

GREEN BOOK

FOR

PUBLIC PRIVATE PARTNERSHIP IN PRIMARY HEALTHCARE

BETWEEN

[•]

AND

[•]

[Insert Date]

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CONCESSION AGREEMENT

This AGREEMENT is made and entered into at [●]¹ on this the [●] day of [month], [year] by and between:

1. [●]², established under the [●], represented by its [●] and having its principal offices at [●] (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 [●] incorporated under the provisions of the [●] and having its registered office at [●], (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- A. The need to enhance efficiencies in the health sector has led [insert the name of the State] to explore the possibility of harnessing private sector investment and managerial skills in this sector. [insert the name of the state] is envisaging the establishment of [insert Description of the Project] (“**Project**”) at the locations specified in Schedule-A of this Agreement, for a period of [●] years³ on PPP basis.⁴
- B. The [Government of India/State Government] had entrusted to the Authority the development, maintenance and management of the Project.
- C. The Authority had resolved to implement the Project on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions to be set forth in a concession agreement.
- D. The Authority had accordingly invited proposals by its Notice No. [●] dated [●] (the “**Tender Notice**”) for short listing of bidders for [design, construction, finance, equip, operation and maintenance] of the Project and had shortlisted certain bidders including, *inter alia*, [the consortium comprising [●] and [●] (collectively the “**Consortium**”)⁵ with [●] as its leader].

¹ To insert the relevant date of signing this Agreement.

² All project-specific provisions in this document have been enclosed in square parenthesis and may be modified suitably, as necessary.

³ Based on project requirements and specifications, the relevant time period should be inserted.

⁴ Please refer to Para 1 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

⁵ Reference may be made alternatively to the type of company/society/trust which is setting up the Project.

- E. The Authority had prescribed the technical and commercial terms and conditions, and invited bids from the shortlisted bidders pursuant to the Tender Notice for undertaking the Project.
- F. After evaluation of the bids received, the Authority had accepted the bid of the [Consortium] and issued its letter of acceptance No. [●] dated [●] (hereinafter called the “**LOA**”) to the [Consortium] requiring, *inter alia*, the execution of this Agreement within [●] days of the date of issue thereof.
- G. [The Consortium has since promoted and incorporated the Concessionaire as a [primary healthcare clinic/ company under the [●] Act, 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 Consortium under the LOA,] including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- H. [By its letter dated [●], the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium 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 Consortium for the purposes hereof].
- I. The Authority has agreed to the said request of the [Consortium] and the Concessionaire, and has accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 43) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only 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**” include, unless the context otherwise requires, investigation, design, developing, monitoring, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” shall be construed accordingly;

- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in [●] are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) 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;
- (l) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (p) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (r) any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Monitor[s] shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Monitor[s], as the case may be, in this behalf and not otherwise;
- (t) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (u) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Monitor[s] shall be provided free of cost and in three copies, and if the Authority and/or the Independent Monitor[s] is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Parties responsible for the drafting and preparation thereof, shall not apply.

1.2.4 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 Priority of agreements and errors/discrepancies

1.4.1 This Agreement, and all other agreements and documents forming part of 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 shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof; i.e., the agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) 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;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses of this Agreement shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2
[SCOPE OF THE PROJECT]⁶

2.1 Scope of the Project⁷

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

- (a) construction of the Project Facilities in conformity with the Specifications and Standards and other provisions of this Agreement;
- (b) [procurement and installation of the Equipment in conformity with the Specifications and Standards and other provisions of this Agreement;]
- (c) [operation and maintenance of the Project Facilities in conformity with the Specifications and Standards and other provisions of this Agreement ;]
- (d) [capacity of the Project in conformity with the Specifications and Standards and other provisions of this Agreement;]
- (e) [provide Services in conformity with the Specifications and Standards and other provisions of this Agreement];
- (f) [to adhere to the Patient Mix as specified in Article 22;]
- (g) additional allowed commercial activities such as concession stand, cafeteria, florist shops and other such facilities, as may be prescribed by the Authority from time to time; and
- (h) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

⁶ This Article may be amended based on the requirement of the asset class.

⁷ Please refer to Para 2 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession⁸

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practice, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and authority to [develop, design, engineer, monitor, procure, finance, construct, equip, operate, maintain and manage] the Project at the Site (the “**Concession**”) for a period of [●]⁹ years (or early termination by a Termination Notice in accordance with this Agreement), commencing from the Appointed Date and ending on the Transfer Date, (the “**Concession Period**”), and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement and implement the Project subject to and in accordance with the terms and conditions set forth herein.

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

- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) [plan, design, develop, procure, finance, construct, equip, operate, maintain and manage] the Project Facilities as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, terms of Clearances, Good Industry Practice, Good Clinical Practice and Good Healthcare Practice and transfer the same to the Authority or its nominated agency on the expiry or the prior termination of the Concession Period;
- (c) perform and fulfill all of the Concessionaire’s obligations in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits, terms of Clearances, Good Industry Practice, Good Clinical Practice and Good Healthcare Practice;
- (d) on and from the Commercial Operation Date and until the Transfer Date, the Concessionaire shall have the right to demand, charge, collect, retain, appropriate and periodically revise the User Charges in accordance with the provisions of this Agreement;

⁸ Please refer to Para 3 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

⁹ Based on project requirements and specifications, the relevant time period should be inserted.

- (e) [provide Services to the Users as per Good Clinical Practice and Good Healthcare Practice;]
- (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; and
- (g) exercise such other rights and obligations as the Authority may determine as being necessary or desirable for the purpose incidental and necessary for implementing the Project.

3.1.3 Upon the termination of this Agreement, either due to expiry of the Concession Period or due to any other reason, the Concessionaire shall comply with obligations provided in Article 33.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 7, 9, 10, 20, 29, 39 and 42, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon providing the Construction Performance Security to the Authority in accordance with Clause 9.1, at any time after [30 (thirty)] days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of [30 (thirty)] days of the notice, or such longer period not exceeding [60 (sixty)] days as may be specified therein, and the conditions precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:
- (a) provided to the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
 - (b) [established the Steering Committee to monitor the progress of the Project]¹⁰;
 - (c) [appointed an Independent Monitor[s] in accordance with the terms of this Agreement]; and
 - (d) approved or provide its comments, if any to the Detailed Project Report including the design, Project Completion Schedule and the Construction Quality Plan submitted by the Concessionaire in accordance with the procedure outlined.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided an evidence to the Authority that the Construction Performance Security as furnished by the Concessionaire on execution of this Agreement is in full force and effect. For the avoidance of doubt, it is expressly clarified that should the Construction Performance Security have been encashed in accordance with Clause 4.2.1, the Concessionaire shall ensure that the Construction Performance Security has been replenished and such Construction Performance Security is in full force and effect on the Appointed Date;

¹⁰ This condition may be deleted if the Authority is not considering establishing a steering committee. Please see footnote relating to Steering Committee under Article 19.

- (b) procured all the Applicable Permits specified in **Schedule-E** unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (c) prepared, finalized and submitted the Detailed Project Report including the design, Project Completion Schedule and the Construction Quality Plan, and received the approval of the [Independent Monitor[s]/Authority];
- (d) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (e) achieved Financial Close and delivered to the Authority, documents evidencing the same including 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;
- (f) deliver a copy of all the Project Agreements (specified by the Authority) to the Independent Monitor[s] in accordance with Clause 5.2;
- (g) executed the Escrow Agreement and opened and established an Escrow Account in accordance with Clause 25 of this Agreement.

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required 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.
- 4.1.6 Upon satisfaction in full of all Conditions Precedent to be satisfied by a Party, the other Party shall forthwith issue to such Party, a certificate setting out the compliances of all Conditions Precedent required to be satisfied by such Party (the “**Certificate of Compliance**”).

4.2 Consequences of Non-fulfillment of Conditions Precedent

- 4.2.1 The Concessionaire hereby agrees and undertakes that it shall procure fulfillment of all Conditions Precedent set out in Clause 4.1.3, within 180 (one hundred and eighty) days from the date of this Agreement. In the event that (i) the Concessionaire does not

procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3, for any reason whatsoever, within 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) 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 Construction Performance Security for each day of delay until the fulfilment of such Conditions Precedent; provided that the Damages specified herein shall be payable every week in advance and the period beyond the 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 fulfillment of Conditions Precedent has occurred solely as a result of any default or delay by the Authority in procuring fulfillment of Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.]

- 4.2.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 29.6.1, in the event that Conditions Precedent are not fulfilled, for any reason whatsoever, within the period set forth in this Clause 4.2.1, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 4.2.3 Upon Termination under Clause 4.2.2, the Authority shall be entitled to encash the Construction Performance Security and appropriate the proceeds thereof as Damages; provided, however, if fulfillment of Conditions Precedent set forth in Clause 4.1.3 has not been fulfilled by the Concessionaire within the period specified in respect thereof, solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, the Authority shall, upon Termination, return the Construction Performance Security to the Concessionaire.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Scope of Services

Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the design, monitoring, procurement, construction, equipping, installation, operation and maintenance of the Project Facilities, deliver Services to Users, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 Standards for Performance of Services

- (a) The Concessionaire shall discharge its obligations:
 - (i) in compliance with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement;
 - (ii) in accordance with the Specifications and Standards outlined in the Schedules; and
 - (iii) in a good and workmanlike manner in accordance with the terms of Clearances, Good Industry Practice, Good Clinical Practice and Good Healthcare Practice; and
- (b) The Concessionaire shall ensure compliance with the design specification, construction specification, Equipment specification, Service specification in conformity with the Specifications and Standards as set out in the **Schedule-D** hereto.

5.1.3 Monitoring and Maintenance

- (a) The Concessionaire shall, prepare and submit at least [•] days prior to COD and thereafter at least [•] days prior to the beginning of each Accounting Year an annual maintenance plan detailing the programmed maintenance works for building and Equipment (the “**Annual Maintenance Plan**”);
- (b) The Concessionaire shall carry out actions as directed by the Authority in respect of repair of defects, Equipment replacement, human resources and other such actions as may be specified;
- (c) The Concessionaire shall maintain appropriate records, documents, data etc. and submit to the Independent Monitor[s], the representative(s) of the Authority and the experts appointed by the Authority, the necessary periodic

reports evaluating adherence to Specifications and Standards, as outlined in the Schedules to this Agreement; and

- (d) The Concessionaire shall provide access to the Project Facilities and the Project records to the Independent Monitor[s], representative(s) of the Authority and experts appointed by the Authority.

5.1.4 Accreditation Requirements

The Concessionaire shall obtain accreditation for the Project within [12 (twelve)] months from the Commercial Operation Date from the [National Accreditation Board for Hospital] (“**NABH**”)¹¹.

5.1.5 Compliance with Applicable Laws

The Concessionaire shall at all times in addition to and not in derogation of its obligations set out in this Agreement, observe and comply with the following:

- (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 all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (b) 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;
- (c) all Applicable Laws, rules and regulations framed thereunder, including those relating to the Pollution Control Board Norms for primary healthcare clinic and guidelines for solid waste management;
- (d) the health and safety norms as may be applicable; and
- (e) all or any other requirements whatsoever that may be incidental to or otherwise related with the Project.

5.1.6 Project Inventory

The Concessionaire shall maintain an inventory of consumables and medicines as required for optimal performance.

5.1.7 Maintenance of Patient Related Records

¹¹ The requirement for accreditation would vary from asset class to asset class.

The Concessionaire shall maintain adequate records of Users, treatment provided, the expenses which have been incurred and invoices raised.

5.1.8 Contractors

The Concessionaire shall ensure that compliance of all Standards and Specifications by all the Contractors.

5.1.9 Maintain Records

The Concessionaire shall maintain records and submit periodic reports evaluating adherence to Specifications and Standards outlined in Schedules to this Agreement.

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 or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements 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, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. The Concessionaire shall, within 7 (seven) days of receipt of comments by the Authority, make amendments to the Project Agreements and resubmit the same to the Authority for its review and comments. 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 the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that 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 liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on 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 Due.

- 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.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of any Contractor and execution of any Contract 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 undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to 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 approval of the Authority.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
 - (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him;

shall be subject to prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such

approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

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

5.4 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 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 Accidents

5.6.1 In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Concessionaire's responsibilities with regard to the construction and operation of the Project shall in no way be diminished by informing the above officials, and the Concessionaire shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of the officials to give any instructions. The Concessionaire shall preserve the Site of such accident intact until the completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of wreckage or debris, and for cleaning the Site. If any portion of the Project Facilities suffers any damage, the Concessionaire shall, with the consent of the Authority, arrange for the repair and rectification thereof within a reasonable time as may be agreed by the Parties.

5.6.2 The Concessionaire shall, in event of any accident, incur any expenditure or take any other action as necessary, in accordance with Good Industry Practice. Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Concessionaire after consultation with the Independent Monitor[s].

5.6.3 Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

5.7 Medico-Legal Cases¹²

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

5.8 Intellectual Property Permits

The Concessionaire shall ensure that if any designated devices, materials or any process are covered by Intellectual Property Rights, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the

¹² The obligation of the Concessionaire under Clause 5.7 may be amended based only to maintain records, based on the scope of the Project.

Intellectual Property Rights owner or person empowered to assign the Intellectual Property Rights. A copy of the agreement shall be filed with the Authority.

5.9 Sole purpose of the Concessionaire

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

ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire, use its best efforts to assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) provide complete access to the Site free of encumbrance;
- (d) ensure that payments are reimbursed by the Authority to the Concessionaire in a timely manner, in accordance with the reimbursement mechanism outlined in Clause 23.1.1;
- (e) ensure that payment towards the grant is made, in a timely manner, in accordance with Article 21;
- (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; and
- (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

7.1.1 The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its [Memorandum and Articles of Association or those of any member of the Consortium]¹³ 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 or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the

¹³ Applicable to a Company registered under the Companies Act, 1956.

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 [promoter/Consortium Members] together with their Associates hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement; that the [respective] holding of the [promoter/Consortium Member] conforms to the representation made by the [promoter/Consortium] and accepted by the Authority as part of the Bid; and that no [promoter(s)/member of the Consortium] shall hold less than 10% (ten per cent) of such Equity during the Construction Period];
- (l) [the promoter/Consortium Members and 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) [promoter/ each of the Consortium Member] is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, 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 by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or

misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

- (p) no sums, in cash or kind, have been paid or will 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.

7.2 Representations and Warranties of the Authority

7.2.1 The Authority represents and warrants 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 the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) 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;
- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (i) it has the right, power and authority to manage and operate the Project up to the Appointed Date;

- (j) it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire; and
- (k) upon the Concessionaire paying the Concession Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, except in accordance with this Agreement.

7.3 Disclosure

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 the same. 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 obligation of either Party under this Agreement.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 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 Tender Notice, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, 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. Save as provided in Clause 7.2, the Authority makes no representations whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 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 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, [the promoter/Consortium Members and their] Associates or any person claiming through or under any of them.
- 8.1.3 Subject to the provisions of Clause 5.7, the Concessionaire understands and acknowledges that the Services constitutes medical act that may give rise to professional liability for the Concessionaire and for its individual staff, and nothing in this Agreement shall be construed as transferring to the Authority any liability to third parties for any medical services.
- 8.1.4 Except as specifically set out in this Agreement, all risk relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or consequences thereof.

ARTICLE 9 PERFORMANCE SECURITY

9.1 Construction Performance Security

The Concessionaire shall have, for the performance of its obligations hereunder during the Construction Period, provided to the Authority on the date of signing of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to [Rs. [•] (Rupees [•])] ¹⁴ in the form set forth in **Schedule-F** (the “**Construction Performance Security**”). Until such time the Construction Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Construction Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.2 Operation Performance Security

The Concessionaire shall, for the performance of its obligations hereunder during the Operation Period, provide to the Authority no later than 30 (thirty) days from the date of issue of Completion Certificate by Independent Monitor[s], an irrevocable and unconditional guarantee from a Bank for a sum equivalent to [Rs. [•] (Rupees [•])] ¹⁵ in the form set forth in **Schedule-F** (the “**Operation Performance Security**”). Until such time the Operation Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Construction Performance Security shall remain in force and effect, and upon such provision of the Operation Performance Security pursuant hereto, the Authority shall release the Construction Performance Security to the Concessionaire.

9.3 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the relevant Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the relevant Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the such Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 32. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period,

¹⁴ To be calculated @ 5% (five per cent) of the amount specified in the definition of Total Project Cost.

¹⁵ To be calculated @ 1% (one per cent) of the amount specified in the definition of Total Project Cost.

the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 32.

9.4 Release of Performance Security

- 9.4.1 The Construction Performance Security shall remain in force and effect for the entire Construction Period until the expiry of 30 (thirty) days from date of issue of Completion Certificate to the Concessionaire, and shall be released pursuant to this Article 9 after the Operation Performance Security is provided by the Concessionaire pursuant to Clause 9.2 hereto and the same comes into effect; provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Construction Performance Security along with the particulars which establish satisfaction of the requirements specified under this Article 9, the Authority shall release the Construction Performance Security forthwith.
- 9.4.2 The Operation Performance Security shall remain in force and effect for the entire Operation Period until the Divestment Requirements have been fulfilled in accordance with Article 33 of this Agreement, and shall be released pursuant to this Article 9 after Defect Liability Performance Security is provided by the Concessionaire pursuant to Clause 34.2.3 hereto and the same comes into effect; provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Operation Performance Security along with the particulars which establish satisfaction of the requirements specified under this Article 9, the Authority shall release the Operation Performance Security forthwith.

ARTICLE 10

SITE

10.1 The Site

The site of the Project shall comprise of the real estate described in **Schedule-A** granted by the Authority to the Concessionaire as a licensee 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 Project as set forth in **Schedule-A**.

10.2 License, Access and Right of Way

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

10.2.2 This Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license 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 “**Licensed Premises**”), on an “**as is where is**” basis, free of any Encumbrances, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.

10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination of this Agreement for any reason whatsoever.

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 license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of

which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that:

- (a) trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period;
- (b) any archaeological discoveries shall belong to and vest in the Government and the Concessionaire shall promptly report the discovery thereof to the Authority and follow its instructions for safe removal thereof; and
- (c) mining rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

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 two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid license 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 On and after signing the memorandum and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, 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.

10.3.3 The Authority shall make best efforts to provide and grant the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. [●] per day for every [●] square feet or part thereof, commencing from the [●] day of the Appointed Date.

10.3.4 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligation or liability in respect thereof.

10.4 No Sub-Leases/license

The Concessionaire shall not sub-lease/license the whole or any part of the land comprising the Site, licensed to it by the Authority, to any person in any form or under any arrangement, device or method.

10.5 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, 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 Licensed Premises shall not be deemed to be Encumbrances.

10.6 Protection of Site from encroachments

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

10.7 Access to the Authority, Independent Monitor[s] and Experts

The license, 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 Monitor[s], any experts appointed by the Authority and their employees and agents for inspection, viewing and as exercise of their rights and performance of their obligations under this Agreement.

10.8 Protection from Hazardous or Contaminated Material

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

ARTICLE 11
CONSTRUCTION OF THE PROJECT¹⁶

11.1 Obligations prior to commencement of construction

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

- (a) submit to the Authority and the Independent Monitor[s] its detailed design, construction methodology, quality assurance procedures, and the procurement, monitoring and construction time schedule for completion of the Project in accordance with the Project Completion Schedule;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

11.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, monitors and Contractors with experience of work similar in scope and nature to that required under this Agreement. The Concessionaire shall design, monitor and execute the construction and implementation of the Construction Works using the best design and monitoring principles and practices. The Concessionaire shall adhere to the Project Completion Schedule and Construction Quality Plan, and the Specifications and Standards set out herein.

11.3 Drawings

11.3.1 In respect of the Concessionaire's obligations with respect to the Drawings of the Project as set forth in **Schedule-H**, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Monitor[s] for review;

¹⁶ Please refer to Para 8.1 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

- (b) By submitting the Drawings for review to the Independent Monitor[s], the Concessionaire shall be deemed to have represented that it has determined and verified that the design and monitoring, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Monitor[s] shall review the same and convey observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Monitor[s] on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Monitor[s] indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Monitor[s] for review. The Independent Monitor[s] shall give its observations, if any, within 15 (fifteen) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Monitor[s] and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Monitor[s] or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 11.3.1, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the Project, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 15 (fifteen) days of the receipt of such Drawings. The provisions of this Clause 11.3.1 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Monitor[s] a complete set of as-built Drawings, in 3 (three) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities.

11.4 Construction of Project

- 11.4.1 On or after the Appointed Date, the Concessionaire shall undertake the Construction Works in conformity with the Specifications and Standards set forth in **Schedule-D** and Good Industry Practice and shall complete the same within [•] days from the Appointed Date (“**Schedule Completion Date**”) and the Concessionaire agrees and undertakes that the Construction Works shall be completed on or before the Scheduled Completion Date. The Concessionaire shall construct, install and establish the Project Facilities, including the basic and detailed design, completion, testing and commissioning in accordance with the provisions of this Agreement, including the Project Completion Schedule, the Specifications and Standards, Applicable Laws including the applicable architectural controls, building byelaws and zoning requirements, terms of Clearances and Good Industry Practice and after obtaining sanction to the building plans etc. with the design plans and specifications from the proper municipal or other Authority, at its own expenses.
- 11.4.2 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in **Schedule-G**. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) 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; it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Construction Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date 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; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 11.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon, [within [•] days from the Schedule Completion Date]. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 11.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 11.4.3 In the event that Construction Works is not completed within [270 (two hundred and seventy)] days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 12

MONITORING OF CONSTRUCTION

12.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Monitor[s] a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Monitor[s].

12.2 Inspection

During the Construction Period, the Independent Monitor[s] shall (individually or jointly as may be required) inspect 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 Scope of the Project and 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 Monitor[s] shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

12.3 Tests

12.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Monitor[s] shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Monitor[s] from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Monitor[s] and furnish the results thereof to the Independent Monitor[s]. One half of the costs incurred on such tests, and to the extent certified by the Independent Monitor[s] as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

12.3.2 In the event that results of any tests conducted under this Clause 12.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Monitor[s] in this behalf. The Independent Monitor[s] shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 12.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is

agreed that tests pursuant to this Clause 12.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Monitor[s] forthwith.

12.4 Delays during construction

If the Concessionaire does not achieve any of the Project Milestone or the Independent Monitor[s] shall have reasonably determined that the rate of progress of Construction Works is such that Project is not likely to be achieved by the Project Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Monitor[s] in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Milestone or Project Completion Date as the case may be.

12.5 Suspension of unsafe Construction Works

- 12.5.1 Upon recommendation of the Independent Monitor[s] to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or any individual on or about the Project.
- 12.5.2 The Concessionaire shall, pursuant to the notice under Clause 12.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the Users or any individual on or about the Project. The Concessionaire may by notice require the Independent Monitor[s] 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 Monitor[s], 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 12.5.2 shall be repeated until the suspension hereunder is revoked.
- 12.5.3 Subject to the provisions of Clause 29.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 12.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Monitor[s] shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is

reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule in accordance with the recommendations of the Independent Monitor[s].

12.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within [●] days of the Appointed Date and thereafter, no later than [●] days after the close of each quarter.

ARTICLE 13
COMPLETION CERTIFICATE

13.1 Tests

13.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Monitor[s] of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Monitor[s] in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Monitor[s] may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Monitor[s] failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Monitor[s].

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

13.2 Completion Certificate

Upon completion of Construction Works and the Independent Monitor[s] determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in **Schedule-J** (the "**Completion Certificate**").

13.3 Provisional Certificate

The Independent Monitor[s] may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in **Schedule-J** (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Monitor[s] and the Concessionaire (the "**Punch List**");

provided that the Independent Monitor[s] shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

13.4 Completion of Punch List items

13.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of [(a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Monitor[s]]. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Monitor[s] in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 13.4.1.

13.4.2 Upon completion of all Punch List items, the Independent Monitor[s] shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 13.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

13.5 Withholding of Provisional Certificate

13.5.1 If the Independent Monitor[s] determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Monitor[s] and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Monitor[s] to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 13. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

13.5.2 Notwithstanding anything to the contrary contained in Clause 13.5.1, the Authority may, at any time after receiving a report from the Independent Monitor[s] under that Clause, direct the Independent Monitor[s] to issue a Provisional Certificate under Clause 13.3, and such direction shall be complied forthwith.

13.6 Rescheduling of Tests

If the Independent Monitor[s] certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 14
ENTRY INTO COMMERCIAL SERVICE

14.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD” or the “**Commercial Operation Date**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to collect the User Charges in accordance with Article 23.

14.2 Damages for delay

Subject to the provisions of Clause 11.4, if COD does not occur prior to the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, 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 Construction Performance Security for delay of each day until COD is achieved. In the event that Construction Works is not completed within [270 (two hundred and seventy)] days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 15 CHANGE OF SCOPE

15.1 Change of Scope

- 15.1.1 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 (“**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 15 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 15.3.
- 15.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the 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 therefor in accordance with this Article 15 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

15.2 Procedure for Change of Scope

- 15.2.1 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**”).
- 15.2.2 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:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; [provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Monitor[s] as reasonable.]
- 15.2.3 Upon receipt of information set forth in Clause 15.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the

Concessionaire, and the Parties shall, with assistance of the Independent Monitor[s], thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the 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, or carry out the works in accordance with Clause 15.5.

15.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 15.

15.3 Payment for Change of Scope

15.3.1 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 Monitor[s]. 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 Monitor[s] as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

15.3.2 Notwithstanding anything to the contrary contained in Clause 15.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of [0.25% (zero point two five per cent) of the Total Project Cost]. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 15.3.1.

15.4 Restriction on certain works

15.4.1 Notwithstanding anything to the contrary contained in this Article 15, 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 Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

15.4.2 [Notwithstanding anything to the contrary contained in this Article 15, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.]

15.5 Power of the Authority to undertake works

15.5.1 Notwithstanding anything to the contrary contained in Clauses 15.2 and 15.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority¹⁷, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof.

15.5.2 The works undertaken in accordance with this Clause 15.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 15.5.

15.6 Reduction in Scope of the Project

15.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay [80% (eighty per cent)]¹⁸ of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

15.6.2 For determining the obligations of the Concessionaire under this Clause 15.6, the provisions of Clauses 15.1, 15.2 and 15.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified.

¹⁷ The Authority shall transfer the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.

¹⁸ This should be linked to concessionaire's contribution [which includes debt] to TPC.

ARTICLE 16
OPERATION AND MAINTENANCE¹⁹

16.1 O&M obligations of the Concessionaire

16.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project and provide Services to Users, in accordance with this Agreement either by itself, [or through the O&M Contractor who may be appointed only after taking prior written approval of the Authority] and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement including the Specifications and Standards, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include the following:

- (a) submit 30 (thirty) days prior to the Commercial Operation Date, in consultation with the Authority and Independent Monitor[s], a Service Quality Manual (the “**Service Quality Manual**”) outlining strategy to achieve services specification including the Specifications and Standards outlined and shall ensure and procure that at all times during the Operation Period, the Project Facilities is operated and maintained in accordance with the provisions thereof;
- (b) provide a monthly status report on the key performance indicators as included in **Schedule-[D]**;
- (c) undertake, in compliance with the terms and conditions of this Agreement, including the [Specifications and Standards, Applicable Laws, Applicable Permits, Clearances, the Maintenance Manual, the Service Quality Manual and Good Industry Practice, Good Clinical Practice and Good Healthcare Practice (i) the operation of the Project Facility and provide Services to Users by itself, and (ii) the maintenance of the Project Facilities by itself [or through an O&M Contractor(s)] who may be appointed only after taking prior written approval of the Authority;
- (d) achieve and maintain accreditation of the Project from the [National Accreditation Board for Hospital]; and
- (e) [other obligations pertaining to other allowed commercial activities to be specified by the Authority from time to time].

¹⁹ Please refer to Para 8 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

16.2 Maintenance Requirements and Service Requirements

16.2.1 The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements including facility management, infrastructure maintenance and Equipment maintenance set forth in **Schedule-K** (the “**Maintenance Requirements**”).

16.2.2 The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the Service requirements as set forth in **Schedule-K** (the “**Service Requirements**”).

16.3 Maintenance Manual

Not later than [180 (one hundred and eighty)] days prior to the COD, the Concessionaire shall, in consultation with the Independent Monitor[s], evolve a repair and maintenance manual (the “**Maintenance Manual**”), for the regular and preventive maintenance of the Project in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice and shall provide 1 (one) copy thereof, to the Authority. Within [●] days of receipt of the Maintenance Manual, the Authority shall review and convey its comments to the Concessionaire. The Concessionaire shall modify the Maintenance Manual, in accordance with the comments provided by the Authority and provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Monitor[s].

The Maintenance Manual, which shall outline the preventive, scheduled and reactive maintenance provisions, shall be revised and updated once every 2 (two) years and the provisions of this Clause 16.3 shall apply, *mutatis mutandis*, to such revision.

16.4 Maintenance Programme

16.4.1 Not later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, the Concessionaire shall provide to the Authority and the Independent Monitor[s], its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Service Requirements, Service Quality Manual, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project;

- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

16.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Monitor[s] shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Service Requirements and Maintenance Requirements, Service Quality Manual, Maintenance Manual and Safety Requirements.

16.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 16.4.1 and 16.4.2 shall apply *mutatis mutandis* to such modifications.

16.5 Damages for breach of maintenance obligations

16.5.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Safety Requirements, Service Requirements and Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at [●]. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

16.6 Authority's right to take remedial measures

16.6.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Safety Requirements, Service Requirements, Maintenance Requirements, Service Quality Manual, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Monitor[s], as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

16.6.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 16.6.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in

accordance with the instructions of the Authority under this Clause 16.6.2 and debit the same to O&M Expenses.

16.7 Overriding powers of the Authority

- 16.7.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Safety Requirements, Service Requirements and Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 16.7.2 In the event that the Concessionaire, upon notice under Clause 16.7.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 16.7.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its Obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 16.6 along with the Damages specified therein.
- 16.7.3 In the event of a national emergency, civil commotion or any other act specified in Clause 29.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 29.

16.8 Restoration of loss or damage to 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.

16.9 Modifications to the Project

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

ARTICLE 17
SAFETY REQUIREMENTS

17.1 Safety Requirements

- 17.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice, Good Clinical Practice and Good Healthcare Practice for securing the safety of the Users or any individual on or about the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in **Schedule-L** (the “**Safety Requirements**”).
- 17.1.2 The Concessionaire shall ensure the safety of Users and authorization from competent authorities and informed consent of the volunteer Users in case of a drug treatment/trial.

ARTICLE 18
MONITORING OF OPERATION AND MAINTENANCE

18.1 Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Monitor[s], a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Monitor[s].

18.2 Inspection

The Independent Monitor[s] shall (individually or jointly as may be required) inspect the Project at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

18.3 Tests

For determining that the Project conforms to the Service Requirements, Maintenance Requirements and Safety Requirements, the Independent Monitor[s] shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Monitor[s] and furnish the results of such tests forthwith to the Independent Monitor[s]. One half of the costs incurred on such tests, and to the extent certified by the Independent Monitor[s] as reasonable, shall be reimbursed by the Authority to the Concessionaire.

18.4 Remedial measures

18.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 18.3 and furnish a report in respect thereof to the Independent Monitor[s] and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

18.4.2 The Independent Monitor[s] shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project into compliance with the Safety Requirements, Service Requirements and Maintenance Requirements and the procedure set forth in this Clause 18.4 shall be repeated until the Project conforms to the Safety Requirements, Service Requirements and Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 16.8.

ARTICLE 19
PERFORMANCE MONITORING MECHANISMS²⁰

19.1 Independent Monitor[s]²¹

[The Independent Monitor[s] shall consist of Independent Engineer and Independent Healthcare Consultant appointed in accordance with Clause 19.1.1 and 19.1.3.].

19.1.1 Appointment of Independent Engineer

The Authority shall, in consultation with the Concessionaire appoint a consulting firm/consultant from a panel of [●] consultants/ firms or bodies corporate, constituted by the [Authority/Concessionaire] substantially in accordance with the selection criteria set forth in **Schedule-Q**, to be the Independent Engineer under this Agreement. The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to **Schedule-Q** to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

19.1.2 Duties and functions of Independent Engineer

- (a) The Independent Engineer shall undertake inspections of the Site regularly and at such times as it deems appropriate, to determine the progress in construction of the Project Facilities, monitoring of the inspection tests and providing of services to make the Project Facilities fully operational;
- (b) [The Independent Engineer shall determine the progress in operation of the Project Facilities, monitoring of the inspection tests and services performance;]
- (c) The Independent Engineer shall prepare and submit (at least one a month), periodic reports to the Authority in respect of its duties and functions set forth in **Schedule-Q**; and
- (d) The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule-Q**.

19.1.3 Appointment of Independent Healthcare Consultant

²⁰ The Authority may consider establishing a steering committee consisting of 1 (one) member who shall be an expert in construction and engineering, 1(one) member who shall be an expert in healthcare sector and 1(one) member who shall be the representative of the Authority.

²¹ Please refer to Para 9 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

The Authority shall, in consultation with the Concessionaire appoint a consulting firm/consultant from a panel of [●] consultants/ firms or bodies corporate, constituted by the [Authority/Concessionaire] substantially in accordance with the selection criteria set forth in **Schedule-Q**, to be the Independent Healthcare Consultant under this Agreement. The appointment shall be made no later than [●] days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to **Schedule-Q** to be the Independent Healthcare Consultant for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

19.1.4 Duties and Functions of Independent Healthcare Consultant

- (a) The Independent Healthcare Consultant shall monitor the Services and Services Requirements in accordance with the Specifications and Standards;
- (b) The Independent Healthcare Consultant shall monitor the testing of Equipments and performance of the Services;
- (c) The Independent Healthcare Consultant shall prepare and submit periodic reports to the Authority in respect of its duties and functions set forth in **Schedule-Q**; and
- (d) The Independent Healthcare Consultant shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule-Q**.

19.2 Certificates

The Independent Monitor[s] shall decide upon, issue and sign all certificates required at various stages in this Agreement until the end of the Construction Period, including the Completion Certificate or Provisional Certificate, in accordance with the provisions of this Agreement.

19.3 Remuneration

The remuneration, cost and expenses of the Independent Monitor[s] shall be paid by the Authority and subject to the limits set forth in **Schedule-Q**, 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.

19.4 Termination of appointment

19.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Monitor[s] at any time, but only after appointment of another Independent Monitor[s] in accordance with Clause 19.1.

19.4.2 If the Concessionaire has reason to believe that the Independent Monitor[s] is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Monitor[s]. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Monitor[s] 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 Monitor[s] is terminated hereunder, the Authority shall appoint forthwith another Independent Monitor[s] in accordance with Clause 19.1.

19.5 Authorised signatories

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

19.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Monitor[s], 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.

19.7 User Satisfaction Survey

The Concessionaire shall ensure that user satisfaction survey is conducted in accordance with **Schedule-O**. The Concessionaire shall prepare a quarterly report on the user satisfaction survey and submit the same to the Authority and Independent Monitor(s).

19.8 Disclosure on Website

The Concessionaire shall update on its website, on a daily basis, the number of beds which are used by and available, for the BPL Patients.

ARTICLE 20
TECHNOLOGY WATCH

20.1 Technology watch

- 20.1.1 The Concessionaire shall implement at its own cost, a technology watch throughout the Concession Period so as to allow the Project to benefit from technical advancement and/or technology upgrades in connection with the Equipment and Services. The technology watch shall include information about any offers to buy back and replace or upgrade the Equipment that the Concessionaire may receive from any third party and that would apply during the Concession Period or within [●] days of the expiry of the Concession Period or early termination of this Agreement. The Concessionaire shall present the findings of the technological watch to the Authority in the form of a written report for review at least once every [●] months.
- 20.1.2 In the event that any Party believes that the replacement and/or upgrade of any Equipment is likely to have a positive impact on the quality of the Services or the cost of performing the Services (a “**Replacement**”), the Concessionaire shall submit either on its own initiative or within [●] days of the Authority’s request for the same, a written memorandum equivalent to that referred to in Clause 15.2.3 and the resulting process shall comply with the provisions of Article 15.

ARTICLE 21
GRANT AND CONCESSION FEE

21.1 Grant

21.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, [Rs. [•] (Rupees [•])], in accordance with the provisions of this Article 21 (the “**Grant**”).

21.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 21.2.

21.2 Equity Support

21.2.1 Subject to the conditions specified in this Clause 21.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “**Equity Support**”).

21.2.2 The Equity Support shall be equal to the sum specified in the Bid and as accepted by the Authority, but in no case greater than the Equity, and shall be further restricted to a sum not exceeding [•] of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 21.2.2 shall include Equity Support.

21.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

21.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

21.3 Concession Fee

21.3.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “**Concession Fee**”) a sum of Rs. [•] per annum, at the beginning of each year.

ARTICLE 22
PATIENT MIX²²

22.1 Patient Mix

On and from the Commercial Operation Date, the Concessionaire shall make available the Services to the following category of Users, in accordance with **Schedule-M (“Patient Mix”)**:

- (a) BPL Patient; and
- (b) Private Patients.

²² Please refer to Para 4 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

ARTICLE 23
USER CHARGES & REIMBURSEMENT MECHANISM²³

23.1 User Charges²⁴

In consideration of making available the Services, to the category of Users set out in Article 22 hereinabove, the Concessionaire shall have the right to collect and appropriate User Charges in accordance with Clause 23.1.1, 23.1.2 and 23.1.3 as may be applicable at the rate specified in **Schedule-R**.

23.1.1 Authority Reimbursement

- (a) In the event the Concessionaire is entitled to receive reimbursement from the Authority under Clause 23.1 read with **Schedule-R**, the Concessionaire shall raise an invoice every [●] months in accordance with the procedure as specified in **Schedule-R**, which shall be verified by the Independent Monitor[s] within a period of [●] days;
- (b) The Authority shall ensure that payments for all the invoices raised shall be reimbursed to the Concessionaire, within a period of 45 (Forty five) days from the date of presentation of the invoices by the Concessionaire in a timely manner in accordance with **Schedule-R**;
- (c) In the event, that the Authority fails to make a payment within a period of 60 (sixty) days from the date of presentation of the invoices by the Concessionaire, the Concessionaire shall have the right to [encash and appropriate the required amounts from the Payment Reserve Account or invoke the Letter of Credit and appropriate the required amounts from the Letter of Credit]²⁵; and
- (d) Cap on Authority Reimbursement²⁶

The reimbursement by the Authority under Clause 23.1.1 shall be subject to an overall cap of Rs. [●] per annum or such other amount as may be specified by the Authority from time to time (“**Cap on Reimbursement**”), towards the treatment of Users. The Cap on Reimbursement shall be further categorized and capped in accordance with **Schedule-R**.

OR

²³ Please refer to Para 6 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

²⁴ Please refer to Para 5 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

²⁵ One of the two options may be retained based on the mechanism adopted under Clause 24.

²⁶ In respect of Cap on Reimbursement, the Concessionaire can adopt either the models, as has been specified in Clause 23.1.1.

The reimbursement by the Authority under Clause 23.1.1 shall be subject to maximum of [●] Users per year or such other number of User as may be specified by the Authority from time to time (“**Cap on Reimbursement**”). The Cap on Reimbursement shall be further categorized and capped in accordance with **Schedule-N**.

23.1.2 Insurance Schemes Based Reimbursement

- (a) In the event the Concessionaire is entitled to receive reimbursement from the insurance service provider under Clause 23.1 read with **Schedule-R**, the Concessionaire shall raise invoices for User Charges, in respect of State/Central Government Health Schemes on a monthly basis, which shall be reimbursed by the insurance service providers, in accordance with the procedure as specified in the insurance scheme; and
- (b) The Authority shall ensure that any loss of revenue caused to Concessionaire, due to variation/difference between the insurance scheme tariff and the applicable tariff structure under this Agreement, shall be reimbursed by the Authority in the manner prescribed in **Schedule-R**.

23.1.3 Revenues from Private Patients

- (a) The Concessionaire shall be entitled to demand, charge collect, retain, appropriate User Charges, as may be applicable to Private Patients; and
- (b) The Concessionaire shall be entitled to, revise every [●] months, the User Charges as may be applicable in accordance with **Schedule-R**.

23.2 Deductions

In event of failure of the Concessionaire to maintain/achieve the Specifications and Standards as outlined in **Schedule-D**, the Authority shall be entitled to deduct such payment amounts, as shall be determined in accordance with **Schedule-R**.

23.3 Other Commercial Activities

The Concessionaire shall be entitled to determine and recover charges from any additional allowed commercial activities in accordance with **Schedule-R**.

23.4 Deposit in Escrow Account

The Concessionaire shall collect and appropriate the User Charges and other charges from any additional allowed commercial activities from the Project and deposit the same into the Escrow Account and for compliance with the provisions of this Agreement.

ARTICLE 24
PAYMENT SECURITY MECHANISM²⁷

24.1 Payment Reserve Account

24.1.1 The Authority shall, at least 60 (sixty) days prior to the Commercial Operation Date, [open and establish] an account (“**Payment Reserve Account**”) with a bank and shall maintain such Payment Reserve Account in accordance with the payment reserve agreement (the “**Payment Reserve Agreement**”) to be entered into amongst the Concessionaire, the Authority and the bank at least 75 (seventy five) days prior to the Commercial Operation Date.

24.1.2 The Authority shall, at least [●] days prior to the Commercial Operation Date, deposit or cause to be deposited in the Payment Reserve Account, an amount equivalent to 3 (three) months revenue of the Project and shall continue to maintain such account throughout the Operation Period. For the purpose of Clause 24.1, the term revenue shall mean:

- (a) *during the first 3 (three) months of the Operation Period:* the reimbursement estimated to be received by the Concessionaire from the Authority (in accordance with Clause 23.1.1) for the first 3 (three) months of the Concession Period; and
- (b) *after the first 3 (three) months of the Operation Period:* the reimbursement received by the Concessionaire from the Authority (in accordance with Clause 23.1.1), in the immediately preceding 3 (three) months.

24.1.3 In the event of default or delay in payment set out in Clause 23.1.1 by the Authority beyond a period of 60 (sixty) days, the Concessionaire shall be entitled to encash and appropriate the required amounts from the Payment Reserve Account.

24.1.4 If the Concessionaire encashes and appropriates any such required amount from the Payment Reserve Account in accordance with Clause 24.1.4, the Authority shall replenish such Payment Reserve Account within 15 (fifteen) days from the date of such drawing.

[OR]²⁸

²⁷ Please refer to Para 7 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

²⁸ The Authority may use its discretion to adopt either the method of payment reserve account or issuance of a letter of credit, as a suitable mechanism for payment security.

24.1 Letter of Credit

24.1.1 The Authority shall, at least [●] days prior to the Commercial Operation Date, provide to the Concessionaire, a letter of credit (“**Letter of Credit**”) for an amount equivalent to 3 (three) months revenue of the Project and shall continue to maintain the such Letter of Credit throughout the Operation Period. For the purpose of Clause 24.1, the term revenue shall mean:

- (a) *during the first 3 (three) months of the Operation Period:* the reimbursement estimated to be received by the Concessionaire from the Authority (in accordance with Clause 23.1.1) for the first 3 (three) months of the Concession Period; and
- (b) *after the first 3 (three) months of the Operation Period:* the reimbursement received by the Concessionaire from the Authority (in accordance with Clause 23.1.1) during the immediately preceding 3 (three) months.

24.1.2 In the event of default or delay in payment set out in Clause 23.1.1 by the Authority beyond a period of 60 (sixty) days, the Concessionaire shall be entitled to invoke the Letter of Credit and appropriate the required amounts from the Letter of Credit.

24.1.3 If the Concessionaire invokes the Letter of Credit in accordance with Clause 24.1.2, the Authority shall replenish such Letter of Credit within 15 (fifteen) days from the date of such invocation.

ARTICLE 25 ESCROW ACCOUNT

25.1 Escrow Account

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

25.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in **Schedule-S**.

25.2 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; and
- (b) all revenues from or in respect of the Project, including the proceeds of insurance claims;

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.

25.3 Withdrawals during Concession Period

25.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) Debt Service 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.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of the Authority.

25.4 Withdrawals upon Termination

25.4.1 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;
- (b) [●] % of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all 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 37;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 33.3.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

ARTICLE 26 INSURANCE

26.1 Insurance during Concession Period

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

26.2 Notice to the Authority

Not later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. 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.

26.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 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.

26.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an

amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

26.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 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.

26.6 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.

26.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, notwithstanding anything to the contrary contained in Clause 25.3 apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 27
ACCOUNTS AND AUDIT

27.1 Audited accounts

- 27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts, 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. 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 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].
- 27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.²⁹
- 27.1.3 On or before the 31st (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on [(a) the count of Users each category of the Patient Mix, (b) User Fee charged and received and other revenues derived from the Project, and (c) such other information as the Authority may reasonably require].

27.2 Appointment of auditors

- 27.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in **Schedule-T**. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 27.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

²⁹ Applicable only if the Concessionaire is a Company, registered under the Companies Act, 1956.

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

27.2.4 [In the event that the Grant exceeds [•]% of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts].

27.3 Certification of claims by Statutory Auditors

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

27.4 Monthly Review by Statutory Auditors

The Statutory Auditors shall review claims in connection with, or relating to receipts, income, payments, costs, expenses, accounts or audit and any matter incidental thereto, on a monthly basis.

27.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

ARTICLE 28
HUMAN RESOURCE MANAGEMENT

28.1 Staffing

- 28.1.1 The principles governing the manner and type of staffing for the Project shall be detailed in **Schedule-[D]**.
- 28.1.2 The Concessionaire shall recruit and manage all the required personnel at each level of the Services in the manner as prescribed under **Schedule-[D]**.³⁰
- 28.1.3 The Concessionaire shall adopt an effective human resources policy in accordance with the Applicable Laws.
- 28.1.4 The Concessionaire shall, during the Concession Period employ fully qualified, experienced and competent medical personnel and designate and appoint suitable officers/staff/representatives to work and supervise in the Project and to deal with the Authority.

³⁰ Schedule-D (Specifications and Standards) to include Staffing Requirements.

ARTICLE 29

FORCE MAJEURE

29.1 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 29.2, 29.3 and 29.4 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, (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

29.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/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 29.3;
- (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 judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

29.3 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 collection of User Charges by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

29.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their

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

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

29.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 29 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

29.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 29.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

29.6 Effect of Force Majeure Event on the Concession

29.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.2.1 for fulfillment of all Condition Precedents set out in 4.1.2 and 4.1.3 shall be extended by a period equal in length to the duration of the Force Majeure Event.

29.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of User Charges on account thereof.

29.7 Allocation of costs arising out of Force Majeure

29.7.1 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.

29.7.2 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 (“**Force Majeure Costs**”) shall be allocated and paid as follows:

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

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of User Charges 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.

29.7.3 Save and except as expressly provided in this Article 29, 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.

29.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 29, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

29.9 Termination Payment for Force Majeure Event

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

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

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

29.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 31.3.2 as if it were an Authority Default.

29.10 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 on account of such Force Majeure Event.

29.11 Excuse from performance of obligations

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

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

ARTICLE 30
COMPENSATION FOR BREACH OF AGREEMENT

30.1 Compensation for default by the Concessionaire

In the event of the Concessionaire being in material default or breach 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 default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.

30.2 Compensation for default by the Authority

In the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, 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 default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any 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 default but shall not include loss of revenues or debt repayment obligations, 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.

30.3 Extension of Concession Period

In the event that a material default or breach of this Agreement set forth in Clause 32.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 32.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

30.4 Compensation to be in addition

Compensation payable under this Article 30 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

ARTICLE 31
SUSPENSION OF CONCESSIONAIRE’S RIGHTS

31.1 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, and (ii) exercise such rights itself or authorise any other person to exercise 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, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

31.2 Authority to act on behalf of Concessionaire

31.2.1 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Concessionaire 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.

31.3 Revocation of Suspension

31.3.1 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.

31.3.2 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.

31.4 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 31.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

31.5 Termination

- 31.5.1 At any time during the period of Suspension under this Article 31, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 31.4, the Authority shall within 15 (fifteen) days of receipt of such, notice, terminate this Agreement under and in accordance with Article 32.
- 31.5.2 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 31.1, the 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 32
TERMINATION

32.1 Termination for Concessionaire Default

32.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (a “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.3 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.3, 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;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of **Schedule-G** and continues to be in default for 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 11.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 13.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements, Service Requirements;
- (h) the Concessionaire has failed to adhere to the [accreditation requirement], or has failed to maintain the [accreditation];
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;

- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified in the Substitution Agreement;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

32.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 32.1.3.

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

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

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

32.2 Termination for Authority Default

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

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire; or
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

32.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of 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.

32.3 Termination Payment

- 32.3.1 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 90% (ninety percent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty percent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.
- 32.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) 100% (one hundred per cent) of Debt Due less any insurance proceeds to the Concessionaire; and
 - (b) 150% (one hundred and fifty per cent) of the Adjusted Equity.
- 32.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [●]% above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

32.4 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 and all other Project Facilities on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Service Continuity and Divestment Requirements set forth in Clause 33.1; and
- (e) succeed upon election by the 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, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

32.5 Survival of rights

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

ARTICLE 33
SERVICE CONTINUITY AND DIVESTMENT OF RIGHTS AND INTEREST

33.1 Service Continuity

Notwithstanding Article 32, upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) submit to the Authority, a plan outlining the handover procedures, training of authority staff and plan for management of human resources (the “**Service Continuity Plan**”); and
- (b) the Concessionaire shall continue operation of the Project for a period of 30 (thirty) days from the date of Termination of this Agreement (“**Service Continuity**”), and during this period payments shall be made to the Concessionaire, in accordance with **Schedule-R**;

33.2 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including all defects and deficiencies so that the Project is compliant with the Safety Requirements, Service Requirements and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;
- (d) deliver relevant records and reports pertaining to the Project and its design, monitoring, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date;
- (e) the staff recruited by the Concessionaire including the medical personnel and officers/staff/representatives, shall not be transferred to the Authority upon termination of this Agreement;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

- (g) 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 the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (h) 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.

33.3 Inspection and cure

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

33.4 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-U** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

33.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

33.6 Divestment costs etc.

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

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

ARTICLE 34
DEFECTS LIABILITY AFTER TERMINATION

34.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days (the “**Defect Liability Period**”) after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Monitor[s] in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority 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 Safety Requirements, Service Requirements and Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

34.2 Retention in Escrow Account

- 34.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to [●]% for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of [●] days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 34.1.
- 34.2.2 Without prejudice to the provisions of Clause 34.2.1, the Independent Monitor[s] shall carry out an inspection of the Project at any time between [●] and [●] days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid [●] days, the amount recommended by the Independent Monitor[s] shall be retained in the Escrow Account for the period specified by it.
- 34.2.3 The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in **Schedule-F** (the “**Defect Liability Performance Security**”), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Defect Liability Performance Security for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Defect Liability Performance Security under this Clause

34.2.3, the retention of funds in the Escrow Account in terms of Clause 35.2.1 or 34.2.2, as the case may be, shall be dispensed with.

ARTICLE 35
ASSIGNMENT AND CHARGES

35.1 Restrictions on assignment and charges

35.1.1 Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2 Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2 Permitted assignment and charges

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

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

35.3 Substitution Agreement

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

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

35.4 Assignment by the Authority

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

ARTICLE 36 CHANGE IN LAW

36.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. [•], 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 same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. [•], 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 same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

36.3 No claim in the event of recovery from Users

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 Users.

ARTICLE 37
LIABILITY AND INDEMNITY

37.1 General indemnity

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

37.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the 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, 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.

37.2 Indemnity by the Concessionaire

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

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors or sub-contractors.

37.2.2 Without limiting the generality of the provisions of this Article 37, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors 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 license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

37.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 37 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

37.4 Defence of claims

37.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action,

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

37.4.2 If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3 If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

37.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

37.6 Survival on Termination

The provisions of this Article 37 shall survive Termination.

ARTICLE 38
RIGHTS AND TITLE OVER THE SITE

38.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and 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.

38.2 Access rights of the Authority and others

38.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Authority, Senior Lenders, and the Independent Monitor[s], and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or 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.

38.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility.

38.3 Property taxes

The Concessionaire shall not be liable to pay any property taxes for the Site.

38.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet 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 39 DISPUTE RESOLUTION

39.1 Dispute resolution

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

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

39.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Monitor[s] to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Monitor[s] or without the intervention of the Independent Monitor[s] within [●], either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 40.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3 Arbitration

39.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the [Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi] (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be [●], and the language of arbitration proceedings shall be English.

39.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the

event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

- 39.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 39.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 39.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

ARTICLE 40 DISCLOSURE

40.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme, the Safety Requirements, Service Requirements and Maintenance Requirements and such other document as may be specified by the Authority from time to time (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office.

ARTICLE 41
REDRESSAL OF GRIEVANCES

41.1 Complaints Register

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

41.2 Redressal of complaints

- 41.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 41.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Monitor[s] a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance.

ARTICLE 42 MISCELLANEOUS

42.1 Governing law and jurisdiction

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

42.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

42.3 Depreciation

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

42.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 15 (fifteen) 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 [●] above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

42.5 Waiver

42.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

42.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

42.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

42.7 Exclusion of implied warranties etc.

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

42.8 Survival

42.8.1 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.

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

42.9 Entire Agreement

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

42.10 Severability

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

42.11 No partnership

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

42.12 Third Parties

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

42.13 Successors and Assigns

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

42.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile 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 [●] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Chairman of the Authority 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 [●] it may send such notice by facsimile 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.

42.15 Language

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

42.16 Counterparts

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

ARTICLE 43 DEFINITIONS

43.1 Definitions

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

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

“**Additional Auditors**” shall have the meaning as set forth in Clause 27.2.3;

“**Additional Facilities**” means the facilities such as [●] that the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)³¹ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

³¹ This number shall be substituted in each case by the product of 100 divided by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42.

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

“**Affected Party**” shall have the meaning set forth in Clause 29.1;

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

“**Annual Maintenance Plan**” shall have the meaning as set forth in Clause 5.1.3(a);

“**Appendix**” shall have the meaning as set forth in Clause 10.3.1;

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

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

“**Appointed Date**” means the date on which all Condition Precedent are fulfilled, and shall be deemed to be the date of commencement of the Concession Period;

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

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

“**Authority Default**” shall have the meaning set forth in Clause 32.2;

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

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

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

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of 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;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the [Concessionaire/Consortium] in response to the Tender Notice in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the [Concessionaire/Consortium] to the Authority along with the Bid in a sum of [Rs. [•]³²], in accordance with the Tender Notice, and which is to remain in force until substituted by the Contract Performance Security;

“**BPL Patient**” shall have the meaning as set forth in **Schedule-M**;

“**Cap on Reimbursement**” shall have the meaning as set forth in Clause 23.1.1(d);

“**Certificate of Compliance**” shall have the meaning as set forth in Clause 4.1.6;

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

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;

³² To be calculated @ 1% (one per cent) of the amount specified in the definition of Total Project Cost.

- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“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 [promoter/Consortium Members] together with their Associates in the total Equity to decline below (i) 51 % (fifty one per cent) thereof during Construction Period, (ii) 33 % (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26 % (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process) in the proportion of the equity holding of [any promoter/Consortium Member] to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership; provided further that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15 % (fifteen per cent) of the total Equity by any person and/ or his Associate at any time during the Concession Period shall constitute a Change in Ownership. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the Equity or voting rights of the shares of the Concessionaire;

“Change of Scope” shall have the meaning set forth in Clause 15.1;

“Change of Scope Notice” shall have the meaning as set forth in Clause 15.2.1;

“Change of Scope Order” shall have the meaning as set forth in Clause 15.2.3;

“Clearances” means [•];

[**“Clinical Services”** shall have the meaning as set forth in **Schedule-B**;

“COD” or **“Commercial Operation Date”** shall have the meaning set forth in Clause 14.1;

[**“Company”** means the Company acting as the Concessionaire under this Agreement;]

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

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

“**Completion Certificate**” shall have the meaning set forth in Clause 13.2;

“**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;

“**Concession Fee**” shall have the meaning as set forth in Clause 21.3.1;

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

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

“**Concurrent Auditors**” shall have the meaning as set forth in Clause 27.2.4;

“**Conditions Precedent**” shall have the meaning set forth in Clause 4.1.1;

[“**Consortium**” shall have the meaning set forth in Recital (B);]

[“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;]

“**Construction Period**” means the period beginning from the Appointed Date and ending on the COD;

“**Construction Performance Security**” shall have the meaning set forth in Clause 9.1;

[“**Construction Quality Plan**” shall have the meaning set forth in **Schedule-D**;]

“**Construction Works**” means all works and things necessary to complete the construction of the Project and subsequent development and augmentation in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other 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;

“**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 Monitor[s] hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Monitor[s] to accord their approval;

“**Damages**” shall have the meaning set forth in Sub-clause (v) of Clause 1.2.1;

“**DBFOT**” shall have the meaning as set forth in Recital [C];

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

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

“**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;

“**Defect Liability Performance Security**” shall have the meaning as set forth in Clause 34.2.3;

“**Defect Liability Period**” shall have the meaning as set forth in Clause 34.1;

[“**Detailed Project Report**” shall mean the base document for planning the project and implementing the project;]

“**Development Period**” means the period from the date of this Agreement until the Appointed Date;

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

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

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

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

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Project as set forth in **Schedule-H**, and shall include ‘as built’ drawings of the Project;

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

“**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;

“**EPC Contract**” means the Monitoring, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, *inter alia*, monitoring 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;

“**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 shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

“**Equity Support**” shall have the meaning set forth in Clause 21.2.1;

“**Equipment**” shall have the meaning as set forth in **Schedule-C**;

“**Escrow Account**” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning set forth in Clause 25.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 25.1.1;

“**Escrow Default**” shall have the meaning set forth in Clause 6.1 of **Schedule-S**;

“**Facility Management Services**” shall have the meaning as set forth in **Schedule-B**;

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

“**Financial Default**” shall have the meaning set forth in **Schedule-V**;

“**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 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;

“**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 loan agreements, guarantees, 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 5.2.3;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 29.1;

“**Force Majeure Costs**” shall have the meaning as set forth in Clause 29.7.2.

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

“**Good Clinical Practice**” means degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced clinical services provider and a person providing services;

“**Good Healthcare Practice**” means using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would be expected from a skilled, efficient and experienced provider and a person engaged in the provision of services;

“**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 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 or the State Government, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Grant**” shall have the meaning set forth in Clause 21.1.1;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Clause 37.3;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Clause 37.3;

“**Independent Engineer**” shall be appointed in accordance with Clause 19.1.1, for purpose of monitoring during the construction phase to inspect, test and monitor the

Construction Works, and during the Operation phase, to inspect, verify, test for maintenance requirements of the Project Facility;

“**Independent Healthcare Consultant**” shall be appointed in accordance with Clause 19.1.3, for the purpose of testing the Equipment during the construction phase and monitoring the Services, as per the required Specifications and Standards;

“**Independent Monitor[s]**” means an Independent Engineer or an Independent Healthcare Consultant as may be applicable in accordance with the terms of this Agreement;;

“**Indirect Political Event**” shall have the meaning set forth in Clause 29.3;

“**Inspection Report**” shall have the meaning as set forth in Clause 12.2;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

“**Intellectual Property Rights**” means any patent, utility model, registered design, trademark, copyright or other intellectual property rights (including any and all licenses) regardless of where or whether it is registered;

“**LOA**” or “**Letter of Acceptance**” means the letter of acceptance referred to in Recital (E);

“**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;

“**Letter of Credit**” shall have the meaning as set forth in Clause 24.1.1³³;

“**Licensed Premises**” shall have the meaning ascribed to it in Clause 10.2.2;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 16.3;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 16.4.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 16.2.1;

“**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

³³ This may be deleted in case the Letter of Credit is not opted for under Article 24.

the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

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

“**NABH**” shall have the meaning as set forth in Clause 5.1.4;

“**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 29.2;

“**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 User Charges 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 the O&M Contractor for performance of all or any of the O&M obligations;]

[“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;]

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

“**O&M Inspection Report**” shall have the meaning set forth in Clause 18.2;

“**Operation Performance Security**” shall have the meaning set forth in Clause 9.2;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 27.2.1;

“**Panel of Firms**” shall have the meaning as set forth in **Schedule-Q**;

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

“**Patient Mix**” shall have the meaning as set forth in Clause 22.1;

[“**Payment Reserve Account**” shall have the meaning as set forth in Clause 24.1.1]³⁴;

[“**Payment Reserve Agreement**” shall have the meaning as set forth in Clause 24.1.1]³⁵;

“**Performance Security**” shall mean Construction Performance Security and/or Operation Performance Security, as the case may be;

“**Political Event**” shall have the meaning set forth in Clause 29.4;

“**Pollution Control Board Norms**” shall have the meaning as set forth in **Schedule-D**;

“**Preservation Costs**” shall have the meaning as set forth in Clause 12.5.3;

“**Private Patients**” shall have the meaning as set forth in **Schedule-M**;

“**Project**” shall have the meaning as set forth in Recital A;

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other 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 Escrow Agreement and the Substitution Agreement;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and Equipment; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project, but does not include Additional Facilities;

“**Project Completion Date**” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Clause 13.3;

³⁴ This may be deleted in case the Payment Reserve Account is not opted for under Article 24.

³⁵ This may be deleted in case the Payment Reserve Agreement is not opted for under Article 24.

“**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;

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in **Schedule-C**;

“**Project Milestones**” means the project milestones set forth in **Schedule-G**;

“**Provisional Certificate**” shall have the meaning set forth in Clause 13.3;

“**Punch List**” shall have the meaning ascribed to it in Clause 13.3;

“**RBI**” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**Replacement**” shall have the meaning as specified in Clause 20.1;

“**Right of Way**” means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project in accordance with this Agreement;

“**Safety Requirements**” shall have the meaning set forth in Clause 17.1.1;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 11.4.1;

“**Scope of the Project**” shall have the meaning set forth in Clause 2.1;

“**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 parri passu charge on the assets, rights, title and interests of the Concessionaire;

“**Services**” shall include Clinical Services and Support Clinical Services, Facility Management Services and such other healthcare services as outlined in **Schedule-B**;

“**Service Continuity**” shall have the meaning as set forth in Clause 33.1

“**Service Requirements**” shall have the meaning as set forth in Clause 16.2.2;

“**Service Continuity Plan**” shall have the meaning as set forth in Clause 33.1(a);

“**Service Quality Manual**” shall have the meaning as set forth in Clause 16.1.1(a);

“**Site**” shall have the meaning set forth in Clause 10.1;

“**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-D**, and any modifications thereof, or additions thereto, as included in the design and monitoring for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Documents**” shall have the meaning as set forth in Clause 40.1;

“**State**” means the State of [●] and “**State Government**” means the government of that 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, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2;

“**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 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 expressed 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 expressed 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, 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 35.3.1;

“**Support Clinical Services**” shall have the meaning as set forth in **Schedule-B**;

“**Suspension**” shall have the meaning set forth in Clause 31.1;

“**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;

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

“**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 by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD 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 product arrived at by subtracting Debt Due from Total Project Cost;

“**Tests**” means the tests set forth in **Schedule-I** to determine the completion of the Project in accordance with the provisions of this Agreement;

“**TOR**” shall have the meaning as set forth in **Schedule-Q, Annex 1**;

[“**Total Project Cost**” means the lowest of:

- (a) capital cost of the Project, [less Equity Support] as set forth in the Financial Package;

- (b) the actual capital cost of the Project upon completion of the Project[less Equity Support]; and
- (c) a sum of [Rs. [●] (Rupees [●]), less Equity Support]³⁶;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;]

“**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;

“**User**” means a person who avails the Services in accordance with the terms of this Agreement;

“**User Charges**” means charges for treatment of Users in accordance with **Schedule-R**;

“**Vesting Certificate**” shall have the meaning set forth in Clause 33.3; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

³⁶ This amount may be indicated on the basis of project-specific cost estimates, including financing charges; and this amount shall, after bidding, be reduced by a sum equivalent to the Grant. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

IN WITNESS WHEREOF the Parties have executed and delivered this agreement as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of THE GOVERNMENT
OF [●] by:

For and on behalf of CONCESSIONAIRE
by:

(Signature)
(Name)
(Designation)

(Signature)
(Name)
(Designation)

In the presence of:

1.

2.

SCHEDULE-A
SITE OF THE PROJECT

[Location of site[s] of the Project along with description should be specified]

SCHEDULE-B

SERVICES

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

1. Services

- (a) Clinical Services;
- (b) Support Clinical Services;
- (c) Facility Management Services;
- (d) Other Commercial Services.

SCHEDULE-C
PROJECT FACILITIES

SCHEDULE-D
SPECIFICATIONS AND STANDARDS³⁷

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

1. Infrastructure specifications and standards;
2. Equipment specifications and standards;
3. Services specifications and standards
 - (a) Clinical Services;
 - (b) Support Clinical Services;
 - (c) Facility Management Services; and
 - (d) Other Commercial Services.
4. Capacity of the primary healthcare clinic; and
5. Segmentation of the Capacity (if applicable)

³⁷ Please refer to Para 8 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

SCHEDULE-E
APPLICABLE PERMITS

1. Applicable Permits

1.1 The Concessionaire shall obtain, maintain and comply with the Applicable Permits, as required under the Applicable Laws.

1.2 An indicative list of Applicable laws is provided hereunder:

- (a) 1. No objection certificate from the Competent Fire Authority
- (b) Authorisation under Bio-medical Waste (Management and Handling) Rules, 1998.
- (c) Authorisation from Atomic Energy Regulation Board.
- (d) Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules 2008
- (e) Authorisation from Atomic Energy Regulation Board (if X-Ray facility available)
- (f) Excise permit to store Spirit
- (g) Vehicle registration certificates for Ambulances
- (h) Consumer Protection Act
- (i) Drug & Cosmetic Act 1950
- (j) Fatal Accidents Act 1855
- (h) Indian Lunacy Act 1912
- (k) Indian Medical Council Act and code of Medical Ethics
- (l) Indian Nursing Council Act
- (m) Insecticides Act 1968
- (n) Maternity Benefit Act 1961
- (o) Boilers Act as amended in 2007
- (p) MTP Act 1971
- (q) Persons with Disability Act 1995
- (r) Pharmacy Act 1948
- (s) PNDDT Act 1996
- (t) Registration of Births and Deaths Act 1969

(u) Right to Information Act

(v) Clinical Establishments (Registration and Regulation) Act 2010

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

SCHEDULE-F
PERFORMANCE SECURITY

The Chairman,
[●]

[Place]

WHEREAS:

- (A) [●](the “**Concessionaire**”) and the Chairman, [●] (the “**Authority**”) have entered into a Concession Agreement dated [●] (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking [●] on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of [Rs. [●] (Rupees [●])] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction/Operation Period (as defined in the Agreement).
- (C) We, [●] through our Branch at [●] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction/Operation/Period/Defect Liability Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of [●], that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period/Operation Period/Defect Liability Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between

them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than [●] of the Total Project Cost which is deemed to be [Rs.[●]] for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement.

Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)
(Name)
(Designation)
(Address)

SCHEDULE-G
PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this **Schedule-G** for each of the Project Milestones (the “**Project Completion Schedule**”). Within [●] days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance alongwith necessary particulars thereof.

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [●] day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and expended not less than [●] of the total capital cost set forth in the Financial Package.

3. Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [●] day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction of [●] and expended not less than [●]] of the total capital cost set forth in the Financial Package.

4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [●] day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [construction of all Project Facilities and expended not less than [●] of the total capital cost set forth in the Financial Package.

5. Extension of period

Upon extension of any or all of the aforesaid Project Milestones, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

**SCHEDULE-H
DRAWINGS**

SCHEDULE-I TESTS

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

Construction Tests

[To specify the procedure for conducting the tests for Construction]

Tests for Equipment

[To specify the procedure for conducting tests for Equipment]

SCHEDULE-J

(Annex-1)

COMPLETION CERTIFICATE

1. I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•] (the “**Agreement**”), for [Description of the Project] (the “**Project**”) on design, build, finance, operate and transfer (“**DBFOT**”) basis, through [Name of Concessionaire], hereby certify that the Tests specified in Clause 12.3 and **Schedule-I** of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT MONITOR[S] by:

(Signature)

(Name)

(Designation)

(Address)

(Annex-2)

PROVISIONAL CERTIFICATE

1. I, [Name of the Independent Monitor[s]], acting as Independent Monitor[s], under and in accordance with the Concession Agreement dated [•] (the “**Agreement**”), for [Description of the Project] (the “**Project**”) on design, finance, build, operate and transfer (“**DBFOT**”) basis through [Name of Concessionaire], hereby certify that the Tests specified in Clause 12.3 and **Schedule-I** of the Agreement have been undertaken to determine compliance of the Project with the provisions of the Agreement.

2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,] I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.

3. In view of the foregoing, I am satisfied that the Project can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

ACCEPTED, SIGNED, SEALED AND DELIVERED AND SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE
by:

(Signature)
(Name and Designation)
(Address)

For and on behalf of **INDEPENDENT MONITOR[S]** by:

(Signature)
(Name and Designation)
(Address)

SCHEDULE-K
SERVICE REQUIREMENTS AND MAINTENANCE REQUIREMENTS³⁸

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

1. Service Requirements

2. Maintenance Requirements

3. Equipment Maintenance Plan

³⁸ Please refer to Para 8 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

SCHEDULE-L

SAFETY REQUIREMENTS

SCHEDULE-M
PATIENT MIX³⁹

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

1. Patient Mix shall include:
 - (a) BPL Patients
 - (b) Non-BPL Patients

2. Applicable User Fee for each category of the Users/patients shall be as specified in Article 23.

3. [**Note:** An outline of the institutional mechanism for referral and identification of the Authority referred patient should be provided.]

4. [**Note:** Specifically outline the proportion of healthcare infrastructure for different categories of patients];

5. [**Note:** Cap on reimbursement to be specified.]

³⁹ The Patient Mix may vary from project to project. Please refer to Para 4 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

SCHEDULE-N
[INTENTIONALLY LEFT BLANK]

SCHEDULE-O
USER SATISFACTION SURVEY⁴⁰

Indicative Format for User Satisfaction Survey

	<i>Service (Clinical/Support Clinical/ Facility Management) (Example OPD Consultation)</i>	<i>Proportion of respondents (Service User)</i>					<i>Remarks</i>
		<i>Strongly Disagree</i>	<i>Disagree</i>	<i>Neutral</i>	<i>Agree</i>	<i>Strongly Agree</i>	
1.	Service Access Related Issues						
	(a) The time taken for registration is as per the service standard (15 minutes)						
	(b) The waiting time for consultation is within the specified time frame (30 minutes)						
2.	Service Quality Related Issues						
	(a) The medical records are adequately maintained and available when required						
	(b) The waiting room and Consultation area is clean and well lit						
3.	Outcome Related Issues						
	(a) Satisfied with consultation						

⁴⁰ Please refer to Para. 9 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

	procedure						
	(b) The Consultation/ Treatment provided is satisfactory						

SCHEDULE-P
[TERMS OF REFERENCE FOR STEERING COMMITTEE]41

⁴¹ This Schedule is to be retained in the event the Authority opts for establishing a Steering Committee under Article 19.

SCHEDULE-Q
APPOINTMENT & TERMS OF REFERENCE FOR INDEPENDENT MONITOR[S]⁴²

1 Selection of Independent Monitor[s]

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting firms or bodies corporate to undertake and perform the duties and functions set forth in this **Schedule-Q** and thereupon shortlist 10 (ten) qualified firms for each category of Independent Monitor in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 7 (seven) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 10 (ten) firms (the “**Panel of Firms**”) and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of [●]:[●]

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Monitor[s] during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Monitor[s] on account of fee and expenses do not exceed [●] of the Total Project Cost. Payments not exceeding such [●] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 2.2 The nature and quantum of duties and services to be performed by the Independent Monitor[s] during the Operation Period shall be determined by the Authority in

⁴² Please refer to Para. 9 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Monitor[s] on account of fee and expenses during the Operation Period, including the construction of the Project, shall be borne equally by the Authority and the Concessionaire.

3 Constitution of fresh panel

Not later than three years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this **Schedule-Q**; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Monitor[s]

[Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Monitor[s]; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for [●] projects; provided that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Monitor[s].]

5. Terms of Reference

[Detailed Terms of Reference for an Independent Monitor[s] (i.e. Independent Engineer and Independent Healthcare Consultant) have been enclosed in *Annex 1* and *Annex 2* respectively to this **Schedule-Q**.]

Annex-1
(Schedule-Q)

TERMS OF REFERENCE OF INDEPENDENT ENGINEER

1. Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated [●] (the “**Agreement**”), which has been entered into between the Authority and [●] (the “**Concessionaire**”) for the Project in the State on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (a) review of the Design, Drawings and Documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (c) conducting Tests on completion of construction and issuing Completion/Provisional Certificate as set forth in Paragraph 5;
 - (d) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (e) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;

- (f) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (g) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (h) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
- (i) undertaking all other duties and functions in accordance with the Agreement.

The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Design, Drawings and Documents to be furnished by the Concessionaire along with supporting data, including the surveys and investigations. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Design, Drawings. In particular, such comments shall specify the conformity or otherwise of such Design, Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Design, Drawings or Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Design, Drawings or Documents.
- 4.3 The Independent Engineer shall review the Design, Drawings and Documents (including safety report) sent to it by any consultant and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Design, Drawings and Documents. The Independent Engineer shall also review the report submitted by such consultant and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, monitoring and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5. Construction Period

- 5.1 In respect of the Design, Drawings and Documents (including safety report) received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and the Project once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**IE’s Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the IE’s Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project. The Independent Engineer shall send a copy of its IE’s Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the [●]⁴³ shall be applicable. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise [●]% of the quantity or number of tests prescribed for each category or type of tests in the Service Quality Manual and Construction Quality Plan; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to [●] % for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in

⁴³ To insert the industry specific tests which need to be carried out, which may be specific to each project.

accordance with the Service Quality Manual and Construction Quality Plan. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in **Schedule-I** and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 13 and **Schedule-I**.

- 5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6. Operation Period

- 6.1 In respect of the Drawings, Documents and reports (including safety report) received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an IE's O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Service Requirements, Maintenance Requirements and Safety Requirements. In a separate section of the IE's O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project. The Independent Engineer shall send a copy of its IE's O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Project more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its IE's O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Service Requirements, Maintenance Requirements and Safety Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of **Schedule-Q**, the Independent Engineer shall, in conformity with Good Industry Practice, specify the

permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any of the Services or part thereof for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 5 (five) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the reopening of such Services, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 16.5.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 18.4.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

7. Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 10 (ten) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Project for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 33.2 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Project is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 34, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

8. Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

11.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may

specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

Annex-2
(Schedule-Q)

TERMS OF REFERENCE OF INDEPENDENT HEALTH CONSULTANT

1. Scope

- 1.1 These Terms of Reference for the Independent Health Consultant (the “**TOR**”) are being specified pursuant to the Concession Agreement dated [●] (the “**Agreement**”), which has been entered into between the Authority and [●] (the “**Concessionaire**”) for the Project in the State on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3. Role and functions of the Independent Health Consultant

- 3.1 The role and functions of the Independent Health Consultant shall include the following:
- (a) conducting Inspection and Tests of Equipment and issuing Completion/Provisional Certificate as set forth in Paragraph 5;
 - (b) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (c) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (d) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (e) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and

- (f) undertaking all other duties and functions in accordance with the Agreement.

The Independent Health Consultant shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. [Intentionally left blank]

5. Construction Period

- 5.1 The Independent Health Consultant shall carry out the required tests and inspections to verify the equipment's installation and performance as per the Specifications and Standards.
- 5.2 The Independent Health Consultant shall inspect the Equipment's after receipt of the installation report from the Concessionaire, and make out a report of such inspection (the "**IHC's Inspection Report**") setting forth an overview of the status, progress, quality and safety of Equipment's, including the work methodology adopted, the materials used and their sources, and conformity with the Scope of the Project and the Specifications and Standards. In a separate section of the IHC's Inspection Report, the Independent Health Consultant shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Equipment installation of the Project. The Independent Health Consultant shall send a copy of its IHC's Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.3 For determining that the Equipment's conform to Specifications and Standards, the Independent Health Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests, to be specified by the Independent Health Consultant in accordance with Good Industry practice for quality assurance. For purposes of this Paragraph 5.3, the tests specified in the [●] shall be applicable.⁴⁴ The Independent Health Consultant shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.4 The timing of tests referred to in Paragraph 5.2, and the criteria for acceptance/rejection of their results shall be determined by the Independent Health Consultant in accordance with the Construction Quality Plan and Service Quality Manual. The tests shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.5 In the event that the Concessionaire carries out any replacement of Equipment or remedial works for removal or rectification of any defects or deficiencies, the

⁴⁴ To insert the Equipment specific tests which need to be carried out, which may be specific to each project.

Independent Health Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such replacement or remedial works have brought the Equipment into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

- 5.6 The Independent Health Consultant shall carry out, or cause to be carried out, all the Equipment Tests specified in **Schedule-I** and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.5 and all matters incidental thereto, the Independent Health Consultant shall act under and in accordance with the provisions of Article 13 and **Schedule-I**.
- 5.7 Upon reference from the Authority, the Independent Health Consultant shall make a fair and reasonable assessment of the costs of providing information, works, equipment's and services and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5.8 The Independent Health Consultant shall aid and advise the Concessionaire in preparing the Services Quality Manual.

6. Operation Period

- 6.1 The Independent Health Consultant shall review the Service Quality Manual furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Service Quality Manual.
- 6.2 The Independent Health Consultant shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.3 The Independent Health Consultant shall inspect the Project on continuous basis, and make out an IHC's O&M Inspection Report for each Payment Period setting forth an overview of the status, quality and safety of Services including its conformity with the Service Requirements and Safety Requirements. In a separate section of the IHC's O&M Inspection Report, the Independent Health Consultant shall describe in reasonable detail the lapses, defects or deficiencies observed by it in Services. [The IHC's O&M Inspection Report shall also describe the Service Failure Event and Quality Failure Event with respect to the Payment Period, and the applicable Deductions to the Payment for the period] The Independent Health Consultant shall send a copy of its IHC's O&M Inspection Report to the Authority and the Concessionaire within 3 (three) days of the end of the Month.
- 6.4 The Independent Health Consultant shall in its IHC's O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Project is in conformity with the Service Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.

6.5 The Independent Health Consultant shall examine the request of the Concessionaire for alternative location arrangement for Service within the project facility for undertaking maintenance/repair work, keeping in view the need to minimise disruption in services and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 5 (five) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of relocation, the Independent Health Consultant shall monitor the reopening of such part(s) of Project Facility, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause [●].

6.6 The Independent Health Consultant shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 18.4.

6.7 In the event that the Concessionaire notifies the Independent Health Consultant of any modifications that it proposes to make to the Services, the Independent Health Consultant shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

7. [Deleted]

8. Determination of costs and time

8.1 The Independent Health Consultant shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.

8.2 The Independent Health Consultant shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9. Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the Independent Health Consultant shall mediate and assist the Parties in arriving at an amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Health Consultant shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10. Other duties and functions

The Independent Health Consultant shall perform all other duties and functions specified in the Agreement.

11. Miscellaneous

- 11.1 The Independent Health Consultant shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, or Documents sent by the Independent Health Consultant to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Health Consultant thereon shall be furnished by the Independent Health Consultant to the Authority forthwith.
- 11.3 The Independent Health Consultant shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Health Consultant, whereupon the Independent Health Consultant shall send one of the copies to the Authority along with its comments thereon.
- 11.4 The Independent Health Consultant shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Health Consultant shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

SCHEDULE-R
USER CHARGES & REIMBURSEMENT MECHANISM⁴⁵

[This is an indicative list and may be amended and detailed in accordance with the Project requirements.]

1. User Charges

2. Reimbursement Mechanism

⁴⁵ Please refer to Para. 5 and Para. 6 of the Guide for Practitioners for Primary Healthcare. This Agreement may be modified accordingly.

SCHEDULE-S

ESCROW AGREEMENT

This ESCROW AGREEMENT is entered into on this the [●] day of [●] 20[●].

AMONGST

- 1 [●], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at [●] (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 [name and particulars of Lenders’ Representative] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 [name and particulars of the Escrow Bank] and having its registered office at [●] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The [●], established under the [●], represented by its Chairman and having its principal offices at [●] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated *** with the Concessionaire (the “**Concession Agreement**”) for [●] on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Business Day**” shall be construed as a reference to a day (other than a Sunday) on which banks in [•] are generally open for business;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals,

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the term hereof together with all such rights, powers, authorities and discretion as tire reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest it, and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the

Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [●] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank, shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in this monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

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

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) all User Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

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

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire;
- (b) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (h) debt service payments in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including [Premium] and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 34 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 31 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) Business Days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders* Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the

Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [•] and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] shall have jurisdiction over all matters arising out of or relating to this Agreement.

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or

enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by
the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of [●] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

2.

SCHEDULE-T
PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this **Schedule-T**.

2. Invitation for empanelment

The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 100,00,00,000 (Rupees one hundred crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

- 3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this **Schedule-T**.

SCHEDULE-U
VESTING CERTIFICATE

1. The Chairman, [●] (the “**Authority**”) refers to the Concession Agreement dated [●] (the “**Agreement**”) entered into between the Authority and [●] (the “**Concessionaire**”) for [●] (the “**Project**”) on design, build, finance, operate and transfer (“**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED

For and on behalf of CONCESSIONAIRE
by:

(Signature)
(Name)
(Designation)
(Address)

SIGNED, SEALED AND DELIVERED

For and on behalf of [●] by:

(Signature)
(Name)
(Designation)
(Address)

In the presence of:

1.

2.

SCHEDULE-V
SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the [●] day of [●] 20[●].

AMONGST

1. The [●], established under the [●], represented by its Chairman and having its principal offices at [●] (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [●]⁴⁶, a [●] incorporated under the provisions of the [●] and having its registered office at ****, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. [●] [name and particulars of Lenders’ Representative] and having its registered office at [●], acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the “**Concession Agreement**”) for the Project in the State [●] on design, build, finance, operate and transfer basis (DBFOT), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

⁴⁶ All project-specific provisions in this document have been enclosed in square parenthesis and may be modified suitably, as necessary.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Cause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” means any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 31 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in

accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days, provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and Transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such

waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 7 (seven) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 32 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the

claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [•] and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [•] shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received

after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of CONCESSIONAIRE
by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of [●] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by
the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)

In the presence of:

1. _____ 2. _____