



सत्यमेव जयते

**NITI Aayog**



# Public-Private Partnership for Non-communicable Diseases

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Model Concession Agreement (MCA)



# DRAFT MODEL CONCESSION AGREEMENT

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**Between**

**Department of [•]<sup>1</sup>**

**&**

----- [•]<sup>2</sup>

**Concessionaire (Special Purpose Vehicle)**

**For**

**Public Private Partnership (PPP) for Non-Communicable Diseases (NCD) in District Hospital [•]<sup>3</sup>**

**Co-location (Build, Operate and Transfer) Model of PPP**

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

<sup>2</sup> Insert full name of the Special Purpose Vehicle set up for the purpose of managing this Project.

<sup>3</sup> Insert name of the District Hospital in which this Project will be developed and implemented for which this Agreement is being signed.



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# CONCESSION AGREEMENT

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**THIS AGREEMENT** is made and entered into at [.]<sup>4</sup> on this [.]<sup>5</sup> day of [.]<sup>6</sup>, [.]<sup>7</sup> by and between:

1. **THE GOVERNOR OF [.]<sup>8</sup> acting through the [.]<sup>9</sup>, Department of [.]<sup>10</sup>** having its offices at [.]<sup>11</sup> (hereinafter referred to as the “**State Government**”), which expression shall unless excluded by or repugnant to the context or meaning thereof, be deemed to include its officers, successors, assigns, representatives and constituents); of the **FIRST PART**,

AND

2. [.]<sup>12</sup>, Special Purpose Vehicle, a company incorporated under the Indian Companies Act 2013<sup>13</sup> having its registered office at [.]<sup>14</sup>, represented by [.]<sup>15</sup> (hereinafter referred to as the “**Concessionaire**”), which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, representatives and permitted assigns), of the **SECOND PART**.

## WHEREAS:

- A. The State Government desires to improve access to quality screening, diagnostic and treatment Services related to cardiology, oncology and pulmonology specialties including managing diabetes, hypertension and stroke and related co-morbidities in district hospitals through public private partnership project.
- B. The State Government desires to contribute towards (i) improving access to the above mentioned NCD services at government hospitals at the district level; (ii) decongesting tertiary facilities at the state level that are stressed beyond capacity to meet the growing demand for NCD services; and (iii) reducing out-of-pocket expenditure for those accessing services in terms of cost of diagnosis, treatment, and care for NCD services.
- C. The State Government intends to undertake these activities in the Assigned District Hospital (as defined below) through public private partnership.

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<sup>4</sup> Insert name of the capital city of the State for which this Concession Agreement will be signed.

<sup>5</sup> Insert the calendar date on which this Concession Agreement will be signed.

<sup>6</sup> Insert the name of the month in which this Concession Agreement will be signed.

<sup>7</sup> Insert the calendar year in which this Concession Agreement will be signed.

<sup>8</sup> Insert the name of the State for which this Concession Agreement will be signed.

<sup>9</sup> Insert the designation of the Head of the Department: Additional Chief Secretary / Principal Secretary as the case may be.

<sup>10</sup> Insert full name of the Department, such as the Department of Health and Family Welfare or as the concerned department may be called in the State.

<sup>11</sup> Insert complete address of the office of the concerned Department that is signatory to this Concession Agreement.

<sup>12</sup> Insert registered name of the Special Purpose Vehicle set up by the Selected Bidder for the purpose of managing this Project as the Concessionaire.

<sup>13</sup> Delete whatever is not applicable.

<sup>14</sup> Insert registered office address of the SPV.

<sup>15</sup> Insert the name of the authorised representative of the SPV.

- D. Vide [•]<sup>16</sup>, the State Government has empowered the [•]<sup>17</sup>, as the **Implementing Authority**, for managing and supervising the implementation of this Project including selection of Private Partners for the Project (as defined below).
- E. Pursuant to the above, the Implementing Authority invited bids by its Notice No. [•]<sup>18</sup> dated [•]<sup>19</sup> (the "**Tender Notice**") for short listing of bidders for the Project (as defined below) and had shortlisted certain bidders including, inter alia, the [•]<sup>20</sup> OR the consortium comprising of [•]<sup>21</sup> (the "**Consortium Members**") with [•]<sup>22</sup> as its lead member ("**Selected Bidder**"). (delete whatever is not applicable)
- F. The Implementing Authority prescribed minimum technical specifications and terms and conditions for the Project in the Tender Notice.
- G. After evaluation of the Bids received, the Implementing Authority accepted the Bid of the Selected Bidder and issued the letter of acceptance No. [•]<sup>23</sup> dated [•]<sup>24</sup> (hereinafter called the "**Letter of Acceptance**" or the "**LOA**") to the Selected Bidder requiring, inter alia, the Selected Bidder to incorporate a Special Purpose Vehicle ("**SPV**") for the execution of this Agreement within forty-five (45) days of the date of issue of LOA and thereafter execute the Project through SPV.
- H. The Selected Bidder has since incorporated a SPV under the Indian Company's Act 2013, and has requested the Implementing Authority to accept the SPV as the **Concessionaire**, which will undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA and the Tender Notice, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- I. The Implementing Authority has agreed to the request of the Selected Bidder and is accordingly entering into this Agreement with the Concessionaire for executing the Project in accordance with the terms and conditions set forth hereinafter.

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

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<sup>16</sup> Insert reference to the relevant Letter / Government Order no. and date.

<sup>17</sup> Insert name of the arm / unit within the Department (State Health Society / State NCD Cell / State Nodal Agency / Trust managing existing Government Health Insurance Scheme(s), Directorate of Health Services, etc.) which will be designated as the focal agency for managing this Agreement.

<sup>18</sup> Insert Bid / Tender Notice Number as issued by the Implementing Authority for selecting the Private Partner for this Project.

<sup>19</sup> Insert date of issue of the Tender Notice by the Implementing Authority.

<sup>20</sup> Insert name of the Selected Bidder in case of a single agency application.

<sup>21</sup> Insert names of all consortium members if the Selected Bidder applied as a Consortium.

<sup>22</sup> Insert name of the leader of the Consortium if the Selected Bidder applied as a Consortium.

<sup>23</sup> Insert letter no.

<sup>24</sup> Insert date of the LOA.

# ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

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## 1.1 Definitions

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

1. **"Accounting Year"** or **"Financial Year"** shall mean the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year; or any duration specified by a Government of India notification which amends the period of accounting year or the financial year;
2. **"Adjusted Equity"** shall have the meaning set forth in Clause 24.2.4.
3. **"Affected Party"** shall have the meaning as set forth in Clause 19.1.1.
4. **"Agreement"** shall mean this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement.
5. **"Ancillary Services"** shall have the meaning as set forth in Clause 2.5.
6. **"Annual Maintenance Plan"** or **"Maintenance Program"** shall have the meaning as set forth in Clause 13.3.4.
7. **"Applicable Laws"** shall mean all laws, acts, ordinances, rules, regulations, notifications, guidelines or bye-laws which are in force and effect, or may be amended from time to time, as on the date hereof and which may be promulgated or brought into force in the territory of India, including judgments, decrees, injunctions, writs or orders of any court, as may be in force and effect, during the subsistence of this Agreement and applicable to the Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect on the date of this Agreement and during the subsistence thereof.
8. **"Applicable Permits"** shall mean all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the Construction, operation and maintenance of the Project during the subsistence of this Agreement.
9. **"Appointed Date"** shall have the meaning as set forth in Clause 3.3.1.
10. **"Arbitration Act"** shall mean the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time.
11. **"Assigned District Hospital"** shall mean the district hospitals where the Project shall be set up and located as defined in Clause 2.2.
12. **"Assigned District Hospital Authorities"** or **"Authorised Representative of the Assigned District Hospital"** shall mean and include the Head / Medical Superintendent or her / his authorised representative of the Assigned District Hospital.

13. "**Award**" shall have the meaning as set forth in Clause 28.3.5.
14. "**Bid**" means the documents in their entirety submitted by the Selected Bidder in response to the Tender Notice and in accordance with the provisions thereof.
15. "**Bid Security**" shall mean the security provided by the Selected Bidder to the Implementing Authority along with the Bid for the Project, in accordance with the Tender Notice issued by the Implementing Authority, and which is to remain in force until substituted by the Performance Security.
16. "**Bidders**" shall mean all agencies, either in an individual capacity or in consortium with other agencies, who submitted a Bid in response to the Tender Notice for the Project.
17. "**Change in Law**" shall mean the occurrence of any of the following after the last date of the submission of the Bid: (a) the enactment of any new Indian law; (b) the repeal, modification or re-enactment of any existing Indian law; (c) the commencement of any Indian law which has not entered into effect until the last date of the submission of the 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 last date of the submission of the Bid; or (e) any change in the rates of any of the Taxes that have a direct effect on the Project.
18. "**Change in Ownership**" means a transfer of Equity that causes the change in the shareholding as set forth in Clause 4.2.2.
19. "**Change of Scope**" shall have the meaning as set forth in Clause 12.1.1.
20. "**COD**" or "**Commercial Operation Date**" shall have the meaning as set forth in Clause 3.3.1.
21. "**COD Achievement Notice**" shall have the meaning as set forth in Clause 5.4.7.
22. "**COD Failure Notice**" shall have the meaning as set forth in Clause 5.4.8.
23. "**COD Obligations**" shall have the meaning as set forth in Clause 5.4.6.
24. "**COD Review Period**" shall have the meaning as set forth in Clause 5.4.8.
25. "**Competent Authority**" shall mean any person or organization that has the legally delegated or invested (by the State Government or any of its authorised bodies) authority, capacity or power to perform a designated function.
26. "**Completion Certificate**" shall have the meaning as set forth in Clause 11.3.4.
27. "**Concession Period**" shall have the meaning as set forth in Clause 3.2.
28. "**Concessionaire**" shall mean the Special Purpose Vehicle set up by the Selected Bidder for execution of the Project.
29. "**Concessionaire Default**" shall have the meaning as set forth in Clause 23.1.1.
30. "**Conditions Precedent**" shall have the meaning as set forth in Clauses 5.1 and 5.2.
31. "**Confidential Information**" shall have the meaning as set forth in Clause 8.2.9.
32. "**Consortium Members**" shall have the meaning as set forth in Recital E.

33. "**Construction**" shall mean, unless the context requires otherwise, investigation, designs and drawings, developing, monitoring, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to new construction or expansion or upgradation of existing civil structure of the Assigned District Hospital, and "**Construct**" shall be construed accordingly.
34. "**Contract Management Cell**" or "**CMC**" shall have the meaning as set forth in Clause 20.1.2(b) and Clause 20.1.5.
35. "**Construction Works**" shall mean all works and things necessary to complete the Construction of the Project Facilities and expansion, rehabilitation and upgradation of the existing facilities at the Assigned District Hospital and its subsequent development and augmentation in accordance with this Agreement.
36. "**Cure Period**" shall mean the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall: (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice; (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement.
37. "**Damages**" shall mean considerations in form of money to be paid by the Concessionaire to the Implementing Authority as compensations for breach of the terms of this Agreement.
38. "**Debt Due**" shall have the meaning as set forth in Clause 24.2.3.
39. "**Defect Liability Performance Security**" shall have the meaning as set forth in Clause 24.6.3
40. "**Defect Liability Period**" shall have the meaning as set forth in Clause 24.5.1.
41. "**Dispute**" shall have the meaning as set forth in Clause 28.2.1.
42. "**Divestment Requirements**" means the obligations of the Concessionaire for and in respect of termination as set forth in Clause 25.2.
43. "**Drawings**" means all the drawings, calculations and documents pertaining to the Project as set forth in Schedule 3, and shall include 'as built' drawings of the Project.
44. "**Duration**" shall have the same meaning as Concession Period.
45. "**Effective Date**" shall have the meaning as set forth in Clause 3.3.1.
46. "**Encumbrances**" shall mean, in relation to the Project, any encumbrances, such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein.
47. "**Equity**" shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall, for the purposes of this Agreement, include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Special Purpose Vehicle, and any interest-free funds or subordinate debt advanced by any shareholder of the Special Purpose Vehicle for meeting such equity component, but does not include Equity Support.

48. "**Escrow Account**" shall mean an account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures of the Project shall be credited and debited, as the case may be, in accordance with the provisions of Clause 14.6.2 this Agreement, and includes the Sub- Accounts of such Escrow Account.
49. "**Escrow Agreement**" shall have the meaning as set forth in Clause 14.6.2(b).
50. "**Escrow Default**" shall have the meaning as set forth in Clause 14.6.2(b).
51. "**Estimated Total Project Cost**" shall have the meaning as set forth in Clause 14.2.1.
52. "**Finance Parties**" means any person providing debt in accordance with the Financing Agreements (for the avoidance of doubt, excluding all shareholders and their affiliates other than an affiliate that is a bank or financial institution lending debt in the ordinary course of its business and on arm's length terms) for implementation of the Project.
53. "**Financial Close**" means the date on which all conditions precedent under the relevant Financing Agreements have been satisfied or waived such that the Concessionaire has debt finance that will, when aggregated with the equity finance made available to the Concessionaire, be sufficient to execute the Project.
54. "**Financing Agreements**" means any and all loan, bond, security, inter creditor, hedging and associated agreements entered into by the Concessionaire with the Finance Parties for the financing of the Project or for the refinancing of any of the above.
55. "**Force Majeure**" or "**Force Majeure Event**" shall have the meaning as set forth in Clause 19.1.1.
56. "**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.
57. "**Confidential Information**" shall have the meaning as set forth in Clause 8.2.9.
58. "**Government Instrumentality**" shall mean any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.
59. "**Government Insurance Scheme Patients**" shall have the meaning as set forth in Clause 14.1.1(b).
60. "**Government Referred Patients**" shall have the meaning as set forth in Clause 14.1.1(a).
61. "**Grievance Management System**" or the "**GMS**" shall have the meaning as set forth in Clause 21.1(b).
62. "**Implementing Authority**" shall mean and have the meaning as attributed thereto in the array of Parties



hereinabove set forth in the Recitals.

63. "**Implementing Authority Conditions Precedent**" shall mean the obligations and the conditions that the Implementing Authority shall fulfil as set forth in Clause 5.1.
64. "**Implementing Authority Default**" shall have the meaning as set forth in Clause 23.2.
65. "**Implementing Authority Indemnified Persons**" shall have the meaning as set forth in Clause 18.1.1.
66. "**Implementing Authority Representative**" shall mean the authorised representative(s) appointed by the Implementing Authority for any purpose specified by the Implementing Authority related to this Agreement.
67. "**Independent Monitor(s)**" means independent engineers or an independent healthcare / hospital consultants or agencies, as may be applicable, in accordance with the terms of this Agreement and may be either externally hired by the Implementing Authority or designated from among the State Government personnel provided such State Government personnel are not members of any of the Committees set up by the Implementing Authority vide Clause 20.1.2 of this Agreement.
68. "**Inspection Report**" shall have the same meaning as O&M Inspection Report.
69. "**Insurance Cover**" shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 15, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event.
70. "**Intellectual Property**" shall have the meaning as set forth and defined in Article 17.
71. "**Key Performance Indicators**" or "**KPIs**" shall mean and have the meaning as attributed and set forth in the Clause 20.2.1 and Schedule 13.
72. "**Lead Member**" shall mean that applicant in the consortium which was declared by the Implementing Authority as the Successful Bidder, which was unanimously proposed by all other consortium applicants as the Lead Member representing the consortium and acting on its behalf for the purpose of the Bid for this Project.
73. "**Letter of Acceptance**" shall have the meaning as set forth in Recital G.
74. "**Maintenance Manual**" shall have the meaning as set forth in Clause 13.3.1.
75. "**Maintenance Requirements**" shall have the meaning as set forth in Clause 13.2.1.
76. "**Material Adverse Effect**" shall mean the circumstances that may have an effect on (a) the ability of the Concessionaire to perform / discharge any of its duties / obligations under and in accordance with the provisions of this Agreement, and / or (b) frustrate the legality, validity, binding nature or enforceability of this Agreement.
77. "**Material Breach**" shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the delivery of services under the Project, implementation of the Project or on any part of the Project Facilities, and which such Party shall have failed to cure.

78. **"Medico-Legal Cases"** means medical cases instituted against the Concessionaire, where the User is claiming medical negligence against the Concessionaire.
79. **"Operations and Maintenance"** or **"O&M"** shall mean the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Charges in accordance with the provisions of this Agreement.
80. **"O&M Inspection Report"** shall have the meaning as set forth in Clause 20.3.2.
81. **"Parties"** shall mean the parties to this Agreement and **"Party"** shall mean any one of them, as the context may admit or require.
82. **"Performance Security"** shall have the meaning as set forth in Clause 6.1.1.
83. **"Project"** shall mean development, operation and management of a NCD care facility (Project Facility) at the Assigned District Hospital and providing the Services in accordance with the terms and conditions of this Agreement.
84. **"Project Coordination Committee"** or **"PCC"** shall have the meaning as set forth in Clause 20.1.2(c) and Clause 20.1.6.
85. **"Project Development Completion Schedule"** shall mean the timeline to be adhered to by the Concessionaire for the implementation of the Project, in accordance with the approved Project Implementation Plan annexed as Schedule 5.
86. **"Project Development Period"** shall mean the period between the Appointed Date and the Commercial Operation Date.
87. **"Project Development Plan"** shall have the meaning as set forth in Clause 5.2.1(a).
88. **"Project Facilities"** shall mean all facilities including infrastructure, medical and non-medical equipment, services, personnel, systems and processes to be developed and maintained by the Concessionaire in the NCD care facility co-located within the Assigned District Hospital(s) for offering Services as per the provisions of this Agreement including the minimum facilities as stated in Schedule 2.
89. **"Project Hospital Management Information System"** or **"P-HMIS"** shall mean the software procured, developed and / or customised by the Concessionaire at its own cost for the purpose of handling the entire operations of the Project including but not limited to the following illustrative modules: patient administration module, clinical records module, personnel administration module, nursing, ward, theatre, laboratory, radiology management modules, all support function modules, asset module and finance module.
90. **"Project Monitoring Indicators"** shall mean and have the meaning as attributed and set forth in the Clause 20.2.1 and Schedule 12.
91. **"Project Portal"** shall mean the web site developed by the Concessionaire for the Project which has integrated within its architecture the P-HMIS among other functionalities as required.
92. **"Project Site"** or **"Site"** shall have the meaning as set forth in Clause 10.1.

93. **"Project Steering Committee"** or **"PSC"** shall have the meaning as set forth in Clause 20.1.2(a) and Clause 20.1.3.
94. **"Provisional Certificate"** shall have the meaning as set forth in Clause 11.3.5.
95. **"Punch List"** shall have the meaning as set forth in Clause 11.3.5.
96. **"Rectification Period"** shall have the meaning as set forth in Clause 23.6.
97. **"Referral Plan"** shall have the meaning as set forth in Clause 9.2.4(a).
98. **"Required Commercial Operation Date"** shall have the meaning as set forth in Clause 3.3.1.
99. **"Required Effective Date"** shall have the meaning as set forth in Clause 3.3.1.
100. **"Right of Way"** means the license to the Site for the purpose of implementing the Project together with rights to construct, operate and maintain the Project in accordance with this Agreement.
101. **"Rupees"** or **"Rs."** or **"INR"** or **"Re"** or **"Rupee"** refers to the lawful currency of the Republic of India.
102. **"Safety Requirements"** shall have the meaning as set forth in Clause 13.9.1.
103. **"Self-Paying Patients"** shall have the meaning as set forth in Clause 14.1.1(c).
104. **"Selected Bidder"** shall mean the individual entity or the consortium which has been issued the Letter of Award by the Implementing Authority for implementing this Project pursuant to the Bid.
105. **"Service Continuity"** shall have the meaning as set forth in Clause 25.1.1.
106. **"Services"** means the services identified in Section 2.3 and Schedule 1A.
107. **"Special Purpose Vehicle"** or **"SPV"** shall mean the company, that is, the Concessionaire, set up under the Indian Company's Act 2013 by the Selected Bidder for the Project.
108. **"Specifications and Standards"** shall mean the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in the Project Development Plan in Schedule 3, Schedule 10 and Schedule 11.
109. **"State Government"** shall mean the elected Government of the State of [•]<sup>25</sup> represented by the Governor acting through the Department of Health and Family Welfare<sup>26</sup>, which has, for the purpose of this Project, delegated its functions to the Implementing Authority.
110. **"Subcontractor"** shall have the meaning as set forth in Clause 7.1.
111. **"Tariff"** shall mean charges for the Services that the Concessionaire is entitled to receive in accordance with Clause 14.5 of this Agreement.
112. **"Term"** shall have the meaning as Concession Period.
113. **"Tender Notice"** shall have the meaning as set forth in Recital E.
114. **"Total Project Cost"** shall mean the total capital cost of the Project as shared by the Concessionaire with

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<sup>25</sup> Insert name of the State where the Project will be implemented.

the Implementing Authority vide Clause 5.2.1 (vi), which may be different from the Estimated Total Project Cost.

115. "**Transfer Date**" shall have the meaning as set forth in Clause 3.3.1.
116. "**Users**" shall mean Government Referred Patients, Government Insurance Scheme Patients, and Self-Paying Patients as referred to in Clauses 14.1.1 (a), (b) and (c).
117. "**User Charges**" shall mean the charges paid by the Users or by the Implementing Authority on behalf of the Users for the Services.
118. "**Vesting Certificate**" shall have the meaning as set forth in Clause 25.4 and Schedule 15.
119. "**Viability Gap Fund**" or "**VGF**" shall have the meaning as set forth in Clause 14.2.2.

## 1.2 Interpretations

1.2.1 In this Agreement, unless the context otherwise requires:

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

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<sup>26</sup> Or whichever other name by which the Department may be called in the State.

which nationalized banks in the State of [•]<sup>27</sup> are generally open for business.

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

## **1.3 Ambiguities and Priority of Documents**

- 1.3.1 The following principles shall apply in case of ambiguities within this Agreement:
- a. Between different Articles and Clauses of this Agreement, the provisions of specific Articles and Clauses relevant to the issue under consideration shall prevail over those in other Articles and Clauses.
  - b. Between the Articles / Clauses and the Schedules / Annexes, the Articles / Clauses shall prevail, save and except as expressly provided in the Articles / Clauses or the Schedules / Annexes.
  - c. Between any value written in words and that in numerals, the latter shall prevail.

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<sup>27</sup> Insert name of the state where the Project will be implemented.

- d. Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail.
  - e. Between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail.
- 1.3.2 Unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof shall, in the event of any conflict between them, be interpreted in the following order of priority:
- a. This Agreement.
  - b. All other agreements and documents forming part thereof.

## ARTICLE 2 SCOPE OF THE PROJECT

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### 2.1 Objectives

- 2.1.1 The objective of the Project is to improve access to the Services as set forth in Clauses 2.3, 2.5 and 2.6 in the Assigned District Hospital through public private partnership.
- 2.1.2 It is expected that by implementing the Project, the State Government shall be able to:
- a. Improve access to the above mentioned Services at the government hospitals at the district level.
  - b. Decongest tertiary facilities at the state level that are stressed beyond capacity to meet the growing demand for NCD services.
  - c. Reduce out-of-pocket expenditure for those accessing services at the Project Facilities in terms of cost of diagnosis, treatment, and care for NCD services that they would have paid seeking services elsewhere if these services had not been implemented.

### 2.2 Area of Operation

- 2.2.1. The Project shall be implemented in the [•]<sup>28</sup>, located in the district of [•]<sup>29</sup> in [•]<sup>30</sup> (the “**Assigned District Hospital**”).

### 2.3 Services

- 2.3.1 Pursuant to this Agreement, the Concessionaire shall offer a range of NCD services related to cardiology, oncology and pulmonology specialties including managing related co-morbidities in the Assigned

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<sup>28</sup> Insert full name of the District Hospital where the Project will be located.

<sup>29</sup> Insert name of the district where the Project will be located.

<sup>30</sup> Insert name of the State where the Project will be located.

District Hospital as set forth in Schedule 1A.

- 2.3.2 The Concessionaire shall perform such other obligations which are incidental to or necessary for the performance of any or all the obligations of the Concessionaire under this Agreement.

## 2.4 Project Facilities

- 2.4.1. The Concessionaire shall, in order to offer the Services, develop, operate and manage the Project Facilities<sup>31</sup> in accordance with the minimum provisions set forth in Schedule 2.

## 2.5 Ancillary Services

- 2.5.1. The Concessionaire may provide additional medical and non-medical commercial services incidental to the Services, such as an out-patient pharmacy<sup>32</sup>, cafeteria and other similar facilities within the Project Site with explicit prior approval of the Implementing Authority, and provided the Project is not affected in any manner.

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

- 2.6.1 The Concessionaire hereby agrees that the Services to be offered under this Project may require support of the Shared Services, which will be shared with the entity operating and managing the part of the Assigned District Hospital which is not handed over to the Concessionaire.
- 2.6.2 The shared services / facilities may include but not be limited to, unless the Concessionaire decides to set up its own services ("**Shared Services**") all services that are listed in Schedule 1B.
- 2.6.3 The Shared Services shall be provided by Assigned District Hospital Authorities ("**Shared Service Provider**"). The Implementing Authority shall indemnify and hold the Concessionaire harmless for any loss suffered by the Concessionaire due to failure of the Shared Service Provider to provide the Shared Services in a timely and efficient manner<sup>33</sup> and in accordance with this Agreement.
- 2.6.4 The Concessionaire shall, in consultation with the Assigned District Hospital Authorities, determine the list of such Shared Services after a detailed assessment of the Site at the time of developing the Project Development Plan as per Clause 11.1.1.
- 2.6.5 For ensuring smooth coordination and access to Shared Services, the Concessionaire shall develop a Standard Operating Procedure (SOP) for shared services in consultation with the Assigned District Hospital Authorities. The SOP shall be approved by the Implementing Authority and it shall be incumbent upon both the Concessionaire and the Implementing Authority to abide by the approved SOP.
- 2.6.6 The Implementing Authority shall set up a Project Coordination Committee (PCC) as set forth in Clause 20.1.2(c), which shall meet monthly to update on progress and to resolve any operational challenges in smooth operations and accessing Shared Services for the Project.

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<sup>31</sup> The specifications set forth in this Clause are only for fifty (50) beds Project Facility. The Implementing Authority may adapt the specifications based on the detailed feasibility study to be conducted at the stage of structuring the Project.

<sup>32</sup> For medicines which do not fall in the list of essential medicines (generics to the extent feasible)

<sup>33</sup> To be clearly articulated for each shared service separately.

## ARTICLE 3 CONCESSION

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### 3.1 Grant of Concession

- 3.1.1 Subject to the terms and conditions of this Agreement, the Implementing Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right to:
- a. Develop, operate and maintain the Project Facilities.
  - b. Provide the Services.
  - c. Receive the User Charges as set forth in Clauses 14.6.3, 14.6.4 and 14.6.5.
  - d. Use the Project Site to implement the Project including carrying out Ancillary Services.
- 3.1.2 The Concessionaire shall undertake all the above to be carried out in accordance with this Agreement, Applicable Laws, the Applicable Permits and Good Industrial Practice.

### 3.2 Concession Period

- 3.2.1 This Agreement shall come into force on the **Appointed Date**, that is, the date of signing this Agreement. The Implementing Authority hereby grants to the Concessionaire a concession for a period of [•]<sup>34</sup> from the Appointed Date, unless otherwise extended or terminated in accordance with this Article 24 ("**Concession Period**" or the "**Term**" or the "**Duration**").

### 3.3 Milestones during the Concession Period

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

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<sup>34</sup> Insert number of years for which the Implementing Authority intends to award the Concession. It is estimated that the likely Concessional Period may be around 15 years, which will include around 12-18 months for the project development period after which the Project will start Commercial Operation of Date (COD) of Services and around 13.5 years of service delivery from the (COD), thereby totaling to the entire concession period of 15 years. It may be noted that the State Government shall need to fix the entire Concession Period based on a financial modeling and analysis which may include the estimated capital cost, revenue forecast, operational costs, reasonable rate of return on investment, and many other variables.



No.	Milestones	Allotted Time	Cumulative Timeframe
1	Date of signing this Agreement – ‘Appointed Date’	X	X
2	<b>Required Effective Date</b>	The date falling on the 120th calendar day from the Appointed Date or as may be extended by the Parties in accordance with this Agreement.	X + 4 months
3	<b>Effective Date</b>	The date on which the Parties have both fulfilled the Conditions Precedent and have declared Effective Date in accordance with Clause 5.3.3.	
4	<b>Required Commercial Operation Date</b>	The date falling on the [•] <sup>35</sup> calendar day from the Effective Date.	
5	<b>Commercial Operation Date</b>	The date on which the Concessionaire has fulfilled the conditions specified in Clause 5.4.6 and the Independent Monitor(s) has approved and certified such fulfilment in accordance with Clause 5.4.6 and Clause 11.3.	X + 18 months
6	<b>Transfer Date</b>	The date of issuing the Vesting Certificate by the Implementing Authority as per Clause 25.4.	

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<sup>35</sup> Insert the period of time as per Schedule 5 within which the Concessionaire is required to construct/upgrade the Project Facilities. This shall be counted from the Effective Date

## ARTICLE 4      STRUCTURE OF THE CONCESSIONAIRE

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### 4.1      Special Purpose Vehicle and Equity Holding Pattern

- 4.1.1      The shareholding of the Concessionaire during the term of this Agreement shall be in accordance with Article 4.
- a.      The Lead Member of the Selected Bidder shall hold at least fifty-one (51) percent of paid up equity in the SPV for a lock in period of minimum eight (8) years from the Appointed Date.
  - b.      Subject to the provisions of Clause 4.1.1(a), any other change in equity holding pattern or change in ownership of the SPV can take place only after the completion of fifth year from the Commercial Operation Date and shall be subject to the provisions of Clause 4.2 and Clause 4.3.
- 4.1.2      The Concessionaire shall share a copy of the latest version of the SPV Shareholder's agreement with the Implementing Authority.

### 4.2      Change in Ownership

- 4.2.1      The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Implementing Authority.
- 4.2.2      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 itself 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 twenty (20) percent or more 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 itself or together with any person acting in concert with it;
- shall constitute a **Change in Ownership** requiring prior approval of the Implementing Authority from public interest perspective.

For the purposes of above provision:

- i.      The expression "acquirer", "control" and "person acting in concert" has 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.
- 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 situated 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 situated in India or abroad, having ultimate control of twenty (20) percent or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

- 4.2.3 The Concessionaire hereby agrees that if the Selected Bidder is a special purpose vehicle established primarily for the purposes of holding Equity in the Concessionaire (such Selected Bidder being a "**Promoter SPV**"), a transfer of any shareholding in such Promoter SPV shall constitute an indirect transfer of Equity by the Promoter SPV for the purposes of this Agreement and be subject to the restrictions on transfer of shares as set forth in this Agreement.

## 4.3 Procedure for Changes in Equity Holding Pattern

- 4.3.1 The Concessionaire shall submit a proposal to the Implementing Authority for any Change in Ownership with justification and complete corporate profile of the proposed shareholder(s) to be inducted in the Concessionaire.
- 4.3.2 The Implementing Authority shall have the right, but not the obligation, to undertake due diligence of such investor, ask for any additional information and / or documents to establish the credibility and competency of such investor.
- 4.3.3 The decision of the Implementing Authority regarding such proposals as per Clause 4.3.1 shall be final, conclusive and binding on the Concessionaire, and the Concessionaire 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 Implementing Authority. The Implementing Authority shall not be liable in any manner on account of grant (which shall be given in the absolute discretion of the Implementing Authority), delay or otherwise of such approval and that such approval, delay, denial or otherwise thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.
- 4.3.4 If the approval for Change of Ownership is granted by the Implementing Authority, then the Concessionaire shall fulfil all necessary tasks and obligations as required under the Indian Companies Act 2013 and other Applicable Laws, if any, and submit the revised shareholder's agreement and necessary documentary evidence of the change of ownership from the Ministry of Corporate Affairs, Government of India.

# ARTICLE 5 CONDITIONS PRECEDENT

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## 5.1 Conditions Precedent of the Implementing Authority

- 5.1.1 Implementing Authority Conditions Precedent are required to be satisfied by the Implementing Authority within thirty (30) days of the Appointed Date and shall be deemed to have been fulfilled when the Implementing Authority has:
- a. Handed over the Project Site to the Concessionaire in accordance Article 10 without any encumbrance and without any access barriers.

- b. Provided to the Concessionaire the Right of Way to the Project Site in accordance with the provisions of Clauses 10.1 and 10.2.
- c. Established the Project Steering Committee, Contract Management Cell, Project Coordination Committee and the Medical Referral Board as per Clause 20.1.2 of the Agreement.
- d. Appointed Independent Monitor(s) in accordance with the terms of this Agreement.
- e. Provided to the Concessionaire access to electricity of the required load with separate sub-meter.
- f. Provided to the Concessionaire access to water supply required for the Services.

## 5.2 Conditions Precedent of the Concessionaire

- 5.2.1 The Concessionaire shall fulfil the following Conditions Precedent within ninety (90) days of the Implementing Authority fulfilling its Conditions Precedent or before the Effective Date, whichever is later:
- a. Prepare and submit to the Implementing Authority the upgradation / expansion plan including the design of the Construction Work, construction completion schedule and the construction quality plan (hereinafter together called the “**Project Development Plan**”) in accordance with Schedule 3 and the terms of this Agreement. The Project Development Plan shall include but not be limited to:
    - i. Architectural Drawings including civil, electrical and plumbing specifications and implementation schedule of the Construction Work.
    - ii. Bio-medical equipment plan along with load specifications including details of procurement, installation and testing, downtime of equipment and alternate plan during downtime to ensure continuity of the Services to Users at no addition cost.
    - iii. Plan for quality control and inspections during upgradation.
    - iv. Plan for ring-fencing the existing services at the Assigned District Hospital, prepared in consultation with the Assigned District Hospital Authorities to ensure continuity of the existing services being offered by the State Government at the Assigned District Hospital during the implementation of the Construction Works and during the Concession Period.
    - v. Project development and implementation timelines.
    - vi. Detailed financial plan for the Project including capex estimation leading to the Total Project Cost.
  - b. Prepare and submit project implementation timelines indicating the timeframe within which different components of the Project Development Plan shall be completed by the Concessionaire in accordance with Schedule 5.
  - c. Achieve the Financial Closure. Further, demonstration to the Implementing Authority’s reasonable satisfaction that arrangements are in place to ensure provision of sufficient Equity funding to the Concessionaire that it will, following Financial Close have sufficient debt and Equity financing to undertake the Project.
  - d. Open and establish the Escrow Account in accordance with Clause 14.6.2 of this Agreement.

- e. Designate a nodal person<sup>36</sup> for all communication and coordination with the Implementing Authority.
- 5.2.2 The Implementing Authority shall review and approve the Project Development Plan submitted by the Concessionaire vide the provisions of Clause 5.2.1(a) and Project Implementation Plan vide the provisions of Clause 5.2.1(b).
- 5.2.3 Review period shall not exceed twenty one (21) days, calculated from the date on which the Implementing Authority receives the Project Development Plan from the Concessionaire (“**Review Period**”).
- 5.2.4 The Implementing Authority may, within the Review Period, give notice to the Concessionaire that the Project Development Plan fails (to the extent stated) to comply with the terms of the Agreement.
- 5.2.5 If the Project Development Plan fails to comply with the terms of the Agreement, it shall be rectified and resubmitted by the Concessionaire and reviewed and approved by the Implementing Authority in accordance with this Clause.
- 5.2.6 If the Implementing Authority fails to approve or give notice to the Concessionaire that the Project Development Plan fails (to the extent stated) to comply with the Agreement within the Review Period, then the Implementing Authority shall be deemed to have approved the Project Development Plan.
- 5.2.7 Any approval or consent, or any review (under this Clause or otherwise), shall not relieve the Concessionaire from any obligation or responsibility under this Agreement<sup>37</sup>.

### 5.3 Fulfilling Conditions Precedent and Compliance Certificate

- 5.3.1 Each Party shall make reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation, as may be required, in fulfilling the Conditions Precedent for which that Party is responsible.
- 5.3.2 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent.
- 5.3.3 When the Concessionaire: (i) has received from the Implementing Authority evidence that the Implementing Authority has satisfied all the Conditions Precedent required to be fulfilled by the Implementing Authority; (ii) has itself satisfied all the Conditions Precedent required to be satisfied by it and has received the Implementing Authority’s concurrence thereto, it shall give written notice to the Implementing Authority confirming the above and stating the date it requires to be the Effective Date. This date may not be less than seven (7) days after the date of such notice and may not be after the Required Effective Date. If the Conditions Precedent have been satisfied but the Parties have not, no later than ten (10) days after such satisfaction, agreed on the Effective Date, then either Party may by written notice to the other Party designate the Effective Date (the designated Effective Date shall not be less than fifteen (15) and not more than thirty (30) days from the date such notice is given). If both Parties serve such notice, the earlier notice to be served, as determined by the date of receipt of such notice, shall prevail.

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<sup>36</sup> Preferably CMO of the Assigned District Hospital

<sup>37</sup> Approved Project Development Plan shall be annexed as Schedule 3.

- 5.3.4 The Implementing Authority shall provide the Concessionaire vacant possession of the Site on the Effective Date.
- 5.3.5 Any Party may make proposal(s) for an extension of the Required Effective Date but the other Party shall be under no obligation to accept such proposals. Any agreement on an extension of the Required Effective Date must be made in writing and signed by all the Parties.

## 5.4 Consequences of Non-fulfilment of Conditions Precedent

- 5.4.1 The Parties hereby agree and undertake that it shall ensure fulfilment of all Conditions Precedent set out above within the Required Effective Date.
- 5.4.2 In the event a Party does not fulfil any or all of the Conditions Precedent within the prescribed timeframe, and the delay has not occurred as a result of breach of this Agreement by the other Party or due to Force Majeure, then the defaulting Party shall be entitled to a further period not exceeding forty-five (45) days, subject to payment of Damages to the non-defaulting party in a sum calculated at the rate of one (1) percent of the Performance Security for each day of delay until the fulfilment of such Conditions Precedent.
- 5.4.3 If the Effective Date has not occurred within forty-five (45) days of the Required Effective Date then, unless the Parties have agreed to extend the Required Effective Date in accordance with Clause 5.3.5, either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party.
- 5.4.4 Upon termination under Clause 5.4.3 due to non-fulfilment of Conditions Precedent by the Concessionaire, the Implementing Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.
- 5.4.5 Upon termination under Clause 5.4.3 due to non-fulfilment of Conditions Precedent by the Implementing Authority, the Implementing Authority shall, upon such termination, return the Performance Security to the Concessionaire without any deduction and the Concessionaire shall be entitled to one (1) percent of the Total Project Cost<sup>38</sup> as Damages from the Implementing Authority, which shall be paid within sixty (60) days of termination of this Agreement.
- 5.4.6 **Obligations prior to COD:** The Concessionaire shall fulfil the following obligations by the Required Commercial Operation Date (“**COD Obligations**”):
- a. Complete the Construction Work.
  - b. Procure all the Applicable Permits specified in Schedule 3.
  - c. Submit a Service Quality Manual in accordance with Clause 13.1.2(a).
  - d. Submit an Annual Maintenance Plan in accordance with Clause 13.3.4.
  - e. Submit a Repair and Maintenance Manual in accordance with Clause 13.3.1.
  - f. Submit a human resources plan including the positions, minimum qualifications and experience, job

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<sup>38</sup> At least one (1) percent of the Total Project Cost is recommended as damages. The Implementing Authority may decide the quantum and specify in the MCA.

- profiles and the number of personnel in each position that the Concessionaire proposes to deploy for the operations and management of the Services and the Project Facilities in accordance with Clause 8.2.4.
- g. Ensure fulfilment of all provisions related to completion and verification as set forth in Clause 11.3.
  - h. Submit a protocol for Beneficiary Grievance Redressal System in accordance with Article 21.
  - i. Set up an office for the Project at the Project Site and appoint a full-time project manager for the Project.
- 5.4.7 On fulfilment of the above obligations, the Concessionaire shall provide a written notice to the Implementing Authority and Independent Monitor that it has fulfilled the COD Obligations (“**COD Achievement Notice**”).
- 5.4.8 Save and except the Construction Work, which shall be certified in accordance with Clause 11.3, the Independent Monitor shall review and approve whether the COD Obligations have been fulfilled by the Concessionaire. Each review period shall not exceed twenty-one (21) days, calculated from the date on which the Independent Monitor receives the COD Achievement Notice (“**COD Review Period**”). If the Concessionaire has fulfilled the above obligations, then the Independent Monitor will inform the Parties that COD has been achieved (“**COD Achievement Notice**”). The Independent Monitor may, within the COD Review Period, give notice to the Concessionaire identifying the items that the Concessionaire failed to fulfil (“**COD Failure Notice**”). On receipt of the COD Failure Notice, the Concessionaire shall rectify and resubmit for review and approval of the Independent Monitor in accordance with this Clause, at the Concessionaire’s cost. This process shall continue until the Independent Monitor(s) confirm that the COD Obligations have been fulfilled by the Concessionaire before Required Commercial Operation Date.
- 5.4.9 The Concessionaire may request for extension of the Required Commercial Operation Date but the Implementing Authority shall be under no obligation to accept such proposal. Any agreement on an extension of the Required Commercial Operation Date must be made in writing and signed by all the Parties.
- 5.4.10 Within thirty (30) days of receipt of the COD Achievement Notice and the Completion Certificate or the Provisional Certificate under Clause 11.3.5, whichever is later, the Concessionaire shall commence commercial operation of the Project, which is, the Concessionaire shall start providing the Services to the Users and operate and maintain the Project Facilities, all in accordance with the terms of this Agreement. The Concessionaire shall inform the Implementing Authority of the date on which it will commence the commercial operation of the Project (“**Commercial Operation Date**”).

## ARTICLE 6 PERFORMANCE SECURITY

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### 6.1 Performance Security

- 6.1.1 The Concessionaire shall, for due and punctual performance of its obligations under this Agreement, provide to the Implementing Authority on the Appointed Date, simultaneously with the execution of this Agreement, an irrevocable and unconditional bank guarantee from a scheduled nationalized bank for a

sum equivalent to Rs. [•] (Rupees [•]<sup>39</sup> in the form set forth in Schedule 4 (the "**Performance Security**").

6.1.2 The Bid Security shall be released on the receipt of the Performance Security.

## 6.2 Appropriation of Performance Security

6.2.1 Upon occurrence of a Concessionaire Default, the Implementing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash the Performance Security.

6.2.2 Upon encashment of the Performance Security in accordance with the terms of this Agreement, the Concessionaire shall, within thirty (30) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security; and in case of appropriation of the entire Performance Security provide a fresh Performance Security failing which the Implementing Authority shall be entitled to terminate this Agreement in accordance with Article 24.

## 6.3 Release of Performance Security

6.3.1 The Performance Security shall remain in force and effect from the Appointed Date until the Service Continuity and Divestment Requirements have been fulfilled in accordance with Article 25, and shall be released after the Defect Liability Performance Security is provided by the Concessionaire pursuant to Clause 24.6.3.

6.3.2 If for any reason, the Performance Security is set to expire before the Service Continuity and Divestment Requirements have been fulfilled in accordance with Article 25, then the Concessionaire shall deliver to the Implementing Authority a new Performance Security of the required amount no later than thirty (30) days prior to the expiry of the existing Performance Security.

# ARTICLE 7 SUBCONTRACT

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7.1 The Concessionaire may appoint another person to carry out any part of the work or to provide any part of the Services only in accordance with the provisions of this Article ("**Subcontractor**").

7.2 The Concessionaire shall, at least fifteen (15) days before the appointment of any Subcontractor, inform the Implementing Authority about the subcontractor. The Implementing Authority may, within a period of fifteen (15) days, object to the appointment of Subcontractor on the grounds of public interest and national security. If the Implementing Authority objects to the appointment of Subcontractor, then the Concessionaire will not enter into the said subcontract.

7.3 The subcontract entered by the Concessionaire with the Subcontractor shall provide for the right of the

<sup>39</sup> Insert the amount of Performance Security in figures and words. Depending on the Project financials, the Implementing Authority may calculate the Performance Security in the range of five to ten percent (5-10%) of the Total Project Cost. The Implementing Authority may also benchmark the quantum of Performance Guarantee to the provisions of the State General Financial Rules.



- Implementing Authority and the Finance Parties to novate the subcontract in its name.
- 7.4 Notwithstanding the appointment of any Subcontractor, the Concessionaire shall retain full responsibility for the implementation and completion of the Project and operation of the Services and shall remain fully liable to the Implementing Authority for the acts and omissions of any Subcontractor, as if they were the Concessionaire's own acts or omissions.

## **ARTICLE 8 OBLIGATIONS OF THE CONCESSIONAIRE**

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### **8.1 General Obligations**

- 8.1.1 The Concessionaire shall upgrade, operate and maintain the Project Facilities and provide the Services during the Concession Period in accordance with the terms of this Agreement. Without prejudice to the generality of the foregoing, the Concessionaire shall:
- a. Obtain and maintain all consents and approvals including valid permits and licenses necessary from the concerned authorities at its cost for the development, operation and maintenance of the Project Facilities and providing the Services.
  - b. Comply with Applicable Laws including laws pertaining to employees, environment, health and safety aspects.
  - c. At its cost and expense, insure all Project Facilities and equipment and material required for the implementation of the Project in accordance with Article 15 of this Agreement.
  - d. Provide uninterrupted Service to all patients during the Concession Period to meet the Key Performance Indicators in accordance with Clause 20.2.1, without any regard to patients' social, economic and HIV status in accordance with the terms of this Agreement.
  - e. Be responsible for all clinical services, non-clinical support services, operations and management of the Project Facility as per Schedule 1A including maintenance of infrastructure and equipment, alternate sources and backup for power and electricity, and all administrative office communication tools and facilities like phone, fax, email, internet to ensure continuity of high quality Services. This may include replacement of medical and non-medical equipment, as and when required, to ensure that medical equipment being used are updated by the Concessionaire as per the approved Project Development Plan (Schedule 3) and Project Implementation Plan (Schedule 5).
  - f. The Concessionaire may engage in providing patient amenity such as cafeteria, ATM, etc., that add value for the visitors at the Assigned District Hospital, for which a one-time prior approval shall need to be sought by the Concessionaire from the Implementing Authority.
  - g. Ensure that the Project Facilities and equipment and materials are maintained properly and diligently and shall ensure its proper working condition at all times and shall enter into suitable annual maintenance contracts, in accordance with Article 13 of this Agreement, with appropriate qualified agencies in this regard.

- h. Maintain daily records of service utilization, patient records, and other such relevant information, and provide the same to the Implementing Authority.
- i. Ensure and maintain integrity, confidentiality and non-transferability of patient data.
- j. Maintain a complaint register / web-based system for registering the grievances of service seekers and other stakeholders.
- k. Bear all capital costs, operation costs and expenses including expenses incurred towards salaries to its employees and any other related expenses.
- l. Ensure timely completion of all conditions precedent as set forth in Clause 5.2 and all tasks related to development and construction of the Project Site as set forth in different clauses of Article 11.
- m. Ensure wide publicity and marketing of the Project in the Assigned District Hospital and adjacent areas.
- n. Pay all taxes and duties under the Applicable Laws.
- o. Ensure that the work place for its personnel and or any authorised visitor is safe and free from hazards and in accordance with Applicable Laws.
- p. Ensure that the Project Facilities are in good working condition at all times in accordance with the provisions of this Agreement including, without any limitation, at the time of handing over to the Implementing Authority.
- q. Ensure due compliance to and implementation of the Project Implementation Plan (Schedule 5) which is a part of this Agreement.
- r. Fully cooperate and participate in activities that relate to disaster preparedness organised by the Implementing Authority and / or the State Government or any of its agencies, whenever required, at no cost to the Implementing Authority or the State Government; and conduct the State Government approved exercises and disaster drills and other interagency training in preparation for this type of response.
- s. At all times perform the obligations under this Agreement subject to the policy directions and reasonable policy and strategic control of the Implementing Authority and comply with the terms of this Agreement.
- t. Ensure compliance to all statutory requirements related to medical and non-medical waste management, radiation control and occupational safety of the personnel deployed by the Concessionaire in the Project Facility.
- u. Ensure complete insurance / theft protection of the Project Facility as per Article 15.
- v. Ensure continuity of Services at all times during the Concession Period.

## **8.2 Specific Obligations**

### **8.2.1 Specific obligations related to procurement:**

- a. The Concessionaire shall procure personnel, services, equipment (medical and non-medical), and supplies following its own procurement norms based on the principles of cost effectiveness, quality and transparency as per the schedule provided in the Project Implementation Plan.

- b. The Implementing Authority shall not intervene in any manner in the procurement process.
- c. Concessionaire shall inform and annually update the Implementing Authority in writing with a list of equipment with specifications of all major equipment, software or technology that have been procured for the Project.
- d. The Concessionaire shall ensure that all equipment, software and technology are procured under this Project only for the purpose of providing Services and implementation of the Project and is available to the Implementing Authority without any limitation and any additional burden after the expiry of this Agreement.

**8.2.2 Specific obligations related to maintenance, repair and replacement:**

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

of the Concessionaire. The Concessionaire shall reimburse the costs incurred by the Implementing Authority on account of such repair and maintenance within fifteen (15) days of receipt of Implementing Authority's claim thereof or the Implementing Authority may set off such claims against Performance Security.

- i. The Concessionaire shall be deemed to be in Material Breach of Maintenance Requirements, if the Implementing Authority, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Concessionaire, the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the level prescribed by this Agreement and that there has been a serious or persistent breach in adhering to the requirements of this Agreement and thereby the Project Facility or any part thereof is not safe for operations.
- j. For avoidance of doubt, serious or persistent breach shall mean:
  - i. Any breach of operations and Maintenance Requirements by the Concessionaire, which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the Implementing Authority.
  - ii. Recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the Implementing Authority requiring the Concessionaire to remedy a breach.
  - iii. Repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.
- k. Upon occurrence of Material Breach of the Maintenance Requirements, the Implementing Authority shall (subject to the right of the Concessionaire to cure the defect during the Cure Period), without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, may initiate corrective actions under the provisions of this Agreement, including termination.
- l. Every first quarter of the completion of every five (5) years from the COD, the Concessionaire hereby agrees to share the updated bio-medical equipment plan with replacement(s) and changes in specifications as and if required, and submit such updated plan to the Implementing Authority as set forth in Clause 5.2.1.a(ii), to ensure availability of the Services at all times during the Concession Period.

### **8.2.3 Specific obligations related to Annual Maintenance Contract:**

- a. The Concessionaire shall procure and maintain an Annual Maintenance Contract ("**AMC**") at its own cost and expense for the Project Facilities (including all software, hardware, and equipment) used for providing the Services and implementation of the Project.
- b. The Concessionaire shall maintain a complete record of all the AMCs and furnish these records and any related information to the Implementing Authority when such records and information are required by the Implementing Authority.
- c. The Concessionaire shall ensure adherence to the conditions related to equipment warranty.

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

- a. The Concessionaire, at its cost and expenses, shall recruit and train all personnel required for the

operation, management and maintenance of the Project Facilities and providing Services (both clinical and non-clinical) under this Agreement.

- b. The minimum expertise that the Concessionaire shall deploy is set forth in Schedule 6.
- c. The recruitment of the personnel including but not limited to consultants and specialists required for the operation, maintenance and management of the Services under this Agreement shall be as per the human resources plan submitted by the Concessionaire in accordance with Clause 5.4.6(f) and Schedule 7A and as per its own human resources policy and be in compliance with all statutory provisions enacted under the Applicable Laws.
- d. Provided, however, no personnel, staff or employee under the Concessionaire, whether temporary or permanently employed for the purposes of implementation of this Project shall, under any circumstances, be deemed to be in employment with the State Government and the Concessionaire shall ensure that its operations are conducted in a manner so as to prevent any employer-employee relationship being imputed between the State Government and the employees, personnel and staff of the Concessionaire.
- e. The credentials of all medical staff and paramedical staff have to be notified to the Implementing Authority within thirty (30) days of employment in the form and manner as set out in Schedule 7B.
- f. The Concessionaire shall retain on file at all times, copies of all current and valid licenses, certifications and all personnel records and statutory compliances of all personnel performing services under this Agreement and shall make them available to the Implementing Authority as and when asked for.

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

- a. The Concessionaire shall maintain referral linkages with government health facilities at the sub-district levels such as Sub-Centres, Primary Health Centres and the Community Health Centres within the Assigned District Hospital area and from similar facilities in the neighbouring districts and with tertiary facilities within and outside the state for referral of cases for services not offered under the Project. All such referrals shall be as per the referral plan issued by the Implementing Authority in accordance with Clause 9.2.4.
- b. The Concessionaire shall devise mechanisms to receive Users from different government schemes for seeking Services under the Project to ensure that this Project is closely integrated within the public health system and is optimally utilised to provide continuum of care.
- c. The Concessionaire shall be responsible for upward linkage of critical patients only as mentioned in Clause 9.2.4.

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

- a. The Concessionaire shall maintain all medical records and service utilization data as per the standard industry norms and statutory requirements, as required by the Implementing Authority at all times and in compliance with the Electronic Health Records 2016 Standards of the Ministry of Health and Family Welfare, Government of India and any related latest standards notified by the Ministry of Health and Family Welfare, Government of India.

- b. The Concessionaire shall maintain all such data on the Project Portal.
- c. All Project Facilities books and records shall be the property of the Implementing Authority and shall not be removed from the Project Facilities (except as necessary because of an emergency) without the prior written consent of the Implementing Authority.
- d. The Concessionaire shall be deemed to have a limited license to use information so created under the Project for the limited and specific purpose of providing the Services under this Project, which license shall terminate and cease to be effective on the termination of this Agreement.
- e. The Concessionaire shall retain all documents pertaining to this Agreement for entire term of this Agreement; for any further period required by Applicable Laws; and until all audits are completed and exceptions resolved.
- f. Upon request and except as otherwise restricted by Applicable Laws, the Concessionaire shall make these records available to authorised representatives of the Implementing Authority.

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

- a. The Concessionaire shall prepare a Service Quality Manual which shall include but not be limited to the parameters provided in Schedule 11 and shall be in line with the latest applicable standards of the National Accreditation Board of Hospitals and Healthcare Providers (NABH).
- b. The Concessionaire hereby agrees to set up an Internal Quality Control Committee responsible for full compliance with the approved Service Quality Manual and its implementation at all times during the Concession Period; and liaise with and follow all instructions issued by the Quality Assurance Team set up by the Project Steering Committee on behalf of the Implementing Authority as per the provisions of Clause 20.1.4.

**8.2.8 Specific obligations related to Management Information and General Reporting:**

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

- a. The Concessionaire shall set a web-based Project Hospital Management Information System (**P-HMIS**) integrated within the architecture of the Project Website ("**Project Portal**") with appropriate levels of data security and access rights. The **P-HMIS** shall be designed in a way that there is seamless transfer of data from the P-HMIS to the State Government's Health Management Information System. Notwithstanding any provisions hereof, the Concessionaire here agrees to grant the Implementing Authority full access rights to the Project Portal and the P-HMIS.
- b. The P-HMIS shall provide all patient data including socio-demographic profile, disease history and any other medical and non-medical information that the Implementing Authority may desire to know for the purpose of government's existing hospital management information system.
- c. The Concessionaire shall ensure that the P-HMIS shall at the minimum include all the data requirements provided to it by the Implementing Authority as set forth in Clause 9.2.9(b) and be obliged to ensure that the P-HMIS provides all such information.
- d. The Concessionaire shall be obliged to provide to the Implementing Authority, as and when required,

any other information / data related to clinical and non-clinical services offered under this Agreement, including but not limited to patient treatment records.

Obligations related to other reporting requirements:

- e. The Concessionaire shall:
  - i. Provide a copy of its annual audited accounts to the Implementing Authority within one hundred and eighty (180) days of the end of the relevant Financial Year.
  - ii. Provide to the Implementing Authority a self-certified audit report of existing infrastructure and equipment including the Project Facilities on an annual basis.
  - iii. Report to the Implementing Authority information regarding any litigation or material claims, disputes or actions, threatened or filed, concerning the Project Facility or the obligations to be performed by the Concessionaire under this Agreement.
  - iv. Report to the Implementing Authority all penalties or notices of violation issued by any Competent Authority.
  - v. Report to the Implementing Authority any material information concerning new or significant aspects of the operations, maintenance and management of the Project Facilities, any material complaint about the Project Facilities from any person or any other information received by the Concessionaire which is material to the operation and maintenance of the Project Facilities.
- f. The Concessionaire shall comply with the orders of the Implementing Authority from time to time regarding any change to be made to the format of any report or information required thereunder.
- g. Notwithstanding the reporting requirements of this Article, the Concessionaire shall provide an accurate, complete and up-to-date record, report or document in relation to any aspect of operation, maintenance and management of the Project Facilities to the Implementing Authority as and when a request is made as soon as reasonably practicable and in any event within any time limit prescribed by the Implementing Authority for the production of such record, report or other document(s).
- h. The Concessionaire shall prepare such report(s) as diligently as possible thereafter. Wherever feasible, such reports shall be submitted to the Implementing Authority for review at least seven (7) days before the same is to be provided to the relevant Competent Authority. The Concessionaire shall take into account any comments or revisions proposed by the Implementing Authority thereon.

#### **8.2.9 Specific obligations related to confidentiality:**

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

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

- b. **Non-Disclosure:** The Concessionaire will not, without the prior written consent of the Implementing Authority, remove or disclose any Confidential Information to any third party, other than those of Concessionaire’s employees, directors and officers with a need to know for performance hereunder; and the Concessionaire shall not use such Confidential Information other than for the purposes of this Agreement.
- c. The Concessionaire agrees that all Confidential Information will be held in strictest confidence by the Concessionaire and that such Confidential Information will not be copied, reproduced or altered either in whole or in any part by any method whatsoever, unless agreed upon in writing by the Implementing Authority.
- d. The Concessionaire shall cause its employees, officers, directors, sub-contractors to whom the Confidential Information is disclosed to be informed of and agree to be bound by the restrictions upon disclosure and use of Confidential Information as contained in this Agreement.
- e. **Exceptions:** The term “Confidential Information” shall not apply to information that:
  - i. Has been legally in the recipient party’s possession prior to disclosure by the disclosing party and is not subject to any disclosure obligations.
  - ii. Has become a part of public domain through no fault of the recipient party.
  - iii. Has been developed subsequent to, and independent of, disclosure to the recipient party.
  - iv. Has been released in writing by the disclosing party so that the recipient party may make public disclosure, or is otherwise deemed by the disclosing party, in writing, to be no longer confidential.
- f. **Required disclosure:** Notwithstanding anything to the contrary in this Clause, if the recipient party learns that it is or may be required by any applicable court order, law or regulation to disclose any confidential information, then recipient party shall: (i) as promptly as possible after learning of a possible disclosure requirement, and in any case prior to making disclosure, notify disclosing party of the disclosure requirement so that disclosing party or the appropriate party may seek a protective order(s) or other appropriate relief; (ii) provide such co-operation and assistance as disclosing party may reasonably request in any effort by disclosing party or the appropriate party to obtain such relief, and (iii) take reasonable steps to limit the amount of Confidential Information so disclosed and to protect its confidentiality.
- g. **Injunctive relief:** The Concessionaire acknowledges that breach of any provisions of this Clause 8.2.9 or disclosure of other information which, at law or in good conscience, ought to remain confidential,



will give rise to irreparable injury to the Implementing Authority. Accordingly, the Implementing Authority or such other party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies, which may be available. The Concessionaire hereby acknowledges and agrees that the covenants contained herein are necessary for the protection of legitimate social interests of the State Government and are reasonable in scope and content.

- h. **No license:** Nothing contained in this Agreement shall be construed to grant to the Concessionaire any right or license under any Intellectual Property Right of Government. "Intellectual Property Rights" shall mean copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress) trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, trade secrets, moral rights, author's rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and / or hereafter come into existence, and all renewals and extensions thereof.
- i. **Return of Confidential Information:** Upon the earlier of (i) a request of the disclosing party; or (ii) the expiration or termination of this Agreement, the recipient party will return all Confidential Information, in whatever form or media, retaining no copies of the same in any form whatsoever. The recipient party's obligations hereunder regarding Confidential Information shall survive the return of such Confidential Information or termination of this Agreement or completion of the Services.
- j. **Termination of Agreement:** In the event the Concessionaire, its officers, directors, employees or a sub-contractor commits breach of this Clause 8.2.9, it will be deemed as material breach of this Agreement and the Implementing Authority shall have the right to invoke the termination clauses as per the provisions set forth in Article 24.

#### **8.2.10 Specific obligations related to assistance in monitoring:**

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

the Implementing Authority or its authorised representative.

**8.2.11 Specific obligations related to compliance with labour laws:**

- a. The Concessionaire shall obtain all relevant labour registrations and comply with all relevant Indian labour laws and applicable local labour laws applying to its employees, and shall duly pay and accord to them all their legal rights.
- b. Copies of the documents affirming such compliance shall be shared with the Implementing Authority or its authorised representatives upon request.
- c. The Concessionaire shall make all deductions of taxes at source as may be required by Applicable Laws.
- d. The Concessionaire shall require all employees to obey all Applicable Laws concerning safety at work.
- e. The Concessionaire shall be responsible for order and discipline of its personnel without disruption of services both within the Project Facility and in the Assigned District Hospital and develop its own standard operating procedures for handling personnel issues including but not limited to employee grievances, indiscipline and / or employee strike.

**8.2.12 Specific obligations related to Medico-Legal Cases:**

- a. All medico legal cases shall report directly to the Assigned District Hospital only; and if required, the Assigned District Hospital Authorities may refer such cases to the Project Facility for medical treatment and care and the Concessionaire shall be obliged to provide the required treatment. In all such cases all medico-legal responsibilities shall vest exclusively with the Assigned District Hospital.
- b. In all other cases apart from those referred to in Clause 8.2.12(a), all medico-legal liabilities resulting from treatment provided by the Concessionaire to its patients in the Project Facility shall vest exclusively with the Concessionaire.
- c. All medico-legal aspects of the case shall be directly dealt with by the Implementing Authority except where the law requires certificates from the treating clinician / hospital where the patient sought care.
- d. Any judicial obligation to participate in legal proceedings as a witness or expert relating to Medico-Legal Cases or providing certificates from the treating clinician /hospital shall be the responsibility of Concessionaire, except where exempted by a Court of law. All such certificates can be issued by the Concessionaire only with the prior written approval of the Implementing Authority.

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

# ARTICLE 9 OBLIGATIONS OF THE IMPLEMENTING AUTHORITY

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## 9.1 General Obligations

The Implementing Authority:

- 9.1.1 Shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 9.1.2 Agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws.
- 9.1.3 Shall not do or omit to do any act, deed or thing which may in any manner be breach of any of the provisions of this Agreement.
- 9.1.4 Ensure that all systems, standard operating procedures and protocols as required under this Agreement are in place by the Concessionaire before the Commercial Operation Date.

## 9.2 Specific Obligations

### 9.2.1 Specific obligations related to Project Site and handover:

The Implementing Authority shall:

- a. Allocate and handover built-up space and / or vacant land to the Concessionaire as per the specifications set forth in Clauses 10.2 and 10.3 and within the agreed time frame.
- b. Provide to the Concessionaire access to all information, drawings and documents, to the extent available, related to existing structure of the Assigned District Hospital including, but not limited to, civil, electric and plumbing drawings and details.
- c. Allocate designated constructed area for establishment of allied commercial services such as cafeteria, book shop, ATM<sup>40</sup>, that add value for the visitors and Users at the Project Facility, or approve the same as part of the construction plan if the vacant land is being allotted to the Concessionaire.
- d. Ensure that the allotted space is without any access barriers.

### 9.2.2 Specific obligations related to Project Site upgradation / expansion plan and approvals:

The Implementing Authority shall:

- a. Review and approve the Project Development Plan submitted by the Concessionaire as a part of Concessionaire's Conditions Precedent set forth in Clause 5.2.1(a) within the time frame specified in Schedule 5.

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<sup>40</sup> Only after the State has explicitly decided to permit the Concessionaire for such allied commercial services

- b. Assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers providing substantially equivalent services.
- c. Upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

**9.2.3 Specific obligations related to managing the Shared Services with the Project Site:**

The Implementing Authority shall:

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

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

The Implementing Authority shall:

- a. Develop a detailed Referral Plan for critical patients which shall include but not be limited to:
  - i. Referral of cases from all community health centres and primary health centres under the district in which the Project Facility is located and from the government health facilities within the neighbouring districts of the Project Facility.
  - ii. Referral of complicated cases or cases handled by the outpatient and / or in-patient departments of the Project Facility, which need medical intervention that are not available within the Scope of Services under this Agreement, to higher tertiary level government facilities / government medical colleges / other government owned centres of excellence or to private hospital empanelled by the State Government under one of the government health insurance schemes operational in the State of [•]<sup>41</sup> in that order.
  - iii. Linkages with patient transportation / emergency transportation / ambulance services operational within the state either directly managed by the State Government or under any public private partnership project.
- b. Share a copy of the Referral Plan with the Concessionaire.
- c. Issue appropriate instructions to in-charges of all concerned government health facilities / projects / schemes identified in the Referral Plan with copies of all such communication to the Concessionaire for follow up and further action.

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<sup>41</sup> Insert name of the State where the Project is being implemented.

- d. The Concessionaire hereby agrees to abide by the latest Referral Plan prepared by the Implementing Authority and shared with the Concessionaire. Non-adherence to the Referral Plan shall be deemed as a Material Breach of this Agreement.

**9.2.5 Specific obligations related to payment administration:**

The Implementing Authority shall:

- a. Undertake verification of all reimbursement claims made by the Concessionaire.
- b. Release funds corresponding to Viability Gap Funding in form of capital grant as set forth in Clause 14.3 and reimbursements on behalf of Government Referred Patients as set forth in Clause 14.6.4.

**9.2.6 Specific obligations related to setting up of governance and management structures and coordination:**

The Implementing Authority shall:

- a. Ensure smooth coordination between the Assigned District Hospital Authorities, the Concessionaire and other entities such as the District NCD Cell, State NCD Cell, and the Contract Management Cell.
- b. In accordance with Clause 20.1, set up the governance and management structures for smooth functioning of the Project.
- c. In accordance with Article 21, set up mechanisms for timely redressal of User grievances.

**9.2.7 Specific obligations related to monitoring and audits:**

The Implementing Authority shall be responsible for:

- a. Overall Project monitoring, audits and quality control as set forth in Clauses 20.2 and 20.3.
- b. Designating Independent Monitors with appropriate skills mix and experience required for monitoring the Project Facilities and Services including, but not limited to, hospital engineering (civil, electrical, plumbing), bio medical engineering, hospital administration and management.

**9.2.8 Specific obligations related to Medico-Legal Cases:**

The Implementing Authority shall be directly responsible for handling and responding to all medico-legal obligations and formalities except the medico-legal cases arising from treatment provided by the Concessionaire in the Project Facility, which shall vest entirely with the Concessionaire as set forth in Clause 8.2.12(b).

**9.2.9 Other specific obligations:**

The Implementing Authority shall:

- a. Develop eligibility criteria for determining the patients who would be referred by the State Government for cashless services under the Project and system for pre-authorisation of such patients.
- b. Within sixty (60) days of the Appointed Date, the Implementing Authority shall provide the

Concessionaire with a list of minimum data related to clinical and non-clinical services and patients records that it needs in the P-HMIS and the Concessionaire shall be obliged to ensure that the P-HMIS provides all such information.

- c. Undertake period verification of medical records.
- d. Undertake all other tasks as required within the provisions of this Agreement.

## **ARTICLE 10 PROJECT SITE**

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### **10.1 The Site**

The site of the Project shall comprise of the real estate described in Schedule 8 granted by the Implementing Authority in accordance with this Agreement (the "Site" or the "Project Site"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Project as set forth in Schedule 8.

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

- 10.2.1 The Implementing Authority shall grant to the Concessionaire Right of Way to the Site including the existing facilities of the Assigned District Hospital as identified in Schedule 8 for implementation of the Project on "as-is where-is" basis.
- 10.2.2 The Site shall be made available by the Implementing Authority to the Concessionaire without the Concessionaire being required to make any payment to the Implementing Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site including the existing facilities of the Assigned District Hospital for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Project Site shall not be deemed to be Encumbrances.
- 10.2.3 The Implementing Authority shall allow access to and use of the Site for laying / installing / maintaining telephone lines, electric lines, water piping, sewage, bio-medical waste management or for such other public purposes related to the Project as the Concessionaire may specify.
- 10.2.4 The Concessionaire shall not carry out any commercial activity or use the Project Facilities for any purpose other than what has been provided for in this Agreement. Any deviation from the permitted usage as provided for under this Agreement would be an event of default on part of the Concessionaire.

- 10.2.5 The Concessionaire cannot construct any structure, permanent or temporary, at the Project Site other than as approved by the Implementing Authority from time to time for the implementation of the Project.
- 10.2.6 It is expressly agreed that the Right of Way granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Implementing Authority to terminate the Right of Way, upon the termination or expiry of this Agreement for any reason whatsoever.
- 10.2.7 The ownership of the Site shall always be with the State Government.

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

- 10.3.1 The Implementing Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site including the existing facilities of the Assigned District Hospital and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site.
- 10.3.2 Such memorandum shall be appended thereto as Schedule 8 specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two (2) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid Right of Way of the Site to the Concessionaire for free and unrestricted use and implementation of the Project including the Shared Services in the Assigned District Hospital during the Concession Period in accordance with the provisions of this Agreement.
- 10.3.3 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and the existing facilities of the Project Facility and shall ensure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall, not later than three (3) days of knowing of such encroachment, report such encroachment or occupation forthwith to the Implementing Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Concessionaire shall ensure at its cost that from the handover of the Site till the Transfer Date, the Site and the Assigned District Hospital shall be protected from all hazardous and contaminated material, and shall also ensure that no damage is caused by its activities to the Site and the Assigned District Hospital.

### **10.4 Peaceful Possession**

- 10.4.1 The Implementing Authority hereby warrants that the Site together with the necessary Right of Way:
- a. Has been acquired through the due process of law.
  - b. Belongs to and is vested in the State Government and that the Implementing Authority has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any

compensation payment on account of rehabilitation / resettlement or land acquisition of any Persons affected thereby.

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

## **10.5 Ownership**

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

10.5.2 The Concessionaire has no right, title or interest or any form of ownership rights over any of the existing Project Facilities at the Site. It is hereby clarified that the Concessionaire shall not get any right, title or interest in any equipment and material, if provided by the State Government under this Agreement and the Concessionaire has no right to create any right, interest or title or any encumbrance in relation to the Site in favour of any third person.

10.5.3 The ownership of all equipment and material that are procured by the Concessionaire for the purposes of implementing the Project shall vest with the Concessionaire. The ownership of the Project Facilities (including all equipment & material) shall be transferred to the State Government on the expiry or termination of this Agreement.

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

# **ARTICLE 11 PROJECT SITE UPGRADATION AND NEW CONSTRUCTION**

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## **11.1 Project Site Design and Planning**

11.1.1 The Concessionaire shall submit to the Implementing Authority and the Independent Monitor its detailed design, construction methodology, quality assurance procedures, and the procurement, monitoring and construction time schedule for construction and completion of Project Facilities / upgradation of existing



facilities and the operation and maintenance of the Project Facilities, in accordance with the Project Development Plan (Schedule 3) and Project Implementation Plan (Schedule 5) but not later than ninety (90) days of taking handover of the Project Site.

11.1.2 In respect of the Concessionaire's obligations with respect to the Drawings of the Construction Works / Project, the following shall apply:

- a. The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Development Plan (Schedule 3) and Project Implementation Plan (Schedule 5), three (3) copies each of all Drawings to the Independent Monitor[s] and Implementing Authority for review.
- b. By submitting the Drawings for review to the Implementing Authority and the Independent Monitor, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and monitoring, including field construction criteria related thereto, are in conformity with the Specifications and Standards.
- c. Within twenty one (21) days of the receipt of the Drawings, the Independent Monitor shall review the same and convey observations to the Concessionaire with particular reference to their conformity or otherwise with the scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Monitor on the Drawings submitted pursuant hereto beyond the said twenty one (21) days period and may begin or continue Construction Works at its own discretion and risk.
- d. If the aforesaid observations of the Independent Monitor indicate that the Drawings are not in conformity with the scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Monitor for review. The Independent Monitor shall give its observations, if any, within twenty one (21) days of receipt of the revised Drawings.
- e. No review and / or observation of the Independent Monitor and / or its failure to review and / or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Monitor or the Implementing Authority be liable for the same in any manner.
- f. Without prejudice to the foregoing provisions of this Clause 11.1.2, the Concessionaire shall submit to the Implementing Authority for review and comments, its Drawings relating to the Construction Works / Project Facilities, and the Implementing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within twenty one (21) days of the receipt of such Drawings but not later than the Effective Date.

## **11.2 Implementing Project Development Plan and Updating Progress**

- 11.2.1 The Concessionaire shall be responsible for the complete upgradation and construction of the Project Site as per the approved the Project Development Plan (Schedule 3) and Project Implementation Plan (Schedule 5) within the approved timelines.
- 11.2.2 During the Project Development Period, the Concessionaire shall ensure:
- a. That existing services in the Assigned District Hospital are ring-fenced in a manner that there is no disruption in existing services and that Users are not inconvenienced.
  - b. For any part of the Construction Work, if any disruption in the existing services in the Assigned District Hospital or inconvenience is anticipated, the Concessionaire shall, in discussion and in agreement with the Project Coordination Committee, arrive at a mutually agreeable plan to minimize such disruption and inconvenience.
  - c. That all such plans shall be mutually agreed upon in writing between the Concessionaire and the Project Coordination Committee and copies of such agreement shared with the Implementing Authority.
  - d. That it undertakes internal monitoring, quality check and supervision to ensure quality of materials, supplies and workmanship.
  - e. That it submits monthly progress reports to the Implementing Authority with copies to the Project Coordination Committee.

## **11.3 Completion and Verification**

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

- 11.3.3 Within ninety (90) days of the Commercial Operation Date, the Concessionaire shall furnish to the Implementing Authority and the Independent Monitor a complete set of as-built Drawings, in three (3) hard copies and in micro film form or in such other medium as may be acceptable to the Implementing Authority, reflecting the Project Facilities as actually designed and constructed, including the as-built survey illustrating the layout of the Project Facilities and setback lines, if any, of the buildings and structures forming part of the Project Facilities.
- 11.3.4 **Completion Certificate:** Upon completion of Construction Works and after the Independent Monitor[s] determining the tests to be successful, it shall forthwith issue to the Concessionaire and the Implementing Authority a certificate substantially in the form set forth in Schedule 9A (the "**Completion Certificate**"). The date of issuance of Completion Certificate shall be prior to the Required Completion Operation Date.
- 11.3.5 **Provisional Certificate:** The Independent Monitor may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule 9B (the "**Provisional Certificate**") if the tests are successful and the Project Facilities in relation to which Construction Works is being carried out, can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Monitor and the Concessionaire (the "**Punch List**"); provided that the Independent Monitor shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Implementing Authority.
- 11.3.6 **Completion of Punch List items:** All items in the Punch List shall be completed by the Concessionaire within ninety (90) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Implementing Authority or due to Force Majeure, the Implementing Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of [(a) zero point one (0.1) percent of the Performance Security, and (b) zero point two (0.2) percent of the cost of completing such items as estimated by the Independent Monitor]. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Implementing Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Monitor in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 11.3.6.
- 11.3.7 Upon completion of all Punch List items, the Independent Monitor shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 11.3.6 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Implementing Authority, shall entitle the Implementing Authority to terminate this Agreement.
- 11.3.8 **Withholding of Provisional Certificate:** If the Independent Monitor determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably

placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Implementing Authority and the Concessionaire. Upon receipt of such a report from the Independent Monitor and after conducting its own inspection as and if required, the Implementing Authority is of the opinion that the Project Facilities are not fit and safe for commercial service, it shall, within seven (7) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Facilities and direct the Independent Monitor to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon tests shall be undertaken in accordance with this Article 11. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

## ARTICLE 12 CHANGE OF SCOPE

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### 12.1 Change of Scope

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

### 12.2 Procedure for Change of Scope

- 12.2.1 In the event of the Implementing Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 12.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Implementing Authority such information as is necessary, together with preliminary documentation in support of:
  - a. The impact, if any, which the Change of Scope is likely to have on the Project Development Completion Schedule if the works or services are required to be carried out during the Concession Period.

- 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 Implementing Authority to its contractors, along with the proposed premium / discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Implementing Authority to the extent such cost is certified by the Independent Monitor as reasonable.
- 12.2.3 Upon receipt of information set forth in Clause 12.2.2, if the Implementing Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Monitor, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Implementing Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Implementing Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 12.5.

## 12.3 Payment for Change of Scope

- 12.3.1 Within seven (7) days of issuing a Change of Scope Order, the Implementing Authority shall make an advance payment to the Concessionaire in a sum equal to [.]<sup>42</sup> percent of the cost of Change of Scope as agreed hereunder as the VGF, and in the event of a Dispute, samepercent of the cost assessed by the Independent Monitor. In the event of any Dispute, final amount shall be made under and in accordance with the Dispute Resolution Procedure as set forth in Article 28.
- 12.3.2 Notwithstanding anything to the contrary contained in Clause 12.3.1, all costs other than the VGF (as per the Clause 12.3.1) arising out of any Change of Scope Order issued during the Term shall be borne by the Concessionaire.

## 12.4 Restriction on Certain Works

- 12.4.1 Notwithstanding anything to the contrary contained in this Article 12, the Implementing Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the achievement of Commercial Operation Date; provided that in the event that the Implementing Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for purposes of determining Commercial Operation Date for issuing Completion Certificate or the Provisional Certificate.

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<sup>42</sup> Insert the percentage of the total cost of change of scope that the Implementing Authority will pay to the Concessionaire. This percentage shall be equal to the percentage of overall VGF paid by the Implementing Authority to the Concessionaire as stated in Clause 14.2.2.

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

## 12.5 Powers of Implementing Authority to Undertake Works

12.5.1 Notwithstanding anything to the contrary contained in Clause 12.2 and Clause 12.3, the Implementing Authority may, after giving notice to the Concessionaire and considering its reply thereto, award Change of Scope Order to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of two (2) percent of the bid amount to the Implementing Authority, and thereupon securing the award of such Change of Scope Order. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked Bid by more than ten (10) percent thereof.

12.5.2 The works undertaken in accordance with this Clause 12.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, in so far as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works carried out under this Clause 12.5.

# ARTICLE 13 OPERATIONS AND MAINTENANCE

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## 13.1 O&M Obligations of the Concessionaire

13.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Project Facilities and provide Services to Users, in accordance with this Agreement; and if required, modify, repair or otherwise make improvements to the Project Facilities to comply with the provisions of this Agreement including the Specifications and Standards, Applicable Laws and Applicable Permits, and conform to Good Industry Practice.

13.1.2 The obligations of the Concessionaire hereunder shall include the following:

- a. Prepare and submit, in consultation with the Implementing Authority and Independent Monitor, a Service Quality Manual (the "**Service Quality Manual**") outlining strategy to achieve services specification including the Specifications and Standards outlined and shall ensure that at all times during the Concession Period, the Project Facilities are operated and maintained in accordance with

the provisions of the Service Quality Manual.

- b. Undertake all maintenance tasks, in compliance with the terms and conditions of this Agreement, including the Specifications and Standards, Applicable Laws, Applicable Permits, the Maintenance Manual, the Service Quality Manual and Good Industry Practice.
- c. The operation of the Project Facility and provide Services to Users by itself.

## 13.2 Maintenance and Service Requirements

- 13.2.1 The Concessionaire shall ensure that at all times during the Concession Period, the Project Facilities conform to the Maintenance Requirements including facility management, infrastructure maintenance and equipment maintenance set forth in Schedule 10 (the "**Maintenance Requirements**").
- 13.2.2 The Concessionaire shall ensure that at all time during the Concession Period, the Project Facilities conform to the Service requirements as set forth in Schedule 10 (the "**Service Requirements**").

## 13.3 Maintenance Manual and Program

- 13.3.1 The Concessionaire shall, in consultation with the Independent Monitor, evolve a repair and maintenance manual (the "**Maintenance Manual**"), for the regular and preventive maintenance of the Project Facilities in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice and shall provide one (1) soft and three (3) hard copy thereof, to the Implementing Authority.
- 13.3.2 Within thirty (30) days of receipt of the Maintenance Manual, the Implementing Authority shall review and convey its comments to the Concessionaire. The Concessionaire shall modify the Maintenance Manual, in accordance with the comments provided by the Implementing Authority and provide five (5) hard copies thereof to the Implementing Authority and two (2) hard copies to the Independent Monitor including two (2) soft copies.
- 13.3.3 The Maintenance Manual, which shall outline the preventive, scheduled and curative maintenance provisions, shall be revised and updated once every two (2) years.
- 13.3.4 Not later than forty-five (45) days prior to the beginning of each Accounting Year during the Concession Period, the Concessionaire shall provide to the Implementing Authority and the Independent Monitor, its proposed annual program of preventive, urgent and other scheduled maintenance (the "**Annual Maintenance Plan**") to comply with the Maintenance Requirements, Service Requirements, Service Quality Manual, Maintenance Manual and Safety Requirements. Such Maintenance Program shall include:
  - a. Preventive maintenance schedule.
  - b. Arrangements and procedures for carrying out urgent repairs.
  - c. Criteria to be adopted for deciding maintenance needs.
  - d. Intervals and procedures for carrying out inspection of all elements of the Project Facility.
  - e. Intervals at which the Concessionaire shall carry out periodic maintenance.

- f. Arrangements and procedures for carrying out safety related measures.
  - g. Intervals for major maintenance works and the scope thereof.
- 13.3.5 Within fifteen (15) days of receipt of the Annual Maintenance Plan, the Independent Monitor shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Service Requirements and Maintenance Requirements, Service Quality Manual, Maintenance Manual and Safety Requirements.
- 13.3.6 The Concessionaire may modify Annual Maintenance Plan as may be reasonable in the circumstances, and the procedures specified in Clauses 13.3.4 and 13.3.5 shall apply mutatis mutandis to such modifications.

## **13.4 Damages for Breach of Maintenance Obligation**

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

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

- 13.5.1 If the Concessionaire does not maintain and / or repair the Project Facilities or any part thereof in conformity with the Safety Requirements, Service Requirements, Maintenance Requirements, Service Quality Manual, the Maintenance Manual or the Maintenance Program, as the case may be, and fails to commence remedial works within fifteen (15) days of receipt of the O&M Inspection Report or a notice by the Implementing Authority or the Independent Monitor, then the Implementing Authority shall, without prejudice to its rights under this Agreement including termination of this Agreement, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover the cost from the Concessionaire.
- 13.5.2 The Implementing Authority shall have the right, and the Concessionaire hereby expressly grants to the Implementing Authority the right, to recover Damages from the Performance Security.

## **13.6 Overriding Powers of the Implementing Authority**

- 13.6.1 If the Concessionaire is in Material Breach of its obligations under this Agreement and, in particular, the Safety Requirements, Service Requirements and Maintenance Requirements, and such breach is causing



or likely to cause material hardship or danger to the Users, the Implementing Authority may, without prejudice to any of its rights under this Agreement including termination thereof, by notice require the Concessionaire to immediately take reasonable measures for rectifying or removing such hardship or danger, as the case may be.

13.6.2 In the event that the Concessionaire, upon notice under Clause 13.6.1, fails to rectify or remove any hardship or danger within a reasonable period, the Implementing Authority may exercise overriding powers under this Clause 13.6.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Implementing Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Implementing Authority in discharge of its Obligations hereunder shall be deemed to be O&M Expenses, and the Implementing Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 13.5.

13.6.3 In the event of a national emergency, civil commotion or any other act specified in Article 19, the Implementing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the State Government, and exercise such control over the Project and Project Facilities or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Implementing Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Implementing Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 19.

## **13.7 Restoration of Loss or Damage to the Project Facilities**

13.7.1. Save and except as provided in this Agreement, if the Project Facilities 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 Project Facilities conform to the provisions of this Agreement.

## **13.8 Modification to the Project**

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

## 13.9 Safety Requirements

- 13.9.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users or any individual working under the Project.
- 13.9.2 In particular, the Concessionaire shall develop, implement and administer a surveillance and safety program for providing a safe environment for the Project, and shall comply with the safety requirements as required by Applicable Laws.
- 13.9.3 The Concessionaire shall procure all required certificates like fire safety and ensure that it is prominently displayed within the Project Facility.

# ARTICLE 14 FINANCIAL TERMS AND CONDITIONS

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## 14.1 Principles and Patient Types

- 14.1.1 On and from the COD, the Concessionaire shall make available services to the following categories of Users:
  - a. **Government Referred Patients:**
    - i. 'Government Referred Patients' shall be those patients who are identified by the State Government and authorised by it to receive cashless services under this Project and on whose behalf the Implementing Authority shall reimburse the Concessionaire at the Tariff structure set forth in Clause 14.5.
    - ii. The Implementing Authority shall set up mechanisms to ensure that Government Referred Patients receive prior authorisation by the Authorised Representative of the Assigned District Hospital.
  - b. **Government Insurance Scheme Patients:** All patients enrolled under a relevant Central or State Government health insurance scheme, where the Government is paying the premium, shall be entitled to receive cashless services under the Project without having to make any direct out-of-pocket payment to the Concessionaire. All such patients shall be referred to as 'Government Insurance Scheme Patients'.
  - c. **Self-Paying Patients:** All other patients who are not Government Referred Patients or who are not enrolled under any government health insurance scheme may receive services under the Project against direct payments at the at the same Tariff structure set forth in Clause 14.5 and all such patients shall be referred to as 'Self-Paying Patients'.
- 14.1.2 The Concessionaire hereby unconditionally agrees on the following principles for providing the Services:
  - a. All the Users shall receive the same standard of care.

- b. There shall be no reserved beds or quota of beds for any category of patients.
- c. The State Government or any of its agencies shall have the right to refer as many patients as it can up to the capacity available in the Project Facility under this Project.
- d. Self-Paying Patients shall be able to seek all Services and shall pay for the Services in accordance with the Tariff structure set forth in Clause 14.5.
- e. The Implementing Authority shall reimburse the Concessionaire for the Government Reimbursed Patients referred by the designated authority of the State Government.

## 14.2 Project Cost and Viability Gap Financing

- 14.2.1 The Estimated Total Project Cost is Rs. [•]<sup>43</sup> (Rupees[•]).
- 14.2.2 The Implementing Authority agrees to provide to the Concessionaire a Viability Gap Fund (VGF) Support of [•]<sup>44</sup> percent of the Estimated Total Project Cost.
- 14.2.3 VGF to be provided by the State Government should be used exclusively for the purpose of implementing the Project.
- 14.2.4 The Concessionaire shall be responsible and liable for ensuring that the remaining funds are available for implementation of the Project.

## 14.3 VGF Support and its Administration

- 14.3.1 The Implementing Authority shall disburse the VGF in the following manner:
  - If Private Partner's capital contribution is through hundred (100) percent equity, no debt:<sup>45</sup>
    - a. The Implementing Authority will disburse hundred (100) percent of the VGF pursuant only to the Concessionaire having expended hundred (100) percent of Equity required for the Project.
    - b. The Concessionaire shall provide documentary evidence to the Implementing Authority about the expenditure incurred in form of utilization certificates duly signed by the auditor of the Concessionaire along with a certificate from the Chartered Accountant and countersigned by the Managing Director of the Concessionaire stating that all funds have been spent for the sole purpose of the Project and as per the approved Project Development Plan.
    - c. Within twenty-one (21) days of receiving the Certificates as specified in Clause 14.3.1(b), the Implementing Authority shall undertake its due diligence, seek clarifications as required and cause to pay in full the VGF support as indicated in Clause 14.2.2.

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<sup>43</sup> Insert the Estimated Total Project Cost as stated in the Tender.

<sup>44</sup> Insert percentage of VGF support needed by the Concessionaire which shall be equal to its financial quote in the Bid and the agreement arrived at with the Implementing Authority pursuant to the Bid.

<sup>45</sup> Delete if the Concessionaire proposes to secure debt for capital financing.

- d. All such funds shall be transferred by the Implementing Authority to the Escrow Account set up for the purposes of the Project.

If Private Partner's capital contribution is through a mix of equity and debt:<sup>46</sup>

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

If Private Partner's capital contribution is through 100 percent debt<sup>47</sup> : The State Government will disburse the VGF in proportion to debt disbursements.

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

- a. For delays in receipt of the VGF beyond the prescribed period, the Implementing Authority will pay an annual interest at a rate equal to State Bank of India's prime lending rate plus two (2) percent penal charges for every one month of delay or part thereof.
- b. The Concessionaire shall not be held responsible for any delays in Project commissioning if there are delays in the release of VGF by the Implementing Authority, provided the delay is not on account of the Concessionaire's non-compliance to any of the terms and conditions of the Agreement.

## 14.4 Operational Expenses

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

- a. Salaries of all staff, consultants, contractors
- b. Electricity and water charges
- c. Medicines
- d. Medical supplies, consumables, reagents, films, etc.

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<sup>46</sup> Delete if the Concessionaire proposes to fund capital expenditure through hundred (100) percent equity contribution.

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

- e. Administrative supplies
- f. Communication costs
- g. Transportation costs
- h. Annual Maintenance Contracts
- i. Cost of major and minor repairs
- j. Insurance premium
- k. Claim for damages
- l. Ex-gratia payments or any other liabilities to employees in the event of accidents, injuries, deaths
- m. Costs for ensuring appropriate security services
- n. Project Facility maintenance costs
- o. Taxes and duties
- p. Statutory license fees
- q. Accounting and auditing charges / costs
- r. Certification and Accreditation fees / charges

## 14.5 Tariff for Services under the Project

- 14.5.1 The starting Tariff for Services offered by the Concessionaire under the Project shall be equivalent to the package rate of procedures and rates for non-package services for [•]<sup>48</sup> applicable in the City of [•]<sup>49</sup>.
- 14.5.2 Any change in the Tariff as provided in Clause 14.5.1 under the [•]<sup>50</sup> shall be applicable from the date on which the revised Tariff of [•]<sup>51</sup> comes into force.
- 14.5.3 The Concessionaire shall have no right to charge a higher Tariff than the Tariff structure as set forth in Clause 14.5.1.
- 14.5.4 The Tariff at which the Concessionaire shall be reimbursed by the Implementing Authority shall be uniform for both the Government Referred Patients and the Self-Paying Patients.
- 14.5.5 Tariff shall be revised periodically based on revision in insurance package rates to account for inflation. Whereas the Concessionaire shall be entitled to fifty (50) percent of the tariff increase, the eligibility for the remaining fifty (50) percent tariff increase shall be linked to achievement against the Key Performance Indicators and determined based on the schedule provided in Schedule 13.

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<sup>48</sup> Insert the name of the Scheme against which the Tariff will be benchmarked. This could be the following in decreasing order of preference: (a) NHPS / RSBY as applicable; or (b) any similar state government health insurance operational in the state, or (c) the Central Government Health Scheme.

<sup>49</sup> Insert the name of the city / state where the Scheme is being implemented.

<sup>50</sup> Insert the name of the Scheme against which the Tariff will be benchmarked.

<sup>51</sup> Insert the name of the Scheme against which the Tariff will be benchmarked.

## 14.6 Collecting User Charges and Administration of Payments

### 14.6.1 Responsibility for collection of User Charges <sup>52</sup>:

- a. All responsibility of collecting the User Charges directly from the Self-Paying Patients at the Tariff set forth in Clause 14.5 shall vest with the Concessionaire.
- b. All collections shall be recorded through the receipt module in the P-HMIS software and receipts generated therefrom.
- c. The Concessionaire hereby agrees that it shall at its own cost procure / update such software and provide the Implementing Authority with full access rights to view and download reports solely for the purpose of monitoring.
- d. The Concessionaire shall ensure that all payments are recorded and accounted for.
- e. The Concessionaire shall ensure that there are no unaccounted charges or extra fee levied on patients.

### 14.6.2 Setting up an Escrow Account:

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

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<sup>52</sup> Clause 14.6.1 is drafted assuming that the Concessionaire shall have the right to collect the user charges from the Self-Paying Patients. Should the Implementing Authority decide to collect the User Charges from Self-Paying Patients, contents of Clause 14.6.1 will need to be modified accordingly along with Clause 14.6.3 and any other related provision(s) in the Agreement.

- iv. All payments and damages certified by the Implementing Authority as due and payable to it by the Concessionaire.
  - v. Any reserve requirements set forth in any Financing Agreement of the Concessionaire for the Project.
- d. The Concessionaire shall not, in any manner, modify the order of payment specified in this Clause 14.6.2(c), except with the prior written approval of the Implementing Authority.
- e. **Withdrawals upon Termination:** Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
- i. All taxes due including standard deductions payable by the Concessionaire.
  - ii. All payments and damages certified by the Implementing Authority as due and payable to it by the Concessionaire.
  - iii. Retention and payments relating to the liability for defects and deficiencies set forth in Clause 24.5.
  - iv. Incurred or accrued O&M Expenses.
  - v. Any other payments required to be made under this Agreement.
  - vi. Balance, if any, in accordance with the instructions of the Concessionaire.
- f. Provided that no appropriations shall be made under this Clause 14.6.2(e) until a Vesting Certificate has been issued by the Implementing Authority under the provisions of Clause 25.4.
- g. The provisions of Clause 14.6.2(e) and the instructions contained in the Escrow Agreement shall remain in full force and effect for the entire Term of this Agreement.
- h. Based on the approved Escrow Agreement, the Concessionaire shall set up the Escrow Account.
- i. For the first three months from the COD, the Implementing Authority shall, prior to the COD, transfer into the Escrow Account funds equivalent to three months of estimated revenues under the Project. For the purposes of this Clause 14.6.2(i), revenues shall include both revenues from the Self-Paying Patients, Government Insurance Scheme Patients and from the Government Referred Patients. Thereafter, the minimum balance that the Implementing Authority shall maintain in the Escrow Account shall be equivalent to last three months of actual receipts into the Escrow Account for the services offered under the Project.

**14.6.3 Administration of revenues collected by the Concessionaire from the Self-Paying Patients:**

All revenues collected by the Concessionaire from the Self-Paying Patients for all services sought by such patients from the Project shall be transferred into the designated Escrow Account within five (5) business days.

**14.6.4 Administration of payments by the Implementing Authority on behalf of Government Referred Patients:**

- a. Not later than five (5) business days after the last business day of the previous month, the Concessionaire shall submit a payment request to the Implementing Authority. All such requests shall be submitted online through the Project Portal.
- b. Release of payments on behalf of Government Referred Patients shall be linked to the performance of the Concessionaire against the Key Performance Indicators (KPIs) specified in Schedule 13 and shall be administered subject to the following:
  - i. The Implementing Authority shall release ninety-five (75) percent of the monthly invoiced amount within thirty (30) days of receiving the claim each month; after a quarterly review (once in 3 months) the remaining twenty five (5) percent withheld in each of the three (3) months in the preceding quarter shall be released within forty-five (45) days of the end of the quarter after thorough review of claims and after verification of Key Performance Indicators (KPIs), appropriate due diligence and composite KPI score as set forth in Schedule 13 para 2..
  - ii. In the event of any default or delay in payment by the Implementing Authority beyond thirty (30) days for the ninety-five (95) percent of claim and beyond forty-five (45) days of the end of the quarter for the claims withheld over the last three (3) months, the Concessionaire shall have the right to withdraw such amount from the Escrow Account with due notice, but only after the expiry of the due date. In such an eventuality, the Implementing Authority will replenish the Escrow Account within thirty (30) days of such withdrawal.

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

- a. The Concessionaire shall ensure that the Project is empanelled under the government health insurance scheme operational in the state of [•]<sup>53</sup> and referred to in Clause 14.5.1.
- b. For all Users who are enrolled under any relevant government health insurance scheme, the Concessionaire hereby agrees to abide by all the terms and conditions of empanelment, pre-authorisation of procedures, providing cashless service, claims submission and reimbursement applicable from time to time under such government health insurance scheme including adherence to third party verification protocols in place under such Scheme(s).
- c. The Concessionaire hereby agrees that all complaints and grievances that it may have related to reimbursement of payments for Government Insurance Scheme Patients shall be addressed through the grievance redressal mechanisms made available by the State Government under such insurance scheme(s).

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<sup>53</sup> Insert name of the State where this Project will be implemented.



## 14.7 Payments to cover all Costs

- 14.7.1 The Concessionaire shall at its own cost implement the Project including but not limited to:
- a. All capital investments for the Project.
  - b. All recurring and non-recurring operational expenses as per Clause 14.4 of this Agreement.
  - c. All others costs / expenses that the Concessionaire may incur for the Project.

## 14.8 Accounts and Audits

- 14.8.1 All transactions related to this Project, including but not limited to investments made by the Concessionaire for the Project, receipts from all sources for this Project, all expenses / recurring expenses as mentioned in different clauses of Article 14, shall be made from the Escrow Account.
- 14.8.2 Any transaction related to the Project through any bank account other than the Escrow Account shall be deemed as a Material Breach of the Agreement.
- 14.8.3 The Concessionaire shall record and maintain separate books of accounts for this Project maintaining all documents, records of all transactions, including but not limited to up-gradation, new construction, equipping, operation and maintenance of the Project Facilities and expenses in accordance with the standard accounting practices within India and complying with all statutory requirements and Applicable Laws.
- 14.8.4 The Concessionaire shall undertake internal and external audit of its accounts for the Project as per Good Industry Practices.
- 14.8.5 The Concessionaire shall, within thirty (30) days of the close of each quarter of an Accounting Year, furnish to the Implementing Authority its unaudited financial results in respect of the preceding quarter.
- 14.8.6 The Concessionaire shall appoint statutory auditors which will be a firm of reputed Chartered Accountants having requisite license to practice in India. This firm will be chosen by the Concessionaire from a list of reputed firms of Chartered Accountants provided to the Concessionaire by the Implementing Authority.
- 14.8.7 The Concessionaire shall bear all costs related to the appointment of Auditors including but not limited to their fees.
- 14.8.8 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Authority shall have the right, but not the obligation, to audit the Project at any point of time during the Concession Period, subject to reasonable advance notice given by the Implementing Authority. The Implementing Authority may, at its sole discretion, undertake such task on its own or through any of its appointed agencies or may appoint an independent third party firm of Chartered Accountants for this

- purpose. The Implementing Authority shall bear all the costs related to such independent inspections and audits.
- 14.8.9 The Concessionaire shall diligently extend all cooperation and make available all documents, and records as necessary that all such independent auditors / agencies may need for conducting their audits.
- 14.8.10 The Concessionaire shall submit to the Implementing Authority three (3) copies of its audited annual balance sheet, cash flow statements and profit and loss account and the audit report duly certified by the statutory auditors within one hundred and eighty (180) days of the close of the Financial Year.

## **ARTICLE 15 INSURANCE**

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### **15.1 Insurance during the Concession Period**

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

### **15.2 Notice to the Implementing Authority**

- 15.2.1. Not later than forty-five (45) days prior to commencement of the Commercial Operation Date, the Concessionaire shall by notice furnish to the Implementing Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 15.

### **15.3 General Requirements of Concessionaire's Policies**

- 15.3.1. The Concessionaire shall every year provide the Implementing Authority the policies and certificates of insurance which it is required to effect under this Agreement together with receipts of payment of premium.

### **15.4 Remedy for Failure to Insure**

- 15.4.1 If at any time and for whatever reason any of the insurances required to be maintained pursuant to Article 15 shall not be in full force and effect, then, without prejudice to any other right of the Implementing Authority, the Implementing Authority may at any time whilst such failure is continuing, procure such insurances at the expense of the Concessionaire and take such steps with respect of such insurances as the Implementing Authority may consider expedient or necessary. Any amounts expended by the Implementing Authority in procuring any such insurance or taking any such steps shall become immediately due and payable by the Concessionaire to the Implementing Authority, and the

Implementing Authority shall have unconditional rights to recover the costs thereof from the Concessionaire, or in the event of computation of a termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

## **15.5 Notification of Claim**

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

## **15.6 Application of Insurance Proceeds**

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

## **15.7 No Breach of Insurance Obligation**

15.7.1 If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained / re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

15.7.2 The Concessionaire shall procure any additional insurance policy as may be required by Applicable Laws from time to time.

# **ARTICLE 16 PROJECT IMPLEMENTATION PLAN**

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16.1 The Concessionaire shall strictly abide by the Project Implementation Plan as per the timeframe indicated in Schedule 5 of this Agreement.

16.2 Any deviation from the time frame indicated in the Project Implementation Plan will be considered as a Material Breach of the conditions of this Agreement.

## ARTICLE 17 INTELLECTUAL PROPERTY

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- 17.1 “Intellectual Property” shall mean any information, inventions, computer software designs (registered and unregistered) and any works, whether electronic or otherwise including but not limited to medical or other related information gathered from patients by the Concessionaire or any person working under the Concessionaire directly or indirectly at the Project Facility, and any material or information relevant for the proper operation, maintenance up-gradation and management of the Project Facilities and any information required for using any software and technology related to the implementation of the Project.
- 17.2 The Parties agree that all Intellectual Property, whether individually developed by the Concessionaire or acquired by the Concessionaire while undertaking the Project, shall constitute the absolute property of the State Government. All such Intellectual Property shall be fully and promptly disclosed in writing and in confidence by the Concessionaire to the Implementing Authority, within seven (7) days from the date of acquiring / development of such Intellectual Property. The State Government shall have the exclusive right to take any action necessary to obtain intellectual property protection of such Intellectual Property, including the selection of appropriate attorney to file and execute such protection. The State Government shall hold the newly disclosed Intellectual Property in confidence for a period of ninety (90) days from the date of disclosure in order to secure patent, copyright or other intellectual property protections, applications or registrations.
- 17.3 The Parties agree that in the event that ownership rights of the Intellectual Property are deemed to vest with the Concessionaire under any Applicable Laws, the Concessionaire shall be obliged to take all steps to ensure that the ownership rights to the Intellectual Property are transferred to and vested in the State Government, free of all costs, within a period of thirty (30) days from the date of acquiring / development of such Intellectual Property.
- 17.4 In the event that the Concessionaire brings in any prior Intellectual Property, owned by it or any of its researchers / personnel for the Project, the Concessionaire agrees that it shall provide royalty free licenses of such Intellectual Property to the State Government for the purposes of this Project, or to the extent that such prior Intellectual Property is related to the Project or becomes a part of the Intellectual Property.

# ARTICLE 18 INDEMNITY

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## 18.1 General Indemnity

- 18.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Implementing Authority and its officers, servants, agents, Government Instrumentalities and Government owned and / or controlled entities / enterprises, (the "**Implementing Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damages, costs and expenses of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of Services by the Concessionaire to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Implementing Authority Indemnified Persons.
- 18.1.2 The Implementing Authority will indemnify, defend, save and hold harmless the Concessionaire and its sub-contracts engaged in the Projects ("**Concessionaire Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damages, costs and expenses of whatever kind and nature arising out of (i) defect in title and / or the rights of the Implementing Authority in the land comprised in the Site, and / or (ii) breach by the Implementing Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and / or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and / or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.
- 18.1.3 Notwithstanding termination of this Agreement, the Concessionaire shall indemnify and hold the State Government harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature that may accrue or may be incurred by the State Government under this Clause 18.1 of the Agreement.

## 18.2 Indemnity by the Concessionaire

- 18.2.1 Without prejudice to the generality of Clause 18.1 of this Agreement, the Concessionaire shall indemnify and hold the Implementing Authority Indemnified Persons harmless, from any and all actions, claims, suits and / or legal proceedings initiated by any person, third party or otherwise, that may be initiated or raised against the Implementing Authority Indemnified Persons that may be in the nature of criminal, civil, medico-legal proceedings, proceedings under the Consumer Protection Act, 1968 or in the nature of tortious claims and that may arise under this Agreement.
- 18.2.2 The Concessionaire shall also indemnify and hold the Implementing Authority Indemnified Persons

harmless from any and all actions, claims, liabilities, costs, damages and expenses of any and every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the Concessionaire or any subcontractor and their respective employees and damage to or destruction of any property or equipment of the Concessionaire or its subcontractors and their respective employees arising during or as a result of the performances or non-performance of this Agreement from any cause whatsoever provided that this Article shall not apply to injury, death, damage or destruction to the extent caused by the negligence, default or omission of the Implementing Authority Indemnified Persons.

### 18.3 Indemnity – Third Party

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

### 18.4 Non-Compliance with Laws

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

### 18.5 Acknowledgement

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

### 18.6 Notice and Contest of Claims

18.6.1 In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 18 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within fifteen (15) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, of which approval shall not be unreasonably withheld or delayed.

18.6.2 In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

## 18.7 Defence of Claims

- 18.7.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claims, actions, suits or proceedings by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 18, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claims, actions, suits or proceedings, 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 reasonable costs 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 claims, demands, actions, suits or proceedings without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 18.7.2 If the Indemnifying Party has exercised its rights under Clause 18.7, the Indemnified Party shall not be entitled to settle or compromise any claims, actions, suits or proceedings without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 18.7.3 If the Indemnifying Party exercises its rights under Clause 18.7, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- a. The employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - b. The Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
  - c. The Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
  - d. The Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
    - i. That there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
    - ii. That such claims, actions, suits or proceedings involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 18.7.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

## 18.8 No Consequential Claims

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

## 18.9 Survival

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

# ARTICLE 19 FORCE MAJEURE

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## 19.1 Force Majeure Event

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

- a. Earthquake, flood, inundation, landslide.
- b. Storm, tempest, hurricane, cyclone, lightning, volcanic eruptions, thunder or other extreme atmospheric disturbances.
- c. Fire caused by reasons not attributable to the Concessionaire.
- d. Acts of terrorism.



- e. War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war.
- f. Any other similar things beyond the control of the Party.

## **19.2 Notice of Force Majeure Event**

- 19.2.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
- a. The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 19 with evidence in support thereof.
  - b. The estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement.
  - c. The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event.
  - d. Any other relevant information concerning the Force Majeure Event, and / or the rights and obligations of the Parties under this Agreement.
- 19.2.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than seven (7) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 19.2.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 19.3.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **19.3 Performance Obligations**

- 19.3.1 The Affected Party shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:
- a. Due notice of the Force Majeure Event has been given to the other party.
  - b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event.
  - c. There shall be no termination of the Concessionaire except as provided in Clause 19.4.
  - d. Where the Concessionaire is the Affected Party, the various deadlines set forth in this Agreement and

the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist.

- e. Where the Concessionaire is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damages, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement.
- f. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non-issue of such notice being no excuse for any delay for resuming such performance.
- g. The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement.
- h. Any insurance proceeds received by the Concessionaire shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by the Implementing Authority.

## 19.4 Termination Due to Force Majeure Event

19.4.1 If a Force Majeure Event subsists for a period of one hundred and eighty (180) days or more within a continuous period of three hundred and sixty-five (365) days, either Party may in its discretion terminate this Agreement by issuing a notice of termination to the other Party without being liable in any manner whatsoever, save as provided in this Article 19, and upon issue of such notice of termination, this Agreement shall stand terminated.

19.4.2 All obligations during termination and payments post termination shall be dealt with as per the provisions set forth in Article 24.

## ARTICLE 20 MONITORING

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### 20.1 Structures and Responsibilities for Monitoring

20.1.1 The Implementing Authority shall have the right to set up governance and management structures which shall be engaged in monitoring of the Project activities.

20.1.2 Such structures shall include but may not be limited to setting up of:

- a. Project Steering Committee (PSC) chaired by the [•]<sup>54</sup> of the Department of Health and Family Welfare

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<sup>54</sup> Additional Chief Secretary / Principal Secretary.

- of the State Government and also include among other members<sup>55</sup>, representatives from the Concessionaire.
- b. Contract Management Cell (CMC) headed by [•]<sup>56</sup>.
  - c. Project Coordination Committee (PCC) chaired by the Medical Superintendent<sup>57</sup> of the Assigned District Hospital, and also include among other members<sup>58</sup>, representatives from the Concessionaire.
  - d. Independent Monitor(s) for approvals, testing and verification of all civil Construction work under the Project including all medical and non-medical equipment procured and installed by the Concessionaire under the Project.
  - e. Medical Referral Board for deciding on referral of critical cases from the Project Facility to higher tertiary level facilities. The constitution of the Medical Referral Board shall be determined by the PSC from time to time.
- 20.1.3 The PSC shall be responsible for overall governance, monitoring and quality control of the Project and review the performance of the Project and the Concessionaire through quarterly review meetings and any other meeting as and when required.
- 20.1.4 The PSC shall set up a Quality Assurance Team for monitoring quality assurance initiatives of the Concessionaire which may include but not be limited to monitoring of patient satisfaction levels. The PSC shall have the right to determine the mandate and the scope of the Quality Assurance Team to ensure continuous quality improvement of the Project and the Services offered under the Project.
- 20.1.5 The CMC shall be responsible for regular monitoring of the Project including monitoring compliance to the provisions of the Agreement and overall contracts management.
- 20.1.6 The PCC shall be responsible for day-to-day operational coordination with the Concessionaire and facilitating and monitoring the shared services and patient referrals to and from the Project Facility and coordination of the Project Facility with different departments of the Assigned District Hospital as required. It shall also be responsible for handling User grievances.
- 20.1.7 The Implementing Authority shall have the right to, either directly or through any consultant(s) or third party appointed by it, undertake process audits, service audits, medical audits, patient satisfaction

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<sup>55</sup> Other members may include but not be limited to the Head of the State NCD Cell, Director General Medical/ Health Services, Chief Executive Officer / Head of the Trust or the agency in the State managing government health insurance programs, and Principal/ Director of the apex Medical College in the state.

<sup>56</sup> Insert the designation of the officer of the State Government who will be heading the Contracts Management Cell. This could be the Director Health Services or the Director Medical Services or the State Program Officer of the NCD Cell or the CEO / Head of the agency / trust managing existing government health insurance programs in the state or any other officer of appropriate seniority as the Implementing Authority may deem fit.

<sup>57</sup> Update, if required, with the exact designation of the overall in-charge of the District Hospital where the Project will be collocated.

<sup>58</sup> May include but not be limited to the Head of the District NCD Cell, Chief Medical Officer of Health or the District Health Officer, Head of the relevant departments of the Assigned District Hospital, Heads of the relevant departments of the Project Facility managed by the Concessionaire and any other officer(s) as the Implementing Authority may consider appropriate. In addition, it is recommended that one external clinical expert from at least one of the clinical specialties in the Project Facility, preferably from the government medical college in the State, be a member of the PCC.

surveys, beneficiary audits (during and post hospitalization), death audits and any other task it may deem appropriate to monitor the Project Facility and the Services rendered by the Concessionaire from the Project Facility under this Agreement. The Implementing Authority shall have the right to determine, at its sole discretion, the scope and the frequency of such audits from time to time.

## 20.2 Indicators for Monitoring

- 20.2.1 The Implementing Authority shall monitor the performance of the Concessionaire on a set of **Project Monitoring Indicators** and **Key Performance Indicators** as set forth in Schedule 12 and Schedule 13 respectively.

## 20.3 Monitoring of Services, Operations and Maintenance

- 20.3.1 Monthly status reports: During Concession Period, the Concessionaire shall, no later than seven (7) days after the close of each month, furnish to the Implementing Authority and the Independent Monitor, a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality Manual, Maintenance Program and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Monitor.
- 20.3.2 Quarterly inspections: The Independent Monitor shall inspect the Project at least once a quarter. It shall make a report of such inspection (the "O&M Inspection Report") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality Manual, the Maintenance Program and Safety Requirements, including microbial testing for infection control and send a copy thereof to the Implementing Authority and the Concessionaire within seven (7) days of such inspection.
- 20.3.3 Tests: For determining that the Project conforms to the Service Requirements, Maintenance Requirements and Safety Requirements, the Independent Monitor(s) may require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out all such tests annually in accordance with the instructions of the Independent Monitor(s) and furnish the results of such tests forthwith to the Independent Monitor[s]. The costs incurred on such tests shall be borne by the Concessionaire.
- 20.3.4 Remedial measures: The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report referred to in Clause 20.3.2 or in the test results referred to in Clause 20.3.3 and furnish a report in respect thereof to the Independent Monitor and the Implementing Authority within fifteen (15) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than fifteen (15) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 20.3.5 The Independent Monitor(s) shall require the Concessionaire to carry out or cause to be carried out tests,

at its own cost, to determine that such remedial measures as referred to in Clause 20.3.4 have brought the Project into compliance with the Safety Requirements, Service Requirement and Maintenance Requirements.

- 20.3.6 In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Implementing Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 13.7.

## ARTICLE 21 BENEFICIARY GRIEVANCE REDRESSAL

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21.1 The Concessionaire shall:

- a. Develop a protocol for beneficiary grievance redressal system.
- b. Be responsible for setting up a web-based Grievance Management System (**GMS**) integrated within the architecture of the Project Portal for handling an efficient tracking of all beneficiary grievances.
- c. Allow the Implementing Authority and its representatives including the designated authorities of the Assigned District Hospital full access rights to the GMS.
- d. Liaise with the Nodal Grievance Redressal Officer (NGRO)<sup>59</sup> within the Project Facility. The name and the contact number of the Officer would be prominently displayed in local and English languages in the OPD area, the Emergency ward and in all patient wards in a manner that it is visible and easily identifiable to beneficiaries accessing the Project Facility.
- e. Ensure that all grievances are entered into the GMS.
- f. Ensure that all grievances are settled initially by the Concessionaire within the timeframe mentioned in the protocol set forth in Clause 21.1(a), failing which the Concessionaire shall be obliged to escalate the matter to the the Nodal Grievance Redressal Officer.
- g. After examination by the NGRO, first appeal may be with the PCC..
- h. In case the aggrieved is not satisfied, he may lodge his grievances to a Grievance Redressal Committee headed by the retired District Judge<sup>60</sup>.

21.2 All complaints received by the Nodal Grievance Redressal Officer shall be entered within the GMS along with ensuring that the real time updates on the status of the grievance are provided on the GMS.

21.3 The Medical Superintendent / Head of the Assigned District Hospital shall monitor and track the GMS and shall investigate and facilitate redressal of those beneficiary complaints not redressed within the prescribed timeframe. Any beneficiary grievances unresolved for seven (7) days shall be referred to the PCC for resolution.

21.4 The Medical Superintendent / Head of the Assigned District Hospital shall in consultation with the PCC determine whether any beneficiary complaint needs to be escalated to the Contracts Management Cell.

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<sup>59</sup> Authorized representative of the Head of the PCC will be designated as the Nodal Grievance Redressal Officer (NGRO).

<sup>60</sup> This committee shall be provided with only a sitting fee and no salary/ perquisites and a timeline may be prescribed for deciding on the issues.

## ARTICLE 22 REPRESENTATIONS AND WARRANTIES

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### 22.1 Representatives and Warranties of the Concessionaire

The Concessionaire represents and warrants to the State Government that:

- a. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.
- b. It has taken all necessary corporate and other actions under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement.
- c. It has the financial standing and capacity to undertake the Project.
- d. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- e. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected.
- f. There are no actions, suits, proceedings or investigations pending against any of the shareholders of the Concessionaire or against any of the Directors on the Board of any of the shareholders of the Concessionaire known to the Concessionaire and threatened against it at law or in equity before any Court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Concessionaire's Event of Default or which individually or in the aggregate may result in Material Adverse Effect.
- g. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect.
- h. It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in aggregate have or may have Material Adverse Effect.
- i. Subject to receipt by the Concessionaire from the Implementing Authority of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in the State Government on the termination date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire.
- j. No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Implementing Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

- k. No bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire or any of its shareholders to any person to procure the operation, maintenance and management of the Project Facilities.
- l. Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Selected Bidder has, after a complete and careful examination, made an independent evaluation of the Project and the information provided by the Implementing Authority, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire and its shareholders in the course of performance of its obligations hereunder.
- m. The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the State Government shall not be liable for the same in any manner whatsoever to the Concessionaire.

## **22.2 Representatives and Warranties of the Implementing Authority**

The Implementing Authority represents and warrants to the Concessionaire that:

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

## **22.3 Obligations to Notify Change**

- 22.3.1 If any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.
- 22.3.2 Failure to notify change within fifteen (15) days of its occurrence shall be deemed as Material Breach of the provisions of this Agreement.

## ARTICLE 23 EVENTS OF DEFAULT

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### 23.1 Concessionaire's Events of Default

23.1.1 In addition to Events of Default 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 sixty (60) days, the Concessionaire shall be deemed to be in default of this Agreement (a "Concessionaire Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Implementing Authority or due to Force Majeure. The defaults referred to herein shall include:

#### Related to Performance Security

- a. The Concessionaire has not renewed the Performance Security thirty (30) days before the expiry of the Performance Security.
- b. The Performance Security has been encashed and appropriated in accordance with Clause 6.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of thirty (30) days.
- c. Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with sub-clauses of Clause 6.2, the Concessionaire fails to cure, within a Cure Period of ninety (90) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated.

#### Related to Project Development and Site Usage

- d. The Concessionaire does not implement the Project Development Plan in accordance with the provisions of Schedule 3 and Schedule 5 and continues to be in default for ninety (90) days.
- e. The Concessionaire abandons or manifests intention to abandon the Project or operation of the Project without the prior written consent of the Implementing Authority.
- f. The Punch List items have not been completed within the period set forth in Clause 11.3.6.
- g. The Concessionaire has utilized the Project Site or Project Facilities in contravention of Clause 10.2.4 and Clause 10.2.5.

#### Related to Project Operations and Management

- h. The Concessionaire is in breach of the Maintenance Requirements as set forth in Clause 13.2.1 and Service Requirements as set forth in Clause 13.2.2.
- i. An Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of fifteen (15) days.
- j. If at any time any payment, assessment, charge, lien, penalty or damage herein specified to be paid by



the Concessionaire to the Implementing Authority, or any part thereof, shall be in arrears and unpaid.

- k. Project Services are stopped and Users do not receive services at any time except for reasons of Force Majeure.

#### **Related to Key Performance Indicators**

- l. The composite KPI score measured on an annual basis is less than eighty-one (81) percent for any two (2) years in a period of three (3) consecutive years.

#### **Related to Overall Provisions of this Agreement**

- m. The Concessionaire creates any encumbrance in breach of this Agreement.
- n. The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement.
- o. A Change in Ownership has occurred in breach of the provisions of Clause 4.2 and Clause 4.3.
- p. An execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect on the Project.
- q. The Concessionaire engaging or knowingly has allowed any of its employees, agents, tenants, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- r. The Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project.
- s. A resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within ninety (90) 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 provided that:
  - i. The amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements; and
  - ii. The amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and has credit worthiness at least as good as that of the Concessionaire as at the COD.
- t. Any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof.

- u. The Concessionaire submits to the Implementing Authority any statement which has a material effect on the Implementing Authority's rights, obligations or interests and which is false in material particulars.
- v. The Concessionaire has failed to fulfil any obligation, for which termination has been specified in this Agreement.
- w. The Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Project.
- x. The Concessionaire has abandoned the Project Facility.
- y. Services under the Project are affected due to disputes between the shareholders of the SPV, legal or otherwise.

## **23.2 Implementing Authority's Events of Default**

- 23.2.1 The following events, to the extent not caused by a default of the Concessionaire or Force Majeure, shall be considered for the purposes of this Agreement as Event of Default of the Implementing Authority which, if not rectified within the time period provided below, shall provide the Concessionaire the right to terminate this Agreement in accordance with provisions of Article 24:
- a. The Implementing Authority has failed to make any payments due to the Concessionaire and more than ninety (90) days have elapsed since such default.
  - b. The Implementing Authority has failed to abide by the terms of the Escrow Agreement.
  - c. The Implementing Authority has failed to abide by the payment administration terms as per the provisions set forth in Clause 14.6.
  - d. In Material Breach of this Agreement.

## **23.3 Rights of Parties**

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

## **23.4 Intimation of Events of Default**

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

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

## 23.5 Remedial Measures Post Event of Default

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

## 23.6 Rectification Period

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

## 23.7 Obligations during the Rectification Period

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

## 23.8 Termination Pursuant to Events of Default

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

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

# ARTICLE 24 TERMINATION

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## 24.1 Conditions for Termination of the Agreement

24.1.1. Without prejudice to any other rights or remedies which the Parties may have under this Agreement, upon occurrence of one Party's Default ("**Defaulted Party**") as per the provisions of Clause 23.1 or Clause 23.2, the other Party shall be entitled to terminate this Agreement by issuing a termination notice to the

defaulted Party; provided that before issuing the termination notice, the concerned Party shall by a notice inform the Defaulted Party of its intention to issue such termination notice and grant fifteen (15) days to the Defaulted Party to make a representation, and may after the expiry of such fifteen (15) days, whether or not it is in receipt of such representation, issue the termination notice.

## 24.2 Termination Payments

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

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

- a. Debt Due as set forth in Clause 24.2.3.
- b. One hundred and fifty (150) percent of the Adjusted Equity.

24.2.3 "**Debt Due**" shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

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

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

24.2.4 "**Adjusted Equity**" shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on

account of depreciation and variations in Wholesale Price Index (WPI), and for any Reference Date occurring:

- a. On or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date.
- b. From COD and until the fourth (4th) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date.
- c. After the fourth (4th) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by zero point five six (0.56) percent<sup>61</sup> thereof at the commencement of each month following the fourth (4th) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date.

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

24.2.5 Termination Payment shall become due and payable to the Concessionaire within thirty (30) days of a demand being made by the Concessionaire to the Implementing Authority with the necessary particulars, and in the event of any delay, the Implementing Authority shall pay interest per annum at a rate equal to two (2) percent above the prime lending rate of the State Bank of India on amount of Termination Payment remaining unpaid. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Implementing Authority of its payment obligations in respect therefore hereunder.

24.2.6 **Realization of Debt Due:** The Implementing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lender's Representative is entitled to receive from the Concessionaire, the Debt Due upon termination of the Concession Agreement.

## 24.3 Rights and Obligations of the Implementing Authority

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

- a. Be deemed to have taken possession and control of the Project.
- b. Take possession and control of all materials, stores, Construction plants and equipment and all other Project Facilities on the Site.

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<sup>61</sup> This number shall be substituted in each case by the product of 100 divided by the number of months comprising the Concession Period. For example, the figure for a twenty (15) year Concession Period shall be  $100/180 = 0.556$  rounded off to two decimal points i.e. 0.56.)

- c. Be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project.
- d. Require the Concessionaire to comply with the Service Continuity and Divestment Requirements set forth in Article 25.

## 24.4 Survival of Rights

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

## 24.5 Liability of Defects and Damages after Termination

- 24.5.1 The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of one hundred and eighty (180) days ("**Defect and Damages Liability Period**" or the "**Defects Liability Period**") after termination of this Agreement, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Monitor[s] in the Project during the aforesaid period.
- 24.5.2 In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of thirty (30) days from the date of notice issued by the Implementing Authority in this regard, the Implementing Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Safety Requirements, Service Requirements and Maintenance Requirements. All costs incurred by the Implementing Authority hereunder shall be reimbursed by the Concessionaire to the Implementing Authority within fifteen (15) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Implementing Authority shall be entitled to recover the same from the Performance Security.

## 24.6 Retention in Escrow Account

- 24.6.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 24.6.3, a sum equal to one hundred (100) percent of the total revenue receipt in the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of one hundred and eighty (180) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 24.5.

- 24.6.2 Without prejudice to the provisions of Clause 24.6.1, the Independent Monitor shall carry out an inspection of the Project at any time within thirty (30) days of the issue of the notice of termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 24.6.1 should be retained in the Escrow Account and for a period longer than the aforesaid one hundred and eighty (180) days, the amount recommended by the Independent Monitor(s) shall be retained in the Escrow Account for the period specified by it.
- 24.6.3 The Concessionaire may, for the performance of its obligations under the Clause 24.5, provide to the Implementing Authority, a guarantee from a Bank for a sum equivalent to the amount determined under Clause 24.6.1 or 24.6.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule 14 (the "**Defect Liability Performance Security**"), to be modified, mutatis mutandis, for this purpose, and the Implementing Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Defect Liability Performance Security for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of Clause 24.5 and Clause 24.6.
- 24.6.4 On furnishing the Defects Liability Performance Security to the Implementing Authority, the Concessionaire shall have the right to withdraw the amount withheld in the Escrow Account in accordance with Clause 24.6.1 and Clause 24.6.2.

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

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### 25.1 Service Continuity

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

### 25.2 Divestment Requirements

25.2.1. Upon termination or expiry of this Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements and its obligations and rights therein:

- a. Without prejudice to the generality of the foregoing provisions and subject to the terms and conditions of the Agreement all shareholders of the Concessionaire shall transfer one hundred (100) percent of their respective shares in Concessionaire to the State Government at a notional cost of Rupee One (Re 1/-) only per share and thereafter not claim any ownership of the Project Facilities, including all improvements made therein by the Concessionaire.
- b. Notify to the Implementing Authority forthwith the location and particulars of all Project Facilities.
- c. Deliver forthwith the actual possession of the Project free and clear of all Encumbrances.
- d. Cure all Project assets, including all defects and deficiencies so that the Project is compliant with the Safety Requirements, Service Requirements and Maintenance Requirements; provided that in the event of termination of the Agreement, all Project assets shall be handed over on 'as is where is' basis after bringing them to a safe condition.
- e. Deliver relevant records and reports pertaining to the Project and Project Facilities and its design, monitoring, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date.
- f. Be responsible for removal of all staff recruited by the Concessionaire including the medical personnel and officers / staff / representatives, who shall not be transferred to the Implementing Authority upon termination of this Agreement. Sole responsibility of any resultant legal liabilities or disputes shall vest with the Concessionaire.
- g. Transfer and / or deliver all Applicable Permits to the Implementing Authority to the extent permissible under Applicable Laws.
- h. Ensure that all software and the technology used in the implementation of the Project shall be made irrevocably and perpetually available to the Implementing Authority on the same terms and conditions as was present during the Concession Period so as to ensure continued and effective implementation of this Project. The Concessionaire shall train personnel as identified by the Implementing Authority in usage and operation of such software and technology so that there is no lack of trained personnel after the end of the Concession Period. The costs of all such training shall be borne by the Implementing Authority.
- i. Execute such deeds of conveyance, documents and other writings as the Implementing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Implementing Authority, absolutely unto the Implementing Authority or its nominee.



- j. Comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Implementing Authority or to its nominee.

## **25.3 Inspection and Cure**

- 25.3.1 Within thirty (30) days of the issue of the Termination Notice or not earlier than ninety (90) days before expiry of the Agreement, the Independent Monitor(s) shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Safety Requirements, Service Requirements and Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose.
- 25.3.2 Defaults, if any, in the Safety Requirements, Service Requirements and Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Clause 13.7 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under Clause 24.5.

## **25.4 Vesting Certificate**

- 25.4.1. The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Implementing Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 15 (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Implementing Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Implementing Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

## **25.5 Divestment Costs**

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

## **ARTICLE 26 EXPIRY OR EXTENSION OF CONCESSIONAIRE'S AGREEMENT**

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- 26.1 This Agreement between the Implementing Authority, the Concessionaire shall be deemed to have been expired at the end of the Concession Period as per Clause 3.2, unless the Duration of this Agreement has been mutually extended by the concerned Parties and such decision has been recorded, issued as an amendment to this Agreement and mutually signed by both the Parties.
- 26.2 All such extension of this Agreement shall be for a period of maximum XX years<sup>62</sup>.
- 26.3 All such extension decisions shall be based on recommendations of an external evaluation commissioned by the Implementing Authority and subject to the conditions that at the end of this Concession Period: (i) there are no outstanding events of default; and (b) there are no instances of breach of any of the conditions of this Agreement that remains uncured by the Concessionaire.
- 26.4 Upon expiry of the Agreement, the Parties agree that they will abide by the relevant provisions of this Agreement, including but not limited to the provisions of Clauses 24.3, 24.4, 24.5, 24.6 and all the clauses of Article 25, to ensure smooth handover of the Project Facility in full compliance with all required obligations and duties without affecting the Services to User in any manner whatsoever.

## **ARTICLE 27 ASSIGNMENTS AND CHARGES**

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### **27.1 Restriction on Assignments and Charges**

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

### **27.2 Assignment by the Project Authority**

- 27.2.1 Notwithstanding anything to the contrary contained in this Agreement, the Implementing Authority

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<sup>62</sup> Implementing Authority should ensure that that the provision of extension up to XX years is explicitly stated in the bid document for the Project.

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

## ARTICLE 28 CONCESSIONAIRE GRIEVANCES & DISPUTE RESOLUTION

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### 28.1 Concessionaire Grievances

- 28.1.1 Grievances, if any, that the Concessionaire may have related to day-to-day operations of the Project Facility shall be addressed with the PCC.
- 28.1.2 Grievances, if any, that the Concessionaire may have related to aspects of the partnership management shall be addressed with the CMC. The CMC shall resolve all grievances within fifteen (15) days, failing which the Concessionaire shall have the right to escalate the grievance to the PSC.
- 28.1.3 Any grievances that remain unaddressed or unresolved for thirty (30) days by the PSC or even earlier if the nature of the grievances is affecting Services from the Project Facility, may become a Dispute and the Concessionaire shall have the right to exercise the provisions of Clause 28.2 followed by Clause 28.3, as required.

### 28.2 Amicable Resolution

- 28.2.1 Save where expressly stated to the contrary in this Agreement, any Dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, (the "**Dispute or Difference**") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in this Clause 28.2.
- 28.2.2 The aggrieved Party shall send a notice to the other Party about the Dispute and its views on the same along with recommendations for settling the Dispute.
- 28.2.3 The Parties shall mutually agree upon a venue, date and time for the negotiation meeting with the intent of amicably resolving the Dispute.
- 28.2.4 In the event that the Parties are unable to amicably resolve the Dispute within thirty (30) days of the receipt of notice of Dispute, either Party may refer the Dispute or Difference to arbitration in accordance with the provisions of Clause 28.3.

### 28.3 Arbitration

- 28.3.1 Subject to the provisions of Clauses 28.1 and 28.2, any grievance, Dispute or Difference, if not settled

through the Project Steering Committee, within thirty (30) days of a reference to it as provided in Clause 28.2.4 of the Concession Agreement, shall be finally settled by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"), under the prevailing International Centre for Alternate Dispute Resolution Arbitration Rules, 1996 ("**ICADR Rules**") and the Arbitration & Conciliation Act (Amendment) Act, 2015

28.3.2 **Arbitral Panel:** The arbitration proceedings shall be conducted by an Arbitral Panel consisting of three arbitrators, of which one shall be appointed by the Implementing Authority, one by the Concessionaire, and the presiding arbitrator shall be mutually appointed by the two arbitrators nominated by the respective Parties.

28.3.3 **Place of arbitration:** The place of conducting arbitration proceedings shall ordinarily be the city of [•]<sup>63</sup> in the State of [•]<sup>64</sup>.

28.3.4 **Language of arbitration:** The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

28.3.5 **Enforcement of Award:** The Parties agree that the decision of the Arbitral Panel or "**Award**" resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved Parties to secure relief from any Court within the jurisdiction of this Agreement.

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

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

28.3.8 Either Party shall have the right to seek legal recourse in the event that the arbitration proceeding fails.

## ARTICLE 29 GOVERNING LAW AND JURISDICTION

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29.1 This Agreement shall be governed by the laws of India. Further, only the Courts in [•]<sup>65</sup> shall have jurisdiction to try all disputes and matters arising out of and under this Agreement, after reference to Arbitration.

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<sup>63</sup> Insert name of the capital city of the State where the Project will be implemented.

<sup>64</sup> Insert name of the State where the Project will be implemented.

<sup>65</sup> Insert the name of the capital city of the State where the Project will be implemented.

## ARTICLE 30 MISCELLANEOUS

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### 30.1 Co-branding

- 30.1.1 The Project or any part thereof shall not be branded in any manner to solely advertise, display or reflect the name or identity of the Concessionaire or its shareholders.
- 30.1.2 The Concessionaire further undertakes that it shall not, in any manner, use the name or identity of the Implementing Authority to advertise or display its own identity, brand Equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business.
- 30.1.3 For the avoidance of doubt, it is agreed that the Concessionaire may, at the Project Facility prominently display its own name jointly with that of the Implementing Authority or in signage as approved by it at a location where other public notices and signage is prominently displayed for the patients, beneficiaries and general public.
- 30.1.4 It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of [•]<sup>66</sup>.

### 30.2 Display of Information, Certificates and Licenses

- 30.2.1 The Concessionaire shall, at all times during the Concession Period, ensure:
- a. That those permits and licenses that are required to be publicly displayed within the Project Facility as per Applicable Laws, are displayed in prominent locations within the Project Facility.
  - b. That all fire safety and fire-fighting norms and guidelines are publicly displayed within the Project Facility in vernacular and English languages.

### 30.3 Waiver

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

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<sup>66</sup> Insert the co-branded name with which the Implementing Authority may desire the Project to be known and identified.

granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

## 30.4 Renegotiation or Amendment Due to Change in Law

30.4.1 The Concessionaire shall have the right to renegotiate or seek amendment to the terms and conditions on account of a **“Change in Law”**. For the purpose hereunder, **“Change in Law”** means any of the following events which, as a direct consequence thereof, has a Material Adverse Effect:

- a. Adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement of any Applicable Laws; or
- b. The imposition by any Government Agency of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Applicable Approval or Applicable Laws) in connection with the issuance, renewal or modification of any clearance after the date of this Agreement; or
- c. Any clearance previously granted, ceasing to remain in full force and effect for reasons other than breach / violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated; and
- d. Provided nothing contained in this Clause 30.4 shall be deemed to mean or construe any increase in taxes, duties, cess and the like effected from time to time by any Government Instrumentality, as Change in Law.

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

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

## 30.5 Survival

30.5.1. Termination of this Agreement:

- a. Shall not relieve the Concessionaire or the Implementing Authority of any obligations already incurred hereunder which expressly or by implication survives Termination hereof.

- b. Except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

## 30.6 Amendment

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

## 30.7 Successors and Assigns

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

## 30.8 Notices

- 30.8.1. Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below <sup>67</sup>:

If to the Implementing Authority:

[Insert name and address]

Phone No.

Fax No.

Email:

If to the Concessionaire:

[Insert name and address]

Phone No.

Fax No.

Email:

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

- a. In the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address.

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<sup>67</sup> Insert complete contact details for the purposes of all communication under this Agreement.

- b. In the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## **30.9 Severability**

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

## **30.10 No Partnership**

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

## **30.11 Third Party**

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

## **30.12 Media Policy**

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

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

## **30.13 Language**

30.13.1. All notices required to be given under this Agreement and all communications, documentation and



proceedings which are in any way relevant to this Agreement shall be in writing and in English language only.

### **30.14 Exclusion of Implied Warranties**

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

### **30.15 Entire Agreement**

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

### **30.16 Execution and Counterparts**

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

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

SIGNED SEALED AND DELIVERED

SIGNED SEALED AND DELIVERED

For an on behalf of the Implementing Authority

For and on behalf of the Concessionaire



# SCHEDULES



# Schedule 1A      Scope of Services and Minimum Service Package

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The Concessionaire shall provide the following Services under this Agreement:

1. Clinical and clinical support services.
2. Management of the functions of the NCD clinic in the Assigned District Hospital.

## 1. Clinical and clinical support services

- a. The Concessionaire shall offer:
  - i. Clinical and clinical support services related to cardiology, oncology and pulmonary, including management of related co-morbidities.
  - ii. General and specialist Out-Patient consultation (OPD) at least as per the OPD timings of the Assigned District Hospital.
  - iii. In-Patient admissions (IPD).
  - iv. Emergency management services (surgical and non-surgical) related to the specialties mentioned above, around the clock for all 365 days in a year.
  - v. Critical care and Intensive Care Unit (ICU) services.
  - vi. Patient stabilization and referral of co-morbidities associated with the clinical Services covered under the Project.
  - vii. Pharmacy<sup>68</sup>, pathology/laboratory services and radiology services that are nationally accredited and respond to the need of the Project Facility.
  - viii. Referral services for advanced clinical care as per the Referral Plan referred to in Clause 9.2.4(a).
  - ix. Typical NCD Clinic Services in the Assigned District Hospital, as per the NPCDCS guidelines.
- b. The Concessionaire shall at all times during the Term of the Agreement offer the following minimum services out of the Project Facility<sup>69</sup>:

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<sup>68</sup> Only for those medicines which do not figure in the list of essential medicines and should preferably dispense generics

<sup>69</sup> Replace with the complete list of procedures / clinical packages to be developed by the Implementing Authority based on detailed market assessment and technical structuring of the Project for each identified Assigned District Hospital. It is recommended that prior to bidding, the State Government should identify and develop a list of Services that could be shared with the Project Facility; and also identify those Services that may possibly overlap between the Project Facility and the Assigned District Hospital. This is possible only on the basis of a detailed facility survey of the Assigned District Hospital. A detailed plan for sharing or managing services should be developed and clearly specified by the State Government at the time of the bid. The purpose of this is to provide clarity on the Services that will be shared and the modalities for sharing such Services. This would also prevent duplication of services and avoid possible future conflicts for Shared Services.

## Minimum Services related to Oncology

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

## Scope of Services related to Cardiology

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

## Scope of Services related to Pulmonology

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

## **2. Management of functions of the NCD Clinic in the Assigned District Hospital**

Apart from the above services, the facility will also undertake all responsibilities of a typical NCD Clinic in the Assigned District Hospital, as per the guidelines of the National Program for Prevention and Control of Cancer, Diabetes, Cardio Vascular Diseases and Stroke (NPCDCS) of the Government of India.

## Schedule 1B List of Shared Services

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The Concessionaire may, if required, share the following services with the Assigned District Hospital.

- a. Ambulance services, when the dedicated ambulance deployed by the Concessionaire is on call.
- b. Mortuary services.
- c. Parking facilities.
- d. Access to water and required electricity load.
- e. Sewerage Treatment Plant
- f. Effluent Treatment Plant
- g. Security (on payment basis, if required)



## Schedule 2 Minimum Project Facilities to be developed by the Concessionaire

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Note:

These specifications are illustrative for a 50-bed facility. The Implementing Authority may adapt the minimum number of patient beds based on the detailed feasibility study to be conducted at the stage of structuring the Project.

1. The Concessionaire shall set up and manage at all times during the Concession the following minimum facilities in the Project Facility for offering the Services set forth in Schedule 1A:
  - a. General out-patient services functional and available at least as per timings of the Assigned District Hospital.
  - b. Specialist out-patient services functional and available at least as per the timings of the Assigned District Hospital.
  - c. In-patient department (IPD) with at least thirty-five (35) functional patient beds.
  - d. Intensive Care Unit (ICU) with at least fifteen (15) functional fully equipped ICU beds.
  - e. Fully equipped two (2) operational theatres capable of performing surgeries as per the Scope of Services set forth in Schedule 1A of this Agreement.
  - f. Fully equipped one (1) Cath lab capable of performing procedures as per the Scope of Services set forth in Schedule 1A of this Agreement.
  - g. Full range of laboratory and diagnostic services required for investigations related to the Scope of Services set forth in Schedule 1A of this Agreement.
  - h. Round the clock emergency services functional and available for all three hundred and sixty-five (365) days a year.
  - i. At least one (1) dedicated Advanced Life Support and one (1) dedicated Basic Life Support Ambulance functional and exclusively available for the Project Facility round the clock for all three hundred and sixty-five (365) days a year.
  - j. Subject to necessary approvals and terms and conditions, Pharmacy within the Project Facility functional, open and accessible round the clock for all three hundred and sixty-five (365) days a year.
  - k. Access to safe blood as required for delivering the Services.
  - l. Associated non-clinical support facilities including but not limited to kitchen (food and beverage) facilities, housekeeping, security, laundry services, central sterile supply department (CSSD), infection control system, bio-medical engineering and utilities management and all such services including IT support and office management required for functioning of the Project Facility or for providing the Services.
2. The Concessionaire may, depending on the need and demand, operate OPD services even outside the hours specified in para 1(a) and 1(b) of this Schedule with prior approval of the Implementing Authority.

## Schedule 3 Project Development Plan, Applicable Permits and Insurances

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*(Attach the Project Development Plan prepared by the Concessionaire as per the provisions of Clause 5.2.1 and approved by the Implementing Authority.)*

1. The Project Development Plan will include:
  - a. All drawings and other items set forth in Clause 5.2.1 (a), including as-is and proposed architectural drawings.
  - b. The complete list of all Applicable Permits that the Concessionaire shall obtain, maintain and comply with, as required under the Applicable Laws.
2. The Project Development Plan will include a list of insurances that the Concessionaire intends to procure for the entire Concessionaire Period for the Project Facility. Indicative list is as follows:
  - a. Indemnity insurance cover for hospital and for doctors.
  - b. Comprehensive insurance cover for the entire Project Facility including but not limited to fire, theft, burglary, etc.
  - c. Group Insurance Cover under personnel policies.
  - d. Comprehensive insurance cover for large medical equipment including replacement cover (this is over and above the annual maintenance contracts).
  - e. Vehicle insurance covering ambulances.
  - f. Parking insurance.
  - g. Medical insurance cover for all hospital staff including ESI cover for outsourced employees or employees under third party contracts.
  - h. Cover for patients during transportation in Project Facility ambulances, if such cover is offered by Insurance Companies.
3. An indicative list of Applicable laws (including clearances / approvals) is provided hereunder:
  - a. Consumer Protection Act, 1986
  - b. Air (Prevention and Control of Pollution) Act, 1981
  - c. Atomic Energy Act, 1962
  - d. Bio-Medical Waste (Management and Handling) Rules, 1998
  - e. The Clinical Establishments (Registration and Establishments) Act, 2010 (as applicable)
  - f. Drugs and Cosmetics Act, 1940
  - g. The Environment (Protection) Act, 1986
  - h. Excise Permit to store Spirit
  - i. Hazardous Waste (Management and Handling) Rules, 1989
  - j. Indian Medical Council Act, 1956

- k. Medical Termination of Pregnancy Act, 1971
- l. Narcotic Drugs and Psychotropic Substances Act, 1985
- m. Nurses and Midwives Act (applicable to specific states)
- n. The Pharmacy Act, 1948
- o. Pre-Natal Diagnostic Techniques Act, 1994
- p. Registration of Births and Deaths Act, 1969
- q. Water (Prevention and Control of Pollution) Act, 1974
- r. Atomic Energy Regulatory Board regulations
- s. No-Objection Certificate from the Chief Fire Officer
- t. Local Municipal Authority or other relevant clearances

*This List is indicative and it is the duty of the Concessionaire to obtain all the Applicable Permits and approvals as required under the Applicable Laws.*

## Schedule 4 Performance Security

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[Place]

WHEREAS:

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

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Term of the Agreement, including Development Period, Concession Period, Defect Liability Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Implementing Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the **Guarantee Amount** as the Implementing Authority shall claim, without the Implementing Authority being required to prove or to show grounds or reasons for its demand and / or for the sum specified therein.
2. A letter from the Implementing Authority, under the hand of an Officer not below the rank of [.]<sup>76</sup> , that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Implementing Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Implementing Authority and the Concessionaire, or any Dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge

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<sup>70</sup> Insert full name of the Concessionaire.

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

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

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

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

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

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

- of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Implementing Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and / or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
  4. It shall not be necessary, and the Bank hereby waives any necessity, for the Implementing Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
  5. The Implementing Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and / or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Implementing Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and / or the securities available to the Implementing Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Implementing Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Implementing Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would, but for this provision, have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
  6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Implementing Authority in respect of or relating to the Agreement or for the fulfilment, compliance and / or performance of all or any of the obligations of the Concessionaire under the Agreement.
  7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Implementing Authority on the Bank under this Guarantee, not later than six (6) months from the date of expiry of this Guarantee, all rights of the Implementing Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
  8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have fulfilled all its obligations under this Agreement, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Implementing Authority shall release the Performance Security forthwith.
  9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Implementing Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
  10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such

notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an Officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)

## Schedule 5 Project Implementation Plan

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(Attach the Project Implementation Plan prepared by the Concessionaire indicating detailed list of activities and their completion timelines of different tasks as per the provisions of Clause 5.2.1 (b) and approved by the Implementing Authority.)

The list of activities shall be categorized under three Phases:

1. **Phase 1: Project Development Phase:** from signing of this Agreement to the Commercial Operation Date. This shall also be referred as 'Project Development Completion Schedule'.
2. **Phase 2: Implementation Phase:** Commercial Operation Date to the Date of Termination or closure of the Agreement if no extension is provided to the Concessionaire.
3. **Phase 3: Exit plan / Activities Post-termination / Closure.**

## Schedule 6 List of Human Resources required for the Project

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

The list of indicative core competencies that are needed for the human resources deployed under the PPP Project Facility are provided below.

The Implementing Authority shall ensure that a detailed assessment of the catchment area is done to estimate demand for services related to the identified disease specialties, based on which the minimum numbers of staff / consultants for each of the positions (**both part-time with periodicity and full-time**) can be estimated and specified in the bid/ tender document.

1. General Surgeons
2. Onco-Surgeon
3. Clinical Cardiologist
4. Pulmonologist
5. Internal Medicine Specialist
6. ICU Intensivist
7. OT Anaesthetist
8. Radiologist
9. Pathologist
10. Staff for ICU and Emergency Room
11. Junior Residents
12. ICU Nurses
13. Nurses trained in OT
14. OT Technicians
15. Cath Lab Technicians
16. Perfusionist
17. Radiology Technicians
18. Pharmacist
19. Pharmacy Assistance
20. Onco-Pharmacist
21. Front Office Staff
22. Management Staff
23. Other Administrative Staff (accounts, HR, IT, etc.)
24. Others as required



# Schedule 7A Human Resources Plan

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*Attach the Human Resources Plan submitted by the Concessionaire to the Implementing Authority vide Clause 5.4.6(f) of this Agreement.*

# Schedule 7B Credentials of the Human Resources Deployed

No.	Name of the Staff	Complete Address	Contact Details	Highest Qualification	Designation at which Hired	Total Years of Experience

*Note: List to be updated for each Financial Year as of 31st March of each year and signed copy including soft copy to be shared by the Concessionaire with the Implementing Authority by April 15th of the same year.*

## **Schedule 8      Details of the Project Site**

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*(To be attached by the Implementing Authority).*

*This Schedule will also include a copy of the Memorandum signed between the Concessionaire and the Implementing Authority vide Clauses 10.3.1 and 10.3.2.*

## Schedule 9A Completion Certificate

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### COMPLETION CERTIFICATE

I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•]<sup>77</sup> (the "Agreement"), for the Project titled "Public Private Partnership for Treatment of NCDs in District Hospital [•]<sup>78</sup>", hereby certify that all Tests as per Good Industry Practice have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•]<sup>79</sup>.

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT MONITOR[S] by:

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<sup>77</sup> Insert the date of signing this Concession Agreement.

<sup>78</sup> Insert the full name of the Assigned District Hospital.

<sup>79</sup> Insert the calendar day, month and year of signing this Completion Certificate.

## Schedule 9B Provisional Completion Certificate

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### PROVISIONAL COMPLETION CERTIFICATE

I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•]<sup>80</sup> (the "Agreement"), for the Project titled "Public Private Partnership for Treatment of NCDs in District Hospital [•]"<sup>81</sup>, hereby certify that all Tests as per Good Industry Practice have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•]<sup>82</sup>.

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

(Annex a list of outstanding tasks)

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT MONITOR[S] by:

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<sup>80</sup> Insert the date of signing this Concession Agreement.

<sup>81</sup> Insert the full name of the Assigned District Hospital.

<sup>82</sup> Insert the calendar day, month and year of signing this Completion Certificate.

## **Schedule 10    Service Requirements and Maintenance Requirements**

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*The minimum requirements for service and maintenance as prepared by the Concessionaire vide Clauses 13.2.1 and 13.2.2 and approved by the Implementing Authority shall be annexed here.*

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

## Schedule 11 Service Quality Manual

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Attach the Service Quality Manual developed by the Concessionaire as per Clause 8.2.7(a) and approved by the Implementing Authority.

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

### **Module 1: Related to Access, Treatment and Continuity of Care**

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

## **Module 2: Related to Care of Patients**

18. Policies and procedures for emergency care in consonance with statutory requirements and Applicable Laws.
19. Policies and procedures for handling Medico-Legal Cases.
20. Policies and procedures for guiding the triage of patients for initiation of appropriate care.
21. Policies and procedures for patient found dead on arrival to the hospital.
22. Documented Disaster Management Plan.
23. Guidelines for processes to be followed which offering basic life support and advanced life support ambulance services.
24. Policies and procedures for all activities of nursing care and services.
25. Policies and procedures for rational use of blood and blood components.
26. Documented admission and discharge criteria for intensive care and high dependency units within the Project Facility.
27. Documented policy and procedure for administration of anaesthesia.
28. Documented policy and procedure for patients undergoing surgical procedures.
29. Documented policy and procedure for pain management.
30. Documented discharge process.

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## Schedule 12    General Project Monitoring Indicators

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Project Monitoring Indicators shall be as follows:

1. Number of patients treated
2. Percentage of Government Referred Patients to total in-patients
3. Percentage of Government Insurance Scheme Patients to total in-patients
4. Percentage of Government Referred Patients to total out-patients
5. Percentage of Government Insurance Scheme Patients to total out-patients
6. No. of repeat visits in the OPD for the same illness
7. Average Length of Stay (ALOS) disaggregated by disease specialties
8. ALOS of different categories of patients
9. Rate of unscheduled returns to the operation theatre
10. Elective surgery cancellations
11. Leave/discharge against medical advice
12. Out-patient / in-patient conversion rate
13. Emergency / IP conversion rate
14. In-patient mortality rate
15. Complaints redressal of Government Referred Patients and of Self-Paying Patients
16. Patient Satisfaction Index which may include but not be limited to service availability and waiting time, hygiene and cleanliness, behaviour and promptness of hospital staff, facilities, amenities and infrastructure, doctor patient communication

## Schedule 13 Key Performance Indicators

1. Key Performance Indicators (KPIs) shall have seven (7) indicators as set forth in the table below in this Schedule.

No.	Category	Indicator	Numerator (N)	Denominator (D)	Calculation (C)	Threshold	Weightage (W)
1	Human Resources	Availability of Service Providers-Specialists in the Project Facility (against required)	Total number of person days of specialists present in the Project Facility	Total number of specialists to be present (as per plan) X no. of days in the month (as per plan)	$(N / D) * 100$	Minimum 85%	20%
2		Availability of Support Staff - Nurses in the Project Facility (against required)	Total number of person days of nurses present in the Project Facility	Total number of nurses to be present (as per plan) X no. of days in the month (as per plan)	$(N / D) * 100$	Minimum 90%	10%
3		Unscheduled Visits Post Discharge	Number of patients making unscheduled revisit to the Project Facility within 48 hours after discharge	Total number of discharges in the month	$(N / D) * 100$	Maximum 5%	10%
4	Quality of Care	Rate of Unscheduled Returns to the Operation Theatre (OT)	Number of unscheduled returns to the OT in the month	Total number of surgeries in the month	$(N / D) * 100$	Maximum 5%	15%
5		Patient Satisfaction Levels	Number of beneficiaries with $\geq 85\%$ satisfaction score from an app-based mobile survey	Total beneficiaries who responded to the app-based mobile survey	$(N / D) * 100$	Minimum 85%	25%
6	Financials	Timely Submission of Claims	NA	NA			10%
7	Facility Maintenance	No. of adverse observations related to adherence to rectification / remedial measures/ incidents of defaults in the quarterly O&M Inspection Report	NA	NA	NA	No adverse observations	10%
						Total	100%

**2. Schedule for release of payments withheld as per provisions of Clause 14.6.4 b (i) (if these are linked to KPIs) <sup>83</sup>:**

- a. The schedule for release of withheld amount shall be as follows:
  - i. Composite KPI score in the preceding quarter: 91% and above: 100% of the withheld amount shall be released.
  - ii. Composite KPI score in the preceding quarter: 86% and 90%: 90% of the withheld amount shall be released.
  - iii. Composite KPI score in the preceding quarter: 81% and 85%: 75% of the withheld amount shall be released.
  - iv. Composite KPI score in the preceding quarter: below 81%: Not eligible for any withheld money.

**3. Schedule for eligibility of rate of increase in tariff as per revision in insurance package rates (if these are linked to KPIs):**

Automatic increase: Fifty (50) percent of the tariff increase as per Clause 14.5.5.

Remaining fifty (50) percent shall be linked to composite KPI score measured on an annual basis as per the table below:

<b>Composite KPI Score</b>	<b>Eligibility for the Remaining 50% Tariff Increase</b>
91% and above	Remaining 50% of the agreed tariff increase as per Clause 14.5.5
Between 86% and 90%	40% of the agreed tariff increase as per Clause 14.5.5
Between 81% and 85%	30% of the agreed tariff increase as per Clause 14.5.5
Less than 81%	No tariff increase

Even if KPIs are not linked to revision, Performance of less than eighty-one (81) percent for any two (2) years in a period of three (3) consecutive years shall be deemed to be Concessionaire's Event of Default and ground for the Implementing Authority to initiate Termination Procedures as per Article 24.

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<sup>83</sup> The State government may decide if they propose to link tariff revision (upon revision of insurance package rate) with the KPIs or not.

# Schedule 14 Defects Liability Performance Security

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Text to be the same as the Schedule 3 with changes in title and the amount. The amount to be included here shall be as per the provisions of Clause 24.6.3

## Schedule 15 Vesting Certificate

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1. The [•]<sup>84</sup> (the "Implementing Authority") refers to the Concession Agreement dated [•]<sup>85</sup> (the "Agreement") entered into between the Implementing Authority and [•]<sup>86</sup> (the "Concessionaire") for [•]<sup>87</sup> (the "Project").
2. The Implementing Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in Clauses 25.2, 25.3 and 25.5 of the Agreement on the basis that upon issue of this Vesting Certificate, the Implementing Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Implementing Authority, free from any Encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and / or relieving the Concessionaire in any manner of the same.

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

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<sup>84</sup> Insert details of the signatory on behalf of the Implementing Authority.

<sup>85</sup> Insert date of signing this Agreement.

<sup>86</sup> Insert details of the Concessionaire.

<sup>87</sup> Insert title of the Project.





सत्यमेव जयते

**NITI Aayog**