



**PARADIP PORT TRUST**

**MINISTRY OF SHIPPING**

**GOVERNMENT OF INDIA**

**DRAFT CONCESSION AGREEMENT**

**ESTABLISHMENT OF 400 BEDDED SUPER SPECIALTY HOSPITAL  
WITH AN OPTION TO FURTHER DEVELOP A MEDICAL COLLEGE  
AND FURTHER EXPAND THE CAPACITY OF HOSPITAL ON PPP  
BASIS**

**FEBRUARY 2020**

## CONCESSION AGREEMENT

This concession agreement (“**Agreement**”) is entered into on this [●] day of [●] 2019.

### BETWEEN

1. **BOARD OF TRUSTEES, PORT OF PARADIP, PARADIP PORT TRUST**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [●], represented by its [●] ..... {*Chairman or any person authorised by him*}] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

### AND

2. [*Insert the name of the Concessionaire*], a limited company incorporated under the provisions of the Companies Act, 2013, and rules notified thereunder, with its registered office at [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

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

### WHEREAS:

- A. The Authority has constructed and developed hospital on the Site (*as defined hereinafter*), the details of which are described in Schedules -A and P of this Agreement ("**Existing Hospital**"). The Authority has now resolved to undertake rehabilitation, augmentation, operation, maintenance , management, development and transfer of the Existing Hospital and the **healthcare facilities created by phased expansion thereof**, which in aggregate comprises the super speciality hospital, developed through Public-Private Partnership (the "**PPP**") subject to and in accordance with the terms and conditions set forth in this Agreement.
- B. The Authority has accordingly invited bids by its Request for Proposal No. [●] dated [●] (the "**Request for Proposal**" or "**RFP**") for undertaking the rehabilitation, augmentation, operation, maintenance, management, development, refurbishment and transfer of the Existing Hospital to at least 400 bedded super specialty hospital by phased construction of new blocks/facilities, and/or rehabilitation of residential quarters, related infrastructure such as road intersections, drains, etc, and the operation and maintenance thereof;

- C. Pursuant to the terms of the RFP, bids were received by the Authority on or before [●*insert Bid Due Date*] from the bidders shortlisted in the RFP process. The Selected Bidder also submitted its bid ("**Bid**") for the Project;
- D. After evaluation of the bids received, the Authority had accepted the Bid of the {Selected Bidder/ Consortium} and issued its Letter of Award No. [●] [dated] (hereinafter called the "**LOA**") to the {Selected Bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.
- E. The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- F. By its letter dated [●], the Concessionaire has also joined in the said request of the Selected Bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder/ Consortium for the purposes hereof.
- G. The Authority has {agreed to the said request of the Selected Bidder/Consortium and the Concessionaire and has} accordingly agreed to enter into this Agreement with the Concessionaire for development of the Project, subject to and on the terms and conditions set forth hereinafter.

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

## ARTICLE 1: DEFINITIONS AND INTERPRETATION

### 1.1. Definitions

In this Agreement, unless the context requires otherwise, capitalised terms shall have the meaning given to them in Article 44.

### 1.2. Interpretation

In this Agreement, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**development or augmentation**" include, unless the context

otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation, operation & maintenance and other activities incidental thereto, and "**develop**" shall be construed accordingly;

- (h) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (k) any reference to day shall mean a reference to a calendar day;
- (l) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the State Government) on which Scheduled Banks in Paradip are generally open for business;
- (m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) save where stated to the contrary, any references to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
- (r) references to any documents being 'in the agreed form' means such document has been initialled by or on behalf of each of the Parties for the purposes of identification;
- (s) unless otherwise stated, any reference to any period commencing 'from' a specific date or date and 'till' or 'until' a specific day or date shall include both such days or

dates;

- (t) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided in this Agreement;
- (u) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall bear the ordinary English meaning;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement; and
- (w) references to Recitals, Clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears.

### **1.3. Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### **1.4. Payment in Rupees**

All payments under this Agreement shall be made in Rupees.

### **1.5. Responsibility for Related Parties**

Subject to the provisions of this Agreement, the Concessionaire shall be responsible to the Authority for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Authority shall be responsible to the Concessionaire for the acts and omissions of the Authority Related Parties as if they were the acts and omissions of the Authority. The Concessionaire shall, as between itself and the Authority, be responsible for the selection of and pricing by all the Concessionaire Related Parties.

### **1.6. Approval**

Neither giving of an approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Authority, nor the failure of the same, shall, unless

expressly stated in this Agreement, relieve the Concessionaire of any obligations under it or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

**1.7. Succession**

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

**1.8. Priority of agreements, clauses and schedules**

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

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

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

(b) Subject to the provisions of Clause 1.8(a), in case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

written dimension, the latter shall prevail; and

- (vi) between any value written in numerals and that in words, the latter shall prevail.



## **ARTICLE 2: SCOPE OF THE PROJECT**

**2.1.** The mandatory and optional scope of the Project during the Concession Period shall mean and include the following ("**Scope of the Project**"):

**a. Phase 0 [Mandatory]**

Rehabilitating, equipping, augmenting, operating, managing and maintaining the Existing Hospital with facilities as set forth in Schedule A and in conformity with Specifications and Standards set forth in Schedule B, the Applicable Permits, Applicable Laws, Good Industry Practices and provisions of this Agreement;

**b. Phase I [Mandatory]**

On or prior to the completion of Phase 0 in accordance with terms hereof, but without any prejudice to its obligations in respect of Phase 0, the Concessionaire shall undertake the development of Phase I of the Project on the Site, namely, upgradation of the Existing Hospital into a 100 bedded super specialty hospital facility as set forth in Schedule A and in conformity with the Specification and Standards set forth in the Schedule B, the Applicable Permits, Applicable Laws, Good Industry Practices and provisions of this Agreement;

**c. Phase II [Mandatory]**

On or prior to the completion of Phase I, in accordance with terms hereof, but without any prejudice to its obligations in respect of Phase I, the Concessionaire shall undertake the development of the Phase II of the Project on the Site , namely, upgradation of the Hospital from 100 bedded facility into a 250 bedded super specialty facility and development of housing block for the medical staff (if required) on the Site, as set forth in Schedule A and in conformity with the Specification and Standards set forth in the Schedule B, the Applicable Permits, Applicable Laws, Good Industry Practices and provisions of this Agreement;

**d. Phase III [Mandatory]**

On or prior to the completion of Phase II in accordance with terms hereof, but without any prejudice to its obligations in respect of Phase I, the Concessionaire shall undertake the development of Phase III i.e. upgradation of the Hospital into a 400 bedded super specialty facility on the Site, as set forth in Schedule A and in conformity with the Specification and Standards set forth in the Schedule B, the Applicable Permits, Applicable Laws, Good Industry Practices and provisions of this Agreement.

## e. **Optional Development**

- I. The Concessionaire shall, subject to Applicable Laws, Applicable Permits, prior written approval of the Authority, be entitled to undertake in accordance with terms herein, and at its sole risk, and cost the development, operation and maintenance of the additional beds and/ or any non-obligated specialty service(s) at the Hospital, and / or, a Medical College, and/or additional housing blocks for doctors and paramedical staffs and Students, at the Site as set forth in the Schedule A ; which Concessionaire to be developed in conformity with the Specification and Standards set forth in the Schedule B (referred in this Agreement as "**Optional Development**"). For avoidance of doubt, in regard to the Option al Development, the Parties hereby unconditionally agree, confirm and understand that the Concessionaire shall, subject always to terms herein and full compliance with Applicable Laws, be entitled to undertake the development of optional component of the Medical College at any time during the Concession Period. The Parties further in this regard agree that Authority shall solely for the purpose of meeting part(s) of the capital cost of the Medical College, upon written request by Concessionaire clearly demonstrating its complete compliance with Applicable Laws and terms herein, disburse (in tranches) an interest bearing (viz, highest G Sec Rate as per latest RBI published bulletin) repayable loan facility to Concessionaire of the value equivalent to lower of:- (i) 50% of the then Authority's estimated capital cost of development of Medical College, as would be determined by Authority in its discretion; and (ii) the sum of INR 75 (Seventy Five) Crores; (hereinafter the "**Loan Facility**") in accordance with terms hereof; provided, that, prior to the commencement of such disbursement(s) of any tranche the Concessionaire shall furnish relevant bank guarantee(s) of value equivalent to 110% of the relevant amount being disbursed in such tranche, to be issued by a Scheduled Bank in India as per the format enclosed herein as Schedule V ("**Optional Development Guarantee**")<sup>1</sup>, each having respective validity period till expiry of corresponding repayment timeline as set out later at S. No (III) below.
- II. The Concessionaire shall prior to undertaking the commencement of development of Medical College in accordance with this Agreement prepare, submit and procure approval of Independent Engineer on the detailed project report (DPR) prepared in respect of development of the Medical College; such DPR shall also incorporate and take into account the following disbursement schedule : the Loan Facility shall be disbursed

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<sup>1</sup> For the avoidance of doubt, Concessionaire shall be obligated to provide a separate bank guarantee against each tranche of payment of the Loan Facility with each bank guarantee having separate validity period.

in five equated installment upon the start of following milestones but upon completion of the immediately prior milestone as applicable, and as duly certified by Independent Engineer industry expert appointed by Authority in its sole discretion: 20% Medical College development ,40% Medical College development, 60% Medical College development, 80% Medical College development and 100% Medical College development. For avoidance of doubt, the Parties agree that all provisions of this Agreement related to inter alia inspection, tests of construction milestones and operation and maintenance mutatis mutandis apply to the construction, completion, operation and maintenance of the Medical College. It is hereby understood that each of the relevant tranches of the Loan Facility shall be deposited by the Authority in accordance with the terms hereof by way of credit to the Escrow Account upon the requisite certification by the Independent Engineer, as described herein above.

- III. Regardless of the status of development of Medical College but without any prejudice to Concessionaire’s obligations in relation to mandatory phases, the Concessionaire shall repay the Loan Facility (along with applicable interest as aforesaid) maximum in ten equated annual instalments starting from achievement of COD of Medical College (“COD-MC”) in accordance with terms hereof; repayment to be made on or before expiry of ten years from COD of Medical College, as per the following repayment schedule: -

<b>S.No</b>	<b>Repayment of Tranches of Loan Facility (with interest)</b>	<b>Timeline for such repayment [with aforesaid interest rate applied from date of disbursement until relevant time of its repayment]</b>
1.	10%	On or before first anniversary of COD-MC
2.	10%	On or before second anniversary of COD-MC
3.	10%	On or before third anniversary of COD-MC
4.	10%	On or before fourth anniversary of COD-MC
5.	10%	On or before fifth anniversary of COD-MC
6.	10%	On or before sixth anniversary of COD-MC
7.	10%	On or before seventh anniversary of COD-MC
8.	10%	On or before eighth anniversary of COD-MC
9.	10%	On or before ninth anniversary of COD-MC

10.	10%	On or before tenth anniversary of COD-MC
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**IV.** Subject to terms herein, in the event of any default in the due completion of the aforesaid construction milestones related to Medical College and/or any repayment of Loan Facility, the same shall construed as Concessionaire’s Default event and shall be liable for treatment as per extant terms of this Agreement, which whether invoked or not in sole discretion of Authority, shall be without prejudice to Authority’s right to recover the Loan Facility or part thereof by encashment of one or more Optional Development Guarantee(s) furnished as per terms aforesaid, in which case the Concessionaire shall ensure that the same is replenished or new bank guarantee is provided so as to ensure that the unrecovered amount of Loan Facility is at all times secured by the Optional Development Guarantee(s), failing which the same shall amount to Concessionaire Default event. Further, if such default leads to termination, then Authority shall, without prejudice to above entitlement, have the option to recover the Loan Facility or part thereof by way of deduction (to the extent recoverable) of relevant amount from the Termination Payment payable hereunder, and in case of shortfall recover the same by encashment of one or more Optional Development Guarantee(s) to the extent required to recover the entire Loan Facility.

**f. Additional Facilities**

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, and without any prejudice to any obligations of the Concessionaire in regard to mandatory phased development in accordance with this Agreement, the Concessionaire shall from the Appointed Date, be entitled to undertake designing, constructing, financing, developing, operating and maintaining the following additional facilities (the "**Additional Facilities**") which are incidental or ancillary for provision of super specialty healthcare services as part of the Project; provided however, that the Concessionaire shall not, in any event, commence the operation and/or use of the Additional Facilities prior to the COD of Phase- I, failing which the same shall be deemed as Concessionaire Default hereunder. The Additional Facilities shall include:

- a. cafeteria;
- b. boarding and lodging facilities for the Patients, their attendants, doctors and other staff employed by the Hospital;
- c. pharmacy; and
- d. any other facilities that may be approved and/or notified, in writing, by the Authority from time to time during the Concession Period.

**g.** Subject to the provisions of this Agreement, Applicable Laws and Applicable

Permits, the Concessionaire shall have the right to exploit these Additional Facilities for commercial purposes with the right to sub-license any or all parts thereof which are coterminous with the Concession Agreement;

- h. To perform and fulfil all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## **ARTICLE 3 GRANT OF CONCESSION**

### **3.1. The Concession**

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence, leasehold rights and authority to construct, operate and maintain the Project (the "**Concession**") for a period of 50 (**fifty**) years, commencing from the Appointed Date ("**Concession Period**"), and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. Without prejudice to the initial term and regardless of the same, the Concession Period may be extended subject to and in accordance with the provisions set out below in this Clause 3.1.1.

The Concessionaire shall, regardless of the aforesaid, have the right to extend the initial term of 50 (fifty) years Concession Period by an additional term of maximum 10 (ten) years, at any time between the 45th anniversary of the Appointed Date to the 48th anniversary of the Appointed Date, by giving a written notice to the Authority. The Authority shall, subject to due performance of material obligations by Concessionaire, respond to such notice within 60 days. Provided, however, that this right of extension shall not be exercisable by the Concessionaire if any Concessionaire Default has occurred during the preceding five (5) years prior to the date on which the Concessionaire exercises its extension right during the aforesaid period by issue of said notice to the Authority.

Provided further that if any Concessionaire Default occurs at any time between the date on which the Authority grants extension subject to and in accordance with terms hereof, and, the 50th anniversary of the Appointed Date, the Concessionaire's right of extension for an additional term of 10 (ten) years shall lapse, unless otherwise agreed by the Authority in its sole discretion.

3.1.2. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority, on and from the Appointed Date, grants to the Concessionaire the exclusive lease, right, licence and authority to develop, operate and maintain the Project, subject to and in accordance with terms as follows:

- (a) Right of Way in terms hereof, and lease hold rights (as is granted under the Land Lease Agreement) in respect of the Site, and Existing Hospital for the purpose of operation, maintenance, rehabilitation, augmentation, development and management of the Project. ;
- (b) finance, develop, design, construct, operate, manage and maintain the Project in a phased manner in accordance with Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B;

- (c) finance, develop, design, construct, operate, manage and maintain the Optional Development (if any) in accordance with Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B and other terms of this Agreement;
- (d) provide Healthcare Services in the Project Facilities in accordance with the Specification and Standards set out in this Agreement, Applicable Laws and Applicable Permits;
- (e) Levy, demand, collect and appropriate Fee from Patients, commencing from the Appointed Date for availing of the Healthcare Services from the Existing Hospital, and thereafter also in respect of and from the incremental additions of other mandatory facilities/phase(s) comprising the Project, subject to and in accordance with this Agreement;
- (f) in the event of development of a medical college under Optional Development, subject to and in accordance with terms hereof, admit Students and determine, demand, collect and appropriate Tuition Fee from Students liable for payment of Tuition Fee for using the Medical College, in accordance with Applicable Laws and this Agreement;
- (g) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
- (h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
- (i) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement and the Substitution Agreement; and
- (j) to engage / deploy Select Employees of Paradip Port Trust in the Hospital in terms of this Agreement, from the Appointed Date.

### **3.2. Acceptance of Concession**

In consideration of the rights, lease, privileges and benefits conferred upon by the Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/ discharge all of its obligations in accordance with the provision hereof.

## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1. Conditions Precedent

- 4.1.1. Save and except as expressly provided in Articles 4, 9, 11, 25, 31, 40 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided however that a Party may grant waiver from satisfaction of any Conditions Precedent by the other Party in accordance with the provisions of Clause 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be amended.
- 4.1.2. The Authority shall satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of **180** (one hundred and eighty) days of the date of execution of this Agreement, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) executed the Land Lease Agreement (to be effective from Appointed Date) for the grant of the lease hold rights for the Site;
  - (b) granted lease hold rights to the Concessionaire for the Site and Existing Hospital, under and in accordance with the provisions of Land Lease Agreement;
  - (c) procured for the Concessionaire access to power supply, water supply and other basic infrastructure that may be required at the Site for the purposes of the Project; and
  - (d) issued necessary orders in relation to the deputation of the Select Employees in terms of this Agreement.

For avoidance of doubt, upon request in writing by the Authority, the Concessionaire may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2 and communicate the same in writing to the Authority.

- 4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have completed the following obligations within 180 days of date of execution of this Agreement:
- (a) provided the Performance Security to the Authority in accordance with Article 9;
  - (b) executed and procured execution of the Escrow Agreement;
  - (c) executed and procured execution of the Substitution Agreement;
  - (d) procured all the Applicable Permits specified in Schedule C, as may be



necessary for the commencement of development of the Project, unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) achieved Financial Close and delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement;
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (i) issued and allotted to Authority the Golden Share (defined hereinafter) in the issued and paid up share capital of the Concessionaire, and undertaken all related compliance with Companies Act, 2013, and applicable secretarial practices for such issue and allotment, and accordingly issue and allot to Authority one non - transferable equity share of the Concessionaire, such that Authority owns and holds, legally and beneficially, the Golden Share in the paid up capital of the Concessionaire; and
- (j) executed the Shareholders Agreement as per the form annexed herewith as Schedule R recording inter-alia the inter se rights and obligations of the Parties as shareholders, which the Shareholders shall exercise solely with a view to ensure and procure that Concessionaire adheres to its Project development , operation and maintenance obligations as enumerated under this Agreement.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3 For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit and communicate the same in writing to the Concessionaire.

4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent set forth in Article 4 within the period specified in respect thereof, respectively, and shall provide the other Party with such reasonable cooperation as may be required to

assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

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

## **4.2. Damages for Delay**

### **4.2.1. Damages for delay by the Authority**

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within 180 days of the date of this Agreement, and, (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of [0.1% (zero point one per cent)] of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, provided however that the damages shall be limited to amount equivalent to 20% of the Performance Security.

### **4.2.2. Damages for delay by the Concessionaire**

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days of the date of execution of this Agreement, and (ii) the delay has not occurred as a result of failure of Authority to fulfil the obligations under Clause 4.1.2 or due to Force Majeure, then in such event, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of [0.2% (zero point two per cent)] of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of [20% (twenty per cent)] of the Performance Security.

- 4.2.3. Without prejudice to the aforesaid provisions, in the event Appointed Date does not occur within 180 days of the date of this Agreement or any extended period specified under this Agreement, then all rights, privileges, claim and entitlements of the Concessionaire hereunder shall be deemed to have been waived, and shall cease to have effect with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual consent of the Parties. In case such termination happens by reason of failure of the Concessionaire to fulfil or procure waiver of its condition precedent obligations in accordance with terms hereof, then the Bid Security or equivalent amount from Performance Security [in case furnished to replace Bid Security] shall be encashed as Damages. However, in case termination happens by reason of non-fulfilment of condition precedent by Authority, the

Authority shall return the Bid Security or Performance Security, as the case may be.

## **ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE**

### **5.1 General Obligations of the Concessionaire**

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, procure finance for and undertake the development, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (save and except as specified in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Hospital;
  - (c) perform and fulfil its obligations under the Financing Agreements;
  - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - (f) not do or omit to do any act, deed or thing which may, in any manner, be in violation of any of the provisions of this Agreement;
  - (g) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Patients have

non-discriminatory access for use of the same under and in accordance with this Agreement;

- (h) ensure that Patients are treated with due courtesy and consideration and provided with ready access to services and information;
- (i) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (j) provide OPD consultation and primary care to PPT Beneficiaries during the Concession Period.;
- (k) transfer the Project to the Authority upon Termination or expiry of Concession Period, whichever is early of this Agreement, in accordance with the provisions thereof; and
- (l) Provide treatment to PPT Beneficiaries, Select Patients in the same premises used for providing treatment to the market patients.

5.1.5 In the event, PPT becomes the development regulation Authority, the Concessionaire shall comply with rules and regulations as prescribed by PPT. For avoidance of doubt, the Concessionaire shall consider PPT as development and regulation authority and shall be liable to pay all such development fee, premium, charges etc as applicable to PPT.

## **5.2 Obligations relating to Project Agreements**

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements and/ or any other agreement (other than this Agreement), and no default under any Project Agreement and/ or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.3 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the

**"Covenant"**). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, thereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

- 5.2.4 The Concessionaire shall be entitled to appoint the O&M Contractor for O&M of the Project, save and except for Core Clinical Services. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority. The decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to ensure compliance of the provisions of this Clause 5.2.4, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement and/ or under Applicable Laws. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall be entitled to appoint its Associate as the O&M Contractor for Core Clinical Services.

### **5.3 Obligations relating to Change in Ownership**

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

- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and if the Authority does not deny the approval required under this Clause 5.3.2 within a period of 90 (ninety) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such Change in Ownership is in accordance with the provisions of this Agreement. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

## 5.4 Obligation relating to Golden Share

5.4.1 The Concessionaire and the Selected Bidder shall execute an agreement with the Authority, substantially in the format specified at Schedule R (“**Shareholders Agreement**”), providing for the issue and allotment of a non-transferable equity share of the Concessionaire (“**Golden Share**”) in favour of the Authority, and shall inter alia provide for the following:

- a. appointment of a nominee of the Authority on the Board of Directors of the Concessionaire;
- b. an irrevocable undertaking that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire, Selected Bidder or any of its Associates or Affiliates;
- c. an irrevocable undertaking that any divestment of Equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the permitted successors, assigns and substitutes of Concessionaire shall be bound by such undertaking; and
- d. any other matter mutually agreed upon between the Parties.

5.4.2 The Parties expressly agree that the Shareholders Agreement shall further, provide that so long as the Authority holds the Golden Share, an affirmative vote of the Authority’s representative or the Director nominated by the Authority shall be necessary and required for passing of, by the general meeting of the Concessionaire’s shareholders or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following matters or any matter incidental or consequential thereto: (a) to alter or add to the provisions of the memorandum of association;

- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to reduce the share capital;
- (e) to commence any new lines of business;
- (f) to enter into a Related Party transaction as envisaged under Indian Companies Act, 2013 [and rules notified thereunder];
- (h) to apply to a court to wind-up the Concessionaire;
- (i) to wind-up the Concessionaire voluntarily;



- (j) for various other matters pertaining to the winding up of the Concessionaire;
- (k) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Company;
- (l) sale, transfer, lease, license or disposal of all or a substantial part of its business undertaking or assets whether in a single transaction or a series of transactions, related or not;
- (m) commencement of Optional Development subject to terms of this Agreement and in accordance thereof;
- (n) to sub-contract substantial part of its services and/or any Project related activity generating revenue from such sub-contracting; and
- (o) Undertaking any other business, directly or indirectly, through any means, device or arrangement.

5.4.3 The Parties agree that the Shareholders Agreement shall provide that till the time the Authority holds the Golden Share, it shall be entitled to nominate a person of its choice for appointment as a non-retiring Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall promptly appoint such person as Director in accordance with the Applicable Laws. Such nominee Director or any other nominated representative of Authority shall also have the right to attend the shareholder's meeting

5.4.4 In addition to the conditions specified in this Clause 5.4, the Parties agree and shall provide that till the time the Authority holds the Golden Share, the non-retiring Director nominated by the Authority shall have the right to issue directions to the Concessionaire at any time and from time to time during the Concession Period, in respect of the following matters and any matter incidental to such matters. The Articles of Association of the Concessionaire shall set out and enable the issue of Golden Share and the protections of rights, privileges and entitlements associated with it as provided hereunder, at all times during the Concession Period. Further, the Concessionaire unconditionally undertakes that such aforesaid directions by Authority's nominee Director in Board meeting or representative in shareholder's meeting, as the case may be, shall be final, conclusive and binding on the Concessionaire and shall be promptly fulfilled and complied with:

- (a) care and treatment of PPT Beneficiary and / or Select Patient
- (b) terms and conditions of employment for the Select Employees enlisted in Schedule D.
- (c) compliance with the Key Performance Indicators which are related to the Select Employees, PPT Beneficiaries and Select Patients.

For the avoidance of doubt, it is clarified that for the purposes of this Clause 5.4.4, in the event that the Concessionaire does not comply with the instructions issued by the Authority it shall be deemed to be a Concessionaire Default and the provisions of Article 33 shall be applicable.

#### **5.5 Obligations relating to employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

#### **5.6 Obligations relating to employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

#### **5.7 Obligations relating to aesthetic quality of the Project**

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Project and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects of repute to ensure that the design of the Project meets the aforesaid aesthetic standards.

#### **5.8 Sole purpose of the Concessionaire**

The Concessionaire having agreed and undertaken to exercise the rights and observe and perform its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement or any similar business related to health care.

#### **5.9 Branding of Hospital**

The Hospital or any part thereof shall not be branded in any manner to advertise, display or reflect the name of the Authority, except as expressly agreed by the Authority. The Concessionaire shall not claim in any manner that any of the

Healthcare Services provided in the Hospital is approved by the Authority for quality or for any other purpose and the Concessionaire shall be solely responsible for quality of Healthcare Services provided in the Hospital.

The Parties agree that the Hospital shall be known, promoted, displayed and advertised by the name, which shall include the name of Paradip Port Trust, and the Concessionaire shall while deciding the name of Hospital, take prior written approval of the Authority.

#### **5.10 Facilities for physically challenged and elderly persons**

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

#### **5.11 Applicable Laws and Safety Standards**

The Concessionaire shall at all times comply with applicable health and safety rules, regulations and Applicable Laws.

#### **5.12 Master Plan**

5.12.1 The Concessionaire shall no later than 90 (ninety) days of the Appointed Date, prepare and submit, for review and comments from the Independent Engineer/ authorised representative of the Authority, a draft master plan ("**Master Plan**") for the Project. The Master Plan shall include, but not be limited to, the following:

- (a) zoning and allocation of the areas for different Emergency Services, OPD Services, Inpatient Services, and Diagnostics Services for various phases of development;
- (b) Planning and lay out of the infrastructure required for the Site, including:
  - (i) roads and storm drainage;
  - (ii) common utilities like street lighting;
  - (iii) waste management and effluent treatment plant, sewage network;
  - (iv) car, two-wheeler and cycle parking area;
  - (v) area identified for installation of power back-up equipment;
  - (vi) storage area;
  - (vii) any other facilities necessary for and/or ancillary to a modern hospital.

- (c) specialties and super specialties to be provided in the Hospital with bed allocation plan;
- (d) details of all medical and clinical facilities and services to be provided in the Hospital including intensive care, ambulatory care services and other such medical and clinical facilities;
- (e) details of support Healthcare Services, facilities and utilities to be provided including diagnostics, mortuary, administration/back office, pharmacy and cafeteria;
- (f) medical waste disposal and treatment facilities;
- (g) detailed project milestones during construction phase for quarterly monitoring of the progress
- (f) any other statutory requirement, which may be required

In addition to the above, the Concessionaire is required to provide the details of medical and non-medical equipment or any further information as may be reasonably required by the Authority.

5.12.2 On receipt of the Master Plan, Independent Engineer/ authorised representative of the Authority shall review the Master Plan submitted by the Concessionaire and provide its comments/observations and suggestions on the same within 30 (thirty) days from the date of the receipt of such Master Plan by the Independent Engineer/ authorised representative of the Authority. Upon receipt of such comments/observations and suggestions from the Independent Engineer/ authorised representative of the Authority, the Concessionaire shall submit the revised Master Plan to the Independent Engineer/ authorised representative of the Authority and the Independent Engineer/ authorised representative of the Authority shall submit the same for the approval of the Authority.

5.12.3 Upon receipt of the such Master Plan, the Authority in its capacity as the special planning authority, shall review the said Master Plan and grant approval to the same with such modifications, as reasonably deemed fit to the Authority, in compliance with the Applicable Laws and Project requirements/scope, and shall intimate the same to the Concessionaire. It is further agreed that no grant of approval by the Authority shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.12.4 The Concessionaire shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification or in resubmitting the Master Plan.

5.12.5 Notwithstanding the review by the Authority, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Master Plan relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.

5.12.6 The Concessionaire shall in no way represent to any person that, as a result of any review by the Authority, the Authority have accepted responsibility for the quality or standards of any work relating to the Project or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

### **5.13 Hospital Management Information System**

5.13.1 The Concessionaire shall within 30 days of the Appointed Date, or with Authority's prior approval, later but in any case prior to COD of Phase 0, at its own cost install, operate and maintain a computerized Hospital Management Information System ("HMIS") so as to ensure that the records of all Project related activities are computerized and maintained in a structured manner.

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

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

- (a) ward availability for Select Patients and any other Patients covered under Insurance Scheme;
- (b) doctor's availability for OPD consultation;
- (c) slot availability of Diagnostic Services relating to the Select Patients;
- (d) number of Select Outpatients, Select Inpatients treated on daily as well as cumulative basis during any year;
- (e) number of Select Patients having availed of Diagnostic Services; and
- (f) any other information as may be reasonably requested by the Authority.

5.13.4 The HMIS should provide the following information:

- (i) Patient registration (Outpatient, Inpatient, Emergency Care) with Hospital identification number, which can be coordinated with the AADHAAR Card No. /Mobile No. etc.;
- (ii) Outpatient record;
- (iii) Inpatient record;
- (iv) Bed management with online ward transfers;

- (v) discharge summary and final disease diagnosis;
- (vi) appointment scheduling;
- (vii) Wards management module;
- (viii) laboratory information system;
- (ix) Radiology information system;
- (x) Patient billing;
- (xi) Human resource management including doctors, paramedical staffs and other staff;
- (xii) Natal and postnatal records; and
- (xiii) Referral services.

5.13.5 For the purpose of identification of Select Patients, the HMIS shall have the facility required for integrating the Identification Cards for the purpose of identifying Select Patients. All necessary hardware and software shall be developed and installed in this regard by the Concessionaire and/or its Contractor.

#### **5.14 Website of the Hospital**

5.14.1 The Concessionaire shall assist Authority by way of providing information and data for operating and maintaining a comprehensive webpage as a part of the Paradip Port Trust website for the Project (“**Hospital Website**”).

5.14.2 The Concessionaire may maintain a separate website for the Hospital on its own expenditure without any liability to the Authority. For avoidance of doubt, it is clarified that the obligations under Clause 5.14.1 shall be performed irrespective of the actions taken under Clause 5.14.2.

### **5.15 Obligations relating to Select Employees**

- a. A Select Employee may at any time by a notice of not less than 60 (sixty) days to the Concessionaire, shall have an option to be relieved from his duties at the Hospital for the purpose of seeking voluntary retirement, and upon receipt of such notice, the Concessionaire shall repatriate the services of such Select Employee to the Authority, on or before expiry of the period of such notice.
- b. In the event any Select Employee resigns or seeks voluntary retirement, as the case may be, from the services of the Authority, the Concessionaire shall be informed by the Authority within 30 (thirty) days of acceptance by the Authority of such resignation or voluntary retirement by the Select Employee.
- c. The Concessionaire shall forthwith clear all its dues towards Select Employees for applicable period in case of retirement/resignation from employment (if any).
- d. The Concessionaire may negotiate with the Select Employees and take action as provided under the Applicable Law to change the working practices and conditions of the Select Employees.
- e. The Concessionaire may devise a performance linked incentive based on the throughput and productivity of the Select Employees. The Select Employees shall have an option to either choose to avail the performance linked incentive or not at any time during the Concession Period based on the applicability and terms & conditions as may be set-forth by the Concessionaire.
- f. The working hours of the Select Employees, leaves and public holidays shall be as per existing PPT service rules.
- g. Subject to the aforesaid in this Clause, the Concessionaire shall be free to fix its own work practices (including without limitation, meaning, pattern for providing health care services, wage structure for employees, working hours and shift systems, and other welfare measures for the employees including incentive schemes) which may be different from those of the PPT, provided however the Concessionaire shall adhere to the applicable laws and shall comply with the same.
- h. All disciplinary actions/penalizes against the deputed employees of the authority will be initiated and conducted /levied by the Authority /Board only.
- i. If in future, the Govt./ Ministry of Shipping /Board offers/implements SVRS scheme, the same shall be applicable to the deputed staff/employees under/with the same terms and conditions as applicable to the employees working under the authority/Board.
- j. Notwithstanding anything specified in this Clause 5.15, the Authority shall be entitled to fill vacancies arising out of promotion, movement to other ports, or any other reasons for the posts identified under composite method. The Authority shall further be entitled to revoke deputation of the employees identified under composite method of selection for Ports.



- k. The Concessionaire should allow and assist to all the research and academic activities by clinical staff as required by the various statutory bodies having jurisdiction in this regard.
- l. As per the existing practice, all the doctors of the Hospital should be fully sponsored to attend academic activities such as conference/workshops/training programme national and/or international, twice in a year to enhance their clinical skills and knowledge.
- m. Preference shall be given to the contractual employees of the Existing Hospital while hiring employees for the Hospital. For avoidance of doubt, it is hereby clarified that such contractual employees, if hired shall be under the employment and payrolls of the Concessionaire and cost of such employees shall be borne by the Concessionaire.
- n. The Select Employee shall continue to provide services at the Hospital and shall not be transferred to any other establishment or subsidiary establishment of the Concessionaire at any other location.
- o. The Select Employee serving in the employment immediately prior to the Appointed Date, shall have the same work profile and practice as per their designation as defined in the Recruitment Rules (RR) of the Authority. The Select Employee shall not be required to perform any duty below their designation. Any deviation in the work profile and working hours as defined in the RR and related compensation, shall be mutually agreed between the Select Employee and the Concessionaire.

#### **5.16 Obligation of the Concessionaire in relation to the PPT Beneficiaries and Select Patients**

The Concessionaire agrees, undertakes and acknowledges that during the Concession Period, the Concessionaire shall procure, adhere to and ensure full compliance with the following obligations:

- (i) the PPT Beneficiaries and Select Patients shall have first right to use at least 12,775 bed days (viz equivalent to [35] beds) per annum from Appointed date till COD of Phase I; from COD of Phase I to COD of Phase II the PPT Beneficiaries and Select Patients shall have first right to use at least 18250 bed days (viz equivalent to [50] beds) per annum and thereafter at least 27375 bed days (viz. equivalent of [75] Beds) per annum from COD of Phase II onwards during the remaining Concession Period. Further, it is clearly recorded and understood by the Parties that in case at any time the respective applicable bed days are not available for providing treatment / Healthcare Services to PPT Beneficiaries and/or Select Patient, for any reason other than occupancy thereof by PPT Beneficiaries and/or Select Patient or Force Majeure, then Concessionaire shall make available the beds available for market Patient at same regulated rates as applicable to PPT Beneficiaries and/or Select Patient.

- (ii) no PPT Beneficiaries or Select Patient shall be denied IPD services for treatment and procedures available at any time or from time to time at the Project Hospital or any part thereof;
- (iii) rooms shall be allotted to PPT Beneficiaries according to the class of employee (as per extant PPT rules) and as per CGHS norms;
- (iv) no payment shall be charged directly or indirectly from the PPT Beneficiaries and Select Patients for availing any of the services such as OPD, IPD and Diagnostic Services including providing any medicine, consumables, implants etc.; and
- (v) it shall give first priority to the PPT Beneficiaries followed by Select Patients over any other patient for Healthcare Services including OPD, IPD and Diagnostic Services.
- (vi) The Concessionaire shall complete the Project Milestones, as defined in Schedule H-Project Completion Schedule. During the Construction Period of the Project (Phase 0, Phase I, Phase II and Phase III), the Authority shall continue to refer its PPT Beneficiaries and / or Select Patients as per the existing referral system to other empanelled hospitals for the healthcare services not available in the Hospital. In the event, the Concessionaire is not able to achieve Commercial Operation Date or not able to provide Healthcare Services in accordance with Schedule A, Schedule M, Schedule O and other relevant provisions of Draft Concession Agreement for the respective Phases, the PPT Beneficiaries and / or Select Patients shall continue to avail treatment as per the existing referral system to other empanelled hospitals and the Concessionaire shall bear the cost of such treatment along with any damages for such delay in accordance with the provisions of the Draft Concession Agreement. The Authority shall reimburse to the Concessionaire the costs for such treatment as per the applicable CGHS Rate, Bhubaneswar or actual treatment cost, whichever is lower.

#### **5.17 Obligation of the Concessionaire related to payments to the Authority**

The Concessionaire shall make payments to the Authority in terms of the Article 26 and other provisions of this Agreement.

#### **5.18 Obligation of the Concessionaire regarding the CMO**

The Concessionaire shall provide a designated built up and equipped office space of 2000 sq. ft. within the Hospital premises for the office of CMO. The CMO/CMO office shall address all issues and grievances of the Select Patients, Select Employees and PPT Beneficiaries.

## **ARTICLE 6: OBLIGATIONS OF THE AUTHORITY**

### **6.1 General Obligations of the Authority**

- (a) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- (b) Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:
  - (i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
  - (ii) transfer the Site to the Concessionaire and ensure that no barriers are erected or placed on or about the Site and/or Project, as the case may be, by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, emergency, national security, or law and order. Authority shall, in case Optional Development is demonstrably elected to be undertaken by Concessionaire, make available adequate additional land as required to comply with Medical Council of India/competent authority's requirement in respect of development of Medical College, in which case such additional land shall be deemed to form part of the Site being given on leasehold basis under the lease agreement executed for this purpose;
  - (iii) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
  - (iv) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
  - (v) monitor adherence to all Key Performance Indicators by the Concessionaire during the Concession Period;
  - (vi) make all payments to the Concessionaire in the manner and within the time period specified in this Agreement;

- (vii) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements;
- (viii) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring empanelment of the Project with any insurance scheme that may be announced by the State Government, from time to time;
- (ix) upon written request from the Concessionaire and prior to the application to MCI or equivalent authority for an LOI in respect of the Medical College, provide reasonable assistance to procure affiliation with a university for the purposes of operation and maintenance of the Medical College on best effort basis;
- (x) ensure that the Authority holds and owns (legally and beneficially, with all associated rights as provided hereunder), the Golden Share in the issued and paid up share capital of the Concessionaire throughout the Concession Period;
- (xi) the CMO / Authority may refer at all the time during Concession Period, in writing any Select Patient(s) for free treatment as a part of CSR initiative or otherwise. The reimbursement for such provision of Healthcare Services shall be made by the Authority at CGHS rates, as prevailing in Bhubaneswar in accordance with the provision of this Agreement. For avoidance of doubt, it's not binding on the Authority to refer such patients, and the referral of such Select Patient (if any) shall not be applicable towards fulfilling of the Concessionaire's obligations arising from any other obligation of Concessionaire to treat the related BPL Patient free of cost. The Authority shall not reimburse for such Patients;
- (xii) Provide 20 (twenty) residential quarters to Concessionaire for its staff i.e. doctor and nurses etc. (other than Select Employees) from COD of Phase 0 and from COD of Phase I till the end of the Concession Period, 30 (thirty) additional residential quarters may subject to availability be provided at a rent as per applicable Scale of Rates(SoR)
- (xiii) Upon written request made by Concessionaire post occurrence of COD of Phase II, Authority may, subject to availability, make available residential

quarters against payment of rent as per then existing SoR.

- (xiv) Upon request made by Concessionaire in writing, Authority may, on reasonable effort basis, request interested PSUs and/or other entities operational in the neighborhood to refer patients to the Project hospital for availing treatment.

Notwithstanding anything in this Clause, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire (save and except the expressly enumerated payments in Clause 26).

## **6.2 Access to Infrastructure**

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

## **6.3 Authority's Employees**

- 6.3.1 The existing permanent employees of the Authority serving in connection with the Existing Hospital shall continue to remain in the employment of the Authority and the Concessionaire shall have obligations in relation thereto as provided in this Clause 6.3.
- 6.3.2 The Parties agree that, the obligations of the Concessionaire, subject to Clause 5.15, for and in respect of the employees of the Authority shall be restricted to (i) all permanent clinical and non-clinical employees of the Authority serving in connection with the Existing Hospital, details of the same have been set forth in Schedule D and whose particulars have been verified and accepted for their veracity by the Concessionaire (the "**Select Employees**").
- 6.3.3 The Authority shall not be filling up the vacancies in respect of the Select Employees.
- 6.3.4 The Authority shall continue to pay the salaries and other statutory benefits for the Select Employees. In this regard, it is being understood by Parties that ballpark estimate of the outflow towards meeting the salaries of the Select Employee shall be equivalent to INR 2.99 Cr for the year 2019-20.
- 6.3.5 The Authority shall endeavour to protect the interest of Select Employees during the Concession Period
- 6.3.6 On the day of retirement of any of the Select Employees during the Concession

Period, such employee shall be entitled to receive all post-retirement benefit from Authority. For avoidance of doubt, if the Select Employee decided to resign from the employment of Authority and join the Concessionaire, he/she shall be entitled for postretirement benefit from Authority in accordance with the PPT Service Rules.

- 6.3.7 The Authority shall, subject to terms hereof, provide residential accommodation for the Select Employees.

## **ARTICLE 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS**

### **7.1 Representations, warranties and undertakings of the Concessionaire**

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

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

knowledge, threatened against it at law or in Equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (k) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (l) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {Selected Bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its subscribed and paid up Equity as on the date of this Agreement and thereafter until 3 years from the COD of Phase I; and that no Member [except Lead Member] of the Consortium whose technical and financial capacity was evaluated for the purposes of qualification in response to the Request for Proposal shall hold less than 10% (ten per cent) of such Equity until 3 years from the COD of Phase I; and that the Lead Member of the Consortium shall hold not less than 26% (twenty six per cent) of such Equity which shall be equivalent to at least 5% (five per cent) of the Total Project Cost until 3 (three) years from COD of Phase I and during the Concession Period till 3 (three) years from COD of Phase I, the Lead Member shall ensure that its shareholding amounts to and is equivalent to at least 50% of the shareholding of the Consortium in the subscribed and paid up Equity of the Concessionaire;
- (m) {the Selected Bidder/ Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement



under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;

- (o) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) all information provided by the Selected Bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- (s) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings; and

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

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

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement; and
- (f) it has good, legal and valid right and title to the Site, and has the power and authority to handover the Site to the Concessionaire for the development of the Project in accordance with the terms of this Agreement.

### **7.3 Disclosure**

- (a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of it. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of a Party under this Agreement.
- (b) Neither the Authority nor any of its agents or employees shall be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
  - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; or
  - (ii) any failure to make available to the Concessionaire any materials, documents, Drawings, plans or other information relating to the Project.

## **ARTICLE 8: DISCLAIMER**

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

## **ARTICLE 9: PERFORMANCE SECURITY**

### **9.1 Performance Security**

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 180 (One Hundred and Eighty) days of the Execution Date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 10,00,00,000/- (Rupees Ten Crores only) substantially in the format set forth in Schedule E (the "**Performance Security**"). The Concessionaire shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Clause 9.1. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to provisions of Article 4 hereof, in the event that the Concessionaire does not fulfil one or more Condition Precedent obligations within the specified time period, including furnishing of the Performance Security within the specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **9.2 Appropriation of Performance Security**

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent on failure to pay such Damages. Subject to this Agreement being valid and in force in accordance with the terms hereof, upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security valid for the duration of the Performance Security Period. In the event that the Concessionaire fails to do so, the Authority shall be entitled to terminate this Agreement in accordance with Article 33.

### **9.3 Release of Performance Security**

The Performance Security shall remain in force and effect until expiry of a period of 6 (six) months from the COD of Phase III, ("**Performance Security Period**"), and shall be released upon provision of a Performance Guarantee in accordance with the provisions of Clause 9.4.

### **9.4 Performance Guarantee**

9.4.1 The Concessionaire shall, for the performance of its obligations under the Agreement relating to the operation and maintenance of the Project, provide to the Authority no later than 30 (thirty) days prior to expiry of the Performance Security, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 5,00,00,000 (Rupees five crores only) in the form set forth in Schedule-F (the "**Performance Guarantee**"). Until such time the Performance Guarantee is provided by the Concessionaire pursuant hereto and the same comes into effect, the Performance Security shall remain in force and effect, and upon such provision of the Performance Guarantee pursuant hereto, the Authority shall release the Performance Security to the Concessionaire.

9.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Guarantee is not provided by the Concessionaire within a period of 30 (thirty) days prior to expiry of the Performance Security, the Authority may encash the Performance Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

### **9.5 Appropriation of Performance Guarantee**

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Guarantee as Damages for such Concessionaire Default. Upon such encashment and appropriation from the Performance Guarantee, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Guarantee, and in case of appropriation of the entire Performance Guarantee provide a fresh Performance Guarantee, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Guarantee as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 33. Upon replenishment or furnishing of a fresh Performance Guarantee, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default,

and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Guarantee as Damages, and to terminate this Agreement in accordance with Article 33.

**9.6 Release of Performance Guarantee**

The Performance Guarantee shall remain in force and effect during the entire remaining Concession period and subject to provisions of Clause 9.5, shall be released after 120 (one hundred and twenty) days of Termination in accordance with this Agreement.

## ARTICLE 10: SITE

### 10.1 The Site

The Site of the Project shall comprise of the super specialty hospital and the building described in Schedule-A, which shall comprise of 8.45 acres of land, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a lease under and in accordance with this Agreement (the "**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 Hospital as set forth in Schedule-A and the Land Lease Agreement.

In case of development of a Medical College, as mutually decided upon by the Authority and Concessionaire, the Authority shall provide additional land, as may be required to comply with Medical Council of India/competent authority requirement in respect of development of Medical College ("**Additional Land**"). Upon handing over of such Additional Land by the Authority to the Concessionaire, such Additional Land shall become part of the Site and all the terms, conditions, rights and obligations of the Concessionaire in relation to Site provided for the Project shall apply mutatis mutandis for such Additional Land being provided for development of the Medical College. For the avoidance of doubt, prior to handing over of the Additional Land by the Authority to the Concessionaire, by way of Lease under this Clause 10.1, the Parties shall agree to amend the land lease agreement provided in Scheduled G, to include Additional Land.

### 10.2 Lease, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Concession Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the Covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby agrees to grant under the Land Lease Agreement, to the Concessionaire, commencing from the Appointed Date, leasehold rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Leased Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Leased Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Leased Premises, hereditaments

or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever through the execution of the land lease agreement substantially in the form and manner annexed hereto as Schedule G ("**Land Lease Agreement**").

10.2.3 The lease, access and Right of Way granted by this Agreement and the Land Lease Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing approach road of the Project or an alternative thereof is open to users at all times during the Concession Period.

10.2.4 It is expressly agreed that the leasehold rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Land Lease Agreement, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-lessee, the leasehold rights in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the leasehold rights granted under the Land Lease Agreement hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Site are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

### **10.3 Procurement of the Site**

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site 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. Such memorandum shall have appended thereto an appendix (the "**Appendix**") 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 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the



provisions of Clause 10.2.2, be deemed to constitute a valid Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and Land Lease Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid leasehold rights and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and the Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Project.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 60 (sixty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 1,000 (Rupees one thousand) per day for every 100 (hundred) square metres or part thereof, commencing from the 61st (sixty first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Completion Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 60 (sixty) days of the Appointed

Date shall be completed before the Commercial Operation Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

#### **10.4 Site to be free from Encumbrances**

The Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Leased Premises shall not be deemed to be with Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

#### **10.5 Protection of Site from encroachments**

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

#### **10.6 Special/temporary right of way**

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Hospital and the performance of its obligations under this Agreement.

#### **10.7 Access to the Authority, Independent Engineer and Independent Panel**

The licence, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, the Independent Engineer, the Independent Panel and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

## **10.8 Geological and archaeological finds**

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

## **ARTICLE 11: UTILITIES AND ASSOCIATED RIGHT OF WAY**

### **11.1 Existing utilities and right of way**

11.1.1 Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that right of way or utilities, on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the approval of the Authority or the relevant Government Instrumentality.

### **11.2 Shifting of obstructing utilities**

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

## **ARTICLE 12: DEVELOPMENT OF THE PROJECT**

### **12.1 Obligations prior to commencement of construction**

Prior to the commencement of Construction Works, the Concessionaire shall, along with the Master Plan:

- 12.1.1 submit to the Authority its design, methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule H;
- 12.1.2 appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- 12.1.3 make its own arrangements for quarrying of materials needed for the Construction Works Project under and in accordance with the Applicable Laws and Applicable Permits.

### **12.2 Drawings**

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

- 12.2.1 The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Independent Engineer for review. Such Drawings shall be prepared taking into account the requirements of the Project;
- 12.2.2 by submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project and the Specifications and Standards;
- 12.2.3 within 15 (fifteen) days of the receipt of the Drawings in respect of relevant phase, the Independent Engineer shall review the same and convey its 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 Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) day period and may begin or continue Construction Works at its own discretion and risk;
- 12.2.4 if the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project and the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to

the Independent Engineer for review within 7 (seven) days. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

12.2.5 no review or observation of the Independent Engineer and/or its failure to review or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;

12.2.6 within 30 (thirty) days of the COD of each respective Phase, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of the Hospital. Upon achieving the Project COD, the Concessionaire shall be required to submit the updated as-built Drawings of entire Project in the manner set out above. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule I; and

12.2.7 The Concessionaire shall seek the prior approval of the Authority and/or the Independent Engineer in case of any alteration, modification or changes to the Drawings. The Concessionaire shall submit such revised Drawings to the Authority and/or the Independent Engineer and the Authority and/or the Independent Engineer who shall review such revised Drawings in accordance with the provisions of this Clause 12.2.

### **12.3 Development of Project**

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake to complete the Construction Works for the Project as specified in Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B.

12.3.2 The Concessionaire agrees and undertakes that it shall complete the Construction Works for the Project or any phase thereof, as the case may be, in accordance with the Project Completion Schedule set forth in Schedule H and, shall be completed on or before the relevant Scheduled Completion Date. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-H, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all the Scheduled Completion Dates are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-H shall be deemed to be modified accordingly and the provisions of this

Agreement shall apply as if Schedule-H has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.3.3 Without prejudice to the provision of clause 12.3.2 above, in the event that the full Project is not completed within 180 (one hundred and eighty) days from the Scheduled Project Completion Date, unless the delay is on account of reasons solely attributable to the Authority (including those specified in Article 11) or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Law or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of 180 (one hundred and eighty) days and allow for a weekly/ monthly extension beyond such period of 180 (one hundred and eighty) days; provided that the Concessionaire agrees and pays in advance, the liquidated damages calculated in accordance with Clause 12.3.2 above, for each day of such extension. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid liquidated damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3. For the avoidance of doubt, it is clarified that this Clause shall not prejudice, in any manner whatsoever, the Authority's right of Termination under any other provision of this Agreement.

## **12.4 Optional Development**

- 12.4.1 The Concessionaire shall, subject to provisions of this Agreement including Clause 2.1(e) hereof have the right to exercise an option of undertaking construction of Medical College anytime during the Concession Period subject to fulfilment of Medical Council of India/competent authority's requirement in respect of development of Medical College. The Concessionaire shall, subject to aforesaid provision, only commence the construction for Optional Development post receiving written approval from the Authority. Provided, however, such approval from Authority, if granted shall be without prejudice to Concessionaire's obligation towards inter alia operation and maintenance of Mandatory Phases of the Project in accordance with provisions of this Agreement.
- 12.4.2 At any time during the Concession Period, the Concessionaire has, subject to and in accordance with terms hereof, an option to undertake the Optional Development. All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of the Project shall apply mutatis mutandis for the development and operation of the Optional Development, including, submission of periodic reports and other relevant documents to the Independent Engineer under Articles 13 and 14; provided that the construction of Optional Development is carried out in such manner that it does not prejudice the Master Plan and the Drawings. For

avoidance of doubt, it is clarified that in relation to the development and construction of Optional Development the Concessionaire shall, except as otherwise stipulated elsewhere in this Agreement, not be required to re-submit the Master Plan and the Drawings unless the Concessionaire has or intends to modify, alter or make any changes to the Master Plan and/or the Drawings.

### **ARTICLE 13: MONITORING OF CONSTRUCTION**

#### **13.1 Monthly progress reports**

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

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

#### **13.2 Inspection**

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

#### **13.3 Delays during construction**

Without prejudice to the provisions of Clause 12.3 and 12.4 if the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall notify the Authority and the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, inform the Independent Engineer and the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the COD.



### 13.4 Suspension of unsafe Construction Works

- 13.4.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Existing Hospital or public.
- 13.4.2 The Concessionaire shall, pursuant to the notice under Clause 13.4.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.4 shall be repeated until the suspension hereunder is revoked.
- 13.4.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.4.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such dates in the Project Completion Schedule in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

## **ARTICLE 14: COMPLETION CERTIFICATE**

### **14.1 Completion Tests**

14.1.1 At least 30 (thirty) days prior to the likely completion of the Construction Works for Project or any Phase thereof (namely, Phase-0 and/or Phase-I and/or Phase-II and/or Phase-III and/or Optional Development), as the case may be, the Concessionaire shall notify the Independent Engineer and/or the Independent Panel, as the case may be, of its intent to subject the Project or any phase thereof to Completion Tests. The date and time of each Test shall be determined by the Independent Engineer and the Independent Panel, as the case may be, in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Completion Tests. The Concessionaire shall provide such assistance as the Independent Engineer and/or the Independent Panel, as the case may be, may reasonably require for conducting the Completion Tests. In the event of the Concessionaire, the Independent Engineer and/or the Independent Panel, as the case maybe, failing to mutually agree on the dates for conducting the Completion Tests, the Concessionaire shall fix the dates by not less than 7 (seven) days' notice to the Independent Engineer and/or the Independent Panel, as the case may be.

14.1.2 All Completion Tests shall be conducted in accordance with Schedule J. The Independent Engineer and/or Independent Panel, as the case may be, shall observe, monitor and review the results of the Completion Tests to determine compliance of the Project, as the case may be, with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer, as the case may be, during the course of any Test that the Project, as the case may, be 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 Engineer and/or the Independent Panel, as the case may be, shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Completion Tests, in accordance with Good Industry Practice, for determining the compliance of the Project, as the case may, with Specifications and Standards.

### **14.2 Completion Certificate**

#### **14.2.1 Completion Certificate for Project**

Upon completion of Construction Works of the Project and within 5 (five) days of determination by the Independent Engineer and/or the Independent Panel, as the case may be, of the successful completion of all Completion Tests in accordance with Clause 14.1 above, for Phase-0, Phase-I, Phase-II, Phase-III or Optional

Development, as the case may be, the Independent Engineer and/or the Independent Panel shall issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule K (the "**Completion Certificate**") for the relevant phase.

- 14.2.2 In the event that upon successful determination by the Independent Engineer and/or the Independent Panel, as the case may be, of the successful completion of all Completion Tests in accordance with Clause 14.1 above, the Independent Engineer and/or the Independent Panel, as the case may be, fail to issue the Completion Certificate to the Authority and the Concessionaire within the time specified in this Clause 14.2.1 for a relevant Phase, at the end of such period, such Completion Certificate for Project or any Phase thereof, as the case may be, shall be deemed to have been issued to the Authority and the Concessionaire in accordance with the provisions of this Clause 14.2.1 ("**Deemed Completion Certificate**").

### **14.3 Provisional Certificate**

The Independent Engineer and/or the Independent Panel, as the case may be, may, at the request of the Concessionaire, certify in writing if the Completion Tests are successful and all the facilities required for Project or any phase thereof, as the case may be, can be safely and reliably placed in commercial operation despite some works being incomplete. Upon such provisional certification the Concessionaire shall be entitled to demand and collect the Fee in relation to the completed part for rendering Services in accordance with this Agreement. For the avoidance of the doubt the Parties agree that notwithstanding anything to the contrary contained in this Clause 14.3, the obligations contained in Clause 12.3 shall continue to be binding on the Concessionaire. Such provisional certificate, if issued, shall carry a punch list ("**Punch List**") of the remaining items to be completed, and the time period within which the same has to be completed for issue of completion certificate in respect thereof. Any failure to comply with the terms of the provisional certificate in regard to completion of punch list items enumerated therein shall make the Agreement liable for termination as if it were Concessionaire's event of default.

### **14.4 Rescheduling of Tests**

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

## ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

### 15.1 Commercial Operation Date

The Phase-0, Phase-I, Phase-II, Phase-III or the Optional Development, as the case may be, shall be deemed to be complete when the Completion Certificate/provisional certificate/Deemed Completion Certificate, as the case may be, for the respective Phase 0, Phase I, Phase-II or Phase-III or Optional Development, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of such Phase, shall be the date on which any of such aforesaid certificate for respective Phase is issued (which date shall be the "**COD**" or "**Commercial Operation Date**") for respective Phase. The Phase-0, Phase-I, Phase-II, Phase-III and/or Optional Development, as the case may be, shall enter into commercial service on respective COD of each such relevant Phase whereupon the Concessionaire shall be entitled to provide Healthcare Services in accordance with terms of this Agreement, and charge, collect and appropriate Fee in lieu thereof from the respective completed phase or entire Project, as the case may be, in compliance with terms of this Agreement and Applicable Laws; provided, however, that without prejudice to Concessionaire's obligation to undertake and ensure the entry of Phase-0, Phase-I, Phase-II, Phase-III and/or Optional Development, into commercial service and aforesaid entitlement to collect Fees there from in accordance with terms hereof, the Concessionaire shall be obligated to operate and maintain the Existing Hospital from Appointed Date on "as is where is" basis with existing level of healthcare services until COD of Phase 0 is achieved as per terms hereof; collect Fee from market patients commencing from Appointed Date against provision of Healthcare Services at the Existing Hospital facilities subject to compliance with Applicable Laws and Applicable Permits; however the Concessionaire's obligation in respect of revenue share shall only commence from COD of Phase 0.

## **ARTICLE 16: CHANGE OF SCOPE**

### **16.1 Change of Scope**

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

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

### **16.2 Procedure for Change of Scope**

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

- (i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (ii) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its Contractors, any impact on the operations or the cost of operation of the Project, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer or the Independent Panel as reasonable.

Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance, thereupon of the Independent Engineer or the Independent Panel or both, as the case may be, make good faith

efforts to agree upon the time and costs for implementation thereof.

16.2.3 Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

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

### **16.3 Payment for Change of Scope**

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer or the Independent Panel, as the case may be. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire 50% (fifty per cent) of such amounts as are certified by the Independent Engineer or the Independent Panel, as the case may be, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1.

### **16.4 Restrictions on certain works**

Notwithstanding anything to the contrary contained in this Article 16, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the Project and issuing the Completion Certificate.



## **ARTICLE 17: OPERATION AND MAINTENANCE**

### **17.1 O&M obligations of the Concessionaire**

17.1.1 During the Operation Period of the Existing Hospital (with effect from Appointed Date) and of the respective Phase, the Concessionaire shall operate and maintain the Existing Hospital or Project or respective Phase thereof, as the case may be, either by itself or through the O&M Contractor, subject to the provisions of Clause 5.2.4 and shall, further develop, modify, repair or otherwise make improvements to the Existing Hospital or Project or any Phase thereof, as the case may be, to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted treatment and care of Patients in the Project hospital or any part thereof during normal operating conditions;
- (b) subject to Clauses 21.2, and this Article 17, making the Project or any Phase thereof , as the case may be, available for use round the clock 24 (twenty four) hours a day and 365 or 366 (three hundred and sixty five or three hundred and sixty six) days a year during the Concession Period and meeting the service level requirements as specified in this Agreement and in accordance with Good Industry Practice, Applicable Permits and Applicable Laws;
- (c) collecting and appropriating the Fees from market Patients and/or from the Authority in respect of Select Patient and PPT Beneficiaries and/or an the insurance companies providing insurance scheme (as the case may be);
- (d) collecting and appropriating the Tuition Fee from Students in case Optional Development is undertaken;
- (e) minimizing disruption to Patient care in the event of accidents or other incidents affecting the safety and use of the Project or any phase thereof by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (f) achieve and maintain accreditation of the Project or any Phase thereof with NABH in accordance with Clause 21.4 and accreditation of Medical College with MCI or equivalent authority throughout the Concession Period for the operation of the Project or any Phase thereof, and other allied medical facilities;
- (g) carrying out periodic preventive maintenance of the Project or any Phase



thereof;

- (h) undertaking routine maintenance including prompt repairs of the Project or any Phase thereof, as the case may be including its structures and Equipment;
- (i) undertaking major maintenance such as repair or replacement of Equipment, repairs to structures, and repairs and refurbishment of HMIS and communication system;
- (j) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Hospital;
- (k) protection of the environment and provision of Equipment and materials thereof;
- (l) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Hospital;
- (m) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, staff, government agencies, media and other agencies;
- (n) complying with Safety Requirements in accordance with Article 18;
- (o) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (p) maintaining punctuality and reliability in operating the Hospital;
- (q) maintaining a high standard of cleanliness and hygiene in the Hospital;
- (r) operating and maintaining the Beds, the Equipment and HMIS in accordance with the provision of this Agreement;
- (s) providing Healthcare Services to the Patients and Medical Education Services to the Students, as the case may be, in accordance with the provisions of this Agreement and Applicable Laws ;
- (t) adhering to the Key Performance Indicators set out in Schedule L;
- (u) adhering to the requirements of Clause 5.11;
- (v) providing and maintaining adequate parking space;

- (w) appointing and retaining the human resource requirements in accordance with the provisions of this Agreement;
- (x) ensuring that immediate medical aid is provided to all Patients, including medico-legal cases without waiting for arrival of police or legal formalities;
- (y) removing promptly from the Project or any Phase thereof, as the case may be, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste (including, without limitation, Project disposals) and keep the Project, as the case may be, in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice;
- (z) Subject to the provisions of this Agreement, the Concessionaire may, in its discretion participate in the government programs relating to health care as notified by the Authority;
- (aa) maintaining, in conformity with Good Industry Practice, all stretches of approach roads, or other structures situated on the Site; and
- (bb) pay for utility, water, sewerage, electricity charges etc.

## **17.2 Maintenance Requirements**

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

## **17.3 Safety, breakdowns and accidents**

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

17.3.2 Concessionaire's responsibility for rescue operations in the Project or any Phase thereof, as the case may be, shall include safe evacuation of all Patients, Students visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction. For this purpose, it shall maintain and operate at least 2 (two) ambulances with rescue equipment and such other Equipment

as may be necessary to conform with Good Industry Practice.

#### **17.4 Overriding powers of the Authority**

17.4.1 In the event of an emergency whether national, state or limited to the city, civil commotion or any other act specified in Clause 31.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project, as the case may be or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 31. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.4, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

#### **17.5 Restoration of loss or damage to the Project**

17.5.1 Save and except as otherwise expressly provided in this Agreement, in the event that the Project, 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, conforms to the provisions of this Agreement.

#### **17.6 Provision of Medical Education Services**

17.6.1 In case the Concessionaire undertakes Optional Development subject to and in accordance with terms hereof, the Concessionaire shall provide medical education and training to Students ("**Medical Education Services**"). The Concessionaire shall operate the Medical College and provide the Medical Education Services, in accordance with the requirements of MCI or equivalent authority and all Applicable Laws and Applicable Permits.

17.6.2 The Concessionaire shall, as a minimum and in addition to any other obligations under this Agreement operate the Project in order to ensure that the Project meets the requirements of the MCI or equivalent authority and all Applicable Laws and Applicable Permits for the operation of the Medical College.

#### **17.7 Equipment**

17.7.1 The Concessionaire shall procure, install and commission all Equipment, medical devices, apparatus, facilities and all other support and ancillary infrastructure as

necessary for development, operations and maintenance of the Project or any Phase(s) thereof, as the case may be, for providing Healthcare Services and Medical Education Services, as the case may be, as per the Scope of the Project.

17.7.2 The Concessionaire shall procure, install, operate and maintain the Equipment, including Equipment meeting the specifications or equivalent to the specifications set out at Schedule O and Schedule B. Such Equipment shall be newly procured and shall not be refurbished equipment other than those already functioning in the Hospital at the time of handover.

17.7.3 The Concessionaire shall ensure that all Equipment, medical devices, apparatus and facilities are in running and working condition and are calibrated, upgraded or replaced from time to time according to their life span or its impending obsolescence and in compliance with the certification requirements of the concerned competent authorities.

## **17.8 Human Resources**

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

17.8.2 The Concessionaire shall comply with the human resource standards in terms of the NABH, NABL and MCI and other prevailing guidelines, as may be applicable.

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

17.8.4 The Concessionaire shall take appropriate remedial measures in the event of any non-compliance with the requirements set forth in this Clause 17.8.

## **17.9 Excuse from performance of obligations**

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

(a) a Force Majeure Event;

(b) measures taken to ensure the safe use of the Project or any Phase thereof, as

the case may be, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement;

- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project; or
- (d) an Authority Default.

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

## **ARTICLE 18: SAFETY REQUIREMENTS**

### **18.1 Safety Requirements**

The Concessionaire shall be responsible for the safety of the Patients, visitors, staff and the Project, as the case may be, in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the "**Safety Requirements**"). In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the Safety Requirements.

### **18.2 Expenditure on Safety Requirements**

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

## **ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE**

### **19.1 Status reports**

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Panel a quarterly report, in a mutually agreed format, stating in reasonable detail the condition of the Project or any Phase thereof, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Panel. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 Prior to the close of each day during the Operation Period, the Concessionaire shall, subject to Applicable Law, send to the Authority and the Independent Panel, a report in a mutually agreed form, stating the following:

(a) particulars of Select Patients and PPT Beneficiaries, such as name, age, sex, finger prints; and

(b) copies of the relevant medical records and prescriptions applicable to Select Patients and PPT Beneficiaries.

19.1.3 During Operation Period, the Concessionaire, through its authorised representative, shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Panel a monthly report, in a mutually agreed format, stating in reasonable detail the list of Patients updated in accordance with Clause 19.1.2 and the compliance with the Key Performance Indicators set forth in this Agreement and shall promptly give such other relevant information as may be required by the Independent Panel. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

### **19.2 Reports of unusual occurrence**

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

(a) death or injury to any person;

- (b) episode of sexual assault or rape;
- (c) suicide by a Patient and/or a Student;
- (d) unanticipated death of a full-term infant;
- (e) infant abduction or discharge to the wrong family;
- (f) hemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities;
- (g) surgery on the wrong Patient or wrong body part;
- (h) smoke or fire;
- (i) unintended retention of a foreign object in the body of any Patient after surgery or other procedure; and
- (j) such other relevant information as may be reasonably required by the Authority or the Independent Panel.

### **19.3 Inspection**

The Independent Panel 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 Maintenance Requirements and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

### **19.4 Remedial measures**

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report and furnish a report in respect thereof to the Independent Panel and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Panel shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements.



## **19.5 Additional Experts and Joint Co-ordination Committee**

- 19.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, additional experts, including any Government owned entity or Government employee to inspect the Project and monitor the performance of the Concessionaire during the Operation Period.
- 19.5.2 The Parties agree and undertake that they shall jointly form a joint coordination committee constituting of representatives from the Authority and Concessionaire to provide advice on day to day operational matters within 30 (thirty) days of the Execution Date.

## **ARTICLE 20: PATIENT REGULATION AND SECURITY**

### **20.1 Project regulation by the Concessionaire**

- 20.1.1 The Concessionaire shall regulate the usage of the Project or any Phase thereof, as the case may be, in accordance with Applicable Laws and subject to the supervision and control of the Authority or a substitute thereof empowered in this behalf under Applicable Laws.
- 20.1.2 The Concessionaire shall, in consultation with the Authority and the Independent Panel, evolve and publicise a system based on Good Industry Practice such that no Patients or category of Patients is discriminated against or unduly favoured, as the case may be, in the use of the Project or any Phase thereof, as the case may be.
- 20.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Project or any Phase thereof, as the case may be, as a common healthcare facility providing non-discriminatory services to all persons.

### **20.2 Security**

- 20.2.1 The Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the Project or any Phase thereof, as the case may be, for the prevention of terrorism, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Project or any Phase thereof, which shall at a minimum be compliant with those conditions set out in Clause 20.2.
- 20.2.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Project and shall be responsible for the security arrangements within the Project or any Phase thereof, as the case may be, in order to maintain orderly conduct of its business and the security thereof.
- 20.2.3 The Concessionaire shall abide by and implement any instructions of the Authority and the Independent Panel for enhancing the security within and around the Hospital. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Independent Panel.

## **ARTICLE 21: KEY PERFORMANCE INDICATORS FOR PROJECT**

### **21.1 Key Performance Indicators for Project/Phase(s)**

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project or any Phase(s) thereof, as the case may be, such that it achieves or exceeds the performance indicators specified in Schedule L (the "**Key Performance Indicators**").

### **21.2 Operation of the Project/Phase(s)**

21.2.1 The Concessionaire shall at all times procure that:

- (a) the hours of availability of all services provided by the Project conform to Good Industry Practice and are posted on the Hospital Website and displayed prominently in the Project or any Phase thereof, as the case may be;
- (b) all the Healthcare Services and Medical Education Services, as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty four) hours a day and all days in year;
- (c) the OPD Services are available at the Project or any Phase thereof, as the case may be, in accordance with Clause 22.4;
- (d) Emergency Services are available at the Project or any Phase thereof, as the case may be, at all times with adequately trained Human Resource to provide these Emergency Services; and
- (e) all lifts, public address systems and lighting systems function efficiently.

### **21.3 Periodic status report**

21.3.1 The Concessionaire shall during the initial 3 (three) years of the Operation Period, furnish to the Authority and Independent Panel a report, setting forth the details provided in Clause 21.3.2, no later than 7 (seven) days after the close of each quarter. Thereafter, during the remaining Operation Period, such report shall be furnished by the Concessionaire annually, no later than 7 (seven) days after the close of each calendar year.

21.3.2 The report specified in Clause 21.3.1 shall state in reasonable detail the compliance of the Project or any Phase thereof, as the case may be, with all the Key Performance Indicators specified in this Article 21 and Schedule L along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Project or any Phase thereof,

as the case may be.

## **21.4 NABH Accreditation**

- 21.4.1 The Concessionaire shall, within 8 years from Appointed Date or COD of Phase II, whichever is earlier, procure the related NABH accreditation and thereafter maintain throughout the Concession Period, including Phase III, NABH Accreditation for the Project, and shall provide a certified copy thereof including its renewals to the Authority forthwith.
- 21.4.2 In the event of default in obtaining or maintaining the NABH accreditation specified in Clause 21.4.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining or maintaining such accreditation.
- 21.4.3 If the period of default in obtaining or maintaining the NABH Accreditation in accordance with this Clause 21.4, shall exceed a continuous period of 3 (three) months from COD of Phase II, the Concessionaire shall thereafter pay Damages to the Authority in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Guarantee for every 1 (one) month of default or part thereof, subject to a maximum of 10% (ten per cent) of the Performance Guarantee.

## **21.5 Patient Charter**

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

## **21.6 Human Resources**

- 21.6.1 The Concessionaire shall procure and ensure that all Human Resources engaged in the provision of Healthcare Services receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties.
- 21.6.2 The Concessionaire shall comply with the human resource standards set forth in in terms of NABH, NABL and MCI and other prevailing guidelines, as the case may be.
- 21.6.3 The Concessionaire shall regularly supervise and monitor the performance of the Human Resource to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.

21.6.4 The Concessionaire shall take appropriate remedial measures in the event of any non-compliance with the requirements set forth in this Clause 21.6.

## **21.7 Equipment**

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

21.7.2 The Concessionaire shall procure, install, operate and maintain the Equipment in accordance with Schedule-B and Schedule-O.

21.7.3 The Concessionaire shall ensure that all Equipment, medical devices, apparatus and facilities are in running and working condition and are calibrated, upgraded or replaced from time to time according to their life span or its impending obsolescence and in compliance with the certification requirements of the concerned competent authorities.

## **21.8 Damages for shortfall in performance**

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 21.8 shall be determined in accordance with the rates as set forth in Schedule-L for each Key Performance Indicator.

## ARTICLE 22: HEALTHCARE SERVICES

### 22.1 Healthcare Services

#### 22.1.1 Quality of Healthcare Services

- (a) The Concessionaire shall procure and ensure that all Patients in the Project or any Phase (s) thereof, as the case may be, receive quality care in accordance with the provisions of this Agreement and Good Industry Practices. The Concessionaire shall procure that access, assessment and continuity of care, care of Patients, management of medication, Patient rights and education, infection control and continuous quality improvement are in accordance with the applicable sections of NABH.
- (b) The Concessionaire shall abide by the provisions relating to the provision of Healthcare Services and the responsibilities of management outlined in NABH.

### 22.2 Specialty Services

The Concessionaire agrees and undertakes that the relevant phase of the Project shall provide *inter alia* the Healthcare Services ("**Specialties**") commencing from not later than Appointed Date on "as is where is" basis and from COD of Phase-0, such Healthcare Services as described in Schedule M:

For the avoidance of doubt, it is clarified that the Specialties specified in Schedule M are only minimum and the Concessionaire may, at its discretion, provide any other additional services.

### 22.3 Diagnostic Services

The Concessionaire agrees and undertakes that the Project shall provide *inter alia* the Diagnostics Services ("**Diagnostics**") commencing from not later than COD of Phase-0 as described in Schedule M:

For the avoidance of doubt, it is clarified that the Specialties specified in Schedule M are only minimum and the Concessionaire may, at its discretion, provide any other additional services.

The above shall be without prejudice to Concessionaire's obligation to provide relevant Healthcare Services on "as is where is" basis in the Existing Hospital till COD of Phase 0, whereupon, all obligations shall apply with full force and affect.

### 22.4 OPD Services

The Concessionaire shall ensure that the Select Patients requiring OPD Services shall be dealt with on *first-come –first-served* basis, to the extent possible (on best endeavour basis) and shall be given priority over market patients. However, PPT Beneficiaries shall be given priority in treatment over Select Patient and market patients to the extent possible on best endeavour basis in the Hospital.

The above shall be without prejudice to Concessionaire's obligation to provide relevant Healthcare Services on "as is where is" basis in the Existing Hospital till COD of Phase 0, whereupon, all obligations shall apply with full force and affect.

## **22.5 Referral of Select Patients**

- (a) The Concessionaire shall ensure that no Patient or category of Patients is discriminated against or unduly favored, as the case may be, in the use of the Project. The Concessionaire agrees that it shall not refer any Select Patient or PPT Beneficiaries to any other Healthcare Services/facility without a valid reason, which shall be required to be recorded in writing and signed by the Designated Person post consultation with Authority's Representative and after reasonably taking into account his comments. In addition,
- i) For referral of certain diseases like Cardiac Surgery (Complicated surgeries and CABG etc.), Brain tumor, Cancer, Organ transplant and Stem cell transplant etc. the option of the Patient to choose an empanelled hospital of PPT may be considered. In other cases, for which the treatment is available in the Hospital developed by the Concessionaire, such Patients need not be referred to the outside hospitals. Referral can be processed to an empanelled hospital of PPT with the approval of Chief Medical Officer, PPT for the treatment procedures which are not available in the re-developed Hospital.
  - ii) The Concessionaire shall engage experienced, trained and well qualified personnel from reputed medical college.
- (b) The Designated Person shall submit a periodic report, at least once a month, stating the particulars of the Select Patient, BPL Patient and PPT Beneficiary and reason for making such referral, in a mutually agreed form, to the Independent Panel.

## **22.6 Identification Process for Select Patients**

22.6.1 Subject to availability of Beds and provisions of this Agreement including inter alia this Article 22, and without any prejudice to Concessionaire's obligations, the Concessionaire shall provide services to all Select Patients who approach the Project hospital seeking medical attention without any discrimination.

22.6.2 The Authority or its authorised representative shall determine the eligibility for Select

Patients. The Authority or its authorised representative, as the case may be, shall issue a certificate to the effect that such patient is a Select Patient (the "**Authorisation Certificate**"). Any Patient issued an Authorisation Certificate will be deemed to be a Select Patient entitled to avail Healthcare Services in accordance with the terms of this Agreement.

22.6.3 The Authorisation Certificate for a Select Patient shall be conclusive and binding on the Authority for payments to be made to the Concessionaire solely for rendering Healthcare Services /treatment to such Select Patient in the Project hospital or any Phase thereof, as the case may be.

22.6.4 The Authority shall at all times ensure that at least one Authority designated representative is stationed and on duty at the Project hospital or any Phase thereof, as the case may be.

## **22.7. Identification Process for PPT Beneficiaries**

22.7.1 Subject to availability of Beds and provisions of this Agreement, and without any prejudice to obligations of the Concessionaire, the Concessionaire shall provide Healthcare Services to all PPT Beneficiaries who approach the Project hospital or any phase thereof seeking Healthcare Services; without any discrimination.

22.7.2 The Authority shall determine the eligibility for PPT Beneficiaries. The Authority or its authorised representative, as the case may be, shall issue a certificate or identification card to the effect that such Patient is a PPT Beneficiaries (the "**Identification Certificate**"). Any Patient issued an Identification Certificate will be deemed to be a PPT Beneficiary entitled to avail Healthcare Services in accordance with the terms of this Agreement.

22.7.3 The Identification Certificate for a PPT Beneficiary shall be conclusive and binding on the Authority for payments to be made to the Concessionaire for rendering Healthcare Services treatment to such PPT Beneficiary in the Project hospital or any part thereof.

22.7.4 The Authority shall at all times ensure that at least one Authority designated representative is stationed and on duty at the CMO office to assist PPT Beneficiaries. The Concessionaire shall provide all reasonable assistance to the designated representative for facilitation of PPT Beneficiaries.



## **ARTICLE 23: INDEPENDENT ENGINEER**

### **23.1 Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm from a panel of 3 (three) firms or bodies corporate, mutually constituted by the Authority and the Concessionaire, to be the independent consultant under this Agreement to certify the Construction Works of the Hospital in accordance with this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 180 (one hundred and eighty) days from the Execution Date and shall expire upon NABH accreditation in accordance with Clause 21.4.

### **23.2 Duties and functions**

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

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

### **23.3 Remuneration**

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

### **23.4 Termination of appointment**

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

23.4.2 If the Concessionaire or the Authority has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the other party and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the other Party shall hold a tripartite meeting with the party seeking termination and the Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

### **23.5 Authorised signatories**

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

### **23.6 Dispute resolution**

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

## **ARTICLE 24: INDEPENDENT PANEL**

### **24.1 Appointment of Independent Panel**

The Authority may appoint an Independent Panel of experts, mutually constituted by the Authority and the Concessionaire, to be the independent consultant under this Agreement (the "**Independent Panel**"). The Independent Panel shall constitute of a panel of experts including doctors, engineers and other experts relevant for the Project. The appointment shall be made no later than Appointed Date and shall be for a period of 3 (three) years at a time. On expiry or Termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another panel to be constituted in the manner specified herein to be the Independent Panel for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

Notwithstanding anything contrary enumerated above, the Authority may in its discretion unilaterally appoint the CMO and/or his officials as the Independent Panel under this Agreement.

### **24.2 Duties and functions**

24.2.1 The Independent Panel shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule N.

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

### **24.3 Remuneration**

The remuneration, cost and expenses of the Independent Panel shall be paid by the Authority, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

### **24.4 Termination of appointment**

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

24.4.2 If the Concessionaire or the Authority has reason to believe that the Independent Panel is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the other party and seek termination of the appointment of the Independent Panel. Upon receipt of such representation, the other Party shall hold a tripartite meeting with the party seeking termination and

Independent Panel for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Panel is terminated hereunder, the Authority shall appoint forthwith another Independent Panel in accordance with Clause 24.1.

#### **24.5 Authorised signatories**

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

#### **24.6 Dispute resolution**

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

## **ARTICLE 25: FINANCIAL CLOSE**

### **25.1 Financial Close**

25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the Execution Date or such later date as particularly provided in Article 04 of this Agreement.

25.1.1 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

### **25.2 Termination due to failure to achieve Financial Close**

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the damages due and payable under Clause 4.2.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

## ARTICLE 26: ANNUAL FEE AND GROSS REVENUE SHARE

### 26.1 Payment Obligations of the Concessionaire

The Concessionaire shall pay to the Authority the following fee prior to and/or during the Concession Period, a fixed fee, commencing from the first anniversary of Appointed Date, on an annual basis (the “**Annual Fee**”). The Annual Fee payable from the first anniversary of the Appointed Date shall be equivalent to a sum of INR 1 (Rupee One Only) which shall be the amount payable for the first year of Concession Period. The Annual Fee for the first year shall be payable by the Concessionaire within 30 days from first anniversary of the Appointed Date. The subsequent annual installments of the Annual Fee shall be paid during the remaining Concession Period within 30 days of the relevant anniversary date of the Appointed Date.

### 26.2 Gross Revenue Share

The Concessionaire shall, subject to terms hereof, pay to the Authority revenue share of its Gross Revenue, which shall be equivalent to [●]<sup>2</sup> (per cent) of the Gross Revenue (“**Gross Revenue Share**”) payable on a monthly basis, beginning from the COD of Phase 0.

The Gross Revenue Share for a particular month shall be payable by the Concessionaire by the seventh day of the next month and shall be subject to verification and reconciliation on a quarterly, semi -annual or annual basis, as required by the Authority in its discretion. For this purpose, the Parties hereby agree as follows:-

- i. Authority and its authorized representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Concessionaire in order to check or audit any information related to the calculation of Gross Revenue Share as paid/reported to Authority. Concessionaire shall make available to the Authority and its authorized representatives such information and grant such access as they shall reasonably require in connection therewith.
- ii. Without prejudice to the quarterly reconciliation based inter alia on the statutory auditor’s certificate, the applicable Gross Revenue used for final annual verification/reconciliation shall be the revenue as certified by independent auditor, to be appointed in following manner:-
  - a. Authority shall nominate a panel of six reputed chartered accountancy firms, out of which concessionaire shall have the right to object to maximum 03

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<sup>2</sup>To be determined Based on the Bidder’s quote under RFP

nominees, and Authority shall appoint any one nominee to whom concessionaire has not objected. The cost of such independent auditor shall be shared by Parties to this Agreement.

- b. Pursuant to such certification, if it is established that previous reporting of Gross Revenue is inaccurate, then Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement pay the differential amount with interest at the rate of SBI MCLR plus 3 percent and also fully bear the cost of engaging independent auditor

### **26.3 Concession Fee**

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “**Concession Fee**”) a sum of Re. 1 (Rupee one) per annum for the Concession Period.

### **26.4 Set-off**

The Concessionaire shall not be entitled to retain or set-off any amount due to the Authority by it except expressly provided hereunder, but the Authority may retain or set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

## **ARTICLE 27: FEE**

### **27.1 Collection and appropriation of Fee**

On and from the Appointed Date of the Project till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the market Patients directly and in respect of Select Patients and PPT Beneficiaries from the Authority and/or the relevant Insurer, subject to and in accordance with this Agreement.

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

27.1.2 On and from the COD of the Medical College, if Optional Development is undertaken in accordance with terms hereof, till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee directly from the Students in accordance with guidelines of MCI or equivalent authority for fixing up of Student Fee.

#### **27.1.3 Display of Fee**

(a) The Concessionaire shall ensure that the applicable rates of Fee are readily available to market Patients on demand and printed Fee schedules are available at all convenient locations in the Project hospital, including near the Fee counters. Further, the Concessionaire shall share the printed Fee schedules with the Authority.

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

#### **27.1.4 Payment for Select Patient and PPT Beneficiaries by the Authority**

The Authority shall be liable to reimburse, subject to and in accordance with terms hereof, to the Concessionaire for the cost incurred by Concessionaire in rendering Healthcare Services availed by a Select Patient (as referred by PPT in accordance with terms hereof) and by PPT Beneficiaries. However prior to any such reimbursement by the Authority to the Concessionaire, the cost of Healthcare Services availed by Select Patients and PPT Beneficiaries shall be adjusted and deducted from the payments that are due and are payable by the Concessionaire to the Authority, subject to and in accordance with the terms of this Agreement. If post such adjustment any portion of aforesaid costs enumerated in this clause remain outstanding, the



Authority shall reimburse the Concessionaire such remaining costs as soon as is reasonably practicable basis the rates determined as per terms set forth hereafter. The applicable rate shall be the applicable CGHS Rate for relevant Healthcare Services, as applicable in Bhubaneswar. If there are no packages or rates for relevant Healthcare Services or procedures available in applicable CGHS prevailing in Bhubaneswar the procedure set out in Paragraph 10, Schedule A shall be followed.

For avoidance of doubt it is clarified that the CGHS rates prior to obtaining of the NABH shall be the rates applicable in non-NABH Accredited hospitals. From the date of obtaining the NABH accreditation the applicable rates shall be the rates applicable in NABH accredited hospital.

For avoidance of doubt, the Concessionaire shall charge market patients at the prevailing market rates for availing Healthcare Services.

#### **27.1.5 Billing and Payment**

- (a) In the event that a Select Patient or PPT Beneficiary approaches the Project Hospital or any part thereof, for availing of the Healthcare Services provided by the Project hospital or any part thereof, including those provided in the OPD, the Concessionaire shall immediately start providing the requisite treatment and Healthcare Services as per the CGHS guidelines issued by Ministry of Health & Family Welfare, Government of India.
- (b) The Concessionaire shall immediately intimate (not later than four hours from the time of admission / registration of the patient in the Hospital) to the Chief Medical Officer (CMO) and /or designated officer on duty, in writing and via telephone with the following details:
  - i. details of Healthcare Package to be applied to the Select Patient / PPT Beneficiary;
  - ii. estimated cost of applying such Healthcare Package, calculated at the regulated rates as determined in accordance with terms hereof and published by the Project Hospital; and
  - iii. Diagnosis / lab test, plan of treatment,
- (c) The Concessionaire shall intimate all the cases by end of each day, detailing the OPD services provided to Select Patients and /or PPT Beneficiaries. Invoice for each day's OPD services provided to Select Patients and /or PPT Beneficiaries may be submitted on the next working day by the Concessionaire to the Authority for verification and payment.

- (d) Commencing from the month following the month in which Appointed Date occurs, the Concessionaire shall, by the 5th (fifth) day of such for each succeeding month (or, if such day is not a business day, the immediately following business day), submit in triplicate monthly invoices (related to Healthcare Services provided to Select Patients and / or PPT Beneficiaries, excluding OPD services, if separate invoice is submitted for such OPD services) to the Authority and Escrow Bank as approved by the CMO (the "**Monthly Invoice**") signed by the authorised signatory of the Concessionaire.
- (e) The invoices shall be reviewed and scrutinized by the CMO, in case of any error/miscalculation/mis-representation of rates / wrong application of package rates/ individual rates/ application of excessive packages etc., the invoice with clarifications / findings / queries of CMO will be returned to the Concessionaire for appropriate corrective measures. The Concessionaire within 7 days of receiving such clarifications / findings / queries from CMO, will respond with appropriate measures / revised invoices as the case may be.
- (f) Any discrepancy can be resolved on mutual agreement/discussion with doctors/management of Concessionaire and CMO. In case of any discrepancy persists, the decision of the CMO shall be final & binding. The Authority shall endeavour to complete the process of scrutiny/quantification within 15 days (subject to the each party responds without any delay) from the date of submission of bill and/or submission of clarification but not later than 30 days.
- (g) The Monthly Invoice shall specify the cost of the Healthcare Package availed by the Select Patient and/or PPT Beneficiary in the immediately preceding month which is to be adjusted and deducted from the payments due from the Concessionaire to the Authority in accordance with the terms of this Agreement and/or the amount to be reimbursed by the Authority to the Concessionaire for the Select Patient and/or the PPT Beneficiary, if applicable.
- (h) The Concessionaire shall, with each Monthly Invoice submit, (i) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (ii) proof of cost of Healthcare Package for the period billed; (iii) detailed calculations of the costs to be reimbursed in accordance with the Annual Budgetary Allocation Notification for Select Patients or the Minimum Budget, as the case may be, (iv) payment recovered under the Annual Budgetary Allocation Notification for Select Patients or of the Minimum Budget, if any; (iii) details in respect of discount and/or interest; (v) the net amount which shall be adjusted and deducted from the payments due from the Concessionaire to the Authority on account of the cost of Healthcare Services availed by the Select Patient or PPT Beneficiary ; and (vi) original copy of the Authorisation Certificates for the Select Patients or PPT Beneficiary, as the case may be.

- (i) Notwithstanding anything contained herein, the Parties shall complete the invoice verification process within the timeline stipulated in Clause 27.1.5 (f), and the Authority shall deposit the dues in the Escrow Account within 30 days from the receipt of Monthly Invoice.

Further, within 15 (fifteen) days of receipt of a Monthly Invoice, the Escrow Bank shall verify it for any apparent error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire in accordance with Clause 27.1.5 above. In the event that the Escrow Bank notifies any error in writing to the Concessionaire within the time period mentioned above, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Escrow Bank. The process set out in this Clause shall then apply to any re-issued Monthly Invoice.

In the event that the Escrow Bank does not notify within 30 (thirty) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Escrow Bank and the Escrow Bank shall, subject to money available in the balance sub account of Escrow Account and in compliance with waterfall cash flow application set out in Article 28 hereof, make the payment of the amounts claimed under such invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

#### **27.1.6 Delayed payments**

- (a) All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 27.1.5 (i).
- (b) In the event that the Authority fails to pay to the Concessionaire any amounts due and payable by it in accordance with the terms of this Agreement, the Concessionaire shall be entitled to deduct the outstanding amount due from the Concession Fee payable by it to the Authority for the succeeding Financial Year.

## ARTICLE 28: ESCROW ACCOUNT

### 28.1 Escrow Account

28.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an escrow account (“**Escrow Account**”) with a Bank (the “**Escrow Bank**”) in accordance with this Agreement read with the Escrow Agreement.

28.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-T.

### 28.2 Deposits into Escrow Account

(i) The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all funds constituting the Financial Package;
- (b) all Fee, deposits in all form and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Authority, after deduction of any outstanding Concession Fee.

Provided that the Senior Lenders may make direct disbursements to the EPC Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

(ii) The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) the relevant tranches of the Loan Facility, in accordance with the Concession Agreement;
- (b) Termination Payments.

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

Provided further that the Authority shall be entitled to set off any outstanding Loan Facility amount along with the relevant interest amount from the Termination Payment (if any) and/or by way of encashment of the relevant shortfall amount from

the Optional Development Guarantee/(s)

### **28.3 Withdrawals during Concession Period**

28.3.1 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:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee, Gross Revenue Share and Annual Fee, as due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) monthly proportionate provision of Debt Service Payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements;
- (j) any dividend payable to Authority; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

28.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.3.1, except with the prior written approval of the Authority.

### **28.4 Withdrawals upon Termination**

28.4.1 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:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee, Gross Revenue share and Annual Fee due and payable to Authority;
- (d) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 35;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 28.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 34.

28.4.2 The provisions of this Article 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.4.1 have been discharged.

## **ARTICLE 29: INSURANCE**

### **29.1 Insurance during Concession Period**

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

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

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Project;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance;
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items above; and
- (g) Professional Indemnity insurance as per the existing practice of the Authority.

### **29.2 Notice to the Authority**

No later than 45 (forty-five) days prior to commencement of the Construction Period

or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

### **29.3 Evidence of Insurance Cover**

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

### **29.4 Remedy for failure to insure**

If the Concessionaire fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

### **29.5 Waiver of subrogation**

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

### **29.6 Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings



and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **29.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 28.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, Healthcare Services or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

## **ARTICLE 30: ACCOUNTS AND AUDIT**

### **30.1 Audited accounts**

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

30.1.2 On or before the thirty-first day of July each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (i) the count for each category of persons using the Project and liable for payment of Fee therefor, (ii) the number of Students using the Medical College and liable for payment of Tuition Fees therefor (iii) Fee and Tuition Fee charged and received, realizable fee and other revenues derived from the Project, and (iv) such other information as the Authority may reasonably require.

### **30.2 Certification of claims by Statutory Auditors**

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

## ARTICLE 31: FORCE MAJEURE

### 31.1 Force Majeure

As used in this Agreement, the expression **Force Majeure** or **Force Majeure Event** shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 31.2, 31.3 and 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 31.2 Non-Political Event

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

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

Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or

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

### **31.3 Indirect Political Event**

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

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

### **31.4 Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 37 and its effect, in financial terms, exceeds the sum specified in Clause 37.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit,

authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

### **31.5 Duty to report Force Majeure Event**

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
  - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 31 with evidence in support thereof;
  - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
  - (iv) any other information relevant to the Affected Party's claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (c) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and

not less than weekly) reports containing information as required by Clause 31.5(a), and such other information as the other Party may reasonably request the Affected Party to provide.

### **31.6 Effect of Force Majeure Event on the Concession**

- (a) Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in this Agreement for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.
- (b) At any time after the Appointed Date, if any Force Majeure Event occurs:
  - (i) before COD of the Phase 0 of the Project, the Concession Period and the dates set forth in the Project Completion Schedule in respect of Phase I shall be, subject to Applicable Laws, extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
  - (ii) after COD of the Phase 0 of Project, whereupon the Concessionaire is unable to render Healthcare Services and collect Fee from Phase I and/or Phase II and/or Phase III of Project despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be, subject to Applicable Laws, extended by a period, proportionate in length that is required to make the Concessionaire whole for the Shortfall in Fee collection occurring directly by reason of such Force Majeure Event.

### **31.7 Allocation of costs arising out of Force Majeure**

- (a) Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- (b) Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:
  - (i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

- (ii) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (iii) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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

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

### **31.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 31, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention in writing and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period from the date of such notification, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

### **31.9 Termination Payment for Force Majeure Event**

- (a) If Termination is on account of a Non-Political Event, the Authority shall, subject to Clause 33.4 hereof, make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due

less Insurance Cover.

- (b) If Termination is on account of an Indirect Political Event, the Authority shall , subject to Clause 33.4 hereof, make a Termination Payment to the Concessionaire in an amount equal to:
  - (i) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
  - (ii) 110% (one hundred and ten per cent) of the Adjusted Equity.
  - (iii) an amount equivalent to the Additional Termination Payment less Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder, if applicable.
- (c) If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 33.3(b) as if it were an Authority Default.

### **31.10 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse of performance of its obligations on account of such Force Majeure Event.

### **31.11 Excuse from performance of obligations**

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or



occurrence of such Force Majeure Event and to cure the same with due diligence; and

- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## **ARTICLE 32: SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

### **32.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fee and/or Tuition Fee, as the case may be, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

### **32.2 Authority to act on behalf of Concessionaire**

- (a) During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement. The Authority shall be entitled to use the Fee collected in accordance with this Clause 32.2(a) for meeting the costs incurred by it for remedying and rectifying the cause of Suspension.
- (b) During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 32.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project, its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### **32.3 Revocation of Suspension**

- (a) In the event that the Authority shall have rectified or removed the cause of

Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

- (b) Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### **32.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 32.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders. Notwithstanding anything to the contrary stipulated in this Agreement elsewhere, the Authority shall (to the exclusion of Senior Lenders) have the right to substitute the Concessionaire in case of Concessionaire's Event of Default occurs prior to the COD of Phase 1.

#### **32.5 Termination**

- (a) At any time during the period of Suspension under this Article 32, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 32.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 33.
- (b) Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 32.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

## ARTICLE 33: TERMINATION

### 33.1 Termination for Concessionaire Default

- (a) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:
- (i) the Performance Security or the Performance Guarantee, as the case may be, has been encashed and appropriated in accordance with Clause 9.1 and 9.4 respectively and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
  - (ii) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.1 or the Performance Guarantee in accordance with Clause 9.4, as the case may be, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security or the Performance Guarantee, as the case may be, was appropriated;
  - (iii) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project and/or the Medical College without the prior written consent of the Authority;
  - (iv) the Concessionaire's failure to fulfil any of its material obligations (including repayment of Loan Facility as per terms hereof).;
  - (v) the Concessionaire commits repeated default in conforming to the Key Performance Indicators as set forth in Article 21 and Schedule L or O&M obligations as set forth in Article 17 and the total damages payable for such defaults exceed the amount of Performance Guarantee;
  - (vi) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
  - (vii) upon occurrence of a Financial Default, the Lenders' Representative

has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- (viii) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (ix) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (x) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (xi) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (xii) there is a transfer, pursuant to law either of (A) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (B) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (xiii) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (xiv) 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;
- (xv) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (xvi) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the

amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (A) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (B) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
  - (C) each of the Project Agreements remains in full force and effect;
- (xvii) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (xviii) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (xix) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (xx) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- (xxi) Instances any time during the Concession Period, where the Concessionaire breaches any condition or fails to provide any Healthcare services to PPT Beneficiaries and / or Select Patients at any time during the Concession Period (if healthcare services are operational and being provided to the market patients or any other patients) may lead to Termination at the discretion of Authority's nominated director on the board of the Concessionaire. The healthcare services shall include Diagnostic, OPD and IP services etc. and as defined in this Agreement

- (b) Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 33.1(c).
- (c) The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 33.1(b) to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

### **33.2 Termination for Authority Default**

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

- (i) The Authority commits a material default in complying with any of the obligations of the Authority under this Agreement and as a result of such material, the Concessionaire is unable to undertake that Project in terms of this Agreement;
  - (ii) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
  - (iii) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.
- (b) Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### **33.3 Termination Payment**

- (a) Upon Termination on account of a Concessionaire Default during the Operation Period of the Project, the Authority shall, subject to Clause 33.4 hereof, pay to the Concessionaire, by way of Termination Payment, an amount equal to :-
- (i) 90% (ninety percent) of Debt Due less Insurance Cover as on the date of such Termination; and
  - (ii) 70% (seventy percent) of the amount representing the Additional Termination Payment, if applicable.

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due.

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 of Phase III, save and except as provided herein below in this Clause 33.3 (a).



Upon Termination on account of Concessionaire's Default during the Construction Period, namely, at any time prior to COD of mandatory Phases, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty percent) of the total project cost of one or more phase(s) completed in accordance with terms hereof, by the date of termination, and in the event of expenditure exceeding such 40% (forty percent) of aggregate project cost of such relevant phase(s) for which completion certificate is issued in terms herein, and forming part of debt due, the provisions of this Clause 33.3 (a) shall, to the extent applicable to debt due, apply in respect of the expenditure exceeding such 40% (forty percent). By way of solely for illustration purposes, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety percent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty percent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five percent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 33.3 (a), total project cost shall mean the amount specified in sub-clause (b) of the definition of Total Project Cost, viz, the actual cost expended on the development of the Project.

- (b) Upon Termination on account of an Authority Default, the Authority shall, subject to Clause 33.4, pay to the Concessionaire, by way of Termination Payment, an amount equal to:
  - (i) Debt Due;
  - (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
  - (iii) 115% (one hundred and fifteen percent) of the amount representing the Additional Termination Payment, if applicable.
- (c) Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- (d) The Concessionaire expressly agrees that Termination Payment under this Article 33 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason

whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### **33.4 Certain limitations on Termination Payment**

- (a) The Termination Payments [including Additional Termination payment] that is payable hereunder shall be subject to deductions [as applicable in accordance with terms of Clause 2.1 (e )] as applicable towards the recovery of Loan Facility that remains unpaid till such termination date, and the Concessionaire unconditionally agrees and consents to the same. Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD of Phase- III, the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.
- (b) The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment in respect of of the Project or any phase thereof, as the case may be.

33.4.A Additional Termination Payment due and payable in respect of assets of the Optional Development and/or Additional Facilities (if any) of the Project in accordance with the provisions of this Agreement, and forming part of Specified Assets shall be limited to the lowest of :-

- (a) Adjusted Depreciated Value thereof;

- (b) the capital cost of the Optional Development and/or Additional Facilities (if any) of the Project as approved by Senior Lenders; and
- (c) the actual cost of the Optional Development and/or Additional Facilities (if any) of the Project upon completion thereof;
- (d) the estimated capital cost of the Optional Development and/or Additional Facilities (if any) of the Project, as reasonably specified by the Authority, in consultation with the Independent Engineer/industry expert appointed by Authority in its sole discretion, and prior to commencement of construction thereof.

### **33.5 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and Equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 34.1;
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire; and
- (f) under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this

purpose shall be deducted from the Termination Payment.

### **33.6 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 34: DIVESTMENT OF RIGHTS AND INTEREST

### 34.1 Divestment Requirements

- (a) Upon Termination on any account including due to expiry of the Term of this Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements:
  - (i) notify to the Authority forthwith the location and particulars of all Project Assets;
  - (ii) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
  - (iii) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;
  - (iv) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the Selected Bidder/Consortium Members, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
  - (v) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
  - (vi) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority

or its nominee; and

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

Any major shortfall or damage to the infrastructure and/or equipment handed over by the Authority at the time of Appointed Date shall be recoverable from the Concessionaire.

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

### **34.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Panel shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 35 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 34.

### **34.3 Cooperation and assistance on transfer of Project**

- (a) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients, other members of the public or the lawful occupiers of any part of the Site.
- (b) The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of

the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

- (c) The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 34.1(a) and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

#### **34.4 Vesting Certificate**

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

#### **34.5 Divestment costs**

- (a) 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 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 equally by the Authority and the Concessionaire. .
- (b) In the event of any dispute relating to matters covered by and under this Article 34, the Dispute Resolution Procedure shall apply.

## **ARTICLE 35: DEFECTS LIABILITY AFTER TERMINATION**

### **35.1 Liability for defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Project as on the Transfer Date, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Panel in the Project on or before the Transfer Date. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 30 (thirty) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Guarantee.



## **ARTICLE 36: ASSIGNMENT AND CHARGES**

### **36.1 Restrictions on assignment and charges**

- (a) Subject to Clauses 36.2 and 36.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (b) Subject to the provisions of Clause 36.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

### **36.2 Permitted assignment and charges**

The restraints set forth in Clause 36.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project, as the case may be;
- (b) mortgages, pledges or hypothecation of goods or assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project, as the case may be;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or Encumbrances required by any Applicable Law.

### **36.3 Substitution Agreement**

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

- (b) Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

#### **36.4 Assignment by the Authority**

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

## **ARTICLE 37: CHANGE IN LAW**

### **37.1 Increase in costs**

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 37.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **37.2 Reduction in costs**

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount

specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 37.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **37.3 Protection of NPV**

Pursuant to the provisions of Clauses 37.1 and 37.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

### **37.4 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 37 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

### **37.5 No claim in the event of recovery from Patients**

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

## **ARTICLE 38: LIABILITY AND INDEMNITY**

### **38.1 General indemnity**

- (a) The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire, its agents and/or its Contractors 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, its agents and/or its Contractors to any Patients and/or Students, as the case may be, or from any act and/or omission by the Concessionaire, its agents and/or its Contractors arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
  
- (b) The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, and/or (iii) any act and/or omission by the Authority arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, 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.

### **38.2 Indemnity by the Concessionaire**

- (a) Without limiting the generality of Clause 38.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising

out of or with respect to:

- (i) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
  - (ii) payment of Taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's Contractors, suppliers and representatives; or
  - (iii) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (b) Without limiting the generality of the provisions of this Article 38, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **38.3 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 38 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay

the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

#### **38.4 Defense of claims**

- (a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 38, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- (b) If the Indemnifying Party has exercised its rights under Clause 38.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- (c) If the Indemnifying Party exercises its rights under Clause 38.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
  - (i) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
  - (ii) 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

- (iii) 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
- (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (A) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (B) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if sub-clauses (b) or (c) of this Clause 38.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **38.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 38, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **38.6 Survival on Termination**

The provisions of this Article 38 shall survive Termination.



## **ARTICLE 39: RIGHTS TO THE SITE**

### **39.1 Rights to the Site**

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

### **39.2 Access rights of the Authority and others**

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

### **39.3 Property taxes**

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, all dues and taxes which are payable and due in respect of the Site, prior to the Appointed Date, shall be payable by the Authority.

### **39.4 Restriction on sub-letting**

The Concessionaire shall not sub-lease, sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

## ARTICLE 40: DISPUTE RESOLUTION

### 40.1 Dispute resolution

If any dispute or difference or claims of any kind arises between the Authority and the Concessionaire in connection with construction, interpretation or application of any terms and conditions or any matter or thing in any way connected with or in connection with or arising out of this Agreement, whether before or after the Termination of this Agreement, and so notified in writing by either Party to the other Party (the "**Dispute**"), then the Parties shall meet together promptly, at the request of any Party, in an effort to resolve such dispute, difference or claim by discussion between them.

### 40.2 Conciliation

The Parties, may, in appropriate cases agree to refer the matter to an expert appointed by them with mutual consent. The cost of obtaining the service of the expert shall be shared equally between the Parties.

### 40.3 Arbitration

40.3.1 Any Dispute which is not resolved amicably as provided in Clause 40.1 and 40.2, shall be finally settled by arbitration as set forth below:-

- (i) The Dispute shall be referred to the Society for Affordable Redressal of Disputes - Ports (hereinafter called as SAROD - Ports). The Dispute shall be dealt with in terms of Rules of SAROD - Ports. The detailed procedure for conducting arbitration shall be governed by the Rules of SAROD - Ports and provisions of Arbitration & Conciliation Act, 1996, as amended from time to time. The Dispute shall be governed by Substantive Law of India.
- (ii) The constitution of arbitral tribunal, code of conduct for Arbitrators and fees and expenses of SAROD - Ports and Arbitral Tribunal shall also be governed by the Rules of SAROD - Ports as amended from time to time. The rules of SAROD – Ports are placed at Schedule U.
- (iii) The seat of Arbitration shall be New Delhi or a place selected by the Governing Body of SAROD-Ports and the language for all documents and communications between the parties shall be English.
- (iv) The expenses incurred by each party in connection with the preparation, presentation, etc., of arbitral proceedings shall be borne by each party itself.

40.3.2 Any award made in any arbitration held pursuant to this Article 40 ("**Award**") shall

be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

40.3.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire or the Authority, as the case may be, and their respective assets wherever situated.

40.3.4 In the event that the Party against whom the Award has been granted, challenges the Award for any reason in a Court of law, the other Party, subject to the order of the Court, shall be entitled to seek an interim payment for an amount equal to 75% (seventy five per cent) of the Award, pending final settlement of the dispute. The aforesaid amount shall be paid forthwith upon furnishing an irrevocable Bank Guarantee for a sum equal to 120 % (one hundred and twenty per cent) of the aforesaid amount. The Bank Guarantee shall be kept alive for the entire period till the dispute is finally resolved. Upon final settlement of the dispute, the aforesaid interim payment shall be adjusted and any balance amount due to be paid or returned, as the case may be, shall be paid or returned with interest calculated at 10 year G Sec + 6% per annum from the date of interim payment to the date of final settlement of such balance. The Parties acknowledge and agree that the Arbitration proceedings shall be video recorded and one copy each of the video recording shall be provided to both the parties.

#### **40.4 Adjudication by Adjudicatory Board**

In the event of constitution of a statutory Adjudicatory Board or such other forum with powers to receive and adjudicate upon Disputes between the Concessionaire and the Authority, all Disputes not settled under Clause 40.2, can alternatively be referred to the Adjudicatory Board or such other forum with mutual consent of the Parties in accordance with the applicable laws. For avoidance of doubt, Parties hereto agree that notwithstanding anything contained herein above, after adjudication by the statutory Adjudicatory Board or such other forum, the Parties cannot refer the Dispute, difference or controversy of whatsoever nature again under Clause 40.3 and the adjudication hereunder shall be final and binding.

## ARTICLE 41: DISCLOSURE

### 41.1 Disclosure of Specified Documents

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

### 41.2 Disclosure of Documents relating to safety

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

### 41.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 41.1 and 41.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

#### *Explanation:*

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 41.1 and 41.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **ARTICLE 42: REDRESSAL OF PUBLIC GRIEVANCES**

### **42.1 Complaints Register**

- (a) The Concessionaire shall maintain a public relations office at the Project where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**") in compliance with the minimum standards set out in this Agreement. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project so as to bring it to the attention of all Patients.
- (b) The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- (c) Without prejudice to the provisions of Clauses 42.1(a) and 42.1(b), the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### **42.2 Redressal of complaints**

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

## **ARTICLE 43: MISCELLANEOUS**

### **43.1 Governing law and jurisdiction**

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

### **43.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

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

### **43.3 Depreciation and interest**

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

#### **43.4 Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 1% (one per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

#### **43.5 Waiver**

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

#### **43.6 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer or Independent Panel of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under

this Agreement, the Applicable Laws and Applicable Permits; and

- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in sub-clause (a) above.

#### **43.7 Exclusion of implied warranties**

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

#### **43.8 Survival**

Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

#### **43.9 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals/ Request for Qualification, shall be deemed to form part of this Agreement and treated as such.

#### **43.10 Severability**



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

#### **43.11 No partnership**

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

#### **43.12 Third parties**

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

#### **43.13 Successors and assigns**

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

#### **43.14 Notices**

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Paradip may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to

the number as the Concessionaire may from time to time designate by notice to the Authority;

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

#### **43.15 Language**

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

#### **43.16 Stamp Duty**

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

#### **43.17 Counterparts**

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

## ARTICLE 44: DEFINITIONS

### 44.1 Definitions

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

**"Accounting Year"** means the Financial Year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

**"Adjusted Depreciated Value"** means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire) to reflect the variation occurring in Price Index between the date of construction thereof and the Transfer Date. ;

**"Additional Facilities"** shall have the meaning set forth in Clause 2.1 f.;

**"Additional Land"** shall have the meaning set forth in Clause 10.1;

**"Additional Termination Payment"** means the amount payable upon Termination in respect of Specified Assets, if any, as limited by the provisions of Clause 33.4.A.

**"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the **Reference Date**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

- (a) on or before Phase 0 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 PRICE INDEX occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) anytime after Phase 0 COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on Phase 0 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 Phase 0 COD to the extent of variation in PRICE INDEX occurring between COD of Phase-0 and the Reference Date; and
- (c) anytime after the 4th (fourth) anniversary of Phase 0 COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point two two per cent) thereof at the commencement of each

month following the 4th (fourth) anniversary of Phase 0 COD and the amount so arrived at shall be revised to the extent of variation in PRICE INDEX occurring between Phase 0 COD and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and spent for the development of other mandatory Phases of the Project in accordance with the terms of this Agreement. Further it is clarified and the Parties understand that this provision shall not apply to Optional Development or Additional Facilities that forms part of Project. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of PRICE INDEX shall continue to be made;

**"Affected Party"** shall have the meaning set forth in Clause 31.1;

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

**"Annual Budgetary Allocation Notification for Select Patients"** means the notification issued by the Authority in relation to the Project and in accordance with the terms of this Agreement, which shall set out the following:

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

Notwithstanding the above, the Annual Budgetary Allocation Notification for Select Patients issued by the Authority shall not provide for any additional obligation to be performed by the Concessionaire and shall not prejudice any right of the Concessionaire under this Agreement and/or Applicable Law in any manner whatsoever;

**"Annual Fee"** shall have the meaning set forth in Clause 26.1. ;

**"Appendix"** shall have the meaning set forth in Clause 10.3.1;

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

**"Applicable Permits"** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement and upon termination, the transfer of the Project to the Authority;

**"Appointed Date"** means the date falling within **180 days of the date of this Agreement or any extended period specified under this Agreement**, on which Financial Close and fulfilment of all other condition precedent obligation are achieved or waived or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

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

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

**"Associate"** or **"Affiliate"** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression **control** means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

**"Authorisation Certificate"** has the meaning ascribed to in Clause 22.6.2;

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

**"Authority Default"** shall have the meaning set forth in Clause 33.2(a);

**"Authority Indemnified Persons"** shall have the meaning set forth in Clause 38.1(a);

**"Authority Related Parties"** means the Authority's agents and Contractors (other than the Concessionaire) and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project;

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

**"Award"** shall have the meaning set forth in Clause 40.3.2;

**"Bank"** means any Scheduled Bank;

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

**"Beds"** means the beds used for Patients and includes the following:

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

**"Bid"** means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

**"Bid Security"** means the security provided by the Selected Bidder to the Authority along with the Bid in a sum of Rs.[●] (Rupees [●]only)in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

**"BPL Patient"** means the patient from amongst the list of below poverty line people prepared by the State Government as per the extant poverty guidelines which may

inter alia include those used for RSBY or NHPS or equivalent enrolment schemes;

**"CGHS"** means Central Government Health Scheme applicable for Bhubaneswar;

**"Change in Law"** means the occurrence of any of the following after the date of Bid submission:

- (a) the enactment of any new Indian law as applicable to the Project;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

but shall not include (i) any change in any withholding or other tax on income or dividends distributed to the shareholders of the Concessionaire; (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised environmental safety laws; (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; or (iv) any rules or regulations stipulated by any regulatory authority having jurisdiction over the Project in respect of the standards of Healthcare Services.

**"Change in Ownership"** means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/Consortium Members}, together with {its/their} Affiliates in the total Equity to decline below 51% (fifty one) thereof until 2 years from the COD of Phase I; provided that any material variation (as compared to representation made by the Concessionaire during the bidding process for the purpose of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {the Selected Bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of 2 years following the Completion of the Phase 1 of Project, shall constitute Change in Ownership;

**"Change of Scope"** shall have the meaning set forth in Clause 16.1.1;

**"Change of Scope Notice"** shall have the meaning set forth in Clause 16.2;

**"Change of Scope Order"** shall have the meaning set forth in Clause 16.2.3;

**"Clause"** means a clause of this Agreement;

**"COD of Phase-0"** means COD of in respect of Phase – 0 of the Project;

**"COD of Phase-I"** means COD in respect of Phase-I of the Project;

**"COD of Phase-II"** means COD in respect of Phase-II of the Project;

**"COD of Phase-III"** means COD in respect of Phase-III of the Project;

**"COD of Optional Development"** means COD of Project in respect of Optional Development;

**"Company"** means the company acting as the Concessionaire under this Agreement;

**"Companies Act"** means, Companies Act 1956 (1of1956) and/or Companies Act, 2013 (18 of 2013) (including all the rules and regulations made thereunder), as applicable, and includes any statutory amendment or re-enactment; thereof;

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

**"Complainant"** shall have the meaning set forth in Clause 42.1(a);

**"Complaint Register"** shall have the meaning set forth in Clause 42.1(a);

**"Completion Tests"** means the tests set forth in Schedule J to determine the completion of Project in accordance with the provisions of this Agreement;

**"CMO"** means chief medical officer of the Hospital;

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

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

**"Concessionaire Default"** shall have the meaning set forth in Clause 33.1;

**"Concessionaire Related Parties"** means the Concessionaire's agents and contractors and its or their sub-contractors of any tier and its or their directors, officers, employees and workmen in relation to the Project;

**"Concession Fee"** shall have the meaning set forth in Clause 26.3;

**"Concession Period"** shall have the meaning set forth in Clause 3.1.1;

**"Conditions Precedent"** shall have the meaning set forth in Article 4;



**"Consortium"** means any combination of persons that have formed a consortium or association by fulfilling the requirements set out in the Request For Proposal, including executing a joint bidding agreement, for the purposes of submitting a Bid and for implementing the Project, if such consortium or association is declared as the Selected Bidder;

**"Consortium Member"** or **"Member"** means a member of the Selected Bidder's Consortium with the rights and obligations as set out in the RFP;

**"Construction Period"** means period beginning from the Appointed Date and ending on Project COD subject to the provisions of this Agreement;

**"Construction Works"** means all construction works and things necessary to complete (i) Phase 0; and/ or (ii) Phase – I and/or (iii) Phase – II (iv) Phase-III and/or (v) Optional Development, as the case may be, in accordance with this Agreement;

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

**"Contractor"** means the person or persons, as the case may be, with whom the Concessionaire may into any of the EPC Contract, the O&M Contract, the or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

**"Core Clinical Services"** means the following services and activities, for each of which, the Project shall employ and make available at least one MCI/recognised specialist on its rolls:

- (a) General Medicine;
- (b) General Surgery;
- (c) Obstetrics and Gynaecology;
- (d) Paediatrics, Paediatric Surgery, Neonatology;
- (e) ENT;
- (f) Ophthalmology;
- (g) Cardiac Sciences: Cardiology and Cardio thoracic Surgery;
- (h) Neuro Sciences: Neurology and Neurosurgery;
- (i) Renal Sciences: Nephrology and Urology;
- (j) Trauma and Critical Care;

- (k) Orthopaedics;
- (l) Gastroenterology & Hepatology;
- (m) Rheumatology;
- (n) Endocrinology & Diabetes; and
- (o) Anaesthesiology.

**"Covenant"** shall have the meaning set forth in Clause 5.2.3;

**"CPI (IW)"** means the Consumer Price Index for Industrial Workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding quarter;

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

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

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

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

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the principal) but excluding any part of the principal that had fallen due for repayment 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 prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default;
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; and

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;

**"Debt Service"** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

**"Deemed Completion Certificate"** shall have the meaning set forth in Clause 14.2.2;

**"Designated Person"** shall mean designated person duly authorised by the Concessionaire;

**"Development Period"** means the period from the date of this Agreement until the Effective Date;

**"Diagnostic Services"** means rendering the Pathology Tests and Radiology Tests;

**"Dispute"** shall have the meaning set forth in Clause 40.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 40;

**"Divestment Requirements"** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 34.1;

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

**"Drawings"** means all of the drawings, calculations and documents pertaining to each Phase of the Project, as the case may be as set forth in Schedule I, and shall include as built drawings of the Project;

**"EPC Contract"** means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, engineering and construction of the Project, in accordance with the provisions of this Agreement;

**"EPC Contractor"** means the person with whom the Concessionaire has entered into an EPC Contract;

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

**"Emergency Beds"** means Beds in the emergency department of the Project;

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

**"Encumbrances"** means, 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 but excluding utilities referred to in Clause 11.1;

**"Escrow Account"** shall have the meaning set forth in Clause 28.1;

**"Escrow Agreement"** shall have the meaning set forth in Clause 28.1;

**"Escrow Bank"** shall have the meaning set forth in Clause 28.1;

**"Equipment"** shall have the meaning set forth in Clause 21.7.1;

**"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest- free loans advanced by any shareholder of the Company for meeting such equity component;

**"Execution Date"** means the date on which this Agreement is executed by the Parties;

**"Existing Hospital"** shall have the meaning as ascribed in Recital A, Schedule- A and Schedule P;

**"Fee"** means the charge(s) levied on and payable by a person for use of the Project in accordance with the terms of this Agreement;

**"Financial Close"** means the fulfilment of all conditions precedent under the Financing Agreements, so that the funds agreed to be disbursed thereunder are ready and available for disbursement to the Concessionaire;

**"Financial Default"** shall have the meaning set forth in Schedule Q;

**"Financial Model"** means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**"Financial Package"** means the financing package indicating the total capital cost of the Project, as the case may be, and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and equity support, if any;

**"Financial Year"** means a year commencing on 1<sup>st</sup> April of a calendar year and ending on 31<sup>st</sup> March of the immediately succeeding calendar year;

**"Financing Agreements"** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures, bonds and other debt instruments, security agreements,

and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2 ;

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

**"Force Majeure Costs"** shall have the meaning ascribed to it in Clause 31.7(b);

**"General Ward"** means one or more rooms, each having a minimum of 6 (six) Ward Beds and includes associated rooms and facilities;

**"GOI"** means the Government of India;

**"Gross Revenue"** means all pre-tax gross revenues and receipts earned by the Concessionaire under or pursuant to this Agreement, at any time from the commercial operation date of the Phase 0, computed on monthly basis in accordance with this Agreement upto the Transfer Date, and shall include any monies received from sub-licensees and other persons, by the Concessionaire as deposits (refundable or otherwise) but shall exclude the following:

- (a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;
- (b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and
- (c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Concession year provided these pertain to past deposits on which Gross Revenue Share has been paid to the Authority

It is expressly clarified that:

- (i) insurance proceeds referred to in exclusion (a) above, shall not include any exclusion of insurance proceeds received for loss of revenues and/or business interruption;

- (ii) monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded;
- (iii) Gross Revenue Share is quoted by selected bidder on an annual basis (payable on monthly basis) for an Accounting Year, in accordance with the Indian Generally Accepted Accounting Principles, as applicable, however the same shall be payable and reconciled subject to and in accordance with provisions of this agreement.

“**Golden Share**” shall have the meaning ascribed to it in Clause 5.4.1;

**"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**"Government Instrumentality"** means 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 the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**"Gross Revenue Share"** shall have the meaning set forth in Clause 26.2;

“**Golden Share**” shall meaning set forth in Clause 5.4.1;

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

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

**"HMIS"** means Hospital management information system;

**"Hospital"** means the physical area given on lease to the Concessionaire and where Healthcare Services are provided by the Concessionaire;

**"Hospital Website"** shall have the meaning ascribed to it in Clause 5.14;

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

**"HVAC"** means heating, ventilation and air-conditioning;

**"ICU Beds"** means Beds in the intensive care unit of the Project and includes the Market ICU Beds and the Regulated ICU Beds;

**"Identification Certificate"** shall meaning set forth in Clause 22.7.2;

**"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 38;

**"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 38;

**"Independent Engineer"** shall have the meaning set forth in Clause 23.1;

**"Independent Panel"** shall have the meaning set forth in Clause 24.1;

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

**"Inpatient"** shall be those Patients receiving Inpatient Services;

**Inpatient Beds** means any Bed in the Project to which an Inpatient can be admitted and such Bed includes an ICU Bed;

**"Inpatient Services"** means the following items and services furnished to an Inpatient by the Project: (1) Bed and board; (2) such nursing services and other related services, such use of Project Facilities, and such medical social services as are ordinarily furnished by the Project for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the Project, as are ordinarily furnished by such Project for the care and treatment of inpatients; (3) medical or surgical services provided by a physician, resident, or intern; (4) the services of a private-duty nurse or other private-duty attendant; and (5) any other



clinical or non-clinical services provided to an admitted Patient;

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

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

**"Insurance Scheme"** means any public insurance scheme brought into force and effect by the Government of India or the State Government for reimbursing the cost of medical treatment provided to the Patients, including Select Patients, as may be in force and effect during the subsistence of this Agreement and shall include RSBY;

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

;

**"Key Performance Indicators"** shall have the meaning set forth in Clause 21.1;

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

**"LOA" or "Letter of Award"** means the letter of award referred to in Recital (D);

**"Land Lease Agreement"** shall have the meaning set forth in Clause 10.2.2;

**"Lead Member"** shall mean the lead member of the Consortium;

**"Leased Premises"** shall have the meaning set forth in Clause 10.2.2;

**LOI** means the letter of intent, approval or permit or other sanction, by whatever name called, to be issued by the MCI or equivalent authority under its relevant regulations, as a pre-condition to the Concessionaire being able to commence operations of the Medical College under this Agreement];

“**Loan Facility**” shall have the meaning set forth in Clause 2.1 (e);

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

"**Master Plan**" means and include the plan prepared for the Project after taking into account the capacities as envisaged under Phase- 0, Phase- I, Phase – II, Phase-III and Optional Development in accordance with the provisions of Clause 5.12.1 and shall mean any of these as the context may require;

"**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

["**MCI**" means the Medical Council of India];

["**Medical College**" means an educational facility including Medical College Building, medical college equipment and faculty which is approved by MCI or equivalent authority to provide medical education to Students leading to a degree of M.B.B.S. i.e. Bachelor of Medicine and Bachelor of Surgery and which shall be qualified under Applicable Law to be able to induct not less than 100 Students in each academic year;]

["**Medical Education Services**" shall have the meaning set forth in Clause 17.6.1;]

"**Monthly Invoice**" shall have the meaning set forth in Clause 27.1.5(d);

"**MRI**" means Radiology Tests carried out using a magnetic resonance imaging scan machine;

"**NABH**" means the National Accreditation Board for Hospitals and Healthcare Providers;

"**NABH Accreditation**" means the public recognition by NABH of the achievement of accreditation standards by a healthcare organization, demonstrated through an independent external peer assessment of that organization’s level of performance in relation to the standards. The achievement of accreditation shall mean the lowest accreditation provided by the NABH and **NABH Accredited** shall be construed accordingly;

"**NABL**" means the National Accreditation Board for Testing and Calibration Laboratories;

**"Nominated Company"** means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

**"Non-Political Event"** shall have the meaning set forth in Clause 31.2;

**"NPV"** shall have the meaning set forth in Clause 37.3;

**"O&M"** means 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 Fee in accordance with the provisions of this Agreement;

**"O&M Contract"** means the operation and maintenance contract that may be entered into between the Concessionaire and Project Operator and/or medical college operator for performance of the O&M obligations in accordance with this Agreement;

**"O&M Contractor"** means the Contractor with whom the Concessionaire has entered into an O&M Contract;

**"O&M Expenses"** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees; (b) cost of materials, supplies, utilities and other services; (c) premium for insurance; (d) all Taxes, duties, cess and fees due and payable for O&M; (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs; (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M; and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**"O&M Inspection Report"** shall have the meaning set forth in Clause 19.3;

**"OPD"** means the area earmarked for providing Healthcare Services to Patients other than Inpatients and does not include day care facility or emergency department;

**"OPD Patient"** or **"Outpatient"** shall be those Patients receiving OPD Services;

**"OPD Services"** means the Healthcare Services and consultation with doctor provided in the OPD more particularly set forth in Schedule M;

**"Operation Period"** during the relevant period, in relation to:

- (i) Phase – 0 shall mean, the period commencing from Appointed Date and ending on the Transfer Date;

- (ii) Phase – I shall mean, the period commencing from COD of Phase-I and ending on the Transfer Date;
- (iii) Phase – II shall mean, the period commencing from COD of Phase-II and ending on the Transfer Date;
- (iv) Phase – III shall mean, the period commencing from COD of Phase-III and ending on the Transfer Date; and
- (v) Optional Development shall mean, the period commencing from COD of Optional Development and ending on the Transfer Date;

**"Operationalised Bed"** means to include a Bed forming part of a Phase which has achieved the COD and/or a Bed in relation to which the Independent Engineer and the Independent Panel, upon successful determination of the Completion Tests, shall certify in writing to the Concessionaire and the Authority that a Patient can be immediately admitted to such Bed for availing of the Healthcare Services at the Project in accordance with the terms of this Agreement;

**"Optional Development"** means the Project with the additional number of Beds (over and above those provided in Phase -III), supporting facilities in accordance with Schedule A and Schedule H, and / or development operation and maintenance of the Medical College in terms of this Agreement;

**"Optional Development Guarantee"** shall have the meaning set forth in Clause 2.1 (e);

**"Parties"** means the parties to this Agreement collectively and **Party** shall mean any of the parties to this Agreement individually;

**"Pathology Tests"** mean the different tests that fall under the following six broad classifications:

- (a) Haematology; and/or
- (b) Clinical pathology; and/or
- (c) Biochemistry and immunology; and/or
- (d) Histopathology and cytology; and/or
- (e) Microbiology; and/or
- (f) Serology;

**"Patient"** means a person who uses or intends to use the Project for Healthcare Services on payment of Fee, directly or indirectly, in accordance with the provisions of this Agreement and Applicable Laws and includes an Inpatient and an Outpatient;

**"Patient Charter"** shall have the meaning set forth in Clause 21.5;

**"Performance Guarantee"** shall have the meaning set forth in Clause 9.4;

**"Performance Security"** shall have the meaning set forth in Clause 9.1.1;

**"Performance Security Period"** shall have the meaning set forth in Clause 9.3;

**"Phase"** as the context requires means, Phase-0, Phase –I, Phase- II, Phase -III and Optional Development developed in accordance with the provisions of this Agreement;

**"Phase-0"** means the Project comprising minimum number of 64 (sixty four) Beds with Super Specialty facility and Diagnostic Services in accordance with Schedule A and Schedule H;

**"Phase-I"** means the Project comprising minimum number of 100 (hundred) Beds (including those provided in Phase-0) with Super Specialty and Diagnostic Services in accordance with Schedule A and Schedule H;

**"Phase-II"** means the Project comprising minimum number of 250 (two hundred and fifty) Beds (including those provided in Phase -1) with Super Specialty and Diagnostic Services in accordance with Schedule A and Schedule H;

**"Phase-III"** means the Project comprising minimum number of 400 (four hundred) Beds (including those provided in Phase –I&II) with Super Specialty and Diagnostic Services in accordance with Schedule A and Schedule H;

**"Price Index"** shall comprise of weighted average of:

- (a) 70% (seventy percent) of WPI; and
- (b) 30% (thirty percent) of CPI (IW)

**"Political Event"** shall have the meaning set forth in Clause 31.4;

**"PPT"** means the Paradip Port Trust constituted under the Major Port Trust Act, 1963.

**"PPT Beneficiaries"** means PPT employees and their dependents, Chairmen, Dy. Chairmen and their dependents; Pensioners and their spouses/dependents, including from other Major Ports (under Ministry of Shipping, with proper permission); CISF employees and their family members/dependents; Kendriya Vidyalaya Staff. All Trustees on the day of their visit for Trust Board Meeting. Port Guests (declared for the days).

**"Preservation Costs"** shall have the meaning set forth in Clause 13.4.3;

**"Project"** shall mean: the operation, maintenance, rehabilitation, augmentation, development, construction, and management of the Phase – 0, Phase I, Phase II and Phase III and Optional Development (if any) and Additional Facilities, to be undertaken by Concessionaire subject to and in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project; For avoidance of doubt it is clarified that as and when Optional Development is undertaken or Additional Facilities is created, in accordance with terms hereof, the same shall be deemed to form part of the Project and all obligation of Concessionaire including in regard to payment of Gross Revenue Share shall extend thereto mutatis mutandis.

**"Project Agreements"** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to Rs. 5,00,00,000 (Rupees five crore) for each such agreement;

**"Project Assets"** means all physical and other assets relating to and forming part of the Project and the Site including:

- (a) rights over the Site;
- (b) tangible assets such as civil works including foundations, drainage works, electrical systems, communication systems, fare collection systems, rest areas, relief centres, maintenance depots, administrative offices;
- (c) Equipment
- (d) Project Facilities situated on the Site;
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc.;
- (g) insurance proceeds;
- (h) Applicable Permits and authorisations relating to or in respect of the Project; and

**"Project COD"** shall mean occurrence of all of : COD of Phase-0, COD of Phase-I COD of Phase-II and COD of Phase-III, in accordance with terms of this Agreement ;

**"Project Completion Schedule"** means the progressive Project Milestones set forth in Schedule H for completion of the Project, on or before the Scheduled Completion Date for Phase –0, Scheduled Completion Date for Phase –I and Scheduled Completion Date for Phase –II, Scheduled Completion Date for Phase -III;

**"Project Facilities"** means all the amenities and facilities in relation to the Project as

required by NABH, or NABL, as the case may be;

**"Project Milestones or Milestones"** means the project milestones set forth in Schedule H;

**"Protected Documents"** shall have the meaning set forth in Clause 41.3;

**"Project Operator"** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations in respect of the Project(except the Core Clinical Services), for and on behalf of the Concessionaire;

**"Radiology Tests"** means and includes the following tests:

- (a) MRI; and/or
- (b) CT-scan; and/or
- (c) X-Ray; and/or
- (d) USG; and/or
- (e) ECG; and/or
- (f) Echo cardiography;
- (g) Pulmonary Function Test (**PFT**); and/or
- (h) Treadmill Test (**TMT**).

**"Reference Exchange Rate"** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

**"Request for Proposals"** or **"RFP"** shall have the meaning set forth in Recital (B);

**"Right of Way"** means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project and real estate development in accordance with this Agreement;

**"Rs."** or **"Rupees"** or **"Indian Rupees"** means the lawful currency of the Republic of India;

**"RSBY"** means Rashtriya Swasthya Bima Yojna of the Ministry of Labour and Employment, Government of India or any substitute thereof;

**"Safety Requirements"** shall have the meaning set forth in Clause 18.1;

**"Schedule"** means a schedule under this Agreement;

**"Scheduled Bank"** means a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934;

**"Scheduled Completion Date"** shall include the scheduled date(s) for achieving COD of Phase-0, Phase-I, Phase-II and Phase-III as the case may be, as set forth in Schedule H;

**"Scheduled Completion Date for Phase –O"** has the meaning ascribed to it in Schedule H;

**"Scheduled Completion Date for Phase –I"** has the meaning ascribed to it in Schedule H;

**"Scheduled Completion Date for Phase –II"** has the meaning ascribed to it in Schedule H;

**"Scheduled Completion Date for Phase –III"** has the meaning ascribed to it in Schedule H;

**"Scope of the Project"** shall have the meaning set forth in Clause 2;

**"Select Patient"** means a BPL Patient or any other patient, who has been identified, certified and referred as a Select Patient, in accordance with Clause 22.6;

**"Selected Bidder"** means the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

**"Select Employees"** shall have the meaning as set forth in Clause 6.3.2;

**"Senior Lenders"** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

**"Site"** shall have the meaning ascribed thereto in Clause 10.1 and in case of development of Medical College by the Concessionaire as per the Agreement, Site shall also include Additional Land;

**"Specialties"** shall have the meaning set forth in Clause 22.2;

**"Specifications and Standards"** means the specifications and standards relating to



the quality, quantity, capacity and other requirements for the Project as set forth in Schedule B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

**"Specified Assets"** means and includes the assets forming part of the Optional Development and Additional Facilities (if any) envisaged as optional facilities/assets under this Agreement; which when approved to be constructed by Authority and developed and put into operation in accordance with Agreement shall be deemed to form part of the Project and the provisions of this Agreement shall apply and be operative on such development and its operations and maintenance, but shall in no case include land. Provided however that in case of termination, the Concessionaire's compensation in respect of such Specified Assets shall be limited to Additional Termination Payment.

**"Specified Documents"** shall have the meaning set forth in Clause 41.1;

**"State"** means the State of Odisha and **State Government** means the government of the State;

**"Statutory Auditors"** means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with provisions of this Agreement;

**"Students"** shall mean a student enrolled in the Medical College;

**"Subordinated Debt"** means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans denominated in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**"Substitution Agreement"** shall have the meaning set forth in Clause 36.3;

**"Suspension"** shall have the meaning set forth in Clause 32.1;

**"Taxes"** means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

**"Termination"** means the expiry or termination of this Agreement and the Concession hereunder;

**"Termination Notice"** means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**"Termination Payment"** means the amount payable in respect of Phase 0, and/or Phase I, and/or Phase II and/or Phase III of Project, subject to and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 33.3;

**"Test"** means the tests set forth in Schedule-J to determine the completion of Hospital in accordance with the provisions of this Agreement;

**"Total Project Cost"** means, as on the date of Project COD, the capital cost incurred on construction and financing of the Phase 0, Phase I, Phase II and Phase III of the Project, which cost shall regardless of anything contrary in this Agreement, be limited to the lowest of the following:

- (a) the capital cost of the Phase 0, Phase I, Phase II and Phase III of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Phase 0, Phase I, Phase II and Phase III of the Project upon completion of the Project; and

(c) a sum of Rs. 200 crore (Rupees Two Hundred crore)

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets;

**"Transfer Date"** means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

**"Tuition Fee"** means the fees to be charged to Students in accordance with this Agreement;

**"USG"** means Radiology Tests carried out using an ultra sound machine;

**"Vesting Certificate"** shall have the meaning set forth in Clause 34.4;

**"Ward Beds"** means the Beds in the private wards, semi-private wards, General Wards and mother and child ward meant for the care of the Inpatients and includes the Regulated Ward Beds and the Market Ward Beds. and

**WPI"** means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month. Only For illustration, the WPI is published at the web link <http://eaindustry.nic.in/#.WPI> index value is for the month of July 2014 is available, then the WPI Inflation Rate for the preceding year will be =  $[(\text{WPI Index Value at the end of July 2014})/(\text{WPI Index value at the end of August 2013}) - 1] \times 100$ .

## SIGNATORIES

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of

I ..... hereunto affixed in the presence of ....., director, who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>3</sup>:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of [Witness] by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

\_\_\_\_\_

<sup>3</sup> To be affixed in accordance with the articles of association of the Concessionaire.

SIGNED, SEALED AND DELIVERED For  
and on behalf of [Witness] by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

- 1.
- 2.

In the presence of:

- 1.
- 2.

## SCHEDULE A SCOPE OF THE PROJECT

### 1. Site Details

The project site is situated in an area of approximately 8.45 (eight point four five) acres and is located within the Paradip Port Trust Complex, Paradip, Orissa. The Site is situated next to Paradip bus stand and the main city market, in the centre of the cities hub. Currently, the site can be accessed from two major arterial roads in the east and west which are 17m & 20m in width and a service road in the south of width 5-7m. On the north is the city's police station and the south is partially an abandoned school complex.



Figure 1: Proposed project site for development of Super-specialty PPP hospital

### 2. Proposed development of the Project

The project shall be developed in 4 mandatory Phases with scope for Optional Development. From the Appointed Date, the Concessionaire shall start operating the existing hospital after taking over on “as is where is” basis. In 90 days from Appointed Date, the Concessionaire shall develop the mandatory Phase 0.

### 3. Phase – 0 – Mandatory 64 bedded super specialty facility

The Concessionaire shall refurbish and operate the Existing Hospital (The details pertaining to all the existing amenities and facilities situated on the Site are more particularly set out in Schedule P).

The broad scope of work under this phase includes:

- i. Operate and maintain 64 bedded hospital with 2 ICCU beds, ALS (Ambulance) & Blood Bank
- ii. Deploy adequate manpower
- iii. Equip the hospital as per speciality requirements
- iv. Install requisite diagnostic facilities
- v. Setup two ICCU beds
- vi. Install Fire suppression System

#### **4. Phase – 1 – Mandatory 100 bedded super specialty facility**

The Concessionaire is required to develop a 100 bedded super specialty facility.

The broad scope of work under this phase includes:

- i. Upgrade from 64 bedded hospital to 100 bedded hospital
- ii. Deploy adequate manpower
- iii. Equip the hospital as per specialty requirements
- iv. Develop supporting facilities – housing block for employees of the hospital, if required.
- v. Operate and maintain 100 bedded hospital
- vi. Install requisite diagnostic facilities
- vii. Develop 2 additional ICCU beds

#### **5. Phase – 2 – Mandatory 250 bedded super specialty facility**

- i. Upgrade from 100 bedded hospital to 250 bedded hospital
- ii. Deploy adequate manpower
- iii. Equip the hospital as per specialty requirements
- iv. Develop supporting facilities – housing block for employees of the hospital, if required.
- v. Operate and Maintain 250 bedded hospital
- vi. Install requisite diagnostic facilities
- vii. Develop additional 4 ICCU beds

#### **6. Phase-III- Mandatory 400 bedded super specialty facility**

- i. Upgrade from 250 bedded hospital to 400 bedded hospital
- ii. Deploy adequate manpower
- iii. Equip the hospital as per specialty requirements
- iv. Develop supporting facilities – housing block for employees of the hospital, if required.
- v. Operate and Maintain 400 bedded hospital
- vi. Install requisite diagnostic facilities
- vii. Develop 6 additional ICCU beds

#### **7. Optional Development**

**a. Additional beds**

- i. Develop additional beds and other facility in Hospital premises
- ii. Deploy adequate manpower
- iii. Adequately equip the hospital
- iv. Develop supporting facilities – housing block for doctors, nurses etc., if required.
- v. Operate and Maintain additional bedded hospital

**b. Development of Nursing / Medical College**

- i. Develop Medical College within Hospital premises
- ii. Deploy adequate manpower & develop housing block for students
- iii. Operate and Maintain the Medical College

\* With equipment as defined in the Concession Agreement

**8. Development timelines**

<b>Phases</b>	<b>From Appointed Date</b>
<b>Mandatory Phase</b>	
Phase 0	Operation of 64 bedded hospital with ICCU, ALS & Blood Bank within 90 days from Appointed Date
Phase I	Development of fully functional 100 bedded super specialty hospital within 2 years from Appointed Date
Phase II	Development of fully functional 250 bedded super specialty hospital within 8 years from Appointed Date
Phase III	Development of fully functional 400 bedded super specialty hospital within 15 years from Appointed Date
<b>Optional Phase</b>	
Addition of bed capacity	Construction Period – 2 years from the construction start date of this phase
Development of medical college	Construction Period – 2 years 6 months from the construction start date of Medical college

**9. Minimum Manpower requirement**

The ratio of Doctor: Nurse: Beds is equal to 1:4:10 for all Phases

For avoidance of doubt:

- a. Doctors may include the following:
  - Super specialty HODs
  - Other HODs
  - Senior Consultants



- Consultants
  - Senior Residents
  - Junior Residents
- b. Nurses may include the following:
- Nursing Superintendent
  - Deputy Nursing Superintendent
  - Senior Nurses
  - Shift duty nurses
- c. Technicians may include the following:
- OT Technicians
  - Laboratory Technicians
  - Radiology Technicians
  - Dialysis Technicians
  - Emergency Trained Experts / Technicians
  - Critical Care Technicians
  - Cath Lab Technicians
  - Physiotherapist
  - Pharmacist

## 10. Terms and conditions for treatment

The concessionaire shall provide treatment according to the CGHS guidelines and Non-NABH CGHS rate notified for Bhubaneswar. In the event that the Concessionaire acquires NABH certification and produces the same to the Authority, the Concessionaire shall be permitted to charge at NABH CGHS rates notified for Bhubaneswar. The guidelines and rates revised from time to time by the CGHS Authority will automatically be adopted from the time of such notification

01. "Package rate" shall mean and include the lump sum cost of inpatient treatment/day care/diagnostic procedure for which a PPT beneficiary has been permitted by the competent authority or for treatment in emergency from the time of admission to the time of discharge including (but not limited to)-(1) registration charges, (2) admission charges, (3) accommodation charges including patient's diet, (4) operation charges, (5) injection charges, (6) dressing charges, (7) doctor's visit/consultant's visit charges, (8) ICU/ICCU charges, (9) monitoring charges, (10) transfusion charges, (11) anesthesia charges, (12) operation theatre charges, (13) procedural charges/surgeon's fee, (14) cost of surgical disposables and all sundries used during hospitalization, (15) cost of medicines, (16) related routine and essential investigations, (17) physiotherapy charges etc., (18) nursing care and charges for its' services.
02. The PPT Patients must be treated in package rate as mentioned above, if any procedure is not available in CGHS rate of Bhubaneswar, first it will be quantified according to a similar (nearly similar) procedure for which package rate is available;

failing which, it will be quantified on the basis of rate for “**any other, major or minor surgery**” provided at the end of each discipline; or according to hospital rate; whichever is lower. In case of conservative management item-wise quantification will be done.

03. The cost of implant/stent/graft is reimbursable in addition to the package rate according the ceiling limit (CGHS), or as per the lowest rate quoted by a private hospital located in Cuttack/Bhubaneswar, where no prescribed CGHS rate is available. The Authority reserves the right to allow the actual hospital rate for the implant, in deserving cases.
04. The Hospital must not charge anything more than the package rate/rates. They must not ask the Select Patients and PPT Beneficiaries for any payment.
05. The regular employees and their dependents are entitled of accommodation depending on their basic pay as per CGHS guideline as detailed below, which may be modified from time to time by CGHS:

Sl. No.	Basic Pay + Dearness Pay (monthly)	Entitlement
01	Upto 13,950/-	General Ward
02	Rs.13,951.00 to 19,530.00	Semi-private Ward
03	Rs.19531 and above	Private Ward

If the beneficiary opts for higher accommodation other than his eligibility, the Hospital may provide the same getting consent from the patient for payment of excess charge deducting the eligibility charge as per CGHS tariff directly to the hospital in advance or during treatment.

The rates for item wise quantification shall be considered as per CGHS approved rate irrespective of class of accommodation.

06. The retired employee and his/her spouse are entitled for accommodation as detailed below:-

Sl. No.	Class of the Retired Employee	Entitlement
01	Class - IV	General Ward
02	Class - III	Semi-Private Ward
03	Class-I & II	Private Ward

The Class of the retired employee is mentioned in his/her Identity Card.

07. Unnecessary investigations must not be ordered and performed; such investigations will not be reimbursed.

08. Hospital must not make the steps of a surgery/procedure as individual procedure and charge for multiple packages. Artificially made multiple packages out of a particular procedure will not be reimbursed.
09. All investigations required for fitness of patients for elective surgeries/procedures are included as a part of package, no extra charges are allowed. In case of elective surgery, investigations can be completed before admission.
10. Patients of PPT must not be denied of emergency treatment in any case. Any fee or undertaking must not be collected. No elective case must be made to look like emergency for admission, whatever may be the reason.
11. The packing of chemo-drugs used for the patients in chemotherapy should be signed by the patients or his/her attendant and which must be attached with the bills. The rate(s) of chemotherapy drug(s) under price control by the GOI or the State Government shall be reimbursed without any deduction by the Authority as per the terms of this Agreement. For the chemotherapy drug(s) not under price control, the Hospital should give minimum 10% discount on MRP or discount offered to any other government entity, whichever is higher, in all such cases. Also, the Hospital must extend the benefits of discounted rate of chemo-drugs, if available under any scheme. .
12. All the coverings / packing / sticker of the implants / stents should be signed by the patients or his/ her attendant and the same is to be attached with the bills for reimbursement.
13. Discharge summary should contain a brief description of course of treatment in the hospital and the procedures conducted.
14. **PERIOD OF HOSPITALISATION**  
Where a patient is admitted for specific treatment, he will be hospitalized for **such period as is necessary for completion of the treatment**, procedures or diagnostic tests **for which Package rates are specified**. Treatment for prolonged period, in case of conservative management must have the approval of CMO, PPT.
16. Treatment of Patients suffering from Cancer and Lymphoma etc.
  - (i) The cost of cancer surgery will be reimbursed based on the OM No. REC/2008/JD(Gr.)/CGHS/CGHS(P) dated 23.06.2011 and subsequent revisions..
  - (ii) In addition to the rate prescribed for chemotherapy procedure/administration charges, accommodation, investigation and chemo-medicine charges (10% Less on MRP) will be reimbursed.

- (iii) For Radiotherapy package rate as defined earlier and prescribed in the CGHS rate 2014 will be reimbursed according to the category of the hospital.
17. If, the normal rates of the hospital for treatment procedure/test are lower than the CGHS prescribed rates, shall charge as per the rates charged by them for that procedure/treatment from a market patient. If, it is more and not available in CGHS rate and hospital is charging its' own rate, the hospital has to furnish a certificate to the effect that the rates charged from PPT beneficiaries are not more than the rates charged by them from market patients (Non-PPT).
18. During in-patient treatment of PPT beneficiary, the hospital will not ask the beneficiary or his/her attendant to purchase separately the medicines/sundries/equipment or accessories from outside and will provide the treatment within the package rate, fixed by the CGHS which includes the cost of all the items.
19. If, one or more additional/minor procedures form part of major treatment procedure, or if, allowed by PPT, then the package charges will be permissible for major procedure and only at 50% of charges for additional/minor procedure.
20. Any legal liability arising out of such services, responsibility solely rests on the hospital and shall be dealt with by the hospital.
21. The Second Party/the Hospital shall solely be responsible for any medical negligence, dispute, issue or liability, Civil and Criminal, if any, relating to and/or arisen out of any injury or harm or loss on account of the omission, commission, negligence, lack of due care, due diligence or rashness on the part of the Hospital, the attending Doctors, the para-medical staff, other staff, trainers, trainees, students or agents or any servant of the Hospital/the second Party and that shall be resolved directly in total by the Second Party at their cost, risk and responsibility, and the Second party shall always save the first party against all such risks, costs and liabilities. The First party shall not be a party to it in anyway and first party shall never be liable in any manner, merely because there is agreement for treating such patients or has been referred.
22. The front page of the bill must be in the format provided as Annex-I of this Schedule. The bills should be submitted at the end of treatment of each patient for quick disposal, must not be piled up and sent in a bunch.
23. PPT Beneficiaries will have a discretion to choose any empanelled hospital for the following procedures, even if the said procedures are available in the Hospital developed
- (i) Cardiothoracic Surgeries (Complicated or like CABG etc.)
  - (ii) Organ Transplant

- (iii) Cancer including Brain tumors
  - (iv) Stem Cell Transplant or
  - (v) Any other such type of cases recommended by the CMO
24. In case the facilities required for treating the Patients are not available in the Hospital, in such event CMO, upon intimation by the Concessionaire, shall make all the referrals, to other empanelled or Government hospitals. The Concessionaire shall provide the transport facility for the Patient to such empanelled/ Government hospital.
25. In the course of treatment, if, any patient needs to be shifted to higher centre (empanelled on CGHS rate or Govt. hospital) in Cuttack/ Bhubaneswar, the Hospital can bill @ Rs. 16-00 per kilometer for A/C ambulance and @ Rs. 20.00 per kilometer for advanced life support ambulance. The amount shall be modified as per the prevailing NHM guidelines or by a committee constituted by the PPT on its own or upon request from the Concessionaire.
26. The Hospital shall get enrolled for Janani Surakshya Jyojana (JSY), Universal Immunization Program and Facility Integrated Testing and Counselling Centre that are functioning at present and provide staffs/doctors for sustaining the activities. The Hospital shall adopt any welfare measure declared by the State or Central Government.
27. The Hospital shall support PPT Schemes under CSR activity, like cataract surgeries and health camps.
28. The Hospital shall support welfare measures declared by PPT, like sterilization operations for family planning free of cost.
29. Issues or disputes relating to the reimbursement and quantification of the bills will be sorted out in a mutually agreed manner; however, for any disagreement that may persist, the decision of the Chief Medical Officer of the Paradip Port Trust will be final.

**Format**

**Annex-I**

Letter Head of the Institution  
**Paradip Port Trust Health Care Service**

Name of the patient.....PPT  
 ID.....M/F.....Age.....  
 Self/dependant of/spouse of.....  
 Reference No..... /Post-facto Reference No..... date.....  
 Disease for which referred..... In-Patient/OPD/Day  
 care Or Investigation for which referred.....  
 Date of Admission..... Date of Discharge.....  
 Hospital ID..... Bed No.....  
 How Discharged: Cured and discharged/Discharged against Medical Advice, If Death: cause of  
 Death..... Treatment Given-  
 Conservative/Procedure/ if Surgery- Name of Surgery.....Serial No. in  
 CGHS Annexure II .....

Package rate\*.....  
 (\*Hospital rate or CGHS Pkg rate whichever is less)

Less 10% as General Ward.....  
 Increase 15% as Private ward.....  
 Rate of Implants (If Any).....  
**Total.....**

Certified that the Hospital has not charged anything in excess of CGHS certified rate and not more than the hospital rate applicable to the general public.

Signature and Name of the  
Authorized Signatory

## SCHEDULE B

### SPECIFICATIONS AND STANDARDS

The Project shall comply with the following standards/norms/guidelines and their latest revisions/amendments for construction, operation, maintenance and management of the Hospital.

#### I. Standard to be followed for construction, operation, and management of Hospital:

- National Accredited Board of Project and Healthcare Providers (NABH) standards for Project(as per prevailing standard);
- National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services (as per prevailing standard);
- International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL) (as per prevailing standard);
- National Building Code of India (NBC) guideline issued by Bureau of Indian Standards in 2005 and latest published version;
- Hospital’s Medical Gas Pipeline System (MGPS) shall conform to Health Technical Memorandum (HTM)-02-01: Medical gas pipeline systems Part A for Design, Installation, Validation and Verification, revised from time to time (prevailing standard)
- Environmental Sustainability Plan including:
  - Ministry of Environment and Forest (MoEF) Guidelines as applicable
  - the equator principles (<http://www.equator-principles.com>)
- Shall comply with Solar energy, rainwater harvesting, zero garbage and waste water recycling requirements of municipal corporation, Paradip as applicable
- To the extent possible shall construct energy saving building in the Hospital

#### II. Standard to be followed for maintenance of Hospital:

S No	Description	Guideline	Latest publication
1	General Maintenance of hospital	<ul style="list-style-type: none"> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital;</li> </ul>	Prevailing Standard
2	Biomedical Equipment	<ul style="list-style-type: none"> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital.</li> </ul>	Prevailing standard
		<ul style="list-style-type: none"> <li>• Compliance also required to the respective suppliers' maintenance manuals and guidelines.</li> </ul>	As applicable

3	Laboratory Equipment	<ul style="list-style-type: none"> <li>International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL)</li> </ul>	Prevailing Standard
		<ul style="list-style-type: none"> <li>Compliance also required to the respective suppliers' maintenance manuals and guidelines</li> </ul>	As applicable
4	Radiology and Imaging Equipment	<ul style="list-style-type: none"> <li>National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services; and</li> </ul>	Prevailing Standard
		<ul style="list-style-type: none"> <li>Compliance also required to the respective suppliers maintenance manuals and guidelines</li> </ul>	As applicable
5	Plant and Machinery	<ul style="list-style-type: none"> <li>National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital.</li> </ul>	Prevailing Standard
		<ul style="list-style-type: none"> <li>Compliance also required to the respective suppliers' maintenance manuals' and guidelines</li> </ul>	As applicable

### III. Standard to be followed for safety standards:

SN	Description	Guideline	Latest publication
1	Patient and staff safety	<ul style="list-style-type: none"> <li>National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital;</li> </ul>	3 <sup>rd</sup> edition; November, 2011
2	Building and Fire safety	<ul style="list-style-type: none"> <li>National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital;</li> </ul>	3 <sup>rd</sup> edition; November, 2011
		<ul style="list-style-type: none"> <li>National Building Code of India (NBC) guideline issued by Bureau of Indian Standards.</li> </ul>	Latest available standard and state govt. guidelines



**SCHEDULE C****APPLICABLE PERMITS**

Indicative list of approval is mentioned below, Concessionaire shall have to make assessment of applicable permits, approvals, clearances and shall be responsible for fulfilment of all legal requirements and obligations under Clinical Establishment Act:-

<b>Sr. No.</b>	<b>Licenses/ Permits</b>
1.	Building permit and Completion certificate from the Municipality.
2.	Consent to operate from the State Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment Protection Act.
3.	Clinical Establishments Act, 2010.
4.	Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1999.
5.	Atomic Energy Act, 1954.
6.	Goods and Services Tax Act.
7.	Registration of Births and Deaths Act, 1969
8.	Indian Medical Council Act, 1956 and Code of Medical Ethics Regulations, 2002.
9.	NoC from Chief Fire Inspector
10.	Registration of operation of X-ray machine with AERB.
11.	Shops and Establishments Act, 1954
12.	Sale of Goods Act, 1930.
13.	License for Blood Bank.
14.	Cable Television Networks Act, 1995.
15.	Transplantation of Human Organs Act, 1994.
16.	Radiation Protection Rules, 1971 and Radiation Surveillance Procedures for Medical Application of Radiation, 1989.
17.	Labour, Tax laws, Electricity, Petroleum (for storage), Water and Consumer Protection laws.
18.	NOC from Local Municipal Office for any Bye Laws.
19.	Food and Safety Standards Act, 2006.
20.	Narcotics and Psychotropic Substances Act, 1985.
21.	Pharmacy Act, 1948
22.	Societies Registration Act, 1860.
23.	Excise permit to store spirit (Central Excise Act, 1944)

24.	Hazardous Waste Management Rules, 1989.
25.	Bio-medical Management and Handling Rules, 2016.
26.	Boilers act, 1923
27.	The Orissa Nurses & Midwives Registration Act, 1938
28.	Registration under PNDT Act, 1994 and MTP Act, 1971.
29.	Any other applicable permit, as required time to time.

For the avoidance of doubt, the abovementioned list is indicative in nature and the Concessionaire shall be responsible for taking out and maintaining all and any Applicable Permits as may be required under Applicable Law and for the facilitation of the Project.

**SCHEDULE D****SELECT EMPLOYEES**

1. The Select Employees as mentioned in this Schedule shall be deputed in the Project (Super Specialty Hospital) from Appointed Date during the entire Concession Period unless any of the Select Employee resigned / retire from her/ his services or medically not-capable of providing her/his services.

**2. Detail of Clinical and Non- Clinical Staff**

S.No	Designation	Expected date of retirement
1.	Asst. Matron	30.05.2020
2.	Staff Nurse	31.05.2041
3.	Nursing Sister	30.06.2045
4.	Sr. Labaortary Technician	30.06.2043
5.	Head Pharmacist	30.06.2040
6.	Sr. Pharmacist	31.03.2036
7.	Pharmacist	31.01.2037
8.	Radiographer	31.08.2020
9.	CMO (M.B.B.S. & MS Surgery)	31.03.2026
10.	Sr. Dy CMO (M.B.B.S, MD - O & G)	31.01.2025
11.	Sr. Dy CMO (MD-Radiodiagnosis)	31.01.2035
12.	Dy CMO (MD-Medicine)	31.01.2029
13.	Dy CMO (M.S.-Ophthalmology)	30.04.2038
14.	Sr. MO (M.B.B.S)	31.07.2027
15.	Sr. MO (M.B.B.S)	30.04.2030
16.	Sr. MO (M.B.B.S)	30.11.2040
17.	Sr. MO (M.B.B.S)	31.01.2044
18.	MO (M.B.B.S & Post Graduate Diploma in Hospital Health Management)	31.01.2029
19.	MO (M.B.B.S)	30.06.2050
20.	MO (M.B.B.S)	30.04.2046
21.	MO (M.B.B.S)	30.06.2046
22.	MO (M.B.B.S)	30.04.2056

**3. Non-Clinical Staff**

S.No	Designation	Expected Date of retirement
1.	Dresser	30.04.2020

<b>S.No</b>	<b>Designation</b>	<b>Expected Date of retirement</b>
2.	Dresser	30.04.2020
3.	Sr. Dresser	31.10.2021
4.	Dresser	31.08.2020
5.	Dresser	31.10.2019
6.	Dresser	28.02.2022
7.	Dresser	31.01.2032
8.	Dresser	30.11.2030

## SCHEDULE E

### PERFORMANCE SECURITY

#### FORM OF PERFORMANCE SECURITY

*[On Appropriate Stamp Paper]*

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this *[insert date]* day of *[insert month and year]* at *[insert place]* by *[insert name of bank]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

**IN FAVOUR OF:**

**BOARD OF TRUSTEES**, for **PARADIP PORT TRUST**, represented by [●] (hereinafter referred to as the Authority which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

**WHEREAS:**

- (A) The Authority has entered into a concession agreement dated *[insert date]* (the **Concession Agreement**) with *[insert name of Concessionaire]*, a private limited company incorporated under the provisions of the Companies Act with its registered office at [●] (hereinafter referred to as the **Concessionaire** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).

In terms of the Concession Agreement, the Concessionaire has agreed to develop, operate and maintain a super-specialty Project with an option of development of Medical College at Paradip (the **Project**), on a design, build, finance, operate, and transfer basis and Healthcare Services to Patients at the Project and Medical Education Services to the Students.

- (B) In terms of the Clause 9.1 of the Concession Agreement, the Concessionaire is required to furnish to the Authority, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to Rs. [.] (Rupees [.] Only) (the Performance Security ) as security for the due performance or discharge of the Concessionaire's

obligations and liabilities during the Construction Period until the COD of Phase- 0 or COD of Phase-I or COD of Phase-II or COD of Phase-III or COD of Optional Development, as the case may be under the Concession Agreement, including any amounts due and payable by the Concessionaire as liquidated damages as a condition precedent to the effectiveness of the Concession Agreement.

- (C) At the request of the Concessionaire and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee, for the due and punctual performance or discharge by the Concessionaire of its obligations and liabilities under the Concession Agreement.

**NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:**

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 Performance Security Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the 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 upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the 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 Authority, under the hand of an officer not below the rank of Chief Medical Officer of the Authority or any officer authorised by the Authority 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 Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Performance Security Period 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 Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the 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 Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
  5. The 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 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 Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the 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 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 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 unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Security Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
  8. The Performance Security shall remain in force and effect till the expiry of the Performance Security Period and unless a demand or claim in writing is made by the Authority to the Bank under this Performance Security, no later than 6 (six) months from the date of expiry of this Performance Security (“**Claim Period**”), all rights of the Authority under this Performance Security shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

- 9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants 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 during the Performance Security pursuant to the provisions of the Agreement.
- 12. The Bank’s obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Performance Security. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the amount under the Performance Guarantee.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever

Signed and sealed this ..... day of ....., 20..... at .....

SIGNED, SEALED AND DELIVERED  
 For and on behalf of  
 the BANK by:

(Signature)  
 (Name)  
 (Designation)  
 (Code Number)



(Address)

**NOTES:**

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee. The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

**SCHEDULE F**

**PERFORMANCE GUARANTEE**

**FORM OF PERFORMANCE GUARANTEE**

*[On Appropriate Stamp Paper]*

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this *[insert date]* day of *[insert month and year]* at *[insert place]* by *[insert name of bank]* with its head/registered office at *[insert address]*, (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

**IN FAVOUR OF:**

BOARD OF TRUSTEES, for **PARADIP PORT TRUST** represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

**WHEREAS:**

- (A) .....(the "**Concessionaire**") and Board of Trustees, Paradip Port Trust (the "**Authority**") have entered into a Concession Agreement dated .....(the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking the construction and operation of the Hospital in Paradip on design, finance, equip, operate and transfer 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 Authority in a sum of Rs. [.] (Rupees [.] Only) (the "**Performance Guarantee**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the O&M Period (as defined in the Agreement).
- (C) We, ..... through our Branch at .....(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 Performance Guarantee Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the 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 upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the 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 Authority, under the hand of an officer not below the rank of Chief Medical Officer of the Authority or any officer authorised by the Authority 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 Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Performance Guarantee Period 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 Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the 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 Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The 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 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 Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the 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 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 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 unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Guarantee shall remain in force and effect till the expiry of the Performance Guarantee Period and unless a demand or claim in writing is made by the Authority on the Bank under this Performance Guarantee, no later than 6 (six) months from the date of expiry of this Performance Guarantee (“**Claim Period**”), all rights of the Authority under this Performance Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants 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 during the Performance Guarantee Period pursuant to the provisions of the Agreement.

12. The Bank’s obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Performance Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the amount under the Performance Guarantee.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

Signed and sealed this ..... day of ....., 20..... at .....

SIGNED, SEALED AND DELIVERED

For and on behalf of  
the BANK by:

(Signature)  
(Name)  
(Designation)  
(Code Number)  
(Address)

NOTES:

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

## SCHEDULE G

### LAND LEASE AGREEMENT

This Agreement for Lease of land comprising the Site ("**Lease Deed**") is made and executed on this [\_\_\_\_\_] day of [\_\_\_\_]. 20[\_\_\_], by and between:

- (i) BOARD OF TRUSTEES, for PARADIP PORT TRUST , a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [.] , represented by its [● .....{Chairman of any person authorised by him}] with its principal office at [●] (hereinafter referred to as the "**Authority**" or "**Lessor**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- (ii) [*name of the Concessionaire* ], having its registered office at [*insert*] represented through its authorised representative, [*insert details of the Concessionaire's authorised representative*] (hereinafter referred to as the "**Concessionaire**" or "**Lessee**", which expression shall unless repugnant to the subject or context mean and include its successors and permitted assigns) of the Second Part.

The Lessor and Lessee are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:

- A. The Parties have entered into a Concession Agreement dated \*\*\* (**Concession Agreement**), wherein the Lessee has agreed to **Setting up of Project** (collectively the "**Project**" ) on PPP basis and the Lessor has agreed to provide the Land for this purpose on leasehold basis, upon the terms and conditions specified in the Concession Agreement;
- B. The Lessor owns and is in possession of, the land constituting the Site, as specified in the Concession Agreement and as delineated and set out in the Schedule hereto (herein referred to as "**the Site**");
- C. Pursuant to the provisions of the Concession Agreement, the Lessor now desires to lease the Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Site for the purposes set out in the Concession Agreement.

**NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:**

**1. Definition and Interpretation**

**1.1 DEFINITIONS**

The words and expressions beginning with capital letters and defined in this Lease Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease Deed and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

- (a) "**Appointed Date**" shall have the meaning set forth in Clause 45 of the Concession Agreement;
- (b) "**Encumbrance**" means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;
- (c) "**Site**" shall have the meaning set forth in Recital B of this Lease Deed; and
- (e) "**Term**" shall have the meaning set forth in Clause 3 of this Lease Deed.

**1.2 Interpretations**

In this Lease Deed, except to the extent that the context requires otherwise:

- (a) the Annexure to this Lease Deed forms part of this Lease Deed and will be of full force and effect as though it is expressly set out in the body of this Lease Deed; and
- (b) the terms of this Lease Deed should be read in consonance with and not in derogation with the terms of Concession Agreement;

**2. Grant of lease and possession**

- 2.1.1 In consideration of the Covenants contained in the Concession Agreement and this Lease Deed and payment of the Lease Rent, the Lessor grants leasehold rights ("**Lease**") in respect of the Site, to the Lessee and the Lessee agrees to accept the Lease from the Lessor, for the duration of the Term together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Site or any part thereof, and to hold, possess, use and enjoy the Site and/or any part thereof, in accordance with the provisions of this Lease Deed, subject always, however, to the terms and conditions contained in the Concession Agreement<sup>4</sup>. The parties hereto agree that Lessor shall, in case Optional Development is demonstrably elected to be undertaken by Concessionaire in accordance with terms of the Concession Agreement, make available adequate additional land as required to comply with Medical Council of India/other competent authority requirement in respect of development of Medical College, in which case such additional land shall be deemed to form part of the Site being given on leasehold basis hereunder and the terms hereof shall mutatis mutandis apply to such additional land.
- 2.1.2 The terms and conditions of the Concession Agreement shall be deemed to have been incorporated herein by reference. A copy of the executed Concession Agreement is annexed hereto as Annexure "A".
- 2.1.3 The possession of the Site shall be handed over to the Lessee in accordance with the provisions of the Concession Agreement.

### 3. Term

The Lease granted pursuant hereto shall be for a period of 50 (fifty) years commencing from the Appointed Date (the "**Term**") and shall be subject to extension by a further period of additional 10 years in the event that the Concession Period is extended in accordance with terms of the Concession Agreement, and shall be co-terminus with the Concession Agreement. In the event the Concession Agreement is

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<sup>4</sup> Following amendment shall be introduced in this Land Lease Agreement in case the Concessionaire opts for development of Medical College as per Clause 10.1 of the Concession Agreement: *[In case of development of a Medical College, as mutually decided upon by the Authority and Concessionaire, the Authority shall provide additional 10 (ten) acres or more of land, as may be required ("**Additional Land**") on Lease. Upon handing over of such Additional Land by the Authority to the Concessionaire, such Additional Land shall become part of the Site and all the terms, conditions, rights and obligations of the Concessionaire in relation to Site provided for the Project shall apply mutatis mutandis for such Additional Land being provided for development of the Medical College.]*



terminated for any reason whatsoever, this Lease Deed shall terminate automatically without any further action to be taken by the Lessor. It is further clarified that upon the termination of the Concession Agreement for any reason whatsoever, or upon expiry of the term of the Concession Agreement, as the case may be, the Lessee shall transfer and hand over to the Lessor the Site along with all the assets and facilities related to the Project including, but not limited to, all buildings, constructions or immovable assets, if any thereon, free from all Encumbrances, whatsoever.

#### **4. Lease Rent**

- 4.1 Upon execution of this Lease Deed and in consideration of the grant of the Lease, the Lessee has agreed to pay to the Lessor an annual lease rent of Re 1/- (Rupee One only) ("**Lease Rent**").
- 4.2 The Lessor acknowledges and confirms that the Lessee has paid the entire Lease Rent in respect of the entire Term, prior to execution of this Lease Deed. In the event of earlier termination of the Lease for any reason whatsoever, no amounts shall be refundable to the Lessee.

#### **5. Use of Site**

During the Term of the Lease, the Lessee agrees to use the Site for carrying out its obligations under the Concession Agreement and for no other purpose.

#### **6. Determination of Lease**

- 6.1 The Lease and this Lease Deed may be determined in accordance with terms contained herein, the terms of the Concession Agreement or earlier by mutual agreement between the Parties in writing.
- 6.2 Upon determination under this Clause 6, the Lessor shall have the following rights:
- (a) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Deed by the Lessee; and
  - (b) any other right or remedy, legal or equitable, that the Lessor may be entitled to under Applicable Laws.

#### **7. Lessor's obligations and covenants**

The Lessor hereby agrees and warrants that:

- (a) subject to the terms of the Lease Deed and the Concession Agreement, the Lessee shall be entitled to possess, hold, use and enjoy the Site and every part

thereof during the Term of the Lease Deed, without any interruption by the Lessor except as per the provisions of this Lease Deed;

- (b) the Lessee shall, during the Term of the Lease Deed, enjoy free ingress and egress to and from the Site without any hindrance;
- (c) subject to timely performance of the covenants and conditions contained herein and the Concession Agreement, the Lessee shall peacefully hold and enjoy the Site during the Term of the Lease Deed;
- (d) the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Site in accordance with the terms of the Concession Agreement;
- (e) Except with the prior express written approval of the Lessor and subject always to the terms of the Concession Agreement and any other conditions that may be prescribed by the Lessor while granting its approval, as above, the Lessee shall not be entitled to sub-lease, license or create any other Encumbrance or rights in the Site or any part thereof, in favour of any third party; and
- (f) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period upto the commencement of the Lease Deed. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Site shall be borne by the Lessee during the Term of the Lease Deed.

## **8. Sale, transfer or disposal of the Site**

- 8.1 The Lessor may sell, transfer or otherwise dispose of the Site to any Government Instrumentality or any other entity owned or controlled by the Government of Odisha or Government of India.
- 8.2 The Parties agree that any sale, transfer or other disposal of the Site or any part thereof as provided in this Clause 9 shall always be subject to the leasehold rights of the Lessee set out in this Lease Deed and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Site or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute

an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Lease Deed.

## **9. Lessee's obligations and covenants**

Lessee hereby covenants, agrees and represents that:

- (a) upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Site on "as is where is basis" and in the condition it is handed over and undertakes to use the same only for the purposes specified in the Concession Agreement;
- (b) the Lessee shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period from the commencement of the Lease Deed and during the Term;
- (c) during the Term, the Lessee shall undertake the development of the Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (d) it shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;
- (e) it shall pay all Taxes, service tax, cesses, assessments and levies in respect of the Site, which are leviable at any time during the Term;
- (f) except as specifically permitted herein, it shall not create any lien, charge or Encumbrance on the Site;
- (g) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Site; and
- (h) it shall (i) keep and maintain the Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Site, it shall make diligent efforts to remove such encroachments from the Site, as soon as practicable.
- (i) at the time of termination of the Concession Agreement due to any reason whatsoever, or the expiry of the term of the Concession Agreement, as the case may be, the Lessee shall return and hand over to the Lessor the Site and along with it all of the facilities and assets related to the Project which are present on the Site including but not limited to buildings, constructions or immovable assets, if any, thereon.

## **10. Stamp duty and registration charges**

Subject to the exemption or waiver, if any, granted by the Government of Odisha or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the lease contemplated herein shall be to the account of and borne by the Lessee.

**11. Indemnities and limitation of liability**

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and
- (c) any breach, violation or non-compliance by the Lessee of any applicable laws and/or Applicable Permits.

**12. Assignment**

The Lessee shall not, without the Lessor’s prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed.

**13. Dispute Resolution**

The Dispute Resolution mechanism prescribed under the Concession Agreement shall apply to this Lease Deed.

**SCHEDULE REFERRED TO HEREINABOVE**

(Note : copy Site schedule from the Concession Agreement prior to execution)

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS LEASE DEED AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of THE LESSOR  
by:

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
by LESSEE:

(Signature)  
(Name)  
(Designation)

(Signature)  
(Name)  
(Designation)

In the presence of:

1.

2.

**SCHEDULE H****PROJECT COMPLETION SCHEDULE**

During Construction Period, t//he Concessionaire shall comply with the requirements set forth in this Schedule for each of the Phases of the Project and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Phase, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

The Concessionaire shall adhere to the Phase illustrated in the table below:

S. N.	Description	Period for Phase	Key Specialties	Major Equipment
Phase -0	64 bedded Specialty facility	90 days from the Appointed Date	As per Schedule A and Schedule M	As per Schedule A, Schedule B, and Schedule O
Phase - I	100 bedded Super Specialty facility	2 years from Appointed Date	As per Schedule A and Schedule M	As per Schedule A, Schedule B, and Schedule O
Phase - II	250 bedded Super Specialty facility	8 years from Appointed Date	As per Schedule A and Schedule M	As per Schedule A, Schedule B, and Schedule O
Phase-III	400 bedded Super Specialty facility	15 years from Appointed Date	As per Schedule A and Schedule M	As per Schedule A, Schedule B, and Schedule O
Optional Development (Optional)	Further development of Super Specialty Hospital	2 years from construction start date of this phase	As per Schedule A	As per requirement in consultation and approval from PPT

Medical College (optional)	Medical College having minimum capacity of 100 seats	2 years 6 months from construction start date of Medical College	As per Schedule A	As per requirement in consultation and approval from PPT
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## **SCHEDULE I**

### **DRAWINGS**

The Concessionaire shall furnish the following drawings of the Project Building, Service Block, Residential Complex, Medical College and any other construction in the Site which will be done by the Concessionaire:

- (a) Master Plan of the Project
- (b) Municipality Sanction Drawings
- (c) Detailed Architectural Drawings (floor wise)
- (d) Structural Drawings
- (e) Elevation drawings of all buildings
- (f) Facade design and drawings
- (g) Landscape drawings
- (h) Electrical drawings
- (i) Plumbing and sewerage drawings
- (j) HVAC (Heating, Ventilation and Air Condition) drawings
- (k) Fire Fighting System's drawings
- (l) Medical Gas Pipeline system's drawings
- (m) Lifts design and drawings
- (n) Interior design and drawings
- (o) Drawing for solar system (if any)
- (p) Signage designs
- (q) Any other as may be required



## **SCHEDULE J**

### **TESTS**

#### **COMPLETION TESTS FOR PROJECT**

**I. Authority shall arrange the Independent Engineer to verify and conduct the following Tests:**

- (a) Loose stones and/or plaster and/or bricks in the Project;
- (b) Hanging electrical wire and/or temporary connects for electric supply and distribution system including the diesel generator (DG) sets, UPS systems and stabilizers; and
- (c) Dripping taps and/or leaking pipes and/or blocked swage lines in the water supply and distribution system including supply of hot, cold, potable, ultra-pure water and steam water.

**II. Authority shall arrange the Independent Engineer to inspect the following work / activities for award of Completion Certificate:**

- (a) Traction / transportation system;
- (b) Public health engineering system (waste storage / disposal, effluent treatment plant); and
- (c) Installation and commissioning certificates, warranty certificates of all plant and machineries, transformer, electrical panels, and non-medical equipment.

**III. The Concessionaire shall conduct the following tests during Project construction by the Government authorised agency and to provide the respective test certificates to Authority:**

- a) Soil test of the Project land
- b) Water test of the Project land
- c) Concrete / RMC test
- d) Steel (TMT Bar) test
- e) Cement Test
- f) Brick test

**SCHEDULE K**

**COMPLETION CERTIFICATE FOR PROJECT**

1. I/We, ..... (Name of the Independent Engineer and/or Independent Panel), acting as Independent Engineer and/or Independent Panel, under and in accordance with the Concession Agreement dated ..... (the **Agreement**), for the Project in city of Paradip, Odisha through ..... (Name of Concessionaire), hereby certify that the Tests specified in Clause 14.1 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the [relevant Phase of the Project] with the provisions of the Agreement, and I am satisfied that the [relevant Phase of the Project] can be safely and reliably placed in commercial service of the Patients thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of [relevant Phase of the Project] have been completed, and the [relevant Phase of the Project] is ready for entry into commercial operation on this ..... day of ....., 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER AND/OR INDEPENDENT PANEL by:

(Signature)

(Name)

(Designation)

(Address)

## SCHEDULE L

### KEY PERFORMANCE INDICATORS

#### A. KPIs with Liquidated Damages

S. No.	KPI	Measure & Explanation	Baseline Requirements / Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
1	Periodic painting - interior & exterior	Period painting of interior or exterior buildings	Every 3 or 5 years <sup>@</sup>	No painting within 30 days of due date	<ul style="list-style-type: none"> <li>• Maintenance register</li> <li>• Random audit by Independent Panel</li> <li>• Report by CMO</li> </ul>	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0)	0.01 * number of days of default * estimated cost of painting <sup>\$</sup>
2	Maintenance of Equipment	AMC & CMC	100% of the equipment	Non-renewal of AMC/CMC prior to the expiry for any equipment	<ul style="list-style-type: none"> <li>• AMC/CMC contract</li> <li>• Annual maintenance plan as submitted to CMO</li> </ul>	On 1st day of every quarter for which assessment is being made (calculated from COD of Phase-I)	(0.01 * number of days of default) * cost of AMC/CMC for the equipment

S. No.	KPI	Measure & Explanation	Baseline Requirements / Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
3	Uptime of HMIS	Number of hours for which HMIS is down	Zero except planned maintenance	Any one unplanned occurrence	<ul style="list-style-type: none"> <li>• Authority /CMO reports</li> </ul>	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0)	For every hour of deviation Rs. 5,000
4	Patient Satisfaction Survey	Patient satisfaction survey (survey of 5% patients in hospital at the time of discharge)	Rating of 3.5 on a scale of 5	Every decimal rating below overall 3.5	<ul style="list-style-type: none"> <li>• Random audit by Independent Panel</li> <li>• Satisfaction forms collected by CMO</li> </ul>	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0)	For every decimal point rating below 3.5, 0.1% of PG
5	Patient Complaints	Number of Patient complaints	Less than 20% of the patients	Every occurrences beyond	<ul style="list-style-type: none"> <li>• Patient Complaint</li> </ul>	1st day of subsequent quarter for which assessment is being	For every additional complaint Rs. 1000

S. No.	KPI	Measure & Explanation	Baseline Requirements / Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
		reported		threshold		made (calculated from COD of Phase-0)	
6	Obtaining and maintaining NABH, NABL and other accreditation	Not obtaining or maintaining the accreditation	Zero default	One or more incidences of default	<ul style="list-style-type: none"> <li>Accreditation documents (copy to be submitted to PPT each year)</li> </ul>	Completion of 3 months from COD of Phase II or COD of Phase III, as applicable	<p>Damages for not obtaining NABH accreditation: 0.5% of the Performance Guarantee for every 1 month of default beyond continuous period of 3 months, as referred in the previous column, where the Concessionaire fails to obtain or maintain the NABH Accreditation. Please refer to Clause 21.4 of Agreement.</p> <p><b>Damages per incidence of default:</b> Rs. 100,000 per incidence of default in non observance with</p>

S. No.	KPI	Measure & Explanation	Baseline Requirements / Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
							obligations relating to obtaining and/or maintaining the NABH accreditation plus reimbursement at Non-NABH rates.
7	Priority to PPT Beneficiaries for OP / IP services (except for emergency or trauma cases)	Priority shall be given to PPT Beneficiary in admission	Zero default	One or more incidences of default	<ul style="list-style-type: none"> <li>•HMIS data</li> <li>•Random audit by Independent Panel</li> <li>•Report by CMO</li> </ul>	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-0)	Rs.20,000 per incidence of default and the Concessionaire shall make necessary arrangements for the treatment of PPT Beneficiaries in the hospital as suggested by CMO/designated doctor in CMO's Office. For avoidance of doubt the Concessionaire shall bear the cost of such treatment.
8	Waiting time for	Average waiting	Zero default	One or more incidences	<ul style="list-style-type: none"> <li>•HMIS data</li> <li>•IT Tool for</li> </ul>	1st day of subsequent quarter for which	Rs. 10,000 per day extra waiting

S. No.	KPI	Measure & Explanation	Baseline Requirements / Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
	PPT OP services	time of PPT patients <= average waiting time of market patients (queuing al to take care)		of default	monitoring online & spot registration	assessment is being made (calculated from COD of Phase-0)	time

<sup>§</sup> If not cured for one month, authority may step in to cure and charge 1.5 times of cost of curing (repair / replacement)

All the Liquidated Damages shall be capped to the value of Performance Security /Guarantee individually as well as collectively during a measurement cycle.

<sup>@</sup> Whitewash / oil paintings shall be at the frequency of 3 years while long lasting paintings such as distempers etc shall be at the frequency of 5 years. Independent Engineer shall decide the frequency (nature of painting) in the event of any dispute.

Note: Indicative Liquidated Damages/Incentives shall be increased by 6% every year from the 1st anniversary of the Appointed Date.



## SCHEDULE M

### SPECIALTY SERVICES

The Concessionaire shall have all specialty in the Project as set forth in this Schedule M. Specialty mentioned in this schedule are mandatory obligation of the Concessionaire for each phase. The Concessionaire may add any additional specialty based on the market need in its discretion. For avoidance of doubt, the Concessionaire shall have all specialty as mentioned in this Schedule in phased manner and continue to operate for the entire Concession Period.

#### 1. Specialty Mix

The Concessionaire shall have facility mix as below:

Phase	Phase- 0	Phase-I	Phase-II (Super Specialty)	Phase-III(Super Specialty)
Total Number of Beds	64 beds	100 Beds	250 Beds including 100 beds of Phase I	400 Beds including 250 beds of Phase I & II
Healthcare Services	<ul style="list-style-type: none"> <li>• General Medicine</li> <li>• General Surgery</li> <li>• Obstetrics &amp; Gynecology</li> <li>• Orthopedics</li> <li>• Ophthalmology</li> <li>• Pediatrics</li> <li>• Anesthesia</li> <li>• Pathology</li> <li>• Cardiology</li> <li>• ALS (Ambulance) &amp;</li> </ul>	<ul style="list-style-type: none"> <li>• Cardiac Sciences                             <ul style="list-style-type: none"> <li>○ Cardiology with Cath-lab</li> <li>○ ICCU</li> <li>○ Cardiac Surgery (optional)</li> </ul> </li> <li>• Neuro Science (optional)                             <ul style="list-style-type: none"> <li>○ Neurology</li> <li>○ Neuro Surgery</li> </ul> </li> <li>• Orthopedic                             <ul style="list-style-type: none"> <li>○ Joint Replacement surgeries</li> <li>○ High end Trauma surgeries</li> </ul> </li> <li>• Emergency &amp; Trauma and critical care</li> <li>• Physiotherapy &amp; Rehabilitation</li> <li>• Minimal invasive &amp; day care</li> <li>• ENT</li> </ul>	Healthcare Services under Phase I and: <ul style="list-style-type: none"> <li>• Cardiac Sciences                             <ul style="list-style-type: none"> <li>○ Interventional Cardiology: All Cath Lab Procedures including PTCA and other procedures involving Coronary Artery and Carotid Artery Angioplasty and Stenting, catheter/ percutaneous based cardiac valve repair</li> <li>○ Cardiac Surgery (Thoracic &amp; Vascular Surgery): Coronary Artery Bypass Graft (CABG), Cardiac Valve replacement/ repair surgeries, repair of Congenital Heart Defects</li> </ul> </li> <li>• Neuro Science</li> </ul>	Healthcare Services under Phase II and: <ul style="list-style-type: none"> <li>• Cardiac Sciences                             <ul style="list-style-type: none"> <li>○ Interventional Cardiology: All Cath Lab Procedures including PTCA and other procedures involving Coronary Artery and Carotid Artery Angioplasty and Stenting, catheter/ percutaneous based cardiac valve repair</li> <li>○ Cardiac Surgery (Thoracic &amp; Vascular Surgery): Coronary Artery Bypass Graft (CABG), Cardiac Valve replacement/</li> </ul> </li> </ul>

Phase	Phase- 0	Phase-I	Phase-II (Super Specialty)	Phase-III(Super Specialty)
	<p>minimum 2 ICU beds</p>	<ul style="list-style-type: none"> <li>• Dermatology</li> <li>• Endocrinology &amp; Diabetes</li> <li>• Pharmacy</li> </ul>	<ul style="list-style-type: none"> <li>○ Skull base Neuro surgery, Surgeries for Brain Tumors, Frameless Sternotomy</li> <li>○ High end spinal surgery</li> <li>○ Neurosurgical interventions related to traumatic brain injuries, spinal cord injuries, Stroke, aneurysms, Cancers of the brain and spinal cord, vascular diseases of the brain and spinal cord.</li> <li>• Renal Science               <ul style="list-style-type: none"> <li>○ Urology: including Kidney Transplant Surgery</li> <li>○ Nephrology including Dialysis</li> </ul> </li> <li>• Endocrinology &amp; Diabetes</li> <li>• Gastroenterology &amp; Hepatology               <ul style="list-style-type: none"> <li>○ Liver transplantation</li> <li>○ G I Bleed</li> </ul> </li> <li>• Pulmonology &amp; Respiratory Medicine</li> <li>• Diagnostics: Cardio Diagnostics</li> </ul>	<p>repair surgeries, repair of Congenital Heart Defects</p> <ul style="list-style-type: none"> <li>• Neuro Science               <ul style="list-style-type: none"> <li>○ Skull base Neuro surgery, Surgeries for Brain Tumors, Frameless Sternotomy</li> <li>○ High end spinal surgery</li> <li>○ Neurosurgical interventions related to traumatic brain injuries, spinal cord injuries, Stroke, aneurysms, Cancers of the brain and spinal cord, vascular diseases of the brain and spinal cord.</li> </ul> </li> <li>• Renal Science               <ul style="list-style-type: none"> <li>○ Urology: including Kidney Transplant Surgery</li> <li>○ Nephrology including Dialysis</li> </ul> </li> <li>• Endocrinology &amp; Diabetes</li> <li>• Gastroenterology &amp; Hepatology               <ul style="list-style-type: none"> <li>○ Liver transplantation</li> <li>○ G I Bleed</li> </ul> </li> <li>• Pulmonology &amp; Respiratory Medicine</li> <li>• Diagnostics: Cardio</li> </ul>

Phase	Phase- 0	Phase-I	Phase-II (Super Specialty)	Phase-III(Super Specialty)
				Diagnostics

Above specialty is mix is mandatory and minimum obligation under respective phase along with all necessary diagnosis services and equipment. The Concessionaire may add any specialty in any phase.

## SCHEDULE N

### INDEPENDENT ENGINEER OR INDEPENDENT PANEL

#### Part A

#### TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

##### 1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the **TOR**) are being specified pursuant to the Concession Agreement dated..... (the **Agreement**), which has been entered into between the Authority and ..... (the **Concessionaire**) for the Project at Paradip, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

##### 2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

##### 3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings for the purpose of construction including review of detailed design, construction methodology, quality assurance procedures as set forth in Paragraph 4;
  - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;

- (iii) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 5;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 6; and
- (vii) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

#### **4 Development Period**

4.1 During the Development Period, the Independent Engineer shall undertake review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

#### **5 Construction Period**

5.1 In respect of the Drawings and Documents received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the

Concessionaire within 7 (seven) days of receipt of such report.

- 5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Hospital. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Commercial Operation Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.5 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers, in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.6 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.7 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set

forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.

- 5.8 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate for Hospital.
- 5.9 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

## **6 Assistance in Dispute resolution**

- 6.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 6.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **7 Other duties and functions**

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

## **8 Miscellaneous**

- 8.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 8.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.
- 8.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the

Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

- 8.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 8.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

## **Part B**

### **TERMS OF REFERENCE FOR INDEPENDENT PANEL**

*[to be inserted at the time of selection of Independent Panel]*



## SCHEDULE O

### EQUIPMENT

#### Minimum Facility and Equipment requirements

In Phase 0, the bidder shall install Fire suppression System and install other equipments as follows:

	Fully Functional Hospital (Post Phase III)	Phase I	Phase II <sup>1</sup>	Phase III <sup>1</sup>
<b>Bed Categories</b>	<b>Total Bed Complement</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>
Single	50	10	20	20
Twin	100	20	40	40
Ward	200	60	70	70
ICU	50	10 <sup>@</sup>	20	20
	<b>400</b>	<b>100</b>	<b>150</b>	<b>150</b>
OPD Rooms	30	10	10	10
Procedure room	2	2		
<b>Blood Bank, 2 ICCU beds and ALS shall also be made functional within Commencement of Phase Zero. 2 ICCU beds in Phase I, 4 ICCU beds in Phase II and 6 ICCU beds in Phase III</b>				
Other Beds		Phase I	Phase II	Phase III
<b>Beds</b>	<b>(No. of Beds)</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>
Emergency Room				
Triage	4	2	2	
Observation beds	8	4	4	
Dialysis beds	10	2	4	4
Post Op Recovery	10	4	6	
Pre Op room	4	2	2	
Pre-Cath room	3	3		
Post-Cath room	6	6		
Delivery Rooms	2	1	1	
Labor Room for sepsis	1	1		
<b>Total no. of other beds</b>	<b>48</b>	<b>25</b>	<b>19</b>	<b>4</b>
No of operating rooms	Fully Functional Hospital (Post Phase III)	Phase I	Phase II	Phase III
<b>Type of OR</b>	<b>No. of facilities</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>	<b>No of beds/ Unit</b>
Cardiac OT	1		1	
Neuro OT	1			1
Ortho OT	1		1	
Major OT	4	2	1	1
Labour Room	2	1	1	

Minor OT	1	1		
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The Concessionaire must have below equipment as per mentioned in this schedule. The minimum specifications of equipment (must have Indian Standard / FDA / CE) required in the Project are as follows:

Department / Equipment	Minimum Number of Equipment		
	Phase I	Phase II	Phase III
<b>Radiology &amp; Imaging</b>			
CT Scan (16 Slice)		1	
MRI (1.5T)			1
Ultrasound 3D with multi frequency transducers of 1. Linear, 2. Sector, 3. Convex, 4. TVS and 5. soft tissue	1	1	
X-Ray DR	1		
Portable X Ray 60 mA	1		
Auto Film Processor	1		
Radiology accessories	2		
X-ray viewer [8 film panel]	2		
Mammography	1		
<b>Cardiology Diagnostics</b>			
ECG (12 Channel)	1	1	
Defibrillator / Monitor / Recorder	1		
Echo Doppler	1		
Tread Mill	1		
Holter Monitor		1	
PFT	1		
<b>Neurology Diagnostics</b>			
EEG			1
<b>Ophthalmology</b>			
Slit Lamp	1		
Examination Chair	1		
Indirect Ophthalmoscope	1		
Direct Ophthalmoscope	1		
Trial Lens Set	1		
Retinoscope	1		
<b>ENT</b>			
Otoscope	1		
Head Light Unit	1		
Instrument Set	1		
<b>Physiotherapy</b>			

Department / Equipment	Minimum Number of Equipment		
	Phase I	Phase II	Phase III
Shortwave Diathermy (500 w)	1		
Ultrasound Therapy Unit	1		
Muscle Stimulator	2		
TENS	1		
Interferential Therapy Unit	1		
Tilt Table	1		
Wax Bath	1		
<b>Laboratory &amp; Blood Bank</b>			
Automatic Clinical Analyser	1		
Semi automated analyser	1		
Cell Counter 6 part	1	-	
Blood Gas Analyser	1		
Electrolyte Analyser	1		
Automated sample Culture System	1		
Binocular Microscope	1		
Microscope	1		
Elisa Reader & Washer	1		
Incubator	1		
Hot air oven	1		
Centrifuge machine	1		
VDRL rotator	1		
Electronic balance	1		
Lab autoclave (BB + Lab)	1		
Refrigerator	1		
Knife Sharpener (Histopath)	1		
Wax Bath	1		
Cell Separator	1		
Blood Bank Refrigerator (240 bags)	1		
Blood Bank Refrigerator (40 to 60 bags)	1		
Freezer ( 250bags -40 Deg. C)	1		
Cell Washing System	1		
Platelet Incubator Agitator	1		
Refrigerated Cold Centrifuge	1		
Haemo sealer	1		
Apheresis Equipment	1		
Blood Collection Monitor	1		
LAF bench (Class 100)	1		
Bio-safety cabinet	1		
Automated Donor Couches	1		
Plasma Thaw Bath (37 Deg C)	1		
Cryobath (4 Deg C)	1		

Department / Equipment	Minimum Number of Equipment		
	Phase I	Phase II	Phase III
Plasma Expresser Automated	1		
Plasma Expresser Manual	1		
Automated Hb testing	1		
Fully Automated ID system	1		
Ultrasonic Washer	1		
Water Baths	1		
Medicine Refrigerator	1		
Distilled Water equipment	1		
<b>Emergency Department</b>			
ECG Machine (12 channel)	1		
Multipara meter Monitor (ECG, NIBP, SpO2)	1	1	
Surgical Instrument Sets	1	1	
Defibrillator/ Monitor / Recorder	1		
Examination Table	1		
Minor OT table	1		
<b>Nurse Call System</b>			
Nurse Call System	2	4	4
<b>Operating Theatres Major</b>			
Electrohydraulic Tables (Multipurpose)	2	3	
Electrohydraulic Table (Cardiac)			1
Electrohydraulic Table (Ortho & Neuro)			1
Anaesthesia machine with Ventilator	1		1
Anaesthesia Machine	2		2
Neuro and Cardiac OT Monitor			1
Multipara meter Monitor(Multipurpose)		1	1
Multipara Monitor (SpO2, ECG,NIBP)	2		
Transport Monitor		2	
C-Arm			1
Patient Warming Blanket	1		
Electrocautery	1	1	
Syringe Infusion Pump	1	2	2
Defibrillator	1		
Mobile Light	1		
Flash Steriliser (Instrument)	1		
Surgical Instrument sets (minor)	2		
Surgical Instrument sets (major)	2		
Surgical Instrument sets (Cardio minor)		2	
Surgical Instrument (Cardiac major)			2
Surgical Inst.(Neuro)			1

Department / Equipment	Minimum Number of Equipment		
	Phase I	Phase II	Phase III
Surgical Inst.(Ortho)		1	1
Laparoscopy set		1	
Operating Microscope			1
Arthroscope			1
Neuro Head Lamp			1
<b>Intensive Care Units</b>			
Bedside Monitors (multipara meter)	5	10	10
Bedside Monitors (ECG,SpO2,NIBP)	5	10	10
Syringe Infusion Pumps	2	4	4
Pulse Oximeter	2	1	1
Defibrillator/ Monitor / Recorder	1		1
External Pacemaker		1	
Ventilator	4	2	4
Nebulizer	4	2	4
ECG Machines (12 channel)	1		1
Suction Machines	1	1	
<b>NICU</b>			
Incubators	1	2	1
Phototherapy Unit	1	2	1
Bedside monitor (Multipara meter)	1	2	1
Syringe Pumps	2	2	
Ventilator	1		
Radiant Warmers	1	1	2
Suction Machine	1		1
<b>Nephrology &amp; Urology</b>			
Dialysis Units		5	5
Reverse Osmosis Plant		1	
Monitors (ECG, NIBP, SpO2)		2	3
Lithotripsy Room setup		1	
Urodynamic Lab			1
<b>Endoscopy</b>			
Endoscope Unit		1	
<b>OBG</b>			
Delivery Table	1	1	
Delivery Room Light	1	1	
CTG	1		
<b>Cath Lab Equipment</b>			
Cath Lab	1		



**SCHEDULE P**

**EXISTING FACILITY**

**1. Existing PPT Hospital**

PPT Hospital has a capacity of 64 beds. The hospital caters to Trust employees & their dependents, port users, shipping agents, corporates and others based at Paradip Port. The hospital has ISO certification and is authorized for Bio-Medical disposal system. Table below provides the details of facilities available at the hospital.

<b>Description</b>	<b>Beds</b>
<b>General Beds</b>	<b>52</b>
• Male ward	23
• Female ward	23
• Eye ward	02
• Isolation ward	04
<b>Special cabin (Double bedded with AC &amp;TV)</b>	<b>08</b>
• Male ward	04
• Female ward	04
<b>General cabin (Double bedded with AC)</b>	<b>04</b>
• Male ward	02
• Female ward	02
<b>Grand Total</b>	<b>64</b>

Other Services	Units
NICU	01
ICU	01
Labour tables	02
Operation Theatre	02

Existing hospital is a G+ 1 storey building has a built-up area (BUA) of 97069 sq.ft

## 2. Services available at the Existing Hospital

- In-patient and OPD service
- Laboratory Tests
- X-Ray Facility-CR System
- Ultra sonogram and ECHO Cardiography
- ECG
- Laparoscopic Sterilization
- Endoscopy
- Audiometry
- Spirometry (Pulmonary Function Test)
- Pharmacy
- Physiotherapy
- Immunization
- Casualty: 24X7
- First-Aid :24X7
- 2 AC Basic Life Support Ambulances
- Mortuary
- Effluent treatment plant
- Bio-Medical Waste Disposal System



### 3. Existing Equipment Details

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
	Operation Theatre						
1	Anaesthesia Machine	1 No.			√		
2	Multi Para Monitor, Model: IntelliVue MP20	1 No.	Philips Health Care		√	20.07.2018	19.07.2019
3	Infusion Pump (TOP), Model: TOP 2200	2 No.	TOP Corporation, Tokyo, Japan	01.08.2003	×		
4	TOP Syringes Pump, Model-TOP 5300	2 No.	TOP Corporation, Tokyo, Japan	01.08.2003	×		
5	OT Table, Model: Hospitab 115 E4	1 No.	Hospitech Industries	20.4.2005	×		
6	Ophthalmic Electric OT Table, Model TMI-1207	1 No.	Technomed	04.05.2018	New		
7	OT Light,	1 No.	Martina		×		
8	OT Light, Model:CN7SP & CN 20SP	2 No.	Technomed	26.11.2010	×		
9	LED Surgical OT Light, Model TMI EL-C	1 No.	Technomed	23.03.2018	New		

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
10	Autoclave (Hyprocessure Horizontal Sterilizer), Model-16HB/E	1 No.	NAT Steel Equipment Pvt. Ltd.	15.2.1997	√	13.07.2018	14.07.2019
11	Double Drum Autoclave, Model-LAB 1220	1 Nos.	Solokraft	11.05.2015	×		
12	Steam Sterilizer	5 Nos.			×		
13	Crash Trolley	1	Allat		×		
14	Laprascopy Machine full set (Endomat fully functional)	1	KARL Storz	28.01.2002	×		
15	Micro Mist Fogger Machine	1 No.	Jonshon & Jonshon Medical India	10.01.2015	×		
16	Operating Microscope, Model-Spectra-900	1 No.	Mollar Wedel, Germany	26.3.1992	×		
17	Surgical Ophthalmic Operating Microscope, Model OPMI Lemera 300 (Now under 2 years warranty)	1 No.	Carl Zeiss India (Bangalore) Pvt. Ltd.	27.03.2018	New	27.03.2020	26.03.2025
18	Phaco Emulsification Machine (Now under 2 years warranty)	1 No.	Carl Zeiss India (Bangalore)	11.01.2018	New	12.01.2019	11.01.2024

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/CMC	AMC Date	AMC Expiry date
			Pvt. Ltd.				
19	Electrical Slow Suction Machine	1 No.	Meditrin Instruments	16.08.2010	×		
20	Cuttery Machine	2 No.	L & T Medical and ALAN		×		
	<b>ICCU Unit</b>						
21	ICCU Ventilator, Model-Savina	1 No.	Dragger		√		
	<b>MINOR OT</b>						
22	LED Surgical Light, Model TMI EL-C	1 No.	Technomed	23.03.2018	New		
	<b>LABOUR ROOM</b>						
23	Doppler	1 No.	TekSonic		×		
24	Micro Computer Radiant Heat Warmer	1 No.	Meditrin Instruments		×		
25	OT Light,	1 No.			×		
	<b>FEMALE WARD/NICU</b>						
26	Baby Incubator	1 No.	Meditrin Instruments		×		
27	Baby warmer	1 No.	Meditrin Instruments		×		

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
28	Photo therapy	2 Nos.	Meditrin Instruments		×		
29	Baby Transport Incubator	1 No.	Meditrin Instruments	16.08.2010	×		
	<b>MALE WARD</b>						
30	Defibrillator Machine, Cardioplus	1 No.	Schiller		×		
	<b>X- Ray Unit</b>						
31	X-ray machine, Model-Allengers 300MA	1 No.	Allengers Medical System Ltd.	1998	√	20.01.2018	19.01.2019
32	Ultrasound Machine, Model-Clearvue 650	1 No.	Philips Healthcare	18.02.2015	√	21.02.2018	20.02.2019
33	Computed Radiography (CR) System, Model-Regius 110 Konika	1 No.	Konica Minolta	02.03.2016	√	04.03.2018	03.03.2019
	<b>ENT Unit</b>						
34	Diagnostic Audiometer	1 No.	Elcon				
	<b>Surgery Unit</b>						
35	Vedio Gastro Duodenoscope, Model:EG 265WR (Processor, Display unit and attachment)	1 set	Fujinon	26.05.2009	×		

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/CMC	AMC Date	AMC Expiry date
	Eye Unit						
36	Direct Ophthalmoscope	1 No.	Heine		×		
37	Indirect Ophthalmoscope	1 No.	Appasamy		×		
38	Streak Retinoscope	1 No.	Welch Allyn		×		
39	Streak Retinoscope	1 No.	Appasamy		×		
40	Slit lamp with Unit Chair	1 No.	Appasamy		×		
41	Auto-refraction with Keratometer, Model- Accref-K900	1 No.	Shin- NIPPON Medical, Japan	03.10.2013	√	01.11.2017	31.10.2018
42	Vision Drum (LCD), Model: iChart	1 No.	Appasamy		×		
43	Stabilizer	1 No.			×		
44	Non Contact Tonometer, Model-NT 4000	1 set	NIDEK		√	23.02.2018	22.02.2019
45	A-Scan, Model-3M	1 No.	Echo rule		√	23.02.2018	22.02.2019
46	Testing box (Trial Set)	2 sets.			×		
47	Streak Retinoscope with LED illumination. (Model: Professional Keeler)	1 No.	Keeler Ltd.	30.10.2018	New		
	Pathology Unit						

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
48	Random Access Photometric Biochemistry Auto- Analyzer, Model 360 with Computer, Laser Printer and UPS (Now under 2 years warranty)	1 No.	Transasia	18.05.2017	New	17.05.2019	16.05.2024
49	Easylite Plus (NA/K/CL) Analyzerwith UPS, Model- NA/K/CL (2014) (Now under 2 years warranty)	1 No.	Transasia	18.05.2017	New	17.05.2019	16.05.2024
50	Fully Automated 6-Part Differential Hematology Analyzer, Model -XN-550 + Computer, Laser Printer and UPS(Now under 2 years warranty)	1 No.	Sysmex/Transasia	18.05.2017	New	17.05.2019	16.05.2024
51	Fully Automated Multi parametric Immuno-Assay Analyzer,Model ADIVA Centaur CP with Computer, Laser Printer and UPS (Now under 2 years warranty)	1 No.	Siemens Healthcare Pvt. Ltd.	10.06.2017	New	10.06.2019	09.06.2024
52	Fully Automatic Semi Auto Analyser, Model- BTS-350	1 No.	Biosystem	15.01.2010	×		

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/CMC	AMC Date	AMC Expiry date
53	Incubator	2 No.	SECO Instrument and Yorco		×		
54	Centrifuse Machine	2 nos.	Remi		×		
	Dental Unit						
55	Dental Chair, Model- Chamundi	1 No.	Confident Dental Equipment's Ltd.		√	11.01.2018	10.01.2019
56	Light curve Unit	1 No.			×		
57	Ultrasonic Scaller	1 No.			×		
	Occupational Health Unit						
58	Spirometer, Madel: Spiromin with Laptop - HP.	1 set	Electromedics	24.11.2015	×		
	RVG Machine Ez Sensor Classic 1.5	1 No.	Vatech India Pvt. Ltd.	04.06.2019	√ (warranty)	Warranty of 5 years	04.06.2024
	Physiotherapy Unit						
59	Traction with Bed	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
60	Vectrostim	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/CMC	AMC Date	AMC Expiry date
61	Electrowave 500	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
62	Tech. Leaser SS	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
63	Ultrasound 709	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
64	Diagnostic Muscle stimulator	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
65	Lower limb continuous passive Motation.	1 No.	Technomed Electronics	22.01.2013	√	15.02.2018	14.02.2019
66	Paraffin Wax Bath	1 No.	Shivam Health care	22.01.2013	×		
67	Shoulder Wheel	1 No.	Shivam Health care	22.01.2013	×		
68	Shoulder Pulley Set	1 No.	Shivam Health care	22.01.2013	×		
69	Shoulder Abduction Ladder	1 No.	Shivam health care	22.01.2013	×		
70	Grip Exerciser	1 No.	Technomed	22.01.2013	×		
71	Static Cycle Exerciser(Junior)	1 No.	Avon	22.01.2013	×		
72	Examination Couch	1 No.	made in	22.01.2013	×		



Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/CMC	AMC Date	AMC Expiry date
			wood	13			
73	Electrotherapy plus Ultrasound Combo Machine , Model Winstim 4 Channel (Now under 2 years warranty)	1 No.	Johari Digital Healthcare Ltd.	09.03.2018	New	08.03.2020	07.03.2025
	<b>Biological Waste Unit</b>						
74	Waste Shredder Machine 25 Kg. Model:2000SS-60	1 No.	Yorco Sales Pvt. Ltd.	06.03.2007	×		
75	Autoclave (Steri Biomedical Waste Sterilizer)	1 No.	Yorco		×		
	<b>vaccination room</b>						
76	ILR (Refrigerator) Model:CHBK	1 No.	Blue star		×		
	<b>Medicine Store</b>						
77	Double unit Cold Chamber, Model QC-522	1 No.	Blue star Limited	06.08.1999 (Applcation for Repair)	√		
78	Advanced Practi-man CPR Manikin (Adult and Child Combine, Vimetecsa)	1 No.	Elite Plus, Pune	05.10.2017	New		
	<b>Casualty</b>						

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
79	Digital Alcohol Breath Analyzer, Model KT-4000P with inbuilt Printer	1 No.	Mangal Security Products	19.06.2017	New		
	Other Equipments						
80	ECG Machine, Model 108TMK VI	1 No.	BPL		×		
81	ECG Machine, Model-BPL-9108	1	BPL		×		
82	ECG Machine, Model- TC-20	2 No.	Philips Health Care		√	01.07.2018	30.06.2019
83	Microscope	4 No.	Olympus		×		
84	Weighing Machine	5 Nos.			×		
85	Baby Weighing machine	2 Nos.			×		
86	Digital Weighing Machine	1 No.			×		
87	Sphygmo Manometer	20 Nos.			×		
88	<u>Oxygen Pipeline system</u> 1.56 Out lets 2.N2O 2 out lets 3.Vacuum Suction- 56 Out lets				√	17.01.2018	16.01.2019
	<u>Rebound Technology Portable Tonometer</u> Model: I Care IC 100	1 No.	I Care Finland Oy	03.01.2019		2 years warranty (up to	02.01.2021

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
						02.01.2021)	
	<u>Semi-automatic Urine Chemistry Analyzer</u>	1 No.	BioSystems Reagents & Instruments	22.02.2019		1 year warranty (up to 21.02.2020)	Free 1 year AMC after expiry of 1 year warranty i.e. 21.02. 2021
	<b>SANITARY UNIT</b>						
89	Wet & Dry Vacuum Cleaner, 62 L Tank Capacity	1 No.	Roots Multiclean Limited	22.02.2018	New		
90	Wet & Dry Vacuum Cleaner, 62 L Tank Capacity, Model-429 TNX	1 No.	Roots Multiclean Limited	06.06.2018	New		
91	Automatic Scrubber Drier, Model E 4545	1 No.	Roots Multiclean Limited	06.06.2018	New		
	Automatic Scrubber Drier, Model E 4545	1 No.	Roots Multiclean Limited	02.07.2019	New	Warranty of 1 year	02.07.2020
	<b>Electronic Products</b>						
92	Refrigerator	10 Nos.	LG				
93	Air conditioner	101					

Sl. No.	Name of the Equipment	Qty.	Name of company	Date of Installation	AMC/ CMC	AMC Date	AMC Expiry date
		Nos.					
94	Computer(CPU, Monitor, UPS, Key Board)	16 nos.					
95	Computer Printer	10 nos.					
	Multi para Monitor for ALS						
96	Multi- Channel Monitor, Model G30E (Goldway), Operation Theatre	1 Nos.	Philips	09.07.2018	New		

**SCHEDULE PP**

**EXTANT SERVICE CONDITION OF SELECT EMPLOYEES**

**As per CCS (leave) rule 1972 & Wage Revisions and any revision thereof**

## SCHEDULE Q

### INDICATIVE FORMAT OF THE SUBSTITUTION AGREEMENT

*[On appropriate stamp paper]*

This SUBSTITUTION AGREEMENT is entered into on this [●] 2019

#### **BETWEEN**

**BOARD OF TRUSTEES**, for **PARADIP PORT TRUST**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at [●] represented by its [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns); and

[●], a private limited company incorporated under the provisions of the Companies Act, 2013 with its registered office at [●] (hereinafter referred to as the **Concessionaire** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

#### **AND**

[●] with its registered office at [●], [acting for itself and for and on behalf of the lenders listed at Annex hereto] (hereinafter referred to as the **Lenders**, which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes).

The Authority, Concessionaire and the Lenders are hereinafter collectively referred to as **Parties** and individually as **Party**.

#### **WHEREAS:**

- A. The Authority and the Concessionaire have entered into a concession agreement on [●] (the **Concession Agreement**), in terms of which the Concessionaire has agreed to undertake augmentation, operation, management and development of the Existing Hospital to a 400 bed super speciality hospital by construction of new blocks, rehabilitation of building construction of Existing Hospital and/or rehabilitation of residential quarters and related infrastructure, road intersections, drains, etc., and the operation and maintenance thereof (the **Project**).
- B. With a view to facilitate obtaining financing for the Project by the Concessionaire and to enable the Concessionaire in augmentation, upgradation and development of the

Project pursuant to and in accordance with the Project Agreements, the Parties have agreed that, subject to the terms and conditions of the Project Agreements and the financing documents, the Lenders shall have the right to substitute the Concessionaire for the remaining Concession Period.

- C. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- D. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- E. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.
- F. The Parties have agreed to execute this Substitution Agreement on the terms and conditions mentioned herein below.

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

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

**"Agreement"** means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**"Financial Default"** means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals;

**"Nominated Company"** means a company, incorporated under the provisions of the

Companies Act, 1956, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

"**Notice of Financial Default**" shall have the meaning ascribed thereto in Clause 3.2.1; and

"**Parties**" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

## **1.2 Interpretation**

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## **3 SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1 Rights of substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated



Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

### **3.2 Substitution upon occurrence of Financial Default**

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Concessionaire Default**

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform

the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.4 Procedure for substitution**

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Nominated Company, on the same

terms and conditions, for the residual Concession Period; and

- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The Parties herein expressly agree to execute such agreement as shall be required to give effect to the substitution as contemplated herein. The Nominated Company shall also be under the obligation to grant to Authority (if so desired by Authority) the right to subscribe and acquire the Golden Share in the Nominated Company, as it had in the Concessionaire at time of substitution, on same terms and conditions as set forth in Shareholders Agreement

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains

provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **5 TERMINATION OF CONCESSION AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 33 of the Concession Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### **5.3 Realisation of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

## **6 DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## **7 INDEMNITY**

## **7.1 General indemnity**

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement

which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the [●] (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [●] and the language of arbitration shall be English.

## **9 MISCELLANEOUS PROVISIONS**

### **9.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

### **9.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

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

### **9.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement,

the provisions contained in the Concession Agreement shall prevail over this Agreement.

#### **9.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

#### **9.5 Waiver**

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

#### **9.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

#### **9.7 Survival**

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

## **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

## **9.9 Successors and assigns**

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

## **9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

## **9.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

## **9.12 Authorised representatives**



Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

### **9.13 Original Document**

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

**IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEAL TO THESE PRESENTS ON THE DAY, MONTH & YEAR FIRST ABOVE WRITTEN IN PRESENCE OF THE FOLLOWING WITNESSES:**

SIGNED, SEALED & DELIVERED

for and on behalf of  
the Authority

(Authorised Signatory)

for and on behalf of  
(Concessionaire)

(Authorised Signatory)

for and on behalf of  
(Lenders)

(Authorised Signatory)

Witnesses:

1. 2.

**SCHEDULE R**  
**Draft Shareholders' Agreement**

This Shareholders' Agreement has been entered on this [●] day of [●], 2019 at [Paradip] by and between:

1. **BOARD OF TRUSTEES, for PARADIP PORT TRUST**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its administrative office at [●], represented by its [●]..... {*Chairman of any person authorised by him*}] (hereinafter referred to as the "**Authority**" which expression shall, unless it be repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**;

**AND**

2. [*Insert the name of the Concessionaire*], a company incorporated under the provisions of the Companies Act with its registered office at [●] (hereinafter referred to as the "**SPV**" / "**Concessionaire**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **Second Part**;

**AND**

3. [*Insert the name of the Company*], a private limited company incorporated under the provisions of the Companies Act with its registered office at [●] (hereinafter referred to as the "**Company**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns) of the **Third Part**;

OR<sup>5</sup>

The **Parties listed in Schedule 1** hereto who are the consortium members, who having jointly submitting the Bid under RFP, and were awarded the Project (hereinafter referred to as "**Private Participant**" and collectively referred to as the "**Private Participants**" which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective nominees, legal representatives and successors of the **Third Part**;

The {Company or Private Participants}<sup>6</sup>, are hereinafter referred to as the "**Selected Bidder**". The Authority and the Selected Bidder are hereinafter collectively referred to as "**Shareholders**" and individually as a "**Shareholder**".

The Shareholders and the SPV are hereinafter collectively referred to as "**Parties**" and

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<sup>5</sup> To be modified depending on whether Selected Bidder is single entity or consortium of entities

<sup>6</sup> To be modified in view of the fact whether Selected Bidder is a single entity or consortium of entities.

individually as the “**Party**”.

WHEREAS

- A. The Authority has constructed and developed hospital on the Site (*as defined hereinafter*), which is the "**Existing Hospital**". The Authority has now resolved to undertake augmentation, operation, management and development of the Existing Hospital through Public-Private Partnership (the "**PPP**") into a super specialty hospital in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- B. The Authority had accordingly published its Request for Qualification No. [●] dated [●] (the "**Request for Qualification**" or "**RFP**") for inviting bids for undertaking the augmentation, upgradation and development of the Existing Hospital to at least 400 bed super specialty hospital by construction of new blocks, refurbishment of building construction of Existing Hospital and/or rehabilitation of residential quarters and related infrastructure, including road intersections, drains, etc, and the operation and maintenance thereof ("**Project**") and had prequalified certain bidders including, *inter alia*, the Selected Bidder;
- C. Pursuant to the terms of the RFP, bids were received by the Authority on or before [*insert Bid Due Date*] from the bidders shortlisted in the RFQ process. The Selected Bidder also submitted its bid ("**Bid**") for the Project;
- D. After evaluation of the bids received, the Authority had accepted the Bid of the Selected Bidder and issued its letter of award no. [●] [dated] (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of the Concession Agreement within timelines specified therein. .
- E. [Private Participants are members of a Consortium (*as defined under the Bidding Documents* ), which had bid, and were thereafter short listed and eventually selected by the Authority as the joint venture partners for undertaking the Project and issued its letter of award no. [●] [Dated] (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of the Concession Agreement within timelines specified therein.]<sup>7</sup>
- F. Pursuant to the LOA, the Selected Bidder has incorporated the SPV, and the SPV and Authority has entered into the Concession Agreement, pursuant to which Authority has, among others granted to the SPV the right to undertake the Project in accordance

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<sup>7</sup> This recital shall exist if the Selected Bidder is a Consortium, in which case preceding Recital E shall be deleted.

with the terms and conditions therein.

- G. In term of the Bidding Documents and particularly the Concession Agreement, the Authority would be allotted and issued, and accordingly shall own and hold (legally and beneficially, one non-transferable Golden Share (as defined hereinafter) in the paid up capital of the Concessionaire on the terms and conditions as set out in this Shareholders Agreement.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## CLAUSE 1

### DEFINITION AND INTERPRETATION

- 1.1 In this Shareholders Agreement (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

“**Adjourned Meeting**” shall have the meaning ascribed to the term in Clause 5.11.2 hereunder;

“**Affected Party**” shall have the meaning ascribed to the term in Clause 9.3.1 hereunder;

“**Alternate Director**” shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

“**Board of Director(s)**” or “**Board**” means the board of director(s) of the SPV;

“**Breach Notice**” shall have the meaning ascribed to the term in Clause 7.2(a);

“**Chairman**” means chairman of the SPV;

“**Charter Documents**” means the Memorandum of Association and Articles of Association of the SPV incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.

“**Claimant(s)**” shall have the meaning ascribed to the term in Clause 9.4.3.1 hereunder;

“**Companies Act**” means the Companies Act, 2013, read along with rules notified thereunder;

“**Concession Agreement**” means the agreement entered on [*date of concession agreement*] into between the SPV and the Authority to record the terms for the augmentation, upgradation and development of the Existing Hospital to at least a 400 bed super specialty

hospital by construction of new blocks, refurbishment of building construction of Existing Hospital and/or rehabilitation of residential quarters and related infrastructure, road intersections, drains, etc., and the operation and maintenance thereof;

“**Consequential Loss**” shall have the meaning ascribed to the term in Clause 9.16.1 hereunder;

“**Deed of Adherence**” shall have the meaning assigned thereto in Clause 3.2.1 (iii) hereof;

“**Defaulting Party**” shall have the meaning ascribed to the term in Clause 7.2(a) hereunder;

“**Director**” means a director on the Board of Directors of the SPV;

“**Fair Market Value**” means the fair market value of all of the Securities as calculated and determined by the Independent Valuer (appointed by the Board of SPV from amongst the globally acclaimed Accounting Firms operating in India) in accordance with procedure for valuation set out in Schedule 2 hereof;

“**Golden Share**” shall mean the fully paid up equity share of a par value of Rs.10 of the Concessionaire, issued to the Authority in accordance with terms hereof;

“**Initial Subscription**” shall have the meaning ascribed to the term in Clause 3.1.1 hereunder;

“**Managing Director**” means the whole time managing director of the [●];

“**Material Breach**” shall have the meaning ascribed to the term in Clause 7.2(a);

“**Non-Defaulting Party**” shall have the meaning ascribed to the term in Clause 7.2(a) hereunder;

“**Original Director**” shall have the meaning ascribed to the term in Clause 5.7.1 hereunder; in Clause 5.7.1 hereunder;

“**Private Participants**” shall have the meaning ascribed to it in the preamble of this Agreement;

“**Project**” shall have the meaning ascribed to it Recital B hereunder.

“**Proprietary Information**” shall have the meaning ascribed to the term under Clause 8.1 hereunder;

“**Reserved Matters**” shall have the meaning ascribed to the term in Clause 6.1.3 hereunder;

“**Respondent(s)**” shall have the meaning ascribed to the term in Clause 9.4.3.1 hereunder;

“**RFP**” means the ‘Request for Proposal’ document issued by Authority on [●];

“**Rupee(s)**” or “**Rs.**” means Indian rupee(s);

“**Security(ies)**” shall mean all equity shares, compulsorily convertible preference shares, compulsorily convertible debentures, shares membership interests, registered capital, joint venture or other ownership interests held by the Company in the SPV or any options, warrants, rights or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for, such equity capital, membership interests, partnership interests, registered capital, joint venture or other ownership interests (whether or not such derivative securities are issued);

“**Shareholder**” or “**Shareholders**” shall have the meaning ascribed to the term in the preamble of this Agreement;

“**Shareholders Agreement**” or “**Agreement**” means this shareholders’ agreement;

“**SHA Effective Date**” means the date on which the conditions precedent set forth in Clause 2.1 hereunder are satisfied;

“**Third Party**” means any Entity not a Party to this Agreement;

“**Transfer**” shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Law, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one Entity to another Entity or to the same Entity in a different legal capacity, whether or not for value; (iii) the granting of any Encumbrance or charge in or extending or attaching to such securities or any interest therein;

Other Capitalised terms used herein (and not defined herein) but defined under the Concession Agreement shall have the meaning ascribed to the term under the Concession Agreement.

1.2 In this Agreement, unless the context otherwise requires, the interpretation rules as mentioned in Clause 1.2 of the Concession Agreement shall apply.

## **CLAUSE 2**

### **SHA EFFECTIVE DATE**

- 2.1 This Agreement shall come into force and effect and be binding upon the Parties from the date of execution of this Agreement; (“**SHA Effective Date**”).

### **CLAUSE 3**

#### **CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE**

##### **3.1 Issuance of the Golden Share to the Authority**

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Selected Bidder hereby agrees to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share. The Concessionaire shall and the ensure and procure that the Concessionaire delivers to Authority certified true copy of all related resolutions and statutory filings evidencing compliance with all Applicable Laws for issue of Golden Share.
- 3.1.3 The Parties agree that the nominee Director of the Authority shall have a right of affirmative vote in the meetings of the Board of Directors, and the Authority (acting through its representative) shall have a right of affirmative vote in the general meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share issued shall, unless otherwise provided for under this Agreement, have identical rights and privileges of equity shares, with respect to dividend and all other matters.
- 3.1.5 The Parties expressly agree that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire, Selected Bidder or any of its Associates or Affiliates.
- 3.1.6 The Parties further agree that any divestment of Equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the permitted successors, assigns and substitutes of Concessionaire shall be bound by such undertaking.

##### **3.2 Transfer Restrictions**

- 3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, the Concession Agreement and in compliance with Applicable Laws, Transfer, whether directly or indirectly, all or any of its equity shares or their rights under this Agreement, to a Third Party provided that:
- (i) The Selected Bidder shall not be in breach of this Agreement and the Concession Agreement;
  - (ii) The Selected Bidder shall in terms of Clause 5.3.1 and Clause 5.3.2 of the Concession Agreement require the consent of the Authority for any Transfer to a Third Party; and
  - (iii) Such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and the Concession Agreement and shall execute a deed of adherence in the form and manner attached in **Annex II (“Deed of Adherence”)**.
- 3.3.2 It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Securities in the Concessionaire (such Private Participant being an “**SPV PP**”), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Securities by the SPV PP for the purposes of this Agreement and be subject to the restrictions on Transfer of SPV PP as set forth in this Agreement, including the requirement of consent of Authority and the execution of a Deed of Adherence by a Third Party transferee.
- 3.3.3 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

#### **CLAUSE 4**

##### **SCOPE AND OBJECTIVE OF THE SPV: BUSINESS PLAN**

#### **4.1 Purpose of the SPV and Scope of this Agreement**

- 4.1.1 The purpose of the SPV shall be to undertake the Project in terms of the Concession Agreement and as detailed in Recital A of this Agreement.

#### **4.2 Shareholder Commitments**

- 4.2.1 Each Shareholder hereby agrees to cooperate with the other Shareholder and with the



Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so, to promote the success of the Concessionaire. Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement. Provided further that, nothing contained in this Clause 4.2.1 shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and for the benefit of the Concessionaire:

(a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and

(b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that: (i) every person for the time being representing it in its capacity as Shareholder; and (ii) every person appointed as a Director in terms of this Agreement, will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote on the equity shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.

4.2.3 If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.

4.2.4 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are

amended to the extent permissible under Applicable Law to remove any such inconsistencies.

**CLAUSE 5**  
**MANAGEMENT AND THE BOARD OF DIRECTORS**

5.1 The SPV shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the SPV and the Project. The officers of the SPV shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

**5.2 Composition of the Board**

5.2.1 The Board composition shall be determined as under:

(i) The Authority shall at all times be entitled to nominate a person of its choice for appointment as a Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as a non-retiring Director in accordance with the Applicable Laws.

(ii) The Selected Bidder shall have the right to nominate the remaining 3 (three) Directors.

5.2.2 The Shareholders hereby acknowledge and agree to vote in accordance with their respective shareholding in the SPV in such manner so as to ensure appointment of the nominees of Authority, as Directors from time to time.

5.2.3 The Parties agree that the non-retiring director nominated by the Authority shall be entitled to and have the right to issue binding directions to the Board of Directors and the Concessionaire in respect of the following matters and any matter incidental to such matters:

- (a) care and treatment of PPT Beneficiary/Select Patient
- (b) terms and conditions of employment for the Select Employees enlisted in Schedule D
- (c) compliance with the KPI's which are related to the Select Employees and PPT Beneficiaries/Select Patients.

[It is hereby clarified that for the purposes of this Clause 5.2.3, in case of non-adherence by the Concessionaire to the instructions issued by the non-retiring Director nominated by the Authority, as specified above, the non-adherence shall be deemed to be a Material Breach and the Concessionaire shall be deemed to be a Defaulting Party and the terms and conditions specified in Clause 7.2 shall be applicable forthwith.]

### **5.3 Chairman**

- 5.3.1 The Parties hereby undertake and agree that the Chairman will be nominated by the Authority.
- 5.3.3 The Chairman shall preside over all the meetings of the Board or of the Shareholders of the SPV.
- 5.3.4 If the Chairman is not present at a Board meeting or a Shareholders meeting, the Directors who are present may appoint an acting Chairman from the other nominee Directors.
- 5.3.5 In the event of any dead lock, the Chairman shall not have the casting vote.

### **5.4 Managing Director**

- 5.4.1 The Board shall appoint the Managing Director of the SPV. The term of each appointment for the Managing Director shall be for such period as would be decided by the Board from time to time and subject to a detailed employment agreement (if considered necessary by the Board) with the appointee.
- 5.4.2 The Managing Director shall be responsible for day-to-day management of the SPV and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

### **5.5 Qualification**

- 5.5.1 The Directors need not hold any qualification shares in the SPV.

### **5.6 Resignation and Removal**

- 5.6.1 All Directors, except the Directors appointed by the Authority, shall be liable to retire by rotation provided that Authority shall be entitled to nominate the same or any other person as a Director to fill the vacancy caused by retirement/ substitution. Except where a Director is required by Applicable Law or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the shareholders of the SPV to effect such removal and to vote in favour thereof, if so required.

## 5.7 **Alternate Director**

5.7.1 A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 Such Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in this Clause 5.7.2), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to constitute quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Law his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

## 5.8 **Vacancy**

5.8.1 If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of one (1) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the election of such replacement Director.

## 5.9 **Mode of conduct of Board Meeting**

5.9.1 Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the SPV's registered office located at [●]. If and when permitted under Applicable Law, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

## 5.10 **Notice and Agenda for Meeting**

5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of fourteen (14) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with at least 1 (one) Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

### 5.11 **Quorum**

5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include at least one (1) Director nominated by Authority and at least one (1) Director nominated by the Selected Bidder. Provided that the requirement of having at least one (1) Director nominated by Authority for validly constituting any meeting of the Board or any adjournment thereof shall apply irrespective of its shareholding in the SPV;

5.11.2 If within half an hour from the time appointed for holding a meeting of the Board, a quorum is not present, the said Board meeting shall stand adjourned to the same day in the next week, to be held at the same time and place (“**Adjourned Meeting**”). If at the Adjourned Meeting as well, a valid quorum cannot be constituted, the Directors present shall constitute a valid quorum.

5.11.3 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

### 5.12 **Committees of the Board**

5.12.1 If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained, Authority shall have the right to nominate one nominee each on every committee and sub-committee constituted by the Board.

### 5.13 **Decisions**

5.13.1 Each member of the Board of Directors shall be entitled to cast one vote with respect to any matter to be decided by the Board of Directors.

5.13.2 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of the Board of Directors of the Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

5.13.3 The SPV or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matters without the prior approval by the Board in the manner provided in Clause 5.13.2 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without prior approval shall be null and void.

#### **5.14 Resolution by Circular**

5.14.1 Subject to Applicable Law and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

#### **5.15 Authority**

5.15.1 Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the SPV individually.

#### **5.16 Disqualification of Directors**

5.16.1 Subject to Applicable Law, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

#### **5.17 Inspection and Information**

5.17.1 It is hereby agreed between the Parties that Authority shall have the right to examine the books, records and accounts to be kept by the SPV and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

5.17.2 Without prejudice to the generality of Clause 5.17.1, the SPV shall supply Authority with copies of:

(a) audited accounts of the SPV (complying with all relevant legal requirements);  
and

(b) monthly/quarterly management accounts of each principal division of the SPV; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the SPV including a statement of progress against the relevant Business Plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Financial Year and itemizing all expenditure in relation to the SPV's capital programme entered into by each principal division of the SPV during that period;

## **CLAUSE 6 SHAREHOLDERS' RIGHTS AND OBLIGATIONS**

### **6.1 Matters Requiring Approval of Shareholders**

6.1.1 Till such time as Authority holds Golden Share in the Concessionaire, the Concessionaire (or any of its Directors, officers, agents or representatives) shall not and the Selected Bidder and/or other shareholders shall ensure and procure that Concessionaire does not give effect to any decision or resolution in respect of the Reserved Matters, unless the same is approved by the affirmative vote of Authority.

6.1.2 The Articles of Association of the SPV shall (a) expressly permit the proxies to vote at the SPV's shareholders' meetings; and (b) expressly permit the appointment of multiple proxies/representatives in respect of the SPV's shares and specify the number of votes that each proxy is authorised to use.

6.1.3 Subject to applicable laws, any resolution and/or decisions either taken in shareholders meeting or Board meeting of Concessionaire in respect of all or any of the following or any matter incidental or consequential thereto, shall only be passed/made with the affirmative vote of Authority's representative or its Director, as the case may be:

- (a) to alter or add to the provisions of the memorandum of association;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to reduce the share capital;



- (e) to commence any new lines of business;
- (f) to entering into a Related Party transaction as envisaged under Indian Companies Act;
- (g) to apply to a court to wind-up the Concessionaire ;
- (h) to wind-up the Concessionaire voluntarily;
- (i) for various other matters pertaining to the winding up of the Concessionaire;
- (j) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Company;
- (k) sale, transfer, lease, license or disposal of all or a substantial part of its business undertaking or assets whether in a single transaction or a series of transactions, related or not.
- (l) Commencement of Optional Development.
- (m) matters that have a direct impact on the Healthcare Services of Select Patients
- (n) to not to have any shareholding interest or otherwise in any entity, or any other form of arrangement with any person, which may allow it to undertake or perform any Project related activity generating direct revenue;
- (o) to not to have any subsidiary or be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein

## **CLAUSE 6A**

### **REPRESENTATIONS AND WARRANTIES**

- 6A.1 Selected Bidder hereby warrants and represents to and for the benefit of Authority, and the SPV that:
- (i) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
  - (ii) The execution and delivery by the Selected Bidder of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;

- (iii) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of Selected Bidder, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (iv) It is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (v) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement.
- (vi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Selected Bidder's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

6A.2 Authority hereby warrants and represents to and for the benefit of the SPV and the Selected Bidder that:

- (i) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (ii) The execution and delivery by Authority of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (iii) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of Authority,

enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;

- (iv) Authority is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (v) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement.
- (vi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Authority's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

6A.3 Each of the Parties to this Agreement hereby acknowledges that (i) other than the representations and warranties made in and/or referred to in this Clause 6A, no Party has relied upon or will rely upon any other representation or warranty (whether written or oral) or any financial projection or forecast or market information delivered to it with respect to the business and operations of the Company for the purposes of this Agreement; and (ii) there are no representations or warranties by or on behalf of any Party or its representatives other than those expressly set forth and/ or referred to in this Clause 6A for the purposes of this Agreement.

## **TERMINATION**

### **7.1 Termination**

7.1.1 The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Securities of the SPV, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 8) and dispute resolution (Clause 9.4) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

### **7.2 Right to Terminate for Cause**

- (a) In the event of occurrence of a material breach of any of the terms and conditions of the Agreement, or any covenant, representation, warranty or agreement set forth herein (“**Material Breach**”) on the part of a Shareholder (the “**Defaulting Party**”), any other Shareholders (“**Non-Defaulting Party**”) may give written notice of the alleged breach (“**Breach Notice**”) to the Defaulting Party.

For avoidance of doubt it is hereby clarified that if the SPV commits a default under Concession Agreement due to the act or omission of a Shareholder, or of a Director who is nominated by a Shareholder, then that Shareholder shall be deemed to be a Defaulting Party under this Clause.

- (b) A termination event (“**Termination Event**”) shall be deemed to have occurred:

(i) If such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within thirty (30) days of receipt of the Breach Notice (“**Cure Period**”), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice;

(ii) In the event an insolvency, winding up or a bankruptcy petition or other insolvency application is presented against a Shareholder, or a court of competent jurisdiction makes an order, or a resolution is passed, for the winding up, dissolution or judicial management or administration of that Shareholder otherwise than in the course of a reorganisation or restructuring previously approved in writing by the other Shareholders (such approval not to be unreasonably withheld);

(iii) In the event any attachment, sequestration, distress, execution or other legal process is levied, enforced or instituted against the assets of a Shareholder, or a liquidator, judicial manager, receiver, administrator, trustee-in-bankruptcy, custodian or other similar officer has been appointed (or a petition for the appointment of such officer has been presented) in respect of any assets of a Shareholder; or

- (c) the Concession Agreement expires or is terminated earlier, in terms therein.

- (d) a resolution is passed to wind up the SPV or if a liquidator is otherwise appointed

### 7.3 Consequences of Termination Event:

- (a) Upon occurrence of Termination Event on the part of any of the Private Participants/Company, the Authority may in its sole discretion require the Private Participants/Company to transfer all, but not less than all of its equity shares held by it to the Authority at the lower of Fair Market Value of equity

shares or 25% of the Par value thereof; and the transfer of such shares shall take place at the registered office of the SPV within 30 days from date of notice by Authority in this behalf.

- (b) Upon occurrence of Termination Event on the part of Authority, any of Private Participants/Company shall be entitled to call upon Authority to offer whole (but not less than whole) of Authority's Shares in the SPV in favour of Private Participants/Company, against the consideration of the Fair Market Value or at par value of Authority's Shares whichever is higher.
- (c) In other case(s) of Termination Events, Authority shall be entitled to require and forthwith upon Authority notifying the Private Participants/Company in regard to exercise of said entitlement, the Private Participants/Company shall have the obligation to purchase Authority's equity shares in the SPV against payment of face value of Authority's equity Shares or the Fair Market Value thereof, whichever is higher.

## CLAUSE 8

### CONFIDENTIALITY

- 8.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they, are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(ies).
- 8.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.
- 8.3 This Clause shall not, however, apply to information which:
  - (a) is or becomes publicly available without the fault of any Party;
  - (b) was known to any Party on a non-confidential basis prior to disclosure;

- (c) is independently developed by any Party without use of the Proprietary Information;
- (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
- (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
- (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Securities; and
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

8.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

## CLAUSE 9

### MISCELLANEOUS

#### 9.1 Notices

9.1.1 Any notice to be given under this Agreement shall be deemed to have been duly given upon receipt when in writing and delivered in person, by facsimile transmission, by telex or by courier, addressed as follows:-

(a) If to Authority:

[•]

(b) If to the SPV:

[•]

9.1.2 Any Party may change its address provided above for the purpose of this Agreement by giving written notice to the other Parties of such change in the manner hereinabove provided.

## 9.2 Force Majeure

9.2.1 Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

## 9.3 Specific Performance of Obligations

9.3.1 The Parties to this Agreement agree that, to the extent permitted under Applicable Law, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a Defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party (“**Affected Party**”) for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party’s right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

## 9.4 Governing Law and Consent to Jurisdiction; Arbitration

9.4.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.

9.4.2 The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this Agreement, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within sixty (60) days of such consultations having commenced, the provisions of Clause 9.4.3 shall apply.

### 9.4.3 Arbitration

9.4.3.1 Any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 9.4.2 hereinabove) shall be finally settled by arbitration by a board of arbitrators appointed in accordance with 9.4.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, [●], or such other rules as may be mutually agreed by

the Parties, and shall be subject to the provisions of Arbitration and Conciliation Act, 1996. A notice of the intent to refer the dispute to arbitration may be given by a Party or group of Parties (“**Claimant(s)**”) to the other Party or group of Parties (“**Respondent(s)**”).

9.4.3.2 The disputes shall be referred to a tribunal comprising three (3) arbitrators. The Respondent(s) and the Claimant(s) to the arbitration shall have the right to appoint one arbitrator each and the two arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the “**Arbitral Tribunal**”). In the event of failure by the Respondent(s) and/or the Claimant(s) to appoint their arbitrator(s) or by the two arbitrators appointed by the Respondent(s) and the Claimant(s) respectively to appoint the third arbitrator, the said arbitrator(s) shall be appointed by the High Court of [●].

9.4.3.3 Such arbitration shall, unless otherwise agreeable to the Parties, be held at [●], India. All proceedings of such arbitration shall be in the English language.

9.4.3.4 The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

9.4.3.5 Subject to this Clause 9.4, the Courts at [●] shall have jurisdiction over this Agreement.

## 9.5 **Entire Agreement**

9.5.1 This Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

## 9.6 **Amendments**

9.6.1 Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorized representative of each Party.

## 9.7 **Severability**

9.7.1 If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall



negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

## **9.8 Counterparts**

9.8.1 This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

## **9.9 Waivers**

9.9.1 No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

## **9.10 No Agency**

9.10.1 This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

## **9.11 No Third Party Beneficiaries**

9.11.1 Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any Entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

## **9.12 Independence of the Parties with respect of each other and of the SPV**

9.12.1 The Parties are and shall remain independent. None of the Parties or any group entity thereof shall considered an agents of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the SPV.

## **9.13 Arm's Length**

9.13.1 All relationships between each Party and/or any relevant group entity of such Party of the one part, and the SPV, of the other part, shall be conducted at arms length and on competitive terms.

**9.14 Expenses**

9.14.1 Each of the Parties shall bear the fees and expenses of its respective counsel, accountants and experts and all other costs and expenses incurred by it incidental to the negotiation, preparation, execution and delivery of this Agreement.

**9.15 Encumbrance**

9.15.1 Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that the Selected Bidder shall have the right but not the obligation to, in any way, Encumber their shareholding in the SPV in favour of the Lenders for raising Debt for the use of the SPV, in accordance with the provisions of the Concession Agreement.

**9.16 Consequential Loss**

9.16.1 Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. Each party undertakes not to sue any other party, its officers, employees and agents in respect of such Consequential Loss.

For the purposes of this provision, “Consequential Loss” means any indirect or consequential loss (including loss or protection, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach knew or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

IN WITNESS WHEREOF the Parties have hereunto set their respective hands the day and year first above written.

For and on behalf of Paradip Port Trust:

Signed by \_\_\_\_\_

Witnessed by:

For and on behalf of [●]:

Signed by \_\_\_\_\_

Witnessed by:

For and on behalf of [●]:

Signed by \_\_\_\_\_

Witnessed by:

**SCHEDULE 1  
PRIVATE PARTICIPANTS**

[•]

**SCHEDULE 2**  
**MECHANISM FOR DERIVING FAIR MARKET VALUE OF EQUITY**  
**SHARES**

In the event that a determination needs to be made of the Fair Market Value of the Equity Shares, the procedures and approach set forth in this Schedule shall apply:

1. If the SPV at that time is publicly listed company then the Fair Market Value shall be the weighted average of the daily trading price for the shares over the previous twelve (12) week period, with the weights being the value of the daily turnover of the Equity Shares.
2. If the SPV is not publicly listed, then:
  - i. Fair Market Value of the Equity Shares means the value of the Equity Shares determined by a firm of independent chartered accountants of international reputation (the “Valuer”) on the basis of a transaction between a willing seller and a willing buyer and in accordance with Indian GAAP. Provided that in the event Authority is not the defaulting Party, in determining such value, the Valuer shall:
    - a. not ascribe or take into account directly or indirectly, any value per se to the land provided to the SPV under the Lease Deed.
    - b. exclude any value attributable directly or indirectly to the state support granted to the SPV.

Provided however, if Authority is the defaulting Party then the Valuer shall attribute the above value while determining the Fair market Value of the Equity Shares.

- ii. Upon receiving a request from a concerned Party for determination of the Fair Market Value of Equity Shares where required in terms of this Agreement, the Board will select the Valuer and instruct the Valuer to determine the Fair Market Value in accordance with Paragraph 1 above.
- iii. The SPV will provide the information required by the Valuer for such determination, within a period of seven (7) days of his appointment.
- iv. The Valuer shall determine the Fair Market Value within a period of twenty (20) days thereafter and provide his report to the Board, with copies to all Parties.
- v. The costs, including fees of the Valuer, incurred for such determination shall be borne by the seller and / or the buyer, as may reasonably be determined by the Board.

**ANNEXURE 1  
DEED OF ADHERENCE**

[•]

## SCHEDULE S

### VESTING CERTIFICATE

- 1 **BOARD OF TRUSTEES**, for **PARADIP PORT TRUST** (the Authority) refers to the Concession Agreement dated [●] (the Agreement) entered into between the Authority and [●] (the Concessionaire) for the Project.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 34.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the 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 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 on this [●] day of [●], 20[●] at [●].

**AGREED, ACCEPTED AND SIGNED**

**For and on behalf of  
CONCESSIONAIRE**

**by:**

**(Signature)**

**(Name)**

**(Designation)**

**(Address)**

**SIGNED, SEALED AND**

**For and on behalf of  
AUTHORITY by:**

**(Signature)**

**(Name)**

**(Designation)**

**(Address)**

**In the presence of:**

**1.**

**2.**

## SCHEDULE T

### ESCROW AGREEMENT

#### FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [●] day of [●] [201●].

#### AMONGST

1. [●], a private limited company incorporated under the provisions of the Companies Act, and having its registered office at [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [●][name and particulars of Lenders' Representative] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [●] [name and particulars of the Escrow Bank] and having its registered office at [●] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES, for PARADIP PORT TRUST, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [●] represented by its [●] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

#### WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the "**Concession Agreement**"), in terms of which the Concessionaire has agreed to undertake augmentation, operation, management and development of the Existing Hospital to a 400 bed super specialty hospital by construction of new blocks, rehabilitation of building construction of Existing Hospital and/or rehabilitation of residential quarters and related infrastructure, road intersections, drains, etc., and the operation and maintenance thereof, a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.



- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

**NOW IT IS HEREBY AGREED as follows:**

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

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

**"Agreement"** means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

**"Concession Agreement"** means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

**"Escrow Account"** means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

**"Escrow Default"** shall have the meaning ascribed thereto in Clause 6.1;

**"Lenders' Representative"** means the person referred to as the Lenders' Representative in the foregoing Recitals;

**"Parties"** means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually;

**"Payment Date"** means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

**"Sub-Accounts"** means the respective Sub-Accounts of the Escrow Account, into which the

monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

## **1.2 Interpretation**

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

## **2 ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

### **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

### **2.3 Establishment and operation of Escrow Account**

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [●] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

### **2.4 Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

### **2.5 Rights of the parties**

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

## **2.6 Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

## **3 DEPOSITS INTO ESCROW ACCOUNT**

### **3.1 Deposits by the Concessionaire**

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) towards payment of Gross Revenue Share and other sums payable to the Authority and liquidated damages, if any
- (d) [any other revenues from or in respect of the Project; and]
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

### **3.2 Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) the relevant tranches of the Loan Facility, in accordance with the Concession Agreement;
- (b) Termination Payments.

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

Provided further that the Authority shall be entitled to set off any outstanding Loan Facility amount along with the relevant interest amount from the Termination Payment (if any) and/or by way of encashment of the relevant shortfall amount from the Optional Development Guarantee/(s).

### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

## **4 WITHDRAWALS FROM ESCROW ACCOUNT**

### **4.1 Withdrawals during Concession Period**

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all Taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee, Gross Revenue share and Annual Fee due and payable
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) debt service payments in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements;
- (j) any dividend payable to the Authority; and
- (l) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

## **4.2 Withdrawals upon Termination**

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all Taxes due and payable by the Concessionaire;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) Concession Fee, Gross Revenue share as due and payable;
- (d) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) payments arising out of, or in relation to, liability for defects and deficiencies

set forth in Article 35 of the Concession Agreement;

- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

#### **4.3 Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### **4.4 Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 32 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5 OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

## **5.2 Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

## **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

## **5.4 No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being



trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

## **5.5 Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

## **5.6 Verification of Monthly Invoice:**

The Escrow Bank shall verify Monthly Invoice for any apparent error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire. In the event that the Escrow Bank notifies any error in writing to the Concessionaire within 30 (Thirty) days of receipt of a Monthly Invoice, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Escrow Bank. The process set out in this Clause 5.6 shall then apply to any re-issued Monthly Invoice.

In the event that the Escrow Bank does not notify within 30 (thirty) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Escrow Bank and the Escrow Bank shall make the payment of the amounts claimed under such invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

## **6 ESCROW DEFAULT**

### **6.1 Escrow Default**

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account

of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

## **7 TERMINATION OF ESCROW AGREEMENT**

### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

### **7.2 Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

### **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8 SUPPLEMENTARY ESCROW AGREEMENT**

## **8.1 Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and Documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

## **9 INDEMNITY**

### **9.1 General indemnity**

- 9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

## 9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## 10 DISPUTE RESOLUTION

### 10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the [●] (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [●] and the language of arbitration shall be English.

## 11 MISCELLANEOUS PROVISIONS

### 11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

### 11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

### **11.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **11.4 Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **11.5 Waiver**

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### **11.6 No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

### **11.7 Survival**

#### **11.7.1 Termination of this Agreement**

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

### **11.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

### **11.9 Successors and assigns**

This Agreement shall be binding on and shall inure to the benefit of the Parties and

their respective successors and permitted assigns.

#### **11.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

#### **11.11 Language**

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

#### **11.12 Authorised representatives**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

#### **11.13 Original Document**

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of 20..... hereunto affixed in the presence of ....., Director, [who has signed these presents in token thereof and ....., Company Secretary / Authorised Officer who has countersigned the same in token thereof]<sup>§</sup>:

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
THE ESCROW BANK by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

In the presence of:

1.

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
THE AUTHORITY by:

(Signature)  
(Name)  
(Designation)  
(Address)  
(Fax No.)  
(e-mail address)

2.

---

<sup>§</sup> To be affixed in accordance with the articles of association of the Concessionaire.



**Schedule U**  
**Arbitration Rules of the Society for Affordable Redressal of**  
**Disputes - Ports (SAROD-Ports)**

**I N D E X**

Rule

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
7. Contents of Case Statements
8. Default in Filing and Serving Case Statements
9. Further Written Statements
10. SAROD-PORTS- Ports to Provide Assistance
11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
13. Appointment of Substitute Arbitrator
14. Independence and Impartiality of the Tribunal
15. Code of Ethics for Arbitrators
16. Challenge of Arbitrators
17. Decision on Challenge
18. Removal of the Tribunal
19. Re-hearing in the Event of Replacement of the Tribunal
20. Jurisdiction of the Tribunal
21. Fees of SAROD-PORTS - Ports and Arbitral Tribunal
22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding
26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings
29. Documents - only Arbitration
30. Witnesses
31. Experts Appointed by the Tribunal
32. Rules applicable to substance of dispute
33. Closure of Hearings ·
34. Additional Powers of the Tribunal
35. Deposits to Costs and Expenses
36. Decision Making by the Tribunal

- 37. The Award
- 38. Additional Award
- 39. Correction of Awards
- 40. Settlement
- 41. Interest
- 42. Costs
- 43. Waiver
- 44. Exclusion of Liability
- 45. General Provisions
- 46. Amendment to Rules

## **PREAMBLE**

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD-PORTS - Ports) has been formed as a Society under Societies Registration Act, 1 860 with registration. It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS

## RULES

### **Rule : 1- Scope of Application**

- 1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.
- 1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-PORTS.

### **Rule 2 - Definitions**

- 2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".
- 2.2 In these Rules:

"**Act**" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

"**DOMESTIC ARBITRATION**" means arbitration to be conducted under these rules.

"**SAROD-PORTS**" means the Society for Affordable Redressal of Disputes- Ports.

"**SAROD-PORTS Arbitrator Panel**" means the list of persons admitted to serve as arbitrators under these Rules.

**IPA** means Indian Ports Association

"**IPPTA**" means Indian Private Ports and Terminals Association

"**GOVERNING BODY**" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"**PRESIDENT**" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"**SECRETARY**" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"**TRIBUNAL**" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

"**PARTY**" means a party to an arbitration agreement,

"**E-Arbitration**" means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

### **Rule 3 - Notice, Calculation of periods of Time**

- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.
- 3.4 The transmission is deemed to have been received on the day of transmission.

### **Rule 4- Commencement of Arbitration**

- 4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party {"the Respondent"}, a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:
- a. a request that the dispute be referred to arbitration;
  - b. the names, addresses, telephone numbers, fax numbers and email

addresses of the parties to the dispute;

- c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e. a brief statement describing the nature, facts and circumstances leading to the dispute;
- f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice of Arbitration is filed;
- g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h. the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

#### **Rule 5 - Response by Respondent**

5.1 Within 14 (fourteen) days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a. A confirmation or denial of all or part of the claims;
- b. Brief statement of the nature and circumstances of any envisaged counterclaims
- c. A comment in response to any proposals contained in the Notice of Arbitration; and
- d. The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing

which it will be deemed that parties have waived their right to objection.

#### **Rule 6- Filing of Case Statements**

- 6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case alongwith all documents to be relied upon by the Claimant.
- 6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.
- 6.3 Within 30 days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counterclaim.
- 6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.
- 6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,
- 6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

#### **Rule 7 - Contents of Case Statements**

- 7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.
- 7.2 It must:
  - a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
  - b. State fully its reasons for denying any allegation or statement of the other party.

- c. State fully its own version of events if a party intends to put forward a version of events different from that given by the other party.

7.3 A case statement must be signed by or on behalf of the party making it.

### **Rule 8 - Default in Filing and Serving Case Statements**

- 8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.
- 8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

### **Rule 9 - Further Written Statements**

- 9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.
- 9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

### **Rule 10 - SAROD-PORTS to Provide Assistance**

- 10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.
- 10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

### **Rule 11- Appointment of Tribunal**

- 11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.
- 11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel



maintained by SAROD-PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

- 11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,
- 11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,
- 11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

#### **Rule 12- Multiparty appointment of the Tribunal**

- 12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.
- 12.2 If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

#### **Rule 13-Appointment of Substitute Arbitrator**

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

#### **Rule 14 - Independence and Impartiality of the Tribunal**

- 14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.
- 14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- 14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

## **Rule 15 - Code of Ethics for Arbitrators**

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

### **Appointment**

15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,

15.2 In this code, the masculine includes the feminine.

### **Disclosure**

15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances, in terms of the arbitration and conciliation Act 1996 as amended from time to time.

15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:

(a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;

(b) The extent of any prior knowledge he may have of the dispute.

### **Bias**

15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

15.6 Any close personal relationship or current direct or indirect business

relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

### **Communications**

- 15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.
- 15.8 No arbitrator shall Communicate with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.
- 15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

### **Fees**

- 15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

### **Conduct**

- 15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

### **Confidentiality**

- 15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 15.13 This Code is not intended to provide grounds for the setting aside of any award.

### **Rule 16- Challenge of Arbitrators**

- 16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartially or independence and also if he or she has committed any misconduct
- 16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,
- 16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.
- 16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.
- 16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.
- 16.6 The Notice of Challenge must state the reasons for the challenge.
- 16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.
- 16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

#### **Rule 17 - Decision on Challenge**

- 17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.
- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

#### **Rule 18 - Removal of the Tribunal**

- 18.1 The Governing Body may on the application of a party remove an arbitrator:
- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
  - b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
  - c. Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.
- 18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.
- 18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.
- 18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

#### **Rule 19 - Re-hearing in the Event of Replacement of the Tribunal**

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

#### **Rule 20 - Jurisdiction of the Tribunal**

- 20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.
- 20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority.[neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.

- 20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.
- 20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

### **Rule 21 - Fees of SAROD-PORTS and Arbitral Tribunal**

#### Fee Schedule

Registration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

### **Rule 22- Transmission of File to the Tribunal**

- 22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.
- 22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

### **Rule 23- Judicial Seat of Arbitration**

- 23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.
- 23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

#### **Rule 24 - Language of Arbitration**

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

#### **Rule 25 - Conduct of the Proceedings**

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

#### **Rule 26 - Communication between Parties and the Tribunal**

26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.

26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or ail other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.

26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.

26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

#### **Rule 27 – Party Representatives**

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

#### **Rule 28 - Hearings**

28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.

28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the

arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with or without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.

- 28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.
- 28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.
- 28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

#### **Rule 29 - Documents Only Arbitration**

- 29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.
- 29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.
- 29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

#### **Rule 30 - Witnesses**

- 30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.
- 30.2 No party shall call any expert witness without the leave of the Tribunal.
- 30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,
- 30.4 A Witness may be required by the Tribunal to testify under oath or affirmation
- 30.5 Subject to such order or direction which the Tribunal may make, the



testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,

- 30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,
- 30.7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

### **Rule 31- Experts Appointed by the Tribunal**

- 31.1 Unless otherwise agreed by the parties, the Tribunal may:
- a. appoint one or more experts to report the Tribunal on specific issues;
  - b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.
- 31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.
- 31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

### **Rule 32 - Rules applicable to substance of dispute - (1) Where the place of arbitration is situated in India**

- 32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

### **Rule 33 - Closure of Hearing**

- 33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.
- 33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at

any time before the award is made.

### **Rule 34 - Additional Powers of the Tribunal**

34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-

- a. Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
- b. Extend or abbreviate any time limits provided by these Rules;
- c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
- d. Order the parties to make any property or thing available or inspection
- e. Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
- f. Make orders or give directions to any party for interrogatories;
- g. Make orders or give directions to any party for an interim injunction or any other interim measure;
- h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.

34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

### **Rule 35- Deposits to Costs and Expenses**

35.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.

35.2 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the

time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.

- 35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of
- 35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.
- 35.5 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.
- 35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders
- 35.7 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

### **Rule 36 - Decision Making by the Tribunal**

- 36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason for the omitted signature is stated.
- 36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.
- 36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

**Rule 37 - The Award**

- 37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.
- 37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,
- 37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.
- 37.4 The Tribunal may make interim awards or separate awards on different issues at different times.
- 37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.
- 37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.
- 37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.
- 37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.
- 37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

**Rule 38- Additional Award**

- 38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make an additional award, and complete the additional award within 30 days

after the receipt of the request.

### **Rule 39 - Correction of Awards**

- 39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.
- 39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.
- 39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own initiative within 30 days of the date of the Award.

### **Rule 40- Settlement**

- 40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,
- 40.2 The Parties shall:
- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated
  - b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.
- 40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.
- 40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

#### **Rule 41- Interest**

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

#### **Rule 42- Costs**

42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

42.2 In this Rule, "costs of the arbitration" shall include:

- a. The fees and expenses of the Tribunal and the administration fees of the SAROD-PORTS as determined by the Secretary in accordance with the Schedule of Fees;
- b. The costs of tribunal appointed experts or of other assistance rendered: and
- c. All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc) of one party shall be paid by the other party.

#### **Rule 43 - Waiver**

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

#### **Rule 44 - Exclusion of Liability**

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal

proceedings arising out of the arbitration.

**Rule 45- General Provisions**

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

**Rule 46- Amendment to Rules**

These Rules may from time to time be amended by the Governing Body of SAROD-PORTS.

## Schedule V

### Optional Development Guarantee<sup>8</sup>

**Bank Guarantee No. [●]**

**THIS DEED OF GUARANTEE** is executed on this [*insert date*] day of [*insert month and year*] at [*insert place*] by [*insert name of bank*] with its head/registered office at [*insert address*], (hereinafter referred to as the **Guarantor**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

#### IN FAVOUR OF:

BOARD OF TRUSTEES, for **PARADIP PORT TRUST** represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

#### WHEREAS:

- (A) ..... (the “**Concessionaire**”) and the Board of Trustees, Paradip Port Trust (the “**Authority**”) have entered into a Concession Agreement dated ..... (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction and operation of the Hospital in Paradip on design, finance, equip, operate and transfer basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish an Optional Development Guarantee to the Authority in a sum of Rs. \*\*\*\*\* cr. (Rupees \*\*\*\*\* crore)<sup>9</sup> (the “**Guarantee Amount**”) as security for the Authority disbursing a tranche of the Loan Facility to the Concessionaire for undertaking the Optional Development, in accordance the terms of the Agreement.
- (C) We, ..... through our Branch at ..... (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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<sup>8</sup> For the avoidance of doubt, Concessionaire shall be obligated to provide a separate bank guarantee against each tranche of payment of the Loan Facility with each bank guarantee having separate validity period. Therefore, there shall be five Optional Development Guarantees to be provided by the Concessionaire, issued against each tranche of disbursement of the Loan Facility.

<sup>9</sup> Value of the bank guarantee shall be 110% of the value of the relevant tranche of the Loan Facility being disbursed.



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 period of Optional Development, under and in accordance with the Agreement, and agrees and undertakes to pay to the 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 upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the 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 Authority, under the hand of an Officer duly authorized by the Chairman of the Authority, 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 Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during carrying out Optional Development, 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 Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the 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 Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The 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 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 Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the 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 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 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 Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Optional Development Guarantee shall cease to be in force and effect upon the completion of the mandated timeline for repayment of the relevant amount of the Loan Facility. Upon request made by the Concessionaire for release of the Optional Development Guarantee along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Optional Development Guarantee forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants 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 five years from the time of disbursement of the relevant portion of the Loan Facility 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)