

V.O. CHIDAMBARANAR PORT AUTHORITY, THOOTHUKUDI

MINISTRY OF PORTS, SHIPPING AND WATERWAYS

GOVERNMENT OF INDIA

DRAFT CONCESSION AGREEMENT

VOLUME II OF RFP

**REFURBISHMENT, UPGRADATION, DEVELOPMENT, OPERATION
AND MAINTENANCE OF THE EXISTING HOSPITAL TO A 100
BEDDED SUPER SPECIALITY HOSPITAL ON PPP BASIS**

JULY 2025

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CONCESSION AGREEMENT

This CONCESSION AGREEMENT ("**Agreement**") is entered into on this [*] day of [*], 2025.

BETWEEN:

1. The **BOARD OF MAJOR PORT AUTHORITY** constituted by the Central Government in accordance with sub-section (1) of section 3, of the Major Port Authorities Act, 2021 for V.O. Chidambaranar Port Authority, Thoothukudi (VOCPA), and having its Head Office at Tuticorin -628 004, represented by its CHAIRPERSON, V.O. Chidambaranar Port Authority, Thoothukudi (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. [*], a new 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) 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 62 (sixty-two) bedded hospital on 3.85 acres of land, the details of which are described in Schedule A of this Agreement ("**Existing Hospital**"). The Authority has now resolved to undertake the upgradation of the Existing Hospital into 100 (hundred) bedded super speciality hospital by refurbishment, operation, maintenance and management of the Existing Hospital into a 50 (fifty) bedded super speciality hospital, and additionally to establish, upgrade, develop, finance, equip, operate and manage a new block of 50 (fifty) bedded super-specialty hospital on the same land parcel of 3.85 acres in accordance with the terms and conditions of this Agreement.
- B. The Authority has accordingly invited bids by its Request for Proposal No. [*] (the "**Request for Proposal**" or "**RFP**") for undertaking the refurbishment, development, upgrading, construction, financing, equipping, operation, maintenance and management of the Existing Hospital to 100 (hundred) bedded super-specialty hospital by constructing a 50 (fifty) bedded new block within the premises of Existing Hospital and by refurbishing the building and facilities of the Existing Hospital, related infrastructure, such as road intersections, drains, etc, and the operation and maintenance thereof ("**Project**");
- C. Pursuant to the terms of the RFP, bids were received by the Authority on or before [*] 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 issued its Letter of Award No. [*] dated, [*] (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within the date specified therein.
- E. The Selected Bidder 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 under the LOA, including the obligation to enter into this 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 to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.

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, byelaws 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 permitted 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**" 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**"). For avoidance of doubt, it is clarified that, such damages are payable along with the applicable taxes.
- (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 a "**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 Thoothukudi 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 document being 'in the agreed form' means such document has been initiated 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 day 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.
- (w) references to Recitals, Articles, Clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, 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.
- (x) The rule of construction, if any, that a contract should be interpreted against the Party responsible for the drafting and preparation thereof, shall not apply; and
- (y) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

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. this 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 of this Agreement 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 in words, the latter shall prevail.

ARTICLE 2: SCOPE OF THE PROJECT

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

(a) **Phase I [Mandatory]**

Undertaking operation & maintenance of the Existing Hospital from the Appointed Date and refurbish, equip, operate, maintain, manage and transfer the Existing Hospital (62 bedded) to a 50 (fifty) bedded super speciality hospital within 6 (six) months from the Appointed Date, as set forth in Schedule A and in conformity with the Specifications and Standards set forth in the Schedule B; For this purpose, the Concessionaire shall be entitled to such rights in respect of the Site as per the nature and extent enumerated in Clause 10.1.

(b) **Phase II [Mandatory]**

From the Appointed Date, the Concessionaire shall design, develop, construct, equip, operate, maintain and manage a new block of 50 (fifty) bedded super-speciality facility on the Site under Phase II i.e., development and construction of 50 (fifty) bedded super-speciality facility as set forth in Schedule A and in conformity with the Specifications and Standards set forth in the Schedule B. For this purpose, the Concessionaire shall be entitled to such rights in respect of the Site as per the nature and extent enumerated in Clause 10.1.

(c) **Additional Services**

Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, this Agreement shall, from the Appointed Date, entitle the Concessionaire to undertake the design, construction, finance, development, operation and maintenance of the following additional facilities (the "**Additional Facilities**") as part of the Project; provided however, that the Concessionaire shall commence the commercial exploitation/operation and/or use by third party (i.e.) of the Additional Facilities only upon achievement of COD of Phase I:

- (a) vehicle parking.
- (b) any other facilities that may be approved and/or notified, in writing, by the Authority from time to time during the Concession Period.

Subject to the provisions of this Agreement, Applicable Laws and Applicable Permits, the Concessionaire shall have the right to exploit these Additional Facilities for commercial purposes with the right to sub-license any or all parts thereof which are coterminous with this Agreement.

(e) Concessionaire shall 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 Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein, including the exclusive right, license, leasehold rights and authority to refurbish, develop, upgrade, construct, finance, equip, operate and maintain the Project (the "**Concession**") for a period of 45 (forty five) 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.
- 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 Concession which shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) access, Right of Way and lease hold rights with respect to the Site for the Project in accordance with the provisions of this Agreement.
 - (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) provide Healthcare Services in accordance with the Specifications and Standards set out in this Agreement, Applicable Laws and Applicable Permits.
 - (d) demand, collect and appropriate Fee from Patients for availing Healthcare Services from the Existing Hospital and the Hospital in accordance with this Agreement.
 - (e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement.
 - (f) 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.
 - (g) 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 or the Substitution Agreement; and

ARTICLE 4: CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 9, 11, 25, 31, 36, 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 condition's 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 stand correspondingly amended.

4.1.2. The Concessionaire may at any time after 15 (fifteen) days from the Execution Date or on an earlier day acceptable to the Authority, furnish the Performance Security and by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days of the notice or such extended period not exceeding 180 (one hundred eighty) days from date 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 lease hold rights of the Site in accordance with terms thereof; and
- (b) handover the existing equipment to the Concessionaire as specified in Schedule O, under and in accordance with the provisions of the Agreement.

Provided that 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. For the avoidance of doubt, the Concessionaire 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 Authority.

4.1.3. The Concessionaire shall be deemed to have fulfilled its Conditions Precedent when the Concessionaire shall have, within 180 (one hundred and eighty) days of the Execution Date:

- (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 shall be 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.

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 Clauses 4.1.2 and 4.1.3, as applicable 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/waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within 180 days of the Execution Date, 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 an amount equivalent to *[20%(twenty per cent)]* 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 Execution Date, and (ii) the delay has not occurred as a result of failure of the Authority to fulfil its Conditions Precedent under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority 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 an amount equivalent to *[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 Conditions Precedent 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 occurs by reason of non-fulfilment of Conditions Precedent by the Authority, the Authority shall return the Performance Security.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions set forth in this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, and undertake the development, financing, 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, and obtain and keep in force and effect such Applicable Permits in conformity with 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 violative 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 Healthcare 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) subject to Applicable Law, the Concessionaire may design, construct, develop, operate, equip, deploy clinical, non-clinical & requisite workforce, maintain and manage the Pharmacy for the Market Patient at the Site.

- (k) transfer the Project to the Authority upon Termination, in accordance with the provisions thereof;
- (l) in case of a pandemic/epidemic/state emergency requirement, the Concessionaire will have to ensure that makeshift arrangements are made as per the guidelines/circular/notification issued by the Central/State Government/Authority;
- (m) The treatment of VOCPA Beneficiaries shall be in the same premises used for providing treatment to the Market Patients; and such treatment shall be at par with the treatment provided to the Market Patients.
- (n) the Concessionaire shall develop and commission the specified speciality as set out in point-5 of Schedule A in accordance with the Master Plan as approved by the Authority in accordance with Clause 5.11 and other provisions of this Agreement.
- (o) the Concessionaire shall utilize its own fund (i.e., Equity, and / or Debt disbursed by Senior Lenders, comprising the Total Project Cost) for the purposes of fulfilling its Mandatory obligations as specified in Article 2 and Schedule A, which includes the related obligation towards purchase and installation of plants / machinery / equipment etc.
- (p) the Concessionaire shall procure empanelment of the Project with any healthcare/Insurance Scheme that may be announced by the State Government, from time to time and provide Healthcare Services, subject to the terms of the relevant Insurance Scheme;
- (q) install IT-enabled monitoring mechanisms such as CCTVs to monitor patient in-out in the Hospital as per Applicable Laws and regulations, as required for the smooth operation of the Project. Also, install scanners to read barcodes on bills/prescriptions etc. as required by the Authority; and
- (r) ensure that from the Appointed Date undertake and provide all the speciality and Healthcare Services at the same level as being provided at the date of handover of the Existing Hospital on as is where is basis, in accordance with the provisions of this Agreement. In this regard, it is further clarified that the KPI shall not apply to the provision of such ongoing services on as is where is basis, until the achievement of COD of Phase I.

5.1.5 In the event, VOCPA is declared as a Special Planning Authority under Applicable Laws, the Concessionaire shall comply with rules and regulations as prescribed by VOCPA under Applicable Laws. For avoidance of doubt, the Concessionaire shall be liable to pay any and all such development fee, premium, charges etc. in accordance with Applicable Laws to VOCPA in its capacity as Special Planning Authority. In all other cases, the Concessionaire shall comply with the rules and regulations and seek approvals from the local development bodies in accordance with Applicable Laws.

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 Before finalisation, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance Contract for O&M of the Project, save and except for Core Clinical Services or any amendments or replacements thereto for its review

and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately consider all such comments/ observations. Within [7 (seven)] days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.

- 5.2.3 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.
- 5.2.4 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, whereunder 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.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any part of the Existing Hospital and Project Assets, as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.
- 5.2.6 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the Contractor and execution of the Project Agreement shall be subject to the 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 undertake that it shall not give effect to any such selection or contract without prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority 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.

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 itself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 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 shall be final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. 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 situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 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 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.

5.5 Obligations relating to employment of trained personnel

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

5.6 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 for ensuring that the design of the Project meets the aforesaid aesthetic standards.

5.7 Sole purpose of the Concessionaire

Having agreed and undertaken to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the 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.

5.8 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 V.O.Chidambaranar Port Authority, Thoothukudi, and the Concessionaire shall while deciding the name of Hospital, take prior written approval of the Authority.

5.9 Facilities for physically challenged and elderly persons

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

5.10 Applicable Laws and Safety Standards

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

5.11 Master Plan

- 5.11.1 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 within the Hospital;
- (d) details of all medical and clinical facilities and services to be provided in the Hospital, intensive care, ambulatory care services and other such medicinal and clinical facilities;
- (e) details of support Healthcare Services, facilities and utilities to be provided including diagnostics, mortuary, administration/back office and cafeteria;
- (f) medical waste disposal and treatment facilities;
- (g) detailed project milestones during development phase for quarterly monitoring of the progress.

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.

- 5.11.2 On receipt of the Master Plan, the 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.
- 5.11.3 Upon receipt of 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 deemed fit to the Authority as per the provisions of the Applicable Laws 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. {This Clause shall be applicable in the event VOCPA is acting in the capacity of Special Planning Authority, otherwise such approvals shall be sought by the Concessionaire from relevant the local development bodies in accordance with Applicable Laws}.

- 5.11.4 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.
- 5.11.5 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.
- 5.11.6 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 technical or soundness of any work relating to the Project or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

5.12 Hospital Management Information System

- 5.12.1 The Concessionaire shall within 180 (one hundred and eighty) days from the Appointed Date, 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.
- 5.12.2 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.
- 5.12.3 The HMIS shall be capable of providing online information as specified in this Clause 5.12.3 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) Availability of Beds for VOCPA Beneficiaries and any other Patients covered under Insurance Scheme;
 - (b) doctor's availability for OPD Services;
 - (c) slot availability of Diagnostic Services relating to the VOCPA Beneficiaries;
 - (d) number of VOCPA Beneficiaries, both Outpatients and Inpatients treated on daily as well as cumulative basis during any year;
 - (e) number of VOCPA Beneficiaries having availed of Diagnostic Services; and
 - (f) any other information as may be reasonably requested by the Authority.
- 5.12.4 The HMIS should provide the following information:
- (i) Patient registration (Outpatient, Inpatient, Emergency Care) with Hospital identification number, which can be co-ordinated 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;
- (xiii) referral services;
- (xiv) Type of patient (VOCPA Beneficiaries/Market Patient)
- (xv) Automated invoicing for VOPCA Beneficiaries; and
- (xvi) Compliance with KPIs

5.12.5 For the purpose of identification of VOPCA Beneficiaries, the HMIS shall have the facility required for integrating the Identification Certificates for the purpose of identifying VOPCA Beneficiaries. All necessary hardware and software shall be developed and installed in this regard by the Concessionaire and/or its Contractor. The HMIS must have integration functionality with existing ERP system of VOPCA.

5.13 Website of the Hospital

- 5.13.1 The Concessionaire shall assist the Authority by way of providing information and data for operating and maintaining a comprehensive webpage as a part of the V. O. Chidambaranar Port Authority, Thoothukudi website for the Project.
- 5.13.2 The Concessionaire shall maintain a separate website for the Hospital on its own expenditure without any liability to the Authority ("**Hospital Website**"). For avoidance of doubt, it is clarified that the obligations under Clause 5.13.1 above shall be performed irrespective of the actions taken under this Clause 5.13.2.

5.14 Intentionally Left Blank

5.15 Obligation of the Concessionaire in relation to VOPCA Beneficiaries

The Concessionaire shall agree, undertake and acknowledge that during the Concession Period:

- (i) Bed Days shall be reserved for the VOPCA Beneficiaries in accordance with Clause 22.5;
- (ii) no VOPCA Beneficiaries shall be denied Inpatient Services for treatment, Diagnostic Services, OPD Services and procedures available at the Hospital;
- (iii) rooms shall be allotted to VOPCA Beneficiaries according to the class of employee (as per extant VOPCA Service Rules) and as per CGHS rates;
- (iv) no payment shall be charged directly or indirectly from the VOPCA Beneficiaries for availing any of the services such as OPD, Inpatient and Diagnostic Services etc. except in accordance with Clause 27.1;
- (v) The Concessionaire shall give priority to VOPCA Beneficiaries over any other Patient for Healthcare Services including OPD, Inpatient, Diagnostic Services and treatment except in emergency patient situation of any patient;

- (vi) The Concessionaire shall complete the Project Milestones, as defined in Schedule G-Project Completion Schedule. During the Development Period of the Project (Phase I and Phase II), Authority shall continue to refer its VOCPA Beneficiaries as per the existing in system to other empanelled hospitals for the healthcare services not available in the Existing 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 L, Schedule N and other relevant provisions of this Agreement, the VOCPA Beneficiaries shall continue to avail treatment as per the exiting referral system to other empanelled hospitals and the Concessionaire shall bear the cost of such treatment. The Authority shall reimburse to the Concessionaire for such treatment as per the applicable CGHS rate at Tamil Nadu or actual treatment cost, whichever is lower. Such reimbursement of costs shall be without prejudice to the Concessionaire's liability hereunder to pay Damages for delay in fulfilment of its obligations hereunder;
- (vii) During the Concession Period, VOCPA Beneficiaries may have option to avail Healthcare Services through Authority's empanelled referral hospitals and in such case, the Authority shall make direct payment to the empanelled hospital for such treatment rendered. For the avoidance of doubt, it is clarified that, for the cases referred by the concessionaire to the empanelled hospitals, the Authority shall reimburse to the concessionaire for such treatment as per applicable CGHS rates at Tamil Nadu.
- (viii) There will not be any separate OPDs for VOCPA Beneficiaries, but the VOCPA Beneficiaries will be given priority for registration in the system itself and priority arrangement will be as per the decision of the Authority;
- (ix) If VOCPA Beneficiaries exceed the number of Bed Days reserved for them then such VOCPA Beneficiaries shall either be treated in Hospital subject to availability of Beds and in case of unavailability of Beds, be sent to suitable empanelled super-specialty hospital. The Authority shall reimburse to the Concessionaire for such treatment in accordance with Clause 27.3;
- (x) From COD of Phase II, the VOCPA Beneficiaries shall not be admitted to general wards but only in cubicles accommodating 6/4/2/1 patients or as per the approved design by the Authority in its sole discretion. Also, the room allotment for VOCPA Beneficiaries shall be decided by the Head of Department or designated official of the Authority as per extant VOCPA rules and the Concessionaire would have that information in their HMIS so as to provide clarity and avoid any clashes with Market Patients.
- (xi) Notwithstanding the Concession hereby granted to the Concessionaire and the implementation of the Project hereunder, the VOCPA Beneficiaries may, in case of emergency conditions falling in the list prepared and approved by the Authority, avail medical services at any hospital in the country and shall be reimbursed by the Authority as per CGHS rates.

5.16 Obligation of the Concessionaire related to payments to the Authority

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

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 Instrumentalities 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 including Existing Hospital to the Concessionaire and ensure that no barriers are erected or placed on or about the Site and/or the 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;
 - (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 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors of their obligations under this Agreement and the Project Agreements; and
 - (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) Shall operate and maintain AMRIT pharmacy (has been established on 16.09.2024 at VOCPA as part of an initiative of Ministry of Health and Family Welfare) to provide affordable medicines, implants and consumables at Discounted price to the VOCPA Beneficiaries. This pharmacy shall be under the direct control of the Authority and only the VOCPA Beneficiaries shall

have the access to the same. All VOCPA Beneficiaries for the rendered Healthcare Services, shall avail Medicines, consumables and implants and all materials during the hospital stay from AMRIT pharmacy only.

Notwithstanding anything in this Clause 6.1, 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 Article 27).

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 Applicable Permits as per the Applicable Laws. The Concessionaire shall bear all costs and charges in respect of the use of such infrastructure facilities.

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 shall not be deployed with the Concessionaire.
- 6.3.2 The existing permanent employees will be reporting to CMO and will carry out activities as per the instructions of CMO. The existing permanent employees shall not be deployed with the Concessionaire and shall be retained with the Authority and will be governed by the extant service rules of VOCPA. The Authority by its (existing permanent employees) representative of Medical Department under leadership of CMO shall monitor the following:
 1. Patient care services specifically for Healthcare Services rendered to VOCPA beneficiaries
 2. Reporting of any irregularities /Patient grievances and litigations.
 3. Processing of Final Invoice and Monthly Invoice as mentioned in Clause 27.4 for reimbursement.
 4. To conduct periodical inspection to ensure patient safety and compliance to the NABH /NABL standards.
 5. Shall initiate and conduct enquiries and submit the report to Authority for necessary disciplinary action where applicable.
- 6.3.3 All disciplinary actions/penalties against the existing permanent employees shall be reported by the CMO. CMO shall conduct a detailed enquiry and submit the report to the Authority for necessary action. The Authority shall initiate and conduct such disciplinary actions and levy penalties, where applicable, in accordance with the extant VOCPA Service Rules applicable to such existing permanent 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 and 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 hereunder 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 authorize 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) the information furnished in the Bid and as updated on or before the Execution Date of this Agreement is true and accurate in all respects as on the Execution Date of this Agreement;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) 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;
- (k) 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 issued and paid up Equity as on the Execution Date

of this Agreement and thereafter until the second anniversary of COD of Phase II; and that no 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 26% (twenty six per cent) of such Equity which shall also be no less than and 5% of the Total Project Cost, until second anniversary of the COD of Phase II; and that the Lead Member of the Consortium shall hold not less than 26% (twenty six per cent) of such Equity and until second anniversary of the COD of Phase II;

- (l) {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;
- (m) {the Selected Bidder/each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in 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) 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.

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, under Applicable Laws or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the data disclosed by the Authority to the Concessionaire in relation to the Project; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, Drawings, plans or other information relating to the Project.

ARTICLE 8: DISCLAIMER

- 8.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, the Site, Existing Hospital, Existing Facilities, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Patients 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 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, 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 Development Period, provide to the Authority within 60 (sixty) days of the Execution Date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **INR2,04,00,000/- (Rupees two crores four lakhs only)**¹substantially 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, in the event that the Concessionaire does not fulfil one or more Conditions Precedent 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 Damages from the Performance Security for such Concessionaire Default or failure to meet any Condition Precedent or failure to make such payment to the Authority. Subject to this Agreement being valid and in force in accordance with the terms hereof, upon such encashment and appropriation of the 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. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or satisfying any Conditions Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 33.

9.3 Release of Performance Security

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

¹5% of the Estimated Project Cost.

9.4 Deemed Performance Security

The Parties expressly agree that at least 15 (fifteen) days prior to release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for the same amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire remaining Concession Period (the "**Deemed Performance Security**"). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Article 28, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge, including to the exclusion of the Senior Lenders, and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

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

9.6 References to Performance Security

References to the Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire and/or any amounts due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10: SITE

10.1 The Site

The site of the Project shall comprise of the Existing Hospital including Existing Facilities as described in Schedule A, which shall comprise of 3.85 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 development of Hospital as set forth in Schedule A and the Land Lease Agreement.

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 the 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 Lease Rent, 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 and the land lease agreement, agrees to grant to the Concessionaire, under the land lease agreement 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 F – Part I ("**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 to the Existing Hospital and the Concessionaire shall perform its obligations in a manner that the existing approach road of the Existing Hospital 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 the Land Lease Agreement, but 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 above, 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 Right of Way, the Authority shall be liable to pay Damages under and in accordance with the provisions of Clause 4.2.1. 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, the Authority shall pay to the Concessionaire Damages in a sum calculated at the rate of INR 1,000/- (Rupees One Thousand only) 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 Development 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 Development 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 Development 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 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

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

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 development, construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the 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 development

Prior to the commencement of Development 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, development, and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule G;
- 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 Development Works of the Project under and in accordance with the Applicable Laws and Applicable Permits.
- 12.1.4 The Concessionaire shall in due compliance with extant provisions of the Applicable Laws pay the relevant monies as per the rates/quantum and timelines mandated by Applicable Laws; and the Concessionaire agrees that the Authority shall not bear any liability whatsoever in respect of the same.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project, as set forth in Schedule H, 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 and in accordance with the Specifications and Standards and Project Completion Schedule;
- 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, Specifications and Standards, Applicable Laws and Good Industry Practice;
- 12.2.3 Within 15 (fifteen) days of the receipt of the Drawings, 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 Development 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/or 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 Phase II, 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 developed, 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 Project COD, the Concessionaire shall be required to submit the updated as-built Drawings in the manner set out above. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule H; and

- 12.2.7 without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Project and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within [30 (thirty)] days of the receipt of such Drawings. The provisions of this Clause 13.2 shall apply mutatis mutandis to the review and comments thereunder;

12.3 Development of Project

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake the Development 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 Development Works for the Phase I and Phase II, as the case maybe, in accordance with the Project Completion Schedule set forth in Schedule G 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 G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, the Concessionaire 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 such damages shall not in aggregate exceed 5% of the Total Project Cost. 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 G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule G 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 In the event that the Phase I and Phase II, as the case maybe, is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority (including those specified in Article 10) 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 Laws or equity, the Authority may regardless of anything to the contrary contained herein, 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 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 Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. For the avoidance of doubt, it is clarified that this Clause 12.3.3 shall not prejudice, in any manner whatsoever, the Authority's right of termination under any other provision of this Agreement.

ARTICLE 13: MONITORING OF DEVELOPMENT

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 Development Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Engineer.
- 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 Development 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 development

Without prejudice to the provisions of Clause 12.3, 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 Project COD.

13.4 Suspension of unsafe Development 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 Development 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 above, suspend the Development 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 Development 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 Development 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 of relevant Phase 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 of relevant Phase.

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Completion Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Development Works for the Phase I or Phase II, as the case may be, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project or any part thereof to Completion Tests. The date and time of each Completion Test shall be determined by the Independent Engineer 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 may reasonably require for conducting the Completion Tests. In the event of the Concessionaire and the Independent Engineer 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.
- 14.1.2 All Completion Tests shall be conducted in accordance with Schedule I. The Independent Engineer 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 during the course of any Test that the Phase I or Phase II, 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 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

List of all Punch List items appended to the Provisional Certificate in Clause 14.3 below, if any, shall be completed by the Concessionaire within [180 (one hundred and eighty)] days of the date of issue of such Provisional Certificate. When Concessionaire considers it has achieved completion of Punch List, it must request the Independent Engineer for issuance of the Completion Certificate.

Within [5 (five)] days after receiving the request and upon being satisfied by the documents provided by the Concessionaire, the Independent Engineer on the successful completion of all Completion Tests in accordance with Clause 14.1 above, for Phase I and Phase II, as the case may be, the Independent Engineer shall inspect the Hospital for Punch List items and either:

(a) issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule J (the "**Completion Certificate**") for the relevant Phase, if the Punch List items as provided under the Provisional Certificate have been completed; or

(b) issue a written notice to Concessionaire listing the Punch List items remaining to be completed along with the timelines to complete them.

In the event the Concessionaire fails to complete the Punch List items within the timeline mentioned in this Article, then the Authority without prejudice to any of its rights under this Agreement including Termination thereof, may waive of completion of such Punch List items. Authority's decision in this regard shall be at its discretion and shall be final and binding.

In the event that upon successful determination by the Independent Engineer, of the

successful completion of all Completion Tests in accordance with Clause 14.1 above, the Independent Engineer 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 the relevant Phase, of the Project 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 may in its discretion, at the request of the Concessionaire, certify in writing if the Completion Tests are successful for any or a part of the facilities (if not all) required for the Project, can be safely and reliably placed in commercial operation, even though certain works or things forming part thereof which do not affect the use and safety of the Development Works, or any part of the Development Works, for their intended purpose, are outstanding and are to be completed (the "**Punch List**"), the Independent Engineer may at the request of the Concessionaire, issue a provisional completion certificate, specifying the details of the Punch List which the Concessionaire shall be required to complete before issuance of a Completion Certificate (the "**Provisional Certificate**"). Upon such certification the Concessionaire shall be entitled to demand and collect the Fee for rendering Healthcare Services in accordance with this Agreement. For avoidance of 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.

14.4 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to certify the completion of the facilities required for rendering Healthcare Services or issue the Completion Certificate for respective Phase, 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 I and Phase II, as the case may be, shall be deemed to be complete when the Completion Certificate for the respective Phase I and Phase II or Deemed Completion Certificate for the respective Phase I and Phase II, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of Phase I and Phase II, shall be the date on which such Completion Certificate for the Phase I and Phase II or the Deemed Completion Certificate for the Phase I and Phase II, as the case may be, is issued (the "**COD**" or "**Commercial Operation Date**"). The Phase I and Phase II, as the case may be, shall enter into commercial service on COD of each such Phase whereupon the Concessionaire shall be entitled to provide Healthcare Services, provided, however, that the entry of Phase I and Phase II, into commercial service shall always be subject to compliance with Applicable Laws. For avoidance of doubt, it is clarified in this regard, that the Concessionaire shall from the Appointed Date undertake and provide all the speciality and Healthcare Services at Existing Hospital at the same level as being provided at the date of handover of the Existing Hospital on as is where is basis, in accordance with the provisions of this Agreement.

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.

16.1.1(A) If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Healthcare Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within [15 (fifteen)] days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

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 thereunder (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 Development 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.

16.2.3 Upon receipt of information set forth in Clause 16.2.2 above, 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.

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 Development 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 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 Intentionally Left Blank.

16.3.3 Without prejudice to Clause 16.3.2 above, but regardless of anything contrary contained herein, the cumulative cost of implementing all the orders of Change of Scope shall not exceed a sum corresponding to [20%] of the Total Project Cost during the Concession Period.

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, the Concessionaire shall operate and maintain the Project 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 Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted treatment and care of Patients in the Hospital during normal operating conditions;
- (b) subject to Clauses 21.2, and this Article 17, making the Project 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 Patients and/or from the Authority and/or the insurance companies providing insurance scheme (as the case may be);
- (d) minimizing disruption to Patient care in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) achieve and maintain NABH, and NABL Accreditation of the Hospital in accordance with Clause 21.4, throughout the Concession Period for the operation of the Project, and other allied medical facilities;
- (f) carrying out periodic preventive maintenance of the Project;
- (g) undertaking routine maintenance including prompt repairs of the Project, as the case may be including its structures and Equipment;
- (h) undertaking major maintenance such as repair or replacement of Equipment, repairs to structures, and repairs and refurbishment of HMIS and communication system;
- (i) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Hospital;
- (j) protection of the environment and provision of Equipment and materials thereof;
- (k) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Hospital;
- (l) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, staff, government agencies, media and other agencies;
- (m) complying with Safety Requirements in accordance with Article 18;
- (n) operation and maintenance of Hospital and all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (o) maintaining punctuality and reliability in operating the Hospital;
- (p) maintaining a high standard of cleanliness and hygiene in the Hospital;
- (q) operating and maintaining the Beds, the Equipment and HMIS in accordance with the provision of this Agreement;

- (r) providing Healthcare Services to the Patients in accordance with the provisions of this Agreement and Applicable Laws;
- (s) adhering to the Key Performance Indicators set out in Schedule K;
- (t) adhering to the requirements of Clause 5.11;
- (u) providing and maintaining adequate parking space;
- (v) appointing and retaining the human resource requirements in accordance with the provisions of this Agreement;
- (w) ensuring that immediate medical aid is provided to all Patients, including medico-legal cases without waiting for arrival of police or initiation/completion of legal formalities;
- (x) removing promptly from the Project, as the case may be, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste 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;
- (y) Subject to the provisions of this Agreement, the Concessionaire shall participate in the government programs relating to health care as notified by the Authority/Government of India/ Government of Tamil Naidu;
- (z) maintaining, in conformity with Good Industry Practice, all stretches of approach roads, or other structures situated on the Site;
- (aa) operate and maintain Pharmacy;
- (bb) pay for utility, water, sewerage, electricity charges etc.;
- (cc) ensure provision of food which is served to the Patients is clean, hygienic and of good quality;
- (dd) ensuring that all toilets are clean, hygienic and odour free, the temperature in the Project is maintained in accordance with the Good Industry Practice, all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding 5 (five) minutes;
- (ee) providing free drinking water for users at minimum one location at the Hospital;
- (ff) ensuring provision of ramp ways, modified toilets, wheelchairs and earmarked parking slots in conformity with Specifications and Standards and Good Industry Practice, and at no extra cost to users requiring special assistance; and
- (gg) ensuring proper signs, markings and display within the Hospital to direct the users to the appropriate sections of the Hospital;

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Development 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, the Concessionaire 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, as the case may be, shall include safe evacuation of all Patients, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction. 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 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.
- 17.4.2 If in the opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and in particular, the Maintenance Requirements, and such breach is causing or is likely to cause material hardship or danger to any person or property, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for removing such hardship or danger as the case may be.
- 17.4.3 In the event the Concessionaire, upon notice under Clause 17.4.2, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of this Article 17 along with the Damages specified (if any).

17.5 Restoration of loss or damage to the Project

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 Equipment

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

providing Healthcare Services in accordance with Clause 21.7.

17.7 Human Resources

The Concessionaire shall procure and ensure that it engages necessary Human Resources for the provision of Healthcare Services in accordance with Clause 21.6.

17.8 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, 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 Healthcare 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, 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 Laws, send to the Authority and the Independent Panel, a report in a mutually agreed form, stating the following:
- (a) particulars of VOCPA Beneficiaries, such as name, age, sex, finger prints; and
 - (b) copies of the relevant medical records and prescriptions applicable to VOCPA 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 above, 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, 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;
- (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 Safety Requirements, and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements.

ARTICLE 20: PROJECT REGULATION AND SECURITY

20.1 Project regulation by the Concessionaire

- 20.1.1 The Concessionaire shall regulate the usage of the Project 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.
- 20.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Project 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 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 which shall at a minimum be compliant with those conditions set out in this 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 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 Project. 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

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project, such that it achieves or exceeds the performance indicators specified in Schedule K (the "**Key Performance Indicators**").

21.2 Operation of the Project

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;
- (b) all the Healthcare Services as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty four) hours a day and on all days in the year;
- (c) the OPD Services are available at the Hospital in accordance with Clause 22.4;
- (d) Emergency Services are available at the Hospital 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 below, 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 above shall state in reasonable detail the compliance of the Project with all the Key Performance Indicators specified in this Article 21 and Schedule K 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.

21.4 NABH and NABL Accreditation

21.4.1 The Concessionaire shall, within 5 (five) years from the Appointed Date and thereafter maintain throughout the Concession Period, NABH and NABL Accreditation for the Hospital and its laboratories 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 and NABL Accreditation specified in Clause 21.4.1 above, 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 and NABL Accreditation in accordance with this Clause 21.4, shall exceed a continuous period of 3 (three) months, 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 Security for every 1 (one) month of default or part thereof, subject to a maximum of 10% (ten per cent) of the Performance Security.

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 prescribed by NABH, NABL and other equivalent authority 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 through modes available as per Good Industry Practice (which may include leasing of Equipment or hire purchase) all new equipment, medical devices, apparatus, existing equipment as mentioned in Schedule O(c) (hereafter all the equipment/devices/apparatus are collectively referred to as "**Equipment**") and all other support and ancillary infrastructure as necessary for development, operations and maintenance of the Hospital and providing Healthcare Services as per the Scope of the Project. For avoidance of doubt, it is clarified that, the Concessionaire shall ensure that all the existing equipment that are handed over to the Concessionaire on or before the Appointed Date 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 throughout the Concession Period.

Provided however, in case of Termination, the Concessionaire shall unconditionally adhere and fulfil the Divestment Requirements including the transfer of ownership of the Equipment specified in Schedule N and Schedule O, free from all Encumbrances and in good working condition (with minimum remaining life of 5 (five) years of the Equipment).

- 21.7.2 The Concessionaire shall procure, install, operate and maintain the Equipment in accordance with Schedule B, Schedule N 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 the 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 K for each Key Performance Indicator.

ARTICLE 22: HEALTHCARE SERVICES

22.1 Quality of Healthcare Services

- (a) The Concessionaire shall ensure that all Patients in the Project 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, infection control and continuous quality improvement are in accordance with the applicable sections of NABH and NABL Accreditation.
- (b) The Concessionaire shall abide by the provisions relating to the provision of Healthcare Services and the responsibilities of management outlined in NABH and NABL Accreditation.
- (c) The Authority may empanel other tertiary care hospitals directly (without necessarily going through the Concessionaire) for treatment under CGHS rates or otherwise.

22.2 Specialty Services

The Concessionaire agrees and undertakes that the Project shall provide *inter alia* the Healthcare Services ("**Specialties**") to VOCPA Beneficiaries, commencing from not later than COD of Phase I) as described in Schedule L, save and except for the ongoing Specialities in the Existing Hospital which shall commence not later than the Appointed Date:

For the avoidance of doubt, it is clarified that the Specialties specified in Schedule L 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**") to VOCPA Beneficiaries, commencing from not later than COD of Phase I as described in Schedule L, save and except for the ongoing Diagnostic Services in the Existing Hospital which shall commence not later than the Appointed Date.

22.4 OPD Services

The Concessionaire shall ensure that the VOCPA Beneficiaries shall be given priority in treatment over the Market Patients to the extent possible (on best endeavour basis) in the Hospital.

22.5 Inpatient Services

22.5.1 The Concessionaire shall ensure that bed days ("**Bed Days**") are reserved during each Financial Year for VOCPA Beneficiaries availing Inpatient Services at the Hospital, as per the following terms and mechanism:

- a. 10,950 (Ten Thousand Nine Hundred Fifty) Bed Days annually, corresponding to 30 (thirty) Beds per day, commencing from the Appointed Date till COD of Phase II;
- b. 14,600 (Fourteen Thousand Six Hundred) Bed Days per annum, equivalent to 40 (Forty) Beds, commencing from the 1st year post achieving COD of Phase II till the 5th anniversary of the COD of Phase II;

- c. 12,775 (Twelve Thousand Seven Hundred Seventy-Five) Bed Days per annum, equivalent to 35 (Thirty-Five) Beds, commencing from 5th anniversary of the COD of Phase II till the 10th anniversary of the COD of Phase II;
- d. 10,950 (Ten Thousand Nine Hundred Fifty) Bed Days per annum, equivalent to 30 (Thirty) Beds, commencing from 10th anniversary of the COD of Phase II till the 15th anniversary of the COD of Phase II;
- e. 9,125 (Nine Thousand One Hundred Twenty-Five) Bed Days per annum, equivalent to 25 (Twenty-Five) Beds, commencing from 15th anniversary of the COD of Phase II till the 20th anniversary of the COD of Phase II;
- f. 7,300 (Seven Thousand Three Hundred) Bed Days per annum, equivalent to 20 (Twenty) Beds, commencing from 20th anniversary of the COD of Phase II till the Termination of the Concession Period;
- g. For avoidance of doubt, it is clarified that the reserved Bed Days shall get correspondingly reduced in proportion to expiry of each day of operation of the Hospital.

Such Bed Days shall be made available to VOCPA Beneficiaries as per requirement. The Concessionaire will provide Healthcare Services to VOCPA Beneficiaries on priority basis.

22.5.2 Without prejudice to Clause 22.5.1, the Parties also clearly understand and agree that VOCPA Beneficiaries will be entitled to get the daily dynamic requirement for Inpatient Services fulfilled by the Concessionaire. It is hereby understood and recorded by the Parties that the utilisation of Bed Days shall be effected as per the manner outlined below:

- i. If on any day of a relevant month the Beds required by VOCPA Beneficiaries exceeds the daily Bed Days, then regardless of the same, the Concessionaire shall be required to provide Inpatient Services to all the VOCPA Beneficiaries approaching the Hospital on the given day. For this purpose, the Beds utilised over and above the Bed Days shall be adjusted against the Bed Days entitlement for the subsequent unexpired day(s), to the extent required to accommodate all the VOCPA Beneficiaries.
- ii. However, if such excess VOCPA Beneficiaries approaching the Hospital on a given day as referred at point (i) above, cannot be accommodated in the Hospital due to lack of available Beds, then in such case Concessionaire shall ensure and procure at its costs that such VOCPA Beneficiaries get the required Inpatient Services in any other hospital rendering at least Level 3 clinical services (viz super speciality services) as per the standards/benchmark for hospitals laid down under clinical Establishment Regulations, issued by Government of India. In such case, the Authority shall reimburse the cost incurred by Concessionaire as per the applicable CGHS rate at Tamil Nadu.

22.6 Referral of VOCPA Beneficiaries

- (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 VOCPA Beneficiaries to any other healthcare services facility without a valid reason, which shall be recorded in writing and signed by the Designated Person, and without consulting the Authority's Representative.
- (b) The Designated Person shall submit a periodic report, at least once a month, stating the particulars of the VOCPA Beneficiary and reason for making such

referral, in a mutually agreed form, to the Independent Panel.

22.7 Identification Process for VOCPA Beneficiaries

- 22.7.1 Subject to availability of Beds and provisions of this Agreement, the Concessionaire shall provide Healthcare Services to all VOCPA Beneficiaries who approach the Hospital seeking medical attention without any discrimination.
- 22.7.2 The Authority shall determine the eligibility for VOCPA Beneficiaries. The Authority or its representative, as the case may be, shall issue a certificate or identification card to the effect that such Patient is an VOCPA Beneficiary (the "**Identification Certificate**"). Any Patient issued an Identification Certificate will be deemed to be an VOCPA Beneficiary entitled to avail Healthcare Services in accordance with the terms of this Agreement. For avoidance of doubt, it is clarified that regardless of anything to the contrary contained herein, the Authority is not obliged to refer any VOCPA Beneficiary to the Hospital for availing Healthcare Services.
- 22.7.3 Subject to the provisions of Clause 27.1, the Identification Certificate for a VOCPA Beneficiary shall be conclusive and binding on the Authority for applicable payments to be made to the Concessionaire for treatment of such VOCPA Beneficiary in the Hospital.
- 22.7.4 The Authority shall at all times ensure that at least one Authority designated representative is stationed on duty at the CMO office to assist VOCPA Beneficiaries. The Concessionaire shall provide all reasonable assistance to the designated representative for facilitation of VOCPA Beneficiaries.

ARTICLE 23: INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm through a competitive bidding process in line with its procurement policy, to be the independent consultant under this Agreement to certify the Development Works of the Hospital in accordance with this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) 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 M.

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 M.

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 authorised signatories; provided that the Independent Engineer may, by notice in writing, substitute any of the authorised signatories with 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 comprise of a panel of Experts including doctors, engineers and other Experts relevant for the Project. For avoidance of doubt, it is clarified that, the Independent Panel appointed under this Clause 24.1 shall have equal representation of both the Parties. It is further clarified in this regard that, in case, the Parties fails to arrive at mutual consent for appointment of an Independent Panel, in that case, each Party shall appoint one member of the Independent Panel and the two appointed members shall appoint the third member of the Independent Panel. The appointment shall be made no later than 30 (thirty) days prior to the COD of Phase I and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another panel to be constituted in the manner specified herein to be the Independent Panel for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

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 M.
- 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 M.

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 authorised signatories; provided that the Independent Panel may, by notice in writing, substitute any of the authorised signatories with 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 and in the event of delay, it shall be entitled to a further period not exceeding 200 (two hundred) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay subject to a maximum of 20% (Twenty Percent) of the amount of the Performance Security; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.2.
- 25.1.2 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 25.2.2 Upon termination under Clause 25.2.1 above, 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 any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2, it shall, upon termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2.1. 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

26.1.1 Lease Rent:

The Concessionaire shall pay to the Authority an annual lease rent (the "**Lease Rent**") of INR 1/- (Rupee One) per annum, for 3.85 acres of land, in consideration of the leasehold right being vested in accordance with the terms of Land Lease Agreement, commencing from the Appointed Date for each year during the Concession Period. In the event of earlier termination of this Agreement for any reason whatsoever, no amounts paid by way of Lease Rent shall be refundable to the Concessionaire. The Land Lease Agreement shall be co-terminus with the Concession Agreement.

The Lease Rent shall be payable at end of each year within 60 days of closing of preceding year till the expiry of Concession Period.

26.2 Gross Revenue Share

The Concessionaire shall, subject to terms hereof and basis the quote of the Selected Bidder in its financial bid, pay to the Authority, share in its Gross Revenue ("**Gross Revenue Share**"), which shall be equivalent to [*]% of the Gross Revenue and shall be payable on a monthly basis commencing from the COD of Phase II:

The Gross Revenue Share for each relevant month from the COD of Phase II, shall be payable by the Concessionaire latest by the 7th (seventh) day of the immediately subsequent 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 hereto agree as follows:

- i. Authority and its 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 the Authority. The Concessionaire shall make available to the Authority and its representatives such information and grant such access as they shall reasonably require in connection therewith.
- ii. The applicable Gross Revenue used for final verification/reconciliation shall subject to Clause 26.3 below, be the revenue as certified by Statutory Auditor.

26.3 The Authority shall, at its own cost, have the option to appoint another firm of chartered accountants duly licensed to practice in India (the "**Additional Auditor**") to conduct a special audit of the Gross Revenue and the financial statements, documents and supporting evidences thereto as may be mandated by the Authority and report to the Authority such information as may be desired by the Authority for any period and the Gross Revenue ("**Special Audit**").

In the event that the Gross Revenue reported by the Additional Auditor is higher than that reported by the Statutory Auditor, the auditors shall meet to resolve such differences and if they are unable to resolve the same, the Concessionaire shall pay the Gross Revenue Share on the Gross Revenue reported by the Additional Auditor. The Concessionaire shall also pay interest @SBI PLR plus 2% (two percent) per annum on the difference between the Gross Revenue Share on the Gross Revenue paid by the Concessionaire based on the Gross Revenue reported by the Statutory Auditor and that payable by the Concessionaire based on the Gross Revenue reported by the Additional Auditor for the intervening period between the payment of the revenue share as above. Further the Concessionaire shall reimburse all costs, charges and expenses related to the Special Audit. Without prejudice to the aforesaid, if the difference between the Gross Revenue reported by the Additional Auditor and that reported by the Statutory Auditor is higher than 5% (five percent), the

Authority shall at its sole discretion have the right to require a Special Audit for the entire outstanding tenure of the Concession.

During the subsistence of this Agreement, the Concessionaire shall maintain all documents and supporting evidence for its financial statements including agreements and documents with respect to all capital and debt raised by the Concessionaire, capital and revenue expenses towards the Project, patient-wise information, and, as relevant, fees charged and the amount of rates levied. The Concessionaire shall submit to the Authority a financial statement of the Gross Revenue for every 6 (six) months period ending on 30th September and 31st March every year, duly certified by its Statutory Auditors. The certificate must be furnished within 30 (thirty) days of the end of each such 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 as 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

27.1.1 On and from the Appointed Date of the Project and during Operation Period till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Patients either directly and/or from the Authority in accordance with this Agreement, as follows:

- a. The Concessionaire shall not directly collect Fee from VOCPA Beneficiaries for the OPD and Diagnostic Services availed by them at the Hospital and the Authority shall be liable to reimburse the Concessionaire for the cost of OPD and Diagnostic Services availed by VOCPA Beneficiaries in accordance with Clause 27.3;
- b. The Concessionaire shall not directly collect Fee from VOCPA Beneficiaries for the Inpatient Services availed by them at the Hospital and the Authority shall be liable to reimburse the Concessionaire for the cost of Inpatient Services availed by the VOCPA Beneficiaries in accordance with Clause 27.3;
- c. The Concessionaire shall collect and appropriate the Fees from the relevant insurance companies/competent authority with respect to any Healthcare Services provided to Patients covered under the relevant Insurance Scheme at the Hospital. The Authority shall not be liable for any payment in respect of the Healthcare Services availed by such Patients.

27.1.2 The Concessionaire shall collect Fee directly from Market Patients for all the Healthcare Services availed by them at the Hospital at the market competitive rates. The Authority shall not be liable for any payment in respect of the Healthcare Services availed by the Market Patients or any other patients which are not expressly mentioned in this Agreement. The Concessionaire shall notify the latest market rates to the Authority from time to time. The Concessionaire acknowledges and agrees that upon payment of Fee, any Patient shall be entitled to use the Hospital and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permit or the provisions of this Agreement.

27.2 Display of Fee

- (a) The Concessionaire shall ensure that the applicable rates of Fee are readily available to Patients on demand and printed Fee schedules are available at all convenient locations in the Project, 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.
- (c) The Concessionaire shall display the rates for the Fee including the daily rate for the Bed occupancy, diagnostic services in the Hospital at a place where it is visible to all Patients.

27.3 Payment for VOCPA Beneficiaries by the Authority

Subject to Clause 27.1.1, the Authority shall be liable to reimburse the Concessionaire for the cost of Healthcare Services availed by VOCPA Beneficiaries (where applicable). However, prior to any such reimbursement by the Authority to the Concessionaire, the cost of Healthcare Services availed by VOCPA Beneficiaries (where applicable) 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, the costs mentioned in this Clause 27.3 remain outstanding, the Authority shall reimburse the Concessionaire such costs as per Clause 27.4. The applicable rate for

VOCPA Beneficiaries shall be the applicable CGHS rate for Tamil Nadu. If there are no packages or rates for procedures in CGHS Tamil Nadu, the following order of priority may be used to define the reimbursement rate:

- a) Package rates of National Health Protection Scheme or any public health insurance scheme enforced and in effect in Tamil Nadu shall be used;
- b) CGHS rates in Bangalore;
- c) CGHS rates in Mumbai;
- d) CGHS rates in Delhi;
- e) CGHS rates in Kolkata;
- f) Average of the actual rates prevailing in the hospitals where VOCPA has been sending patients prior to signing of this Agreement.

For avoidance of doubt it is clarified that the CGHS rates prior to obtaining NABH Accreditation 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 hospitals.

It is further clarified that in the event the Authority implements any health insurance scheme extending coverage to its employees, than the payment for the Healthcare Services shall be made by the relevant insurer. The Concessionaire must empanel the Hospital with such health insurance service provider. For avoidance of doubt, it is clarified that, that Authority shall not have any liability whatsoever for payment of such VOCPA Beneficiaries.

27.4 Billing and Payment

- (a) In the event that an VOCPA Beneficiary approaches the Hospital for availing of the Healthcare Services provided by the Hospital, including OPD Services, the Concessionaire shall, before hospitalising and/or commencing any treatment or diagnosis on such VOCPA Beneficiary, shall send an prior information to the CMO office via email (as and when needed)with the following details:
 - i. details of Healthcare Package to be applied to the VOCPA Beneficiary; and
 - ii. estimated cost of applying such Healthcare Package, calculated at the prevailing rates published by the Hospital.

In case of emergency, without prior information to the CMO office, the Concessionaire shall immediately hospitalise the VOCPA Beneficiary and commence the diagnosis or treatment, as the case may be, of his ailment. Such rendering of the emergency Healthcare Services, prior intimation to the CMO would not be required and the same can be sent subsequently by next day. Post completion of the treatment of the VOCPA Beneficiaries, the Concessionaire shall submit all relevant bills to the CMO office for verification/validation of the details mentioned above and for its final approval(**"Final Invoice"**).

- (b) In the event that during the treatment and/or diagnosis being conducted on the VOCPA Beneficiary, the specialists treating the VOCPA Beneficiary are of the opinion that the Healthcare Package mentioned in the email must be changed, the Concessionaire shall share the details of the revised Healthcare Package via an email to the CMO office marking Independent Panel with the details of the new Healthcare Package in accordance with Clause 27.4 (a) above. Such revised email shall be reviewed by the Independent Panel and be dealt with in accordance with the provisions of Clause 27.4 (a) above.

- (c) Commencing from the month following the month in which Appointed Date occurs, the Concessionaire shall, by the 5th(fifth) day of each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Authority and Escrow Bank, all approved Final Invoices, in accordance with Clause 27.4 (a) or 27.4 (b), as the case may be, (the "**Monthly Invoice**") signed by the authorised signatory of the Concessionaire. The Monthly Invoice shall specify the cost of the Healthcare Package availed by the VOCPA 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.
- (d) 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 this 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 VOCPA Beneficiaries, as the case may be, (iv) payment recovered under the annual budgetary allocation notification for VOCPA Beneficiaries, if any; (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 VOCPA Beneficiary; and (vi) original copy of the Identification Certificates for VOCPA Beneficiaries, as the case may be.
- (e) Within 30 (thirty) 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 27.4 (d) 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 27.4 (e) 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 Monthly Invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

27.5 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 27.4 (e). In the event of delay beyond such period, the Authority shall pay interest for the period of delay, calculated at a rate equal to 1% (one per cent) above the Bank Rate on the amounts payable.

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 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 R (the "**Escrow Agreement**").

28.2 Deposits into Escrow Account

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 forms 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 in accordance with this Agreement.

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.

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 relevant Sub-Accounts of 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 development 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) Gross Revenue Share and Lease Rent, along with applicable taxes, 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; and

(j) 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 above, except with the prior written approval of the Authority.

28.4 Withdrawals upon Termination on account of either party default

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 Gross Revenue Share and Lease Rent, along with applicable taxes 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 excluding subordinate debt;
- (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 above have been discharged.

28.5 Withdrawal upon end of Concession Period by efflux of time

All amounts standing to the credit of the Escrow Account at the end of the Concession Period by efflux of time shall be appropriated in the following order of priority:

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amounts due to the Authority and amounts payable towards transfer of the Project and Project Facilities by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:

- (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;
- (ii) the Escrow Bank has received a confirmation of final settlement by the Senior Lenders and/or Authority; and
- (iii) Vesting Certificate has been issued by the Authority under the provisions of Clause 34.4.

ARTICLE 29: INSURANCE

29.1 Insurance during Concession Period

29.1.1 The Concessionaire shall effect and maintain at its own cost, during the Development 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 Development Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the escrow account. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

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

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

29.3 Evidence of Insurance Cover

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

29.4 Remedy for failure to insure

If the Concessionaire fails to effect and keep in force all insurances which it is required to obtain pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premium and recover the costs thereof from the Concessionaire with interest @ 3% above Bank rate per annum, 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 balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 30.1.2 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 Patients using the Project and liable for payment of Fee therefor, (ii) Fee charged and received, realizable fee and other revenues derived from the Project, and (iii) 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 avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

30.3 Appointment of Statutory Auditors

- 30.3.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least five practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 30.3.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with this Clause 30.3.

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) prevents the affected party from performing or discharging its obligations under this agreement and thereby has Material Adverse Effect on the Affected Party.

31.2 Non-Political Event

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

- (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 31.2 (a) 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 Laws or Applicable Permit, or (ii) on account of breach of any Applicable Laws 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) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- (g) 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 political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) 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 the grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) early determination of this Agreement by the Authority for reasons of national emergency, national security or the public interest;
- (e) 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
- (f) 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.

31.5 (A) Period of Force Majeure

Period of Force Majeure shall mean the period from the time of occurrence specified in the notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- (a) expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Clause 31.11; or
- (b) termination of this Agreement pursuant to Clause 31.8 hereof.

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 the Project COD, the Concession Period and the dates set forth in the Project Completion Schedule in respect of affected Phase(s) of the Project 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) during the Operation Period, whereupon the Concessionaire is unable to render Healthcare Services and collect Fee 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 and/or Operation Period shall be, shall be, subject to Applicable Laws, extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of reduction in collection of Fee on account of partial inability or suspension, as the case may be, which causes the daily collection to decline below 90% of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the

avoidance of doubt, loss of 25% in collection of Fee as compared to the Average Daily Fee for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period;

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 avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Development 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 the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, Affected Party may after the expiry of the said period of 120 (one hundred and twenty) days in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 31, and upon issuance of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention in writing and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period from the date of such notification, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

31.9 Termination Payment for Force Majeure Event

- (a) If termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due LESS Insurance Cover;
- (b) If termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (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;
 - (ii) 110% (one hundred and ten per cent) of the Adjusted Equity;
- (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.

Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 29 of this Agreement.

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 the 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. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying 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 the performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume the performance of its obligations hereunder. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

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 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 this 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 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 right of substitution on behalf of Senior Lenders. Notwithstanding anything to the contrary stipulated in this Agreement, the Authority shall (to the exclusion of Senior Lenders) have the right to take over (as per the Divestment Requirements in Clause 34.1) complete possession and control of the Project Assets, Existing Hospital, Existing Facilities, thereby replacing the Concessionaire, by way of terminating this Agreement in case any Concessionaire's event of default occurs prior to the COD of Phase II.

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 the Substitution Agreement and 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 Article 33.1.
- (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, this 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, has been encashed and appropriated in accordance with Clause 9.2 and 9.5 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 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
 - (iii) the Concessionaire abandons or manifests intention to abandon the development or operation of the Project for more than 90 (ninety) days without the prior written consent of the Authority;
 - (iv) the Concessionaire's failure to fulfil any of its material obligations resulting in Material Adverse Effect;
 - (v) the Concessionaire commits repeated default in conforming to the Key Performance Indicators as set forth in Article 21 and Schedule K or O&M obligations as set forth in Article 17 and the total Damages payable for such defaults exceed the amount of Performance Security;
 - (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 the 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) During Operation Period, in any Financial Year, if any VOCPA Beneficiaries are denied Healthcare Services 5 (five) or higher number of times/instances, regardless of anything contrary contained herein, shall constitute a Concessionaire's event of default under this Agreement. It is clarified in this regard that such 5 instances shall be certified by the committee constituted by the Authority under Clause 19.5.3.
- (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) above 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 or such other measures as may be considered appropriate by them in the attendant circumstances:

- (i) the change of management or control/ownership of the Concessionaire;
- (ii) the substitution of the Concessionaire proposed by the Senior Lenders (in terms of the Substitution Agreement), and the specific terms and conditions of such substitution which shall include:
 - (a) the criteria for selection of the Nominated Company;
 - (b) the transfer of rights and obligations of the Concessionaire surviving under this Agreement to the Nominated Company;
 - (c) handing over/ transfer of the Project, Site and the Project Facilities and services to the Nominated Company;
 - (d) acceptance by the Nominated Company of the outstanding obligations of the Concessionaire under the Financing Agreements and preserving Senior Lenders' charge on the Concessionaire's assets;
 - (e) acceptance by the Nominated Company of any amounts due to the Authority from the Concessionaire under this Agreement; and
 - (f) payment of consideration for the Concessionaire's assets comprised in the Project, Project Facilities and services and the manner of appropriation thereof.

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 provisions of this Agreement and as a result of such material default, the Concessionaire is unable to undertake the 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 an 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, the Authority shall 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;

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

Upon termination on account of Concessionaire's Default during the Development Period prior to COD of Phase II, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% (thirty percent) of the Total Project Cost and in the event of expenditure exceeding such 30% (thirty percent) 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 30% (thirty percent). By way of illustration, 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 60% (sixty percent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 54% (fifty four percent) of the Total Project Cost or 90% of the Debt Due. 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.

Provided, no Termination Payment shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 29 of this Agreement.

- (b) Upon termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
 - (i) Debt Due less Insurance Cover; and
 - (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity;
- (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 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) 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. For avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD of Phase II, the Concessionaire shall notify to the Authority, the 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 33.4 (b) 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 Phase I and Phase II of the Project.
- (c) upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an event of default, the Concessionaire shall provide the computation of the Termination Payment with

all requisite details certified by its Statutory Auditor for the sole purpose reference to the Authority.

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 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 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 Payment of Compensation to Senior Lenders

- (a) The Concessionaire hereby irrevocably authorises the Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the Termination Payment payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of Termination Payment under this Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of its assets taken over by the Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of Termination Payment by Authority in accordance with this Clause 33.6 shall be a valid discharge to the Authority in respect of Authority's obligation regarding payment of Termination Payment to the Concessionaire under this Agreement.
- (b) Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Senior Lenders as the case may be, shall be entitled to remove at its/ their cost all such moveable's which are not taken over by the Authority and to deal with the same in accordance with their respective rights under law.
- (c) Provided further, if there are no amounts outstanding under the Financing Agreements and a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Authority, the Termination Payment shall be paid by the Authority to the Concessionaire directly.

33.7 Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire event of default, the Authority may always subject to right of substitution of the Senior Lenders, at its discretion:

- (a) re-enter upon and take possession and control of Project/Project Site/Project Facilities and Healthcare Services forthwith;
- (b) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Healthcare Services;
- (c) step in and succeed upon election by Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate with effect from the date of communication of such election to the counter party to the relative Project Agreements.

Provided, that in such circumstances, the Authority shall assume the obligations of the Concessionaire, either by itself or through an operation and maintenance contractor appointed in consultation with the Senior Lenders, with respect to the Senior Lenders during such Suspension period out of the cash flows of the Project. Provided further, the Concessionaire acknowledges that any payments made by the Authority during the Suspension shall be adjusted against Termination Payment payable by the Authority to the Concessionaire in terms of the provisions of this Agreement.

33.8 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of this Clause 33.6, 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 of this Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements:
 - (i) notify the Authority forthwith of the location and particulars of all Project Assets;
 - (ii) deliver forthwith the actual or constructive possession and ownership of the Project and Project Assets, 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 Development Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;
 - (iv) the Authority shall be entitled to encash any subsisting Performance Security provided by the Concessionaire to the Authority in accordance with the provisions of this Agreement.
 - (v) deliver and transfer relevant records, reports, Intellectual Property and other licenses 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;
 - (vi) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - (vii) 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
 - (viii) 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.
- (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.

- (c) Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the Termination Payment payable to the Concessionaire in accordance with Article 33 in the Escrow Account, the Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the divestment of the Project/Project Site/Project Assets/Project Facilities & Healthcare Services by the Concessionaire to the Authority shall be free from any such obligation.

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 maximum 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 avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

34.3(A) Delayed Transfer of Assets

If for any reasons other than those attributable to the Authority, the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 34, there shall be no suspension of the operation and maintenance of the Project Facilities and Healthcare Services and the Concessionaire shall, as a trustee of the Authority, (a) continue to operate and maintain the Project Facilities and Healthcare Services or such of them, as directed by Authority until completion of the relative transfer formalities as stipulated in Clause 34.3 and (b) account for and pay to the Authority the Fee collected and other revenues derived from the Project minus operating costs and

statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Authority, for every day of delay, liquidated damages computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the Transfer Date, or from COD of Phase II till Transfer date in case the Project is terminated in less than three years from COD of Phase II. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Clause shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to the Authority is delayed for reasons solely attributable to the Authority, the Concessionaire shall nonetheless continue to operate the Project Facilities and Healthcare Services but as agent of the Authority. Provided however, the Concessionaire shall be liable to pay Lease Rent and Gross Revenue Share in accordance with Article 26.

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 Q (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) Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Healthcare Services consequent to the expiry or termination of this Agreement shall be borne by:
 - (i) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire event of default;
 - (ii) the Authority in the event of termination due to Authority event of default or Political Event; and
 - (iii) by both parties equally in case of termination due to Change in Law or Non-Political Event or Indirect Event.
- (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 for a period of [120 (one hundred and twenty)] days after Termination, 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 Security. For avoidance of doubt, the provisions of this Article 35 shall not apply if Termination occurs prior to Operations Period(s).

ARTICLE 35 (A): COMPENSATION FOR BREACH OF AGREEMENT

35 A.1 Compensation for Default by the Concessionaire

Subject to the provisions of Clause 35 A.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no compensation shall be payable under this Clause 35 A.1 for any material breach or default in respect of which damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35 A.2 Compensation for Default by the Authority

Subject to the provisions of Clause 35 A.5, in the event of the Authority being in material breach or default of this Agreement at any time after the date of Award of Concession, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary documentation thereof; provided that no such compensation shall be payable for any material breach or default in respect of which damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of revenues from Project or debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35 A.3 Extension of Concession Period

Subject to the provisions of Clause 35 A.5, in the event that a material breach or default of this Agreement set forth in Clause 35 A.2 causes delay in achieving COD or leads to suspension of or reduction in realisation of Gross Revenue, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35 A.2, extend the Concession Period, such extension in the Concession Period shall be considered and determined by the Authority at such time. The decision of the Authority in this matter shall be final and binding.

35 A.4 Compensation to be in addition

Compensation payable under this Clause 35 A shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including termination thereof.

35 A.5 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

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 or 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 above 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 Hospital, 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 Laws.

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 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 P (the "**Substitution Agreement**").
- (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 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 INR 1,00,00,000/- (Rupees One Crore only) 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 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 INR 1,00,00,000/- (Rupees One Crore only) 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 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 1 (one) year from the close of such Accounting Year. Any demand for each 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/users.

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 Healthcare Services by the Concessionaire to any Patients or from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- (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 above, 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;
 - (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;
 - (iv) its omissions or acts of fraud, gross negligence and wilful misconduct;
 - (v) any personal bodily injury or death of any person caused by, arising out of

or in connection with its performance of this Agreement; or

- (vi) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.
- (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 Clauses 38.4 (b) or (c) 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 payable from the Appointed Date on the Site shall be payable by the Concessionaire. For avoidance of doubt, all dues and taxes which are payable and due 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 Amicable Settlement

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

In case any dispute is not resolved amicably as provided in Clause 40.1, the Concessionaire may agree to refer the matter to conciliation & settlement Committee established by the Authority as per provisions contained in Part-III of the Arbitration & Conciliation (Amendment) Act, 2015 (the "**Conciliation & Settlement Committee**"). The standard operating procedures for conciliation and settlement of disputes through the conciliatory process and the constitution of the committee shall be contained in the policy guidelines issued by the Authority on the subject, which shall be in alignment with the provisions contained in Sections 63 and 64 of the Arbitration & Conciliation (Amendment) Act, 2015. In case the recommendations/decision of the committee is not acceptable to the Concessionaire, it shall be free to refer the dispute to arbitration in accordance with the provisions of Clause 40.3 or 40.4.

40.3 Arbitration

40.3.1 Any Dispute which is not resolved amicably as provided in Clauses 40.1 and 40.2 above, 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 Act. 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 S.
- (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 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 75 % (seventy five percent) of the aforesaid amount. The Bank Guarantee shall be kept valid 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, may 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 above 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 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 at the 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 Documentation 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 above, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents to any person in pursuance of the aforesaid Clauses 41.1 and 41.2.

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 Maintenance Complaint Portal

- (a) The Concessionaire shall maintain a "Complaint Portal" on its website which shall be available to all users of the Project Facilities and Healthcare Services who shall be duly informed about availability of the provision for lodging of complaints. The Complaint Portal will also be linked to the Authority website with an alert system for real time access to the complaints.
- (b) Concessionaire shall take action for just and fair redressal of the grievance and submit a reply to the complainant within thirty days from the date of receipt with a copy to Authority and maintain a proof of reply.
- (c) If Concessionaire fails to address the grievance and the complaint makes a reference to Authority, it will issue directions which shall be complied by the Concessionaire.

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 Tamil Nadu 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 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, Documentation 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 Clause 43.6 (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 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 whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing 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 Thoothukudi 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 person as the Concessionaire may from time to time designate by notice to the Authority;

Name:
Designation:
Address:
Email No.:

- (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 Thoothukudi 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

Save and except as otherwise provided in this Agreement or in the Land Lease Agreement, any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement or Land Lease 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 1st (first) day of April of any calendar year and ending on the 31st (thirty-first) day of March of the following calendar year;

"Additional Facilities" shall have the meaning set forth in Clause 2.1 (c);

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

"Adjusted Equity" means the Equity funded in Indian Rupees and adjusted on the 1st (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 COD of Phase I, 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 1st (first) day of the month of Appointed Date and the Reference Date;
- (b) anytime after COD of Phase I and until the 4th(fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD of Phase I shall be deemed to be the base (the **Base Adjusted Equity**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD of Phase I to the extent of variation in PRICE INDEX occurring between COD of Phase I and the Reference Date; and
- (c) anytime after the 4th(fourth) anniversary of COD of Phase I, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point two per cent) thereof at the commencement of each month following the 4th(fourth) anniversary of COD of Phase I and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD of Phase I and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and spent for the development of Phase II of the Project in accordance with the terms of this Agreement. For 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;

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

"Applicable Laws" means all laws, brought into force and effect by Government of India or the State Government or The Major Port Authorities Act, 2021 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 or from any Government Instrumentality required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other transaction document;

"Appointed Date" means the date falling within 180 (one hundred and eighty) days of the Execution Date of this Agreement or any extended period specified under this Agreement, on which Financial Close and fulfilment of all Conditions Precedent 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 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 INR 100,00,00,000/- (Rupees One Hundred Crores) 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);

"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;

"Average Daily Fee" means the amount arrived at by dividing the total Fee collected in the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the quotient thereof by 5%; provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following Operation Period of Phase I and/or Phase II, as the case may be, shall be a simple average of the Fee collected every day during the period between Operation Period of Phase I and/or Phase II, as the case may

be, and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

"Bank" means any Nationalised 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 INR*****/- (Indian Rupees *****) in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"Board of Directors" or **"Board"** means the board of directors of the Concessionaire;

"CGHS" means Central Government Health Scheme;

"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;
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project; or
- (f) any lockdown orders or orders restricting the movement of persons/goods/vehicles issued by Government of India and/or the State Government under the Epidemic Diseases Act, 1897 and/or the Disaster Management Act, 2005,

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 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 per cent) thereof until 2nd(second) anniversary of COD of Phase II; 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 the 2nd(second) anniversary of COD of Phase II, 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 16.2.1;

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

"Clause" means a clause of this Agreement;

"COD "or **"Commercial Operation Date"** shall have the meaning set forth in Clause 15.1;

"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;

"Companies Act "means, Companies Act, 2013 to the extent applicable and the Companies Act, 2013 as amended from time to time;

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

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

"Completion Tests" means the tests set forth in Schedule I 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 Period" shall have the meaning set forth in Clause 3.1.1;

"Conditions Precedent" shall have the meaning set forth in Clause 4.1.1;

"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 the 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 Request for Proposal;

"Consumables" means 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 enter into EPC Contract, the O&M Contract, 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 recognised specialist on its rolls, as per Applicable Laws:

- (a) General Medicine;
- (b) General Surgery;
- (c) Obstetrics and Gynaecology;
- (d) Paediatrics, Paediatric Surgery, Neonatology;
- (e) ENT;
- (f) Ophthalmology;
- (g) Cardia 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 5.2.4;

"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, during any part of the day 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 Emergency Services;

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the principal) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

Provided further that the Debt Due, on or after COD of Phase II, shall in no case exceed 85% of the Total Project Cost.

"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 14.2.1;

"Deemed Performance Security" shall have the meaning set forth in Clause 9.4;

"Designated Person" means designated person duly authorised by the Concessionaire;

"Development Period" means period beginning from the Appointed Date and ending on Project COD subject to the provisions of this Agreement. For avoidance of doubt, it is clarified that this period shall include the Development Period for Phase I and Phase II of the Project;

"Development Works" means all development works and things necessary to complete (i) Phase –I (ii) Phase - II, as the case may be, in accordance with this Agreement;

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

"Director" means a director on the Board of Directors of the Concessionaire;

"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 H, 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 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 28.1.1;

"Escrow Agreement" shall have the meaning set forth in Clause 28.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 28.1.1;

"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 Concessionaire, and any interest-free loans advanced by any shareholder of the Concessionaire for meeting such equity component;

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

"Existing Facilities" means all existing amenities and facilities situated on Site on the Appointed Date including existing equipment but excluding existing AMRIT Pharmacy and medical office building (CMO Office), more particularly set out in Schedule O;

"Existing Hospital" shall have the meaning set forth in Recital (A) and Schedule A;

"Expert" means any person, body or organization of repute with recognized technical/

professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement;

"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;

"Final Invoice" shall have the meaning set forth in Clause 27.4 (a);

"Financial Close" shall mean fulfilment of either (a) or (b), as the case maybe, in accordance with the terms set out herein below:

- (a) 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; or
- (b) In case the Concessionaire decides to fund the Total Project Cost substantially (more than 60% of Total Project Cost) through Equity infusion, and by reason thereof the Concessionaire and the Senior Lenders does not enter into Financing Agreement outlining the legal obligations and means to cover the funding of the entire Total Project Cost than in such a case Financial Close shall be deemed to be considered subject to the Concessionaire fulfilling any one of the following pre-condition:
 - 1. Furnishing equity bank guarantee for securing an amount equivalent to 25% of the Equity;
 - 2. Infusion of 25% of Equity upfront in the Concessionaire;
 - 3. Demonstrate the funding commitment through certified documents issued by any financial institutions (as defined under Section 2(39) of the Companies Act, 2013) clearly identifying the current/liquidated assets of the Selected Bidder (including any of its Associates/Affiliates) which is ready and available to be committed for application/liquidation towards Equity infusion.In addition to the commitment letters issued by the financial institutions the relevant Equity investor shall also provide respective corporate guarantee for securing their Equity Commitment.

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

"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 1st April of a calendar year and ending on 31st March of the immediately succeeding calendar year; provided that the first Financial Year with respect to this Project means the period from the Appointed Date to the immediately following March 31st and the last Financial Year with respect to the Project means the period from April 1st immediately preceding the Transfer Date till the Transfer Date;

"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 set forth in Clause 31.1;

"Force Majeure Costs" shall have the meaning set forth 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;

"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" of the Project for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Project and its facilities and provision of Healthcare Services, and/or any other activity related to the Project including, if any, as certified by the statutory auditors of the Concessionaire, and shall include Revenues [and, patients, vending machines, parking, use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Concessionaire], but shall exclude the following:

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

For avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any Healthcare Services and/or any other activity related to the Project, and any amount received by the Concessionaire from a third party to whom it has contracted any Healthcare Services and/or any other activity related to the Project;

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

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

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

"HMIS" means Hospital Management Information System;

"Hospital" means the facilities given on lease to the Concessionaire for development of 100 (hundred)bedded super-speciality clinical facility in terms of this Agreement, where Healthcare Services are envisaged to be provided to the patients by the Concessionaire in accordance with this Agreement;

"Hospital Website" shall have the meaning set forth in Clause 5.13.2;

"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 Hospital;

"Identification Certificate" shall have the 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" means Patients receiving Inpatient Services;

"Inpatient Services" means the following items and services furnished to an Inpatient by the Hospital in all department as set forth in Schedule L: (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 Hospital, as are ordinarily furnished by such Hospital for the care and treatment of inpatients; (3) medical or surgical services provided by a physician, resident, or intern; (4) the services of a private-duty nurse or other private-duty attendant; and (5) any other clinical or non-clinical services provided to an inpatient;

"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 Clause 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, as may be in force and effect during the subsistence of this Agreement and shall include PMJAY;

"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 read with Schedule K;

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

"Lead Member" means the lead member of the Consortium;

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

"Lease Rent" shall have the meaning set forth in Clause 26.1;

"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);

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

"Market Patient" means a Patient other than VOCPA Beneficiaries;

"Master Plan" means and include the plan prepared for the Project after taking into account the capacities as envisaged under Phase I and Phase II in accordance with the provisions of Clause 5.11.1 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;

"Monthly Invoice" shall have the meaning set forth in Clause 27.4 (c);

"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 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 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 operations and maintenance 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 operations and maintenance; (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 operations and maintenance; 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 L;

"Operation Period" shall mean and refer severally or in combination to following time period(s) of operation of Project [whole or part(s)] as the context may admit/require during which the Concessionaire shall provide healthcare services in accordance with this Agreement:

- (a) The operation period with respect to Existing Hospital shall commence from Appointed Date till COD of Phase I, wherein, the Concessionaire shall provide such healthcare services in the Existing Hospital which shall be on as is where is basis i.e., at the same level of clinical care existing at the time of handover/Appointed Date.
- (b) The operation period with respect to Phase I, means the period commencing from COD of Phase I and ending on the Transfer Date, wherein the Concessionaire shall provide Healthcare Services in accordance with terms of this Agreement including Schedule L and K;
- (c) The operation period with respect to Phase II, means the period commencing from COD of Phase II and ending on the Transfer Date, wherein the Concessionaire shall provide Healthcare Services in accordance with terms of this Agreement including Schedule L and K; and

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

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

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

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

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

"Pensioner" means retired employees of VOCPA;

"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;

"Pharmacy" means a shop where medical drugs are prepared or sold;

"Phase" as the context requires means, Phase I and Phase II developed in accordance with the provisions of this Agreement;

"Phase I" means the refurbishment of the Existing Hospital (62 bedded) to a 50 (fifty) bedded super specialty facility and Diagnostic Services in accordance with Schedule A and Schedule G;

"Phase II" means the Project comprising minimum number of 100 (one hundred) Beds (including those existing in Phase I) with super specialty facility and Diagnostic Services in accordance with Schedule A and Schedule G;

"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;

"Preservation Costs" shall have the meaning set forth in Clause 13.4.3;

"Project" means development, construction, operation and maintenance of Phase I and Phase II, and of the Additional Facilities (if undertaken), 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.

"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 INR 5,00,00,000/- (Rupees Five Crores only) 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; and

(h) Applicable Permits and authorisations relating to or in respect of the Project;

"Project COD" shall mean and refer severally or in any possible combination to include COD of Phase I and COD of Phase II, as the context may admit or require under this Agreement;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule G for completion of the Project, on or before the Scheduled Completion Date of Phase I and Phase II;

"Project Facilities" means all the amenities and facilities in relation to the Project as required by NABH, NABL or equivalent authority, as the case may be;

"Project Milestones or Milestones" means the project milestones set forth in Schedule G;

"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;
- (b) CT-scan;
- (c) X-Ray;
- (d) USG;
- (e) ECG;
- (f) Echo cardiography;
- (g) Pulmonary Function Test (**PFT**);
- (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 development, operation and maintenance of the Project and real estate development in accordance with this Agreement;

"Rupees" or **"Indian Rupees"** or **"INR"** means the lawful currency of the Republic of India;

"PMJAY" means Pradhan Manthri Jan Arogya Yojna of the Ministry of Health & Family Welfare, 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 I and II, as the case may be, as set forth in Schedule G;

"Scheduled Completion Date for Phase I" shall have the meaning set forth in Schedule G;

"Scheduled Completion Date for Phase II" shall have the meaning set forth in Schedule G;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"Selected Bidder" means the Bidder selected by the Authority for award of the Project following the completion of bidding process;

"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 mean the land area and other immovable infrastructure facilities as delineated and specified in Schedule A;

"Specialties" shall have the meaning set forth in Clause 22.2;

"Special Planning Authority" means, in the context of this Agreement, shall mean the and refer to the Board of Major Port Authority (VOCPA), who has power vested under The Major Port Authorities Act, 2021 to create specific master plan in respect of any development or infrastructure established or proposed to be established within the port limits and the land appurtenant thereto and such master plan which shall subject to Applicable Law, shall be independent of any local or State Government regulations of any authority whatsoever;;

"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 Documents" shall have the meaning set forth in Clause 41.1;

"State" means the State of Tamil Nadu 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;

"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 (a);

"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 I and Phase II of Project, under 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 33.4;

"Total Project Cost" means, as on the date of COD of Phase II, the capital cost incurred on development, construction and financing of the Phase I and Phase II of the Project and shall be limited to the lowest of:

- (a) the capital cost of the Phase I and Phase II of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Phase I and Phase II of the Project upon completion approved by Independent Engineer and Statutory Auditor and submitted to Authority at the time of issuing Completion Certificate; and
- (c) a sum of INR 40.7Crores (Rupees Forty Crores and Seventy Lakhs only).

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 occurring in respect of Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement.

"Transfer Date" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"USG" means Radiology Tests carried out using an ultra-sound machine;

"Vesting Certificate" shall have the meaning set forth in Clause 34.4;

"VOCPA Beneficiaries" means (i) VOCPA employees and their eligible dependents, (ii)

retired VOCPA employees and their spouses(iii) Central Industrial Security Force (CISF) employees (working with VOCPA) and their eligible dependents (iv) Cargo Handling Department (CHD) employees (working with VOCPA) and their eligible dependents (v) retired CHD employees and their spouses;

"Ward Beds" means the Beds in the private wards, semi-private wards, General Wards and mother and child ward meant for the care of the Inpatients; and

WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, Government of India 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:

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)

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.