providing the Construction Performance Security to the Authority in accordance with Clause 9.1, within a period of 30 (thirty) days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.2.1 within the time period specified for each Condition Precedent and if no such time period is specified, within a period of 270 (two hundred and seventy) days from date of the notice, and the conditions precedent required to be satisfied by the Authority prior to the Effective Date shall be deemed to have been fulfilled when the Authority shall have:

- (i) signed the Lease Deed within a period of 60 (sixty) days from the Execution Date;
- (ii) simultaneously with the execution of the Lease Deed provided to the Concessionaire the Right of Way to the Site, free from any Encumbrance, and on an 'as is where is' basis in accordance with the provisions of Article 10 and the Lease Deed for the development, construction and operation of the of the Project;
- (iii) taken all necessary action for approval of the Central Capital Grant, in accordance with the Central VGF Scheme.
- (iv) procured and provided the necessary infrastructure for electricity connectivity up to the boundary limits of the Site, at its own cost;
- (v) constructed permanent approach roads to the Site in accordance with the Applicable Laws, at its own cost, if there are no existing approach roads of to the Site;
- (vi) depositing funds equivalent to the first Tranche of State Capital Grant in the Escrow Account; and
- (vii) appointed the Independent Engineer in accordance with Article 23 within a period of 60 (sixty) days from the date of the notice issued by the Concessionaire.

Provided that, the Concessionaire may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.2.1.

4.2.2 Concessionaire's Conditions Precedent

The Concessionaire shall be responsible for the satisfaction of the following Conditions Precedent, within the time period specified for each Condition Precedent, and if no such time period is specified, within a period of 270 (two hundred seventy) days from the Execution Date:

- (i) providing the Construction Performance Security to the Authority in accordance with Article 9 within a period of 60 (sixty) days from the Execution Date and evidence that the Construction Performance Security is in full force and effect. For the avoidance of doubt, it is expressly clarified that if the Construction Performance Security has been encashed in accordance with Clause 4.4, the Concessionaire shall ensure that the Construction Performance Security has been replenished and such Construction Performance Security is in full force and effect on the Effective Date;
- (ii) procuring all the Applicable Permits for commencement of Construction Works (including but not limited to those specified in Part A of Schedule 7) unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (iii) making all payments (if any) required to be made under the Lease Deed prior to the Effective Date;
- (iv) delivering to the Authority, in original, from the {Selected Bidder/each Consortium Member} confirmation of the correctness of its representations and warranties as set forth in Clauses 7.1(k), (l), (m) and (n);
- (v) delivering to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (vi) providing certified true copies of its constitutional documents;
- (vii) providing certified true copies of all corporate resolutions, authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- (viii) providing proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire;
- (ix) submitting the Construction Documents prepared in accordance with Clause 12 to the Authority and the Independent Engineer for their approval, within a period of 120 (one hundred and twenty) days from the Execution Date;

- (x) execution of the Financing Agreements and delivering to the Authority 3 (three) true copies thereof, duly attested by a director of the Concessionaire; and
- (xi) achievement of Financial Close and delivering to the Authority 3 (three) true copies of the Financial Package, duly attested by a director of the Concessionaire.
- (xii) execution of, and procuring the execution of the Escrow Agreement by the Escrow Bank and opening and establishing the Escrow Accounts in accordance with Article 28 hereof and the Escrow Agreement, within 270 (two hundred and seventy) days of the Execution Date;
- (xiii) execution of, and procuring execution of the Substitution Agreement simultaneously with the execution of Financing Agreements; and

Provided that, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.2.2. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.2.3 Other Conditions Precedent²

- (i) The Central Capital Grant shall have obtained final approval in accordance with the Central VGF Scheme; and
- (ii) the Authority shall have notified the Concessionaire on allocation of amount towards the Central Capital Grant and the State Capital Grant in the Capital Grant Allocation Letter.

4.3 Effective Date

4.3.1 Each Party shall cooperate and use its reasonable efforts to assist the other Party, including by furnishing information, documents and instruments, attending meetings, processing applications and providing consents, in fulfilling the Conditions Precedent that the other Party is required to satisfy.

4.3.2 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.4 Consequences of failure to satisfy Conditions Precedent

4.4.1 In the event that (i) the Authority fails to satisfy any or all Conditions Precedent set forth in Clause 4.2.1 within the period specified in respect thereof; (ii) any or all Conditions Precedent set forth in Clause 4.2.1 have not been expressly waived by the Concessionaire in accordance with Clause 4.2.1; and (iii) the delay has not

² *Note: This condition precedent to be deleted if the Concessionaire is providing a premium to the Authority.*

occurred as a result of failure of the Concessionaire to fulfil the obligations under Clause 4.2.2 or other breach of this Agreement by the Concessionaire or due to occurrence of a Force Majeure Event, the Authority shall pay to the Concessionaire Damages equivalent to an amount calculated at the rate of 0.1% (zero point one per cent) of the Construction Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to 20% (twenty per cent) of the Construction Performance Security.

- 4.4.2 In the event that (i) the Concessionaire fails to satisfy any or all of the Conditions Precedent set forth in Clause 4.2.2 within the period specified in respect thereof; (ii) any or all Conditions Precedent set forth in Clause 4.2.2 have not been expressly waived by the Authority in accordance with Clause 4.2.2; and (iii) the delay has not occurred as a result of failure of the Authority to fulfil the obligations under Clause 4.2.1 or other breach of this Agreement by the Authority or due to occurrence of a Force Majeure Event, the Concessionaire shall pay the Authority Damages equivalent to an amount calculated at the rate of 0.1% (zero point one per cent) of the Construction Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 20% (twenty per cent) of the Construction Performance Security.

4.5 Termination of the Agreement on non-fulfilment of the Conditions Precedent

- 4.5.1 Without prejudice to the provisions of Clause 4.4, the Parties expressly agree that in the event Effective Date does not occur, for any reason whatsoever, within 360 (three hundred and sixty) days from the Execution Date or any extended period mutually agreed by the Parties (subject to payment of Damages calculated in accordance with Clause 4.4 above, for each day of such extension), all rights, privileges, claims and entitlements of the Concessionaire 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 4.5.2 In the event that this Agreement is terminated due to Authority's failure to satisfy any of its Conditions Precedent or Force Majeure then the Authority shall release or return the Bid Security or the Construction Performance Security, as the case may be, after appropriating and adjusting the amount of Damages payable by the Concessionaire, if any, in accordance with the provisions of this Agreement.
- 4.5.3 In the event that this Agreement is terminated due to Concessionaire's failure to satisfy any of its Conditions Precedent, then notwithstanding the Termination of this Agreement in accordance with this Clause 4.5 the Authority shall have the right to invoke the Bid Security and/or the Construction Performance Security, as the case may be, to recover the amount of Damages payable by the Concessionaire in full and return the balance, if any, to the Concessionaire.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 {The Concessionaire and the Lead Financial Institution shall have taken all actions necessary in accordance with the Central VGF Scheme for final approval of the Central Capital Grant, including but not limited to the Lead Financial Institution presenting its appraisal and independent recommendation to the Empowered Committee in the manner and within the time set out in the Central VGF Scheme.}³
/ {The Concessionaire and the Authority shall have taken all actions necessary in accordance with the Central VGF Scheme for final approval of the Central Capital Grant, including but not limited to the Authority presenting its appraisal and independent recommendation to the Empowered Committee in the manner and within the time set out in the Central VGF Scheme.}⁴
- 5.1.3 Subject to Clause 6.2.1, the Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities on or outside the Site for the construction, development, operation and maintenance of the Project, including procuring connection for and supply of electricity, water, telephone lines, sewage disposal etc.
- 5.1.4 During the Concession Period, the Concessionaire shall obtain all Applicable Permits from the relevant Government Instrumentalities, including but not limited to those specified in Schedule 7 and keep in force and comply with the conditions of, all Applicable Permits for the development, operation and maintenance of the Hospital. The Concessionaire shall also establish the necessary system for disposal of medical and hazardous waste in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall, at its own cost and expense, make necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for renewing or maintaining the Applicable Permits in conformity with Applicable Laws.
- 5.1.5 Without prejudice to the obligations specified in Clause 5.1.4 above, the Concessionaire shall obtain all Applicable Permits (including but not limited to those specified in Part B of Schedule 7) for commencement of commercial operations of the services and Specialties envisaged in Phase-I and Phase-II within

³ *Note: To be retained if debt financing is availed by the Concessionaire.*

⁴ *Note: To be retained if no debt financing is availed by the Concessionaire.*

the timelines identified in Schedule 10 and in any case, before the Scheduled Completion Date.

- 5.1.6 The Concessionaire shall comply with all Applicable Laws and conditions of all Applicable Permits while performing its obligations under this Agreement. Further, the Concessionaire shall procure and ensure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.
- 5.1.7 The Concessionaire shall procure that its Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.8 Subject to availability of Beds and the provisions of Applicable Laws, Applicable Permits and this Agreement, the Concessionaire shall, provide all necessary services to Patients including the Select Patients, who approach the Hospital to avail of the Healthcare Services. It is clarified that the Concessionaire shall not discriminate, distinguish or differentiate between the Select Patients and other Patients in the admission of Patients for the provision of Healthcare Services. It is further clarified that Patients who are not Select Patients shall not be given preferential treatment or access to Healthcare Services over the Select Patients.
- 5.1.9 The Concessionaire shall empanel the Hospital under BSKY, BKKY and OSTF on or prior to the achievement of COD of Phase I.
- 5.1.10 In addition to the obligation of the Concessionaire specified in Clause 5.1.9 above, in the event the Authority or the State Government notifies any Government Health Scheme during the Concession Period, the Concessionaire shall make an application to empanel the Hospital under such Government Health Scheme within the time limit prescribed by the Authority.
- 5.1.11 The Concessionaire shall not, solicit, directly or indirectly, doctors, nurses, laboratory technicians or other paramedical staff employed in the State Government hospitals with a view to engage or employ them during their employment with the State Government.
- 5.1.12 The Concessionaire shall ensure that the Hospital Building and Staff Accommodations (where applicable) developed under the Project is earthquake resilient, flood proof, cyclone resistant including fire protection features. Further, the Concessionaire shall ensure that the infrastructure in the Hospital is eco-friendly and disabled (physically & visually handicapped) friendly and is in compliance with Applicable Laws.
- 5.1.13 The Hospital shall act as the local hub for disaster response and comply with applicable National Disaster Management Authority (NDMA) guidelines aimed at internal and external disaster prevention, mitigation, preparedness and response activities such that Hospital is fully equipped to deal with disasters and catastrophes promptly and without delay.

5.1.14 {The Concessionaire shall execute a Design Consultancy Agreement with the Design Consultant and deliver a copy of the executed Design Consultancy Agreement to the Authority;}⁵

5.1.15 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Hospital;
- (b) perform and fulfill its obligations under the Financing Agreements;
- (c) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (d) not do or omit to do any act, deed or thing which may in any manner violate any provision of this Agreement;
- (e) ensure that Patients are treated with due courtesy and consideration and provided with ready access to services and information;
- (f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (g) transfer the Project to the Authority upon Termination in accordance with the provisions of this Agreement;
- (h) subject to Applicable Laws, including the National Building Code – 2005 Guidelines, provide parking space for at least such number of cars, buses and two-wheelers as is specified in Specifications and Standards. Each parking space shall be of the minimum size prescribed for such categories of vehicles under Applicable Law and shall be utilised only for parking and not for any other purposes. Subject to such parking space being provided within the premises of the Site, the Concessionaire is free to develop the prescribed parking space either as underground parking or surface parking. It is clarified that from the COD of Phase-I the Concessionaire shall provide the parking space in proportion to the number of Operationalised Beds and the built up area of Staff Accommodation. It is further clarified that with respect to the area designated in the Master Plan for providing parking space, but which has not been operationalised, the Concessionaire shall have the right to utilise it for temporary storage of raw material.

5.2 Obligations relating to Project Agreements

⁵ *Note: To be deleted if no design consultant is appointed for the Project.*

- 5.2.1 The Concessionaire shall be entitled to sub-contract its obligations under this Agreement in part (but not in full) in accordance with the provisions of this Clause 5.2 and the other provisions of this Agreement provided always that such sub-contracting shall not in any manner whatsoever relieve the Concessionaire from any of its obligation or liability under this Agreement and the Concessionaire shall at all times remain responsible for any act or omission of its counter-parties under a Project Agreement (other than this Agreement) and its contractors/sub-contractors, as if they were the acts or omissions of the Concessionaire.
- 5.2.2 The Concessionaire shall procure goods and services, and award contracts, sub-contracts, or any other rights or privilege in the Project in a competitive, fair, transparent and efficient manner, and shall at all times enter into contracts on an arm's length basis and in accordance with Applicable Laws.
- 5.2.3 {The Concessionaire shall procure that the Lead Technical Member is responsible for all matters pertaining to the operation of the Hospital as is listed in Schedule 25. The Authority may require the Concessionaire to submit documents evidencing compliance with this provision, from time to time.}⁶ Notwithstanding the aforesaid and/or anything to the contrary contained in this Agreement and/or any Project Agreement, under no circumstances shall the Concessionaire sub-contract the overall development, operation and maintenance of the Project and the Concessionaire shall, at all times be responsible for carrying out and shall carry out the overall administration and management of the Hospital.
- 5.2.4 The Concessionaire shall submit to the Authority the drafts of such Project Agreements, Financing Agreements, insurance contracts or such amendments or replacements thereto, as may be requested by the Authority for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Upon the request of the Authority, the Concessionaire shall submit to the Authority a true copy of the Project Agreement(s), Financing Agreement(s), insurance contracts or amendments thereto, as the case may be, duly attested by a Director of the Concessionaire, for its record within 7 (seven) days of receipt of such request. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to request for a Project Agreement, Financing Agreement, insurance contracts or any amendment thereto for review and/or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.5 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing

⁶ *Note: To be deleted if the Selected Bidder is not a Consortium.*

or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. The Authority shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due of the Concessionaire.

5.2.6 The Concessionaire shall ensure that each Project Agreement contains provisions in accordance with this Clause 5.2.6 that entitle the Authority or its nominee, in its sole discretion, to step into such an agreement to substitute the Concessionaire in the event of Termination (the “**Covenant**”) on the following terms and conditions:

- (a) Any bank guarantee submitted by any Project Counterparty to the Concessionaire in accordance with the provisions of the Project Agreement, as performance security or any other form of security, assurance or guarantee for the performance of such Project Agreement, shall be transferred in the name of the Authority or its nominee by such Project Counterparty;
- (b) The benefits of all warranties given by the Project Counterparties under the Project Agreements shall be available to the Authority or its nominee;
- (c) In case the Authority step in occurs due to the termination of the Agreement prior to its term, the Project Agreement may, irrespective of any longer remaining term of the Project Agreement, be terminated by the Authority after expiry of 90 (ninety) days from such termination of this Agreement and, the Authority shall not be liable to make any payments solely on account of such termination of the Project Agreement;
- (d) The Project Counterparty shall not terminate the Project Agreement solely on account of the right of the Authority to step into such agreement and the Authority shall not incur any liability to the Project Counterparty solely on account of the inclusion of the Covenant;
- (e) In the event the Authority does not exercise its rights to step in place of the Concessionaire in the Project Agreement within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreement shall be deemed to cease to be in force and effect on the Transfer Date without the Authority being liable in any manner whatsoever; and
- (f) All sums claimed by the Project Counterparty as being due and owing for works and services performed or accruing prior to Termination, shall constitute debt between the Concessionaire and the Project Counterparty, and the Authority shall not in any manner be liable for such sums.

The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each Project Agreement, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from each of the Project Counterparties that it would be bound by the Covenant and not to seek any relief or remedy whatsoever from the Authority in the event of Termination.

- 5.2.7 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the Contractor and execution of any contract for the Hospital shall be subject to the prior approval of the Authority from national security and public interest perspective, and the decision of the Authority in this behalf shall be final, conclusive and binding on the Concessionaire. The Concessionaire undertakes that it shall not give effect to any such selection of Contractor without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority may request amendments to the contract for ensuring compliance with the terms of this Agreement, and the Concessionaire shall comply with such request of the Authority within 15 (fifteen) days of receipt of the request. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or the Contractor(s) from any liability or obligation under this Agreement.
- 5.2.8 The Concessionaire shall be entitled to appoint O&M Contractor(s) for O&M of the Hospital (except the Core Clinical Services) and for provision and operation of the Ancillary Facilities at the Hospital subject to the O&M Contractor meeting the requirements stipulated in Schedule 22. {Notwithstanding anything to the contrary contained in this Clause 5.2.8 but subject always to Clause 5.2.3, the Authority agrees that the Concessionaire shall be entitled to appoint {the Lead Technical Member or an Associate of the Lead Technical Member/Associate of the Concessionaire} as an O&M Contractor for the O&M of the Hospital, including for providing the Core Clinical Services, provided that the Authority may, in its sole discretion, not allow the Concessionaire to appoint an Associate of the {Lead Technical Member/Concessionaire} as an O&M Contractor for providing the Core Clinical Services only from a national security and/or a public interest perspective. The Concessionaire shall immediately upon execution, submit a copy of the duly executed O&M Contract with the {Lead Technical Member or its Associate, as the case may be/its Associate}, to the Authority for its review, and the Authority may request amendments to the O&M Contract for ensuring compliance with the terms of this Agreement, and the Concessionaire shall comply with such request of the Authority within 15 (fifteen) days of receipt of the request. }

5.3 **Obligations relating to Change in Ownership**

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty-five per cent) of the total Equity of the Concessionaire; or

- (b) acquisition of any control directly or indirectly of the board of directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

shall constitute a Change in Ownership requiring prior approval of the Authority from a national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the board of directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to a national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (i) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Concessionaire;
- (ii) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (iii) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the board of directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the board of directors of the Concessionaire.

5.3.3 Subject to the provisions of Clause 5.3.2 above but notwithstanding anything else contained in this Agreement, the Concessionaire is entitled to Change in Ownership prior to the lock-in period specified in Clause 5.3.1 above subject to:

- (a) the prior consent of the Authority; and
- (b) the transferee shareholder establishing, to the satisfaction of the Authority, that it at least meets:

- (i) the Selected Bidder's Technical Capacity and Financial capacity in case of the Selected Bidder being a single bidder; or
- (ii) in the case the Selected Bidder is a Consortium, the transferor shareholder's experience which was counted towards the satisfaction of the Minimum Eligibility Criteria for the Project.

The Concessionaire agrees and acknowledges that the decision of the Authority in relation to Technical Capacity and Financial Capacity of the transferee shareholder under this Clause 5.3.3 shall be final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such transfer or substitution without the prior approval of the Authority. The Authority shall not unreasonably withhold its consent if the transferee shareholder establishes its Technical Capacity and Financial Capacity, as the case may be, in accordance with Clause 5.3.3 (b) above.

5.4 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Concessionaire shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Concessionaire or any of its contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Concessionaire for performance of its obligations under this Agreement and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Obligations relating to employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are duly qualified as required under Schedule 5, and at all times are properly trained with adequate and state-of-the-art training for their respective functions in accordance with Good Industry Practice.

5.6 Status of Select Patients

The Concessionaire shall, prominently at the Hospital, display in real time, the status of Select Patients treated over the preceding quarter at the entrance of the Hospital. Such information shall be displayed prominently on an electronic board and be updated in real time.

5.7 Sole purpose of the Concessionaire

- 5.7.1 Except as provided in Clause 3.1.3, 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 shall not, except with the prior written consent

of the Authority, be or become directly or indirectly engaged, concerned or interested in any business or activity other than envisaged herein.

5.8 **Branding of Hospital**

5.8.1 The Hospital or any part thereof shall not be branded in any manner to advertise, display or reflect the name of the Authority, except as expressly agreed by the Authority. The Concessionaire shall not claim in any manner that any of the Healthcare Services provided in the Hospital is approved by the Authority for quality or for any other purpose and the Concessionaire shall be solely responsible for quality of Healthcare Services provided in the Hospital.

5.8.2 On or before the Effective Date, the Parties shall mutually agree on the branding of the Hospital and the name by which it shall be known, promoted, displayed and/or advertised. In the event that the Parties are unable to agree on the branding of the Hospital on or before the Effective Date, then the decision of the Authority in this regard shall be final and binding on the Parties and the Concessionaire shall not have the right to challenge such decision.

5.9 **Facilities for physically challenged and elderly persons**

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, GOI or a substitute thereof and any policy issued by the State Government, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Hospital.

5.10 **EHS Standards and L&FS Standards**

5.10.1 The Concessionaire shall at all times and throughout the Concession Period (designing, development, construction, operation and maintenance) comply with Applicable Laws including the relevant Environmental, Health and Safety (“EHS”) rules and regulations and Life, Fire and Safety (“L&FS”) Standards.

5.10.2 The Concessionaire shall prepare an environmental and social management plan (ESMP) for construction and O&M phases separately based on an Environmental and Social Impact Assessment (ESIA) process and comply with the IFC Performance Standards. Such performance standards shall take into consideration the principles set out in:

(a) Manual on norms and standards for environment clearance of large construction projects, Ministry of Environment, Forest and Climate Change (MoEF) guidelines as applicable (Source: http://envfor.nic.in/divisions/iass/Construction_Manual.pdf);

(b) IFC Performance Standards (1 through 8) on Environmental and Social Sustainability, January 2012 available at (http://www.ifc.org/wps/wcm/connect/115482804a0255db96fbffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES), as may be modified and updated from time to time;

- (c) IFC Environmental and Safety General Guidelines dated 30 April 2007 ([http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHS Guidelines2007_GeneralEHS/\\$FILE/Final++General+EHS+Guidelines.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHS_Guidelines2007_GeneralEHS/$FILE/Final++General+EHS+Guidelines.pdf)), as may be modified and updated from time to time;
- (d) IFC Environmental and Safety General Guidelines for Healthcare Facilities dated 30 April 2007 ([http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHS Guidelines2007_HealthCareFacilities/\\$FILE/Final++Health+Care+Facilities.pdf](http://www.ifc.org/ifcext/sustainability.nsf/AttachmentsByTitle/gui_EHS_Guidelines2007_HealthCareFacilities/$FILE/Final++Health+Care+Facilities.pdf)), as may be modified and updated from time to time;
- (e) National Building Code of India published by BIS (<http://www.bis.org.in/>) and other statutory BIS standards applicable to hospital projects; and
- (f) L&FS Standards – As per National Building published by BIS, Applicable Laws and Section 3.3 of IFC General EHS guidelines referred above.

5.10.3 The Concessionaire shall, 90 (ninety) days prior to commencement of Construction Works, prepare and submit to the Authority, the environmental and social management plan as set forth in Clause 5.10.2. The environmental and social management plan shall include E&S Management Systems (ESMS) as specified under IFC Performance Standards 1 covering various aspects such as E&S mitigation plan as per IFC Performance Standards 1 through 8, labour and working conditions in line with IFC Performance Standard 2 requirements especially during construction phase (labour camp standards, workers grievance mechanism; occupational health and safety) and engagement and deployment of security personnel as per IFC Performance Standards 4 requirements. The Authority shall review the environmental and social management plan and provide its feedback to the Concessionaire within 30 (thirty) days from the date of receipt of the environmental and social management plan. In the event that the Authority does not provide its feedback within the aforesaid time period, the said environmental and social management plan shall be deemed to have been approved by the Authority. The Authority shall be free to consult the Independent Engineer in reviewing the said environmental and social management plan.

5.11 **Medico-Legal Cases**

In Medico-Legal Cases, the Concessionaire shall prepare and sign a final report for which it shall be responsible. Any judicial obligation to participate in legal proceedings as a witness or expert relating to a Medico-Legal Cases shall consequently be the responsibility of Concessionaire, except where expressly required otherwise by a judicial authority.

5.12 **Provision of adequate space to Authority for setting up pharmacy and project office**

5.12.1 The Concessionaire shall, on or before COD of Phase-I, provide built up space of not less than 500 (five hundred) square feet, which is ready for occupation and use, to the Authority on the ground floor of the Hospital Building, preferably near the reception area or at the entrance of the Hospital Building or in any other building near the Hospital or any other appropriate location, for dispensing medicines and/or

providing vaccination or preventive services to the Select Patients and/or any other Healthcare Services to Select Patients. For this purpose, the Authority or its authorized representative may setup its own drug dispensing unit to provide medicines, including free and subsidized medicines, to the Select Patients based on the OPD consultations, follow-up treatment and health camps. The space provided by the Concessionaire must have water and electricity supply and access to other utilities as may be requested by the Authority. The Concessionaire and its personnel, agents, representatives, sub-contractors etc. shall not be responsible for any loss, damage, cost and expense of whatever kind and nature arising out of, and attributable to, the activities which may be carried out by the Authority, its personnel, agents, representatives etc. under this Clause 5.12.1, and the Authority shall keep the Concessionaire indemnified against such losses, damage, cost and expense.

5.12.2 The Concessionaire in consultation with the Authority shall provide built a space of not less than 500 (five hundred) square feet, which is ready for occupation and use and which should not unreasonably interfere with or adversely affect the operation of the Hospital, to the Authority on the ground floor of the Hospital Building, preferably near the reception area or at the entrance of the Hospital Building or in any other building near the Hospital or at any other appropriate location, for setting up an administrative office of the Authority for the purpose of monitoring the implementation of the Project and the authorization of Select Patients in accordance with Clause 22.1 and/or setting up of police booth for assistance in Medico-Legal Cases. The space provided by the Concessionaire must have water and electricity supply and access to other utilities as may be requested by the Authority. The location and layout plan of such space shall be submitted by the Concessionaire as part of the Master Plan to the Authority for its review. The Concessionaire and its personnel, agents, representatives, sub-contractors etc. shall not be responsible for any loss, damage, cost and expense of whatever kind and nature arising out of, and attributable to, the activities which may be carried out by the Authority, its personnel, agents, representatives etc. under this Clause 5.12.2, and the Authority shall keep the Concessionaire indemnified against such losses, damage, cost and expense.

5.12.3 Notwithstanding anything contained in this Agreement, the Authority shall be responsible for the maintenance of utilities of the space provided by the Concessionaire under this Clause 5.12. For the purpose of maintenance of the utilities, the Authority shall conform to the EHS rules and regulations and the L&FS Standards and in case of any non-compliance with the aforesaid requirements, the Concessionaire shall inform the Authority in writing together with the remedial measures that the Authority is required to take in order to comply with such rules and standards. Subject to the Concessionaire being in compliance with the aforesaid, the Concessionaire shall not be responsible for any loss, damage, cost and expense of whatever kind and nature arising out of gross negligence, willful misconduct or non-compliance by the Authority and/or its personnel, agents, representatives etc. with this Clause 5.12.3 resulting in any harm, loss, damage, bodily injury or sickness to any person or harm, loss or damage to any property, and the Authority shall keep the Concessionaire indemnified against such losses, damage, cost and expense.

5.12.4 The Concessionaire shall, at its own cost, install separate meters and required interconnections at the Hospital so as to enable calculation of electricity consumption of the premises provided to the Authority in accordance with Clauses 5.12.1 and 5.12.2 above separately from the remainder of the Hospital. The Authority shall be liable for the payment of the cost of utilities of the premises provided by the Concessionaire under this Clause 5.12 to the Concessionaire at the standard rates charged by the concerned Government Instrumentality on these utilities.

5.13 Hospital Management Information System

5.13.1 The Concessionaire shall at its own cost install, operate and maintain a computerised HMIS so as to ensure that the records of all Hospital related activities are computerised and maintained in a structured manner.

5.13.2 The HMIS shall cover the stages of Patient care and Hospital management. It should be capable of generating individual reports on each service area separately along with the ability to generate consolidated reports.

5.13.3 The HMIS shall be capable of providing online information as specified in this Clause 5.13 and Schedule 19 on real time basis. Necessary software and hardware shall be put in place in the Hospital in this regard. The Concessionaire shall control access to this information on a need to know basis by granting passwords to authorised personnel. The HMIS shall include all information as specified in Schedule 19.

5.14 Website of the Hospital

The Concessionaire shall also commission, operate and maintain a comprehensive website exclusively for the Hospital (“**Hospital Website**”) in accordance with Schedule 19.

5.15 Use of Hospital for establishment of Medical College

The Parties expressly agree and acknowledge that the Authority may, anytime during the Operation Period, establish medical colleges associated with the Hospital in accordance with Applicable Laws and without adversely affecting the operation of the Hospital in any manner. In the event that the Authority exercises such right, the Parties acknowledge and agree that this Agreement shall be amended on terms acceptable to both Parties to provide for the establishment of such medical colleges.

5.16 Use of Staff Accommodation

Notwithstanding the other provisions of this Agreement, the Concessionaire may, with the prior approval of the Authority, utilize the area allocated for Staff Accommodation for the purpose of other Hospital operations on a case to case basis. No additional Grant shall be made to the Concessionaire if any such request is approved by the Authority.

5.17 Educational Courses and Training

5.17.1 The Concessionaire shall within 5 (five) years of COD of Phase-II, commence provision of DNB in accordance with Applicable Laws, Applicable Permits and this Agreement, and at least offer the following specializations in DNB:

- (a) General surgery;
- (b) Paediatrics;
- (c) Obstetrics and gynaecology;
- (d) General medicine; and
- (e) Anaesthesiology.

5.17.2 The Concessionaire shall, offer at least 1 (one) seat in each of the specializations in DNB specified in Clause 5.16.1 above, in every academic year, and subject to and in accordance with the Applicable Laws, Concessionaire shall, in its sole discretion, be entitled to determine the fee for such DNB courses.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 General Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.

6.1.2 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:

- (a) {subject to the Concessionaire meeting the eligibility criteria prescribed under the HIPP and *provided that* the Concessionaire has submitted a duly completed CAF in accordance with the requirements stipulated under the HIPP and the Orissa Industries (Facilitation) Act, 2004 and the rules and regulations made thereunder to the relevant Governmental Instrumentality for its approval within 180 (one hundred and eighty) days from the Execution Date, procuring that the concerned Governmental Instrumentality processes and approves the CAF submitted by the Concessionaire;}⁷
- (b) procuring the approvals relating to the land use of the Site for the purpose of the construction of the Hospital, if required;
- (c) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
- (d) transfer the Site to the Concessionaire and ensure that no barriers are erected or placed on or about the Site and/or Hospital by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, emergency, national security, or law and order;
- (e) assist the Concessionaire in procuring police assistance for dealing with Medico-Legal Cases which are brought to the Hospital;
- (f) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
- (g) in addition to the Select Patients identified under the Government Health Schemes, identify or cause to be identified persons or families who shall be

⁷ *Note: Applicable only to HIPP districts.*

the Select Patients eligible for provision of Healthcare Services in accordance with this Agreement;

- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) monitor adherence to all Key Performance Indicators by the Concessionaire during the Concession Period;
- (j) make payments of the State Capital Grant, State Operational Grant (if any) and any other payments to the Concessionaire in the manner and within the time period specified in this Agreement;
- (k) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements;
- (l) appointed the Monitoring Agency in accordance with Article 24 within a period of 365 (three hundred and sixty five) days from the date of the notice issued by the Concessionaire under Clause 4.2.1;
- (m) institute and operate a stakeholder / grievance mechanism and external communication systems in accordance with the terms of this Agreement to be able to engage with various stakeholders and neighborhood communities should concerns on development of Hospital arises;
- (n) constitute the Project Level Coordination Committee in accordance with Clause 19.7; and
- (o) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring empanelment of the Hospital with any Government Health Scheme that may be announced by the State Government, from time to time.

Notwithstanding anything in this Clause, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire, save as expressly provided in this Agreement.

6.2 Access to Infrastructure

- 6.2.1 The Authority shall procure and provide the necessary infrastructure for the utilities identified in Clauses 4.2.1(iv) and (v) up to the boundary limits of the Site, at its own cost as a Condition Precedent subject to the conditions mentioned therein. For the avoidance of doubt, the Concessionaire shall be responsible for the maintenance of the infrastructure for electricity, water, telephone lines and all other utilities at the Site.

6.2.2 The Authority shall provide reasonable assistance to the Concessionaire in procuring access to all necessary infrastructure facilities and utilities such as water supply, power supply, telephone lines and sewerage network facility at the Site. Additionally, the Authority shall, where necessary, provide reasonable assistance in procuring necessary permits as per the Applicable Laws. Notwithstanding anything in this Agreement, it is expressly agreed that the Concessionaire shall be solely responsible for arranging the necessary infrastructure facilities and utilities such as water supply, power supply and sewerage network facility including any permits required for such utilities at the Site, at its own cost.

6.3 **Status as referral hospital**

The Authority may, any time after the Effective Date, designate the Hospital as one of the referral hospitals for the State where the State Government owned healthcare facilities can refer patients subject to such conditions as may be mutually agreed between the Concessionaire and the Authority.

6.4 **Obligations relating empanelment under OSTF**

Within 45 (forty five) days of the date on which an application has been made by the Concessionaire (in accordance with the Applicable Laws), and subject to the Applicable Laws and the Concessionaire meeting the empanelment criteria prescribed under the OSTF guidelines, the Authority shall issue an order for the empanelment of the Concessionaire under OSTF guidelines or any amendment or substitute or thereof.

6.5 **Obligations relating empanelment under BSKY and BKKY**

Within 45 (forty five) days of the date on which an application has been made by the Concessionaire (in accordance with the Applicable Laws), and subject to the Applicable Laws and the Concessionaire meeting the empanelment criteria prescribed under the BSKY and BKKY guidelines respectively, the Authority shall cause the concerned Government Instrumentality to issue an order for the empanelment of the Concessionaire under BSKY and BKKY or any amendment or substitute or thereof.

6.6 **{Benefits under HIPP**

6.6.1 Subject to the Concessionaire meeting the eligibility criteria prescribed under the HIPP and *provided that* the Concessionaire has submitted a duly completed CAF to the relevant Governmental Instrumentality in accordance with the requirements stipulated under the HIPP and the Orissa Industries (Facilitation) Act, 2004 and the rules and regulations made thereunder, the Authority shall provide reasonable support and assistance to the Concessionaire in procuring the approval of the concerned Governmental Instrumentality for the CAF submitted by the Concessionaire.

6.6.2 Subject to the Concessionaire being eligible under HIPP and being registered in accordance with Applicable Laws under the HIPP, the Concessionaire may claim benefits and incentives under the HIPP in accordance with HIPP and other

Applicable Laws so long as the HIPP is in force and effect, in addition to the benefits set out elsewhere in this Agreement.

Provided that nothing in this Clause 6.6 shall entitle the Concessionaire to (i) claim any capital subsidy under the HIPP over and above the Capital Grant {and Operational Grant} payable to the Concessionaire in accordance with this Agreement, and the Concessionaire expressly acknowledges that the Capital Grant {and Operational Grant} payable under this Agreement is inclusive of the capital subsidy payable under the HIPP, or (ii) seek any compensation or relief from the Authority in case it fails to claim or receive any of the benefits or incentives under the HIPP. }⁸

⁸ *Note: Applicable only in case of HIPP districts.*

ARTICLE 7

REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations, warranties and undertakings of the Concessionaire

The Concessionaire represents, warrants and undertakes to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (g) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association {or those of any Member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any

material impairment of its ability to perform any of its obligations under this Agreement;

- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (l) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3;
- (m) {the Selected Bidder/each of the Consortium Members} and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (n) {the Selected Bidder/each of the Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (o) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (p) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

- (r) all information provided by the {the Selected Bidder/each of the Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (s) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts; and
- (t) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

7.2 **Representations, warranties and covenants of the Authority**

The Authority represents, warrants and covenants to the Concessionaire 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 herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) 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 Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) it has good, legal and valid right and title to the Site, and has the power and authority to handover the Site to the Concessionaire for the development of the Project in accordance with the terms of this Agreement.

7.3 **Disclosure**

- (a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Agreement.

- (b) Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, drawings, plans or other information relating to the Project.

ARTICLE 8

DISCLAIMER

- 8.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Patients, suitability of Government Health Schemes, and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.
- 8.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1 above shall not vitiate this Agreement or render it voidable.
- 8.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.4 shall not prejudice the disclaimer of the Authority contained in this Clause 8.4 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

PART III

DEVELOPMENT AND OPERATIONS

ARTICLE 9

PERFORMANCE SECURITY

9.1 Construction Performance Security

9.1.1 Construction Performance Security

- (a) The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within the time period specified in Clause 4.2.2(i) or such extended period as may be mutually agreed between the Authority and the Concessionaire, an irrevocable and unconditional guarantee from a Bank for such amount as is specified in Schedule 8 and substantially in the format set forth in Schedule 8 (the “**Construction Performance Security**”). The Concessionaire shall maintain and keep in force the Construction Performance Security for the entire duration of the Construction Performance Security Period in accordance with this Clause 9.1. Until such time the Construction Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Construction Performance Security, the Authority shall release the Bid Security to the Concessionaire after a period of 10 (ten) days from the date on which the Concessionaire has submitted (in accordance with this Agreement) a valid Construction Performance Security.
- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that the Construction Performance Security is not provided by the Concessionaire within the specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.2 Appropriation of Construction Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the Construction Performance Security as damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment to the Authority. Subject to this Agreement being valid and in force in accordance with the terms hereof, upon such encashment and appropriation of the Construction Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Construction Performance Security, and in case of appropriation of the entire Construction Performance Security provide a fresh Construction Performance Security valid for the duration of the Construction Performance Security Period. In the event that the Concessionaire fails to do so, the

Authority shall be entitled to terminate this Agreement in accordance with Article 32. In the event that the Concessionaire, in any year commencing from the Effective Date, has paid or becomes liable to pay, Damages (in aggregate for such year) amounting to 3 (three) times of the value of the Construction Performance Security, then the Authority shall be entitled to terminate the Agreement in accordance with provisions of Article 32.

9.1.3 Release of Construction Performance Security

The Construction Performance Security shall remain in force and effect for a period of 6 (six) months from the COD of Phase- II (“**Construction Performance Security Period**”). The Authority shall release the Construction Performance Security after a period of 30 (thirty) days from the date of expiry of the Construction Performance Security Period subject to creation of a valid Deemed Performance Security in accordance with Clause 9.2 prior to the expiry of such 30 (thirty) days period.

9.2 Deemed Performance Security

9.2.1 Deemed Performance Security

The Parties expressly agree that at least 30 (thirty) days prior to release of the Construction Performance Security in accordance with the provisions of Clause 9.1, a substitute performance security for the same amount, as is specified in Schedule 9, shall be deemed to be created under this Clause 9.2, as if it is a performance security under Clause 9.1 for and in respect of the entire Operations Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 28, constitute the first and exclusive charge on an equivalent balance in the Revenue Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.2. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Accounts for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

9.2.2 Appropriation of Deemed Performance Security

9.2.1 Upon any amounts becoming due and payable by the Concessionaire to the Authority under and in accordance with the terms of this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the amounts due and payable. For avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

ARTICLE 10

SITE

10.1 Hand-over of the Site

- 10.1.1 In consideration of the lease premium and other charges payable by the Concessionaire to the Authority under the Lease Deed, and the covenants and warranties on the part of the Concessionaire herein contained and pursuant to the hand-over of the Site, the Authority shall commencing from the date of the Lease Deed, transfer all rights and interests in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the site which is described, delineated and a map of which has been provided at Schedule 1 (the “Site”) in accordance with the Lease Deed. The Site consists of the area shaded on the map set out at Schedule 1. It is clarified that the unshaded area is excluded from the Site and shall not be provided to the Concessionaire for the development of the Project. The Site shall be handed-over to the Concessionaire and provided on an ‘as is where is’ basis, free of any Encumbrances, to develop, operate and maintain the Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.1.2 The access, Right of Way and all rights to the Site granted under this Agreement and the Lease Deed by the Authority to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing approach road to the Hospital is open to users at all times during the Concession Period.
- 10.1.3 It is expressly agreed that the period of the lease under the Lease Deed shall be co-existent and co-terminus with the Concession Period including any extension(s) thereof and the lease shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its contractors, the rights of the Concessionaire in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.1.4 It is expressly agreed that trees on the Site are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.
- 10.1.5 The Concessionaire hereby irrevocably appoints the 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 lease granted under the Lease Deed 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 Authority, and the Concessionaire consents to it being registered for this purpose.

10.2 Lease Charges

10.2.1 The Concessionaire shall pay to the Authority lease premium and other charges in accordance with the Lease Deed.

10.3 The Concessionaire's right to the Site

10.3.1 The Authority grants to, or shall procure the grant to, the Concessionaire:

- (a) an exclusive lease of the Site and a non-exclusive right to utilise any land required by the Concessionaire to construct an earth mound or other barrier around the Site commencing from the date of the Lease Deed;
- (b) Right of Way to the Site provided by the Authority for all purposes relating to the Project commencing from the date of this Agreement; and
- (c) the right to carry out any surveys, investigations and soil tests on the Site as the Concessionaire may deem necessary until execution of the Lease Deed, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.4 Site Memorandum

10.4.1 The Authority and the Concessionaire shall, on a mutually agreed date and time (but not later than the timeline specified below for the execution of the Site Memorandum), inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant land, buildings, structures, road works, trees and any other immovable property on or attached to the Site (as applicable), free from any Encumbrance ("**Site Memorandum**"). The Authority and the Concessionaire shall execute the Site Memorandum in 2 (two) counterparts (each of which shall constitute an original) within 10 (ten) days of execution of Lease Deed. In case of any disagreement between the Concessionaire and the Authority in relation to the survey and the inventory, the decision of the Authority shall prevail.

10.4.2 On and after execution of the Site Memorandum, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place on the Site, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expense.

10.5 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided

in this Agreement and the Lease Deed. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.6 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.7 Special or temporary right of way

Save and except the permanent approach roads to the Site, which shall be constructed by the Authority at its cost in accordance with Clause 4.2.1(v) (if applicable), the Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. Save and except the utilities and facilities to be provided by the Authority in accordance with sub-clauses 4.2.1(iv), and (v), the Concessionaire shall obtain at its own cost obtain all utilities and facilities on or outside the Site as may be required by it for the purposes of the Hospital and the performance of its obligations under this Agreement.

10.8 Access to the Authority, Independent Engineer, Clinical Panel and Monitoring Agency

The Concessionaire shall, always allow (on reasonable notice and during the business hours) the Authority, the Independent Engineer, the Clinical Panel, the Monitoring Agency and their employees and agents, access to the Hospital for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.9 Geological and archaeological finds

It is expressly agreed that geological or archaeological rights do not form part of the rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any right or interest in the underlying fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such right, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property.

For the avoidance of doubt, it is agreed that any reasonable expense incurred by the Concessionaire hereunder shall be reimbursed by the Authority.

ARTICLE 11

UTILITIES AND ASSOCIATED ROADS

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the Government Instrumentalities owning the existing roads, right of way or utilities, on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the relevant Government Instrumentality. Further, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Authority, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Hospital. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

ARTICLE 12

CONSTRUCTION OF THE HOSPITAL

12.1 Construction Documents

12.1.1 The Concessionaire shall within the time period specified in Clause 4.2.2(x) or such extended period as may be mutually agreed between the Authority and the Concessionaire, prepare and submit, for review and approval by the Independent Engineer and the Authority, Construction Documents for the Hospital. The Construction Documents shall be prepared by the Concessionaire based on the Specifications and Standards and other provisions of this Agreement.

12.1.2 Within 30 (thirty) days of receipt of the Construction Documents, the Authority and the Independent Engineer shall review it and either, upon being satisfied that Construction Documents are in compliance with the Standards and Specifications and the terms of this Agreement, approve it, or if they are of the opinion that the Construction Documents is not in compliance with the Specifications and Standards and the terms of this Agreement, provide their comments, observations or suggestions on the Construction Documents. In the event that the Independent Engineer and/or the Authority provide any comments, observations or suggestions on the Construction Documents in accordance with this Clause 12.1.2, the Concessionaire shall incorporate such comments, observations and suggestions in the Construction Documents and re-submit the revised Construction Documents within 15 (fifteen) days of receipt of such comments, observations and suggestions. Within 15 (fifteen) days of receipt of revised Construction Documents, the Authority and the Independent Engineer shall review it and upon being satisfied that the revised Construction Documents are in compliance with the Standards and Specifications and the terms of this Agreement, shall approve such Construction Documents. For the avoidance of doubt it is clarified that in the event that the Concessionaire does not agree with any comments, observations or suggestions given by the Authority and/or the Independent Engineer on the Construction Documents in accordance with this Clause 12.1.2, it shall have the right to discuss such comments, observations and suggestions with the Authority and/or the Independent Engineer and resolve any such disagreement. However, the Concessionaire agrees and acknowledges that pursuant to such discussion the decision of the Authority and the Independent Engineer shall be final and binding on the Concessionaire, and the Concessionaire shall not have the right to challenge such decision. In the event that there is any conflict between the decision of the Authority and the Independent Engineer, the decision of the Authority shall be final and binding on the Concessionaire. The Concessionaire shall revise the Construction Documents and re-submit it to the Authority and the Independent Engineer for approval in accordance with this Clause 12.1.2.

12.1.3 Upon receipt of the Construction Documents, if the Authority and/or the Independent Engineer either fail to provide their comments, observations or suggestions on it, or fail to approve such Construction Documents within the time period prescribed under Clause 12.1.2, the Construction Documents shall be deemed to have been approved by the Authority and the Independent Engineer and the Concessionaire shall have the right to, at the end of such period, begin the Construction Works, provided that while carrying out such Construction Works it

is in compliance with the Specifications and Standards and the terms of this Agreement. In the event that the Concessionaire is carrying out the Construction Works which are not in compliance with the Specifications and Standards and the terms of this Agreement, then such non-compliance shall be considered as a material breach of the terms of this Agreement. It is further agreed that approval of, or the failure to approve the Construction Documents by the Authority and the Independent Engineer shall neither relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner whatsoever nor shall make the Authority and/or the Independent Engineer liable for the same under this Agreement in any manner whatsoever.

- 12.1.4 The Concessionaire shall not be entitled to any extension of time in performance of any of its obligations under this Agreement without the prior written consent of the Authority, including development of the Project in accordance with this Agreement or any other relief on account of delay caused due to providing any clarification or in submitting the revised Construction Documents or in making any changes to the Construction Works pursuant to any observation of the Authority and/or the Independent Engineer on the Construction Documents.
- 12.1.5 Notwithstanding the approval of the Construction Documents by the Authority and the Independent Engineer, the Concessionaire shall be solely responsible for any defect or deficiency in the Construction Documents or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- 12.1.6 The Concessionaire shall in no way represent to any person that, as a result of any review or approval of the Construction Documents by the Authority and the Independent Engineer, the Authority and/or the Independent Engineer has accepted responsibility for the technical soundness of any work relating to the Project or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.
- 12.1.7 The Concessionaire shall obtain the prior approval of the Authority and the Independent Engineer in case of any alteration, modification or changes to the Construction Documents. The Concessionaire shall submit such revised Construction Documents to the Authority and the Independent Engineer, and the Authority and the Independent Engineer shall review and approve such revised Construction Documents in accordance with the provisions of this Clause 12.1.
- 12.1.8 It is clarified that in case the Concessionaire proposes to develop any Additional Capacity and such Additional Capacity is not accounted for in the Construction Documents which has been approved in accordance with this Clause 12.1, the Concessionaire must submit to the Authority and the Independent Engineer, the revised Construction Documents for Additional Capacity and such Construction Documents shall then be approved by the Authority and the Independent Engineer in accordance with this Clause 12.1.

12.2 **Obligations prior to commencement of construction**

Prior to the commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority all other documents as specified in Schedule 11. A suitably qualified L&FS professional who prepared the L&FS master plan for the Project shall also provide subsequent certification once the Project has been constructed;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of Construction Works under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

12.3 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Hospital, as set forth in Schedule 11, the following shall apply:

- (a) the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Independent Engineer and the Authority for review prepared in AutoCAD editable format;
- (b) by submitting the Drawings for review to the Independent Engineer and the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer and the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the scope of Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer and the Authority on the Drawings submitted pursuant hereto beyond the specified period and may begin or continue Construction Works at its own discretion and risk;
- (d) if the aforesaid observations of the Independent Engineer and/or the Authority indicate that the Drawings are not in conformity with the Scope of Project and the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer and the Authority for review within 7 (seven) days. The Independent Engineer and the Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) no review or observation of the Independent Engineer and/or the Authority and/or its failure to review 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 Engineer or the Authority be liable for the same in any manner; and

- (f) The Concessionaire shall seek the prior approval of the Authority and the Independent Engineer in case of any alteration, modification or changes to the Drawings. The Concessionaire shall submit such revised Drawings to the Authority and the Independent Engineer who shall review such revised Drawings in accordance with the provisions of this Clause 12.3. It is clarified that in case the Concessionaire proposes to develop any Additional Capacity and such capacity not being accounted for in the Drawings which have been approved in accordance with this Clause 12.3, the Concessionaire must submit the revised Drawings to the Authority and the Independent Engineer for the Additional Capacity, and such Drawings shall then be approved in accordance with this Clause 12.3.

12.4 Construction and Development of Hospital

12.4.1 On or from the Effective Date, the Concessionaire shall complete the construction and development of the Hospital as specified in Schedule 2 together with the Project Facilities, in conformity with the Specifications and Standards set forth in Schedule 4 and other provisions of this Agreement.

12.4.2 The Concessionaire agrees and undertakes that it shall construct the Hospital in accordance with the Project Completion Schedule set forth in Schedule 10 and that Phase-I and the Phase-II shall be completed on or before the relevant Scheduled Completion Date. In the event that the Concessionaire fails to achieve COD of Phase-I and/or Phase-II on or before the Scheduled Completion Date for the relevant Phase as set out in the Project Completion Schedule, then unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay as Damages to the Authority, a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction Performance Security for each day of delay until the COD of the relevant Phase is achieved; provided that if any or all the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the dates set forth in Schedule 10 shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule 10 has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4.3 In the event that the COD of Phase-I and/or the COD of Phase-II is not achieved within 360 (three hundred and sixty) days from the Scheduled Completion Date of the relevant Phase, then unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Law or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of 360 (three hundred and sixty) days and allow for a weekly extension beyond such period of 360 (three hundred and sixty) days; provided that

the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 12.4.2 above, for each day of such extension.

12.5 **Additional Capacity**

12.5.1 The Concessionaire shall have the right but not the obligation to construct and develop the Hospital to provide for any number of Licensed Beds exceeding the Bed Capacity; provided that the Authority has, upon the request of the Concessionaire in this regard, expressly approved in writing the construction and development of such Additional Capacity. In the event that the Concessionaire exercises its right to construct and develop the Hospital to provide for Licensed Beds in excess of the Bed Capacity, it shall do so at its own risk, cost and expense and only to the extent that such expansion shall not adversely affect the quality of the services including Healthcare Services at the Hospital. All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of Phase-I and Phase-II shall apply *mutatis mutandis* for the construction, development and operation of any Additional Capacity, including, submission of periodic reports and other relevant documents (including but not limited to Construction Documents and the Drawings) to the Authority and the Independent Engineer under Clauses 12, 13, 14 and 15. In such a case, the Concessionaire and the Authority may mutually agree to amend the provisions of this Agreement to provide for such approved Additional Capacity, including but not limited to, the provisions relating to Key Performance Indicators and Termination Payments.

12.6 **Liability for review of Documents and Drawings**

12.6.1 Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

13.1.1 Until the COD of Phase-II, the Concessionaire shall, within 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Engineer. In the event that the Concessionaire undertakes the development of any Additional Capacity in accordance with the terms of this Agreement, the provisions of this Article 13 shall apply *mutatis mutandis* to such capacities.

13.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, the additional engineers, including any Government owned entity or Government employee to inspect and monitor the Construction Works.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Hospital, at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall notify the Authority and the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, inform the Independent Engineer and the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the COD.

13.4 Suspension of unsafe Construction Works

13.4.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Hospital Building, Staff Accommodation or public.

13.4.2 The Concessionaire shall, pursuant to the notice under Clause 13.4.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure

the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.4.2 shall be repeated until the suspension hereunder is revoked.

- 13.4.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.4.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Project Completion Schedule is extended by the Authority in accordance with this Clause 13.4.4, the Concession Period shall also be extended by an equivalent period.

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Completion Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Hospital or any part thereof (Phase-I and/or Phase-II and/or any Additional Capacity developed by the Concessionaire in its own discretion, as the case may be), the Concessionaire shall notify the Independent Engineer and the Monitoring Agency of its intent to subject the Hospital or any part thereof to Completion Tests. The date and time of each Test shall be determined by the Independent Engineer and the Monitoring Agency in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Completion Tests. For the avoidance of any doubt, the Independent Engineer and the Monitoring Agency may separately conduct the relevant Completion Tests. The Concessionaire shall provide such assistance as the Independent Engineer and the Monitoring Agency may reasonably require for conducting the Completion Tests. In the event that of the Concessionaire, the Independent Engineer and the Monitoring Agency failing to mutually agree on the dates for conducting the Completion Tests, the Concessionaire shall fix the dates by not less than 7 (seven) days' notice to the Independent Engineer and the Monitoring Agency.

14.1.2 All Completion Tests shall be conducted in accordance with Schedule 12. The Independent Engineer and the Monitoring Agency shall observe, monitor and review the results of the Completion Tests to determine compliance of the Hospital with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer or the Monitoring Agency, as the case may be, during the course of any Completion Test that the Hospital or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Completion Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Completion Test, the Independent Engineer and the Monitoring Agency shall provide to the Concessionaire and the Authority copies of all Completion Test data including detailed Completion Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer and/or the Monitoring Agency may require the Concessionaire to carry out or cause to be carried out additional Completion Tests, in accordance with Good Industry Practice, for determining the compliance of the Hospital with Specifications and Standards.

14.2 Completion Certificate

14.2.1 Within 5 (five) days of determination by the Independent Engineer and the Monitoring Agency of the successful completion of all Completion Tests in accordance with Clause 14.1 above, for Phase-I, Phase-II or any Additional Capacity, as the case may be, the Independent Engineer and the Monitoring Agency shall issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule 13 (the "**Completion Certificate**") for the relevant Phase.

14.2.2 In the event that upon successful determination by the Independent Engineer and the Monitoring Agency of the successful completion of all Completion Tests in accordance with Clause 14.1 above, the Independent Engineer and/or the Monitoring Agency fail to issue the Completion Certificate to the Authority and the Concessionaire within the time specified in this Clause 14.2 for a relevant Phase or Additional Capacity, as the case may be, at the end of such period, such Completion Certificate shall be deemed to have been issued to the Authority and the Concessionaire in accordance with the provisions of this Clause 14.2 (“**Deemed Completion Certificate**”).

14.3 **Provisional Certificate**

14.3.1 The Independent Engineer and the Monitoring Agency may, at the request of the Concessionaire, certify in writing if the Completion Tests are successful and all the facilities required for rendering Diagnostic Services (as contemplated in Phase I) and OPD Services, 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 Engineer and the Concessionaire (the “**Punch List**”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 Upon such certification the Concessionaire shall be entitled to demand and collect the Fee for rendering such Diagnostic Services and OPD Services in accordance with this Agreement. For the avoidance of the doubt the Parties agree that notwithstanding anything to the contrary contained in this Clause 14.3, the obligations contained in Clause 12.4 shall continue to be binding on the Concessionaire.

14.4 **Completion of Punch List items**

14.4.1 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 Authority or due to Force Majeure, the 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 Construction Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) 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 Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer 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 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions

constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional Certificate

14.5.1 If the Independent Engineer 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 Authority and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the Project is 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 and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Completion Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

14.6.1 If the Independent Engineer or the Monitoring Agency, as the case may be, certifies to the Authority and the Concessionaire that it is unable to certify the completion of the facilities required for rendering Diagnostic Services and OPD Services or issue the Completion Certificate, as the case may be, because of events or circumstances on account of which the Completion Tests could not be held or had to be suspended, the Concessionaire at its own cost and expense, shall be entitled to re-schedule the Completion Tests and hold the same as soon as reasonably practicable.

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date

The Phase-I and Phase-II or the Additional Capacity, as the case may be, shall be deemed to be complete when the Completion Certificate or Deemed Completion Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of such Phase or the Additional Capacity, shall be the date on which such Completion Certificate or the Deemed Completion Certificate, as the case may be, is issued (the “**COD**”). The Phase-I, Phase-II, or any Additional Capacity, as the case may be, shall enter into commercial service on COD of each such Phase whereupon the Concessionaire shall be entitled to provide Healthcare Services, provided, however, that the entry of Phase-I, Phase-II or any Additional Capacity, into commercial service shall always be subject to compliance with Applicable Laws.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The 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 (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Hospital and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the 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**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall provide to the 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 Completion Schedule if the works or services are required to be carried out during the Construction 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 labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Hospital, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer or the Monitoring Agency, as the case may be, as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance, thereupon of the Independent Engineer or the Monitoring Agency or both, as the case may be, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the 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 Authority may, by issuing a Change of Scope

Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Completion Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 **Payment for Change of Scope**

16.3.1 Within 14 (fourteen) days of issuing a Change of Scope Order, the 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) of the cost assessed by the Independent Engineer or the Monitoring Agency, as the case may be. The Concessionaire shall, after commencement of work, present to the 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 Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer or the Monitoring Agency, as the case may be, 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.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period 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 Authority in accordance with Clause 16.3.1.

16.4 **Restrictions on certain works**

Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the completion of the Hospital; provided that in the event that the 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 the purposes of determining completion of the Hospital and issuing the Completion Certificate or Deemed Completion Certificate.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Hospital in accordance with this Agreement either by itself, and/or through an O&M Contractor, subject to the provisions of Clause 5.2.7, and if required, modify, repair or otherwise make improvements to the Hospital to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted treatment and care of Patients in the Hospital during normal operating conditions;
- (b) subject to Clauses 21.2(f) and 21.2(g), 13.4 and 17.4, making the Hospital available for use round the clock 24 (twenty four) hours a day and 365 (three hundred and sixty five) or 366 (three hundred and sixty six) days a year during the Concession Period and meeting the KPIs, service level requirements as specified in this Agreement, each in accordance with Good Industry Practice, Applicable Permits and Applicable Laws;
- (c) collecting and appropriating the Fees from Patients or from the Authority or an Insurer (as the case may be) in accordance with the terms of this Agreement;
- (d) minimising disruption to Patient care in the event of accidents or other incidents affecting the safety and use of the Hospital by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Hospital;
- (f) undertaking routine maintenance including prompt repairs of the Hospital including its structures and Equipment;
- (g) undertaking routine maintenance including prompt repairs of the Project Facilities;
- (h) undertaking major maintenance such as repair or replacement of equipment, repairs to structures, and repairs and refurbishment of HMIS and communication system;
- (i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Hospital;
- (j) protection of the environment and provision of equipment and materials thereof;

- (k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Hospital;
- (l) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, staff, government agencies, media and other agencies;
- (m) complying with Safety Requirements in accordance with Article 18 and L&FS Standards;
- (n) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (o) maintaining punctuality and reliability in operating the Hospital;
- (p) maintaining a high standard of cleanliness and hygiene in the Hospital;
- (q) operating and maintaining the Beds, the Equipment and HMIS in accordance with the provision of this Agreement;
- (r) providing Healthcare Services in accordance with the provisions of this Agreement;
- (s) complying with environmental and social management plan under Clause 5.10.2;
- (t) adhering to the requirements of Clause 5.10;
- (u) providing and maintaining adequate parking space in accordance with Good Industry Practice and this Agreement; and
- (v) appointing and retaining the Human Resource requirements in accordance with the provisions of this Agreement.

17.1.2 The Concessionaire shall ensure that immediate medical aid is provided to all Patients, including Medico-Legal Cases.

17.1.3 The Authority may, any time after the COD of Phase – I, require the participation of the Hospital in the implementation of health programmes run by the GOI or the State Government, subject to payment of mutually agreed compensation to the Concessionaire for participating in such programmes.

17.1.4 The Concessionaire shall remove promptly from the Hospital all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste (including, without limitation, hospital disposals) and keep the Hospital in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.5 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, or other structures situated on the Site.

17.2 **Maintenance Requirements**

The Concessionaire shall ensure that at all times during the Operation Period, the Project is maintained in accordance with the provisions of this Agreement, the Maintenance Manual, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Maintenance Requirements**”).

17.3 **Maintenance Manual**

17.3.1 Not later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date of COD of Phase – I, the Concessionaire shall, in consultation with the Monitoring Agency, evolve a repair and maintenance manual (the “**Maintenance Manual**”), for the regular and preventive maintenance of the Hospital in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice and shall provide 1 (one) copy thereof, each to the Authority and the Monitoring Agency. Within 60 (sixty) days of receipt of the Maintenance Manual, the 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 Authority and provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Monitoring Agency.

17.3.2 The Maintenance Manual, which shall outline the preventive, scheduled and reactive maintenance provisions, shall be revised and updated once every 2 (two) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.4 **Safety, breakdowns and accidents**

17.4.1 The Concessionaire shall ensure safety of the Patients, visitors and staff and in the event of unsafe conditions, structural damage, equipment breakdowns and accidents and it shall follow the relevant operating procedures and undertake safe removal of obstruction, debris and dangerous spills and leakages without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.4.2 The Concessionaire’s responsibility for rescue operations in the Hospital shall include safe evacuation of all Patients, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the care of Patients. For this purpose, it shall maintain and operate at least 2 (two) ambulances with rescue equipment and such other equipment as may be necessary to conform with Good Industry Practice.

17.5 **Overriding powers of the Authority**

17.5.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Safety Requirements and Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Patients, the 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.

- 17.5.2 In the event that the Concessionaire, upon notice under Clause 17.5.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.5.2 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 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 Authority in discharge of its Obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire along with the Damages specified therein.
- 17.5.3 In the event of an emergency whether national, state or limited to the city, civil commotion or any other act specified in Article 31, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Hospital or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the 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 Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 31. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.5, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.6 Restoration of loss or damage to the Hospital

Save and except as otherwise expressly provided in this Agreement, in the event that the Hospital or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Hospital conforms to the provisions of this Agreement.

17.7 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Hospital is not available to Patients on account of any of the following for the duration thereof:

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safe use of the Hospital, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement;
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Hospital; or

(d) an Authority Default.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Hospital open to Patients provided that services can be provided safely.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

The Concessionaire shall be responsible for the safety of the Patients, visitors, staff and the Hospital in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Safety Requirements**”). In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Hospital and shall comply with the Safety Requirements. L&FS compliance and performance is a critical requirement and the Concessionaire shall be responsible for complying with the L&FS Standards.

18.2 Expenditure on Safety Requirements

Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

18.3 Safety Certification prior to COD

The Independent Engineer and the Monitoring Agency shall, not later than 4 (four) weeks prior to the Scheduled Completion Date of Phase-I and Phase – II, or the likely COD of Phase-I and Phase-II, as the case may be, notified by the Concessionaire, conduct the Completion Tests specified in Schedule 12, to determine and certify that the Phase-I and/or Phase-II, as the case may be, is compliant with the Safety Requirements and is safe for entering into commercial service, *provided that* the Independent Engineer and/or the Monitoring Agency may require the Concessionaire to conduct additional tests as may be required under the Applicable Laws or prudent as per the Good Industry Practice for the purpose of determining compliance with the Safety Requirements and the costs of such additional tests shall be borne by the Concessionaire.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Status reports

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Monitoring Agency a monthly report, in the format specified in Annexure I to Schedule 19, stating in reasonable detail the condition of the Hospital, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Monitoring Agency. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 On the first day of every month, the Concessionaire shall, subject to Applicable Law, send to the Authority, the Clinical Panel and any entity as may be specified by the Authority, a report (in a mutually agreed form) for the previous month, stating the following:

- (a) particulars of Select Patients, such as name, age and sex; and
- (b) copies of the relevant medical records and prescriptions applicable to Select Patients.

19.2 Reports of unusual occurrence

On the first day of each week, the Concessionaire shall, send to the Authority and the Monitoring Agency, by facsimile or e-mail, a report in a pre-agreed format, stating all accidents and unusual occurrences on the Hospital relating to the safety and security of the Patients, visitors and staff and the Hospital in the preceding week. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month. For the purposes of this Clause 19.2, accidents and unusual occurrences in the Hospital shall include:

- (a) death or injury to any person on account of any accident occurring within the Hospital premises including but not limited to a fire in the Hospital premises;
- (b) episode of sexual assault or rape;
- (c) suicide by a Patient;
- (d) unanticipated death of a full-term infant;
- (e) infant abduction or discharge to the wrong family;
- (f) haemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities;
- (g) surgery on the wrong Patient or wrong body part;

- (h) smoke or fire;
- (i) unintended retention of a foreign object in the body of any Patient after surgery or other procedure; and
- (j) such other relevant information as may be reasonably required by the Authority or the Monitoring Agency.

19.3 **Inspection**

The Monitoring Agency shall inspect the Hospital 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 Maintenance Requirements and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.4 **Tests**

For determining that the Project conforms to the Maintenance Requirements and Safety Requirements, the Monitoring Agency shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice once in every quarter commencing from the COD of Phase-I. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Monitoring Agency and furnish the results of such tests forthwith to the Monitoring Agency. One half of the costs incurred on such tests, and to the extent certified by the Monitoring Agency as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.5 **Remedial measures**

19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report at its own cost and furnish a report in respect thereof to the Monitoring Agency and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; 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.

19.5.2 The Monitoring Agency shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Hospital into compliance with the Maintenance Requirements and the Safety Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Hospital conforms to the Maintenance Requirements and the Safety Requirements.

19.6 **Additional Experts**

19.6.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, additional experts, including any Government owned entity

or Government employee to inspect the Project and monitor the performance of the Concessionaire during the Operation Period.

19.7 Project Level Coordination Committee

19.7.1 The Parties agree and undertake that they shall jointly form a project level coordination committee constituting of District Magistrate, Chief District Medical Officer or any other 2 (two) representatives nominated by the Authority as the Authority may deem fit, and 2 (two) representative(s) of the Concessionaire (“**Project Level Coordination Committee**”) prior to the Effective Date. The Project Level Coordination Committee shall meet at least once every quarter and shall be chaired by the relevant district collector or any other representative of the Authority and shall act as a consultation forum amongst the Concessionaire and the Authority. The Project Level Coordination Committee may make recommendations to the Concessionaire and Authority for the better functioning and operations of the Hospital.

19.7.2 It is hereby clarified that the Project Level Coordination Committee shall only act as an advisory body and the recommendations of the Project Level Coordination Committee shall not be binding on the Concessionaire or the Authority.

19.8 State Level Coordination Committee

The Authority may form a State level coordination committee constituting of such representatives nominated by the Authority as the Authority may deem fit (“**State Level Coordination Committee**”). If constituted by the Authority, the State Level Coordination Committee shall meet at least once every quarter and shall act as a discussion forum for all the Projects awarded under the RFP and the Concessionaire shall be entitled to present its grievances or make suggestions for better functioning of the Projects in the State Level Coordination Committee.

ARTICLE 20

PATIENT REGULATION AND SECURITY

20.1 Hospital regulation by the Concessionaire

20.1.1 The Concessionaire shall regulate the usage of the Hospital in accordance with Applicable Laws and subject to the supervision and control of the Authority or a substitute thereof empowered in this behalf under Applicable Laws.

20.1.2 The Concessionaire shall, in consultation with the Authority and the Monitoring Agency, evolve and publicize a system based on Good Industry Practice such that no Patients or category of Patients is discriminated against or unduly favoured, as the case may be, in the use of the Hospital.

20.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Hospital as a common healthcare facility providing non-discriminatory services to all persons.

20.2 Security

20.2.1 The Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the Hospital for the prevention of terrorism, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Hospital which shall at a minimum be compliant with those set out in Clause 5.10.

20.2.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Hospital and shall be responsible for the security arrangements within the Hospital in order to maintain orderly conduct of its business and the security thereof.

20.2.3 The Concessionaire shall abide by and implement any instructions of the Authority and the Monitoring Agency for enhancing the security within and around the Hospital. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any such instruction of the Authority or the Monitoring Agency.

ARTICLE 21

KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

21.1.1 Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Hospital such that it achieves or exceeds the performance indicators specified in this Article 21 and Schedule 14 (the “**Key Performance Indicators**” or “**KPIs**”).

21.1.2 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators and for any shortfall in performance against the expected level of performance as specified in Schedule 14 and identified in the KPI Compliance Report, it shall pay Damages within 30 (thirty) days of every quarter in which the shortfall occurred. The Damages due and payable under this Clause 21.1 shall be determined in accordance with Schedule 14.

21.2 Operation of the Hospital

The Concessionaire shall at all times procure that:

- (a) the Hospital is clean and hygienic;
- (b) there is adequate lighting within the Hospital in conformity with the Specifications and Standards;
- (c) the temperature inside the necessary areas of the Hospital such ICU, laboratory, operation theatre, etc. is maintained according to Good Industry Practice and the Specifications and Standards;
- (d) the hours of availability of all services provided by the Hospital conform to Good Industry Practice and are posted on the Hospital website and displayed prominently in the Hospital;
- (e) all the Healthcare Services, excluding the OPD Services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty four) hours a day and on all days in a year;
- (f) the OPD Services are available at the Hospital at least from Monday to Saturday of each week between 9.00 am and 5.00 pm;
- (g) the OPD Services for the Specialties of ENT, Dental and Eye are available at the Hospital at least from Monday to Saturday of each week for a minimum of 4 (four) hours per day;
- (h) Emergency Services are available at the Hospital at all times with adequately trained Human Resource to provide these Emergency Services;
- (i) adequate power back-up is available at the Hospital and is ready for use in case of any power outage; and

- (j) all lifts, public address systems and lighting systems function efficiently.

21.3 **Patient Satisfaction Survey**

21.3.1 The Concessionaire shall conduct a Patient satisfaction survey in the Hospital (“**Patient Satisfaction Survey**”) twice in every year as specified in Schedule 14 by handing out a Patient satisfaction form in the form specified in Schedule 26 or any other form designed in consultation with the Monitoring Agency, to Patients randomly chosen by them in a manner consistent with Good Industry Practice. The sample size for carrying out the Patient Satisfaction Survey shall be as per Schedule 14.

21.3.2 In the event that the Patient Satisfaction Survey conducted in accordance with Clause 21.3.1 above, reveals that the surveyed Patients have given an overall rating of less than the minimum rating stipulated in Schedule 14, then the Concessionaire shall be liable to pay Damages in accordance with Schedule 14.

21.4 **Periodic status report**

21.4.1 The Concessionaire shall during the Operation Period, furnish to the Authority and the Monitoring Agency a quarterly report, setting forth the details provided in Clause 21.4.2, by no later than 7 (seven) days after the close of each quarter.

21.4.2 The report specified in Clause 21.4.1 shall state in reasonable detail the compliance of the Hospital with all the Key Performance Indicators specified in this Article 21 and Schedule 14 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Hospital.

21.4.3 The Monitoring Agency shall prepare a quarterly report on the status of compliance with the KPIs by the Concessionaire within 30 (thirty) days of receipt of report from the Concessionaire in accordance with Clause 21.4.1 above and submit such report to the Concessionaire for its comments. The Concessionaire shall provide its feedback on the report submitted by the Monitoring Agency no later than 15 (fifteen) days of the receipt of the same. The Monitoring Agency may take into account feedback received from the Concessionaire, if acceptable and submit the final report on the status of compliance of the KPIs for that quarter to the Authority with a copy to the Concessionaire within 15 (fifteen) days of receipt of feedback from the Concessionaire, or if no such feedback is received, within 7 (seven) days of expiry of the stipulated time period for receipt of feedback of Concessionaire (“**KPI Compliance Report**”). The Monitoring Agency shall present a performance review of the Hospital to the Project Level Coordination Committee every quarter based on the KPI Compliance Report for the preceding quarter.

21.5 **Accreditation**

21.5.1 The Concessionaire shall achieve and maintain accreditation under the Accreditation Standards (as applicable) for the Hospital within the timelines specified in Schedule 15 and shall provide a certified copy of such accreditation including its renewals to the Authority and the Monitoring Agency forthwith.

21.5.2 In the event of default in obtaining or maintaining the accreditation under the relevant Accreditation Standard, the Concessionaire shall,

- (a) within 15 (fifteen) days thereof, submit to the Authority and the Monitoring Agency an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining or maintaining such accreditation; and
- (b) pay Damages to the Authority computed in the manner prescribed in Schedule 14.

21.6 **Patient Charter**

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Patients (the “**Patient Charter**”) in conformity with Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall at all times be accountable and liable to Patients in accordance with the provisions of the Patient Charter and Applicable Laws.

21.7 **Human Resources**

21.7.1 The Concessionaire shall procure and ensure that all Human Resources engaged in the provision of Healthcare Services are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum be compliant with the performance standards set out at Clause 5.10.2.

21.7.2 The Concessionaire shall comply with the Human Resource standards set forth in Schedule 5.

21.7.3 The Concessionaire shall employ and make available such number of full time specialists for each of the Specialties, as specified in Schedule 5. The Concessionaire may engage on call specialists in respect of the Specialties identified in Schedule 5 on such conditions as may be specified therein.

21.7.4 The Concessionaire shall regularly supervise and monitor the performance of the Human Resource to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.

21.7.5 The Concessionaire shall take appropriate remedial measures in the event of any non-compliance with the requirements set forth in this Clause 21.7 in accordance with Applicable Laws and Good Industry Practice.

21.8 **Equipment**

21.8.1 The Concessionaire shall procure, install and commission all equipment, medical devices, apparatus, facilities and all other support and ancillary infrastructure as necessary for development, operations and maintenance of the Hospital and providing Healthcare Services as per the Scope of the Project.

21.8.2 The Concessionaire shall procure, install, operate and maintain the equipment for the Hospital including Equipment meeting the specifications or equivalent to the

specifications set out at Schedule 6. For the avoidance of doubt, it is clarified that the Equipment listed in Schedule 6 are the minimum equipment to be provided and the Concessionaire may, at its sole discretion, cost and expense, provide any other additional equipment in accordance with the terms of this Agreement and Applicable Laws.

- 21.8.3 The Concessionaire shall ensure that all equipment, medical devices, apparatus and facilities are new and in running and working condition and are calibrated, upgraded or replaced from time to time according to their life span or its impending obsolescence and in compliance with the certification requirements of the concerned competent authorities.
- 21.8.4 Without prejudice to the obligations stipulated in Clauses 21.8.1 to 21.8.3 above, the Concessionaire shall ensure that the Equipment are adequately covered under annual maintenance contract(s) after the expiry of the manufacturer warranty period for each Equipment.

ARTICLE 22

HEALTHCARE SERVICES

22.1 Identification of Select Patients

22.1.1 Subject to availability of Beds and provisions of this Clause 22.1, the Concessionaire shall provide services to all Select Patients who approach the Hospital seeking medical attention without any discrimination.

22.1.2 Any Patient approaching the Hospital for availing Healthcare Services and seeking to avail Inpatient Services as a Select Patient must either (a) produce proof of registration/eligibility under the Government Health Schemes, or (b) procure from the Authority's designated officer an Authorisation Certificate in accordance with this Clause 22.1.

22.1.3 If the Authority's representative determines that a Patient is eligible under the applicable Annual Expenditure Budget for Non-Government Scheme Select Patients and/or Applicable Law and/or any other applicable policies and directives, the Authority's representative shall issue a certificate to the effect that such Patient is a Select Patient for the purpose of availing Inpatient Services (the "**Authorisation Certificate**").

22.1.4 Any Patient issued an Authorisation Certificate and availing Inpatient Services will be deemed to be a Non-Government Scheme Select Patient entitled to avail Healthcare Services in accordance with the terms of this Agreement. The Authorisation Certificate shall be conclusive and binding on the Authority for payments to be made to the Concessionaire for treatment of such Non-Government Scheme Select Patient in the Hospital in accordance with this Agreement.

22.1.5 The Authority shall at all times ensure that at least one designated representative of the Authority is stationed and on duty at the Hospital.

22.1.6 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall be entitled to modify the process for identification of Select Patient in accordance with the policies and directives of the State Government, and the Concessionaire shall comply with the modified process notified by the Authority.

22.2 Quality of Healthcare Services

22.2.1 The Concessionaire shall ensure and procure that all Patients in the Hospital receive quality care in accordance with the provisions of this Agreement and Good Industry Practices. The Concessionaire shall procure that access, assessment and continuity of care, care of Patients, management of medication, Patient rights and education, infection control and continuous quality improvement are in accordance with the applicable sections of the Accreditation Standards.

22.2.2 The Concessionaire shall abide by the provisions relating to the provision of Healthcare Services and the responsibilities of management outlined in Accreditation Standards.

22.3 **Approval of Healthcare Services for Select Patients and audits by Clinical Panel**

22.3.1 The Concessionaire shall obtain the approval of the Clinical Panel in writing prior to the commencement of treatment of Non-Government Scheme Select Patients.

22.3.2 The Clinical Panel shall grant such approval for Emergency cases within 4 (four) hours of receipt of the request from the Concessionaire and within 24 (twenty four) hours, in all other cases.

22.3.3 The Concessionaire shall not be liable to commence any treatment of a Non-Government Scheme Select Patient unless it has received the written approval of the Clinical Panel for commencement of the treatment and the kind of treatment adopted.

22.3.4 The Clinical Panel may carry out audits of the Healthcare Services provided to all Select Patients (including Non-Government Scheme Select Patients) twice every year and the Concessionaire shall cooperate with the Clinical Panel and provide all necessary information and records as may be required by the Clinical Panel in carrying out such audit.

22.4 **Use of Generic Drugs**

Without prejudice to the obligations contained in Clause 22.2 above, the Concessionaire shall ensure that its doctors prescribe generic medicines wherever available on OPD, and Inpatient prescription slips and clinical records for the Select Patients.

22.5 **Specialty Services**

22.5.1 The Concessionaire agrees and undertakes that the Hospital shall provide, *inter alia* the clinical specialties (“**Specialties**”) specified in Schedule 3 on or before the time frame for provisions of the Specialties as set out in Schedule 10.

22.5.2 For the avoidance of doubt, it is clarified that the Specialties specified in Schedule 3 are the minimum Specialties to be provided and the Concessionaire may, at its sole discretion, cost and expense, provide any other additional services in accordance with the terms of this Agreement and Applicable Laws.

22.6 **Diagnostic Services**

22.6.1 The Concessionaire shall ensure that the Pathology Tests and Radiology Tests conducted in the Hospital are in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

22.6.2 The Concessionaire shall not charge any Fees for any repeat tests of any Pathology Test and/or Radiology Test due to failure to conduct such test successfully on the part of Concessionaire in the first instance.

22.6.3 The Concessionaire, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, agrees that it shall not refer any Select Patient requiring Diagnostic Services to any other healthcare facility without a valid reason, which

shall be recorded in writing and signed by the relevant person(s) designated by the Concessionaire (“**Designated Person**”).

22.6.4 The Concessionaire shall ensure that the Select Patients requiring Diagnostic Services shall be dealt with on *first come first served* basis, to the extent possible.

22.7 **OPD Services**

22.7.1 The Concessionaire shall ensure that the Select Patients requiring OPD Services shall be dealt with on *first-come –first-served* basis, to the extent possible.

22.8 **Emergency Services**

The Concessionaire shall ensure that all Patients requiring Emergency Services are provided Healthcare Services in accordance with Applicable Laws. If the Concessionaire is unable to recover Fees for the Healthcare Services provided to such Patients from either the Patient themselves or under the provisions of this Agreement, the Authority shall reimburse the Concessionaire for the costs incurred on the treatment of such Patients calculated at BSKY rates or rates under any scheme notified in substitution of BSKY, or such other rates as may be agreed mutually between the Parties, within 30 (thirty) days of the receipt of an invoice for the same.

22.9 **Inpatient Services**

The Concessionaire shall ensure that the Select Patients requiring Inpatient Services shall be dealt with on *first-come–first-served* basis, to the extent possible.

22.10 **Occupancy of Beds**

22.10.1 The Concessionaire shall from the COD of Phase-I and thereafter at all times during the Concession Period, designate a minimum of 50% (fifty percent) of the Bed Capacity (excluding the ICU Beds) in the Hospital as General Ward which shall, subject to availability of General Ward Beds in the Hospital, be available for the treatment of the Select Patients. The Concessionaire shall ensure that the Construction Documents and Drawings prepared by it for the Hospital in accordance with Clauses 12.1 and 12.3, respectively, takes into account the General Ward and the General Ward shall be identified and distinctly, physically demarcated within the Hospital premises.

22.10.2 The Concessionaire shall ensure that the Select Patients admitted in General Ward and requiring ICU services are admitted to ICU Beds without any discrimination.

22.10.3 Except as provided in Clauses 22.10.1 and 22.10.2 above, the Concessionaire shall not be liable to reserve any part of the Bed Capacity for the Select Patients.

22.11 **Referral of Select Patients**

22.11.1 The Concessionaire shall ensure that no Patient or category of Patients is discriminated against or unduly favored, as the case may be, in the use of the Hospital. The Concessionaire agrees that it shall not refer any Select Patient to any

other healthcare facility without a valid reason, which shall be recorded in writing and signed by the Designated Person.

22.11.2 The Designated Person shall submit a periodic report, at least once a month, stating the particulars of the Select Patient and reason for making such referral, in a mutually agreed form, to the Monitoring Agency.

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

23.1.1 The Authority shall appoint a consulting engineering firm from the Independent Engineer Panel, on a limited tender basis, to be the independent engineer under this Agreement to certify the Construction Work of the Hospital in accordance with this Agreement (the “**Independent Engineer**”). The appointment shall be made within the time period specified in Clause 4.2.1(viii) or such extended period as may be mutually agreed between the Authority and the Concessionaire and shall expire upon 365 (three hundred and sixty-five) days of the COD of Phase-II.

23.1.2 In the event that the Concessionaire is required to, or it agrees to, as the case may be, construct and develop any Additional Capacity in accordance with the terms of this Agreement, then the Independent Engineer shall be re-appointed for the construction period of the Additional Capacity. Such re-appointment shall be subject to the approval of the entity proposed to be appointed as Independent Engineer and the terms and conditions of its appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule 16.

23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule 16.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, and a part of such remuneration, cost and expenses not exceeding one-half of such remuneration, cost and expenses, as notified by the Authority shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire or the Authority has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the other party and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the other Party shall hold a tripartite meeting with the party seeking termination and the Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire

remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 **Authorised signatories**

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its employees.

ARTICLE 24

MONITORING AGENCY

24.1 Appointment of Monitoring Agency

The Authority shall appoint a monitoring agency constituting of experts selected on basis of an open, transparent and competitive bidding process to be the monitoring agency under this Agreement (the “**Monitoring Agency**”). The appointment shall be made by no later than the time period prescribed in specified in Clause 6.1.2(1) or such extended period as may be mutually agreed between the Authority and the Concessionaire and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another panel to be constituted in the manner specified herein to be the Monitoring Agency for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment for the entire Concession Period.

24.2 Duties and functions

24.2.1 The Monitoring Agency shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule 17.

24.2.2 The Monitoring Agency shall submit regular periodic reports (at least once every quarter) to the Authority in respect of its duties and functions set forth in Schedule 17.

24.2.3 The Monitoring Agency shall assist the Authority (in accordance with the provisions of this Agreement) in supervising the performance of the Concessionaire. The Monitoring Agency shall be entitled to specify any procedural requirements to the Concessionaire such as any information, reports etc. to be provided by the Concessionaire including formats thereof, which in the discretion of the Monitoring Agency will facilitate it to fulfill its duties and functions, provided that the Monitoring Agency shall not specify any such requirement which is beyond the scope of this Agreement.

24.3 Remuneration

24.3.1 All fees, costs, charges and expenses payable to the Monitoring Agency shall be agreed in advance of its appointment and shall be paid by the Authority.

24.3.2 The Authority shall ensure that a copy of this Agreement is annexed to the appointment letter of the Monitoring Agency highlighting all the rights and obligations of the Monitoring Agency. The appointment letter signed and returned by the Monitoring Agency shall acknowledge acceptance of its rights and obligations set out in this Agreement.

24.3.3 Except as specifically provided in this Agreement, the Monitoring Agency shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.

24.4 Termination of appointment

24.4.1 The Authority may, in its discretion, terminate the appointment of the Monitoring Agency at any time, but only after appointment of another Monitoring Agency in accordance with Clause 24.1.

24.5 Authorised signatories

The Authority shall require the Monitoring Agency to designate and notify to the Authority and the Concessionaire up to 2 (two) persons on the panel to sign for and on behalf of the Monitoring Agency, and any communication or document required to be signed by the Monitoring Agency shall be valid and effective only if signed by any of the designated persons; provided that the Monitoring Agency may, by notice in writing, substitute any of the designated persons by any of its employees.

ARTICLE 25

CLINICAL PANEL

25.1 Appointment of Clinical Panel

The Authority shall appoint a Clinical Panel constituting of 3 (three) medical experts, to be the independent healthcare consultant under this Agreement (the “**Clinical Panel**”) on basis of, (a) an open, transparent and competitive bidding process, (b) nomination by the Authority from amongst medical experts in the employ of the Authority, or (c) nominated by the Authority from amongst the entities under the administrative and legal control of the Authority. The appointment shall be made no later than 60 (sixty) days prior to COD of the Phase-I and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another panel to be constituted in the manner specified herein to be the Clinical Panel for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment for the entire Concession Period.

25.2 Duties and functions

25.2.1 The Clinical Panel shall discharge its duties and functions substantially in accordance with Clause 22.3 and as provided elsewhere in this Agreement.

25.3 Remuneration

25.3.1 All fees, costs, charges and expenses payable to the Clinical Panel shall be agreed in advance of its appointment and shall be paid by the Authority.

25.3.2 The Authority shall ensure that a copy of this Agreement is annexed to the appointment letter of the Clinical Panel highlighting all the rights and obligations of the Clinical Panel. The appointment letter signed and returned by the Clinical Panel shall acknowledge acceptance of its rights and obligations set out in this Agreement.

25.3.3 Except as specifically provided in this Agreement, the Clinical Panel shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.

25.4 Termination of appointment

25.4.1 The Authority may, in its discretion, terminate the appointment of the Clinical Panel at any time, but only after appointment of another Clinical Panel in accordance with Clause 25.1.

25.5 Authorized signatories

The Authority shall require the Clinical Panel to designate and notify to the Authority and the Concessionaire up to 2 (two) persons on the panel to sign for and on behalf of the Clinical Panel, and any communication or document required to be

signed by the Clinical Panel shall be valid and effective only if signed by any of the designated persons; provided that the Clinical Panel may, by notice in writing, substitute any of the designated persons by any of its employees.

25.6 **Dispute resolution**

If either Party disputes any advice, instruction, decision, direction or award of the Clinical Panel, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

PART IV
FINANCIAL COVENANTS

ARTICLE 26

CAPITAL GRANT, OPERATIONAL GRANT AND PREMIUM

26.1 Central Grant

26.1.1 The Central Capital Grant shall be disbursed to the Concessionaire in accordance with the provisions of Clause 26.2, and the Central Operational Grant shall be disbursed in accordance with the provisions of Clause 26.3.

26.2 Central Capital Grant

26.2.1 Subject to the conditions specified in this Clause 26.2, the Central Capital Grant, as determined in the Capital Grant Allocation Letter, shall be credited to the Escrow Account in accordance with the Escrow Agreement. The Central Capital Grant shall be applied by the Concessionaire for meeting the Total Project Cost.

26.2.2 The Central Capital Grant shall be:

- (a) payable to the Concessionaire only after it has expended the Equity component of the Total Project Cost as per the Financial Package; and
- (b) {disbursed proportionate to, and together with, the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost as per the Financial Package.}⁹
- (c) {disbursed in accordance with the project milestones achieved (lower of physical or financial progress).}¹⁰

26.2.3 The final disbursement of the Central Capital Grant shall be reduced, if required, such that the Central Capital Grant does not exceed lower of the following:

- (i) Amount for Central Capital Grant as set out in the Capital Grant Allocation Letter; and
- (ii) 40% (forty percent) of the actual capital cost of the Project.

26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Central Capital Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

26.3 {Central Operational Grant

26.3.1 Subject to Clause 26.3.3, during the first 5 (five) years of the Operations Period, the Central Operational Grant shall be credited to the Central Operational Grant

⁹ *Note: This Clause to be retained when the Project is funded through debt as well. In such case, Clause 26.2.2 (c) to be deleted.*

¹⁰ *Note: This Clause to be retained when the Project is funded entirely through equity. In such case, Clause 26.2.2 (b) to be deleted.*

Account, on an annual basis. The Central Operational Grant for each Financial Year shall be the lower of:

- (a) the amounts set out in Schedule 18-A with respect to such Financial Year; and
- (b) 25% (twenty five percent) of the actual O&M Cost during such Financial Year as certified by the Statutory Auditor of the Concessionaire.

26.3.2 For the avoidance of doubt and as specified in Schedule 18-A, it is clarified that for the first year of operations of the Hospital, the relevant Tranche of Central Operational Grant to be deposited in the Central Operational Grant Account shall be prorated to the number of days between the COD of Phase – I and end of the financial year in which the COD of Phase – I occurs and for the sixth year of operations of the Hospital the relevant Tranche of Central Operational Grant to be deposited in the Central Operational Grant Account shall be for the balance amount of the Tranche of Central Operational Grant 1.

26.3.3 In the event of occurrence of a Concessionaire Default, disbursement of Central Operational Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire, to the satisfaction of the Authority.

26.4 **State Grant**

The Project is also proposed to be funded by way of the State Grant in the manner set out in Schedule 18.

26.5 **State Capital Grant**

26.5.1 During the Construction Period, the Authority shall provide to the Concessionaire the State Capital Grant, as determined in the Capital Grant Allocation Letter. The State Capital Grant shall be applied by the Concessionaire for meeting the Total Project Cost.

26.5.2 The Authority shall deposit or cause to be deposited first Tranche of State Capital Grant in the State Grants Account within the time period prescribed under Clause 4.2.1 or such extended period as may be mutually agreed between the Authority and the Concessionaire. Each subsequent Tranche of State Capital Grant shall be deposited in the State Grants Account within 3 (three) months of receipt of written request from the Concessionaire accompanied by a certificate from the Statutory Auditor of the Concessionaire that the Concessionaire has expended at least 50% (fifty percent) of the previous Tranche of the State Capital Grant towards meeting a part of the Total Project Cost.

26.5.3 The State Capital Grant shall be disbursed by the Escrow Bank to the Concessionaire in tranches on achievement of the related Project Interim Milestone(s) in accordance with the provisions of this Clause 26.5, Schedule 18 and the Escrow Agreement. The Escrow Bank shall disburse each Tranche of State Capital Grant in accordance with the Project Interim Milestone(s) as prescribed in Schedule 18, and as and when due, but no later than 30 (thirty) days of receiving a

request from the Concessionaire along with necessary particulars as specified in the Escrow Agreement.

26.5.4 The final disbursement of the State Capital Grant shall be reduced, if required, such that the State Capital Grant does not exceed the lower of the following:

- (i) Amount for State Capital Grant as set out in the Capital Grant Allocation Letter; and
- (ii) 40% (forty percent) of the actual capital cost of the Project.

26.5.5 In the event of occurrence of a Concessionaire Default, disbursement of the State Capital Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire, to the satisfaction of the Authority.

26.5.6 In the event that the actual built up area of the Hospital Building and the Staff Accommodation is less than the minimum built up area required to be constructed by the Concessionaire under terms and conditions contained in this Agreement and the Schedules hereto, the Concessionaire shall be liable for the payment of Damages to the Authority equal to Rs. 3,500 (Rupees three thousand five hundred) per square foot shortfall in built-up area. Such Damages will be paid by the Concessionaire to the Authority immediately upon demand by the Authority and in any case no later than 30 (thirty) days of receipt of a written notice from the Independent Engineer and/or the Authority. For the avoidance of doubt, payment of such Damages shall not relieve the Concessionaire from its obligation to comply with all other provisions under this Agreement and the Schedules, including but not limited to meeting the Specifications and Standards in the designing and construction of the Hospital Building and the Staff Accommodation and will not preclude the Authority from taking actions under this Agreement or Applicable Laws.

26.6 State Operational Grant

26.6.1 Subject to Clause 26.6.3, during the first 5 (five) years of the Operations Period, the State Operational Grant shall be credited to the State Grants Account, on an annual basis. The State Operational Grant for each Financial Year shall be the lower of:

- (a) the amounts set out in Schedule 18 with respect to such Financial Year; and
- (b) 25% (twenty five percent) of the actual O&M Cost during such Financial Year as certified by the Statutory Auditor of the Concessionaire.

26.6.2 In the event of occurrence of a Concessionaire Default, disbursement of State Operational Grant shall be suspended till such Concessionaire Default has been cured by the Concessionaire, to the satisfaction of the Authority.

26.6.3 The Authority shall deposit or cause to be deposited each Tranche of State Operational Grant, as quoted by the Bidder for each year of operations of the Hospital, in the State Grants Account, in advance, on March 31st of each Financial Year after COD of Phase – I. The Escrow Bank, upon receipt of: (a) certification from the Statutory Auditor of the Concessionaire of the actual amount of O&M Cost for the Project for the relevant Financial Year; and (b) written direction from

the Authority in accordance with the provisions of the Escrow Agreement for disbursement of the relevant Tranche of State Operational Grant, shall disburse the relevant Tranche of State Operational Grant to the Concessionaire of an amount calculated in accordance with Clause 26.6.1.

26.6.4 For the avoidance of doubt and as specified in Schedule 18, it is clarified that for the first year of operations of the Hospital, the relevant Tranche of State Operational Grant to be deposited in the State Grants Account shall be prorated to the number of days between the COD of Phase – I and end of the financial year in which the COD of Phase – I occurs and for the sixth year of operations of the Hospital the relevant Tranche of State Operational Grant to be deposited in the State Grants Account shall be for the balance amount of the Tranche of State Operational Grant 1.

26.6.5 For each Tranche of State Operational Grant, if the advance amount deposited by the Authority in the State Grants Account towards a particular Tranche of State Operational Grant is determined, in accordance with the comparison made pursuant to Clause 26.6.1, to be in excess of the actual amount of the particular Tranche of State Operational Grant to be disbursed to the Concessionaire, then such excess amount already deposited by the Authority shall be adjusted with the subsequent Tranche of State Operational Grant to be deposited in advance by the Authority.

26.7 {Premium

If the Concessionaire has quoted a Premium as part of its Bid, the Concessionaire shall, during the Concession Period, pay to the Authority, an annual premium (“**Premium**”) in such amount and in such manner as is specified in Schedule 18. The Concessionaire shall pay the Premium per the Payment Milestones as specified in Schedule 18.}¹¹

¹¹ *Note: Applicable only in case the Bidder has quoted Premium as part of the Bid.*

ARTICLE 27

FEE

27.1 Collection and appropriation of Fee

27.1.1 On and from the COD of Phase- I till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Patients either directly or from the Insurers/Government Instrumentality, as applicable under the Government Health Scheme and/or the Authority in accordance with this Agreement.

27.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee, any Patient shall be entitled to use the Hospital and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.1.3 Except as expressly provided under this Agreement, the Concessionaire acknowledges and undertakes that the Fee for the Inpatients shall be determined in the following manner:

- (a) in respect of Select Patients enrolled under any Government Health Scheme, the Concessionaire shall be entitled to determine, demand and collect the Fee for the Select Patients admitted in the Hospital from the Insurer or the concerned Governmental Instrumentality, as the case may be, at the rates applicable under and in accordance with the relevant Government Health Scheme (depending on the enrolment of the Select Patient under the relevant Government Health Scheme) applicable in non-NABH accredited hospitals/ health centres in the district where the Hospital is located, for such period. Provided however, on and from the date of accreditation of the Hospital under the Accreditation Standard, the Fee for Select Patients admitted in the Hospital shall not be more than the rates applicable under the relevant Government Health Scheme in similarly accredited hospitals/ health centres in the district where the Hospital is located.
- (b) in respect of Non- Government Scheme Select Patients, the Fee for such Healthcare Services provided to such Select Patients shall not be higher than the BSKY rates applicable in hospitals in the district where the Hospital is located with accreditation similar to the Accreditation Standard under which the Hospital is accredited. In the event the BSKY rates applicable in such similarly accredited hospitals in the district where the Hospital is located do not include any such Healthcare Services, the Concessionaire shall be entitled to determine Fee for such Healthcare Services in the manner it deems fit not exceeding the Fee it charges to Patients other than the Select Patients.
- (c) in respect of Inpatients (other than those specified in sub-clauses (a) and (b) above) the Concessionaire shall be free to determine, demand and collect the Fee for any such Inpatient admitted in the Hospital. Provided that:
 - (i) to the extent any rates for Healthcare Services are specified under the

BSKY, such Fee shall not exceed three (3) times the rates prescribed for the Select Patients availing similar Healthcare Services under BSKY in similarly accredited hospitals/ health centres in the district where the Hospital is located;

(ii) to the extent no rates for Healthcare Services is specified under the BSKY, such Fee shall not exceed three (3) times the amount as determined by the pre-authorization panel of doctors or the technical committee formed under BSKY for the Select Patients availing similar Healthcare Services under BSKY in similarly accredited hospitals/ health centres in the district where the Hospital is located; (collectively the Fees prescribed in Clause 27.1.3(c)(i) and Clause 27.1.3(c)(ii) hereinafter referred to as the “**IPD Fee Cap**”)

Provided further, for the purpose of this Clause 27.1.3(c) such IPD Fee Cap shall not be applicable to the Fees charged for Consumables, implants and premium room rent in the Hospital and shall be charged in accordance with market rates.

27.1.4 Except as expressly provided under this Agreement, the Concessionaire acknowledges and undertakes that the Fee for the Outpatients shall be determined in the following manner:

(a) For OPD Services:

In respect of all Patients (including the Select Patients), the Fee shall not exceed INR 800 (Rupees eight hundred) per consultation (“**OPD Consultation Fee Cap**”).

Provided that the Authority shall, after every 3 (three) years, increase the OPD Consultation Fee Cap by an amount equal to 10% (ten per cent) of the OPD Consultation Fee Cap applicable at such point of time.

(b) For Diagnostic Services:

In respect of all Patients (including the Select Patients), the Fees shall not exceed 5 (five) times the rates prescribed for the Select Patients availing similar Diagnostic Services under CGHS 2014 in NABH accredited hospitals/ health centres in Bhubaneswar (“**OPD Diagnostic Fee Cap**”). If rates for any Diagnostic Service is not specified under the CGHS 2014, the Concessionaire shall collect the Fee separately for such Diagnostic Service in accordance with market rates.

Provided that:

(i) the Authority shall, after every 3 (three) years, increase the OPD Diagnostic Fee Cap by an amount equal to 10% (ten per cent) of the OPD Diagnostic Fee Cap applicable at such point of time; and

- (ii) in the event that the Fees for Diagnostic Services is notified subsequently by the Authority for Select Patients (“**Notified Diagnostic Services Fee**”):
 - (a) the Select Patients shall be charged the Notified Diagnostic Services Fee from the date of notification of the Notified Diagnostic Services Fee;
 - (b) if such Notified Diagnostic Services Fee is less than the OPD Diagnostic Fee Cap, the Concessionaire shall, be entitled to claim compensation from the Authority for reduction in tariff rates below the OPD Diagnostic Fee Cap, to the extent such Notified Diagnostic Services Fee is less than the actual Fee charged by the Concessionaire for Diagnostic Services; and
 - (c) for Patients (other than Select Patients) the Authority shall redetermine the cap for Fees for Diagnostic Services as a multiplier of the Notified Diagnostic Services Fee.

27.1.5 The Parties hereby agree that the Fee for Select Patients determined in accordance with this Clause 27.1 shall also include Consumables which are included under the extant package rates under the applicable Government Health Schemes. The Parties further agree that in the event any Consumables are not covered under the extant package rates, the Concessionaire shall collect the Fee separately for such Consumables in accordance with market rates.

27.1.6 For the purposes of this Clause 27.1, the Authority may, in its sole discretion, increase the IPD Fee Cap by way of issuance of a notification (“**Revision Notification**”) in the manner as the Authority may deem fit. Provided, that any subsequent Revision Notification shall not be effected until a period of 6 (six) months has elapsed from the date of issue of immediately preceding Revision Notification hereunder.

27.1.7 The Concessionaire hereby acknowledges and agrees that it is not entitled to any increase of IPD Fee Cap and/or OPD Consultation Fee Cap and/or OPD Diagnostic Fee Cap or other relief from the Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement and / or Applicable Law.

27.2 **Revised Fee on cessation of BSKY**

27.2.1 In the event the BSKY is discontinued without any alternate / equivalent Government Health Scheme to replace it, the Fee for provision of Healthcare Services to the Patients shall be determined mutually between the GoO and the Concessionaire (“**Revised Fee**”) and the provisions for determination of such Revised Fee shall be set out in a supplementary agreement to this Agreement to be executed between the GoO and the Concessionaire.

27.2.2 Unless agreed otherwise, in writing between the Parties, such Revised Fee shall be applicable till any alternate/equivalent Government Health Scheme is introduced. In case no such Government Health Scheme is introduced, such Revised Fee shall

be applicable for the remaining term of the Concession Period starting from the date of cessation of the BSKY. Provided that, if such Revised Fee is subsequently regulated as per Clause 27.3 of this Agreement, the Concessionaire shall charge such fees in accordance with Clause 27.3 of this Agreement.

27.3 Future regulation of Fee

27.3.1 At any time after the Execution Date, if any statute, rule, regulation, directive, policy is enacted / issued by any Government Instrumentality or any judgment, decree, order is passed by any court regulating the charging of the Fees for providing Healthcare Services (“**Regulated Fee**”), the Concessionaire shall charge the Regulated Fee from the Patients for the remaining term of the Concession Period starting from the date of enactment or issuance of such statute, rule, regulation, directive, policy or passing of such judgment, decree or order.

27.4 Compensation for change in tariffs under BSKY and BKKY

27.4.1 Tariff Revision in BKKY and BSKY within a period of 7 (seven) years of the Effective Date:

- (a) In the event that the tariff rates applicable for any procedure under BSKY and/or BKKY on the date of this Agreement (“**Base Tariff**”) are reduced anytime during a period of 7 (seven) years commencing from the Effective Date, the Concessionaire shall, in respect of each such procedure performed in the Hospital, be entitled to claim compensation from the Authority for reduction in tariff rates below the Base Tariff, for a period commencing from the later of (i) the date of notification of such revised tariff rates under BSKY and/or BKKY (“**Tariff Revision Date**”) or (ii) the COD of Phase-I, as the case may be, until the expiry of 7 (seven) years from the Effective Date (such period hereinafter referred to as the “**Tariff Change Compensation Period 1**”) in accordance with sub-clause (b) below. For the avoidance of doubt, the Concessionaire shall not be liable to pay the Authority for any increase in the tariff under BSKY and/or BKKY.
- (b) In case the revised tariff for any procedure under the BSKY or BKKY, as the case may be, is less than the Base Tariff for such procedure under BSKY and BKKY respectively, the compensation payable by the Authority to the Concessionaire in respect of each procedure (“p”) performed in the Hospital in each month (‘m’) during the Tariff Change Compensation Period 1 shall be computed as follows:

$$C_p = ASP_m \times (\text{Base Tariff} - \text{Reduced Tariff})$$

Where:

C_p = Compensation payable by the Authority to the Concessionaire on account of reduction in Base Tariff for the procedure ‘p’ performed in the Hospital in the month ‘m’ under BSKY and/or BKKY, as the case may be;

ASP_m = Actual number of Select Patients treated under BSKY or BKKY, as the case may be, under procedure ‘p’, in month ‘m’. For the purpose of calculation of compensation payable for the month in which the Tariff Revision Date occurs, ASP_m shall be the actual number of Select Patients treated under BSKY or BKKY, as the case may be, under procedure ‘p’, during the period commencing from the Tariff Revision Date and ending on the last day of the month in which such Tariff Revision Date occurs;

Base Tariff = Base Tariff applicable for procedure ‘p’ under BSKY or BKKY, as the case may be; and

Reduced Tariff = Tariff applicable for procedure ‘p’ under BSKY or BKKY, as the case may be, from the Tariff Revision Date.

27.4.2 Tariff Revision in BKKY and BSKY after expiry of 7 (seven) years from Effective Date:

- (a) In the event that the tariff rate applicable for any procedure under BSKY and/or BKKY are reduced below the Applicable Tariff (*as specified below*) any time after the expiry of a period of 7 (seven) years from the Effective Date, the Concessionaire shall be entitled to claim compensation from the Authority for the decrease in such tariff rate for a period of 12 (twelve) months commencing from the Tariff Revision Date (such period hereinafter referred to as the “**Tariff Change Compensation Period 2**”) in respect of each procedure performed in the Hospital in each month during the Tariff Change Compensation Period 2 in accordance with the following formula:

$$C_p = ASP_m * (\text{Applicable Tariff} - \text{Reduced Tariff})$$

Where:

C_p = Compensation payable by the Authority to the Concessionaire on account of reduction in Applicable Tariff for the procedure ‘p’ performed in the Hospital in the month ‘m’ under BSKY and/or BKKY, as the case may be;

ASP_m = Actual Number of Select Patients treated under BSKY or BKKY, as the case may be, under procedure ‘p’, in month ‘m’. For the purpose of calculation of compensation payable for the month in which the Tariff Revision Date occurs, ASP_m shall be the actual number of Select Patients treated under BSKY or BKKY, as the case may be, under procedure ‘p’, during the period commencing from the Tariff Revision Date and ending on the last day of the month in which such Tariff Revision Date occurs;

Applicable Tariff = Tariff applicable for procedure ‘p’ under BSKY or BKKY, as the case may be, on the day immediately preceding the Tariff Revision Date; and

Reduced Tariff = Tariff applicable for procedure ‘p’ under BSKY or BKKY, as the case may be, from the Tariff Revision Date.

- (b) The Concessionaire shall be able to claim compensation from the Authority in accordance with this Clause 27.4.2 only after occurrence of COD of Phase - I and for any one single period of 12 (twelve) months during the Concession Period. For the avoidance of doubt, the Concessionaire shall not be liable to compensate the Authority for any increase in the tariff under BSKY and/or BKKY.

27.4.3 Introduction of New Scheme during 7 (seven) years from Effective Date:

- (a) In the event of notification of a new Government Health Scheme (whether by way of substitution of BSKY , BKKY or OSTF or otherwise) (“**New Scheme**”) anytime during a period of 7 (seven) years commencing from the Effective Date, the Concessionaire shall for procedures performed in the Hospital be entitled to claim compensation for the resultant reduction in tariff rates from the Authority, for a period commencing from the later of (i) the date of notification of such New Scheme (“**New Scheme Date**”), or (ii) the COD of Phase-I, as the case may be, until the expiry of 7 (seven) years from the Effective Date (such period hereinafter referred to as the “**New Scheme Compensation Period 1**”) in accordance with the provisions of sub-clause (b) below.
- (b) In case the tariff for any procedure under the New Scheme is less than the average applicable tariff under those of BSKY, BKKY and OSTF (which covers such procedure ‘p’) (“**Average Tariff**”), the compensation payable by the Authority to the Concessionaire in respect of each procedure (‘p’) performed in the Hospital in each month (‘m’) during the New Scheme Compensation Period 1 shall be computed as follows:

$$C_p = ASP_m \times (\text{Average Tariff} - \text{New Scheme Tariff})$$

Where:

C_p = Compensation payable by the Authority to the Concessionaire on account of reduction in Applicable Tariff for the procedure ‘p’ performed in the Hospital in the month ‘m’ under the New Scheme;

ASP_m = Actual Number of Select Patients treated under New Scheme under procedure ‘p’ in month ‘m’. For the purpose of calculation of compensation payable for the month in which the New Scheme Date occurs, ASP_m shall be the actual number of Select Patients treated under the New Scheme under procedure ‘p’, during the period commencing from the New Scheme Date and ending on the last day of the month in which such New Scheme Date occurs; and

New Scheme Tariff = Tariff applicable for procedure ‘p’ under New Scheme from the New Scheme Date.

27.4.4 Introduction of New Scheme after 7 (seven) years from Effective Date

In the event of introduction of a New Scheme anytime during a period of 7 (seven) years commencing from the Effective Date, the Concessionaire shall, in respect of

procedures performed in the Hospital be entitled to claim compensation for resultant decrease in tariff rates under the New Scheme from the Authority for a period of 12 (twelve) months commencing from the New Scheme Date (such period hereinafter referred to as the “**New Scheme Compensation Period 2**”) in respect of each procedure performed in the Hospital in each month during the New Scheme Compensation Period 2 in accordance with the following formula:

$$C_p = ASP_m \times (\text{Average Tariff} - \text{New Scheme Tariff})$$

Where:

C_p = Compensation payable by the Authority to the Concessionaire on account of reduction in Applicable Tariff for the procedure ‘**p**’ performed in the Hospital under the New Scheme;

ASP_m = Actual Number of Select Patients treated under New Scheme under procedure ‘**p**’ in month ‘**m**’. For the purpose of calculation of compensation payable for the month in which the New Scheme Date occurs, ASP_m shall be the actual number of Select Patients treated under the New Scheme under procedure ‘**p**’, during the period commencing from the New Scheme Date and ending on the last day of the month in which such New Scheme Date occurs; and

New Scheme Tariff = Tariff applicable for procedure ‘**p**’ under New Scheme from the New Scheme Date.

27.4.5 For the purpose of claiming compensation from the Authority or making payments to the Authority under Clauses 27.4.1 to 27.4.4, the Concessionaire shall claim such amounts under the Monthly Invoice and provide details of computation of compensation in respect of revised tariff in accordance with this Clause 27.4 along with the HMIS data reflecting the details of the Select Patients who have availed treatment (procedure wise) in such month under BSKY, BKKY and the New Scheme, as the case may be.

27.5 Payment for the Healthcare Services on behalf of Select Patients

27.5.1 Payment for Select Patients

The Fee for providing Healthcare Services to the Select Patients shall be paid to the Concessionaire in accordance with the provisions of this Clause 27.5, by the Insurers, the concerned Government Instrumentality providing Government Health Scheme or the Authority, as the case may be.

27.5.2 Payment for Healthcare Services on behalf of Select Patient by Insurers or the Government Instrumentality

(a) Subject to Clause 22.10, the Select Patients enrolled under the Government Health Scheme will be entitled to obtain Healthcare Services covered under the Government Health Scheme from the Hospital, in accordance with the procedure and coverage specified in the Government Health Scheme. For the avoidance of doubt, the Parties expressly agree that the Hospital shall be eligible for reimbursement under the Government Health Scheme, but the

beneficiaries covered under the Government Health Schemes shall have no obligation to use the Healthcare Services at the Hospital.

- (b) The Fee for providing Healthcare Services to the Select Patients covered under the Government Health Scheme shall be paid by the Insurers/ concerned Government Instrumentality providing the Government Health Scheme in accordance with the rates, procedure and coverage specified in the Government Health Scheme.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall be entitled to demand, collect and appropriate Fee directly from the Select Patients in the event empanelment with any Government Health Schemes is delayed or refused or revoked or not renewed, as the case may be, by the relevant Government Instrumentality provided that such delay, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any conditions relating to grant, maintenance or renewal of such empanelment.

27.5.3 Payment for Healthcare Services on behalf of the Select Patient by the Authority

- (a) **Annual Expenditure Budget for Non-Government Scheme Select Patients**
 - (i) On and from the COD of Phase-I, the Authority may, at its discretion, determine an annual expenditure budget applicable in any Financial Year for payment of Fees for provision of Inpatient Services to Non-Government Scheme Select Patients in such Financial Year ("**Annual Expenditure Budget for Non-Government Scheme Select Patients**"). If the Authority decides to notify an Annual Expenditure Budget for Non-Government Scheme Select Patients, it shall notify the Annual Expenditure Budget for Non-Government Scheme Select Patients by no later than (a) 30 (thirty) days prior to the COD of Phase-I; and (b) subsequently, on 28th (twenty eighth) February of each calendar year for the immediately succeeding Financial Year. If the Annual Expenditure Budget for Non-Government Scheme Select Patients is notified and the Escrow Account is funded by the Authority in accordance with this Clause 27.5.3, Concessionaire shall provide Healthcare Services to the Non-Government Scheme Select Patients for such Financial Year in accordance with the provisions of this Agreement.
 - (ii) In the event that the Authority fails to notify the Annual Expenditure Budget for Non-Government Scheme Select Patients for a Financial Year in accordance with the provisions of Clause 27.5.3(a) (i) above, the Annual Expenditure Budget for Non- Government Scheme Select Patients for such Financial Year shall be deemed to be zero and the Concessionaire shall not be liable to provide Healthcare Services to the Non- Government Scheme Select Patients for such Financial Year. However, the Authority may, voluntarily fund the Escrow Account any time, irrespective of whether the Annual

Expenditure Budget for Non- Government Scheme Select Patients has been notified, and the Concessionaire shall be responsible for providing Healthcare Services to Non-Government Scheme Select Patients up to the amount which the Authority has deposited voluntarily.

- (iii) Notwithstanding the above, the Annual Expenditure Budget for Non-Government Scheme Select Patients issued by the Authority shall not provide for any additional obligation to be performed by the Concessionaire under this Agreement in any manner whatsoever, other than as set out in this Clause 27.5.3.

(b) **Payment by Authority on behalf of Select Patients**

- (i) If the Annual Expenditure Budget for Non-Government Scheme Select Patients has been issued, the Authority shall fund the Escrow Account in accordance with Clause 27.5.3(c) and the Escrow Agreement.
- (ii) For the avoidance of doubt, the Authority shall not be liable to make any payment towards, or reimburse the Concessionaire for any Fees in respect of Select Patients availing OPD Services only.
- (iii) The Authority may, in its sole discretion, make provisions for advance payments on behalf of Select Patients covered under the Government Health Schemes which may be recovered from the Concessionaire on being paid by the relevant Insurers/ Government Instrumentality.

(c) **Billing and Payment**

- (i) If the Authority notifies an Annual Expenditure Budget for Non-Government Scheme Select Patients in accordance with the provisions of Clause 27.5.3(a) above, it shall deposit pro-rata amounts on the basis of Annual Expenditure Budget for Non-Government Scheme Select Patients in the Non-Government Scheme Select Patient Account every month in accordance with the provisions of this Clause 27.5.3 and the Escrow Agreement, on and from the date of notification of the Annual Expenditure Budget for Non-Government Scheme Select Patients. If the Authority fails to fund the Non-Government Scheme Select Patient Account in accordance with the Annual Expenditure Budget for Non-Government Scheme Select Patients, the Concessionaire shall be required to treat Non-Government Scheme Select Patients only up to the amount which the Authority has deposited into the Non-Government Scheme Select Patient Account in this regard. For the avoidance of doubt, if the Authority has not issued an Annual Expenditure Budget for Non- Government Scheme Select Patients any year, then the Concessionaire shall not be required to provide Healthcare Services to the Non-Government Scheme Select Patients in that year unless the Authority voluntarily funds the Non-

Government Scheme Select Patient Account at any time during the Financial Year, in which case the Concessionaire shall be responsible for providing Healthcare Services to Non-Government Scheme Select Patients up to the amount which the Authority has deposited voluntarily.

- (ii) On and from the COD of Phase-I, the Concessionaire shall, by the 5th (fifth) day of each month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Monitoring Agency, the Authority and Escrow Bank, an invoice containing separate line items for: (A) the Fees payable for the Non-Government Scheme Select Patients in accordance with Clause 27.5.3(b)(i), (B) any amounts which were previously disputed and which have been resolved and finalised along with adequate proof that such dispute has been resolved but remains unpaid by the Authority, (C) compensation for decrease in tariff rates under BSKY and /or BKKY or on account of introduction of New Scheme (if applicable) in accordance with Clause 27.4, and (D) any other amounts payable by the Authority to the Concessionaire under the Agreement, in respect of the immediately preceding month (the “**Monthly Invoice**”) signed by the authorised signatory of the Concessionaire together with (i) a certificate from an authorised officer of the Concessionaire and the Clinical Panel certifying that the amounts claimed in the Monthly Invoice in respect of Non-Government Scheme Select Patients are correct and in accordance with the provisions of the Agreement; (ii) proof of cost of Healthcare Package for the period billed; (iii) detailed calculations of the costs to be reimbursed in accordance with the Annual Expenditure Budget for Non-Government Scheme Select Patients, (iv) details in respect of discount and/or interest; (v) the net amount payable under the Monthly Invoice; (vi) original copy of the Authorisation Certificates for the Select Patients, if applicable, (vii) detailed calculations and data as required by the Authority in accordance with Clause 27.4.
- (iii) Within 30 (thirty) days of receipt of a Monthly Invoice, the Monitoring Agency and the Authority shall verify the Monthly Invoice in light of the documents submitted by the Concessionaire in accordance with Clause 27.5.3(c)(ii). The Monitoring Agency and/or the Authority may, (a) point out any error in the computation of amounts specified in, and/or (b) raise dispute on the amounts claimed under the Monthly Invoice. Additionally, the Authority shall be entitled to set-off in the Monthly Invoice, any Damages payable by the Concessionaire to the Authority under this Agreement, to the extent such Damages remain unpaid by the Concessionaire and have not been recovered from the Bid Security, Construction Performance Security or the Deemed Performance Security, as the case may be.
- (iv) In the event that any rectification and/or revision is required in the Monthly Invoice pursuant to this Clause 27.5.3, the Monitoring Agency and/or the Authority, as the case may be, will notify the

Concessionaire about such rectification and/or revision with a copy to the Escrow Bank within the time period mentioned above, and the Concessionaire shall immediately rectify the Monthly Invoice and re-issue such rectified Monthly Invoice (“**Rectified Monthly Invoice**”) by no later than 3 (three) days of receipt of notification of such error/revision from the Monitoring Agent and/or the Authority.

- (v) In the event that (A) the Monitoring Agency and/or the Authority do not raise any dispute or notify any error with respect to the Monthly Invoice within 30 (thirty) days of receipt of the Monthly Invoice, or (B) the Concessionaire does not raise any dispute or notify any error with respect to the rectification and/or revision of the Monthly Invoice as notified by the Monitoring Agency and/or the Authority in accordance with the provisions of Clause 27.5.3(c)(iv) above, such Monthly Invoice or the Rectified Monthly Invoice, as the case may be, shall be deemed to have been accepted by the Parties and the Escrow Bank shall release payment to the Concessionaire in the Revenue Account in accordance with such Monthly Invoice or the Rectified Monthly Invoice, as the case may be.
- (vi) If there is a dispute between the Parties regarding the Monthly Invoice, or the Rectified Monthly Invoice, as the case may be, the Escrow Bank shall release payment equal to 100% (hundred percent) of the undisputed amounts claimed under such Monthly Invoice or the Rectified Monthly Invoice, as the case may be, and 50% (fifty percent) of amounts which have been disputed in writing by the Authority and/or the Monitoring Agency (in accordance with sub-clause (iii) above), to the Concessionaire in the Revenue Account within 35 (thirty five) days of receipt of the Monthly Invoice or the Rectified Monthly Invoice, as the case maybe, and the balance 50% (fifty percent) of the disputed amounts shall be retained in the Non-Government Scheme Select Patient Account and shall be released to the Concessionaire in the Revenue Account upon the resolution of the Dispute in accordance with provisions of this Agreement and the Escrow Agreement, as reflected in the Monthly Invoice or the Rectified Monthly Invoice, as the case maybe, following resolution of such Dispute.

(d) **Delayed Payments**

In the event of delay in payment of the undisputed amounts due under the Monthly Invoice beyond the period prescribed in Clauses 27.5.3(c)(v) and 27.5.3(c)(vi) above, the Authority shall pay interest for the period of delay, calculated at a rate equal to 1% (one per cent) above the Bank Rate on the amounts payable.

27.6 Consultation Fee

The Concessionaire agrees that it shall not charge any consultation Fee for one or more subsequent visits by any Patient within a period of 7 (seven) days of his previous visit.

27.7 Display of Fee

27.7.1 The Concessionaire shall ensure that the applicable rates of Fee are readily available to Patients on demand and printed Fee schedules are available at all convenient locations in the Hospital, including near the Fee counters and are also displayed on the Hospital Website. Further, the Concessionaire shall share the printed Fee schedules with the Authority.

27.7.2 The Concessionaire agrees and undertakes that any change in the applicable rates of Fee shall be notified to the Authority in the beginning of each quarter.

ARTICLE 28

ESCROW ACCOUNT

28.1 Escrow Account

28.1.1 The Concessionaire and Authority shall, on or before the Effective Date, enter into an escrow agreement with the Escrow Bank, substantially in the form set forth in Schedule 20 (the “**Escrow Agreement**”) for the establishment and maintenance of Escrow Accounts as may be specified in the Escrow Agreement. The Parties expressly agree that the Escrow Accounts shall be established and maintained with the {Lead Financial Institution}¹² / { an Escrow Bank selected by the Authority at its sole discretion.}¹³

28.1.2 The nature and scope of the Escrow Accounts shall be specified in the Escrow Agreement.

28.2 Deposits into the Escrow Accounts

28.2.1 The Lenders’ Representative, Concessionaire and the Authority, as the case may be, shall deposit or cause to be deposited into the Escrow Accounts the following amounts in accordance with this Agreement and the Escrow Agreement:

- (a) all disbursements made by the Senior Lenders for meeting the Total Project Cost in relation to or in respect of the Project, in the Construction Account;
- (b) Central Capital Grant payable to the Concessionaire into the Construction Account;
- (c) {Central Operational Grant payable to the Concessionaire into the Central Operational Grant Account;}¹⁴
- (d) State Grant payable to the Concessionaire in the State Grants Account;
- (e) all Fees and any other revenues, from or in respect of the Hospital, including the proceeds of any rentals, deposits, capital receipts or insurance claims, in the Revenue Account;
- (f) any funds received by the Concessionaire from its lenders or shareholders, in any manner or form, other than funds for meeting the Total Project Cost, in the Revenue Account;

¹² *Note: If debt financing is availed by the Concessionaire, the Lead Financial Institution shall act as the Escrow Bank.*

¹³ *Note: If no Lead Financial Institution is involved, Escrow Bank shall be selected at the sole discretion of the Authority.*

¹⁴ *Note: Applicable only in case the Bidder has quoted Operational Grant as part of the Bid.*

- (g) any funds at the discretion of the Authority, if the Annual Expenditure Budget for Non-Government Scheme Select Patients has been issued in accordance with Clause 27.5.3(a) of this Agreement in the Non-Government Scheme Select Patients Account;
- (h) any advance payments, at the discretion of the Authority, towards Fees remaining unpaid to the Concessionaire, by the Insurer or the concerned Government Instrumentality, as the case may be towards Inpatient Services provided to Select Patients covered under the relevant Government Health Schemes after the due date under such Government Health Scheme, in the Advance Account;
- (i) pursuant to receipt of any payment from the relevant Insurer or Government Instrumentality, as the case may be, any Fee corresponding to an advance payment, which was previously released to the Concessionaire in accordance with Clause 27.5.3 (b) (iii), in the Authority Account;
- (j) Termination Payments, as and when due and payable in accordance with this Agreement, in the Revenue Account;
- (k) any other amounts required to be paid by the Authority to the Concessionaire not specifically provided for in the Escrow Agreement, in the Revenue Account.

28.3 Withdrawals from the Escrow Accounts

All amounts standing to the credit in the Escrow Accounts shall be utilized in accordance with the priority and instructions set out in the Escrow Agreement. Further, the Authority shall be entitled to recover any Damages payable by the Concessionaire to the Authority under this Agreement from the Escrow Accounts in accordance with the Escrow Agreement to the extent such Damages remain unpaid by the Concessionaire or have not been recovered from the Bid Security, or Construction Performance Security, as the case may be.

ARTICLE 29

INSURANCE

29.1 Insurance during Concession Period

29.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall ensure and procure that in each insurance policy, the Authority shall be a co-insured. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

29.1.2 Without prejudice to the provisions contained in Clause 29.1.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Hospital;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

29.2 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. Within 30 (thirty) days of receipt of such notice, the 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.

29.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

29.4 Remedy for failure to insure

If the Concessionaire fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and 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.

29.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

29.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

29.7 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with the conditions imposed under the insurance policies effected in accordance with the provisions of this Agreement.

ARTICLE 30

ACCOUNTS AND AUDIT

30.1 Audited accounts

30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Fees and other revenues derived or collected by it from or on account of the Hospital and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

30.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

30.1.3 On or before the 31st (thirty-first) day of July each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (i) the count for each category of persons using the Hospital (including Select Patients) and liable for payment of Fee therefor, (ii) Fee charged and received, realisable fee and other revenues derived from the Hospital, and (iii) such other information as the Authority may reasonably require.

30.2 Appointment of auditors

30.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the list of 20 (twenty) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), issued by the Authority on or prior to March 1 every year. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

30.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

30.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those payment claims, matters, expenses, costs and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement

30.3 **Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

30.4 **Set-off**

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 30.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

30.5 **Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory Auditors, such auditors shall meet to resolve the differences and if they are unable to resolve the same within a period of 30 (thirty) days of the raising of Dispute by the Additional Auditor, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure.

PART V

FORCE MAJEURE AND TERMINATION

ARTICLE 31

FORCE MAJEURE

31.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 31.2, 31.3 and 31.4 respectively, 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, and (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.

31.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) acts of God, natural calamities, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees or representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Hospital for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 31.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver critical Equipment in India if such delay or failure is caused outside India by any event specified in Clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or

- (f) any event or circumstances of a nature analogous to any of the foregoing.

31.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents rendering of Health Care Services and collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

31.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

- (e) any event or circumstance of a nature analogous to any of the foregoing.

31.5 Duty to report Force Majeure Event

31.5.1 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:

- (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 31 with evidence in support thereof;
- (ii) 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;
- (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (iv) any other information relevant to the Affected Party's claim.

31.5.2 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 no 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.

31.5.3 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 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

31.6 Effect of Force Majeure Event on the Concession

31.6.1 Upon occurrence of any Force Majeure Event prior to the Effective Date, the period set forth in Clause 4.2 for fulfilment of the Conditions Precedent, shall be extended by a period equal in length to the duration of the Force Majeure Event.

31.6.2 At any time after the Effective Date, if any Force Majeure Event occurs:

- (a) before COD of the relevant Phase, the Concession Period and the dates set forth in the Project Completion Schedule shall be, subject to Applicable Laws, extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, if the Concessionaire is unable to render Healthcare Services and collect Fee despite making best efforts or is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be, subject to Applicable Laws, extended by a period, equal in length to the period during which the Concessionaire

was prevented from collection of Fee on account thereof; [provided that in the event of reduction in the Hospital services on account of partial suspension of services which cause the Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period over the preceding [2 (two) years], the Authority shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For avoidance of doubt, loss of [25% (twenty five per cent)] in Gross Revenue for [4 (four)] days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two) years] shall entitle the Concessionaire to the extension of [1(one)] day in the Concession Period. Provided further that if the Hospital has not been in operation for the preceding 2 (two) years, then the Average Daily Gross Revenue for the preceding 1 (one) year shall be considered.]

31.7 Allocation of costs arising out of Force Majeure

31.7.1 Upon occurrence of a Force Majeure Event, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event and not exceeding the Insurance Cover for such Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, 100% (one hundred percent) of such excess amount shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost, O&M Expenses, any increase in the cost of Construction Works and Equipment on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues, or any debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

31.7.2 Notwithstanding anything to the contrary contained in this Agreement, any revision of the tariff rates applicable for any procedure under BSKY, OSTF, BKKY and/or

any other Government Health Scheme shall not be considered as a Force Majeure Event, and the costs incurred by the Concessionaire and attributable to such revision shall not be considered as a Force Majeure Cost.

31.7.3 Save and except as expressly provided in this Article 31, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

31.8 Termination Notice for Force Majeure Event

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 31, and upon issuance 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 in writing and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period from the date of such notification, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

31.9 Termination Payment for Force Majeure Event

31.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of the Debt Due less Insurance Cover.

31.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(a) 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 per cent) of such unpaid claims shall be included in the computation of Debt Due; and

(b) 120% (one hundred and twenty percent) of the Adjusted Equity.

31.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 32.3.2 as if it were an Authority Default.

31.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon

the Party claiming relief and/or excuse of performance of its obligations on account of such Force Majeure Event.

31.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform on account of the Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 32

TERMINATION

32.1 Termination for Concessionaire Default

32.1.1 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 (the “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Construction Performance Security has been encashed and appropriated in accordance with Clause 9.1 and the Concessionaire fails to replenish or provide fresh Construction Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Construction Performance Security in accordance with Clause 9.1, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Construction Performance Security was appropriated;
- (c) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Hospital without the prior written consent of the Authority;
- (d) the Concessionaire’s failure to fulfil any of its material obligations resulting in Material Adverse Effect;
- (e) the Concessionaire, in any year commencing from the Effective Date, has paid or becomes liable to pay, Damages (in aggregate for such year) amounting to 3 (three) times of the value of the Construction Performance Security;
- (f) the Concessionaire charges Fee to a Select Patient directly in breach of the terms of this Agreement, or overcharges any Select Patient in 10 (ten) instances during any year;
- (g) the Concessionaire commits default(s) in any year commencing from COD of Phase-I, in conforming to the Key Performance Indicators as set forth in Article 21 and Schedule 14 or O&M obligations as set forth in Article 17, which results in the total Damages payable for such defaults exceed the amount of Deemed Performance Security;
- (h) the Concessionaire fails to obtain or maintain the accreditation under the relevant Accreditation Standard in accordance with Clause 21.5 and the total Damages payable for such default exceeds the maximum amount of Damages prescribed in Schedule 14;

- (i) the Concessionaire is in breach of the Maintenance Requirements or Safety Requirements;
- (j) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule 10 and continues to be in default for 365 (three hundred and sixty five) days;
- (k) the COD for any Phase does not occur within the period specified in Clause 12.4.3;
- (l) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (m) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement and has failed to cure such default within a Cure Period of 30 (thirty) days;
- (n) a default under the Escrow Agreement has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (o) upon occurrence of a Financial Default, the Lenders' Representative has by notice conveyed its intention to substitute the Concessionaire with a Nominated Company, or the Authority is required to undertake Termination, in accordance with the Substitution Agreement;
- (p) if the Lease Deed is terminated on account of a Concessionaire event of default (howsoever defined under the Lease Deed);
- (q) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (r) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (s) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (t) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (u) the Concessionaire fails to effect and keep in force all insurances which it is required to obtain under this Agreement and fails to cure the same within 30 (thirty) days;
- (v) there is a transfer, pursuant to law either of (A) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (B) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (w) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

- (x) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver or custodian or administrator or insolvency resolution professional is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (y) 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 Authority, a Material Adverse Effect;
- (z) a resolution for corporate insolvency resolution process of the Concessionaire is passed, or any petition for corporate insolvency resolution process of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016, and such application has not been withdrawn or dismissed within 30 (thirty) days of the date thereof, or a proceeding or case has been commenced without the application or consent of the Concessionaire in any court of competent jurisdiction seeking its liquidation, reorganization, dissolution or winding up or the composition or readjustment of debts;
- (aa) 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 in accordance with the provisions of the Companies Act, 2013, 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:
 - (A) 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;
 - (B) 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 Effective Date; and
 - (C) each of the Project Agreements remains in full force and effect;
- (bb) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (cc) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the

Authority's rights, obligations or interests and which is false in material particulars;

- (dd) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (ee) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire 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, subject to the provisions of Clause 32.1.3.

32.1.3 The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement.

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2 **Termination for Authority Default**

32.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement, the Lease Deed or the Escrow Agreement and such default has a Material Adverse Effect on the Concessionaire; or
- (b) the Authority has failed to make any payment exceeding Rs.10,00,00,000 (Rupees Ten Crores) in any year commencing from the Effective Date (“**Authority Payment Default Threshold**”), to the Concessionaire within the period specified in this Agreement. The Authority Payment Default Threshold shall be revised annually commencing from the 1st (first) anniversary of the Effective Date in accordance with the Inflation Index Formula; or
- (c) the Authority submits to the Concessionaire any statement, notice or other document, in written or electronic form, which has a material effect on the Concessionaire's rights, obligations or interests and which is false in material particulars; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority 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.

32.3 **Termination Payment**

32.3.1 Upon Termination on account of a Concessionaire Default at any time during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety percent) of Debt Due less Insurance Cover as on the date of such Termination.

Provided that if any valid insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid valid 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 Effective Date.

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

- (a) 90% (ninety percent) of Debt Due less Insurance Cover; and

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

32.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

32.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Hospital, shall have been acquired and installed after the 25th (twenty-fifth) anniversary of COD of Phase-II, with prior written consent of the Authority (which consent shall not be unreasonably denied), a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 32.4.1, be made by the Authority to the Concessionaire.

32.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4 Certain limitations on Termination Payment

32.4.1 Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD of Phase- II, the Concessionaire shall notify to the Authority, the actual capital cost of the Project as on the date of COD of Phase- II (evidenced by supporting documents) and the Total Project Cost computed in accordance with Clause 43.1 together with its disaggregation between Debt Due and Equity, and only the amounts so conveyed, in the absence of manifest error, shall form the basis of computing Termination Payment. It is further agreed that in the event the Total Project Cost and/or such disaggregation between Debt Due and Equity is not notified to the Authority, the actual capital cost of the Project shall not be taken into account for the purpose of computation of Total Project Cost in accordance with Clause 43.1 and the Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

32.4.2 Additional Termination Payment due and payable in respect of Specified Assets, shall be limited to the lowest of.

- (i) Adjusted Depreciated Value thereof;
- (ii) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (iii) 30% (thirty per cent) of the sum of Total Project Cost.

32.4.3 For the avoidance of doubt, it is clarified that any Termination Payment payable under this Agreement shall not include the Grant.

32.5 **Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Hospital forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and Equipment 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 requirements set forth in Clause 33.1;
- (e) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.2;
- (f) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire; and
- (g) under such of the Project Agreements as the Authority may in its discretion deem appropriate and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

32.6 **Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.5(f), 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, service continuity requirements and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 33

DIVESTMENT OF RIGHTS AND INTEREST

33.1 Service Continuity

Notwithstanding anything contained in Article 32, upon Termination, the Concessionaire shall comply with and conform to the following service continuity requirements:

- (a) submit to the Authority, a plan outlining the handover procedures, training of authority staff and plan for management of human resources (the “**Service Continuity Plan**”); and
- (b) the Concessionaire shall continue operation of the Project for a period of 180 (one hundred eighty) days from the date of Termination of this Agreement (the “**Service Continuity**”), and during this period payments shall be made to the Concessionaire by the Authority, for reimbursement of reasonable O&M Expenses at actuals. Provided that, for the purpose of payment of the O&M Expenses in relation to Service Continuity, the Authority shall not be liable to pay for any month during the Service Continuity, more than the monthly average of the O&M Expenses incurred by the Concessionaire during last 1 (one) year immediately preceding the date of Termination which shall be reviewed by the Monitoring Agency.

33.2 Divestment Requirements

33.2.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement. For the avoidance of doubt, the Human Resources employed by the Concessionaire in the Project, shall not be transferred to the Authority automatically upon Termination of this Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Hospital is compliant with the Maintenance Requirements and the Safety Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Hospital and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the Selected Bidder/Consortium Members, if any, in relation

to the Hospital or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Hospital and shall be assigned to the Authority free of any Encumbrance;

- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties and/or annual maintenance contracts in respect of any Equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) 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 Authority or to its nominee furnish a Defects Liability Security in accordance with Clause 34.2, if applicable.

33.2.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

33.3 **Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Monitoring Agency shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements and Safety Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements, Safety Requirements, as the case may be, shall be cured by the Concessionaire at its cost and the provisions of Article 34 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 33.

33.4 **Cooperation and assistance on transfer of Project**

33.4.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients, other members of the public or the lawful occupiers of any part of the Site.

33.4.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

33.4.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the equipment (other than the Equipment installed in the Hospital in accordance with the provisions of this Agreement) used in connection with the Project but which does not form part of the assets specified in Clause 33.2.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

33.5 **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 Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 23 (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Hospital, and their vesting in the 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 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.

33.6 **Divestment costs**

33.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Hospital in favour of the 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 Authority.

33.6.2 In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.

ARTICLE 34

DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Hospital as on the Transfer Date, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Monitoring Agency in the Hospital on or before the Transfer Date. 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 Authority or the Monitoring Agency in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Hospital conform to the Maintenance Requirements and the Safety Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Deemed Performance Security.

34.2 Latent Defects and Defects Liability Security

34.2.1 In the event that any defect(s) in the major components of the civil structures of the Hospital are detected any time before the expiry of 3 (three) years from the date of Termination (“**Latent Defects**”), the Concessionaire shall be responsible for the repair and rectification of the Latent Defects.

34.2.2 Upon Termination due to Concessionaire Default:

(a) the Concessionaire shall, at its own cost, furnish an irrevocable and unconditional guarantee from a Bank for an amount equal to Rs. 10,00,00,000 (Rupees Ten crores) in favour of the Authority or its nominee (“**Defects Liability Security**”) as security for due and faithful performance of the obligations of the Concessionaire as specified in Clause 34.2.1 above, until the expiry of 3 (three) years from the date of Termination (“**Defects Liability Period**”); and

(b) in the event that the Concessionaire fails to repair and rectify Latent Defects (during the Defects Liability Period) within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired and rectified at the Concessionaire's risk and cost. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Defects Liability Security.

34.2.3 For the avoidance of doubt, it is clarified that the provisions of Clause 34.2.2 shall not be applicable for Termination of the Concession Agreement other than Termination due to Concessionaire Default.

PART VI
OTHER PROVISIONS

ARTICLE 35

ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline along with providing reason(s) thereof.

35.1.2 Subject to the provisions of Clause 35.2, 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 Authority, which consent the Authority shall be entitled to decline along with providing reason(s) thereof.

35.2 Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

- (a) liens arising by operation of law in the ordinary course of business of the Hospital;
- (b) mortgages, pledges or hypothecation of goods or assets and their related documents of title, arising or created in the ordinary course of business of the Hospital, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Hospital;
- (c) any security over Project Assets including without limitation, the Escrow Accounts (other than those specified in sub-clause (d) below) only for indebtedness to the Senior Lenders under the Financing Agreements for the Hospital;
- (d) mortgage of leasehold rights of the Site together with the buildings, fixtures and improvements constructed thereon in accordance with the terms of the Lease Deed as security only for indebtedness to the Senior Lenders under the Financing Agreements for the Hospital;
- (e) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (f) liens or encumbrances required by any Applicable Law.

35.3 Substitution Agreement

35.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the “**Substitution Agreement**”) to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule 24.

35.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire.

35.4 **Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

ARTICLE 36

CHANGE IN LAW

36.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 1,00,00,000 (Rupees One Crore) in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that:

- (a) if the Change in Law is specifically and exclusively applicable to the Project only, and if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay during the Concession Period, an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law; or
- (b) if the Change in Law is not specifically and exclusively applicable to the Project only, and if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay, an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law for a period of 1 (one) year from the date of the implementation of such Change in Law,

in either case, within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds Rs. 1,00,00,000 (Rupees One Crore) in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as

aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to Change in Law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.3 Protection of NPV

Pursuant to the provisions of Clauses 36.1 and 36.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the base case plan adopted by the Senior Lenders and prepared in accordance with the internationally accepted accounting standards and verified by the Monitoring Agency, to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

36.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 36 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year.

36.5 No claim in the event of recovery from Patients

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Patients.

ARTICLE 37

LIABILITY AND INDEMNITY

37.1 General indemnity

37.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether 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 Patients or from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

37.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties 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 Authority in the land comprised in the Site, (ii) any activities carried out by the Authority, its personnel, agents, representatives etc. under and in accordance with Clause 5.12, (iii) breach by the 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, and (iv) any act and/or omission by the Authority arising out of gross negligence, fraud or willful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, 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, sub-contractors, servants or agents, the same shall be the liability of the Concessionaire.

37.2 Indemnity by the Concessionaire

37.2.1 Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (i) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

- (ii) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
- (iii) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors or sub-contractors.
- (iv) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (v) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (vi) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's contractors/sub-contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Hospital, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

37.3 Notice and contest of claims

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 37 (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. 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.

37.4 Defense of claims

37.4.1 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 37, 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.

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, 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).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, 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:
 - (A) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

- (B) 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) or (c) of this Clause 37.4 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.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, 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.

37.6 Limitation of Liability

37.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, shall not exceed the Total Project Cost. For avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and willful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

37.7 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38

RIGHTS TO THE SITE

38.1 Rights to the Site

For the purpose of this Agreement, the Concessionaire shall have rights to use the Site in accordance with this Agreement and the Lease Deed, and to this end, it may regulate the entry and use of the Hospital by third parties in accordance with and subject to the provisions of this Agreement.

38.2 Access rights of the Authority and others

- (a) The Concessionaire shall allow free access to the Site at all times to the Authority Representatives, Senior Lenders, the Independent Engineer, the Clinical Panel and the Monitoring Agency, and to the persons duly authorised by any Government Instrumentality to inspect the Hospital and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (b) The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

38.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

38.4 Restriction on sub-letting

The Concessionaire shall not license, sub-lease, sub-license or sub-let the whole or any part of the Site, save and except as provided under Clause 3.1.3 or as may be otherwise expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint contractors for the performance of its obligations hereunder in accordance with the provisions of this Agreement.

ARTICLE 39

DISPUTE RESOLUTION

39.1 Dispute resolution

39.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 39.2.

39.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

39.2 Conciliation

In the event of any Dispute between the Parties arising out of or in respect of Construction Works, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. In the event of any other Dispute between the Parties arising under or in respect of this Agreement (other than the Dispute relating to Construction Works), either Party may call upon the Monitoring Agency to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or the Monitoring Agency within period of 15 (fifteen) days from the date of reference to Independent Engineer or the Monitoring Agency, as the case may be or without the intervention of the Independent Engineer or the Monitoring Agency, as the case may be, either Party may require such Dispute to be referred to Secretary to the Government of Odisha, H&FW Department and the Chairman of the board of directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3 Arbitration

39.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Bhubaneshwar, and the language of arbitration proceedings shall be English.

- 39.3.2 There shall be a Board of three arbitrators, of whom each Party shall appoint one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi.
- 39.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 39.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 39.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

39.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 40

DISCLOSURE

40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement and such other document as may be specified by the Authority from time to time (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire's registered office and Hospital. The Concessionaire shall prominently display at the Hospital, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a no profit no loss basis.

40.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Hospital, free of charge, during normal business hours on all working days, at the Concessionaire's registered office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a no profit no loss basis.

40.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Concessionaire shall be entitled to withhold the disclosure of Protected Documents (*as defined herein below*) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005 (“**Protected Documents**”).

ARTICLE 41

REDRESSAL OF PUBLIC GRIEVANCES

41.1 **Complaints Register**

- 41.1.1 The Concessionaire shall maintain a public relations office at the Hospital where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”) in compliance with the minimum standards set out in Clause 5.10.2(b). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Hospital so as to bring it to the attention of all Patients.
- 41.1.2 The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 41.1.3 Without prejudice to the provisions of Clauses 41.1.1 and 41.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

41.2 **Redressal of complaints**

- 41.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 41.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Monitoring Agency a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 42

MISCELLANEOUS

42.1 **Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts in the State of Odisha shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

42.2 **Waiver of immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

42.3 **Depreciation and interest**

- (a) For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.
- (b) Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rates.

42.4 **Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein,

and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate prescribed therein and if no such rate is prescribed at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.5 Waiver

- (a) 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:
 - (i) 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;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) 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.

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority, the Independent Engineer and/or the Monitoring Agency of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Hospital nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

42.7 Exclusion of implied warranties

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

42.8 **Survival**

Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

42.9 **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. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, shall be deemed to form part of this Agreement and treated as such.

42.10 **Severability**

If for any reason whatever, 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

42.11 **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.

42.12 **Third parties**

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.

42.13 **Successors and assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

42.14 **Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to [*insert name*] at [*insert address*] or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Bhubaneshwar may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to [*insert address*] with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Bhubaneshwar it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

42.15 **Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

42.16 **Set-Off**

Without prejudice to any other right that the Authority may have under this Agreement or otherwise in law or equity, in the event that the Concessionaire fails

to perform any of its obligations under this Agreement, the Authority shall have the right to recover Damages (as specified in this Agreement) from the Concessionaire from the amounts that are due and payable by the Authority to the Concessionaire, including the Capital Grant, Operational Grant and any other payments due to the Concessionaire under this Agreement. The Concessionaire shall not be entitled to retain or set-off any amount owed to it by the Authority from the amounts that are due and payable by the Concessionaire to the Authority.

42.17 Stamp Duty

Any stamp duty, registration charges or other fees, taxes or charges of any kind whatsoever pertaining to the execution of this Agreement and the Lease Deed shall be borne by the Concessionaire.

42.18 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 43

DEFINITIONS

43.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

“**Accounting Year**” means 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;

“**Accreditation Standards**” shall have the meaning ascribed to it in Schedule 15;

“**Additional Auditor**” shall have the meaning ascribed to it in Clause 30.2.3

“**Additional Capacity**” means any additional Licensed Beds beyond the Bed Capacity developed in accordance with the provisions of this Agreement.

“**Additional Termination Payment**” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets, as further limited by the provisions of Clause 32.4.2;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three percent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“**Adjusted Equity**” means 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 of Phase-II, 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 100% (one hundred percent) of the variation in WPI occurring between the first day of the month of Effective Date and the Reference Date;
- (b) anytime after COD of Phase-II and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD of Phase- II 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 of Phase- II to the extent of variation in WPI occurring between COD of Phase-II and the Reference Date; and

- (c) anytime after the 4th (fourth) anniversary of COD of Phase-II, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.26% (zero point two six per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD of Phase- II and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD of Phase-II 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 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;

“**Advance Account**” shall have the meaning ascribed to it under the Escrow Agreement;

“**Affected Party**” shall have the meaning ascribed to it in Clause 31.1;

“**Agreement**” or “**Concession Agreement**” means this Agreement, its Recitals and the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

“**Ancillary Facilities**” has the meaning ascribed to in Clause 3.1.4;

“**Annual Expenditure Budget for Non-Government Scheme Select Patients**” means the notification issued by the Authority in relation to the Project in accordance with Clause 27.5.3(a) of this Agreement, which shall set out the following:

- (i) the total budgetary allocation by the Authority for the succeeding Financial Year for provision of Healthcare Services to the Non-Government Scheme Select Patients at the Hospital;
- (ii) details of budgetary allocation, along with specified caps, for specific diseases, treatments or medical provisions;
- (iii) details of any specific diseases, treatments or medical provisions that shall not be paid for by the Authority; and
- (iv) any other guidelines that the Authority may deem fit in relation to budgetary allocation and payment for Healthcare Services availed of by the Non-Government Scheme Select Patients in the Hospital;

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations, policies, guidelines, directives and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

“**Applicable Permits**” means all clearances, licences, permits, authorisations, 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 Hospital during the subsistence of this Agreement;

“**Approved Valuer**” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100,00,00,000 (Rupees one hundred crore) each in value;

“**Arbitration Act**” means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

“**Associate or Affiliate**” means, in relation to either Party and/or Consortium Members, a person who Controls, or is Controlled by, or is under the common Control of such Concessionaire or Consortium Member;

“**Authorisation Certificate**” shall have the meaning set forth in Clause 22.1.3;

“**Authority Account**” shall have the meaning ascribed to it under the Escrow Agreement;

“**Authority Default**” shall have the meaning set forth in Clause 32.2.1;

“**Authority Indemnified Persons**” shall have the meaning set forth in Clause 37.1.1;

“**Authority Payment Default Threshold**” shall have the meaning as set forth in Clause 32.2.1(b);

“**Authority Representative**” means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

“**Authority**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Average Daily Gross Revenue**” shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by [5% (five per cent)]; provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year following the COD shall be simple average of the Gross Revenue realised with respect to every day during the period between the COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

“**Average Tariff**” shall have the meaning set forth in Clause 27.4.3(b);

“**Award**” shall have the meaning set forth in Clause 39.3.3;

“**Bank Rate**” means the rate of annual interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Bank**” means any Scheduled Bank;

“**Base Tariff**” shall have the meaning set forth in Clause 27.4.1(a);

“**Bed Capacity**” means the total number of Licensed Beds in the Hospital for the use of Patients as specified in Schedule 2;

“**Bed-Days**” means, with reference to any specific time period, the product of, (a) the total number of Licensed Beds in the Hospital available for the use of Inpatients in such specific time period, and (b) the number of days in such specific time period.

“**Beds**” means the beds used for Patients and includes Licensed Beds;

“**Bid Due Date**” shall have the meaning ascribed to it in Recital C;

“**Bid Security**” means the security provided by the {Selected Bidder/Consortium Members} to the Authority along with the Bid in a sum of [●], in accordance with the Request for Proposal, and which is to remain in force until substituted by the Construction Performance Security in accordance with this Agreement;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {Selected Bidder/Consortium Members} in response to the Request for Proposal in accordance with the provisions thereof;

“**Bidder**” shall have the meaning ascribed to it in the Request for Proposal;

“**Bidding Process**” shall have the meaning ascribed to it in the RFP;

“**BKKY**” means Biju Krushak Kalyan Yojna implemented through the Director of Agriculture and Food Production, Government of Odisha;

“**BSKY**” means Biju Swasthya Kalyan Yojna as may be notified by Government of Odisha;

“**CAF**” means the combined application form for establishment of industries under the Orissa Industries (Facilitation) Act, 2004 and the rules and regulations made thereunder;

“**Capital Grant Allocation Letter**” means the notification by the Authority to the Concessionaire on allocation of amount towards the Central Capital Grant and the State Capital Grant in the format as set out in Schedule 18 – B;

“**Capital Grant**” means an amount of INR {insert amount} as quoted by the Bidder as the capital grant in the Bid;

“**Central Capital Grant**” shall be minimum amount as set out in the Capital Grant Allocation Letter, as may be reduced in accordance with Clause 26.2.3 of this Agreement;

“**Central Grant**” shall collectively mean the Central Capital Grant and the Central Operational Grant.

“**Central Operational Grant Account**” shall mean the escrow account as may be specified in the Escrow Agreement for receipt and disbursement of the Central Operational Grant in accordance with the Central VGF Scheme;

“**Central Operational Grant**” shall mean the Operational Grant payable in accordance with the Central VGF Scheme and determined in accordance with Clause 26.3;

“**Central VGF Scheme**” means the Guidelines for Financial Support to Public Private Partnerships in Infrastructure, dated December 7, 2020, notified by the Ministry of Finance, DEA *vide* office memorandum F. No. 10/3/2018 – PPP of the Ministry of Finance, DEA;

“**CGHS**” means Central Government Health Scheme notified by the Government of India, as amended from time to time;

“**CGHS 2014**” shall mean CGHS rates prescribed as of 2014 and more particularly set out in Schedule 27 of this Agreement;

“**Change in Law**” means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law as applicable to the Project;
- (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;

but shall not include (i) any change in any withholding or other tax on income or dividends distributed to the shareholders of the Concessionaire; (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised environmental safety laws; (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; (iv) any revision in the rates specified under BSKY, BKKY, OSTF and/or any other Government Health Scheme which may be applicable to the Project; and (v) any

rules or regulations stipulated by any regulatory authority having jurisdiction over the Project in respect of the standards of Healthcare Services.

“Change in Ownership” means:

- (a) in the case of the Selected Bidder being a Consortium, transfer or issue of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes:
 - (i) the aggregate holding of any of the Members in the total Equity to decline below the percentages as specified in the letter comprising the Bid submitted by the Consortium, at any time prior to the COD of Phase-I; and/or
 - (ii) the aggregate holding of any of the Evaluated Members in the total Equity to decline below 5% (five percent) thereof at any time prior to the COD of Phase-II; and/or
 - (iii) the aggregate holding of Lead Technical Member, in the total Equity to decline below 10% (ten percent) thereof at any time during the Concession Period; and/ or
 - (iv) the aggregate holding of Lead Financial Member, in the total Equity to decline below 26% (twenty six percent) thereof at any time prior to the expiry of 10 (ten) years from the COD of Phase –II; and/or
 - (v) the aggregate holding of Lead Technical Member and the Lead Financial Member in the total Equity to fall below 51% (fifty one percent) at any time prior to the expiry of 10 (ten) years from the COD of Phase – II; or
- (b) in case of the Selected Bidder being a single bidder, transfer or issue of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the selected bidder in the total Equity to fall below (i) 100% (one hundred percent) at any time prior to the COD of Phase-I, (ii) 51% (fifty one percent) any time prior to the expiry of 10 (ten) years from the COD of Phase – II, and (iii) 10% (ten percent) at any time during the Concession Period.

For the purpose of determination of Change in Ownership, shareholders loans shall be excluded from the computation of Equity;

“Change of Scope Notice” shall have the meaning set forth in Clause 16.2.1;

“Change of Scope Order” shall have the meaning set forth in Clause 16.2.3;

“Change of Scope” shall have the meaning set forth in Clause 16.1.1;

“Clause” means a clause of this Agreement;

“**Clinical Panel**” shall have the meaning as set forth in Clause 25.1;

“**COD of Phase-I**” means COD in respect of Phase-I;

“**COD of Phase-II**” means COD in respect of Phase-II;

“**COD**” shall have the meaning set forth in Clause 15.1 and shall include COD of Phase-I, COD of Phase-II, or COD of Additional Capacity, as the case may be;

“**Companies Act**” means the Companies Act, 2013 as amended from time to time;

“**Complainant**” shall have the meaning set forth in Clause 41.1.1;

“**Complaint Register**” shall have the meaning set forth in Clause 41.1.1;

“**Completion Certificate**” shall have the meaning set forth in Clause 14.2.1;

“**Completion Tests**” means the tests set forth in Schedule 12 to determine the completion of Hospital or part thereof in accordance with the provisions of this Agreement;

“**Concept Plan**” means the concept schematic design which shall capture the intent of the architectural design of the Project and is developed and defined in detail sufficient to illustrate via plans, sections, elevations and 3D imagery, the overall form and fabric of the Project and its detailed layouts, spatial arrangements, facades, overall appearance and range of construction materials and finishes;

“**Concession Period**” means the period starting on and from the Effective Date and ending on the Transfer Date;

“**Concession**” shall have the meaning set forth in Clause 3.1.1;

“**Concessionaire Default**” shall have the meaning set forth in Clause 32.1.1;

“**Concessionaire**” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1;

“**Consortium Member**” or “**Member**” means a member of the Consortium with the rights and obligations as set out in the RFP;

“**Consortium**” shall have the meaning set forth in Recital C;

“**Construction Documents**” means collectively, the Master Plan, the Design Basis Report and the Concept Plan.

“**Construction Performance Security Period**” shall have the meaning set forth in Clause 9.1.3;

“**Construction Performance Security**” shall have the meaning set forth in Clause 9.1.1(a);

“**Construction Period**” means period beginning from the Effective Date and ending on COD of Phase-II;

“**Construction Works**” means all construction works, improvement works and things necessary to complete the Project in accordance with this Agreement, as more particularly described in Schedule 2;

“**Consumables**” shall mean medical supplies which are non-durable medical supplies and which: (1) are usually disposable in nature; (2) cannot withstand or are not intended for repeated use by more than one individual; (3) are primarily and customarily used to serve a medical purpose; (4) generally are not useful to a person in the absence of illness or injury; and (5) may be ordered and/or prescribed by a physician;

“**Contractor**” means the Design Consultant, the O&M Contractor or any other person or persons, as the case may be, with whom the Concessionaire enters into any other material agreement or contract for construction, operation and maintenance of the Hospital or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance or Insurance Cover to the Concessionaire;

“**Control**” or “**Controlled**” means:

- (a) with respect to a company:
 - (i) the ownership, directly or indirectly, of more than 50% (fifty percent) of shares or other ownership interest of such company; or
 - (ii) as defined under (Indian) Companies Act, 2013,
- (b) with respect to a person which is not a company:
 - (i) the ownership, directly or indirectly, of more than 50% (fifty percent) of ownership interest of such person; or
 - (ii) the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise;

“**Core Clinical Services**” means all activities pertaining to or incidental to the provision of following services by the Hospital, including but not limited to employment of doctors, nurses and staff necessary for providing such services:

- (a) General Medicine;
- (b) General Surgery;
- (c) Obstetrics and Gynecology;

- (d) Pediatrics and Neonatology;
- (e) Trauma and Critical Care;
- (f) Orthopedics; and
- (g) Anesthesiology.

For the avoidance of doubt, Core Clinical Services does not include housekeeping, biomedical waste management, and other administrative and support services such as security provision, laundry and pantry/canteen services;

“**Covenant**” shall have the meaning set forth in Clause 5.2.6;

“**CPI**” means the weighted average of the Consumer Price Index (Industrial Worker) in respect of all areas and for all items as published by Labour Bureau, GOI from the time to time. For illustration, the CPI (Industrial Worker) index is published at the web link <http://labourbureau.nic.in/indtab.pdf> with base year as 2001. As per the link above, in case the latest available CPI index value is for the month of June 2022, then the CPI Inflation Rate for the preceding year will be = [(CPI Index Value at the end of June 2022)/(CPI Index value at the end of July 2021))-1] X 100;

“**CT Scan**” means Radiology Tests carried out using a computerised tomography scan machine;

“**Cure Period**” means 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; and
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer or the Monitoring Agency hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer or the Monitoring Agency after the receipt of the relevant information to accord their approval;

“**Damages**” shall have the meaning as set forth in Clause 1.7;

“**Day Care Beds**” means the Beds to be provided to Patients, other than Inpatients, for day care or ambulatory care procedures, and who are discharged in the same calendar day; for the avoidance of doubt Day Care Beds will not include Beds for such Patients who are receiving dialysis services and any Healthcare Services in the Emergency Department;

“Day Care Services” means the medical services provided to Patients, other than Inpatients, for day care or ambulatory care procedures, and who are discharged on the same calendar day. The services are provided using Day Care Beds. For avoidance of doubt, it is clarified that Day Care Services shall not include services for such Patients who are receiving dialysis services and Healthcare Services in the Emergency Beds;

“DBFOT” shall have the meaning set forth in Recital (B);

“DEA” means the Department of Economic Affairs, Government of India;

“Debt Due” means 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 Senior 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 Authority Default,

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;

“Deemed Completion Certificate” shall have the meaning set forth in Clause 14.2.2;

“Deemed Performance Security” shall have the meaning set forth in Clause 9.2.1;

“Defects Liability Period” shall have the meaning set forth in Clause 34.2.2;

“Defects Liability Security” shall have the meaning set forth in Clause 34.2.2;

“Design Basis Report” means the document prepared for the Project to ensure compliance with minimum standards, establish industry benchmarks and maintain minimum quality parameters at the specification levels. The document shall include detailed guidelines related to architectural approach, structural engineering and service engineering aspects of the Project, like building systems, its analysis and design philosophy;

“Design Consultancy Agreement” means the design consultancy agreement entered into by the Concessionaire with the Design Consultant for, *inter alia*, designing of the Hospital including finalization of the Construction Documents, architectural designs, structural drawings, interior drawings, landscape design etc., in accordance with the provisions of this Agreement;}¹⁵

“Design Consultant” means a person eligible to act as a ‘Design Consultant’ under the RFP or any other person meeting the eligibility requirements specified in the RFP for acting as a ‘Design Consultant’ and acceptable to the Authority;

“Designated Person” shall have the meaning set forth in Clause 22.6.3;

“Diagnostic Services” means rendering the Pathology Tests and Radiology Tests;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 39;

“Dispute” shall have the meaning set forth in Clause 39.1.1;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 33.2;

“DNB” means the Diplomate of National Board as awarded by the National Board of Examination, Ministry of Health, GOI;

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

“Drawings” means all of the drawings, calculations and documents pertaining to each Phase of the Hospital as set forth in Schedule 11;

“Effective Date” means the date on which every Conditions Precedent shall have been satisfied and/or waived in accordance with the terms of this Agreement or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period;

“EHS” shall have the meaning set forth in Clause 5.10;

“e-ICU/ Tele-ICU” means an electronic intensive care unit (eICU) which is a form of telemedicine that uses information technology to provide an additional layer of real time critical care service. The goal of a Tele-ICU initiative is to optimize clinical expertise and facilitate 24-hour-a-day care by ICU caregivers, whether on site or off-site from a remote location. The Tele-ICU services will include real time audio-visual technology based local or remote monitoring of patients and their vital parameters. The patient parameters are to be monitored

¹⁵ *Note: Applicable only if the Bidder has submitted a Design Consultancy Undertaking in terms of the RFP.*

and analysed real time through predictive analytics, data visualization and clinical decision support systems. This data is required to be monitored 24-hour-a-day by critical care specialists, locally or from remote locations in case not available locally. Local care in absence of critical care specialists on site, will have to be provided by certified and trained MBBS qualified doctors and nursing staff. For consideration of outsourcing of tele-ICU services, the Tele-ICU provider must have provided Tele-ICU coverage to at least 50 (fifty) beds and must employ on its rolls at least 10 (ten) full-time, qualified critical care specialists in the financial year immediately preceding the provision of services to the Hospital;

“Emergency Beds” means Beds in the emergency department of the Hospital;

“Emergency Services” means the services provided in response to the perceived individual need for immediate treatment or care;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Hospital, including Patients thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Empowered Committee” shall have the meaning ascribed to it under the Central VGF Scheme;

“Encumbrances” means, in relation to the Hospital, 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 Hospital, where applicable herein but excluding utilities referred to in Clause 11.1;

“Equipment” means the equipment that is required to be utilised in the Hospital, as set out under Schedule 6;

“Equity” means 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 for the purposes of this Agreement shall include compulsory convertible instruments or other similar forms of capital, which by their terms are compulsorily convertible into equity share capital of the Concessionaire, and shall include principal amount of shareholder loans, but does not include Capital Grant;

“Escrow Account” and **“Escrow Accounts”** shall have the meaning set forth in the Escrow Agreement;

“Escrow Agreement” shall have the meaning set forth in Clause 28.1.1;

“Escrow Bank” shall have the meaning set forth in the Escrow Agreement;

“Evaluated Members” shall have the meaning set forth in RFP;

“Execution Date” means the date on which this Agreement is executed by the Parties;

“**Fee**” means the charge(s) levied on and payable by a Patient for availing Healthcare Services in the Hospital in accordance with the terms of this Agreement;

“**Financial Capacity**” shall have the meaning set forth in the RFP;

“**Financial Close**” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“**Financial Default**” shall have the meaning set forth in the Substitution Agreement;

“**Financial Package**” means the financing package indicating the total capital cost of the Hospital and the means of financing thereof, as approved by the Senior Lenders, and includes Equity and all financial assistance specified in the Financing Agreements and grants received from Authority;

“**Financial Year**” means a year commencing on 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year;

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures and bonds, security agreements, and other documents relating to the debt financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.5;

“**Force Majeure Costs**” shall have the meaning ascribed to it in Clause 31.7.1;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 31.1;

“**General Ward**” means one or more rooms, each having a maximum of 10 (ten) Ward Beds and includes associated rooms and facilities;

“**GOI**” means the Government of India;

“**GoO**” means the Government of Odisha;

“**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;

“**Government Health Scheme**” means and includes government health schemes notified by the Authority and/or State Government from time to time, for reimbursing the cost of medical treatment provided to the Select Patient by the Hospital (including under a contract between Authority and Insurers) in

accordance with the provisions of such scheme and this Agreement. As on date of this Agreement, BSKY, BKKY and OSTF are the notified Government Health Schemes for the purposes of this Agreement;

“Government Instrumentality” or **“Government Instrumentalities”** means any department, division or sub-division of the GOI 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 GOI or the State Government, as the case may be, and having jurisdiction over the Hospital or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Gross Revenue” of the Hospital for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Hospital and its facilities and provision of Healthcare Services, and/or any other activity related to the Hospital including, if any, as certified by the statutory auditors of the Concessionaire, and shall include Revenues and, Revenue from Ancillary Facilities, but shall exclude the following:

- (a) All statutory applicable indirect Taxes by whatever name called now or in future, which the Concessionaire is bound to pay;
- (b) Any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and
- (c) Interest income from investment made;

“Healthcare Package” means the health care packages devised to provide a mix of services including individual procedures (medical or surgical procedure or intervention, or day care treatment) and/ or Diagnostic Services;

“Healthcare Services” means the provision of services towards Patients for the purpose of promoting, maintaining, monitoring or restoring health including but not limited to OPD Services, Inpatient Services, Diagnostic Services and Healthcare Packages;

“HIPP” means the Health Care Investment Promotion Policy, 2016 notified by the Department of Health and Family Welfare, Government of Odisha vide resolution number ME-II-M-41/2016-25084/H dated November 26, 2016, as may be amended, supplemented or modified from time to time;

“HMIS” means hospital management information system as described in detail in Schedule 19;

“Hospital Building” means the hospital building in which the Concessionaire shall provide Healthcare Services in accordance with this Agreement;

“Hospital Website” shall have the meaning ascribed to it in Clause 5.14;

“**Hospital**” means the higher secondary care hospital along with multi-specialty services to be developed, constructed and operated on the Site in accordance with the terms of this Agreement and includes Phase- I, Phase-II, and any Additional Capacity, as the context may require and the Hospital Building, the Staff Accommodation, the Project Assets, the Project Facilities, Ancillary Facilities and incidental infrastructure (including equipment) relevant thereto;

“**Human Resource**” means clinical and non-clinical manpower including but not limited to doctors, nurses, lab technicians, heads of departments (“**HODs**”), senior consultants, multi-speciality HODs, deputy nursing superintendent, physiotherapists, security staff, drivers, and housekeeping staff;

“**HVAC**” means heating, ventilation and air-conditioning;

“**ICU Beds**” means Licensed Beds in the ICU and NICU;

“**ICU**” means intensive care unit of the Hospital;

“**IFC**” means the International Finance Corporation;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 37;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 37;

“**Independent Engineer Panel**” means [*insert names of the three qualified firms*] identified by the Authority in accordance with the selection criteria set forth in Schedule 16;

“**Independent Engineer**” shall have the meaning set forth in Clause 23.1.1;

“**Indirect Political Event**” shall have the meaning set forth in Clause 31.3;

“**Inflation Index Formula**” means inflation measured using the following formula:

Applicable escalation index for year ‘n’ = $50\% \times [(WPI \text{ for December of year } n-1 / WPI \text{ for December of year } n-4)^{(1/3)} - 1] + 50\% \times [(CPI(\text{Industrial Worker}) \text{ for December of year } n-1 / CPI(\text{Industrial Worker}) \text{ for December of year } n-4)^{(1/3)} - 1]$

“**Inpatient Days**” means the unit of measure denoting the lodging provided and services rendered in the Hospital to the Inpatients between the census taking hours (usually at midnight) of two successive days. A Patient formally admitted who is discharged or dies on the same day is counted as one patient day, regardless of the number of hours such Patient occupies a Licensed Bed. For Patients switched from observation to Inpatient status, the patient day count shall begin on the day such Patient was officially admitted as an Inpatient;

“**Inpatient Services**” means the following items and services furnished to an Inpatient by the hospital: (1) Bed and board; (2) such nursing services and other related services, such use of hospital facilities, and such medical social services

as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; (3) medical or surgical services provided by a physician, resident, or intern; (4) the services of a private-duty nurse or other private-duty attendant; and (5) any other clinical or non-clinical services provided to an admitted Patient;

“**Inpatient**” means those Patients receiving Inpatient Services;

“**Inspection Report**” shall have the meaning set forth in Clause 13.2;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Insurer**” means selected insurance companies mandated with the task of operating and managing BSKY, BKKY or any other Government Health Scheme providing insurance coverage to Select Patients.

“**Intellectual Property**” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**IPD Fee Cap**” shall have the meaning set forth in Clause 27.1.3(c);

“**Key Managerial Personnel**” shall mean Chief Executive Officer, Medical Superintendent and Chief Medical Officer of the Hospital;

“**Key Performance Indicators**” or “**KPI**” shall have the meaning set forth in Clause 21.1.1;

“**KPI Compliance Report**” shall have the meaning set forth in Clause 21.4.3;

“**L&FS Standards**” means the standards prescribed under the National Building Code, 2005 and at least one internationally accepted L&FS standards such as US Life Safety Code (NFPA), and Odisha Fire Service Act 1993, as amended from time to time;

“**L&FS**” shall have the meaning set forth in Clause 5.10.1;

“**Latent Defects**” shall have the meaning as set forth in Clause 34.2.1;

“**Lead Financial Institution**” shall have the meaning set forth in the Central VGF Scheme;

“**Lead Financial Member**” shall have the meaning set forth in Recital C;}¹⁶

“**Lead Technical Member**” shall have the meaning set forth in Recital C;}¹⁷

“**Lease Deed**” shall mean the lease deed entered into by and between the Authority and the Concessionaire in accordance with the provisions of the Agreement in the form set forth in Schedule 21;

“**Lenders’ Representative**” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“**Licensed Beds**” means the number of licensed beds installed, operated and managed in the Hospital for use for Patients as evidenced by the registration granted to the Hospital under the Orissa Clinical Establishments (Control and Regulation) Act, 1990 or any other relevant law (similar to Orissa Clinical Establishments (Control and Regulation) Act, 1990) as applicable to the State of Odisha and includes the following:

- (a) Ward Beds;
- (b) ICU Beds;
- (c) Emergency Beds; and
- (d) Day Care Beds;

“**LOA**” or “**Letter of Award**” means the letter of award referred to in Recital I;

“**Maintenance Manual**” shall have the meaning set forth in Clause 17.3.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 17.2;

“**Master Plan**” means the master plan prepared for the Hospital in accordance with the provisions of Clause 12.1 and Schedule 11;

“**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party in excess of Rupees [10 (ten) crores¹⁸/20 (twenty) crores¹⁹] in any year commencing from the Effective Date.

¹⁶ *Note: To be retained only if the Selected Bidder is a Consortium.*

¹⁷ *Note: To be retained only if the Selected Bidder is a Consortium.*

¹⁸ *Applicable to a 100 bed hospital.*

¹⁹ *Applicable to a 200 bed hospital.*

The aforesaid threshold shall be increased every year in accordance with the Inflation Index Formula;

“**Medico-Legal Cases**” means medical cases where the Patient is a victim of a criminal offence;

“**Minimum Eligibility Criteria**” shall have the meaning set forth in the RFP;

“**Monitoring Agency**” shall have the meaning set forth in Clause 24.1;

“**Monthly Invoice**” shall have the meaning set forth in Clause 27.5.3(c)(ii);

“**MRI**” means Radiology Tests carried out using a magnetic resonance imaging scan machine;

“**NABH**” means the National Accreditation Board for Hospitals and Healthcare Providers;

“**New Scheme Compensation Period 1**” shall have the meaning set forth in Clause 27.4.3(a);

“**New Scheme Compensation Period 2**” shall have the meaning set forth in Clause 27.4.4;

“**New Scheme Date**” shall have the meaning set forth in Clause 27.4.3(a);

“**New Scheme**” shall have the meaning set forth in Clause 27.4.3(a);

“**NICU**” means neonatal intensive care unit which is an intensive care unit specializing in the care of ill or premature new-born infants who need specialized treatment;

“**Nominated Company**” means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“**Non-Government Scheme Select Patients Account**” shall have the meaning ascribed to it under the Escrow Agreement;

“**Non-Government Scheme Select Patients**” means a Select Patient availing Inpatient Services in the Hospital under an Authorisation Certificate in accordance with Clause 22.1;

“**Non-Political Event**” shall have the meaning set forth in Clause 31.2;

“**Non-Privileged Records**” shall mean such information, documents and records which are not considered as privileged or confidential under Applicable Laws;

“**Notified Diagnostic Services Fee**” shall have the meaning set forth in the proviso to Clause 27.1.4(b);

“NPV” shall have the meaning set forth in Clause 36.3;

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and an O&M Contractor for performance of the O&M obligations in accordance with this Agreement;

“**O&M Contractor**” means a contractor with whom the Concessionaire has entered into an O&M Contract, if any;

“**O&M Cost**” shall have the meaning ascribed to it under the Central VGF Scheme;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services; (c) premia for insurance; (d) all taxes, duties, cess and fees due and payable for O&I(e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M; and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning set forth in Clause 19.3;

“**O&M**” means the operation and maintenance of the Hospital and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

“**Occupancy**” shall be calculated as follows:

$$\text{Occupancy} = \frac{\text{Number of Inpatient Days in a specific period} \times 100}{\text{Number of Bed-Days in such specific period}}$$

“**OPD Consultation Fee Cap**” shall have the meaning set forth in Clause 27.1.4(a);

“**OPD Diagnostic Fee Cap**” shall have the meaning set forth in Clause 27.1.4(b);

“**OPD Patient**” or “**Outpatient**” shall be those Patients receiving OPD Services;

“**OPD Services**” means the Healthcare Services provided in the OPD;

“**OPD**” means the area earmarked in the Hospital Building for providing Healthcare Services to Patients other than Inpatients and does not include day care facility or emergency department;

“**Operation Period**” means the period commencing from COD of Phase-I and ending on the Transfer Date;

“**Operational Grant**” means aggregate of the State Operational Grant and the Central Operational Grant as set out in Schedule 18 and Schedule 18 – A respectively;

“**Operationalised Bed**” means a Licensed Bed forming part of a Phase which has achieved the COD and/or a Licensed Bed in relation to which the Independent Engineer and the Monitoring Agency, upon successful determination of the Completion Tests, shall certify in writing to the Concessionaire and the Authority that a Patient can be immediately admitted to such Bed for availing of the Healthcare Services at the Hospital in accordance with the terms of this Agreement;

“**OSTF**” means the Odisha State Treatment Fund managed by the Odisha State Treatment Fund Society registered under the Societies Registration Act, 1860;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 30.2.1;

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the parties to this Agreement individually;

“**Pathology Tests**” may also be used interchangeably as laboratory or lab tests, mean the different tests that fall under the following six broad classifications:

- (a) Hematology; and/or
- (b) Clinical pathology; and/or
- (c) Biochemistry and immunology; and/or
- (d) Histopathology and cytology; and/or
- (e) Microbiology; and/or
- (f) Serology;

“**Patient Charter**” shall have the meaning set forth in Clause 21.6;

“**Patient Satisfaction Survey**” shall have the meaning set forth in Clause 21.3.1;

“**Patient**” means a person who uses or intends to use the Hospital for Healthcare Services on payment of Fee, directly or indirectly, in accordance with the provisions of this Agreement and Applicable Laws and includes an Inpatient and an Outpatient;

“**Payment Milestones**” means the milestones for payment of each Tranche of State Operational Grant set forth in Schedule 18;}²⁰

²⁰ *Note: Applicable only if the Bidder has sought State Operational Grant in its Bid under the terms of the RFP.*

“**Phase**” as the context requires means, Phase-I or Phase-II;

“**Phase-I**” means the Hospital with minimum number of Licensed Beds corresponding to 50% (fifty percent) of the Bed Capacity. For the avoidance of doubt, Phase-I shall include completion of each activity as is specified in Schedule 10 and provision of Project Facilities in accordance with Schedule 3;

“**Phase-II**” means the Hospital with the minimum number of Licensed Beds (including those provided in Phase-I) corresponding to the entire Bed Capacity. For the avoidance of doubt, Phase-II shall include completion of each activity as is specified in Schedule 10 and provision of Project Facilities in accordance with Schedule 3;

“**Political Event**” shall have the meaning set forth in Clause 31.4;

“**Premium**” shall have the meaning set forth in Clause 26.7;}

“**Preservation Costs**” shall have the meaning set forth in Clause 13.4.3;

“**Project Agreements**” means this Agreement, {Design Consultancy Agreement,}²¹ O&M Contract, the Lease Deed and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include, Financing Agreements, the Substitution Agreement, the Escrow Agreement and insurance policies;

“**Project Assets**” means all physical and other assets relating to and forming part of the Hospital and the Site including:

- (a) leasehold rights over the Site;
- (b) Hospital Building and Staff Accommodation;
- (c) Other tangible assets such as civil works including foundations, drainage works, electrical systems, communication systems, fare collection systems, rest areas, relief centres, maintenance depots, administrative offices;
- (d) Equipment;
- (e) Project Facilities situated on the Site;
- (f) all rights of the Concessionaire under the Project Agreements;
- (g) financial assets, such as receivables, security deposits etc.;
- (h) insurance proceeds; and

²¹ *Note: Applicable only if the Bidder has submitted a Design Consultancy Undertaking in terms of the RFP.*

(i) Applicable Permits relating to or in respect of the Hospital;

“Project Completion Schedule” means the progressive Project Milestones set forth in Schedule 10 for completion of the Hospital on or before the Scheduled Completion Date;

“Project Counterparty” means each party (other than the Authority) with whom the Concessionaire enters into a Project Agreement;

“Project Facilities” means all the amenities and facilities in relation to the Hospital required under the Specifications and Standards and the amenities and facilities as specified in Schedule 3;

“Project Interim Milestones” means the interim milestones required for completion of a Project Milestone as set forth in Schedule 10;

“Project Level Coordination Committee” shall have the meaning as set forth in Clause 19.7.1;

“Project Milestones” or **“Milestones”** means the project milestones set forth in Schedule 10;

“Project” means the construction, development operation and maintenance of the Hospital on a DBFOT basis in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Protected Documents” shall have the meaning set forth in Clause 40.3;

“Punch List” shall have the meaning ascribed to it in Clause 14.3;

“Radiology Tests” means and includes the following tests:

- (a) MRI; and/or
- (b) CT-scan; and/or
- (c) X-Ray; and/or
- (d) USG; and/or
- (e) ECG; and/or
- (f) Echo cardiography;

“Rectified Monthly Invoice” shall have the meaning set forth in Clause 27.3.3(c)(iii);

“Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the

average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Regulated Fee**” shall have the meaning set forth in Clause 27.3.1;

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital (B);

“**Resident Medical Officer**” means a general physician who is registered as a medical practitioner with the Medical Council of India and, (i) possesses at least, the qualification of Bachelor of Medicine and Bachelor of Surgery (MBBS) or any other equivalent qualification, in each case, as recognized by the Medical Council of India, (ii) has experience of providing immediate first line of treatment/resuscitation to patient under medical emergency, and (iii) has experience of assisting in the management of patients at a hospital;

“**Revenue Account**” shall have the meaning ascribed to it under the Escrow Agreement;

“**Revenue**” shall mean all amounts charged and recovered by the Concessionaire from the Patients and shall include the Fee and shall also include but not be limited to all charges, rent, license fees, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Hospital;

“**Revised Fee**” shall have the meaning set forth in Clause 27.2.1;

“**Revision Notification**” shall have the meaning set forth in Clause 27.3.2;

“**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;

“**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Safety Requirements**” shall have the meaning set forth in Clause 18.1;

“**Schedule**” means a schedule under this Agreement;

“**Scheduled Bank**” means a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934;

“**Scheduled Completion Date**” means the scheduled date(s) for achieving COD of Phase-I or Phase-II as the case may be, as set forth in Schedule 10;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.1;

“**Select Patient**” means any Patient who is enrolled under a Government Health Scheme or referred under an Authorisation Certificate and shall also include any other category of Patients as may be notified by the Authority in writing to the Concessionaire;

“**Selected Bidder**” shall have the meaning as set forth in the RFP;

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

“**Service Continuity Plan**” shall have the meaning as set forth in Clause 33.1(a);

“**Service Continuity**” shall have the meaning as set forth in Clause 33.1(b);

“**Site Memorandum**” shall have the meaning set forth in Clause 10.4.1;

“**Site**” shall have the meaning set forth in Clause 10.1.1;

“**Specialties**” shall have the meaning set forth in Clause 22.5.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Hospital including utilities within the boundary of the Hospital, as set forth in Schedule 4, and any modifications thereof, or additions thereto, as included in the design and engineering for the Hospital and incorporated in the Construction Documents, Drawings and other documents submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Assets**” means and includes such Project Assets which are constructed, acquired or installed in accordance with the terms of this Agreement before the 25th (twenty fifth) anniversary of COD of Phase- II but are not part of the Financial Package that has been approved for Phase-I and/or Phase- II; and in no case shall include land;

“**Specified Documents**” shall have the meaning set forth in Clause 40.1;

“**Staff Accommodation**” means the residential units for accommodation of students availing training and educational courses in the Hospital and/or doctors, nurses and other staff employed by the Concessionaire for the Hospital developed in accordance with Schedule 2 and other provisions of this Agreement;

“**State Capital Grant**” shall mean shall be minimum amount as set out in the Capital Grant Allocation Letter, as may be adjusted in accordance with Clause 26.5.4 of this Agreement;

“**State Grant**” shall collectively mean the State Capital Grant and the State Operational Grant.

“**State Grants Account**” shall mean the escrow account as may be specified in the Escrow Agreement for receipt and disbursement of the State Grant;

“**State Level Coordination Committee**” shall have the meaning as set forth in Clause 19.8;

“**State Operational Grant**” shall mean the Operational Grant payable by the Authority and determined in accordance with Clause 26.6 ;

“**State**” means the State of Odisha and **State Government** means the government of the State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 30.2;

“**Substitution Agreement**” shall have the meaning set forth in Clause 35.3.1;

“**Tariff Change Compensation Period 1**” shall have the meaning set forth in Clause 27.4.1(a);

“**Tariff Change Compensation Period 2**” shall have the meaning set forth in Clause 27.2.2(a);

“**Tariff Revision Date**” shall have the meaning set forth in Clause 27.4.1(a);

“**Taxes**” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, goods and service tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Technical Capacity**” shall have the meaning set forth in the RFP;

“**Term of Concession**” shall have the meaning set forth in Clause 3.1.1;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 32.4;

“**Termination**” means the expiry or termination of this Agreement and the Concession hereunder;

“**Total Project Cost**” means the capital cost incurred on construction and financing of the Project, and shall be limited to the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package; and
- (b) the actual capital cost of the Project as on the date of COD of Phase- II;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6.5% (six point five per cent) per annum for the period between the date hereof and COD of Phase-II, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6.5 % (six point five per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets;

“**Tranche of Central Operational Grant**” means each tranche of Central Operational Grant set forth in Schedule 18-A, and as determined in accordance with Clause 26.3 of this Agreement;

“**Tranche of State Capital Grant**” means each tranche of State Capital Grant set forth in Schedule 18;

“**Tranche of State Operational Grant**” means each tranche of State Operational Grant set forth in Schedule 18 and as determined in accordance with Clause 26.6 of this Agreement;

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**USG**” means Radiology Tests carried out using an ultrasound machine;

“**Vesting Certificate**” shall have the meaning set forth in Clause 33.5;

“**Ward Beds**” means the Beds in the private wards, semi-private wards, General Wards and mother and child ward meant for the care of the Inpatients; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month For illustration, the WPI is published at the web link <http://eaindustry.nic.in/#.WPI> index value is for the month of July 2022 is available, then the WPI Inflation Rate for the preceding year will be = [(WPI

Index Value at the end of July 2022)/(WPI Index value at the end of August 2021)
-1] X 100.

SIGNATORIES

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

SIGNED AND DELIVERED For and on behalf of **GOVERNOR OF ODISHA** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED AND DELIVERED For and on behalf of **THE CONCESSIONAIRE** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.