



Syama Prasad Mookerjee Port, Kolkata
(*Erstwhile Kolkata Port Trust*),
(Ministry of Ports, Shipping and Waterways, Government of India)

Medical Department

**ESTABLISHMENT OF 300 BEDDED SUPER SPECIALITY
HOSPITAL WITH AN OPTION
TO DEVELOP MEDICAL COLLEGE & FURTHER EXPANSION ON
PPP BASIS**

INTERNATIONAL COMPETITIVE BIDDING (ICB)

REQUEST FOR PROPOSAL (RFP)

Tender Notice No: MED/ CH/304/ 21-22/137, Dated 11.03.2022

BID DOCUMENT

VOLUME - I

INSTRUCTION TO BIDDER

March 2022

Contact Details:

Chief Medical Officer

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**SYAMA PRASAD MOOKERJEE PORT,
KOLKATA,
MEDICAL DEPARTMENT**

No.: Tender Notice No: MED/ CH/304/ 21-22/137, Dated 11.03.2022

e-Tender Call Notice

E-Tender is invited in **percentage (%) (% of Gross Revenue Share with SMP)** on behalf of the Board of Trustees of Kolkata Port in Single Stage two steps System from the **eligible bidders meeting the pre-qualifying criteria** for the work mentioned below through online bidding on the website <https://kopt.enivida.in/> having Digital Signature Certificate (DSC) issued from any agency authorized by Controller of Certifying Authority (CCA), Govt. of India and which can be traced up to the chain of trust to the Root Certificate of CCA.

PROJECT: ESTABLISHMENT OF 300 BEDDED SUPER SPECIALTY HOSPITAL WITH AN OPTION TO FURTHER DEVELOP A MEDICAL COLLEGE AND FURTHER EXPANSION OF HOSPITAL ON PPP

Chief Medical Officer,
Syama Prasad Mookerjee Port,
Kolkata

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DISCLAIMER

The information contained in this Request for Proposal document (the “**RFP**”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of the Authority or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their application for qualification and making their financial offers (“**Bids**”) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in the Bidding Documents, especially the Feasibility Report, may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in this Bid Stage.

The Authority also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP.

The Authority may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that the Authority is bound to select a Bidder or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Authority or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

GLOSSARY

Annual Fee	As defined in Clause 1.2.7 B
Associate	As defined in Clause 2.1.18
Authority	As defined in Clause 1.1.1
Bank Guarantee	As defined in Clause 2.19.1
Bid(s)	As defined in the Disclaimer
Bidder	As defined in Clause 1.2.1
Bidding Documents	As defined in Clause 1.1.7
Bid Due Date	As defined in Clause 1.1.7
Bidding Process	As defined in Clause 1.2.1
Bid Security	As defined in Clause 1.2.4
Concession	As defined in Clause 1.1.5
Concessionaire	As defined in Clause 1.1.3
Conflict of Interest	As defined in Clause 2.2.1 (c)
Consortium	As defined in Clause 2.2.1(a)
Damages	As defined in Clause 2.2.1 (c)
Document Fee	As defined in Clause 1.2.1.1
Concession Agreement	As defined in Clause 1.1.3
Enclosures to Bid	As defined in Clause 2.10.6
e-Procurement Portal	As defined in Clause 1.2.1
Estimated Project Cost	As defined in Clause 1.1.4
Existing Hospital	As defined in Clause 1.1.2
Financial Bid	As defined in Clause 1.2.1
Financial Capacity	As defined in Clause 2.2.2 (B)
First Round of Bidding	As defined in Clause 3.8.3
Golden Share	As defined in Clause 1.2.7 D
Government	Government of India
Gross Revenue	As defined in Clause 1.2.7 E
Gross Revenue Share	As defined in Clause 1.2.7 A
Highest Bidder	As defined in Clause 1.2.7 A
Joint Bidding Agreement	As defined in Clause 2.1.15 (g)
Lead Member	As defined in Clause 2.1.15 (c)
LOA	As defined in Clause 3.8.5
Net Worth	As defined in Clause 2.2.2 (B)
Project	As defined in Clause 1.1.1
PPP	As defined in Clause 1.1.1
Rs. or INR	Indian Rupee
RFP or Request for Proposal	As defined in the Disclaimer
Second Round of Bidding	As defined in Clause 3.8.3
Selected Bidder	As defined in Clause 3.8.1
Subject Person	As defined in Clause 2.2.1 (c) (i)
Technical Bid	As defined in Clause 1.2.1

Technical Capacity	As defined in Clause 2.2.2 (A)
Third Round of Bidding	As defined in Clause 3.8.4
Tie Bid	As defined in Clause 3.8.2

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein.

SECTION 1

INTRODUCTION

1.1. Background

The Board of Trustees, Syama Prasad Mookerjee Port (SMP), Kolkata having office at 15, Strand Road, Kolkata - 700001, invites Bids through the Chief Medical Officer, Syama Prasad Mookerjee Port, Kolkata, West Bengal, for the purpose of this Project in accordance with the terms and conditions of this RFP.

- 1.1.1 The Syama Prasad Mookerjee Port, Kolkata (the "**Authority**") is engaged in the development and operation of port in Kolkata and as part of this endeavour, the Authority has decided to undertake "Development of existing 104 bedded Centenary Hospital, Kolkata into a 300-bedded Super-Specialty Hospital with an option to develop Medical College at Kolkata, West Bengal, India¹" (the "**Hospital**") through Public Private Partnership (the "**PPP**") mode to up-grade, develop, finance, equip, operate and manage the super specialty hospital and may undertake the development and operations of medical college (optional) (the "**Project**") in a phased manner. Hence, SMP has decided to carry out a single stage two steps, online Bidding Process for selection of the Bidder to whom the Project may be awarded.

Brief particulars of the Project are as follows:

Name of the Project	Scope of Project & Concession Period	Total area for development	Estimated Project Cost
Development of existing Centenary Hospital, Kolkata into a minimum 300 bedded Super-Specialty Hospital with an option to develop Medical College and further expansion at Kolkata, West Bengal, India	Upgrade, develop, finance, equip, operate and manage the 300 bedded super specialty hospital [Further expansion and medical college (optional)] Concession Period: 60 years,	6 acres of land (Additional land shall be provided by the Authority in accordance with the prevalent norms of NMC or equivalent authority, in case the Concessionaire decides to develop a Medical College within 10 years of Appointed Date)	202.00

¹ To be modified throughout the document, based on finalized model for development

The Estimated Project Cost of Rs. 202 Crores (Rupees Two hundred and two Crores only) has been estimated keeping in view the investment required to be made by the Concessionaire on:

- (i) Upgrading the existing 104 bedded hospital building by filling the gaps in the Existing infrastructure, upgrading the equipment and completing second floor of existing hospital building.
- (ii) Constructing and providing infrastructure, manpower, medical and other equipment for new block
- (iii) Employing clinical and non-clinical staff, medical and other equipment for operating 300-bedded hospital (along with new block) in phased manner within the timeline specified in the Bidding Documents;
- (iv) Providing adequate support infrastructure and upgrade hospital campus as per requirement

1.1.2 The Authority has an existing secondary care hospital (Centenary Hospital, Kolkata) developed in approximately 6 acres of land parcel (consisting of 104 beds) ("**Existing Hospital**"). The Existing Hospital is mainly providing health care services to the Authority's employees and their family Members; pensioners and their spouse, Central Industrial Security Force (CISF) and their family members and contractual employees (for duration of Contract). The Authority has now decided to carry out the bidding process for selection of a private entity as the bidder to whom the Project may be awarded on the terms as specified in the Concession Agreement (as defined hereinafter) for the development, upon 6 acres of land, a 300-bedded super specialty hospital which shall encompass the Existing Hospital. The successful bidder shall be responsible for the Project, which shall include the super specialty healthcare facilities. The scope of work, development phases and timelines will broadly include the following:

Scope of Work, Development Phases and timelines for the Project:

Phases	Development	From Appointed Date
Mandatory Development*		
Phase 0	<ul style="list-style-type: none"> Upgradation of existing hospital to 150 beds in 1.5 years Operate and Maintain existing hospital Deploy adequate manpower Equip the hospital for super-specialties 	<ul style="list-style-type: none"> 1 year and 6 months

Phases	Development	From Appointed Date
	<ul style="list-style-type: none"> • Install requisite diagnostic facilities • Design, construct, develop, equip, operate, maintain and manage the Pharmacy 	
Phase 1	<ul style="list-style-type: none"> • Develop 300 bedded super-specialty hospital • Operate and Maintain new block, along with existing hospital • Deploy adequate manpower • Equip the hospital for super-specialties • Install requisite diagnostic facilities 	<ul style="list-style-type: none"> • 4 year and 6 months
Optional Development – Subject to the provisions of the Concession Agreement including Clause 2 thereof.		
To be informed to Authority within 10 years from appointed date	<ul style="list-style-type: none"> • Develop medical college and residential facilities as per NMC norms 	3 years from construction start date of this phase
	<ul style="list-style-type: none"> • Further expansion of the proposed 300 bedded hospital 	2.5 years from construction start date of this phase

* With equipment as defined in the Schedule O, Concession Agreement and specialties as defined in Schedule M, Concession Agreement

1.1.3 The Selected Bidder (defined hereinafter) undertakes to incorporate a special purpose vehicle (the “SPV”) company (the “**Concessionaire**”) under Companies Act 2013 (including all the rules and regulations made thereunder) prior to execution of the concession agreement, which shall be responsible for, development, design, augmentation, equip (medical, non-medical equipment and machinery), finance, operation, maintenance and management of the Project under and in accordance with the provisions of a concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto. Further, in case the Selected Bidder is a Consortium, it shall also adhere to the shareholding requirements in respect of its Members as set out in this RFP.

1.1.4 The estimated cost of the Project (the “**Estimated Project Cost**”) has been specified in Clause 1.1.1 above. The assessment of actual costs, however, will have to be made by the Bidders.

- 1.1.5 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**").
- 1.1.6 The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims in this regard on any account shall be entertained by the Authority.
- 1.1.7 The Authority shall receive Bids pursuant to and in accordance with the terms set forth in this RFP, as modified, altered, amended and clarified from time to time by the Authority and other documents to be provided by the Authority pursuant to this RFP (collectively the "**Bidding Documents**") and all Bids shall be prepared and submitted in accordance with the terms of this RFP on or before the bid due date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2. Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage two steps system, online bidding process consisting of submission of a technical bid and a financial bid (both terms are defined hereafter) (the "**Bidding Process**") for selection of the Bidder for award of the Project. **The Bidding Documents in its entirety will be available for download from the website <https://kopt.enivida.in/>, ("e-Procurement Portal")** from the date mentioned in the Clause 1.3.

For purpose of tender submission, only ENivida portal to be accessed by tenderer at - <https://smpk.enivida.in>

Alternatively, the Bidding Documents can also be viewed from the website <https://smporkolkata.shipping.gov.in/> for the sole purpose of viewing and it shall not be entertained as valid download of the Bidding Document. To participate in the Bidding Process, the Bidder should complete all stages of registration, download from the e-Procurement Portal and final bid submission through the e-Procurement Portal. Bids which are submitted on the e-Procurement Portal alone will be accepted by the Authority. The Bidders are advised to download the Bidding Documents at least one day prior to the Bid Due Date so as to safeguard their participation and avoid any delay. The Bidders

are advised to upload the Bid sufficiently before the specified time on the Bid Due Date to avoid any technical issues or malfunction in the network caused by heavy internet traffic on the Bid Due Date. The Authority shall not be responsible for any failure, malfunction or breakdown of the e-Procurement Portal during the Bidding Process, or for any sort of delay or difficulties faced during submission of the Bid on the e-Procurement Portal. The Bidders are required to register on e-Procurement Portal. Bidders are required to obtain digital signature to upload the Technical and Financial bid. Bidders are requested to visit e-Procurement Portal for the details related to online registration and submission of Bids.

- 1.2.1.1 The Bidder shall pay to the Authority a non-refundable sum of Rs. 70,800/- (Rs 60,000 +18% GST - Rupees Seventy Thousand Eight Hundred Only) by way of RTGS/NEFT, as the cost of downloading the Bidding Documents (“**Document Fee**”). The payment shall be made in the following account:

A/C No: 11143631170

In favour of: Syama Prasad Mookerjee Port, Kolkata.

Bank Name: State Bank of India, Specialised Institutional Banking,
Kolkata

Type of A/C: Current Account

Branch: Samriddhi Bhawan, 4th floor,1, Strand Road, Kolkata 700001

IFSC: SBIN0014524

For the avoidance of doubt, no exemption from payment of Document Fee is permitted. Further, a scanned attested copy of the receipt of payment of the Document Fees shall be uploaded by the Bidder along with its Technical Bid on the e-Procurement Portal and the hard copy of such receipt shall also be submitted along with the physical submission of the Technical Bid.

- 1.1.2.2 Eligibility and qualification of the bidder (The “**Bidder**”, which expression shall, unless repugnant to the context, include the members of the Consortium) will be first examined based on the details submitted (“**Technical Bid**”) with respect to eligibility and qualifications criteria prescribed in this RFP. The financial bid submitted online (“**Financial Bid**”) of only those Bidders whose Technical Bids are substantially responsive to eligibility and qualifications requirements as per this RFP shall be opened. For avoidance of doubt, it is clarified that Financial Bid has to be submitted online only. No physical hard copy of Financial Bid is to be submitted by the Bidders. In case a bidder submits Financial Bid in hard, its bid shall be liable for rejection.

GOI has issued guidelines (see Annexure VI of Appendix-IA of RFP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. The Authority shall be entitled to disqualify

any Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process.

Bidder must follow the server time that is being displayed on bidder's dashboard at the top of the e-Procurement Portal, which shall be considered valid for all actions of requesting, bid submission and bid opening etc.

- 1.2.2 Interested bidders are being called upon to submit their Bid in accordance with the terms specified in this Bidding Document. The Bid shall be valid for a period of 120 days from the Bid Due Date.
- 1.2.3 The complete Bidding Documents including the Concession Agreement for the Project is enclosed for the Bidders. The aforesaid documents and any addenda issued subsequent to this RFP will be deemed to form part of the Bidding Documents.
- 1.2.4 The Bidder is required to deposit, along with its **Bid, a Bid Security of Rs. INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only)** (the "**Bid Security**"), refundable not later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have to provide Bid Security in the form of a bank guarantee from a nationalized bank in India (defined hereafter) at Kolkata, West Bengal which is acceptable to the Authority. The bank guarantee to be provided shall have a validity period not less than 180 (one hundred and eighty) days from the Bid Due Date, exclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected, if it is not accompanied by the Bid Security. The format for Bank Guarantee has been provided in Appendix- II of this RFP. It is hereby instructed that the Bidders are to submit a scanned copy of the Bid Security along with the soft copy submission of the Technical Bid on the e-Procurement Portal. The Bidder(s) shall also submit the original Bid Security (in the form of Bank Guarantee as per the format prescribed in this RFP) in hard copy before Bid Due Date.
- 1.2.5 The Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the contract including implementation of the Project.
- 1.2.6 As part of the Bidding Documents, the Authority will provide a Concession Agreement prepared by the Authority and such other information pertaining/relevant to the Project available with it.
- 1.2.7 **Bid Parameter and Commercial Arrangements**

A. Financial Bid shall be invited under the RFP on the basis of the highest percentage of gross revenue share of the Gross Revenue (“**Gross Revenue Share**”) offered to be paid to the Authority by the Concessionaire during the Concession Period in the manner set out herein. The Gross Revenue Share shall be payable on a monthly basis during the Concession Period commencing from the commercial operation date of Phase 1 or 4 years 6 months from appointed date (whichever is earlier) of the Project, as defined in the draft Concession Agreement. The Concession Period is pre-determined, as indicated in the Concession Agreement. The Gross Revenue Share shall constitute the sole criteria for shortlisting the qualified and responsive Bidder. Subject to Clause 2.15, the Project will be awarded to the Bidder quoting the highest Gross Revenue Share. The Gross Revenue Share for a month shall be paid by seventh day of immediately succeeding month, and shall be subject to verification and reconciliation on a quarterly, semi-annual or annual basis, as required by the Authority in its discretion.. In this RFP, the term "**Highest Bidder**" shall mean the Bidder who is offering the highest Gross Revenue Share.

B. Lease Rent & Upfront Lease Rent:

The Concessionaire shall pay to the Authority an annual lease rent (the “**Lease Rent**”) equivalent to a sum of **INR 2,86,00,000/-** (Rupees Two Crore Eighty Six Lakhs only)² in consideration of the leasehold right being vested in accordance with the terms of Land Lease Agreement, commencing from the Appointed Date. The Lease Rent shall be subject to annual escalation at the rate of 4% and shall, commencing from 1st anniversary of the Appointed Date be paid at an escalated rate (i.e. escalated at 4% on the last paid amount of Lease Rent).

Without prejudice to the foregoing, the Lease Rent shall be payable in the manner as set out below:

- (a) For the first 5 (five) years from the Appointed Date, the Lease Rent shall be payable in accordance with this Clause 26.1.1. at end of each year within 60 days of closing of preceding year till the 5th anniversary of the Appointed Date.
- (b) Thereafter, beginning from the 6th (sixth) year of the Appointed Date, the Concessionaire shall pay within 60 days from the 5th anniversary of the Appointed Date, Lease Rent in advance in one tranche for the next 5 (five) years at the beginning of each 5 (five) year tenure during the remaining Concession Period.

For avoidance of doubt, it is further clarified that, the Concessionaire shall simultaneously pay both: the Lease Rent i.e., (i) the annual Lease Rent payable at end of 5th year of the Appointed Date and (ii) the Lease Rent payable in advance in one tranche for the next 5 (five) years at the beginning

² The Lease Rent is tentative and shall be computed as per prevailing SOR at the time of Appointed Date

of 6th year of the Appointed date within 60 days from the 5th anniversary of the Appointed Date.

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C. Additional Lease Rent

The Concessionaire shall pay to the Authority lease rent for Additional Land (the “Additional Lease Rent”) at the rate equivalent to 1.25 times then the prevailing/applicable SOR, commencing from the date of execution of the Land Lease Agreement for Additional Land. The payment mechanism stipulated in Clause 1.2.7 B shall apply, mutatis mutandis, to the payment of Additional Lease Rent.

D. The Selected Bidder shall issue and allot a Golden Share (as defined under the Concession Agreement and Shareholders Agreement, to mean and include one non- transferable equity share with specified rights, as enumerated under aforesaid Agreements) in the paid up equity capital of the Concessionaire, to the Authority, which the Authority shall hold and own at all time during the Concession Period (as defined in the Concession Agreement) along with such rights as expressly provided under the said Agreements ("**Golden Share**").

E. Concession Fee: In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “Concession Fee”) a sum of INR 1/- (Rupee One) per annum for the Concession Period. The Concessionaire shall pay the Concession Fee in respect of the entire Concession Period, prior to Appointed Date. In the event of earlier termination of this Agreement for any reason whatsoever, no amounts paid by way of Concession Fee shall be refundable to the Concessionaire.

F. For the purpose of this RFP:

“**Gross Revenue**” means all pre-tax gross revenues of the Concessionaire at any time from the date of commercial operation of Phase 0 up to the Transfer Date, computed on monthly basis, as defined in the Concession Agreement, and shall include any monies received from sub-licensees and other persons, by the Concessionaire as deposits (refundable or otherwise) but shall exclude the following:

- (a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire has incurred or will incur an

expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;

- (b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and
- (c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular Concession year provided these pertain to past deposits on which the Gross Revenue Share has been paid to the Authority.

It is expressly clarified that:

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

G. [The Selected Bidder as Condition Precedent shall pay to Authority onetime amount which shall be notified in terms of LOA against the existing Equipment i.e., handed over to the Selected Bidder in accordance with terms of the Agreement. The Parties agree and understand that the payable amount notified under the LOA is be based on the valuation undertaken by the Authority in respect of the equipment i.e., been handed over along with Existing Hospital. For avoidance of doubt, it is clarified that since, the Existing Hospital is an operational hospital and based on requirement, the Authority may procure new equipment before Appointed Date, cost of which shall be recovered from the Selected Bidder on actual basis. It is clarified that the indicative cost of the equipment shall be approximately Rs. 3.5 Crores (Rupees Three Crores Fifty

Lakh Only), however, actual cost shall be based on the valuation undertaken by the Authority.

1.2.8 The Concessionaire shall be entitled to levy and charge user fee/fee from the patients of the Project as below:

- A. The Authority shall reimburse the Concessionaire for treatment of the SMP beneficiaries at Central Government Health Scheme ('CGHS') rates for Kolkata as applicable from time to time in accordance with the provision of the Concession Agreement;
- B. The Authority may refer and shall reimburse for Select Patients, as defined in the Concession Agreement, from time to time as part of CSR initiative (not binding on SMP) at CGHS rates as applicable in Kolkata from time to time; and
- C The Concessionaire shall provide 20% discount on medicine for SMP Beneficiaries on Maximum Retail Price for such medicine.
- D. The Concessionaire shall be allowed to charge market rates from other patients, including private patients; and
- H. [The Concessionaire shall be allowed to charge student(s) in case the Concessionaire develops the medical college in the Authority's campus in accordance with the Concession Agreement and applicable guidelines as issued by National Medical Commission (NMC) from time to time or equivalent authority.]

1.2.9 Generally, the Highest Bidder shall be the Selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Section 3 of this RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest Bidder, the Authority may, in its discretion, either invite fresh Bids from the all Bidders or annul the Bidding Process.

1.2.10 Other details of the process to be followed under this Bidding Process and the terms thereof are laid down in this RFP.

1.2.11 Any queries or request for additional information concerning this RFP shall be submitted through e-mail to the officer designated in Clause 2.11.5 below. The e-mail shall clearly bear the following subject:

"Queries/Request for Establishment of 300 Bedded Super Specialty Hospital with an Option to Further Develop a Medical College and Further Expansion of Hospital on PPP ".

The pre-bid queries should be submitted in the format specified below to be considered for response and they should be submitted in MS-Excel format. Pre-

bid queries not submitted in the prescribed format shall not be responded to:

S. No.	Page No.	Part of RFP	Clause No.	Text provided in RFP	Clarification sought with justification, if any

1.3. Schedule of e-Procurement Activities

The Authority shall endeavour to adhere to the following schedule. However, the Authority may, at its own discretion, revise or extend any of the timelines set out in this schedule.

SN	Event Description	Date
1	Period of Sale of Bidding Documents online at . - https://smpk.enivida.in	[11.03.2022]
2	Last date for receiving queries	[01.04.2022; 5:00 PM]
3	Pre-Bid meeting (venue to be intimated by SMP through further notices)	[04.04.2022; 3:00 PM]
4.	Last date for reply to the queries	[13.04.2022; 5:00 PM]
5	Bid due Date	[04.05.2022; 5:00 PM]
6	Hard Copy Submission : To: Chief Medical Officer SYAMA PRASAD MOOKERJEE PORT, KOLKATA, CENTENARY HOSPITAL, Block A, 1, Diamond Harbour Road, Uttar Raypur, New Alipore, Kolkata, West Bengal 700053	[05.05.2022; 5:00 PM]
7	Opening of Bids	[06.05.2022; 3:00PM]
8	Letter of Award (LOA)	Shall be intimated to short listed bidder
9	Validity of Bids	120 days from bid due date
10	Signing of Concession Agreement	45 days from the issuance of LOA

SECTION-2

INSTRUCTION TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

- 2.1.1 No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2 An international Bidder bidding individually or as a member of a Consortium shall ensure that power of attorney is legalised/ apostilled by appropriate authority, notarized in the jurisdiction where the power of attorney is being issued and requirements under the Indian Stamp Act, 1899 are duly fulfilled.
- 2.1.3 Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Concession Agreement shall have meaning assigned thereto in the Concession Agreement.
- 2.1.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Draft Concession Agreement shall have an overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.
- 2.1.5 The Bid shall be furnished in the format prescribed in this RFP. The Technical Bid shall be as per Appendix IA and the Financial Bid (to be submitted online only) shall be as per Appendix IB of the RFP. The Financial Bid shall be indicated clearly in figures as per the format provided in Appendix IB and shall be signed by the Bidder's authorised signatory.
- 2.1.6 The Bidder shall deposit a **Bid Security of INR 2,02,00,000 /-** (Rupees Two Crores Two Lakhs only) for the Project, in accordance with the provisions of this RFP. The Bidder has to provide the Bid Security in the form of a Bank Guarantee, acceptable to the Authority, as per format at Appendix-II.
- 2.1.7 The validity period of the Bank Guarantee shall not be less than 180 (One Hundred Eighty) days from the Bid Due Date with a claim period of 60 (Sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable not

later than 180 (one hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder, who's Bid Security shall be retained till the Selected Bidder has provided the Performance Security under the Concession Agreement.

- 2.1.8 The Bidder should submit a power of attorney as per the format as specified in Appendix-III, duly supported by a charter document or board resolution in favour of executant authorizing the signatory of the Bid to commit the Bidder.
- 2.1.9 In case the Bidder is a Consortium, the members thereof should furnish a power of attorney in favour of any member, which member shall thereafter be identified as the Lead Member, in the format as specified in Appendix – IV³, duly supported by a charter document or board resolution in favour of executant. In case the Bidder is a Consortium, Joint Bidding Agreement in the format as specified in Appendix V shall be submitted by the Bidder.
- 2.1.10 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 2.1.11 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.
- 2.1.12 The Bidding Documents including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.12 shall also apply *mutatis mutandis* to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided along therewith.
- 2.1.13 This RFP is not transferable.
- 2.1.14 Any award of Project pursuant to this RFP shall be subject to the terms of Bidding Documents.
- 2.1.15 A Bidder may either be a company incorporated under the Companies Act in force in India or the applicable laws of the jurisdiction of its origin, or be a

³ In case of a Consortium, the Members should submit a Power of Attorney in favour of the any Member as per the format as Appendix-IV. Such Member shall thereafter be identified as the Lead Member. The Lead Member should submit a power of Attorney as per the format in Appendix-III, authorising the signatory of the Application. Members of the Consortium of need not submit Power of Attorney as per the format at Appendix-III, authorising the signatory of the Application.

society or a trust incorporated under applicable governing laws or partnership registered under the relevant laws of incorporation or any other entity or any combination of them, Whether the Bidder is a single entity or consortium of entities, it shall be required to form an appropriate Special Purpose Vehicle (SPV), prior to the execution of the Concession Agreement, under the Indian Companies Act 2013 (including all the rules and regulations made thereunder), to act as the Concessionaire and execute the Concession Agreement and implement the Project. In case the Selected Bidder is a Consortium, it shall, in addition to forming an SPV, comply with the following additional requirements:

- (a) number of members in a Consortium shall not exceed 3 (three). However, none of the members in a Consortium should be under any sort of ineligibility under the Bidding Documents;
- (b) subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix-IV, signed by all the other members of the Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) an individual Bidder cannot at the same time be a member of any other Consortium applying for RFP. Further, a member of a particular Consortium cannot be a member of any other Consortium applying for RFP;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall enter into a binding Joint Bidding Agreement, in the form specified at Appendix-V (the “**Joint Bidding Agreement**”), for the purpose of submitting a Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, inter alia:
 - (i) convey the intent to form an SPV, solely for the purpose of domiciling the Project and no other purpose, with shareholding/ ownership equity commitment(s) in accordance with this RFP,

which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;

- (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
 - (iii) commit the minimum equity stake to be held by each member;
 - (iv) commit that each of the members, whose experience will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, for a period of 2 (two) years from the date of commercial operation of Phase 0 of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement;
 - (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until the second anniversary of the commercial operation date of Phase 0 of the Project; and
 - (vi) include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Financial Close of the Project is achieved in accordance with the Concession Agreement.
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Joint Bidding Agreement without the prior written consent of the Authority.

2.1.16 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit a Bid, either individually or as member of a Consortium.

2.1.17 A Bidder including any Consortium member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium member or

Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium member or Associate.

Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.1.17 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

- 2.1.18 In computing the Technical Capacity and Net Worth of the Bidder/ Consortium members under Clauses 2.2.2 (A) and 2.2.2 (B), the Technical Capacity and Net Worth of their respective Associates would also be eligible hereunder.

For purposes of this RFP, the term Associate and “Control” shall have the meaning given to it in the Explanation of Clause 2.2.1.

It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium member shall be provided to demonstrate that a person is an Associate of the Bidder or the Consortium as the case may be.

- 2.1.19 The following conditions shall be adhered to while submitting a Bid:

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent member if the Bidder is a Consortium) must apply to the Bidder, member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;

- (c) in responding to the RFP submissions, Bidders should demonstrate their capabilities in accordance with Section 3 below; and
- (d) in case the Bidder is a Consortium, each member should substantially satisfy the RFP requirements to the extent specified herein.

2.1.20 Without prejudice to the provisions of Clause 2.2.1A, the Bidders shall comply with the following provisions:

- (a) where, on the date of the Bid, not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital in a Bidder or its member is held by persons resident outside India or where an Bidder or its member is controlled by persons resident outside India; or
- (b) if at any subsequent stage after the date of the Bid, there is an acquisition of not less than 25% (twenty five percent) of the aggregate issued, subscribed and paid up equity share capital or control, by persons resident outside India, in or of the Bidder or its member; then the eligibility of such Bidder shall be subject to approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.

The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.

The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

While evaluating applications, regard will be paid to national defence and security considerations.

Offer received from any Bidder may be summarily rejected on national security consideration without any intimation thereof to the bidder.

The Bidders will be obliged to protect the national interests like national security whenever necessary and required, and also honour priority orders of Central Government, in this regard. The Bidders will also abide by the various statutory requirements on the protection of the environment, anti-pollution measures, safety, conservancy etc., and also abide by the directives issued by the Government of India and Syama Prasad Mookerjee Port, Kolkata in this regard from time to time.

- 2.1.21 Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 5 (five) years preceding its latest financial year. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

2.2 Eligibility and qualification requirements of Bidder

- 2.2.1 For determining the eligibility of Bidder the following shall apply:

- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) Bidder may be a permitted entity or any combination of them with a formal intent to enter into a Joint Bidding Agreement or under an existing agreement to form a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.1.15.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate 5% (five percent) of the value of the Bid Security or equivalent amount from the Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/or the Concession Agreement or otherwise. Without

limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- (i) The Bidder, its member or Associate (or any constituent thereof) and any other Bidder, its member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the shareholding of a Bidder, its member or an Associate thereof (or any shareholder thereof having a shareholding of more than 25% (Twenty five percent) of the paid up and subscribed capital; of such Bidder, member or Associate, as the case may be) in the other Bidder, its member or Associate, is not more than 25% (Twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in Section 2(72) of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% (Twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or
- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
- (iii) such Bidder, its member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its member or any Associate thereof; or

- (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v) such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or
- (vi) such Bidder or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/Consortium member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium member (the “**Associate**”). 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 percent) 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 by operation of law.

- (d) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder or Concessionaire, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification

shall not apply where such adviser was engaged by the Bidder, its member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of RFP for the Project. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of commercial operation of the Project.

Provided that, in case the Authority seeks information / clarification from a Bidder related to occurrence / non-occurrence of Conflict of Interest and the Bidders fails to provide such information within a reasonable time, the Authority shall disqualify the Bidders and encash the Bid Security as per Clause 2.19.6 and further debar it from participation in any future procurement process for a minimum period of 1 (one) year.

2.2.1A While qualification is open to persons from any country, the following provisions shall apply:

Any Bidder from a country which shares a land border with India will be eligible to bid in this tender only if the bidder is registered with the Competent Authority as provided in the Order (Public Procurement No. 1) dated 23rd July 2020 issued by the Ministry of Finance, Department of Expenditure Public Procurement Division. Provided further that the Selected Bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority as provided in the aforesaid Order. It is however clarified that, as mentioned in Annex 2 of the aforesaid Order, the restriction contained in this clause will not apply to Bidders from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. The updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs.

"Competent Authority" for the purpose of this clause means the Authority defined in Annex 1 of the Order (Public Procurement No. 1) dated 23rd July 2020 issued by the Ministry of Finance, Department of Expenditure Public Procurement Division.

"Bidder from a country which shares a land border with India" for the purpose of this clause means: -

- a. An entity incorporated, established or registered in such a country; or
- b. A subsidiary of an entity incorporated, established or registered in such a country, or
- c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
- d. An entity whose beneficial owner is situated in such a country; or
- e. An Indian (or other) agent of such an entity; "agent" for the purposes of this RFP shall mean a person employed to do any act for another, or to represent another in dealings with third person; or
- f. A natural person who is a citizen of such a country, or

g. A consortium or joint venture where any member of the consortium or joint venture falls under any of the above categories.

The “beneficial owner” for the purpose of (d) above will be as under:

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation –

a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company,

b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements,

2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals.
4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.
5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

2.2.2 To be eligible for this RFP a Bidder shall fulfil the following conditions of eligibility:

- (A) **Technical Capacity:** For demonstrating technical capacity and experience, the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have either Option A or Option B (the "**Technical Capacity**"):

Option A

- (i) Operating at least one (1) 240 bedded super-specialty hospital; or
- (ii) Operating two (2) 150 bedded super-specialty hospitals; or
- (iii) Operating three (3) 120 bedded super-specialty hospitals.

Further, the Bidder, for at least one of the hospitals for which experience is being claimed, must have an experience of operating and maintaining a NABH or JCAHO or JCI accreditation.

For the purpose of this RFP as per “Clinical Establishment Act Standards for Hospital (Level 3)”, super specialty Hospital shall be Hospital Level 3 (Non – Teaching) Super Specialty Services –

This Level may include all the services provided at level I (A), I (B), and 2 and services of one or more or the super specialty with distinct department and / or also dentistry, if available. It will have other support systems required for services like pharmacy laboratory and imaging facility, operation theatre etc.

OR

Option B

Must have experience of operating recognized Medical College with Hospital for the past five financial years preceding the Bid Due Date duly recognized by National Medical Commission.

The Bidder shall provide documentary evidence by way of Statutory Auditor’ /Chartered Accountant’s certificate and/or client certificate and/or agreement copy and/or Letter of Award as the case may be in support of the Technical Capacity as specified in this Clause. Such documentary evidence shall be duly signed by the whole-time director of the single Bidder or a Member of the Consortium (whose Technical Capacity was taken into consideration for the purposes of technical qualification under and in accordance with the RFP), as the case may be.

(B) Financial Capacity:

The Bidder shall have:

(i) Net Worth (*as defined hereinafter*) of Rs. 50,50,00,000/- (Rupees Fifty Crores Fifty Lakhs only) at the close of the preceding financial year; and

(ii) Positive Net Cash Accruals for last three financial years preceding the Bid Due Date.

The financial capacity mentioned above shall be referred to as the “**Financial Capacity**”.

For the purposes of this RFP, net worth (the “**Net Worth**”) shall mean:

- a) In case of a company, it shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.
- b) In case of a trust or a society, it shall mean the sum of available corpus and reserves.
- c) in case the Bidder is any other entity - the aggregate value of the paid up capital and reserves of such entity, after deducting the aggregate value of the intangible assets.

For the purposes of this RFP, in case the Bidder is a company, **Net Cash Accruals** shall mean Profit after Tax + Depreciation, in case the Bidder is a Society or Trust, Net Cash Accruals shall mean Excess of income over Expenditure + Depreciation.

In case of a Consortium, the combined technical capacity and Net Worth of those Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of Phase 0 of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.

2.2.3 The Bidders shall enclose with its Technical Bid, to be submitted as per the format at Appendix-IA, complete with its Annexures, the following:

- (i) Certificate(s) from statutory auditors along with the certificate of incorporation or equivalent of the Bidder or its Associates or the concerned client(s) stating the technical experience of the Bidder, as the case may be, during the past 5 (five) years in respect of the Projects specified in paragraph 2.2.2 (A) above.; and
- (ii) Certificate(s) from statutory auditors of the Bidder or its Associates specifying the Net Worth and Net Cash Accruals of the Bidder, as mentioned in 2.2.2 (B) and also specifying that the methodology adopted for calculating such Net Worth conforms to the provisions of this Clause 2.2.3 (ii).
- (iii) In case the Bidder is in the nature of a public charitable trust (either as a single entity or as a part of a Consortium), and is required to submit a certificate as per applicable laws, it shall mandatorily provide along with the submission of its Technical Bid a certificate from the Charity Commissioner/competent authority

under applicable laws, approving and permitting such Selected Bidder to undertake the Project, fulfil its obligations under the Concession Agreement, invest and hold such portion of equity share capital in the SPV/Concessionaire as is required in accordance with terms of the RFP and the Bidding Documents. Upon the formation of the Concessionaire/SPV, it shall be ensured that the Concessionaire/SPV transfers the Golden Share to the Authority in accordance with the terms set out in this RFP and the Concession Agreement.

For the avoidance of doubt, if the Bidder which is in the nature of a public charitable trust does not submit the certificate as mentioned above, the Technical Bid shall be treated as non-responsive.

2.3 Proprietary data

All documents and other information supplied by the Authority or submitted by a Bidder to the Authority shall remain or become the property of the Authority. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

2.4 Number of Bids and Cost of Bidding

- 2.4.1 No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.
- 2.4.2 The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

- 2.5.1 Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water & other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders are advised to visit the site and familiarise themselves with the Project within the stipulated time of submission of the Bid. No extension of time is likely to be considered for submission of Bids.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5.1 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Authority shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, including any error or mistake therein or in any information or data given by the Authority.

2.6 Verification and Disqualification

2.6.1 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.6.2 The Authority reserves the right to reject any Bid and appropriate the Bid Security if:

- (a) at any time, a material misrepresentation is made or uncovered, or
- (b) the Bidder does not provide, within the time specified by the Authority, the supplemental information sought by the Authority for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each member of the Consortium may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to annul the Bidding Process and invites fresh Bids.

- 2.6.3 In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by the Authority, that one or more of the eligibility and /or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or the SPV has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Authority to the Selected Bidder or the Concessionaire, as the case may be, without the Authority being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under this RFP, the Bidding Documents, the Concession Agreement or otherwise.

B. DOCUMENTS

2.7 Contents of the RFP

- 2.7.1 This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for BIDs

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

Appendices

IA Letter comprising the Technical Bid including Annexures I to VI

IB Letter comprising the Financial Bid

II. Bank Guarantee for Bid Security

III. Power of Attorney for signing of Bid

IV. Power of Attorney for Lead Member of Consortium

V. Joint Bidding Agreement for Consortium

VI. Integrity Pact

VII. Check List

- 2.7.2 The Concession Agreement provided by the Authority as part of the Bidding Documents shall be deemed to be part of this RFP.

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority through e-mail in accordance with Clause 1.2.11. They should send in their queries before the date mentioned in the Schedule of e-Procurement Activities specified in Clause 1.3. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The Authority may forward all the queries and its responses thereto, to all Bidders without identifying the source of queries and shall also upload the responses on the e-Procurement Portal.
- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.
- 2.8.4 To facilitate evaluation of the Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) may without prejudice include clarifications with respect to minor deviations found in the Bid and shall be provided within the time specified by the Authority for

this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

- 2.8.5 If a Bidder does not provide clarifications sought under Clause 2.8.4 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any Addendum issued hereunder will be in uploaded on the e-Procurement Portal
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.
- 2.9.4 The Bidders who have downloaded the Bidding Documents are advised to regularly check for amendments/corrigendum/clarifications, if any issued by the Authority and which shall form part and parcel of the Bidding Documents. Such amendments /corrigendum/clarifications will be posted on the e-Procurement Portal and Syama Prasad Mookerjee Port, Kolkata website [<https://kopt.enivida.in/>]. Any ignorance on the part of the Bidder in not checking the e-Procurement Portal will not be an excuse and the Authority not be responsible if any Bidder omits to notice any amendments/corrigendum/clarification.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all the information sought under this RFP and upload the same on the e-Procurement Portal as a part of its online submission of Bid as well as by way of physical submission of original copy of the Enclosures to Bid to the Authority. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects and which are submitted on the e-procurement portal on or prior to the Bid Due Date.

Incomplete and /or conditional Bids or not submitted online on e-procurement portal shall be rejected.

- 2.10.2 The Bidders shall submit both the Technical Bid as well as the Financial Bid, along with all the annexures thereto, on the e-Procurement Portal. Each page of the Bid shall bear the digital signature of the Bidder. The Bidders shall sign their Bids using Class III - Digital Certificates, issued from any agency authorized by Controller of Certifying Authority (CCA), Government. of India, upon uploading the soft copy of the Technical Bid to the e-Procurement Portal. In case of the Bidder being a Consortium, the Lead Member shall sign each page of the Bid using Class III DSC only.

Bidders shall note that the very act of using DSC for downloading the tender document and thereafter uploading their Bids shall be deemed to be a confirmation that they have read all sections and pages of the Bidding Documents without any exception and have understood the complete Bidding Documents and are clear about the requirements herein.

While submitting the Bids online, the Bidder shall read the terms & conditions of the e-Procurement Portal and accepts the same in order to proceed further to submit their Bid.

Bidders must get ready in advance the bid documents to be submitted as indicated in this RFP in PDF/xls/rar/zip/dwf formats.

- 2.10.3 After the bid submission, the Bidders shall take print out of system generated acknowledgement number and keep it as a record of evidence for online submission of Bid.
- 2.10.4 Bidder must follow the server time that is being displayed on Bidder's dashboard at the top of the e-Procurement Portal, which shall be considered valid for all actions of requesting, bid submission and bid opening etc., in the e-tender system.
- 2.10.5 All the documents being submitted by the Bidders would be encrypted to ensure the secrecy of the data. The data entered cannot be viewed by unauthorized persons until the time of bid opening.
- 2.10.6 The Bidders shall also be required to submit a hard copy of the following documents ("**Enclosures to Bid**"):
- a. Proof/ Receipt of RTGS/ NEFT payment, as the case may be for Document Fee;

- b. Power of Attorney for signing of Bid in the prescribed format (Appendix – III) supported with board resolution / charter document in favour of executant;
- e. If applicable, the Power of Attorney for Lead Member of Consortium (Appendix – IV) supported with board resolution / charter document in favour of executant.
- f. Bid Security in the form of a bank guarantee, as per format in Appendix- II;
- g. Joint Bidding Agreement (in case of Consortium) (Appendix – V);

For the avoidance of doubt, the scanned copy of the abovementioned documents shall also be submitted with the Technical Bid on the e-Procurement Portal.

The hard copy of the Enclosures to Bid shall be typed and signed in indelible blue ink by the authorized signatory of the Bidder who shall initial every page. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialled by the person(s) signing the Bid. For avoidance of doubt, no hard copy of Financial Bid shall be submitted.

- 2.10.7 Financial Bid shall be submitted online as per the format given in Appendix-IB, Bidders shall download the Bill of Quantity (BOQ), in xls format and save it without changing the name of the file. Bidder shall quote their rates in figures only in the green background cells, thereafter save and upload the file along with the submission of the Financial Bid only. The Bidders are cautioned that while uploading of the Financial Bid, Macros in .xls must be enabled to see the word representation of figures.

2.11 Documents comprising Technical and Financial Bid

- 2.11.1 The Bidder shall submit the Technical Bid, both online as well as physical hard copy of Enclosures to Bid. **The Financial Bid shall be submitted online only.** There shall be no physical hard copy submission of the Financial Bid under any circumstance.

The Technical Bid shall comprise of the following documents along with supporting documents as appropriate:

Technical Bid

- (a) Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents.
- (b) Power of Attorney for signing the Bid as per the format at Appendix-III;
- (c) if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;
- (d) if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;
- (e) copy of the certificate of incorporation or equivalent.

- (f) copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 3 years;
- (g) Bid Security of INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only in the form of Bank Guarantee in the format at Appendix-II from a nationalized bank;
- (h) Integrity Pact as per the Format at Appendix VI duly signed by the Authorized Signatory, which shall form part of Concession Agreement;
- (i) copy of the receipt towards payment of the Document Fee by way of NEFT/RTGS, in accordance with Clause 1.2.1; and
- (j) Copy of certificate received from Charity Commissioner (if applicable), please refer Clause 2.3.1 (iii)
- (j) Duly completed checklist as per the format provided in Appendix-VII.

For the avoidance of any doubt, scanned copies of the abovementioned documents shall be uploaded online on the e-Procurement Portal on or prior to the Bid Due Date.

Financial Bid

The Financial Bid, which shall be uploaded online (no hard copy submission), shall consist of the following particulars:

- (i) Appendix-IB (Letter comprising the Financial Bid)
- (ii) Bill of Quantities (BOQ) as provided in the e-Procurement Portal

2.11.2 The Technical Bid shall be submitted online and uploaded on the e-Procurement Portal. The Bidder shall also provide one physical hard copy of the Enclosures to Bid in accordance with the terms provided in this RFP. For the online submission, each page of the Technical Bid, including the annexures thereto, shall bear the digital signature of the Bidder. The Bidders are required to sign their Bids using Class III - Digital Certificates at the time of uploading the soft copy of the Technical Bid. In case of a Consortium, the digital signature of the Lead Member shall be affixed to every page of the Technical Bid and all annexures thereof. The scanned copy of documents, mentioned above in Clause 2.11.1, comprising of the Technical Bid shall be uploaded online in proper resolution.

2.11.3 The hard copy of the Enclosures to Bid consisting of the documents listed at Clause 2.11.1 shall be placed in an envelope bearing **"Technical Bid for Establishment of 300 Bedded Super Specialty Hospital with an Option to Further Develop a Medical College and Further Expansion of Hospital on PPP "** and shall clearly indicate the name and address of the Bidder.

2.11.4 The Financial Bid shall be submitted online only on the e-Procurement Portal. The Financial Bid shall not be submitted physically in hard copy. Any submission of

Financial Bid in hard copy shall lead to the Bid being rejected in its entirety and declared as non-responsive. Each page of the Financial Bid shall bear the digital signature of the Bidder. The Bidders are required to sign their Bids using Class III DSC only. In case of a Consortium, the digital signature of the Lead Member shall be affixed to every page of the Financial Bid.

- 2.11.5 The original hard copy of the Enclosures to Bid shall be addressed and submitted on or before Bid Due Date at the following address:

DESIGNATION:	Chief Medical Officer
ADDRESS:	Syama Prasad Mookerjee Port, Kolkata Port Centenary Hospital, D. H. Road, Kolkata 700 053
TELEPHONE NO:	+91- 98362 98634
E-MAIL ADDRESS:	cmo@kolkataporttrust.gov.in

- 2.11.6 If the envelope containing the hard copy of the Enclosures to Bid is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Technical Bid submitted and consequent losses, if any, suffered by the Bidder.

- 2.11.7 In the event of any discrepancy between the soft copy/scanned copy of the Enclosures to Bid uploaded to the e-Procurement Portal and the hard copy of the same, the soft copy/scanned copy will prevail provided, however, that regardless of anything to the contrary, in case of legal documents and financial instruments, the hard copy shall prevail over the soft copy.

- 2.11.8 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and will be rejected.

2.12 Bid Due Date

Technical & Financial Bid comprising of the documents listed at Clause 2.11.1 of the RFP shall be submitted online on or before the Bid Due Date in the manner and form as detailed in this RFP.

2.13 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14 Procedure for tendering

2.14.1 Submission of Bids:

- 2.14.1.1 The Bidder shall submit the Technical Bid online on the e-Procurement Portal on or prior to the Bid Due Date. The Bidder shall also submit a hard copy of the Enclosures to Bid in the manner specified in this Bid Document in Clause 2.10.6, a receipt thereof should be obtained from the person specified at Clause 2.11.5.
- 2.14.1.2 The Bidder shall upload the Financial Bid only on the e-Procurement Portal on or prior to the Bid Due Date. The Authority shall not entertain any physical submission of the Financial Bid. Any physical submission of the Financial Bid shall lead to the rejection of the Bid as being non-responsive.
- 2.14.1.3 The Bidder will receive a system generated acknowledgement of its Bid submission on the e-Procurement Portal to confirm successful uploading of its Bid.

2.14.2 Substitution and Withdrawal of Bids

- 2.14.2.1 The Bidder may substitute or withdraw its Bid after submission at any time prior to the specified time on the Bid Due Date on the e-Procurement Portal. No Bid will be substituted or withdrawn by the Bidder on or after the specified time on the Bid Due Date.
- 2.14.2.2 If the Bidder substitutes or withdraws its Bid after submission at any time prior to the specified time on the Bid Due Date on the e-Procurement Portal, then the hard copy of the original Enclosures to Bid will be returned unopened.

2.15 Rejection of Bids

- 2.15.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.15.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.16 Validity of Bids

The Bids shall be valid for a period of not less than 120 (One hundred and Twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Authority.

2.17 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to, or matters arising out of, or concerning the Bidding Process. The Authority will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. The Authority may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Authority or as may be required by law or in connection with any legal process.

2.18 Correspondence with the Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. Bid Security

2.19 Bid Security

- 2.19.1 The Bidder shall furnish as part of its Bid, a Bid Security in the form of a bank guarantee issued by nationalized bank in India, having a net worth of at least 2,02,00,000 /- (Rupees Two Crores Two Lakhs only), in favour of the Authority in the format at Appendix-II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (one hundred eighty) days from the Bid Due Date and a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. The Bank Guarantee must be enforceable in Kolkata.

For the avoidance of doubt, “**National Bank**” shall mean a bank as defined under Section 2(ccc) of the Reserve Bank of India Act, 1934.

- 2.19.2 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive. As part of the Bidding Process and for the

avoidance of any confusion, the Bidder shall submit a scanned copy of the Bid Security along with online submission of the Technical Bid.

- 2.19.3 Save and except as provided in Clause 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 180 (one hundred and eighty) days from the Bid Due Date.
- 2.19.4 The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.19.5 The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.19.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.19.6 The entire Bid Security shall be forfeited and appropriated by the Authority as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise under the following conditions:
- a) If a Bidder submits a non-responsive Bid;

Subject however that in the event of encashment of Bid Security occurring due to operation of para 2.19.6 (a), the Damage so claimed by the Authority shall be restricted to 5% (five percent) of the value of the Bid Security.
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
 - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;

- d) In the case of Selected Bidder, if it fails within the specified time limit–
 - i) to sign and return the duplicate copy of LOA;
 - ii) to sign the Concession Agreement; or
 - iii) to furnish the Performance Security within the period prescribed therefore in the Concession Agreement;
- e) In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

SECTION-3

EVALUATION OF TECHNICAL BIDS AND OPENING & EVALUATION OF FINANCIAL BIDS

3.1 Opening and Evaluation of Technical Bids

- 3.1.1 The Authority shall open the soft copy of the Technical Bids online on the e-Procurement Portal at a time specified by the Authority on the date specified in Clause 1.3 and at the place specified in Clause 2.11.5 and in the presence of the Bidders and their authorized representatives who choose to attend.
- 3.1.2 The Authority will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.
- 3.1.3 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

- 3.2.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is substantially responsive to the requirements of this RFP. A Technical Bid shall be considered substantially responsive only if it conforms to all the below-mentioned requirements without any material deviation or reservation:
 - (a) Technical Bid is received as per the format at Appendix-IA including Annexure I to V;
 - (b) Technical Bid is received on or before the Bid Due Date
 - (c) Technical Bid is accompanied by the Bid Security as specified in Clause 2.1.6 and 2.1.7;
 - (d) Technical Bid is accompanied by the Power of Attorney as specified in Clauses 2.1.8;
 - (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium and the Joint Bidding Agreement as specified in Clause 2.1.9, if so required;
 - (f) Technical Bid is accompanied by Integrity Pact as per the Format at Appendix VI duly signed by the Authorized Signatory, which shall form part of the Concession Agreement;
 - (g) Technical Bid contain all the information (complete in all respects) required in this RFP and/or Bidding Documents (in formats same as those specified);
 - (h) Technical Bid does not contain any condition or qualification;

- (i) Technical Bid contains certificates from its statutory auditors in the formats specified at Annexure IV of Appendix-IA of the RFP for each eligible project⁴;
- (j) Technical Bid contains an attested copy of the receipt towards the payment of Document Fee by NEFT/RTGS, as specified in Clause 1.2.1;
- (k) Technical Bid is not non-responsive in terms hereof; and
- (l) the hard copy of the Enclosures to the Bid is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11.
- (m) [Technical Bid contains the certificate and approval from the Charity Commissioner/competent authority as prescribed under Clause 1.1.3.]⁵

3.2.2 The Authority reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 Evaluation parameters

3.3.1 Only those Bidders who meet the eligibility criteria (Technical Capacity and Financial Capacity) specified in Clause 2.2.2 above shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.

3.3.2 Experience for any activity relating to an eligible project shall not be claimed by two or more members of the Consortium. In other words, no double counting by a Consortium in respect of the same experience shall be permitted in any manner whatsoever.

3.4 Technical capacity for purpose of evaluation

Subject to the provisions of Clause 2.2, the Bidder's experience shall be measured and stated in terms of its Technical Capacity.

3.5 Details of Experience

The Bidder should furnish the details of Eligible Experience for the last 5 (five) financial years immediately preceding the Bid Due Date. The Bidders must provide the necessary information relating to Technical Capacity as per format at Annexure-II of Appendix-IA.

⁴ In case duly certified audited annual financial statements containing the requisite details are provided, a separate certification by statutory auditors would not be necessary in respect of Clause 3.2.1 (i). In jurisdictions that do not have statutory auditors, the firm of auditors which audits the annual accounts of the Applicant may provide the certificates required under this RFP.

⁵ Applicable if the Bidder is in the nature of public charitable trust and is required to submit such a certificate of approval under Applicable Laws (both in case of single entity or as a part of a Consortium).

Further, the Bidder should furnish the required project-specific information and evidence in support of its claim of Technical Capacity, as per format at Annexure-IV of Appendix-IA.

3.6 Financial information for purposes of evaluation

- 3.6.1 The Bids must be accompanied by the audited Annual Reports of the Bidder (of each member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.
- 3.6.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 5 (five) years preceding the year for which the Audited Annual Report is not being provided.
- 3.6.3 The Bidder must establish the minimum Net Worth specified in Clause 2.2.2 (B), and provide details as per format at Annexure-III of Appendix-IA.
- 3.6.4 In case of foreign companies, a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium member in the formats provided in the country where the project has been executed shall be accepted, provided it contains all the information as required in the prescribed format of the RFP.

3.7 Opening and Evaluation of Financial Bids

The Financial Bids shall be opened online on the e-Procurement Portal. The Authority shall open the Financial Bids on date and time mentioned in Clause 1.3 in the presence of the authorized representatives of the Bidders who may choose to attend. The Authority shall publically announce the Financial Bid for each of the technically responsive Bidders.

3.8 Selection of Bidder

- 3.8.1 Subject to the provisions of Clause 2.15.1, the Bidder whose Bid is adjudged as responsive in terms of Clause 3.2 and who quotes the highest percentage of gross revenue share of the Gross Revenue of the SPV shall be declared as the selected Bidder (the “**Selected Bidder**”). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

- 3.8.2 In the event that, the assessed Financial Bid of two or more Bidders is the same (the "**Tie Bid**"), the Authority shall identify Selected Bidder as Bidder with the highest Financial Capacity as specified in Clause 2.2.2 (B).
- 3.8.3 In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the "**First Round of Bidding**"), the Authority may invite all the remaining qualified Bidders to revalidate or extend their respective Bid Security, as necessary, and shall invite all the remaining bidders to match the bid of the aforesaid Highest Bidder (the '**Second Round of Bidding**'). If in the Second Round of Bidding, only one Bidder matches the aforesaid Highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Highest Bidder in the Second Round of Bidding, then the Bidder whose Bid was ranked higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth ranked Bidders in the first round of bidding offer to match the said first ranked Bidder in the second round of bidding, the said third rank Bidder shall be the Selected Bidder. In the event that no Bidder offers to match the Highest Bidder in the Second Round of Bidding as specified in this Clause 3.8.3 above, the Authority may, in its discretion annul the Bidding Process.
- 3.8.4 In the event that no Bidder offers to match the Highest Bidder in the Second Round of Bidding as specified in Clause 3.8.3, the Authority may, in its discretion, invite fresh Bids (the "**Third Round of Bidding**") from all Bidders except the Highest Bidder of the First Round of Bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the Third Round of Bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such Third Round of Bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the First Round of bidding.
- 3.8.5 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7(seven)days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA and next eligible bidder may be considered.
- 3.8.6 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the

period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Concession Agreement.

3.9 Contact during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority makes official intimation of award/rejection to the Bidders. While the Bids are under consideration, Bidders and/or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means with the Authority and/ or their employees/ representatives on matters related to the Bids under consideration.

3.10 Correspondence with Bidder

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to the acceptance or rejection of any Bid.

3.11 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

3.12 The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

SECTION-4

4. FRAUD AND CORRUPT PRACTICES

- 4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or the Concessionaire, as the case may be, if it determines that the Bidder Concessionaire, as the case may be, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, or otherwise if a Bidder or the Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or the Concessionaire, as the case may be, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder, or Contractor, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3 For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official

of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.2.1(d) of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

SECTION-5

5. PRE-BID CONFERENCE

- 5.1 Pre-Bid conference of the Bidders shall be convened at the designated date as mentioned in Clause 1.3 of this RFP and at the time and place as specified by the Authority. A maximum of three representatives of prospective Bidders shall be allowed to participate on production of authority letter from the Bidder.
- 5.2 During the course of Pre-Bid conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

SECTION-6

6. MISCELLANEOUS

- 6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Kolkata, West Bengal shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process including any terms and conditions specified in this RFP.
- 6.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Bidder in order to receive clarification or further information;
 - (c) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
 - (d) independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

[On the letter head of the Bidder/ Lead Bidder]

APPENDIX IA

LETTER COMPRISING THE TECHNICAL BID

(Refer Clause 2.1.5, 2.11 and 3.2)

To,
Chief Medical Officer
Syama Prasad Mookerjee Port, Kolkata
Port Centenary Hospital,
DH Road, Kolkata 700053
Tele: 98362 98634
E-mail: cmo@kolkataporttrust.gov.in

Sub: Technical Bid for Establishment of 300 Bedded Super Specialty Hospital with an Option to Develop a Medical College and Further Expansion of Hospital on PPP

Dear Sir,

1. With reference to your RFP document dated⁶, I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid and in Annexures I to V is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of our selection as a Concessionaire for the Rehabilitate, Operate, Augment, Manage, and Transfer the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.

⁶ All blank spaces shall be suitably filled up by the Bidder to reflect the particulars relating to such Bidder.

6. I/ We certify that in the last three years, we/ any of the Consortium members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.
 - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.2 of the RFP document.
9. I/ We believe that we/ our Consortium/ proposed Consortium satisfy (ies) the Net Worth criteria and meet(s) all the requirements as specified in the RFP document.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for this Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the

Project or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. The Directors / President / Chairperson / Trustee of our _____ (*Please mention the exact nature of the entity such as Company / Society / Trust / LLP / Partnership etc.*) M/s _____ have not been criminally indicted or convicted of any offence nor is/are any criminal case(s) pending before any Competent Court.
14. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors.⁷
15. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFP at Annexure VI of Appendix-IA thereof.
16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
17. The Statement of Legal Capacity as per format provided at Annex-V in Appendix-IA of the RFP document, and duly signed, is enclosed. The Power Of Attorney for Signing of Bid and [the Power of Attorney for Lead Member of Consortium]⁸, as per format provided at Appendix III and IV respectively of the RFP, are also enclosed.

⁷ In case the Applicant is unable to provide the certification specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Applicant for pre-qualification hereunder.

⁸ To be retained only in case Bidder is a Consortium

18. [I/We acknowledge and undertake that our Consortium is qualified on the basis of Technical Capacity and Financial Capacity of those of its Members, who shall have an equity share of at least 26% (twenty six per cent) each in the SPV, provided that each such Member shall, for a period of 2 (two) years from the date of commercial operation of Phase 0 of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. We further agree and acknowledge that the aforesaid obligation shall be in addition to the obligations contained in the Concession Agreement in respect of Change in Ownership.]⁹
19. I/We acknowledge and agree that in the event of a change in control of an Associate whose Technical Capacity and/ or Financial Capacity shall be taken into consideration for the purposes of selection as Concessionaire under and in accordance with the RFP, I/We shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed a breach thereof, and the Concession Agreement shall be liable to be terminated without the Authority being liable to us in any manner whatsoever.
20. I/ We understand that the Selected Bidder shall either be an existing company incorporated under the Companies Act in force in India or the applicable laws of the jurisdiction of its origin, or be a society or a trust incorporated under applicable governing laws or partnership registered under the relevant laws of incorporation.
21. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
22. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

⁹ To be retained only if the Bidder is a Consortium.

23. I/We have studied all the Bidding Documents carefully. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
24. I/We offer a Bid Security of INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only to the Authority in accordance with the RFP Document, enclosed in the format as provided in Appendix- II of the RFP.
25. We shall pay to the Authority an Annual Fee of INR Rs.2,86,00,000(Rupee Two Crore Eighty Six Lakhs only subject to an annual escalation of 4%) every year from the first anniversary of the Appointed Date as per the provision of RFP documents, in accordance with provisions of Clause no. 1.2.7A
26. The documents accompanying the Technical Bid, as specified in Clause 2.11.1 of the RFP, have been submitted.
27. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
28. The Financial Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, the Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the Estimated Project Cost and implementation of the Project.
29. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
30. [We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till occurrence of Financial Close in accordance with the Concession Agreement.]¹⁰
31. I/We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
32. I/We have read the clause regarding restrictions on procurement from a bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries under the proviso to Clause 2.2.1A of the RFP;

¹⁰ To be retained in case of consortium, only.

I/We certify that this bidder is not from such a country or, if from such a country, has been registered with the Competent Authority as provided in Order (Public Procurement No. 1) dated 23rd July 2020 issued by the Ministry of Finance, Department of Expenditure Public Procurement Division and will not sub-contract any work to a contractor from such countries unless such contractor is registered with such Competent Authority. I/We hereby certify that I/We fulfil all requirements in this regard and are eligible to be considered.

33. We hereby submit that we shall transfer 1 (one) Golden Share to the Authority in the Project SPV and shall allow the appointment of a designated official of the Authority in the Board of Directors of the SPV.
34. I/ We hereby submit our Bid as indicated in Financial Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement and shall share a percentage share of Gross Revenue in accordance with the Concession Agreement.

In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date:

(Signature, Name and designation of the Authorised signatory)

Place:

(Name and seal of Bidder/Lead Member)

Appendix IA
Annexure-I
Details of Bidder

1. (a) Name:
(b) Country of incorporation:
(c) Address of the corporate headquarters and its branch office(s), if any, in India:
(d) Date of incorporation and/ or commencement of business:
2. Brief description of the company/trust/society/partnership etc. including details of its main lines of business and proposed role and responsibilities in this Project:
3. Details of individual(s) who will serve as the point of contact/ communication for the Authority:
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
 - (a) Name:
 - (b) Designation:
 - (c) Address:
 - (d) Phone Number:
5. In case of a Consortium:
 - (a) The information above (1-4) should be provided for all the members of the Consortium.
 - (b) A copy of the Joint Bidding Agreement, as envisaged in Clause 2.1.15 (g) and provided in Appendix V, should be attached to the Bid.
 - (c) Information regarding the role of each member should be provided as per table below:

Appendix IA

Annex-I

Sl. No.	Name of Member	Role*	Percentage of equity in the Consortium
1.			
2.			
3.			

- * The role of each Member, as may be determined by the Bidder, should be indicated such that LM means Lead Member and OM means Other Member. In case the eligible project relates to an Associate of the Bidder or its Member, write “Associate” along with Member Code.

- (d) The following information shall also be provided for each member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% (five percent) of the contract value in a contract due to delay or has been penalised due to any other reason in relation to execution of a contract, in the last three years?		

6. In case of an individual Bidder:
- (a) Name:
 - (b) S/o:
 - (c) Designation
 - (d) Permanent Address:
 - (e) Phone Number
7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

Appendix IA

Annexure-II

Technical Capacity of the Bidder

(Refer to Clauses 2.2.2(A) and 3.5 of the RFP)

S.N.	Name of hospital & Location	Number of operational Bed and /or number of seats in the medical college	Accreditation#	Legal Entity Claiming Experience	Associate Relationship of the Legal Entity who is claiming relationship with Bidder / Consortium Member	Category Type and details	Specialty(ies) /courses	Years since start of operations	Remarks
1									
2									
3									
4									

NABH / JCAHO / JCI /NMC/Not Available

Note: Accreditation Certificate should be submitted in support of this.

- A. *Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.1.18 and eligible under Clause 3.2.*
- B. *In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.21.*
- C. *Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, OMM means Operation & Maintenance Member, OM means Other Member.*

D. Refer Annex-IV of this Appendix-IA. Add more rows if necessary.

E. For conversion of US Dollars to Rupees, the rate of conversion shall Rupees [60 (sixty)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

Appendix IA
[Certificate from statutory auditor/ CA]
Annexure-III
Financial Capacity of the Bidder
(Refer to Clauses 2.2.2(B), 2.2.3 (ii) and 3.6 of the RFP)
(In INR. Crore)
(In Rs. crore\$)

Applicant	Net Cash Accruals			Net Worth (Close of the preceding financial year)
As on	31st March 2020	31st March 2019	31st March 2018	31st March 2020
Single entity Applicant				
Consortium Member 1				
Consortium Member 2				
Consortium Member 3				
TOTAL				

Name & address of Applicant's
Bankers:

\$For conversion of other currencies into rupees, see notes below Annexure-II of Appendix-IA.

\$\$An Applicant consisting of a single entity should fill in details as per the row titled Single entity Applicant and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Applicant may be ignored.

£For Member Code, see instruction 4 at Annexure-IV of this Appendix-IA.

££The Applicant should provide details of its own Financial Capacity or of an Associate specified in Clause 2.1.18.

Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balance sheets and financial statements for the 3 (three) years preceding the Bid Due Date. The financial statements shall:
 - (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;
 - (b) be audited by a statutory auditor;
 - (c) be complete, including all notes to the financial statements; and
 - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.1.21.
3. In the case of a Consortium, a copy of the Joint Bidding Agreement shall be submitted in accordance with Clause 2.1.15 (g) of the RFP document.
4. The Bidder shall provide an Auditor's Certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth in accordance with Clause 2.2.3 (ii) of the RFP document.

Appendix IA

Annexure IV Details of Eligible Projects

[Refer to Clause 3.5 of the RFP]

Item (1)	Particulars of the Project (3)
Title & nature of the project	
Category (Medical College / Hospital)	
Accreditation	
Total Number of Years since Operational	
Number of Beds	
Location	
Specialty in the Hospital	
Number of Doctors / Nurses and Clinical Staff	
Date of commencement of Hospital	
Equity shareholding (with period during which equity was held)	
Whether credit is being taken for the Eligible Experience of an Associate (Yes/ No)	

Project Code:

Member Code:

Instructions:

1. Bidders are expected to provide information in respect of each Eligible Project in this Annexure IV. The projects cited must comply with the eligibility criteria specified in the RFP, as the case may be. Information provided in this section is intended to serve as a backup for information provided in the Bid. Bidders should also refer to the Instructions below.

2. For a single entity Bidder, the Project Codes would be a, b, c, d etc. In case the Bidder is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each Eligible Project.
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidder. For other Members, the following abbreviations are suggested viz. LM means Lead Member, OM means Other Member. In case the Eligible Project relates to an Associate of the Bidder or its Member, write "Associate" along with Member Code.
5. Documentary proof / an undertaking by the Authorized Signatory is to be provided
6. Experience for any activity relating to an Eligible Project shall not be claimed by two or more Members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.

**Certificate from the Statutory Auditor/ Company Secretary regarding
(if applicable) Associate^{\$}**

Based on the authenticated record of the Company, this is to certify that more than

50% (fifty per cent) of the subscribed and paid up voting equity of

(*name of the Bidder/ Consortium Member/ Associate*) is held, directly or indirectly[£], by (*name of Associate/ Bidder/ Consortium Member*). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in accordance with the terms of this RFP.

A brief description of the said equity held, directly or indirectly, is given below:

{Describe the share-holding of the Bidder/ Consortium Member and the Associate. In the event the Associate is under common control with the Bidder/ Consortium Member, the relationship may be suitably described and similarly certified herein. }

Name of the audit
firm:

Seal of the audit firm:

Date:

(Signature, name and designation of
the authorised signatory).

§ In the event that the Bidder/ Consortium Member exercises control over an Associate by operation of law, this certificate may be suitably modified and copies of the relevant law may be enclosed and referred to.

£ In the case of indirect share-holding, the intervening companies in the chain of ownership should also be Associates i.e., the share-holding in each such company should be more than 50% in order to establish that the chain of "control" is not broken.

Appendix IA
Annexure-V
Statement of Legal Capacity

(To be forwarded on the letterhead of the Bidder / Lead Member of Consortium)

Ref. Date:

To,

[.....]

Dear Sir,

We hereby confirm that we/ our members in the Consortium (constitution of which has been described in the bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that (insert member's name) will act as the Lead Member of our Consortium.¹¹

We have agreed that (insert individual's name) will act as our representative/ will act as the representative of the Consortium on its behalf and has been duly authorized to submit the RFP. Further, the authorised signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

¹¹ Please strike out sentence if this is not applicable

APPENDIX-IA

Annexure VI

Guidelines of the Department of Disinvestment¹²

(Refer Clause 1.2.1)

No. 6/4/2001-DD-II

Government of India

Department of Disinvestment

Block 14, CGO Complex

New Delhi.

Dated 13th July, 2001.

OFFICE MEMORANDUM

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

- (a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.
- (b) In regard to matters relating to the security and integrity of the country, any charge- sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant

¹² These guidelines may be modified or substituted by the Government from time to time.

facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

- (c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.
- (d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified.
The mere pendency of appeal will have no effect on the disqualification.
- (e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.
- (f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.
- (g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI). The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

[On the letter head of the Bidder/ Lead Bidder]
APPENDIX - IB

Letter comprising the Financial Bid
(Refer Clauses 2.1.5, 2.11.1 and 3.2)

(NOT TO BE SUBMITTED IN THE TECHNICAL BID)

To,

Dated:

Chief Medical Officer Syama Prasad Mookerjee Port, Kolkata
Port Centenary Hospital, Kolkata
Tele: 98362 98634
E-mail: cmo@kolkataporttrust.gov.in

SUB: Financial Bid for Development of existing Centenary Hospital, Kolkata to a 300 bedded super specialty hospital with an option to develop Medical College and further expansion of the proposed Hospital on PPP basis

Dear Sir,

1. With reference to your RFP document dated *** **, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Concessionaire for the aforesaid Project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. The Bid has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, Concession Agreement and its Schedules, our own estimates of costs and after a careful assessment of the site and all own the conditions that may affect the Estimated Project Cost and implementation of the Project.
4. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
5. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
6. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.

7. I/We hereby submit our Bid and hereby offer to pay % (in words) as gross revenue share out of the Gross Revenue payable from the commercial operation date of Phase 1 or 4 years 6 months from appointed date (whichever is earlier) of the Project, every year during the Concession Period of the Project to the Authority for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement:-
- a) The % of gross revenue share has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, the Concession Agreement, our own estimates of cost and patient footfall and after a careful assessment of the site and all the conditions that may affect the Estimated Project Cost and implementation of the Project.
- b) I/We hereby confirm that in addition to the % of gross revenue share, we shall pay a sum of Rs.2,49,00,000 (Rupee Two Crore Forty Nine Lakhs only subject to an annual escalation of 4%) as Annual Fee every year commencing from the first anniversary of the Appointed Date, , in accordance with provisions of Clause no. 1.2.7A
8. I/We here by confirm to provide Golden Share (as defined under the Concession Agreement and Shareholders Agreement, to mean and include one non-transferable equity share with specified rights, as enumerated under aforesaid Agreements) in the paid up equity capital of the Concessionaire, to the Authority, which the Authority shall hold and own at all time during the Concession Period (*as defined in the Concession Agreement*).
9. I/We hereby confirm to confirm one designated official of the Authority, as nominated by the Authority, to be a Director in the Board of the SPV.
10. In addition the Bidder shall also submit a fully completed Bill of Quantities (BOQ) as provided in the e-Procurement Portal. In the e-Procurement Portal, an intelligent Bill of Quantity in Microsoft Excel format shall be made available to the Bidder. The Bidder shall fill in the percent rate in figures and must not leave any cell blank. He has to only write (type) his offer in figures, the words will be self generated (Enabling macros).

Yours faithfully,

Date:

Place:

(Signature, Name and designation of the Authorised signatory)

(Name and seal of Bidder/Lead Member)

APPENDIX – II

Bank Guarantee for Bid Security

(Refer Clauses 2.1.6 and 2.19.1)

B.G. No. Dated:

1. In consideration of you, Syama Prasad Mookerjee Port, Kolkata, having its office at 15, Strand Road, Kolkata - 700001(hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of (a company registered under Companies Act, 1956/2013 or a society registered under Societies Registration Act, 1860 or a registered trust under Indian Trusts Act, 1882) or any other Indian law for registration of public trust or partnership registered under the relevant laws of incorporation or any other entity or any combination of them and having its registered office at (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Development of existing Centenary Hospital, Kolkata to a 300-bedded super specialty hospital with an option to develop Medical College and further expansion of the proposed Hospital on PPP basis (hereinafter referred to as “**the Project**”) pursuant to the RFP Document dated [.....] issued in respect of the Project and other related documents including without limitation the Concession Agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at {Kolkata} (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.6 read with Clause 2.1.7 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest

or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to INR2,02,00,000 /- (Rupees Two Crores Two Lakhs only

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date and a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability 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 said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to of INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only) The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before (indicate date falling 180 days after the Bid Due Date).

Signed and Delivered by
Bank

By the hand of Mr./Ms, its..... and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

APPENDIX-III

Format for Power of Attorney for signing of Bid¹³

(Refer Clause 2.1.8)

(To be executed on Stamp paper of appropriate value)

Know all men by these presents, We, (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of..... and presently residing at, who is presently employed with us/ the Lead Member of our Consortium and holding the position of, as our true and lawful attorney (hereinafter referred to as the “**Attorney**”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Development of existing Centenary Hospital, Kolkata to a 300 bedded super specialty hospital with an option to develop Medical College and further expansion of Hospital on PPP basis, proposed or being developed by the Syama Prasad Mookerjee Port, Kolkata (the “**Authority**”) including but not limited to signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE,, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF, 20.....

For

(Signature, name, designation and address
of person authorized by Board Resolution

¹³ To be submitted in original

in case of Firms/Company)/Partner in case of
Partnership Firms

Witnesses:

1.

2.

Notarised
Person identified by me/personally appeared before me
/signed before me/Attested/Authenticated*
(*Notary to specify as applicable)
(Signature, Name and Address of the Notary)
Seal of the Notary
Registration Number of the Notary
Date_____

Accepted

(Signature, name, designation and address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate issued by the designated competent authority and has been notarized by the public notary.

APPENDIX-IV

Format for Power of Attorney for Lead Member of Consortium¹⁴

(Refer Clause 2.1.9)

(To be executed on Stamp paper of appropriate value)

Whereas the Syama Prasad Mookerjee Port, Kolkata (“the Authority”) has invited bids from interested parties for the Development of existing Centenary Hospital, Kolkata to a 300-bedded super specialty hospital with an option to develop 100-seated Medical College on PPP basis (the “**Project**”). Whereas,, and (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, having our registered office at, M/s., having our registered office at, and M/s., having our registered office at, (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorise M/s....., having its registered office at, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Concession/ Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Authority, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Concession Agreement is entered into with the Authority.

¹⁴ To be submitted in original

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS DAY OF 20.....

For

(Signature, Name & Title)

For

(Signature, Name & Title)

For

(Signature, Name & Title)

Witnesses:

1.

2.

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*

- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate issued by the designated competent authority and has been notarized by the public notary. Apostille certificate.*

APPENDIX V

Format for Joint Bidding Agreement for Consortium

(Refer Clause 2.1.9 & 2.1.15(g))

(To be executed on Stamp paper of appropriate value)

THIS JOINT BIDDING AGREEMENT is entered into on this the day of 20...

AMONGST

1. {..... Limited, a company/society/trust/sole-proprietorship/partnership¹⁵ incorporated/registered under the and having its registered office at.....} (hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. {..... Limited, a company/society/trust/sole-proprietorship/partnership¹⁶ incorporated/registered under the having its registered office at..... } and (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

3. {..... Limited, a company/society/trust/sole-proprietorship/partnership¹⁷ incorporated/registered under the and having its registered office at} (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST, {SECOND and THIRD} PART are collectively referred to as the “**Parties**” and each is individually referred to as a “**Party**”

WHEREAS,

- (A) The Syama Prasad Mookerjee Port, Kolkata having its principal offices at 15, Strand Road, Kolkata - 700001 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the “**Bids**”) by its Request for Proposal No.dated(the “**RFP**”) for award of contract for Development of existing Centenary Hospital, Kolkata to

¹⁵ Specify nature of entity

¹⁶ Specify nature of entity

¹⁷ Specify nature of entity

a 300-bedded super specialty hospital with an option to develop 100- seated Medical College on PPP basis (the “**Project**”).

- (B) The Parties are interested in jointly bidding for the Project as members of a Consortium and in accordance with the terms and conditions of the RFP document and other bid documents in respect of the Project, and
- (C) It is a necessary condition under the RFP document that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows

1. Definitions and Interpretations

In this Agreement, the capitalized terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RFP.

2. Consortium

- 2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.
- 2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall incorporate a special purpose vehicle (the “SPV”) under the Indian Companies Act, 2013 for entering into a Concession Agreement with the Authority and for performing all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding

Process and until the Appointed Date under the Concession Agreement when all the obligations of the SPV shall become effective;

(b) Party of the Second Part shall be {the Technical Member of the Consortium¹⁸;}

{(c) Party of the Third Part shall be {the Financial Member of the Consortium¹⁹; and}

5. Joint and Several Liability

The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till such time as the Financial Close for the Project is achieved under and in accordance with the Concession Agreement.

6. Shareholding in the SPV

The Parties agree that the proportion of shareholding among the Parties in the SPV shall be as follows:

Name of Party	Role*	% of Shareholding
First Party		
Second Party		
Third Party		

*Clinical/Financial/Technical specialization

6.2 The Parties undertake that each member of the Consortium, whose experience and Net Worth have been reckoned for the purposes of qualification and short-listing of Bidders for the Project, shall hold a minimum of 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV shall, at all times till the second anniversary of the date of commercial operation date of Phase 0 of the Project

6.3 The Parties undertake that each of the Parties specified in Clause 6.2 above, shall, at all times between the commercial operation date of Phase 0 of the Project and the second anniversary thereof, hold subscribed and paid up equity share capital of SPV equivalent to at least 5% (five per cent) of the Total Project Cost, as defined in the Concession Agreement.

¹⁸ Please fill appropriately.

¹⁹ Please fill appropriately.

- 6.4 The Parties undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity share capital of the SPV at all times until the second anniversary of the commercial operation date of Phase 0 of the Project.
- 6.5 The Parties undertake that they shall comply with all equity lock-in requirements set forth in the Concession Agreement.

7. Representation of the Parties

Each Party represents to the other Parties as of the date of this Agreement that:

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
 - (i) require any consent or approval not already obtained;
 - (ii) violate any Applicable Law presently in effect and having applicability to it;
 - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or Encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;

- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

8. Termination

This Agreement shall be effective from the date hereof and shall continue in full force and effect until the Financial Close of the Project is achieved under and in accordance with the Concession Agreement, in case the Project is awarded to the Consortium. However, in case the Consortium is either not pre-qualified for the Project or does not get selected for award of the Project, the Agreement will stand terminated in case the Bidder is not qualified/selected or upon return of the Bid Security by the Authority to the Bidder, as the case may be.

9. Miscellaneous

- 9.1 This Joint Bidding Agreement shall be governed by laws of India.
- 9.2 The Parties acknowledge and accept that this Agreement shall not be amended by the Parties without the prior written consent of the Authority.

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
LEAD MEMBER by:

SIGNED, SEALED AND DELIVERED
SECOND PART

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

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

SIGNED, SEALED AND DELIVERED
For and on behalf of
THIRD PART

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

In the presence of:

- 1.
- 2.

Notes:

1. The mode of the execution of the Joint Bidding Agreement should be in accordance with the procedure, if any, laid down by the Applicable Law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution / power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member.
3. For a Joint Bidding Agreement executed and issued overseas, the document shall be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.
4. However, in the countries, which are member of Hague convention, the document has to be notarized by the public notary and apostille by the designated component authority of the issuing country.

APPENDIX - VI

Integrity Pact

SYAMA PRASAD MOOKERJEE PORT, KOLKATA (SMP) hereinafter referred to as "The Principal"

AND

**(Name of The bidders and consortium members)
..... hereinafter referred to as "The Bidder/Contractor"**

Preamble: The Principal intends to award, under laid down organizational procedures, contract/concession for Tender No. E..... The Principal values full compliance with all relevant laws and regulations, and the principles of economic use of resources, and of fairness and transparency in its relations with its Bidders. The Central Vigilance Commission (CVC) has been promoting Integrity, transparency, equity and competitiveness in Government / PSU transactions and as a part of Vigilance administration and superintendence, CVC has, recommended adoption of Integrity Pact and provided basic guidelines for its implementation in respect of major procurements in the Government Organizations in pursuance of the same, the Principal agrees to appoint an external independent Monitor who will monitor the execution of the contract for compliance with the principles mentioned above.

Section 1 - Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles: -

(a) No employee of the Principal, personally or through family members, will in connection with the execution of a contract, demand, take a promise for or accept, for him/herself or third person, any material or immaterial benefit which he/she is not legally entitled to.

(b) The Principal will, during the pre-contract stage, treat all BIDDERS alike, and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS.

(c) The Principal will exclude from the process all known prejudicial persons.

(2) If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the relevant Anti-Corruption Laws of India, or

if there be a substantive suspicion in this regard, the Principal will inform its Vigilance Office and in addition can initiate disciplinary actions. In such a case, while an enquiry is being conducted by the Principal, the proceedings under the contract would not be stalled.

Section 2 - Commitments of the Bidder / Contractor

(1) The Bidder/Contractor commits themselves to take all measures necessary to prevent corrupt practices, unfair means and illegal activities, during pre-contract as well as post- contract stages. He commits himself to observe the following principles during the contract execution.

a. The Bidder/Contractor will not, directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the execution of the contract or to any third person any material or immaterial benefit, which he/she is not legally entitled to, in order to obtain in exchange of advantage of any kind, whatsoever during the execution of the contract.

b. The Bidder/Contractor will not enter with other Bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids, or any other actions to restrict competitiveness, or to introduce cartelization in the bidding process.

c. The Bidder/Contractor will not commit any offence, under the relevant Anticorruption Laws of India; further the Bidder/Contractor will not use improperly, for purposes of competition, or personal gain, or pass on to others, any information or document provided by the Principal, as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

d. The Bidder will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

e. The Bidder/Contractor will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries, in connection with the award of the contract.

f. The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

g. The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Principal.

(2) The Bidder/Contractor will not instigate third persons to commit offences outlined above or be an accessory to such offences.

Section-3 Disqualification from or exclusion from future contracts

If the Bidder, before award of contract, has committed a transgression, through a violation of Section-2 or in any other form, such as to put his reliability as Bidder, into question, the principal is entitled to disqualify the Bidder, from the tender process, or to terminate the contract, if already signed, for such reason.

1. If the Bidder/Contractor has committed a transgression, through a violation of Section-2, such as to put his reliability, or credibility into question, the Principal is entitled to disqualify the Bidder/Contractor from the tender process, terminate the contract if already awarded and also, to exclude the Bidder/Contractor from future contract award processes. The imposition and duration of the exclusion, will be determined by the severity of the transgression. The severity will be determined, by the circumstances of the case, in particular the number of transgressions, the position of the transgressions, within the company hierarchy of the Bidder and the amount of the damage. The execution will be imposed for a minimum of 6 months and maximum of 3 years.

Note: A transgression is considered to have occurred, if in the light of available evidence, no reasonable doubt is possible.

2. The Bidder accepts and undertakes to respect and uphold, the principal's Absolute right to resort to and impose such exclusion and further accepts and undertakes, not to challenge or question such exclusion, on any ground, including the lack of any hearing before the decision, to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.

3. If the Bidder/Contractor can prove that, he has restored/recouped the Damage caused by him and has installed a suitable corruption prevention system, the Principal may revoke the exclusion prematurely.

Section-4 Compensation for damages

1. If the Principal has disqualified the Bidder, from the tender process prior to the award, according to Section-3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.

2. If the Principal has terminated the contract according to Section-3, or if the Principal is entitled to terminate the contract according to Section3, the Principal shall be entitled to demand and recover from the Contractor, liquidated damages equivalent to 5% of the contract value, or the amount equivalent to Security Deposit/Performance Bank Guarantee, whichever is higher.

3. The Bidder agrees and undertakes to pay the said amounts, without protest or demur, subject only to condition that, if the Bidder/Contractor can prove and establish that the termination of the contract, after the contract award has caused no damage or less damage than the amount of the liquidated damages, the Bidder/Contractor shall compensate the principal, only to the extent of the damage in the amount proved.

Section-5 Previous transgression

1. The Bidder declares that, no previous transgression has occurred in the last 3 years, with any other company, in any country, or with any other Public Sector Enterprises in India, that could justify his exclusion from the award of the contract.

2. If the Bidder makes incorrect statement on this subject, it can be declared disqualified for the purpose of the contract and the same can be terminated for such reason.

Section-6 Equal treatment of all Bidders/Contractors/ Subcontractors

1. The Bidder/Contractor undertakes to demand from all subcontractors, a commitment in conformity with this Integrity Pact, and to submit it to the Principal before contract signing.

2. The Principal will enter into agreements with identical conditions as this one which all Bidders, Contractors and Subcontractors.

3. The Principal will disqualify from the tender process all Bidders, who do not sign this part or violates its provisions.

Section-7. Criminal charges against violating Bidders/ Contractors/ Sub-contractors

If the principal obtains knowledge of conduct of a Bidder/Contractor or Subcontractor, or of an employee, or a representative, or an associate of a Bidder/Contractor, or Subcontractor, which constitutes corruption, or if the Principal has substantive suspicion, in this regard, the Principal will inform the Vigilance office.

Section-8. External Independent Monitor

1. Pursuant to the need to implement and operate this Integrity Pact the Principal has appointed the following Independent Monitors:

A. Shri Anand Deep; IRS (Retd)
117/363, H — 1, Next to Gurdwara
Pandu Nagar, Kanpur,
Uttar Pradesh — 208 005
Mobile : 9044796181
Mail : anand.deep117@gmail.com

B. Shri Bipin Behari Mallick, IAS, (Retd)
293, Naval Technical Officers,
CGHS, Sector-22
Dwarka
New Delhi-110077
Mobile : 9643002222/ 9968150900
E-mail ID : bipinmallick@gmail.com

The task of the Monitors, is to review independently and objectively, whether and to what extent, the parties comply with the obligations under this agreement.

2. The Monitors are not subject to instructions, by the representative of the parties to the Chairperson of the Board of the Principal.

3. The Bidder/Contractor accepts that, the monitors have the right to access, without restriction to all Project documentation of the Principal, including that provided by the Contractor. The Bidder/Contractor will also grant the Monitors, upon his request and demonstration of a valid interest, unrestricted and unconditional access, to the project documentation. The same is applicable to Subcontractors. The monitors are under contractual obligation, to treat the information and documents of the Bidder/Contractor/Subcontractor with confidentiality.

4. The Principal will provide to the Monitors, sufficient information about all meetings, among the parties related to the Project, provided such meetings could have an impact, on the contractual relations between the Principal and the Bidder/Contractor. The parties offer to the Monitors the option to participate in such meetings.

5. As soon as the Monitors notice a violation of this agreement, he/they will so inform the Management of the Principal and request the management to discontinue, or heal the violation. Or to take other relevant action. The Monitors can in this regard submit non- binding recommendations. Beyond this, the Monitors have no right to demand from the parties, that they act in a specific manner, refrain from action or tolerate action.

6. The Monitors will submit a written report, to the Chairperson of the Board of the Principal, within 8 to 10 weeks, from the date of reference of intimation to him by the 'Principal' and, should the occasion arise, submit proposals for correcting problematic situations.

7. If the Monitors have reported to the Chairperson of the Board, a substantiate suspension of an offence, under relevant Anti-Corruption Laws of India, and the Chairperson has not, within reasonable time, taken visible action to proceed against such offence, or reported it to the Vigilance Office, the Monitors may also transmit this information directly to the Central Vigilance Commissioner, Government of India.

Section-9 Pact Duration

This Pact begins when both parties have signed it. It expires 12 months after the last payment under the contract Agreement is made.

If any claim is made/lodged during this time, the same shall be binding and continue be valid, despite the lapse of this Pact, as specified above, unless it is discharged/determined Chairperson of the Principal.

The Pact duration in respect of unsuccessful Bidders shall expire after 3 months of the award of the contract.

Section-10: Other Provisions

1. This agreement is subject to Indian Law. Place of performance and jurisdiction is the Registered Office of the Principal, i.e. Kolkata, West Bengal.

2. Changes and supplements as well as termination notices, need to be made in writing, before they become effective and binding on the both parties.

3. If the Bidder / Contractor is a partnership or a consortium, this agreement must be, signed by all partners or consortium members.

4. Should one or several provisions of this agreement, turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement, to their original intentions.

For the Principal

For the Lead Member / Bidder

Place:

Witness-1 :

Witness-2 :

Date : ____ / ____ / ____

APPENDIX - VII

CHECK LIST

(Mandatory Documents to be uploaded in the Technical bid.)

TECHNICAL BID DOCUMENTS.		
1	Appendix-IA (Letter comprising the Technical Bid) including Annexure I to V and supporting certificates / documents	Yes / No
2	Power of Attorney for signing the Bid as per the format at Appendix-III;	Yes / No
3	if applicable, Power of Attorney for Lead Member of Consortium as per the format at Appendix-IV;	Yes / No
4	if applicable, Joint Bidding Agreement for Consortium as per the format at Appendix-V;	Yes / No
5	copy of the certificate of incorporation or equivalent.	Yes / No
6	copies of Bidder's duly audited balance sheet and profit and loss statement for preceding 3 years;	Yes / No
7	Bid Security of INR 2,02,00,000 /- (Rupees Two Crores Two Lakhs only in the form of Bank Guarantee in the format at Appendix-II from a Nationalized Bank;	Yes / No
8	Integrity Pact as per the Format at Appendix VI duly signed by the Authorized Signatory, which shall form part of Concession Agreement;	Yes / No
9	copy of the receipt towards payment of the Document Fee by way of NEFT/RTGS, in accordance with Clause 1.2.1.	Yes / No
10	Copy of Check List as per Appendix VII	Yes / No
11	Any other Documents as per the requirement of RFP	Yes / No
12	[Certificate and approval from the Charity Commissioner/competent authority as prescribed under Clause 1.1.3] ²⁰	Yes/ No

²⁰ To be retained if the Bidder is in the nature of public charitable trust and is required to submit such a certificate of approval under Applicable Laws (both in case of single entity or as a part of a Consortium).

For the avoidance of any confusion, scanned copies of the abovementioned documents shall be uploaded online on the e-Procurement Portal on or prior to the Bid Due Date.

APPENDIX – VIII

BOQ – Format for Financial Bid

(Refer – Appendix 1B, Clauses 2.1.5, 2.11.1 and 3.2)

[This format is for reference only, the financial bid will be submitted online in the Excel uploaded along with RFP & DCA]

Tender Inviting Authority : Chief Medical Officer, Syama Prasad Mookerjee Port, Kolkata					
Name of Work : Establishment of 300 Bedded Super Specialty Hospital with an Option to Further Develop a Medical College and Further Expansion of Hospital on PPP					
e-TCN No- Date:					
Bidder Name :					
<u>PRICE SCHEDULE</u> (This BOQ template must not be modified/replaced by the bidder and the same should be uploaded after filling the relevant columns, else the bidder is liable to be rejected for this tender. Bidders are allowed to enter the Bidder Name and Values only) Total figure entered by bidder will be treated as percentage.					
NUMBER #	TEXT #	TEXT #	NUMBER #	NUMBER #	TEXT #
Sl. No.	Item description	Units	% gross revenue share (in figures)	% gross revenue share (in figures)	% gross revenue share In Words
1	2	3	4	5	6
1.00	% of Gross Revenue to be shared every year with the Authority from COD of Phase 0 in accordance with the terms of the Concession Agreement	Percentage		0.00	Percentage Zero Only
Total in Figures				0.00	Percentage Zero Only
Quoted Rate in Words	Percentage Zero Only				

SYAMA PRASAD MOOKERJEE PORT, KOLKATA
MINISTRY OF PORTS, SHIPPING AND WATERWAYS
GOVERNMENT OF INDIA

DRAFT CONCESSION AGREEMENT & SCHEDULES

VOLUME II

**ESTABLISHMENT OF 300 BEDDED SUPER SPECIALTY HOSPITAL
WITH AN OPTION TO DEVELOP A MEDICAL COLLEGE AND
FURTHER EXPANSION OF HOSPITAL ON PPP**

MARCH 2022

CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** ("**Agreement**") is entered into on this **[*]** day of **[*]**, 2020.

BETWEEN

1. **BOARD OF TRUSTEES, PORT OF KOLKATA, SYAMA PRASAD MOOKERJEE PORT, KOLKATA**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Head Office at 15, Strand Road, Kolkata - 700 001, represented by its Chief Medical Officer/Secretary, , Syama Prasad Mookerjee Port, Kolkata (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 company incorporated under the provisions of the Companies Act 2013 with its registered office at **[*]** (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Other Part.

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

WHEREAS:

- A. The Authority has constructed and developed hospital on the Site, the details of which are described in Schedule A of this Agreement ("**Existing Hospital**"). The Authority has now resolved to undertake augmentation, operation, management and development of the Existing Hospital through Public-Private Partnership (the "**PPP**") into a super specialty hospital in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- B. The Authority has accordingly invited bids by its Request for Proposal No. **[*]** (the "**Request for Proposal**" or "**RFP**") for undertaking the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital by construction of new blocks, refurbishment of building construction of Existing Hospital, related infrastructure such as road intersections, drains, etc, and the operation and maintenance thereof ("**Project**");
- C. Pursuant to the terms of the RFP, bids were received by the Authority on or before **[*]** from the bidders shortlisted in the RFP process. The Selected Bidder also submitted its bid ("**Bid**") for the Project;
- D. After evaluation of the bids received, the Authority issued its Letter of Award No. **[*]** dated, **[*]** (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within the date specified therein.
- E. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- F. By its letter dated **[*]**, the Concessionaire has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder for the purposes hereof.

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

1.2. Interpretation

In this Agreement, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, 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 permitted assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**development or augmentation**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation, operation & maintenance and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (h) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (k) any reference to a "**day**" shall mean a reference to a calendar day;

- (l) references to a "**Business Day**" shall be construed as a reference to a day (other than a Sunday or a statutory holiday as declared by the State Government) on which Scheduled Banks in Kolkata are generally open for business;
- (m) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (n) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) save where stated to the contrary, any references to this Agreement or to any other document shall include any permitted variation, amendment or supplement to this Agreement and/or such document;
- (r) references to any documents being 'in the agreed form' means such document has been initialed by or on behalf of each of the Parties for the purposes of identification;
- (s) unless otherwise stated, any reference to any period commencing 'from' a specific day or date and 'till' or 'until' a specific day or date shall include both such days or dates;
- (t) unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a monthly basis and from the respective due dates as provided in this Agreement;
- (u) any word or expression used in this Agreement, unless defined or construed in this Agreement, shall bear the ordinary English meaning;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement; and
- (w) references to Recitals, Articles, Clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears.

1.3. Measurements and arithmetic conventions

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

1.4. Payment in Rupees

All payments under this Agreement shall be made in Rupees.

1.5. Responsibility for Related Parties

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

1.6. Approval

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

1.7. Succession

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

1.8. Priority of agreements, clauses and schedules

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

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

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

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

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

ARTICLE 2: SCOPE OF THE PROJECT

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

(a) **Phase 0 [Mandatory]**

Development and upgradation of the Existing Hospital to 150 Beds as set forth in Schedule A and in conformity with the Specifications and Standards set forth in the Schedule B;

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

On or before completion of Phase 0, the Concessionaire shall undertake the development of the Project on the Site under Phase I i.e. development and upgradation of 300 bedded super specialty facility as set forth in Schedule A and in conformity with the Specifications and Standards set forth in the Schedule B;

(c) **Pharmacy (Mandatory)**

Design, construct, develop, equip, operate, maintain and manage the Pharmacy. The Concessionaire shall equip and deploy adequate workforce (both clinical & non-clinical) as per Applicable Laws in the Pharmacy. The Concessionaire shall operate the said Pharmacy as per Good Industry Practice for 24 (twenty four) hours a day and 7 (seven) days a week.

(d) **Optional Development**

Development, operation and maintenance of the additional beds and / or a medical college at Site and additional housing blocks for doctors, paramedical staffs and Students at the Site as set forth in Schedule A and in conformity with the Specifications and Standards set forth in the Schedule B ("**Optional Development**"); Provided further that any Optional Development shall be permitted post achievement of COD of Phase 0.

(e) **Additional Services**

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

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

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

(f) Concessionaire shall perform and fulfil all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3: GRANT OF CONCESSION

3.1. The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein, including the exclusive right, licence, leasehold rights and authority to construct, operate and maintain the Project (the "**Concession**") for a period of (sixty) years, commencing from the Appointed Date ("**Concession Period**") and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority, on and from the Appointed Date, grants to the Concessionaire the exclusive right, licence and authority to:
- (a) Right of Way and lease hold rights on the Site, Project and Existing Hospital for the purpose of and to the extent conferred by the provisions of this Agreement and Land Lease Agreement, respectively;
 - (b) finance, develop, design, construct, operate, manage and maintain the Project in a phased manner in accordance with Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B;
 - (c) finance, develop, design, construct, operate, manage and maintain the Optional Development in accordance with Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B;
 - (d) provide Healthcare Services and in the event of development of a Medical College under Optional Development, provide Medical Education Services in accordance with the Specifications and Standards set out in this Agreement, Applicable Laws and Applicable Permits;
 - (e) demand, collect and appropriate Fee from Patients for availing Healthcare Services from the Hospital in accordance with this Agreement;
 - (f) in the event of development of a Medical College under Optional Development, admit Students and determine, demand, collect and appropriate Tuition Fee from Students liable for payment of Tuition Fee for using the Medical College, in accordance with Applicable Laws and this Agreement; The Chairman, SYAMA PRASAD MOOKERJEE PORT, KOLKATA shall nominate two students in the proposed medical college and the Concessionaire shall have to admit those two students per annum as per applicable law. The Fee for the course shall be recovered in full, from the students directly as per the fee prescribed for the students by State Fee Fixation Committee for the proposed Medical College.
 - (g) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement;
 - (h) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
 - (i) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement;
 - (j) to engage / deploy Select Employees of Syama Prasad Mookerjee Port, Kolkata (SMP) in the Hospital in terms of this Agreement from Appointed Date; and

- (k) design, construct, develop, operate, equip, deploy clinical, non-clinical & requisite workforce, maintain and manage the Pharmacy at the Site.

ARTICLE 4: CONDITIONS PRECEDENT

4.1. Conditions Precedent

- 4.1.1. Save and except as expressly provided in Articles 4, 9, 11, 25, 31, 36, 40 and 43, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). Provided however that a Party may grant waiver from satisfaction of any Conditions Precedent by the other Party in accordance with the provisions of Clause 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be amended.
- 4.1.2. The Concessionaire may at any time after 60 (sixty) days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 120 (one hundred and twenty) days of the notice or such extended period and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
 - (a) executed the Land Lease Agreement (to be effective from Appointed Date) for the lease hold rights of the Site;
 - (b) granted lease hold rights to the Concessionaire for the Site and Existing Hospital, under and in accordance with the provisions of Land Lease Agreement;
 - (c) procured for the Concessionaire access to power supply, water supply and other basic infrastructure that may be required at the Site for the purposes of the Project; and
 - (d) issued necessary orders in relation to the deputation of the Select Employees in terms of this Agreement.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.2 For the avoidance of doubt, the Concessionaire may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit and communicate the same in writing to the Authority.

- 4.1.3. The Concessionaire shall be deemed to have fulfilled its Conditions Precedent when the Concessionaire shall have, within 180 (one hundred and eighty) days of the Execution Date:
 - (a) provided the Performance Security to the Authority in accordance with Article 9;
 - (b) executed and procured execution of the Escrow Agreement;
 - (c) executed and procured execution of the Substitution Agreement;
 - (d) procured all the Applicable Permits specified in Schedule C, as may be necessary for the commencement of development of the Project, unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits shall be in full force and effect;
 - (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

- (f) achieved Financial Close and delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement;
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (i) issued offer letter to Authority for subscription of the Golden Share of the Concessionaire, undertake all related compliance with Companies Act 2013 and applicable secretarial practices for such issue, and accordingly issue and allot to Authority one non-transferable equity share of the Concessionaire, such that the Authority owns and holds, legally and beneficially, the Golden Share in the paid up capital of the Concessionaire;
- (j) executed the Shareholders Agreement as per the form annexed herewith as per Schedule R, recording inter-alia the inter se rights and obligations of the Parties as shareholders, which the Shareholders shall exercise solely with a view to ensure and procure that Concessionaire adheres to its obligations in relation to the Project as enumerated under this Agreement;
- (k) at the time of Financial Closure, the Selected Bidder shall pay to SMP onetime amount equivalent to Rs. _____ (as notified in terms of LOA) against the existing Equipment i.e., handed over to the Selected Bidder in accordance with term hereof, on or before Appointed Date. The Parties agree and understand that the payable amount notified under the LOA is be based on the valuation undertaken by the Authority in respect of the equipment i.e., been handed over along with Existing Hospital. The list of such equipment are enclosed at Schedule P of this Agreement from SN [*] to SN [*] of point no. [*].

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

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent set forth in Clauses 4.1.2 and 4.1.3, as applicable within the period specified in respect thereof, respectively, and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2. Damages for Delay

4.2.1. Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within 180 days of the Execution Date, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount

calculated at the rate of *[0.1% (zero point one per cent)]* of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, provided however that the Damages shall be limited to an amount equivalent to *[20% (twenty per cent)]* of the Performance Security.

4.2.2. Damages for delay by the Concessionaire

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

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

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

5.1 General Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions set forth in this Agreement, the Concessionaire shall, at its own cost and expense, implement the Project, and undertake the development, financing, engineering, procurement, equipping, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Hospital;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may, in any manner, be violative of any of the provisions of this Agreement;
 - (g) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Patients have non-discriminatory access for use of the same under and in accordance with this Agreement;
 - (h) ensure that Patients are treated with due courtesy and consideration and provided with ready access to Healthcare Services and information;
 - (i) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (j) Design, construct, develop, equip, operate, maintain and manage the Pharmacy and provide branded medicines at minimum 20% discount on maximum retail price to SMP Beneficiaries during the Concession Period;
 - (k) transfer the Project to the Authority upon Termination, in accordance with the provisions thereof;

- (l) The treatment of SMP Beneficiaries and Select Patients shall be in the same premises used for providing treatment to the Market Patients; and
 - (m) ensure the continuance of the existing course of Diploma in Medical Laboratory Technology (DMLT) at the Existing Hospital for 5 students and ensure that stipend is provided to such students in accordance with the details provided in Schedule P. The Concessionaire shall be permitted to collect fee and other applicable charges which may be payable by such students as per existing norms. The Parties agree that no change in the aforementioned fee structure shall be made without express permission from the Authority.
 - (n) the Concessionaire shall develop and commission the specified speciality as set out in point-8 of Schedule A in accordance with the Master Plan as approved by the Authority in accordance with Clause 5.12 and other provisions of this Agreement.
 - (o) the Concessionaire shall utilize its own fund (i.e., Equity, and / or Debt disbursed by Senior Lenders, comprising the Total Project Cost) for the purposes of fulfilling its Mandatory obligations as specified in Article 2 and Schedule A, which includes the related obligation towards purchase and installation of plants / machinery / equipment etc.
- 5.1.5 In the event, SMP is declared as a Special Planning Authority under Applicable Laws, the Concessionaire shall comply with rules and regulations as prescribed by SMP under Applicable Laws. For avoidance of doubt, the Concessionaire shall be liable to pay any and all such development fee, premium, charges etc. in accordance with Applicable Laws to SMP in its capacity as Special Planning Authority. In all other cases, the Concessionaire shall comply with the rules and regulations and seek approvals from the local development bodies in accordance with Applicable Laws.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements and/or any other agreement (other than this Agreement), and no default under any Project Agreement and/or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.3 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of termination or Suspension (the "**Covenant**"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept

the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of termination or Suspension.

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

5.3 Obligations relating to Change in Ownership

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

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective. The decision of the Authority in this behalf shall be final, conclusive and binding on the Concessionaire, and the Concessionaire undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligation relating to Golden Share

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

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

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

- (a) to alter or add to the provisions of the memorandum of association;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to reduce the share capital;
- (e) to commence any new lines of business;
- (f) to enter into a Related Party transaction as envisaged under Companies Act 2013;
- (h) to apply to a court to wind-up the Concessionaire;
- (i) to wind-up the Concessionaire voluntarily;
- (j) for various other matters pertaining to the winding up of the Concessionaire;
- (k) any other matter which is required by the Companies Act 2013 to be passed by a special resolution of the shareholders of the company;
- (l) sale, transfer, lease, license or disposal of all or a substantial part of its business undertaking or assets whether in a single transaction or a series of transactions, related or not; and

(m) commencement of Optional Development.

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

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

(a) care and treatment of SMP Beneficiary and / or Select Patient;

(b) terms and conditions of employment for the Select Employees enlisted in Schedule D;

(c) compliance with the Key Performance Indicators which are related to the Select Employees, SMP Beneficiaries and Select Patients.

The Articles of Association of the Concessionaire shall set out and enable the issue of Golden Share and the protections of rights, privileges and entitlements associated with it as provided hereinabove, at all times during the Concession Period.

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

5.5 Obligations relating to employment of foreign nationals

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

5.6 Obligations relating to employment of trained personnel

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

5.7 Obligations relating to aesthetic quality of the Project

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

5.8 Sole purpose of the Concessionaire

Having agreed and undertaken to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement.

5.9 Branding of Hospital

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

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

5.10 Facilities for physically challenged and elderly persons

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

5.11 Applicable Laws and Safety Standards

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

5.12 Master Plan

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

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

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

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

- 5.12.2 On receipt of the Master Plan, the Independent Engineer/ authorised representative of the Authority shall review the Master Plan submitted by the Concessionaire and provide its comments/observations and suggestions on the same within 30 (thirty) days from the date of the receipt of such Master Plan by the Independent Engineer/ authorised representative of the Authority. Upon receipt of such comments/observations and suggestions from the Independent Engineer/ authorised representative of the Authority, the Concessionaire shall submit the revised Master Plan to the Independent Engineer/ authorised representative of the Authority and the Independent Engineer/ authorised representative of the Authority shall submit the same for the approval of the Authority.
- 5.12.3 Upon receipt of the such Master Plan, the Authority in its capacity as the Special Planning Authority, shall review the said Master Plan and grant approval to the same with such modifications, as deemed fit to the Authority as per the provisions of the Applicable Laws and shall intimate the same to the Concessionaire. It is further agreed that no grant of approval by the Authority shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever{This Clause shall be applicable in the event SMP is acting in the capacity of Special Planning Authority, otherwise such approvals shall be sought by the Concessionaire from relevant the local development bodies in accordance with Applicable Laws}.
- 5.12.4 The Concessionaire shall not be entitled to any extension of time for developing the Project or any other relief on account of delay caused due to providing any clarification or in resubmitting the Master Plan.
- 5.12.5 Notwithstanding the review by the Authority, the Concessionaire shall be solely responsible for any defect and/or deficiency in the Master Plan relating to the Project or any part thereof and accordingly the Concessionaire shall at all times remain responsible for its obligations under this Agreement.
- 5.12.6 The Concessionaire shall in no way represent to any person that, as a result of any review by the Authority, the Authority have accepted responsibility for the technical or soundness of any work relating to the Project or part thereof carried out by the Concessionaire and the Concessionaire shall, in accordance with the provisions of this Agreement, be solely responsible for the technical feasibility, operational capability and reliability of the Project or any part thereof.

5.13 Hospital Management Information System

- 5.13.1 The Concessionaire shall within 180 (one hundred and eighty) days from the Appointed Date, but in any case, prior to the COD of Phase 0, at its own cost install, operate and maintain a computerized Hospital Management Information System ("HMIS") so as to ensure that the records of all Project related activities are computerized and maintained in

a structured manner.

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

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

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

5.13.4 The HMIS should provide the following information:

- (i) Patient registration (Outpatient, Inpatient, Emergency Care) with Hospital identification number, which can be co-ordinated with the Aadhaar Card No. / Mobile No. etc;
- (ii) Outpatient record;
- (iii) Inpatient record;
- (iv) Bed management with online ward transfers;
- (v) discharge summary and final disease diagnosis;
- (vi) appointment scheduling;
- (vii) Wards management module;
- (viii) laboratory information system;
- (ix) Radiology information system;
- (x) Patient billing;
- (xi) human resource management including doctors, paramedical staffs and other staff;
- (xii) natal and postnatal records;
- (xiii) referral services;
- (xiv) Type of patient (SMP Beneficiaries/Select Patient/Market Patient)
- (xv) Automated invoicing for SMP Beneficiaries; and
- (xvi) Compliance with KPIs

5.13.5 For the purpose of identification of Select Patients and SMP Beneficiaries, the HMIS shall have the facility required for integrating the Authorization Certificates and Identification

Certificates for the purpose of identifying Select Patients and SMP Beneficiaries. All necessary hardware and software shall be developed and installed in this regard by the Concessionaire and/or its Contractor. The HMIS must have integration functionality with existing ERP system of SMP

5.14 Website of the Hospital

- 5.14.1 The Concessionaire shall assist the Authority by way of providing information and data for operating and maintaining a comprehensive webpage as a part of the Syama Prasad Mookerjee Port, Kolkata website for the Project ("**Hospital Website**").
- 5.14.2 The Concessionaire may maintain a separate website for the Hospital on its own expenditure without any liability to the Authority. For avoidance of doubt, it is clarified that the obligations under Clause 5.14.1 above shall be performed irrespective of the actions taken under this Clause 5.14.2.

5.15 Obligations relating to Select Employees

The Concessionaire shall bear the cost of Select Employees of the Authority in accordance with the provisions of Clause 6.3 :

- a. On and from Appointed Date, all Select Employees shall be on deputation to the Concessionaire and shall be entitled to receive from the Authority, their respective basic pay, dearness allowance, house rent allowance, city compensatory allowance, officer's allowance, conveyance allowance, leave travel concession, applicable bonus, NPS (National Pension Scheme), other benefits and pension contribution, etc. (collectively, the "**Emoluments**"). The Emoluments of the Select Employees shall not be in any manner less favourable than those applicable to them immediately before their deputation as per SMP Service Rules. The Concessionaire shall reimburse to the Authority the Emoluments paid by the Authority to the Select Employees. The Concessionaire shall, throughout the Concession Period cause the Escrow Bank to make payment of the monthly Emoluments to the Authority on or prior to the 7th (seventh) day of each month by cheque drawn in favour of the Authority. Upon Concessionaire making such payment to the Authority, it shall not be liable for non-payment of such Emoluments by the Authority to the Select Employees.
- b. The Select Employees shall also be entitled to medical allowances, free treatment in the Hospital or at least equivalent hospital and other benefits as applicable to the employees of the Authority in accordance with SMP Service Rules. All the medical expenses of the Select Employees shall be borne by the Concessionaire, as admissible and applicable in the case of Authority's medical regulations. It is clarified that the Select Employees and their eligible dependent(s), as per SMP Service Rules, shall be eligible for availing the Healthcare Services from the Hospital free of any charges/cost.
- c. In case any of the Select Employees is eligible for promotion had she/he been continued in the establishment of the Authority, such Select Employee shall be eligible for promotion/MACP and other consequential benefits and it shall be paid by the Authority and reimbursed by the Concessionaire.
- d. The advances like vehicle advance, house building advance and computer advance for which the Select Employees are eligible, will be paid by the Authority.
- e. A Select Employee may at any time by a notice of not less than 90 (ninety) days to the Concessionaire and the Authority, opt to be relieved from his/her duties at the Hospital for the purpose of seeking voluntary retirement, and upon receipt of such notice and if such notice of seeking voluntary retirement is accepted by the Authority, the Concessionaire shall repatriate the services of such Select Employee to the Authority, on last day of the period of such notice and such Select Employee will report to the Authority on such last working day. In case of superannuation, the Select Employee will report to

the Authority on the last working day.

- f. In the event any Select Employee resigns or seeks voluntary retirement, as the case may be, from the services of the Authority, within 60 (sixty) days of such resignation or seeking voluntary retirement, the Authority shall be required to pay the Emoluments in respect of that Select Employee till the last day of the service, if such notice of resignation or seeking voluntary retirement is accepted by the Authority. The Emoluments accruing to such Select Employee till the last day of his/her service (including notice period, if any) shall be borne and reimbursed by the Concessionaire to the Authority. The Concessionaire shall not be liable for reimbursement of any dues (post retirement fiscal and/or non-fiscal benefits) to be paid to the Select Employees post their resignation (duly accepted by the Authority) or superannuation.
- h. The Concessionaire shall bear the cost of Emoluments related to remuneration, gratuity etc. as per SMP Service Rules payable to the Select Employee by the Authority, if any at the time of retirement. The Emoluments cost payable by the Concessionaire shall be during the Concession Period and shall not include any dues prior to her/his deputation and/or post retirement..
- i. The Concessionaire shall bear the Emoluments cost relating to contribution towards pension, gratuity, NPS, leave salary etc. (which is to be reimbursed by the Concessionaire for the Select Employees) to the Authority in respect to the period during which the Select Employees are on deputation.
- l. The Select Employees can retain the residential quarters allotted by the Authority after superannuation / VRS / SVRS for a period of 6 (six) months and in case of resignation/ death due to any cause, for a period as prescribed as per SMP Service Rules, at prescribed rent, intimated and fixed by the Authority as per Regulations governing residential quarters i.e. Syama Prasad Mookerjee Port, Kolkata Employees (Allotment and Occupancy of Residence) Regulations, 1975 , as amended from time to time.
- m. The Select Employees may join the services of the Concessionaire after retiring from the Authority's services at any stage during the Concession Period.
- n. The working hours of the Select Employees, leaves, compensatory off and public holidays shall be as per existing SMP Service Rules.
- o. The Concessionaire shall maintain the same job description/ profile of Select Employees as per SMP Service Rules. The Select Employees shall not be required to perform any duty below his/her designation. The Concessionaire shall be free to fix its own work practices with the consent of Select Employees, involving work/ duties/ responsibilities which may be additional to the work/ duties/ responsibilities hitherto carried out by the Select Employees in the Authority's employment prior to the Appointed Date. For such additional work/ duties and responsibilities, the Select Employee shall be paid incentive as per the rate fixed by the Concessionaire from time to time.
- p. All disciplinary actions/penalties against the Select Employees shall be recommended by the Concessionaire to the Authority and the Authority shall initiate and conduct such disciplinary actions and levy penalties, where applicable, in accordance with the extant SMP Service Rules applicable to such Select Employees.
- q. If in future, the Authority offers/implements SVRS scheme, the same shall be applicable to the Select Employees in accordance with the same terms and conditions as applicable to the employees working under the Authority. The Concessionaire shall bear the cost of the SVRS compensation amount payable to the Select Employees on pro-rata basis for the period the Select Employees have worked at the Hospital.
- r. The pay structure of officers/doctors shall include in addition to other payments under various headings Non-Practicing Allowances (NPA) and cafeteria allowance as per the

existing rules with changes applicable as and when revised by the Authority/Government Instrumentality.

- s. Notwithstanding anything specified in this Clause 5.15, the Authority shall be entitled to fill vacancies arising out of promotion, movement to other posts, or any other reasons for the posts identified under composite method. The Authority shall further be entitled to revoke deputation of the Select Employees identified under composite method of selection for posts.
- t. The Concessionaire should allow and assist in all the research and academic activities by clinical staff as required by the various statutory bodies established under Applicable Laws.
- u. As per the existing practice, all the SMP doctors should be fully sponsored to attend academic activities such as conference/workshop/training programme national and/or international, twice in a year to enhance their clinical skills and knowledge.
- v. As per the existing practice, all the Select Employees shall continue to be paid by the Authority all entitled allowances (Schedule PP)/benefits such as e.g. uniforms/shoes/protective gears etc. as per the existing rules and regulations of the Authority as amended from time to time, and such expenses shall be duly reimbursed by the Concessionaire.
- w. As per the existing practice all the SMP doctors and other officers should continue to be paid all entitled allowances (as specified in Schedule PP)/benefits such as e.g. cell phone, telephone bills, office bags etc.
- x. The Select Employees of the Authority in the employment, immediately prior to the Appointed Date and residing in the residential quarters of the Hospital shall continue to reside in such residential quarters as per the Syama Prasad Mookerjee Port, Kolkata Employees (Allotment and Occupancy of Residence) Regulations, 1975. The rent payable by the Select Employees shall continue to be paid as same by Select Employees or as per the charges levied by the Authority on other quarters of the same grade.
- y. The Select Employee of the Authority in the employment immediately before the Appointed Date and residing in rent free residential quarters shall continue to reside in such residential quarters as per the Syama Prasad Mookerjee Port, Kolkata Employees (Allotment and Occupancy of Residence) Regulations, 1975.
- z. The Select Employee shall continue to provide services at the Existing Hospital and shall not be transferred to any other establishment or subsidiary establishment of the Concessionaire at any other location.

5.16 Obligation of the Concessionaire in relation to SMP Beneficiaries and Select Patients

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

- (i) Bed Days shall be reserved for the SMP Beneficiaries in accordance with Clause 22.5;
- (ii) no SMP Beneficiaries shall be denied Inpatient Services for treatment, Diagnostic Services, OPD Services and procedures available at the Hospital;
- (iii) rooms shall be allotted to SMP Beneficiaries according to the class of employee (as per extant SMP Service Rules) as per CGHS rates;
- (iv) no payment shall be charged directly or indirectly from the SMP Beneficiaries and Select Patients for availing any of the services such as OPD, Inpatient and Diagnostic Services etc. except in accordance with Clause 27.1;

- (v) Notwithstanding Clause 5.16 (iv) above, Pensioners and their spouses shall be provided Inpatients Services at the Hospital, and the Concessionaire shall charge them directly at applicable CGHS rates for Kolkata;
- (vi) The Concessionaire shall give priority to SMP Beneficiaries over any other Patient for Healthcare Services including OPD, Inpatient, Diagnostic Services and treatment except in emergency patient situation of any patient;
- (vii) The Concessionaire shall complete the Project Milestones, as defined in Schedule H-Project Completion Schedule. During the Construction Period of the Project (Phase 0 and Phase I), Authority shall continue to refer its SMP Beneficiaries and / or Select Patients as per the existing referral system to other empanelled hospitals for the healthcare services not available in the Hospital. In the event, the Concessionaire is not able to achieve Commercial Operation Date or not able to provide Healthcare Services in accordance with Schedule A, Schedule M, Schedule O and other relevant provisions of this Agreement for the respective Phases, the SMP Beneficiaries and / or Select Patients shall continue to avail treatment as per the exiting referral system to other empanelled hospitals and the Concessionaire shall bear the cost of such treatment. The Authority shall reimburse to the Concessionaire for such treatment as per the applicable CGHS rate at Kolkata or actual treatment cost, whichever is lower. Such reimbursement of costs shall be without prejudice to the Concessionaire's liability hereunder to pay Damages for delay in fulfilment of its obligations hereunder;
- (viii) All SMP Beneficiaries and Market Patients will get same quality of branded medicines, consumables or any other services as prescribed and Healthcare Services by the treating doctors as per requirement of the individual patients;
- (ix) Necessary arrangement will be made by the Concessionaire to provide sufficient number of pharmacy counters so that the SMP Beneficiaries get priority in collecting medicines;
- (x) There will not be any separate OPDs for SMP Beneficiaries, but the SMP Beneficiaries will be given priority for registration in the system itself and priority arrangement will be as per the decision of the Authority;
- (xi) One upgraded, cardiac ambulance shall be compulsorily made available 24/7 by the Concessionaire inside Kolkata Port premises at certain location as may be specified by the Authority;
- (xii) If SMP Beneficiaries exceed the number of Bed Days reserved for them then such SMP Beneficiaries shall not be turned away but will be accommodated or sent to private super-specialty hospital. The Authority shall reimburse to the Concessionaire for such treatment as per the applicable CGHS rate at Kolkata or actual treatment cost, whichever is lower;
- (xiii) The SMP Beneficiaries shall not be admitted to general wards but only in cubicles accommodating 6/4/2/1 patients from COD of Phase I or as per the approved design by the Authority in its sole discretion. Also, the room allotment for SMP Beneficiaries shall be decided by the Chief Medical Officer/Secretary or designated official of the Authority and the Concessionaire would have that information in their HMIS so as to provide clarity and avoid any clashes with Market Patients.
- (xiv) If any SMP Beneficiaries are unable to travel all the way to the Hospital, they could avail same treatment/service at any of the nearest existing hospital or any other hospital of the Concessionaire in future in the country, including the existing hospitals of the Concessionaire in India.

5.17 Obligation of the Concessionaire related to payments to the Authority

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

5.18 Obligation of the Concessionaire regarding the Authority's Chief Medical Officer (CMO)/Secretary

The Concessionaire shall provide a designated built up and equipped office space of 1500 sq. ft. within the Hospital premises for the office of CMO/Secretary. The CMO//Secretary CMO office shall address all issues and grievances of the Select Patients, Select Employees and SMP Beneficiaries.

5.19 Obligation relating to Medical College (if opted for)

The concessionaire shall be obligated to admit two students per annum as may be nominated by The Chairman, SYAMA PRASAD MOOKERJEE PORT, KOLKATA as per the applicable norms. The Fee for the course shall be recovered in full, from the students directly as per the fee prescribed for the students by State Fee Fixation Committee for the proposed Medical College.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1. General Obligations of the Authority

- (a) The Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- (b) Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:
 - (i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentalities for implementation and operation of the Project. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
 - (ii) transfer the Site to the Concessionaire and ensure that no barriers are erected or placed on or about the Site and/or the Project, as the case may be, by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, emergency, national security, or law and order;
 - (iii) pay to the Select Employees their Emoluments in accordance with the SMP Service Rules;
 - (iv) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;
 - (v) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (vi) monitor adherence to all Key Performance Indicators by the Concessionaire during the Concession Period;
 - (vii) make all payments to the Concessionaire in the manner and within the time period specified in this Agreement;
 - (viii) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors of their obligations under this Agreement and the Project Agreements;
 - (ix) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring empanelment of the Project with any Insurance Scheme that may be announced by the State Government, from time to time;
 - (x) in the event of development of Medical College under Optional Development is undertaken by the Concessionaire, upon written request from the Concessionaire and prior to the application to MCI or equivalent authority for an LOI in respect of the Medical College, provide reasonable assistance to procure affiliation with a university for the purposes of operation and maintenance of the Medical College on best effort basis; and

- (xi) ensure that the Authority holds and owns (legally and beneficially, with all associated rights as provided hereunder), the Golden Share in the issued and paid up share capital of the Concessionaire throughout the Concession Period; and (xii) the CMO/Secretary / Authority may refer at any time during the Concession Period, in writing any Select Patients for free treatment as a part of CSR initiative. The reimbursement for such cases shall be made by the Authority at CGHS rates, Kolkata in accordance with the provisions of this Agreement.

Notwithstanding anything in this Clause 6.1, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire (save and except the expressly enumerated payments in Article 27).

6.2. Access to Infrastructure

The Authority shall provide reasonable assistance to the Concessionaire in procuring access to water supply, power supply and sewerage network facility at the Site. Additionally, the Authority shall, where necessary, provide reasonable assistance in procuring Applicable Permits as per the Applicable Laws. The Concessionaire shall bear all costs and charges in respect of the use of such infrastructure facilities.

6.3. Authority's Employees

- 6.3.1 The existing employees of the Authority serving in connection with the Existing Hospital shall continue to remain in the employment of the Authority and the Concessionaire shall have obligations in relation thereto as provided in this Clause 6.3.
- 6.3.2 The Parties agree that the obligations of the Concessionaire for and in respect of the employees of the Authority shall be restricted to (i) all permanent clinical employees and 1/3 (one third) of the permanent non-clinical employees of the Authority serving in connection with the Existing Hospital, details of the same have been set forth in Schedule D and whose particulars have been verified and accepted for their veracity by the Concessionaire (the "**Select Employees**").
- 6.3.3 The Authority shall not be filling up the direct recruitment baseline vacancies in respect of the Select Employees.
- 6.3.4 The Authority shall promptly provide the Concessionaire with copies of such Government orders related to the employment of Select Employees and their Emoluments, wage/ pay settlement and/or any documents in relation thereto, including the SMP Service Rules and Regulations for implementation.
- 6.3.5 The Authority shall endeavour to protect the interests related to general service conditions of Select Employees during the Concession Period as specified in this Agreement.
- 6.3.6 On the day of retirement of any of the Select Employees during the Concession Period, such employee shall be entitled to receive all post-retirement benefits from the Authority. For avoidance of doubt, if the Select Employee decided to resign from the Authority and join the Concessionaire, he/she shall be entitled for postretirement benefits from the Authority in accordance with the SMP Service Rules. 6.3.7
- 6.3.7 In the event there is a disagreement arising out of interpretation of any Clause of this Agreement in future, the Concessionaire under any circumstances shall bear the Emolument cost of deputed employee and Authority has to ensure smooth payment. Any violation thereof should be viewed under provisions of relevant Damages for default under this Agreement. In the event if the Concessionaire does not reimburse the Emolument cost of the Select Employees on the due date, Authority shall ensure that the Select Employee/s continues to get such payments from Authority, the Concessionaire shall reimburse to the Authority such due amount, and in case of any delay, the Concessionaire irrevocably agrees

and undertakes that Authority shall have the right to either adjust the same against any amount payable by the Authority, or in its sole discretion withdraw such due amount or any shortfall from the Escrow Account of Concessionaire.

For realisation of the aforesaid amount from the Escrow Account, the Authority shall be entitled to make its claim from the Escrow Account, without any recourse or reference to the Concessionaire and the Concessionaire and the Escrow Bank unconditionally consents to the foregoing. The Escrow bank shall promptly upon receiving related instructions debit the Escrow Account and make relevant payment to the Authority in accordance with the provisions of the this Agreement read along with the Escrow Agreement.

- 6.3.8 Notwithstanding the Concession hereby granted to the Concessionaire and the implementation of the Project hereunder, the SMP Beneficiaries may, in case of emergency conditions falling in the list prepared and approved by the Authority, avail medical services at any hospital in the country and shall be reimbursed by the Authority as per CGHS rates.

ARTICLE 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

7.1 Representations, warranties and undertakings of the Concessionaire

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

- (a) it is duly organized and validly existing under and subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) the information furnished in the Bid and as updated on or before the Execution Date of this Agreement is true and accurate in all respects as on the Execution Date of this Agreement;
- (g) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the {Selected Bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the Execution Date of this

Agreement and thereafter until the second anniversary of COD of Phase 0; and that no Member [except Lead Member] of the Consortium whose technical and financial capacity was evaluated for the purposes of qualification in response to the Request for Proposal shall hold less than 26% (twenty six per cent) of such Equity which shall also be no less than and 5% of the Total Project Cost, until second anniversary of the COD of Phase 0; and that the Lead Member of the Consortium shall hold not less than 26% (twenty six per cent) of such Equity and until second anniversary of the COD of Phase 0;

- (l) {the Selected Bidder/ Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the Selected Bidder/each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;(n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date, free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any Person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) all information provided by the Selected Bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;
- (r) the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts;
- (s) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction, to the giving of any relief, or the issue of any process in connection with such proceedings.

7.2 Representations, warranties and covenants of the Authority

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

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorize the execution,

delivery and performance of this Agreement;

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

7.3 Disclosure

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

ARTICLE 8: DISCLAIMER

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

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority within 60 (sixty) days of the Execution Date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to INR 6,10,00,000 /- (Rupees Six Crore Ten Lakhs only)¹ substantially in the format set forth in Schedule E (the "**Performance Security**"). The Concessionaire shall maintain and keep in force the Performance Security for the entire duration of the Performance Security Period in accordance with this Clause 9.1. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the Concessionaire does not fulfil one or more Conditions Precedent within the specified time period, including furnishing of the Performance Security within the specified period, the Authority shall have the right to encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as Damages from the Performance Security for such Concessionaire Default or failure to meet any Condition Precedent or failure to make such payment to the Authority. Subject to this Agreement being valid and in force in accordance with the terms hereof, upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security valid for the duration of the Performance Security Period. In the event that the Concessionaire fails to do so, the Authority shall be entitled to terminate this Agreement in accordance with Article 33. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or satisfying any Conditions Precedent.

9.3 Release of Performance Security

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

9.4 Performance Guarantee

- 9.4.1 The Concessionaire shall, for the performance of its obligations hereunder during the Operation Period, provide to the Authority no later than 30 (thirty) days prior to expiry of the Performance Security Period, an irrevocable and unconditional guarantee from a Bank

¹ 3% of the Project Cost.

for a sum equivalent to INR 4,10,00,000/- (Rupees Four Crore Ten Lakhs only)² in the form set forth in Schedule F (the "**Performance Guarantee**"). Until such time the Performance Guarantee is provided by the Concessionaire pursuant hereto and the same comes into effect, the Performance Security shall remain in force and effect, and upon such provision of the Performance Guarantee pursuant hereto, the Authority shall release the Performance Security to the Concessionaire.

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

9.5 Appropriation of Performance Guarantee

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Guarantee as Damages for such Concessionaire Default. Upon such encashment and appropriation of the Performance Guarantee, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Guarantee, and in case of appropriation of the entire Performance Guarantee provide a fresh Performance Guarantee, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Guarantee as aforesaid, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 33. Upon replenishment or furnishing of a fresh Performance Guarantee, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Guarantee as Damages, and to terminate this Agreement in accordance with Article 33.

9.6 Release of Performance Guarantee

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

² 2% of project Cost.

ARTICLE 10: SITE

10.1 The Site

The site of the Project shall comprise of the Existing Hospital and Facilities described in Schedule A, which shall comprise of 6 acres of land , and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a lease under and in accordance with this Agreement (the "**Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Hospital as set forth in Schedule A and the Land Lease Agreement.

10.2 Lease, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Concession Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of the survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leasehold rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A hereto (the "**Leased Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Leased Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Leased Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever through the execution of the land lease agreement substantially in the form and manner annexed hereto as Schedule G – Part I ("**Land Lease Agreement**").
- 10.2.3 The lease, access and Right of Way granted by this Agreement and the Land Lease Agreement, to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing approach road of the Project or an alternative thereof is open to users at all times during the Concession Period.
- 10.2.4 It is expressly agreed that the leasehold rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Land Lease Agreement, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-lessee, the leasehold rights in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the leasehold rights granted under the Land Lease Agreement hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the

Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site, including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and the Land Lease Agreement, but for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid leasehold rights and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1 above, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to pay Damages under and in accordance with the provisions of Clause 4.2.1. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the development of the Project.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 60 (sixty) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay to the Concessionaire Damages in a sum calculated at the rate of INR 1,000/- (Rupees One Thousand only) per day for every 100 (hundred) square metres or part thereof, commencing from the 61st (sixty first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Completion Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 60 (sixty) days of the Appointed Date shall be completed before the Commercial Operation Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with

the provisions of Clause 12.3.2.

10.4 Site to be free from Encumbrances

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

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority, Independent Engineer and Independent Panel

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

10.8 Geological and archaeological finds

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

ARTICLE 11: UTILITIES AND ASSOCIATED RIGHT OF WAY

11.1 Existing utilities and right of way

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

11.2 Shifting of obstructing utilities

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

ARTICLE 12: DEVELOPMENT OF THE PROJECT

12.1 Obligations prior to commencement of construction

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

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

12.2 Drawings

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

- 12.2.1 The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, the copies of all Drawings to the Independent Engineer for review. Such Drawings shall be prepared taking into account the requirements of the Project;
- 12.2.2 By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering are in conformity with the Scope of the Project and the Specifications and Standards;
- 12.2.3 Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) day period and may begin or continue Construction Works at its own discretion and risk;
- 12.2.4 If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project and/or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review within 7 (seven) days. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- 12.2.5 No review or observation of the Independent Engineer and/or its failure to review or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;
- 12.2.6 Within 30 (thirty) days of the COD of Phase I, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project, as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of the Hospital. Upon achieving Project COD, the Concessionaire shall be required to submit the updated as-built Drawings in the manner set out above. It is clarified that the Concessionaire shall submit the Drawings in accordance with Schedule I; and

- 12.2.7 The Concessionaire shall seek the prior approval of the Authority in case of any alteration, modification or changes to the Drawings. The Concessionaire shall submit such revised Drawings to the Authority and the Authority shall review such revised Drawings in accordance with the procedure provided in this Clause 12.2.

12.3 Development of Project

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake the Construction Works for the Project as specified in Schedule A, and in conformity with the Specifications and Standards set forth in Schedule B.
- 12.3.2 The Concessionaire agrees and undertakes that it shall complete the Construction Works for the Project in accordance with the Project Completion Schedule set forth in Schedule H and, shall be completed on or before the relevant Scheduled Completion Date. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule H, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all the Scheduled Completion Dates are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule H shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule H has been amended as above. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of termination thereof.
- 12.3.3 In the event that the Project is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority (including those specified in Article 11) or due to Force Majeure, the Authority shall be entitled to terminate this Agreement. Without prejudice to the Authority's rights under this Agreement and/or any other right that it may have under Applicable Laws or equity, the Authority may in its sole discretion choose not to terminate this Agreement after the said period of 180 (one hundred and eighty) days and allow for a weekly/ monthly extension beyond such period of 180 (one hundred and eighty) days; provided that the Concessionaire agrees and pays in advance, the Damages calculated in accordance with Clause 12.3.2 above, for each day of such extension. To the extent that the Authority has agreed to allow for an extension and the Concessionaire has paid Damages in advance as stated above, the Authority shall not terminate this Agreement in accordance with the provisions of this Clause 12.3.3. For the avoidance of doubt, it is clarified that this Clause 12.3.3 shall not prejudice, in any manner whatsoever, the Authority's right of termination under any other provision of this Agreement.

12.4 Optional Development

- 12.4.1 Subject to notifying the Authority of its intention and upon receiving the written approval of the Authority, the Concessionaire may undertake the following Optional Development:
- a. At any time post achievement of COD of Phase 0 and during the Concession Period, the Concessionaire shall have the right to exercise the option of expanding and/or augmenting the Hospital on the Site. For avoidance of doubt, it is hereby clarified that the expansion shall involve expansion in Bed capacity or the development of Specified Assets which directly relate to the provision of Health Care Services;
 - b. At any time after the Appointed Date, but subject to Clause 12.5.1, the Concessionaire shall have the right to exercise the option of developing a Medical College on the Additional Land.

- 12.4.2 All the terms, conditions, rights and obligations of the Concessionaire in relation to construction and operation of the Project shall apply *mutatis mutandis* for the development and operation of the Optional Development, including submission of periodic reports and other relevant documents to the Independent Engineer under Articles 13 and 14, and payment of Gross Revenue Share, Lease Rent and Additional Lease Rent (where applicable) under Article 26; provided that the construction of Optional Development is carried out in accordance with the Master Plan and the Drawings. For avoidance of doubt, it is clarified that in relation to the development and construction of Optional Development, the Concessionaire shall not be required to re-submit the Master Plan and the Drawings unless the Concessionaire has or intends to modify, alter or make any changes to the Master Plan and/or the Drawings.

12.5 Development of Medical College

- 12.5.1 In the event the Concessionaire is desirous of exercising its option to develop the Medical College as per Clause 12.4.1 (b), the Concessionaire shall within the 10th anniversary of the Appointed Date, send a notice in writing to the Authority, intimating the Authority of its intention to develop the Medical College and request additional land of 4 acres ("**Additional Land**") or as may be required as per NMC regulation, whichever is less to be leased to the Concessionaire. Within 180 (one hundred and eighty) days of the receipt of such notice, or upon achievement of COD of Phase 0, whichever is later, the Authority shall grant to the Concessionaire, leasehold rights in respect of the Additional Land (along with any buildings, constructions or immovable assets, if any, thereon) which is described, delineated and shown in Schedule A hereto (the "**Additional Leased Premises**") through the execution of the land lease agreement substantially in the form and manner annexed hereto as Schedule G - Part II ("**Land Lease Agreement for Additional Land**"). For avoidance of doubt, the provisions of Article 10 in relation to the Site shall apply *mutatis mutandis* to the Additional Land. It is expressly agreed that the leasehold rights granted under the Land Lease Agreement for Additional Land shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Land Lease Agreement for Additional Land, upon the Termination of this Agreement for any reason whatsoever.
- 12.5.2 The Concessionaire agrees and undertakes that it shall complete the Construction Works for the Medical College, on or before the Scheduled Completion Date for Medical College.
- 12.5.3 In the event that the Medical College is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date for Medical College, unless the delay is on account of reasons solely attributable to the Authority (including those specified in Article 11) or due to Force Majeure, the Authority shall be entitled to terminate the Land Lease Agreement for Additional Land and shall take possession and control of the Additional Land including Project Facilities and physical structures developed thereon and shall utilize the Additional Land for any purpose that the Authority may deem fit.
- 12.5.4 In the event the Concessionaire fails to send the notice as prescribed in Clause 12.5.1 within the 10th anniversary of the Appointed Date, or the Concessionaire at any time before the 10th anniversary of the Appointed Date intimates the Authority in writing that the Concessionaire does not intend to exercise the option for development of Medical Collage, the Authority shall be free to utilize the Additional Land for any purpose that the Authority may deem fit.
- 12.5.5 In the event, Authority is desirous of utilizing the Additional Land of 4 acres for any purpose before 10th Anniversary of the Appointed Date, it shall notify the Concessionaire of the same in writing and in such event, the Concessionaire shall not have the option to develop the Medical College as part of Optional Development.

ARTICLE 13: MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

- 13.1.1 Until the Project COD, the Concessionaire shall, within 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Authority and/or Independent Engineer. In the event that the Concessionaire undertakes the Optional Development in accordance with the terms of this Agreement, the provisions of this Article 13 shall apply *mutatis mutandis*.
- 13.1.2 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, the additional engineers, including any Government owned entity or Government employee to inspect and monitor the Construction Works.

13.2 Inspection

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

13.3 Delays during construction

Without prejudice to the provisions of Clauses 12.3 and 12.5 if the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall notify the Authority and the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, inform the Independent Engineer and the Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the COD.

13.4 Suspension of unsafe Construction Works

- 13.4.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Existing Hospital or public.
- 13.4.2 The Concessionaire shall, pursuant to the notice under Clause 13.4.1 above, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.4 shall be repeated until the suspension hereunder is revoked.
- 13.4.3 Subject to the provisions of Clause 31.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the

Preservation Costs shall be borne by the Authority.

- 13.4.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such dates in the Project Completion Schedule in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 14: COMPLETION CERTIFICATE

14.1 Completion Tests

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Construction Works for the Project or any Phase thereof (Phase 0 and/or Phase I and/or Optional Development), as the case may be, the Concessionaire shall notify the Independent Engineer or the Independent Panel, as the case may be, of its intent to subject the Project or any part thereof to Completion Tests. The date and time of each Completion Test shall be determined by the Independent Engineer and the Independent Panel, as the case may be, in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Completion Tests. The Concessionaire shall provide such assistance as the Independent Engineer and the Independent Panel, as the case may be, may reasonably require for conducting the Completion Tests. In the event of the Concessionaire, the Independent Engineer and the Independent Panel, as the case may be, failing to mutually agree on the dates for conducting the Completion Tests, the Concessionaire shall fix the dates by not less than 7 (seven) days' notice to the Independent Engineer and the Independent Panel, as the case may be.
- 14.1.2 All Completion Tests shall be conducted in accordance with Schedule J. The Independent Engineer and Independent Panel, as the case may be, shall observe, monitor and review the results of the Completion Tests to determine compliance of the Project, as the case may be, with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer or the Independent Panel, as the case may be, during the course of any Test that the Project, as the case may be, or any part thereof, does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer and/or the Independent Panel, as the case may be, shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Completion Tests, in accordance with Good Industry Practice, for determining the compliance of the Project, as the case may, with Specifications and Standards.

14.2 Completion Certificate

14.2.1 Completion Certificate for Project

Upon completion of Construction Works of the Project and within 5 (five) days of determination by the Independent Engineer and the Independent Panel, as the case may be, of the successful completion of all Completion Tests in accordance with Clause 14.1 above, for Phase 0, Phase I, Optional Development, as the case may be, the Independent Engineer and the Independent Panel shall issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule K (the "**Completion Certificate**") for the relevant Phase.

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

14.3 Provisional Certificate

The Independent Engineer and the Independent Panel, as the case may be, may in its

discretion, at the request of the Concessionaire, certify in writing if the Completion Tests are successful for any or a part of the facilities (if not all) required for the Project, can be safely and reliably placed in commercial operation. Upon such certification the Concessionaire shall be entitled to demand and collect the Fee for rendering Healthcare Services or Medical Education Services in accordance with this Agreement. For avoidance of doubt, the Parties agree that notwithstanding anything to the contrary contained in this Clause 14.3, the obligations contained in Clause 12.3 and 12.5 shall continue to be binding on the Concessionaire.

14.4 Rescheduling of Tests

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

ARTICLE 15: ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date

The Phase 0, Phase I, and Optional Development, as the case may be, shall be deemed to be complete when the Completion Certificate for the respective Phase 0, Phase I or Optional Development or Deemed Completion Certificate for the respective Phase 0, Phase I or Optional Development as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of such Phase, shall be the date on which such Completion Certificate for such Phase or the Deemed Completion Certificate for such Phase, as the case may be, is issued (the "**COD**" or "**Commercial Operation Date**"). The Phase 0, Phase I, Optional Development, as the case may be, shall enter into commercial service on COD of each such Phase whereupon the Concessionaire shall be entitled to provide Healthcare Services, provided, however, that the entry of Phase 0, Phase I, or Optional Development, into commercial service shall always be subject to compliance with Applicable Laws.

ARTICLE 16: CHANGE OF SCOPE

16.1 Change of Scope

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

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (ii) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, any impact on the operations or the cost of operation of the Project, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer or the Independent Panel as reasonable.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2 above, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance, thereupon of the Independent Engineer or the Independent Panel or both, as the case may be, make good faith efforts to agree upon the time and costs for implementation thereof.

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

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

16.3 Payment for Change of Scope

- 16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per

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

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

16.4 Restrictions on certain works

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

ARTICLE 17: OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period of the respective Phase, the Concessionaire shall operate and maintain the Project either by itself or through the O&M Contractor, subject to the provisions of Clause 5.2.4 and shall, further develop, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) permitting safe, smooth and uninterrupted treatment and care of Patients in the Hospital during normal operating conditions;
- (b) subject to Clauses 21.2, and this Article 17, making the Project available for use round the clock 24 (twenty four) hours a day and 365 or 366 (three hundred and sixty five or three hundred and sixty six) days a year during the Concession Period and meeting the service level requirements as specified in this Agreement and in accordance with Good Industry Practice, Applicable Permits and Applicable Laws;
- (c) collecting and appropriating the Fees from Patients and/or from the Authority and/or the insurance companies providing insurance scheme (as the case may be);
- (d) collecting and appropriating the Tuition Fee from Students in case Optional Development is undertaken;
- (e) minimising disruption to Patient care in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (f) achieve and maintain NABH Accreditation of the Hospital in accordance with Clause 21.4, accreditation of the Medical College, if developed under Optional Development, with MCI or equivalent authority throughout the Concession Period for the operation of the Project, and other allied medical facilities;
- (g) carrying out periodic preventive maintenance of the Project;
- (h) undertaking routine maintenance including prompt repairs of the Project, as the case may be including its structures and Equipment;
- (i) undertaking major maintenance such as repair or replacement of Equipment, repairs to structures, and repairs and refurbishment of HMIS and communication system;
- (j) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Hospital;
- (k) protection of the environment and provision of Equipment and materials thereof;
- (l) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Hospital;
- (m) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, staff, government agencies, media and other agencies;
- (n) complying with Safety Requirements in accordance with Article 18;
- (o) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (p) maintaining punctuality and reliability in operating the Hospital;
- (q) maintaining a high standard of cleanliness and hygiene in the Hospital;

- (r) operating and maintaining the Beds, the Equipment and HMIS in accordance with the provision of this Agreement;
- (s) providing Healthcare Services to the Patients and Medical Education Services to the Students, as the case may be, in accordance with the provisions of this Agreement and Applicable Laws;
- (t) adhering to the Key Performance Indicators set out in Schedule L;
- (u) adhering to the requirements of Clause 5.11;
- (v) providing and maintaining adequate parking space;
- (w) appointing and retaining the human resource requirements in accordance with the provisions of this Agreement;
- (x) ensuring that immediate medical aid is provided to all Patients, including medico-legal cases without waiting for arrival of police or initiation/completion of legal formalities;
- (y) removing promptly from the Project, as the case may be, all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste and keep the Project, as the case may be, in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice;
- (z) Subject to the provisions of this Agreement, the Concessionaire may, in its discretion participate in the government programs relating to health care as notified by the Authority;
- (aa) maintaining, in conformity with Good Industry Practice, all stretches of approach roads, or other structures situated on the Site;
- (bb) operate and maintain Pharmacy; and
- (cc) pay for utility, water, sewerage, electricity charges etc.

17.2 Maintenance Requirements

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

17.3 Safety, breakdowns and accidents

- 17.3.1 The Concessionaire shall ensure safe conditions for the Patients, visitors and staff and in the event of unsafe conditions, structural damage, Equipment breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures and undertake safe removal of obstruction, debris and dangerous spills and leakages without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- 17.3.2 Concessionaire's responsibility for rescue operations in the Project, as the case may be, shall include safe evacuation of all Patients, Students, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction. For this purpose, it shall maintain and operate at least 2 (two) ambulances with rescue equipment and such other Equipment as may be necessary to conform with Good Industry Practice.

17.4 Overriding powers of the Authority

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

17.5 Restoration of loss or damage to the Project

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

17.6 Provision of Medical Education Services

- 17.6.1 In case the Concessionaire undertakes to develop Medical College as Optional Development, the Concessionaire shall provide medical education and training to Students ("**Medical Education Services**"). The Concessionaire shall operate the Medical College and provide Medical Education Services, in accordance with the requirements of the MCI or equivalent authority and all Applicable Laws and Applicable Permits.
- 17.6.2 The Concessionaire shall, as a minimum and in addition to any other obligations under this Agreement operate the Project in order to ensure that the Hospital meets the requirements of MCI or equivalent authority and all Applicable Laws and Applicable Permits for the operation of the Medical College.

17.7 Equipment

The Concessionaire shall procure, install and commission all Equipment, medical devices, apparatus, facilities and all other support and ancillary infrastructure as necessary for providing Healthcare Services and Medical Education Services, as the case may be, in accordance with Clause 21.7.

17.8 Human Resources

The Concessionaire shall procure and ensure that it engages necessary Human Resources for the provision of Healthcare Services and Medical Education Services, as the case may be, in accordance with Clause 21.6.

17.9 Excuse from performance of obligations

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

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safe use of the Project, as the case may be, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement;
- (c) compliance with a request from the Authority or the directions of any Government

Instrumentality, the effect of which is to close all or any part of the Project; or

(d) an Authority Default.

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

ARTICLE 18: SAFETY REQUIREMENTS

18.1 Safety Requirements

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

18.2 Expenditure on Safety Requirements

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

ARTICLE 19: MONITORING OF OPERATION AND MAINTENANCE

19.1 Status reports

- 19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Panel a quarterly report, in a mutually agreed format, stating in reasonable detail the condition of the Project, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Panel. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- 19.1.2 Prior to the close of each day during the Operation Period, the Concessionaire shall, subject to Applicable Laws, send to the Authority and the Independent Panel, a report in a mutually agreed form, stating the following:
- (a) particulars of SMP Beneficiaries and Select Patients, such as name, age, sex, finger prints; and
 - (b) copies of the relevant medical records and prescriptions applicable to SMP Beneficiaries and Select Patients.
- 19.1.3 During Operation Period, the Concessionaire, through its authorised representative, shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Panel a monthly report, in a mutually agreed format, stating in reasonable detail the list of Patients updated in accordance with Clause 19.1.2 above, and shall promptly give such other relevant information as may be required by the Independent Panel. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Reports of unusual occurrence

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

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

19.3 Inspection

The Independent Panel shall inspect the Project, at least once a quarter. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.4 Remedial measures

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

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

19.5 Additional Experts and Joint Co-ordination Committee

19.5.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, additional Experts, including any Government owned entity or Government employee to inspect the Project and monitor the performance of the Concessionaire during the Operation Period.

19.5.2 The Parties agree and undertake that they shall jointly form a joint coordination committee comprising of representatives from the Authority and the Concessionaire to provide advice on day to day operational matters within 30 (thirty) days of the Execution Date.

ARTICLE 20: PATIENT REGULATION AND SECURITY

20.1 Project regulation by the Concessionaire

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

20.2 Security

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

ARTICLE 21: KEY PERFORMANCE INDICATORS FOR PROJECT

21.1 Key Performance Indicators for Project

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

21.2 Operation of the Project

21.2.1 The Concessionaire shall at all times procure that:

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

21.3 Periodic status report

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

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

21.4 NABH Accreditation

21.4.1 The Concessionaire shall, within 4 (four) years and 6 (six) months from the Appointed Date for the Project and thereafter maintain throughout the Concession Period, NABH Accreditation for the Project, and shall provide a certified copy thereof including its renewals to the Authority forthwith.

21.4.2 In the event of default in obtaining or maintaining the NABH Accreditation specified in Clause 21.4.1 above, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining or maintaining such accreditation.

21.4.3 If the period of default in obtaining or maintaining the NABH Accreditation in accordance with this Clause 21.4, shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount calculated at the rate of 0.5% (zero point five per cent) of the Performance Guarantee for every 1 (one) month of default or part thereof, subject to a maximum of 10% (ten per cent) of the Performance Guarantee.

21.5 Patient Charter

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

21.6 Human Resources

- 21.6.1 The Concessionaire shall procure and ensure that all Human Resources engaged in the provision of Healthcare Services receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties.
- 21.6.2 The Concessionaire shall comply with the human resource standards prescribed by NABH, NABL and MCI or equivalent authority and other prevailing guidelines, as the case may be.
- 21.6.3 The Concessionaire shall regularly supervise and monitor the performance of the Human Resource to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.
- 21.6.4 The Concessionaire shall take appropriate remedial measures in the event of any non-compliance with the requirements set forth in this Clause 21.6.

21.7 Equipment

- 21.7.1 The Concessionaire shall procure, install and commission all new equipment, medical devices, apparatus, facilities and all other support and ancillary infrastructure ("**Equipment**") as necessary for development, operations and maintenance of the Hospital and providing Healthcare Services as per the Scope of the Project.
- 21.7.2 The Concessionaire shall procure, install, operate and maintain the Equipment in accordance with Schedule B and Schedule O.
- 21.7.3 The Concessionaire shall ensure that all Equipment, medical devices, apparatus and facilities are in running and working condition and are calibrated, upgraded or replaced from time to time according to their life span or its impending obsolescence and in compliance with the certification requirements of the concerned competent authorities.

21.8 Damages for shortfall in performance

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

ARTICLE 22: HEALTHCARE SERVICES

22.1 Quality of Healthcare Services

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

22.2 Specialty Services

The Concessionaire agrees and undertakes that the Project shall provide *inter alia* the Healthcare Services ("**Specialties**") commencing from not later than COD of Phase 0 as described in Schedule M, save and except for the ongoing Specialities in the Existing Hospital which shall commence not later than the Appointed Date:

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

22.3 Diagnostic Services

The Concessionaire agrees and undertakes that the Project shall provide *inter alia* the Diagnostics Services ("**Diagnostics**") commencing from not later than COD of Phase 0 as described in Schedule M, save and except for the ongoing Diagnostic Services in the Existing Hospital which shall commence not later than the Appointed Date.

22.4 OPD Services

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

22.5 Inpatient Services

The Concessionaire shall ensure that Bed Days are reserved each Financial Year for SMP Beneficiaries availing Inpatient Services at the Hospital, as follows:

- a. 21,900 (Twenty One Thousand Nine Hundred) Bed Days, equivalent to 60 (sixty) Beds, commencing from the Appointed Date till the 30th anniversary of the Appointed Date; and
- b. 18,250 (Eighteen Thousand Two Hundred Fifty) Bed Days, equivalent to 50 (fifty) Beds, commencing from the 30th anniversary of the Appointed Date till the Termination of the Concession Period;
- c. For avoidance of doubt, it is clarified that the above reserved Bed Days per annum shall not be carried forward into the next Financial Year.

22.6 Referral of Select Patients and SMP Beneficiaries

- (a) The Concessionaire shall ensure that no Patient or category of Patients is discriminated against or unduly favored, as the case may be, in the use of the Project. The Concessionaire agrees that it shall not refer any Select Patient, SMP Beneficiaries to any other healthcare services facility without a valid reason, which

shall be recorded in writing and signed by the Designated Person, and without consulting the Authority's Representative.

- (b) The Designated Person shall submit a periodic report, at least once a month, stating the particulars of the Select Patient and SMP Beneficiary and reason for making such referral, in a mutually agreed form, to the Independent Panel.

22.7 Identification Process for Select Patients

- 22.7.1 Subject to availability of Beds and provisions of this Article 22, the Concessionaire shall provide Healthcare Services to all Select Patients who approach the Hospital seeking medical attention without any discrimination.
- 22.7.2 The Authority or its representative shall determine the eligibility for Select Patients. The Authority or its representative, as the case may be, shall issue a certificate to the effect that such Patient is a Select Patient (the "**Authorization Certificate**"). Any patient issued an Authorization Certificate will be deemed to be a Select Patient entitled to avail the Healthcare Services in accordance with the terms of this Agreement. For avoidance of doubt, it is clarified that regardless of anything to the contrary contained herein, the Authority is not obligated to refer any Select Patient to the Hospital for availing Healthcare Services.
- 22.7.3 The Authorisation Certificate for a Select Patient shall be conclusive and binding on the Authority for payments to be made to the Concessionaire for treatment of such Select Patient in the Hospital.
- 22.7.4 The Authority shall at all times ensure that at least one Authority designated representative is stationed and on duty at the Project.

22.8 Identification Process for SMP Beneficiaries

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

ARTICLE 23:

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 3 (three) firms or bodies corporate, mutually constituted by the Authority and the Concessionaire, to be the independent consultant under this Agreement to certify the Construction Works of the Hospital in accordance with this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the Execution Date and shall expire upon NABH Accreditation in accordance with Clause 21.4.

23.2 Duties and functions

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

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

23.3 Remuneration

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

23.4 Termination of appointment

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

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

23.5 Authorised signatories

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

23.6 Dispute resolution

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

ARTICLE 24: INDEPENDENT PANEL

24.1 Appointment of Independent Panel

The Authority may appoint an Independent Panel of Experts, mutually constituted by the Authority and the Concessionaire, to be the independent consultant under this Agreement (the "**Independent Panel**"). The Independent Panel shall comprise of a panel of Experts including doctors, engineers and other Experts relevant for the Project. The appointment shall be made no later than 60 (sixty) days from Appointed Date and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another panel to be constituted in the manner specified herein to be the Independent Panel for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

24.2 Duties and functions

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

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

24.3 Remuneration

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

24.4 Termination of appointment

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

24.4.2 If the Concessionaire or the Authority has reason to believe that the Independent Panel is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the other Party and seek termination of the appointment of the Independent Panel. Upon receipt of such representation, the other Party shall hold a tripartite meeting with the Party seeking termination and Independent Panel for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Panel is terminated hereunder, the Authority shall appoint forthwith another Independent Panel in accordance with Clause 24.1.

24.5 Authorised signatories

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

24.6 Dispute resolution

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

ARTICLE 25: FINANCIAL CLOSE

25.1 Financial Close

- 25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the Execution Date and in the event of delay, it shall be entitled to a further period not exceeding 185 (one hundred eighty five) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay subject to a maximum of 10 (Ten) % of the amount of the Performance Security; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 185 (one hundred eighty five) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.2.2.
- 25.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

25.2 Termination due to failure to achieve Financial Close

- 25.2.1 Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 25.2.2 Upon termination under Clause 25.2.1 above, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2, it shall, upon termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2.1. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 26: Annual Fee and Gross Revenue Share

26.1 Payment Obligations of the Concessionaire

26.1.1 Lease Rent and Upfront Lease Rent

The Concessionaire shall pay to the Authority an annual lease rent (the "**Lease Rent**") equivalent to a sum of **INR 2,86,00,000/-** (Rupees Two Crore Eighty Six Lakhs only)³ in consideration of the leasehold right being vested in accordance with the terms of Land Lease Agreement, commencing from the Appointed Date. The Lease Rent shall be subject to annual escalation at the rate of 4% and shall, commencing from 1st anniversary of the Appointed Date be paid at an escalated rate (i.e. escalated at 4% on the last paid amount of Lease Rent).

Without prejudice to the foregoing, the Lease Rent shall be payable in the manner as set out below:

- (a) For the first 5 (five) years from the Appointed Date, the Lease Rent shall be payable in accordance with this Clause 26.1.1. at end of each year within 60 days of closing of preceding year till the 5th anniversary of the Appointed Date.
- (b) Thereafter, beginning from the 6th (sixth) year of the Appointed Date, the Concessionaire shall pay within 60 days from the 5th anniversary of the Appointed Date, Lease Rent in advance in one tranche for the next 5 (five) years at the beginning of each 5 (five) year tenure during the remaining Concession Period.

For avoidance of doubt, it is further clarified that, the Concessionaire shall simultaneously pay both: the Lease Rent i.e., (i) the annual Lease Rent payable at end of 5th year of the Appointed Date and (ii) the Lease Rent payable in advance in one tranche for the next 5 (five) years at the beginning of 6th year of the Appointed date within 60 days from the 5th anniversary of the Appointed Date.

26.1.2 Additional Lease Rent

The Concessionaire shall pay to the Authority lease rent for Additional Land (the "**Additional Lease Rent**") at the rate equivalent to 1.25 times then prevailing/applicable SOR, commencing from the date of execution of the Land Lease Agreement for Additional Land. The payment mechanism stipulated in Clause 26.1.1 shall apply, *mutatis mutandis*, to the payment of Additional Lease Rent.

26.2 Gross Revenue Share

The Concessionaire shall, subject to terms hereof, pay to the Authority, share in its Gross Revenue ("**Gross Revenue Share**"), which shall be equivalent to [*]% of the Gross Revenue and shall be payable on a monthly basis commencing from the COD of Phase I or 4 (four) years 6 (six) months from Appointed Date, whichever is earlier:

The Gross Revenue Share for a particular month shall be payable by the Concessionaire by the 7th (seventh) day of the next month and shall be subject to verification and reconciliation on a quarterly, semi-annual or annual basis, as required by the Authority in its discretion. For this purpose, the Parties hereto agree as follows:

- i. Authority and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Concessionaire in order to check or audit any information related to the calculation of Gross Revenue Share as paid/reported to the Authority. The Concessionaire shall make available to the Authority and its representatives such information and grant such access as they shall reasonably require in connection therewith.

³ The Lease Rent shall be computed as per prevailing SOR at the time of Appointed Date

- ii. The applicable Gross Revenue used for final verification/reconciliation shall be the revenue as certified by independent auditor, to be appointed in following manner:
 - a. The Authority shall nominate a panel of 6 (six) chartered accountancy firms, out of which the Concessionaire shall have the right to object to maximum of 3 (three) such nominees, and the Authority shall appoint any 1 (one) nominee to whom the Concessionaire has not objected.
 - b. Pursuant to such certification, if it is established that previous reporting of Gross Revenue is inaccurate then the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement pay the differential amount with interest at the rate of SBI MCLR plus 3% (three percent) and also fully bear the cost of engaging independent auditor.

26.3 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the "**Concession Fee**") a sum of INR 1/- (Rupee One) per annum for the Concession Period. The Concessionaire shall pay the Concession Fee in respect of the entire Concession Period, prior to Appointed Date. In the event of earlier termination of this Agreement for any reason whatsoever, no amounts paid by way of Concession Fee shall be refundable to the Concessionaire.

26.4 Set-off

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

ARTICLE 27: FEE

27.1 Collection and appropriation of Fee

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

- a. The Concessionaire shall not directly collect Fee from SMP Beneficiaries and Select Patients for the OPD and Diagnostic Services availed by them at the Hospital and the Authority shall be liable to reimburse the Concessionaire for the cost of OPD and Diagnostic Services availed by a Select Patient and SMP Beneficiaries in accordance with Clause 27.3;
- b. The Concessionaire shall not directly collect Fee from SMP Beneficiaries (except Pensioners and their spouses in accordance with the provision of this Agreement) and the Select Patients for the Inpatient Services availed by them at the Hospital and the Authority shall be liable to reimburse the Concessionaire for the cost of Inpatient Services availed by a Select Patient and SMP Beneficiaries (except Pensioners and their spouses) in accordance with Clause 27.3;
- c. The Concessionaire shall collect Fee directly from Pensioners and their spouses for the Inpatient Services and any day care procedures, availed by them at the Hospital as per applicable CGHS rates for Kolkata;
- d. The Concessionaire shall collect Fee directly from Market Patients for all the Healthcare Services availed by them at the Hospital. For avoidance of doubt, the Concessionaire shall charge Market Patients at rates mutually agreed with the Market Patients for availing Healthcare Services. The Authority shall not be liable for any payment in respect of the Healthcare Services availed by the Market Patients or any other patients which are not expressly mentioned in this Agreement.

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

27.1.3 If Optional Development (in case of Medical College) is undertaken, then from the COD of the Medical College till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Student Fee directly from the Students in accordance with guidelines of MCI or equivalent authority, as applicable.

27.2 Display of Fee

- (a) The Concessionaire shall ensure that the applicable rates of Fee are readily available to Patients on demand and printed Fee schedules are available at all convenient locations in the Project, including near the Fee counters. Further, the Concessionaire shall share the printed Fee schedules with the Authority.
- (b) The Concessionaire agrees and undertakes that any change in the applicable rates of Fee shall be notified to the Authority in the beginning of each quarter.

27.3 Payment for Select Patient and SMP Beneficiaries by the Authority

Subject to Clause 27.1.1, the Authority shall be liable to reimburse the Concessionaire for the cost of Healthcare Services availed of by a Select Patient and SMP Beneficiaries (where applicable). However prior to any such reimbursement by the Authority to the Concessionaire, the cost of Healthcare Services availed by Select Patients and SMP Beneficiaries (where applicable) shall be adjusted and deducted from the payments that are due and are payable by the Concessionaire to the Authority, subject to and in accordance

with the terms of this Agreement. If post such adjustment, the costs mentioned in this Clause 27.3 remain outstanding, the Authority shall reimburse the Concessionaire such costs as soon as is reasonably practicable. The applicable rate for Select Patient and SMP Beneficiaries shall be the applicable CGHS rate for Kolkata. If there are no packages or rates for procedures in CGHS Kolkata, the following order of priority may be used to define the reimbursement rate:

- a) Packages of National Health Protection Scheme or equivalent public health insurance in Maharashtra shall be used;
- b) CGHS rates in Delhi;
- c) CGHS rates in Chennai;
- d) CGHS rates in Bangalore;
- e) CGHS rates in Mumbai;
- f) Package rates of State health insurance or equivalent;
- g) Average of the actual rates prevailing in the hospitals where SMP has been sending patients prior to signing of this Agreement.

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

27.4 Billing and Payment

- (a) In the event that a Select Patient or SMP Beneficiary approaches the Hospital for availing of the Healthcare Services provided by the Hospital, including OPD Services, the Concessionaire shall, before hospitalising and/or commencing any treatment or diagnosis on such Select Patient or SMP Beneficiary, prepare an interim invoice ("**Interim Invoice**") with the following details:
 - i. details of Healthcare Package to be applied to the Select Patient or SMP Beneficiary; and
 - ii. estimated cost of applying such Healthcare Package, calculated at the prevailing rates published by the Hospital.

The Concessionaire shall, within 7 (seven) hours of the Select Patient or SMP Beneficiary approaching the Hospital, prepare and submit the Interim Invoice to the CMO/Secretary for review and approval. The CMO shall, within 24 (twenty four) hours of receipt of the Interim Invoice, review and either, in writing, approve or reject the Interim Invoice. In the meantime, without waiting for CMO/Secretary approval of Interim Invoice, the Concessionaire shall immediately hospitalise the Select Patient and/or SMP Beneficiary and commence the diagnosis or treatment, as the case may be, of his ailment. For the avoidance of doubt, upon approval by the CMO/Secretary, the Interim Invoice shall be deemed to be the approved final invoice ("**Final Invoice**").

In the event that the CMO/Secretary rejects the Interim Invoice, it shall provide the reasons for rejection and upon receipt of notice of such rejection the process for preparing, submitting and approving the Interim Invoice as set out in this Clause 27.4 shall apply in relation to the new Interim Invoice that shall be prepared by the Concessionaire. Further, in the event that CMO/Secretary fails to either approve or reject the Interim Invoice within the prescribed time, such Interim Invoice shall be deemed to have been approved and the Concessionaire shall immediately hospitalise

the Select Patient and/or the SMP Beneficiary and commence the diagnosis or treatment, as the case may be, of his ailment.

- (b) In the event that during the treatment and/or diagnosis being conducted on the Select Patient or SMP Beneficiary, the specialists treating the Select Patient or SMP Beneficiary are of the opinion that the Healthcare Package mentioned in the Interim Invoice must be changed, the Concessionaire shall submit to the Independent Panel a revised Interim Invoice with the details of the new Healthcare Package in accordance with Clause 27.4 (a) above. Such Interim Invoice shall be reviewed by the Independent Panel and be dealt with in accordance with the provisions of Clause 27.4 (a) above.
- (c) Commencing from the month following the month in which Appointed Date occurs, the Concessionaire shall, by the 5th (fifth) day of each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Authority and Escrow Bank, all approved Final Invoices, in accordance with Clause 27.4 (a) or 27.4 (b), as the case may be, (the "**Monthly Invoice**") signed by the authorised signatory of the Concessionaire. The Monthly Invoice shall specify the cost of the Healthcare Package availed by the Select Patient and/or SMP Beneficiary in the immediately preceding month which is to be adjusted and deducted from the payments due from the Concessionaire to the Authority in accordance with the terms of this Agreement.
- (d) The Concessionaire shall, with each Monthly Invoice, submit (i) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of this Agreement; (ii) proof of cost of Healthcare Package for the period billed; (iii) detailed calculations of the costs to be reimbursed in accordance with the Annual Budgetary Allocation Notification for Select Patients and SMP Beneficiaries, as the case may be, (iv) payment recovered under the Annual Budgetary Allocation Notification for Select Patients and SMP Beneficiaries, if any; (iii) details in respect of discount and/or interest; (v) the net amount which shall be adjusted and deducted from the payments due from the Concessionaire to the Authority on account of the cost of Healthcare Services availed by the Select Patient or SMP Beneficiary; and (vi) original copy of the Authorisation Certificates for the Select Patients or Identification Certificates for SMP Beneficiaries, as the case may be.
- (e) Within 30 (thirty) days of receipt of a Monthly Invoice, the Escrow Bank shall verify it for any apparent error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire in accordance with Clause 27.4 (d) above. In the event that the Escrow Bank notifies any error in writing to the Concessionaire within the time period mentioned above, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Escrow Bank. The process set out in this Clause 27.4 (e) shall then apply to any re-issued Monthly Invoice.

In the event that the Escrow Bank does not notify within 30 (thirty) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Escrow Bank and the Escrow Bank shall make the payment of the amounts claimed under such Monthly Invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

27.5 Delayed payments

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

- (b) In the event that the Authority fails to pay to the Concessionaire any amounts due and payable by it in accordance with the terms of this Agreement, the Concessionaire shall be entitled to deduct the outstanding amount from the Gross Revenue Share, Lease Rent or Additional Lease Rent payable by it to the Authority; provided, however that in the event outstanding amount due from the Authority exceeds the *Lease Rent, Additional Lease Rent, Gross Revenue Share and any other monies* payable by the Concessionaire for the succeeding Financial Year, then notwithstanding anything contrary contained in this Agreement, the Concessionaire shall have the right to refuse to provide or suspend the provision of any Healthcare Services to any Select Patient or SMP Beneficiary, the Fee for which is to be paid by the Authority. For avoidance of doubt, it is clarified that upon recovery of such amounts due and payable, in full, the Concessionaire shall provide Healthcare Services to Select Patients and/or SMP Beneficiaries in accordance with the terms of this Agreement.

ARTICLE 28: ESCROW ACCOUNT

28.1 Escrow Account

- 28.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an escrow account ("**Escrow Account**") with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.
- 28.1.2 The nature and scope of the Escrow Account are fully described in the agreement to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule T (the "**Escrow Agreement**").

28.2 Deposits into Escrow Account

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

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

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

28.3 Withdrawals during Concession Period

- 28.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in relevant Sub-Accounts of the Escrow Account and paid out therefrom in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
 - (b) Reimbursement to Authority of Emoluments of Select Employees;
 - (c) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (e) 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;
 - (f) Concession Fee, Gross Revenue Share, Lease Rent and Additional Lease Rent, if applicable, as due and payable to the Authority;
 - (g) monthly proportionate provision of Debt Service due in an Accounting Year;
 - (h) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
 - (i) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect of Subordinated Debt;
 - (j) any reserve requirements set forth in the Financing Agreements;

- (k) any dividend payable to Authority; and
- (l) balance, if any, in accordance with the instructions of the Concessionaire.

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

28.4 Withdrawals upon Termination on account of either party default

28.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

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

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

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

28.4(A) Withdrawal upon end of Concession Period by efflux of time

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

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amounts due to the Authority and amounts payable towards transfer of the Project and Project Facilities by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;

- (ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Authority; and
- (iii) Vesting Certificate has been issued by the Authority under the provisions of Clause 34.4.

ARTICLE 29: INSURANCE

29.1 Insurance during Concession Period

- 29.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.
- 29.1.2 Without prejudice to the provisions contained in Clause 29.1.1 above, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:
- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
 - (b) comprehensive third party liability insurance, including injury to or death of personnel of the Authority or others who may enter the Project;
 - (c) the Concessionaire's general liability arising out of the Concession;
 - (d) liability to third parties for goods or property damage;
 - (e) workmen's compensation insurance;
 - (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items above; and
 - (g) Professional Indemnity insurance as per the existing practice of the Authority.

29.2 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

29.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Concessionaire shall furnish to the Authority,

notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

29.4 Remedy for failure to insure

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

29.5 Waiver of subrogation

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

29.6 Concessionaire's waiver

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

29.7 Application of insurance proceeds

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

ARTICLE 30: ACCOUNTS AND AUDIT

30.1 Audited accounts

- 30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Fees and other revenues derived or collected by it from or on account of the Project), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 30.1.2 On or before the thirty-first day of July each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (i) the count for each category of Patients using the Project and liable for payment of Fee therefor, (ii) the number of Students using the Medical College and liable for payment of Tuition Fees therefor (iii) Fee and Tuition Fee charged and received, realizable fee and other revenues derived from the Project, and (iv) such other information as the Authority may reasonably require.

30.2 Certification of claims by Statutory Auditors

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

ARTICLE 31: FORCE MAJEURE

31.1 Force Majeure

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

31.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees or representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 31.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver Equipment in India if such delay or failure is caused outside India by any event specified in Clause 31.2 (a) and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Laws or Applicable Permit, or (ii) on account of breach of any Applicable Laws or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

31.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

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

31.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 37 and its effect, in financial terms, exceeds the sum specified in Clause 37.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) early determination of this Agreement by the Authority for reasons of national emergency, national security or the public interest;
- (e) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (f) any event or circumstance of a nature analogous to any of the foregoing.

31.5 Duty to report Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 31 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

- (iv) any other information relevant to the Affected Party's claim.
- (b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (c) For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 31.5 (a), and such other information as the other Party may reasonably request the Affected Party to provide.

31.5 (A) Period of Force Majeure

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

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

31.6 Effect of Force Majeure Event on the Concession

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

31.7 Allocation of costs arising out of Force Majeure

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

the other Party any costs thereof;

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

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

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

31.8 Termination Notice for Force Majeure Event

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

31.9 Termination Payment for Force Majeure Event

- (a) If termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due LESS [all insurance claims received or admitted ; and Proportionate lease rent amount (if paid as per Clause 26 hereof)corresponding to the unexpired period that remains unutilised by the Concessionaire as on date of Termination]
- (b) If termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (i) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;

- (ii) 110% (one hundred and ten per cent) of the Adjusted Equity;
 - (iii) an amount equivalent to the Additional Termination Payment less Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder, if applicable.
 - (iv) Proportionate lease rent amount (if paid as per Clause 26 hereof) corresponding to the unexpired period that remains unutilised by the Concessionaire as on date of Termination
- (c) If termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 33.3 (b) as if it were an Authority Default.

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

31.10 Dispute resolution

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

31.11 Excuse from performance of obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume the performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume the performance of its obligations hereunder. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

ARTICLE 32: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

32.1 Suspension upon Concessionaire Default

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

32.2 Authority to act on behalf of Concessionaire

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

32.3 Revocation of Suspension

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

32.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold termination for a period not exceeding 180 (one

hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 32.1, for enabling the Lenders' Representative to exercise its right of substitution on behalf of Senior Lenders. Notwithstanding anything to the contrary stipulated in this Agreement, the Authority shall (to the exclusion of Senior Lenders) have the right to take over (as per the Divestment Requirements in Clause 34.1) complete possession and control of the Project Assets, Existing Hospital, Existing Facilities, thereby replacing the Concessionaire, by way of terminating this Agreement in case any Concessionaire's Event of Default occurs prior to the COD of Phase 0.

32.5 Termination

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

ARTICLE 33: TERMINATION

33.1 Termination for Concessionaire Default

- (a) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:
 - (i) the Performance Security or the Performance Guarantee, as the case may be, has been encashed and appropriated in accordance with Clause 9.2 and 9.5 respectively and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
 - (ii) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2 or the Performance Guarantee in accordance with Clause 9.5, as the case may be, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security or the Performance Guarantee, as the case may be, was appropriated;

- (iii) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project (including Optional Development) for more than 90 (ninety) days without the prior written consent of the Authority;
- (iv) the Concessionaire's failure to fulfil any of its material obligations resulting in Material Adverse Effect;
- (v) the Concessionaire commits repeated default in conforming to the Key Performance Indicators as set forth in Article 21 and Schedule L or O&M obligations as set forth in Article 17 and the total Damages payable for such defaults exceed the amount of Performance Guarantee;
- (vi) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (vii) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (viii) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (ix) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (x) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (xi) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (xii) there is a transfer, pursuant to law either of (A) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (B) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (xiii) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (xiv) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (xv) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (xvi) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by the court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (A) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (B) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (C) each of the Project Agreements remains in full force and effect;
 - (xvii) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
 - (xviii) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
 - (xix) the Concessionaire has failed to fulfil any obligation, for which failure, termination has been specified in this Agreement; or
 - (xx) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;
 - (xxi) The Concessionaire fails to reimburse the Authority for Emoluments for a continuous period of 3 months;
 - (xxii) Five such instances any time during the Concession Period, where the Concessionaire breaches any condition or fails to provide any Healthcare Services to SMP Beneficiaries and/or Select Patients at any time during the Concession Period (if Healthcare Services are operational and being provided to the Market Patients).
- (b) Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 33.1 (c).
- (c) The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 33.1 (b) above to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement or such other measures as may be considered appropriate by them in the attendant circumstances::

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

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

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

33.2 Termination for Authority Default

- (a) In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:
 - (i) The Authority commits a material default in complying with any of the provisions of this Agreement and as a result of such material default, the Concessionaire is unable to undertake the Project in terms of this Agreement;
 - (ii) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
 - (iii) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.
- (b) Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided

that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

33.3 Termination Payment

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

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

For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD of Phase I, save and except as provided herein below in this Clause 33.3 (a).

Upon termination on account of Concessionaire's Default during the Construction Period prior to COD of Phase I, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 30% (thirty percent) of the Total Project Cost and in the event of expenditure exceeding such 30% (thirty percent) and forming part of Debt Due, the provisions of this Clause 33.3 (a) shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 30% (thirty percent) . By way of illustration, the Parties agree that if the total expenditure incurred prior to termination is 90% (ninety percent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 60% (sixty percent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 54% (fifty four percent) of the Total Project Cost or 90% of the Debt Due. The Parties further agree that for the purposes of this Clause 33.3 (a), Total Project Cost shall mean the amount specified in sub-clause (b) of the definition of Total Project Cost.

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

- (b) Upon termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
 - (i) Debt Due less Insurance Cover;
 - (ii) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
 - (iii) 115% (one hundred and fifteen percent) of the amount representing the Additional Termination Payment, if applicable; and
 - (iv) Proportionate lease rent amount (if paid as per Clause 26 hereof) corresponding to the unexpired period that remains unutilised by the Concessionaire as on date of Termination

- (c) The term "lease rent" as used in Clause 31.9b (iv) and 33.3b(iv) shall solely for the purposes of Termination Payment be understood to include Lease Rent and Additional Lease Rent that is paid by Concessionaire in accordance with Clause 26. Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- (d) The Concessionaire expressly agrees that Termination Payment under this Article 33 shall constitute a full and final settlement of all claims of the Concessionaire on account of termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

33.4 Certain limitations on Termination Payment

- (a) Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement. For avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD of Phase I, the Concessionaire shall notify to the Authority, the Total Project Cost and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.
- (b) The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 33.4 (b) shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment in respect of Phase 0 and Phase I of the Project.
- (c) upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default, the concessionaire shall provide the computation of the Termination Payment with all requisite details certified by its Statutory Auditor for the sole purpose reference to the Authority.

33.4.A Additional Termination Payment due and payable in respect of Specified Assets which are constructed, acquired or installed after the COD of Phase 0 forming part of Optional Development but no later than the 14th (fourteenth) anniversary of the COD of Phase 0, shall be limited to the lowest of:

- (i) Adjusted Depreciated Value thereof;
- (ii) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

(iii) 40% of Total Project Cost.

33.5 Other rights and obligations of the Authority

Upon termination for any reason whatsoever, the Authority shall:

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

33.5(A) Payment of Compensation to Senior Lenders

- (a) The Concessionaire hereby irrevocably authorises the Authority to pay to the Senior Lenders or at their instruction to any designated bank account in India the Termination Payment payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of Termination Payment under this Agreement and the charge created by the Concessionaire in favour of the Senior Lenders on any of its assets taken over by the Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge. The Concessionaire further confirms that payment of Termination Payment by Authority in accordance with this Clause 33.5(A) shall be a valid discharge to the Authority in respect of Authority's obligation regarding payment of Termination Payment to the Concessionaire under this Agreement.
- (b) Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Senior Lenders as the case may be shall be entitled to remove at its/ their cost all such moveable's which are not taken over by the Authority and to deal with the same in accordance with their respective rights under law.
- (c) Provided further, if there are no amounts outstanding under the Financing Agreements and a certificate to that effect issued by the Senior Lenders is furnished by the Concessionaire to the Authority, the Termination Payment shall be paid by the Authority to the Concessionaire directly.

33.5(A) Authority's Rights of Step-in

Upon a Termination Notice being issued due to a Concessionaire Event of Default, the Authority may always subject to Right of Substitution of the Senior Lenders, at its

discretion:

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

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

33.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of this Clause 33.6, any termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money Damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 34: DIVESTMENT OF RIGHTS AND INTEREST

34.1 Divestment Requirements

- (a) Upon Termination of this Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements:
 - (i) notify the Authority forthwith of the location and particulars of all Project Assets;
 - (ii) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
 - (iii) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of termination during the Construction Period, all Project Assets shall be handed over on an as is where is basis after bringing them to a safe condition;
 - (iv) the Authority shall be entitled to encash any subsisting Performance Security or Performance Guarantee provided by the Concessionaire to the Authority in accordance with the provisions of this Agreement.
 - (v) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete as built Drawings as on the Transfer Date, provided that in the event the Concessionaire has used the brand name and/or logo of the {Selected Bidder/Consortium Members}, if any, in relation to the Project or otherwise, the Concessionaire shall not be obliged to deliver and transfer such brand name and/or logo to the Authority. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any Encumbrance;
 - (vi) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
 - (vii) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or Equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
 - (viii) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.
- (b) Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the termination of this Agreement becomes effective in accordance with its terms.

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

34.2 Inspection and cure

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

34.3 Cooperation and assistance on transfer of Project

- (a) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients, other members of the public or the lawful occupiers of any part of the Site.
- (b) The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project maximum until the expiry of 6 (six) months after the Transfer Date.
- (c) The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 34.1 (a) and is reasonably required in connection with operation of the Project. For avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

34.3(A) Delayed Transfer of Assets

If for any reasons other than those attributable to the Authority the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 34, there shall be no suspension of the operation and maintenance of the Project Facilities and services and the Concessionaire shall, as a trustee of the Authority, (a) continue to operate and maintain the Project Facilities and services or such of them, as directed by Authority until completion of the relative transfer formalities as stipulated in Clause 34.3 and (b) account for and pay to the Authority the Fee collected and other revenues derived from the Project minus operating costs and statutory dues, from such operations. In the event of failure to do so, the Concessionaire shall be liable to pay to the Authority, for every Day of delay, liquidated damages computed at the rate of the average daily profits earned

during the 3 (three) years immediately preceding the Transfer Date, or from COD of Phase I till Transfer date in case the Project is terminated less than three years from COD of Phase I. Parties confirm that this is a true and correct estimate of damages and not in the nature of a penalty. Provided nothing contained in this Clause shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to the Authority in accordance with the requirements thereof under this Agreement.

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

34.4 Vesting Certificate

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

34.5 Divestment costs

- (a) Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and services consequent to the expiry or termination of this Agreement shall be borne by:
 - (i) the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;
 - (ii) the Authority in the event of termination due to Authority Event of Default or Political Event; and
 - (iii) by both parties equally in case of termination due to Change in Law or Non-Political Event or Indirect Event.
- (b) In the event of any Dispute relating to matters covered by and under this Article 34, the Dispute Resolution Procedure shall apply.

ARTICLE 35: DEFECTS LIABILITY AFTER TERMINATION

35.1 Liability for defects after Termination

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

ARTICLE 36: ASSIGNMENT AND CHARGES

36.1 Restrictions on assignment and charges

- (a) Subject to Clauses 36.2 and 36.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (b) Subject to the provisions of Clause 36.2, the Concessionaire shall not create or permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

36.2 Permitted assignment and charges

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

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

36.3 Substitution Agreement

- (a) Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule Q (the "**Substitution Agreement**").
- (b) Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days for curing such breach.

36.4 Assignment by the Authority

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

ARTICLE 37: CHANGE IN LAW

37.1 Increase in costs

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

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

37.2 Reduction in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For avoidance of doubt, it is agreed that this Clause 37.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

37.3 Protection of NPV

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

37.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 37 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Accounting Year. Any demand for each cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

37.5 No claim in the event of recovery from Patients

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

ARTICLE 38: LIABILITY AND INDEMNITY

38.1 General indemnity

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

38.2 Indemnity by the Concessionaire

- (a) Without limiting the generality of Clause 38.1 above, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
 - (i) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (ii) payment of Taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's Contractors, suppliers and representatives; or
 - (iii) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- (b) Without limiting the generality of the provisions of this Article 38, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay

by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

38.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 38 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

38.4 Defence of claims

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

- (c) If the Indemnifying Party exercises its rights under Clause 38.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (i) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (iii) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (A) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (B) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

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

38.5 No consequential claims

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

38.6 Survival on Termination

The provisions of this Article 38 shall survive Termination.

ARTICLE 39: RIGHTS TO THE SITE

39.1 Rights to the Site

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

39.2 Access rights of the Authority and others

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

39.3 Property taxes

All property taxes payable from the Appointed Date on the Site shall be payable by the Concessionaire. For avoidance of doubt, all dues and taxes which are payable and due prior to the Appointed Date, shall be payable by the Authority.

39.4 Restriction on sub-letting

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

ARTICLE 40: DISPUTE RESOLUTION

40.1 Amicable Settlement

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

40.2 Assistance of Expert

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

40.3 Arbitration

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

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

40.3.2 Any award made in any arbitration held pursuant to this Article 40 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such award without delay.

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

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

proceedings shall be video recorded and one copy each of the video recording shall be provided to both the Parties.

40.4 Adjudication by Adjudicatory Board

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

ARTICLE 41: DISCLOSURE

41.1 Disclosure of Specified Documents

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

41.2 Disclosure of Documents relating to safety

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

41.3 Withholding disclosure of Protected Documents

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

Explanation:

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

ARTICLE 42: REDRESSAL OF PUBLIC GRIEVANCES

42.1 Complaints Register

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

42.2 Redressal of complaints

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

ARTICLE 43: MISCELLANEOUS

43.1 Governing law and jurisdiction

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

43.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

43.3 Depreciation and interest

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

43.4 Delayed payments

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

43.5 Waiver

- (a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

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

43.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer or Independent Panel of any Project Agreement, Documentation or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Clause 43.6 (a) above.

43.7 Exclusion of implied warranties

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

43.8 Survival

Termination shall:

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

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

43.9 Entire Agreement

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

part of this Agreement and treated as such.

43.10 Severability

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

43.11 No partnership

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

43.12 Third parties

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

43.13 Successors and assigns

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

43.14 Notices

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

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

following the date of its delivery.

43.15 Language

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

43.16 Stamp Duty

Save and except as otherwise provided in this Agreement or in the Lease Deed or Lease Deed for Additional Land, any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Concessionaire.

43.17 Counterparts

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

ARTICLE 44: DEFINITIONS

44.1 Definitions

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

"Accounting Year" means the Financial Year commencing from the 1st (first) day of April of any calendar year and ending on the 31st (thirty-first) day of March of the following calendar year;

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

"Additional Lease Rent" shall have the meaning set forth in Clause 26.1.2;

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

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

"Adjusted Equity" means the Equity funded in Indian Rupees and adjusted on the 1st (first) day of the current month (the **Reference Date**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

- (a) on or before COD of Phase 0, as the case may be, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in PRICE INDEX occurring between the 1st (first) day of the month of Appointed Date and the Reference Date;
- (b) anytime after COD of Phase 0 and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD of Phase 0 shall be deemed to be the base (the **Base Adjusted Equity**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD of Phase 0 to the extent of variation in PRICE INDEX occurring between COD of Phase 0 and the Reference Date; and
- (c) anytime after the 4th (fourth) anniversary of COD of Phase 0, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.11% (zero point one one per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD of Phase 0 and the amount so arrived at shall be revised to the extent of variation in PRICE INDEX occurring between COD of Phase 0 and the Reference Date;

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

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

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

contained in this Agreement;

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

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

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

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

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

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

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

"Approved Valuer" means a firm of valuers recognized as such by the income tax department and having experience of valuing at least 5 (five) properties exceeding INR 100,00,00,000/- (Rupees One Hundred Crores) each in value;

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

"Associate" or **"Affiliate"** means, in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member (as used in this definition, the expression **control** means, with respect

to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Authorisation Certificate" shall have the meaning set forth in Clause 22.7.2;

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

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

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

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

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

"Bank" means any Nationalised Bank;

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

"Bed Day" means a day during which an Inpatient is confined to an a Bed and in which the Inpatient stays overnight in the Hospital; For avoidance of doubt, it is clarified that Day Care Beds for day care procedures (Patients admitted for a medical procedure or surgery in the morning and released before the evening) are excluded;

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

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

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

"Bid Security" means the security provided by the Selected Bidder to the Authority along with the Bid in a sum of INR 4,04,00,000/- (Rupees Four Crore Four Lakhs only) in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

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

"BPL Patient" means the list of below poverty line patients prepared by the State Government as per the poverty guidelines of NITI Aayog, also used for PMJAY or equivalent enrolment;

"CGHS" means Central Government Health Scheme;

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

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

- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid;
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project; or
- (f) any lockdown orders or orders restricting the movement of persons/goods/vehicles issued by Government of India and/or the State Government under the Epidemic Diseases Act, 1897 and/or the Disaster Management Act, 2005,

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

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/Consortium Members}, together with {its/their} Affiliates in the total Equity to decline below 51% (fifty one) thereof until 2nd (second) anniversary of COD of Phase 0; provided that any material variation (as compared to representation made by the Concessionaire during the bidding process for the purpose of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be) in the proportion of the equity holding of {the Selected Bidder/ any Consortium Member} to the total Equity, if it occurs prior to the 2nd (second) anniversary of COD of Phase 0, shall constitute Change in Ownership;

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

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

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

"Clause" means a clause of this Agreement;

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

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

"COD of Phase 0" means COD in respect of Phase 0 of the Project;

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

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

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

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

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

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

"CMO" means Chief Medical Officer of the Hospital;

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

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

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

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

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

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

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

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

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

"Construction Period" means period beginning from the Appointed Date and ending on Project COD subject to the provisions of this Agreement. For avoidance of doubt, it is clarified that this period shall include the Construction Period for Phase 0 and Phase I of the Project;

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

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

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

"Core Clinical Services" means the following services and activities, for each of which, the Project shall employ and make available at least one MCI or equivalent authority/recognised specialist on its rolls, as per Applicable Laws:

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

- (f) Ophthalmology;
- (g) Cardia Sciences: Cardiology and Cardio thoracic Surgery;
- (h) Neuro Sciences: Neurology and Neurosurgery;
- (i) Renal Sciences: Nephrology and Urology;
- (j) Trauma and Critical Care;
- (k) Orthopaedics;
- (l) Gastroenterology & Hepatology;
- (m) Rheumatology;
- (n) Endocrinology & Diabetes; and
- (o) Anaesthesiology.

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

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

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

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

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

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

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

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the principal) but excluding any part of the principal that had fallen due for repayment prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub-clause (a) above until

the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default;

- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Emoluments" shall have the meaning set forth in Clause 5.15 (a);

"Encumbrances" means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any

kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

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

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

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

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

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

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

"Existing Facilities" means all existing amenities and facilities situated on Site on the Appointed Date, more particularly set out in Schedule P;

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

"Expert" means any person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement;

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

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

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

- (a) means the fulfilment of all conditions precedent under the Financing Agreements, so that the funds agreed to be disbursed thereunder are ready and available for disbursement to the Concessionaire;
- (b) In case the Concessionaire does not enter into any Financing Agreement with Senior Lenders for funding the entire Total Project Cost (TPC) through debt: equity contribution, and rather proposes to fund the Total Project Cost or substantial part thereof (viz. more than 60% of TPC), as the case maybe, through Equity; in such scenario, the Concessionaire shall comply with any one of the following measures as stated below:
 - (a) Upfront infusion of at least 25% of the proposed Equity in the SPV to demonstrate the funding commitment; or
 - (b) Furnish the documentary evidence from banks/financial institutions identifying the monies available either in form of cash and/or liquid asset available to be liquidated to meet the Equity commitment. In this connection, the promoter (and/or any of its associates) who are identified by the SPV as equity infusers, should also corroborate the aforesaid financial documents through their board resolution and corporate guarantee.

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

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

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

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

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning set forth in Clause 31.1;

"Force Majeure Costs" shall have the meaning set forth in Clause 31.7 (b);

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

"Golden Share" shall have the meaning set forth in Clause 5.4.1;

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

"Government Instrumentality" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"Gross Revenue" means all pre-tax gross revenues and receipts earned by the Concessionaire under or pursuant to this Agreement including revenue from Optional Development, at any time from the achievement of COD of Phase 0, or 4 (four) years 6 (six) months from the Appointed Date, whichever is earlier, computed on monthly basis in accordance with this Agreement upon the Transfer Date, and shall include any monies received from sub-licensees and other persons, by the Concessionaire as deposits (refundable or otherwise) but shall exclude the following:

- (a) any insurance proceeds received by the Concessionaire relating to (i) third party liability insurance paid or to be paid to the person whose claim(s) constitute(s) the risk or liability insured against; and (ii) any form of physical damage of assets, and the Concessionaire

has incurred or will incur an expenditure greater than or equal to such proceeds received for repair, reinstatement or otherwise replacement, promptly and diligently of such assets;

- (b) any monies received by the Concessionaire, for or on behalf of any Government Instrumentality, as an authorized agent of such Government Instrumentality; and
- (c) any deposit amounts refunded to the relevant sub-licensee or any other person authorized by the Authority in a particular year of the Concession Period, provided these pertain to past deposits on which Gross Revenue Share has been paid to the Authority.

It is expressly clarified that:

- (i) insurance proceeds referred to in exclusion (a) above, shall not include insurance proceeds received for loss of revenues and/or business interruption;
- (ii) monies referred to in exclusion (b) above, shall be excluded only if the same has been credited or will be credited by the Concessionaire to the relevant Government Instrumentality promptly and diligently and any fine, penalty or other amounts of similar nature that may accrue as a result of non-payment or delayed payment of such monies under the Applicable Laws, will not be excluded;
- (iii) Gross Revenue Share is quoted by Selected Bidder on an annual basis (payable on monthly basis) for an Accounting Year, in accordance with prevailing Indian accounting standards as applicable from time to time, however same shall be payable and reconciled subject to and in accordance with the provisions of this Agreement.

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

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

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

"HMIS" means Hospital management information system;

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

"Hospital Website" shall have the meaning set forth in Clause 5.14.1;

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

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

"ICU Beds" means Beds in the intensive care unit of the Hospital;

"Identification Certificate" shall have the meaning set forth in Clause 22.8.2;

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

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

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

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

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

"Inpatient" means Patients receiving Inpatient Services;

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

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

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

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

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

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

"Key Performance Indicators" shall have the meaning set forth in Clause 21.1 read with Schedule L;

"SMP Beneficiaries" means (i) SMP employees and their family members, (ii) Chairman, Deputy Chairman and their dependent family members; (iii) Pensioners (including existing and future Pensioners) and their spouses, including from other Major Ports (under Ministry of Ports, Shipping and Waterways) residing in Kolkata; (iv) CISF employees (working with SMP) and their dependent family members, (v) contractual staff of SMP during the currency of their contract, and (vi) all Trustees including retired Trustees (including retired Chairman and Deputy Chairman) who have completed at least one term of two years and their spouses;

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

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

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

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

"Lenders' Representative" means the person duly authorised by the Senior Lenders to act

for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

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

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

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

"Market Patient" means a Patient other than Select Patient and SMP Beneficiaries;

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

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

"MCI" means the Medical Council of India;

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

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

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

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

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

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

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

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

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

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

"O&M" means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

"O&M Contract" means the operation and maintenance contract that may be entered into between the Concessionaire and Project Operator and/or medical college operator for

performance of the O&M obligations in accordance with this Agreement;

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

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

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

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

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

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

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

- (i) Phase 0, means the period commencing from Appointed Date and ending on the Transfer Date;
- (ii) Phase I, means the period commencing from COD of Phase I and ending on the Transfer Date; and
- (iii) Optional Development, means the period commencing from COD of Optional Development and ending on the Transfer Date;

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

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

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

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

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

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

"Pensioner" means retired employees of SMP;

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

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

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

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

"Phase" as the context requires means, Phase 0, Phase I or Optional Development developed in accordance with the provisions of this Agreement;

"Phase 0" means the Project comprising minimum number of 150 (one hundred fifty) Beds (including those existing in the Project i.e. [*] Beds) with super specialty facility and Diagnostic Services in accordance with Schedule A and Schedule H;

"Phase I" means the Project comprising minimum number of 300 (three hundred) Beds (including those provided in Phase 0) with super specialty facility and Diagnostic Services in accordance with Schedule A and Schedule H;

"Price Index" shall comprise of weighted average of:

(a) 70% (seventy percent) of WPI; and

(b) 30% (thirty percent) of CPI (IW)";

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

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

"Project" means the development, construction, operation and maintenance of Phase 0 and Phase I, and Additional Facilities to be undertaken subject to and in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project. For avoidance of doubt it is clarified that as and when Optional Development is undertaken, the same shall be deemed to form part of the Project and all obligation of Concessionaire including payment of Gross Revenue Share shall extend thereto;

"Project Agreements" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of up to INR 5,00,00,000/- (Rupees Five Crores only) for each such agreement;

"Project Assets" means all physical and other assets relating to and forming part of the Project and the Site including:

- (a) rights over the Site;
- (b) tangible assets such as civil works including foundations, drainage works, electrical systems, communication systems, fare collection systems, rest areas, relief centres, maintenance depots, administrative offices;
- (c) Equipment
- (d) Project Facilities situated on the Site;
- (e) all rights of the Concessionaire under the Project Agreements;

- (f) financial assets, such as receivables, security deposits etc.;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Project;

"Project COD" shall include COD of Phase 0 and COD of Phase I, to the extent applicable;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule H for completion of the Project, on or before the Scheduled Completion Date for Phase 0, Phase I and Optional Development of Medical College;

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

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

"Protected Documents" shall have the meaning set forth in Clause 41.3;

"Project Operator" means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations in respect of the Project (except the Core Clinical Services), for and on behalf of the Concessionaire;

"Radiology Tests" means and includes the following tests:

- (a) MRI;
- (b) CT-scan;
- (c) X-Ray;
- (d) USG;
- (e) ECG;
- (f) Echo cardiography;
- (g) Pulmonary Function Test (**PFT**);
- (h) Treadmill Test (**TMT**);

"Reference Exchange Rate" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"Request for Proposals" or **"RFP"** shall have the meaning set forth in Recital (B);

"Right of Way" means the constructive possession of the Site and Additional Land (where applicable), together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Project and real estate development in accordance with this Agreement;

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

"PMJAY" means Pradhan Manthri Jan Arogya Yojna of the Ministry of Health & Family Welfare, Government of India or any substitute thereof;

"Safety Requirements" shall have the meaning set forth in Clause 18.1;

"Schedule" means a schedule under this Agreement;

"Scheduled Bank" means a bank as defined under Section 2(e) of the Reserve Bank of

India Act, 1934;

"Scheduled Completion Date" shall include the scheduled date(s) for achieving COD of Phase 0, Phase I as the case may be, as set forth in Schedule H;

"Scheduled Completion Date for Phase O" shall have the meaning set forth in Schedule H;

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

"Scheduled Completion Date for Medical College" means 2 (two) years and 6 (six) from the grant of vacant access and Right of Way to the Additional Land, pursuant to the execution of the Land Lease Agreement for Additional Land;

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

"Select Patient" means a BPL Patient or any other Patient who has been identified as a Select Patient in accordance with Clause 22.7;

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

"Select Employees" shall have the meaning as set forth in Clause 6.3.2;

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu* charge on the assets, rights, title and interests of the Concessionaire;

"Site" shall include Part A Site as specified in Schedule A;

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

"Special Planning Authority" means, in the context of this Agreement, SMP on and from the date of conferment of such status by [*], Government of West Bengal, in accordance with the West Bengal Town And Country (Planning And Development) Act, 1979, or any other Applicable Laws;

"Specifications and Standards" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by the Authority;

"Specified Assets" means such of the Project Assets which are constructed, acquired or installed after the COD of Phase 0 forming part of the Optional Development, but no later than the 14th (fourteenth) anniversary of the COD of Phase 0; provided that Specified Assets shall not include assets that are part of Existing Hospital and augmentation thereof in accordance with the provision of this Agreement; provided further that any Specified Assets shall be constructed, acquired or installed by the Concessionaire only with the prior approval of Authority.

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

"State" means the State of West Bengal and **"State Government"** means the government of the State;

"Statutory Auditors" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act 2013 including any statutory modification or re-enactment thereof, for the time being in force, and

appointed in accordance with provisions of this Agreement;

"Students" means a student enrolled in the Medical College;

"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans denominated in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

"Substitution Agreement" shall have the meaning set forth in Clause 36.3 (a);

"Suspension" shall have the meaning set forth in Clause 32.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable in respect of Phase 0 and Phase I of Project, under and in accordance with this Agreement, by the Authority to the Concessionaire upon termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 33.4;

"Total Project Cost" means, as on the date of COD of Phase I, the capital cost incurred on construction and financing of the Phase 0 and Phase I of the Project and shall be limited to the lowest of:

- (a) the capital cost of the Phase 0 and Phase I of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Phase 0 and Phase I of the Project upon completion approved by Independent Engineer and Statutory Auditor and submitted to Authority at the time of issuing Completion Certificate; and
- (c) a sum of INR 202[*]/- crore (Rupees [*] Two hundred and two Crores only)

provided that in the event of termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index occurring in respect of Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of

doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets;

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

"Tuition Fee" means the fees to be charged to Students in accordance with this Agreement;

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

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

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

WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month. Only For illustration, the WPI is published at the web link <http://eaindustry.nic.in/#>. WPI index value is for the month of July 2014 is available, then the WPI Inflation Rate for the preceding year will be =
$$\left[\frac{\text{WPI Index Value at the end of July 2014}}{\text{WPI Index value at the end of August 2013}} - 1 \right] \times 100.$$

SIGNATORIES

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of

I hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of [Witness] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of [Witness] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of:

1.

2.

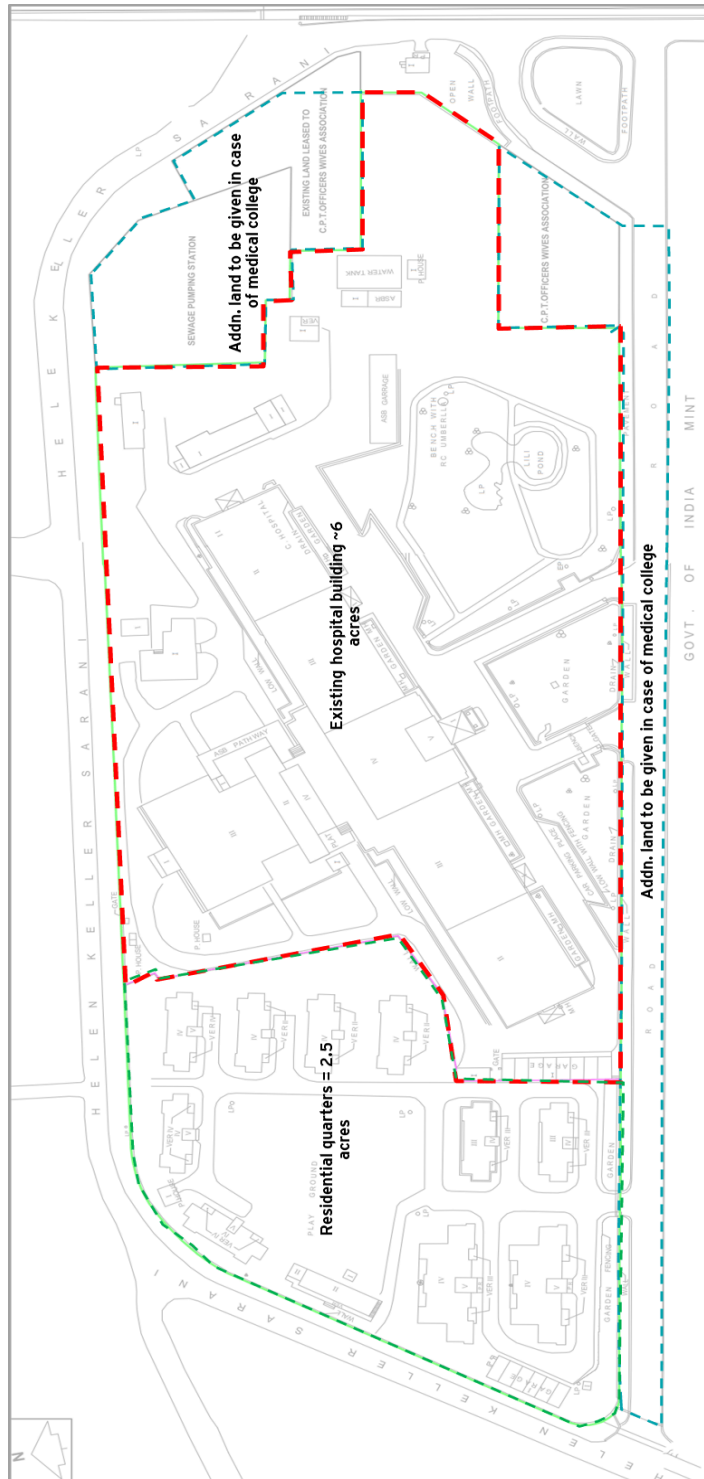
In the presence of:

1.

2.

SCOPE OF THE PROJECT

1. Site Details

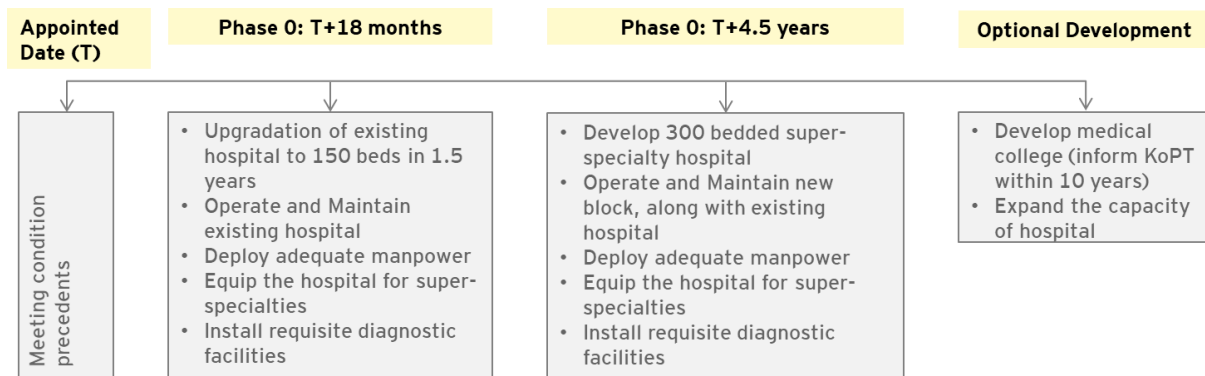


- **Enclosed in red line:** Land to be leased to Concessionaire (Existing hospital building) = 6 acres
- **Enclosed in green line:** Land to remain with SPMP (residential quarters) = 2.5 acres
- **Enclosed in blue line:** Addn. land = 1.5 acres to remain with SPMP
- **Total Land parcel - 10 acres** (4 acres shall be subject to NMC norms)
 - **6 acres for proposed development under Project**
 - 4 acres of land shall be provided Medical College subject to the provisions of the Agreement

The location and boundaries of the hospital are shown in the figure below:

2. Proposed development of the Project

The project is to be developed in the following phases:



T = Appointed Date

From the Appointed Date, the Concessionaire shall start operating the existing hospital after taking over on "as is where is" basis. In 18 months, the Concessionaire shall develop the mandatory Phase 0.

3. Phase – 0 – Mandatory 150 bedded super specialty facility

The Concessionaire is required to refurbish the Existing Hospital (The details pertaining to all the existing amenities and facilities situated on the Site are more particularly set out in Schedule P) and increase the existing capacity of the hospital from 104 bedded to 150 bedded.

The broad scope of work under this phase include:

- Up-grade from 104 bedded facility to 150 bedded facility
- Deploy adequate manpower
- Equip the hospital for super-specialties
- Install requisite diagnostic facilities
- Refurbish residential quarters for Select Employees
- Operate and Maintain 150 bedded hospitals

4. Phase – 1 – Mandatory 300 bedded super specialty facility

The Concessionaire is required to develop a 300 bedded super specialty facility.

The broad scope of work under this phase include:

- i. Develop 300 bedded hospital (the Concessionaire shall develop and commission as set out in point-8 of Schedule A only in the new greenfield block (i.e., additional 150 bedded facility in Phase I) developed by the Concessionaire in accordance with the provision of this Agreement.
- ii. Deploy adequate manpower
- iii. Equip the hospital as per specialty requirements
- iv. Operate and Maintain 300 bedded hospital

5. Optional Development

a. Additional beds

- i. Develop additional beds and other facility in Hospital premises
- ii. Deploy adequate manpower
- iii. Adequately equip the hospital
- iv. Develop supporting facilities – housing block for doctors, nurses etc.
- v. Operate and Maintain additional bedded hospital

b. Development of Medical College

- i. Develop Medical College within Hospital premises
- ii. Deploy adequate manpower & develop housing block for students
- iii. Operate and Maintain the Medical College
- iv. Admit two students per annum from the Operation Date of the Medical College as nominated by Chairman, SYAMA PRASAD MOOKERJEE PORT, KOLKATA. The Fee for the course shall be recovered from the students directly as applicable for the students under State Fee Fixation Committee

6. Development timelines

Phases	From Appointed Date
Mandatory Phase	
Phase 0	Development of 150 bedded fully operational hospital within 18 months from the Appointed date <ul style="list-style-type: none">• Refurbishment of existing hospital• Expansion to 150 beds minimum with essential super-specialties• O&M of hospital
Phase I	Development of fully functional 300 bedded super specialty hospital (including 150 bedded new block) within 4 years 6 months
Optional Phase	
Medical College	Construction Period – 2 years 6 months from the date of handing over of the 4-acre of additional land by SMP for the of development of Medical college

7. Minimum Manpower requirement

The Concessionaire shall ensure deployment of adequate Specialist, Doctors, Clinical Staff and non-clinical, Admin, HR, Marketing etc as per the applicable standards.

8. Mandatory Departments and Services

Department	Phase-0	Phase-1
Medicine	<ul style="list-style-type: none"> Internal Medicine Pulmonology & Respiratory Medicine Cardiology with Cath Lab and CCUs Rheumatology 	<ul style="list-style-type: none"> Neurology Geriatric Medicine Palliative Care Endocrinology
Anesthesia & Critical Care	<ul style="list-style-type: none"> Critical care - ICU, NICU, PICU, MICU, HDU, CCU Multi-organ failure Palliative care (optional) 	
Transfusion Medicine	<ul style="list-style-type: none"> Blood Transfusion Blood product transfusion services (component service) - Plasmapheresis, Apheresis, Cryo-precipitate transfusion, Factor-VIII transfusion 	
Gastroenterology	<ul style="list-style-type: none"> All scopes for rendering diagnosis and treatment– Sigmoidoscope(optional) Colposcope (optional) Therapies(optional) Endoscopy - Endoscopy suite 	
Urology & Nephrology	<ul style="list-style-type: none"> Dialysis 	<ul style="list-style-type: none"> ESWL, ERCP (optional) Radical prostatectomy & cystectomy (optional)
Pediatrics	<ul style="list-style-type: none"> Paediatric medicine services Immunization services 	<ul style="list-style-type: none"> Hormone therapies (optional)
Foetal Medicine		<ul style="list-style-type: none"> Foetal doppler (optional)
Dermatology	<ul style="list-style-type: none"> Usual / Standard Cryosurgeries (optional) 	<ul style="list-style-type: none"> Infrared therapies (optional)
Orthopedics	<ul style="list-style-type: none"> Splints/braces /plaster cast/ traction for Fractures Surgically inserted metal rods/plates Amputation 	<ul style="list-style-type: none"> Joint Replacement Surgery Arthroscopic Surgery (optional)

Department	Phase-0	Phase-1
Surgery and Gastro-surgery	<ul style="list-style-type: none"> General Surgeries 	<ul style="list-style-type: none"> Laparoscopic Surgery Nephrectomies (optional) Hepatobiliary surgeries (optional) Pancreatic surgery (optional) Minimally invasive surgeries Gastro-enterosurgery-- Colposcopic & Sigmoidoscopic surgeries (optional)
Plastic Surgery	Cosmetology and Plasty-- Cosmetology and plastic surgery (optional)	
ENT	<ul style="list-style-type: none"> Basic upto septal repairs Tympanic surgeries 	
Accident, Emergency & Trauma medicine	<ul style="list-style-type: none"> General Trauma and emergency 	
Obstetrics and Gynecology	<ul style="list-style-type: none"> Reproductive Medicine-- Pregnancy Care, sterilization procedure Hysterectomy, oophorectomy 	
Neurosurgery		<ul style="list-style-type: none"> Basic trauma care Subdural hematoma Brain tumors
Cardiac Surgery	Cath Lab with all related procedures and CCU unit	<ul style="list-style-type: none"> CABG (optional) Valve replacement (optional) Major surgery (optional)
Ophthalmology	<ul style="list-style-type: none"> Anterior chamber procedures including intraocular transplant Glaucoma Squint 	<ul style="list-style-type: none"> Posterior chamber procedures (optional) Cataract with Phaco-emulsification and IOL implants (optional)
Oncosurgery		Basic resection and amputation (optional)
Behavioral Sciences and mental health	<ul style="list-style-type: none"> Outdoor Consultation De-addiction services Mental Health & Behavioral Science 	

Department	Phase-0	Phase-1
Oncology	OPD consultation	<ul style="list-style-type: none"> Chemotherapy (optional) Immunotherapy (optional) Hormone therapy (optional) Palliative Care (optional)
Dental Medicine	<ul style="list-style-type: none"> Standard dentistry services and procedure 	
Physiotherapy	<ul style="list-style-type: none"> Shoulder, Thigh, Leg, Abdomen strengthening machines Ultrasound therapy Wax Bath therapy Infrared therapy 	

9. Diagnostics

Department	Phase-0	Phase-1
Laboratory Medicine	<ul style="list-style-type: none"> Basic Haematology Biochemistry Clinical Pathology Basic culture-sensitivities ELISA, PCR 	
Imaging (Radiology)	<ul style="list-style-type: none"> Digital x-ray, Dental x-ray 64 slice CT USG C-Arm 	<ul style="list-style-type: none"> Fluoroscopy (optional) MRI
Cardiology	<ul style="list-style-type: none"> ECG, stress ECG Treadmill, Stress induced treadmill 2d and 3d Echo, T Echo Stress Echo 	<ul style="list-style-type: none"> Cath lab–Angiography and plasty and other related procedures CCU
Pulmonology	<ul style="list-style-type: none"> Spirometry, Oximetry (optional) 	
Molecular Diagnostics	Optional	
Medicine and its super-specialties	<ul style="list-style-type: none"> Audiology–BERA, Speech Therapy (optional) Lumbar Puncture studies 	<ul style="list-style-type: none"> Fine Needle Aspiration Cytology (FNAC) & biopsy (optional) Mediastinoscopy (optional) Bronchoscopies (optional) Bone Marrow Aspiration studies (optional) Neurology (optional)
Nuclear Medicine	Optional	

Note:

1. Pre-operative beds, daycare beds, beds in emergency department, post-operative beds, baby warmers in the nursery will not be considered as a part of hospital bed compliment.
2. General surgery OT, Cath Lab and Orthopaedic OT has to be a modular OT
3. Speciality and Equipment mentioned above are mandatory and rest are desirable marked as optional

- ▶ Hospital Management Information system is a must to integrate diagnostics and therapeutics.
- ▶ Occupational therapy and physiotherapy with its advances are must for basic and advanced treatment success.
- ▶ Kitchen and Dietary services are also an essential service that must be provided to the patients.

SCHEDULE B

SPECIFICATIONS AND STANDARDS

The Project shall comply with the following standards/norms/guidelines and their latest revisions/amendments for construction, operation, maintenance and management of the Hospital.

I. Standard to be followed for construction, operation, and management of Hospital:

- National Accredited Board of Project and Healthcare Providers (NABH) standards for Project (as per prevailing standard);
- National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services (as per prevailing standard);
- International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL) (as per prevailing standard);
- National Building Code of India (NBC) guideline issued by Bureau of Indian Standards in 2005 and latest published version;
- Hospital's Medical Gas Pipeline System (MGPS) shall conform to Health Technical Memorandum (HTM)-02-01: Medical gas pipeline systems Part A for Design, Installation, Validation and Verification, revised from time to time (prevailing standard)
- Environmental Sustainability Plan including:
 - Ministry of Environment and Forest (MoEF) Guidelines as applicable
 - the equator principles (<http://www.equator-principles.com>)
- Shall comply with Solar energy, rainwater harvesting, zero garbage and waste water recycling requirements of municipal corporation, Kolkata as applicable
- To the extent possible shall construct energy saving building in the Hospital

II. Standard to be followed for maintenance of Hospital:

S No	Description	Guideline	Latest publication
1	General Maintenance of hospital	<ul style="list-style-type: none">• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital;	Prevailing Standard
2	Biomedical Equipment	<ul style="list-style-type: none">• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital.	Prevailing standard
		<ul style="list-style-type: none">• Compliance also required to the respective suppliers' maintenance manuals and guidelines.	As applicable

3	Laboratory Equipment	<ul style="list-style-type: none"> International standard ISO 15189:2007 (Medical laboratories – particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL) 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers' maintenance manuals and guidelines 	As applicable
4	Radiology and Imaging Equipment	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services; and 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers maintenance manuals and guidelines 	As applicable
5	Plant and Machinery	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital. 	Prevailing Standard
		<ul style="list-style-type: none"> Compliance also required to the respective suppliers' maintenance manuals' and guidelines 	As applicable

III. Standard to be followed for safety standards:

SN	Description	Guideline	Latest publication
1	Patient and staff safety	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital; 	3 rd edition; November, 2011
2	Building and Fire safety	<ul style="list-style-type: none"> National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital; 	3 rd edition; November, 2011
		<ul style="list-style-type: none"> National Building Code of India (NBC) guideline issued by Bureau of Indian Standards. 	Latest available standard and state govt. guidelines

SCHEDULE C
APPLICABLE PERMITS

Indicative list of approval is mentioned below, Concessionaire shall have to make assessment of applicable permits, approvals, clearances:-

Sr. No.	Licenses/ Permits
1.	Building permit and completion certificate from the Municipality
2.	Consent to operate from the State Pollution Control Board under the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and Environment Protection Act
3.	West Bengal Clinical Establishments (Registration and Regulation) Act, 2010
4.	Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1999
5.	Atomic Energy Act, 1954
6.	Goods and Services Tax Act
7.	Registration of Births and Deaths Act, 1969
8.	Indian Medical Council Act, 1956 and Code of Medical Ethics Regulations, 2002
9.	NoC from Chief Fire Inspector
10.	Registration for operation of X-ray machine with AERB
11.	Shops and Establishments Act, 1954
12.	West Bengal Lifts, Escalators and Travelators Act, 2019
13.	Sale of Goods Act, 1930
14.	License for Blood Bank
15.	Cable Television Networks Act, 1995
16.	Transplantation of Human Organs Act, 1994
17.	Radiation Protection Rules, 1971 and Radiation Surveillance Procedures for Medical Application of Radiation, 1989
18.	Labour, Tax laws, Electricity, Petroleum (for storage), Water and Consumer Protection laws
19.	NOC from Local Municipal Office under any Bye Laws
20.	Food and Safety Standards Act, 2006
21.	Narcotics and Psychotropic Substances Act, 1985
22.	Pharmacy Act, 1948
23.	Societies Registration Act, 1860
24.	Excise permit to store spirit (Central Excise Act, 1944)

25.	Hazardous and other Wastes (Management and Transboundary Movement) Rules, 2016
26.	Bio-medical Waste Management Rules, 2016
27.	Boilers Act, 1923
28.	Bengal Nurses Act, 1934
29.	Registration under PNDT Act, 1994 and MTP Act, 1971
30.	Any other applicable permit, as required time to time

SCHEDULE D
SELECT EMPLOYEES

Category	Existing (permanent)
Doctors	38
Nurses	25
Technicians & Others	27
Clinical (all) to be deployed at proposed hospital	90
Non-Clinical to be deployed at proposed hospital	14

List of the employees in above category shall be provided at the time of signing of the Concession Agreement and the same shall form part of this Schedule. The indicative aggregate annual compensation for the aforesaid employees is about Rs. 25 Crores. This compensation does not include benefits related to Healthcare Services being provided under this Agreement.

SCHEDULE E

PERFORMANCE SECURITY

FORM OF PERFORMANCE SECURITY

[On Stamp Paper of appropriate value]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this ***[insert date]*** day of ***[insert month and year]*** at ***[insert place]*** by ***[insert name of bank]*** with its head/registered office at ***[insert address]***, (hereinafter referred to as the **Guarantor or Bank**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

BOARD OF TRUSTEES, for **SYAMA PRASAD MOOKERJEE PORT, KOLKATA**, represented by [●] (hereinafter referred to as the Authority which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

WHEREAS:

- (A) The Authority has entered into a concession agreement dated ***[insert date]*** (the **Concession Agreement**) with ***[insert name of Concessionaire]***, a private limited company incorporated under the provisions of the Companies Act 2013 with its registered office at [●] (hereinafter referred to as the **Concessionaire** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns).
- (B) In terms of the Concession Agreement, the Concessionaire has agreed to undertake the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof at Kolkata (the **Project**), on a design, build, finance, operate, and transfer basis and offer Healthcare Services to Patients at the Project and Medical Education Services to the Students.
- (C) In terms of Clause 9.1 of the Concession Agreement, the Concessionaire is required to furnish to the Authority, an unconditional, irrevocable, on demand bank guarantee for an amount equivalent to INR 6,10,00,000 /- (Rupees Six Crore Ten Lakhs only (the **"Guarantee Amount"**) as security for the due performance or discharge of the Concessionaire's obligations and liabilities during the Construction Period until the COD of Phase-I, including payment of any amounts due and payable by the Concessionaire as liquidated damages, as a Condition Precedent to the effectiveness of the Concession Agreement.
- (D) At the request of the Concessionaire and for sufficient consideration, the Guarantor has agreed to provide an unconditional, irrevocable and on-demand bank guarantee (**"Guarantee"**), for the due and punctual performance or discharge by the Concessionaire of its obligations and liabilities under the Concession Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Performance Security Period, under and in accordance with the Concession 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 up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of Chief Medical Officer of the Authority or any officer authorised by the Authority, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Concession Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Performance Security Period under the Concession 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 Concession 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 Concession 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 Concession 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 Concession Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Concession Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is

made by the Authority on the Bank under this Guarantee, during the Performance Security Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Guarantee shall remain in force and effect till the expiry of the Performance Security Period and unless a demand or claim in writing is made by the Authority to the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee ("**Claim Period**"), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force during the Performance Security Period pursuant to the provisions of the Concession Agreement.
12. The Bank's obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the Guarantee Amount.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

Signed and sealed this day of, 20.... at

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

SCHEDULE F
PERFORMANCE GUARANTEE

FORM OF PERFORMANCE GUARANTEE

[On Appropriate Stamp Paper]

Bank Guarantee No. [●]

THIS DEED OF GUARANTEE is executed on this ***[insert date]*** day of ***[insert month and year]*** at ***[insert place]*** by ***[insert name of bank]*** with its head/registered office at ***[insert address]***, (hereinafter referred to as the **Guarantor or Bank**, which expression shall unless it is repugnant to the subject or context thereof include successors and assigns)

IN FAVOUR OF:

BOARD OF TRUSTEES, for **SYAMA PRASAD MOOKERJEE PORT, KOLKATA** represented by [●] (hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns);

WHEREAS:

- (A)(the "**Concessionaire**") and Board of Trustees, Syama Prasad Mookerjee Port, Kolkata (the "**Authority**") have entered into a Concession Agreement dated(the "**Agreement**") whereby the Authority has agreed to the Concessionaire undertaking the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof at Kolkata on design, finance, equip, operate and transfer basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Guarantee to the Authority in a sum of INR 4,10,00,000/- (Rupees Four Crores Ten Lakhs)(the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the O&M Period (as defined in the Agreement).
- (C) We, through our Branch at have agreed to furnish this Bank Guarantee by way of Performance Guarantee ("**Guarantee**").

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Performance Guarantee Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of Chief Medical Officer of the Authority or any officer authorised by the Authority that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Performance Guarantee Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, during the Performance Guarantee Period, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Guarantee shall remain in force and effect till the expiry of the Performance Guarantee Period and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee ("**Claim Period**"), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force during the Performance Guarantee Period pursuant to the provisions of the Agreement.
12. The Bank's obligations hereunder shall subsist until all such demands of the Authority are duly met and discharged in accordance with the provisions hereof. Any such demand made on the Bank by the Authority shall be conclusive, absolute and unequivocal as regards the amount due and payable by the Guarantor under this Guarantee. The Authority shall at all times at its sole discretion have the absolute and unconditional right to call upon the Bank to pay the Guarantee Amount.

Any payment made hereunder shall be made free and clear of, and without deduction for or on account of taxes, levies, imposts, duties, charges, fees, deductions, or withholding of any nature whatsoever.

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

The Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing branch should be mentioned on the covering letter of issuing branch.

SCHEDULE G – Part I

LAND LEASE AGREEMENT

This Agreement for Lease of Land ("**Lease Deed**") is made and executed on this [_____] day of [____]. 20[___], by and between:

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

AND

- (ii) [*name of the Concessionaire*], having its registered office at [*insert*] represented through its authorised representative, [*insert details of the Concessionaire's authorised representative*] (hereinafter referred to as the "**Concessionaire**" or "**Lessee**", which expression shall unless repugnant to the subject or context mean and include its successors and permitted assigns) of the Second Part.

The Lessor and Lessee are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:

- A. The Parties have entered into a Concession Agreement dated *** (the "**Concession Agreement**"), wherein the Lessee has agreed to undertake the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof (collectively the "**Project**") on PPP basis and the Lessor has agreed to provide the land for this purpose on leasehold basis, upon the terms and conditions specified in the Concession Agreement;
- B. The Lessor owns and is in possession of the land constituting the Site, as specified in the Concession Agreement and as delineated and set out in the Schedule hereto (herein referred to as "**the Site**");
- C. Pursuant to the provisions of the Concession Agreement, the Lessor now desires to lease the Site to the Lessee and the Lessee desires to take on lease from the Lessor, the Site for the purposes set out in the Concession Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition and Interpretation

1.1 DEFINITIONS

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

- (a) **"Appointed Date"** shall have the meaning set forth in Clause 44 of the Concession Agreement;
- (b) **"Encumbrance"** means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;
- (c) **"Site"** shall have the meaning set forth in Recital B of this Lease Deed; and
- (e) **"Term"** shall have the meaning set forth in Clause 3 of this Lease Deed.

1.2 Interpretations

In this Lease Deed, except to the extent that the context requires otherwise:

- (a) the Annexure to this Lease Deed forms part of this Lease Deed and will be of full force and effect as though it is expressly set out in the body of this Lease Deed; and
- (b) the terms of this Lease Deed should be read in consonance with and not in derogation of the terms of the Concession Agreement.

2. Grant of lease and possession

- 2.1.1 In consideration of the covenants contained in the Concession Agreement and this Lease Deed and payment of the Lease Rent, the Lessor grants leasehold rights ("**Lease**") in respect of the Site, to the Lessee and the Lessee agrees to accept the Lease from the Lessor, for the duration of the Term together with all and singular rights, liberties, privileges, easements,

benefits, rights of way, paths, passages whatsoever in or appurtenant to the Site or any part thereof, and to hold, possess, use and enjoy the Site and/or any part thereof, in accordance with the provisions of this Lease Deed, subject always, however, to the terms and conditions contained in the Concession Agreement.

2.1.2 The terms and conditions of the Concession Agreement shall be deemed to have been incorporated herein by reference. A copy of the executed Concession Agreement is annexed hereto as Annexure "A".

2.1.3 The possession of the Site shall be handed over to the Lessee in accordance with the provisions of the Concession Agreement.

3. Term

The Lease granted pursuant hereto shall be for a period of 60 (sixty) years commencing from the Appointed Date (the "**Term**"), subject to earlier termination as specified in the Concession Agreement. In the event the Concession Agreement is terminated for any reason whatsoever, this Lease Deed shall terminate automatically without any further action to be taken by the Lessor. It is further clarified that upon the termination of the Concession Agreement for any reason whatsoever, or upon expiry of the term of the Concession Agreement, as the case may be, the Lessee shall transfer and hand over to the Lessor the Site along with all the assets and facilities related to the Project including, but not limited to, all buildings, constructions or immovable assets, if any thereon.

4. Lease Rent

4.1 Upon execution of this Lease Deed and in consideration of the grant of the Lease, the Lessee has agreed to pay to the Lessor, Lease Rent in the manner prescribed in Clause 26.1 of the Concession Agreement.

5. Use of Site

During the Term of the Lease, the Lessee agrees to use the Site for carrying out its obligations under the Concession Agreement and for no other purpose.

6. Determination of Lease

6.1 The Lease and this Lease Deed may be determined in accordance with terms contained herein, the terms of the Concession Agreement or earlier by mutual agreement between the Parties in writing.

6.2 Upon determination under this Clause 6, the Lessor shall have the following rights:

- (a) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of this Lease Deed by the Lessee; and
- (b) any other right or remedy, legal or equitable, that the Lessor may be entitled to under Applicable Laws.

7. Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

- (a) subject to the terms of this Lease Deed and the Concession Agreement, the Lessee shall be entitled to possess, hold, use and enjoy the Site and every part thereof during the Term of this Lease Deed, without any interruption by the Lessor except as per the provisions of this Lease Deed;
- (b) the Lessee shall, during the Term of this Lease Deed, enjoy free ingress and egress to and from the Site without any hindrance;
- (c) subject to timely performance of the covenants and conditions contained herein and the Concession Agreement, the Lessee shall peacefully hold and enjoy the Site during the Term of this Lease Deed;
- (d) the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Site in accordance with the terms of the Concession Agreement;
- (e) Except with the prior express written approval of the Lessor and subject always to the terms of the Concession Agreement and any other conditions that may be prescribed by the Lessor while granting its approval, as above, the Lessee shall not be entitled to sub-lease, license or create any other Encumbrance or rights in the Site or any part thereof, in favour of any third party; and
- (f) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period upto the commencement of this Lease Deed. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Site shall be borne by the Lessee during the Term of this Lease Deed.

8. Sale, transfer or disposal of the Site

- 8.1 The Lessor may sell, transfer or otherwise dispose of the Site to any Government Instrumentality or any other entity owned or controlled by the Government of West Bengal or Government of India.
- 8.2 The Parties agree that any sale, transfer or other disposal of the Site or any part thereof as provided in this Clause 8 shall always be subject to the leasehold rights of the Lessee set out in this Lease Deed and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Site or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Lease Deed.

9. Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

- (a) upon execution of this Lease Deed and subject to the terms thereof, the Lessee shall accept the Site on "as is where is basis" and in the condition it is handed over and undertakes to use the same only for the purposes specified in the Concession Agreement;
- (b) the Lessee shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Site relating to the period from the commencement of this Lease Deed and during the Term;
- (c) during the Term, the Lessee shall undertake the development of the Site, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (d) it shall obtain and keep current all Applicable Permits that may be required under Applicable Laws;
- (e) it shall pay all Taxes assessments and levies in respect of the Site, which are leviable at any time during the Term;
- (f) except as specifically permitted herein, it shall not create any lien, charge or Encumbrance on the Site;
- (g) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Site; and
- (h) it shall (i) keep and maintain the Site and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Site shall be free from encroachments at all times and to the extent that there occur any encroachments on the Site, it shall make diligent efforts to remove such encroachments from the Site, as soon as practicable.
- (i) at the time of termination of the Concession Agreement due to any reason whatsoever, or the expiry of the term of the Concession Agreement, as the case may be, the Lessee shall return and hand over to the Lessor the Site and along with it all of the facilities and assets related to the Project which are present on the Site including but not limited to buildings, constructions or immovable assets, if any, thereon.

10. Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by the Government of West Bengal or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the Lease contemplated herein shall be to the account of and borne by the Lessee.

11. Indemnities and limitation of liability

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants,

agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Deed;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and
- (c) any breach, violation or non-compliance by the Lessee of any Applicable Laws and/or Applicable Permits.

12. Assignment

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Deed.

13. Dispute Resolution

The Dispute Resolution Procedure prescribed under the Concession Agreement shall apply to this Lease Deed.

(Note: copy Site schedule from the Concession Agreement prior to execution)

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS LEASE DEED AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND

DELIVERED

For and on behalf of THE LESSOR

by:

(Signature)

(Name)

(Designation)

In the presence of:

1.

SIGNED, SEALED AND

DELIVERED

For and on behalf of

by LESSEE:

(Signature)

(Name)

(Designation)

2.

SCHEDULE G – Part II

LAND LEASE AGREEMENT FOR ADDITIONAL LAND

This Agreement for Lease of Additional Land ("**Additional Lease Deed**") is made and executed on this [_____] day of [____], 20[____], by and between:

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

AND

- (ii) [*name of the Concessionaire*], having its registered office at [*insert*] represented through its authorised representative, [*insert details of the Concessionaire's authorised representative*] (hereinafter referred to as the "**Concessionaire**" or "**Lessee**", which expression shall unless repugnant to the subject or context mean and include its successors and permitted assigns) of the Second Part.

The Lessor and Lessee are hereinafter collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS:

- A. The Parties have entered into a Concession Agreement dated *** (the "**Concession Agreement**"), wherein the Lessee has agreed to undertake the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof (collectively the "**Project**") on PPP basis and the Lessor has agreed to provide the land for this purpose on leasehold basis, upon the terms and conditions specified in the Concession Agreement;
- B. The Lessee, vide notice dated [*] has intimated the Lessor of its intention to develop a Medical College on the Additional Land in accordance with the Concession Agreement;
- C. The Lessor owns and is in possession of the land constituting the Additional Land, as specified in the Concession Agreement and as delineated and set out in the Schedule hereto (herein referred to as "**Additional Leased Premises**");
- D. Pursuant to the provisions of the Concession Agreement, the Lessor now desires to lease the

Additional Leased Premises to the Lessee and the Lessee desires to take on lease from the Lessor, the Additional Leased Premises for the purposes set out in the Concession Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES, COVENANTS SET FORTH HEREINAFTER THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definition and Interpretation

1.1 DEFINITIONS

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

- (a) **"Encumbrance"** means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;
- (b) **"Additional Leased Premises"** shall have the meaning set forth in Recital C of this Additional Lease Deed; and
- (c) **"Term"** shall have the meaning set forth in Clause 3 of this Additional Lease Deed.

1.2 Interpretations

In this Additional Lease Deed, except to the extent that the context requires otherwise:

- (a) the Annexure to this Additional Lease Deed forms part of this Additional Lease Deed and will be of full force and effect as though it is expressly set out in the body of this Additional Lease Deed; and
- (b) the terms of this Additional Lease Deed should be read in consonance with and not in derogation of the terms of the Concession Agreement.

2. Grant of lease and possession

- 2.1.1 In consideration of the covenants contained in the Concession Agreement and this Additional

Lease Deed and payment of the Additional Lease Rent, the Lessor grants leasehold rights ("**Lease**") in respect of the Additional Leased Premises, to the Lessee and the Lessee agrees to accept the Lease from the Lessor, for the duration of the Term together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Additional Leased Premises or any part thereof, and to hold, possess, use and enjoy the Additional Leased Premises and/or any part thereof, in accordance with the provisions of this Additional Lease Deed, subject always, however, to the terms and conditions contained in the Concession Agreement.

2.1.2 The terms and conditions of the Concession Agreement shall be deemed to have been incorporated herein by reference. A copy of the executed Concession Agreement is annexed hereto as Annexure "A".

2.1.3 The possession of the Additional Leased Premises shall be handed over to the Lessee in accordance with the provisions of the Concession Agreement.

3. Term

The Lease granted pursuant hereto shall be for a period commencing from the date of this Additional Lease Deed to the expiry of the Concession Period (the "**Term**"), subject to earlier termination as specified in the Concession Agreement. In the event the Concession Agreement is terminated for any reason whatsoever, this Additional Lease Deed shall terminate automatically without any further action to be taken by the Lessor. It is further clarified that upon the termination of the Concession Agreement for any reason whatsoever, or upon expiry of the term of the Concession Agreement, as the case may be, the Lessee shall transfer and hand over to the Lessor the Additional Leased Premises along with all the assets and facilities related to the Project including, but not limited to, all buildings, constructions or immovable assets, if any thereon.

4. Additional Lease Rent

4.1 Upon execution of this Additional Lease Deed and in consideration of the grant of the Lease, the Lessee has agreed to pay to the Lessor, Additional Lease Rent in the manner prescribed in Clause 26.1 of the Concession Agreement.

5. Use of Additional Leased Premises

During the Term of the Lease, the Lessee agrees to use the Additional Leased Premises for carrying out its obligations under the Concession Agreement and for no other purpose.

6. Determination of Lease

6.1 The Lease and this Additional Lease Deed may be determined in accordance with terms contained herein, the terms of the Concession Agreement or earlier by mutual agreement

between the Parties in writing.

6.2 Upon determination under this Clause 6, the Lessor shall have the following rights:

- (a) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Additional Lease Deed by the Lessee; and
- (b) any other right or remedy, legal or equitable, that the Lessor may be entitled to under Applicable Laws.

7. Lessor's obligations and covenants

The Lessor hereby agrees and warrants that:

- (a) subject to the terms of this Additional Lease Deed and the Concession Agreement, the Lessee shall be entitled to possess, hold, use and enjoy the Additional Leased Premises and every part thereof during the Term of the Additional Lease Deed, without any interruption by the Lessor except as per the provisions of this Additional Lease Deed;
- (b) the Lessee shall, during the Term of the Additional Lease Deed, enjoy free ingress and egress to and from the Additional Leased Premises without any hindrance;
- (c) subject to timely performance of the covenants and conditions contained herein and the Concession Agreement, the Lessee shall peacefully hold and enjoy the Additional Leased Premises during the Term of the Additional Lease Deed;
- (d) the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Additional Leased Premises in accordance with the terms of the Concession Agreement;
- (e) Except with the prior express written approval of the Lessor and subject always to the terms of the Concession Agreement and any other conditions that may be prescribed by the Lessor while granting its approval, as above, the Lessee shall not be entitled to sub-lease, license or create any other Encumbrance or rights in the Additional Leased Premises or any part thereof, in favour of any third party; and
- (f) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Additional Leased Premises relating to the period upto the commencement of the Additional Lease Deed. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Additional Leased Premises shall be borne by the Lessee during the Term of the Additional Lease Deed.

8. Sale, transfer or disposal of the Additional Leased Premises

8.1 The Lessor may sell, transfer or otherwise dispose of the Additional Leased Premises to any Government Instrumentality or any other entity owned or controlled by the Government of West Bengal or Government of India.

- 8.2 The Parties agree that any sale, transfer or other disposal of the Additional Leased Premises or any part thereof as provided in this Clause 8 shall always be subject to the leasehold rights of the Lessee set out in this Additional Lease Deed and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Additional Leased Premises or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Additional Lease Deed.

9. Lessee's obligations and covenants

Lessee hereby covenants, agrees and represents that:

- (a) upon execution of this Additional Lease Deed and subject to the terms thereof, the Lessee shall accept the Additional Leased Premises on "as is where is basis" and in the condition it is handed over and undertakes to use the same only for the purposes specified in the Concession Agreement;
- (b) the Lessee shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Additional Leased Premises relating to the period from the commencement of the Additional Lease Deed and during the Term;
- (c) during the Term, the Lessee shall undertake the development of the Additional Leased Premises, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (d) it shall obtain and keep current all Applicable Permits that may be required under Applicable Laws;
- (e) it shall pay all Taxes assessments and levies in respect of the Additional Leased Premises, which are leviable at any time during the Term;
- (f) except as specifically permitted herein, it shall not create any lien, charge or Encumbrance on the Additional Leased Premises;
- (g) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Additional Leased Premises; and
- (h) it shall (i) keep and maintain the Additional Leased Premises and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Additional Leased Premises shall be free from encroachments at all times and to the extent that there occur any encroachments on the Additional Leased Premises, it shall make diligent efforts to remove such encroachments from the Additional Leased Premises, as soon as practicable.
- (i) at the time of termination of the Concession Agreement due to any reason whatsoever, or the expiry of the term of the Concession Agreement, as the case may be, the Lessee shall return and hand over to the Lessor the Additional Leased Premises and along with it all of the facilities and assets related to the Project which are present on the Additional Leased Premises including but not limited to buildings, constructions or immovable assets, if any, thereon.

10. Stamp duty and registration charges

Subject to the exemption or waiver, if any, granted by the Government of West Bengal or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the Lease contemplated herein shall be to the account of and borne by the Lessee.

11. Indemnities and limitation of liability

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Additional Lease Deed;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and
- (c) any breach, violation or non-compliance by the Lessee of any Applicable Laws and/or Applicable Permits.

12. Assignment

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Additional Lease Deed.

13. Dispute Resolution

The Dispute Resolution Procedure prescribed under the Concession Agreement shall apply to this Additional Lease Deed.

(Note: copy Site schedule from the Concession Agreement prior to execution)

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS ADDITIONAL LEASE DEED AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED
For and on behalf of THE LESSOR
by:
(Signature)
(Name)
(Designation)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
by LESSEE:
(Signature)
(Name)
(Designation)

In the presence of:

1.

2.

SCHEDULE H

PROJECT COMPLETION SCHEDULE

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule for each of the Phases of the Project and the Scheduled Completion Date (the "**Project Completion Schedule**"). Within 15 (fifteen) days of the date of each Project Phase, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

The Concessionaire shall adhere to the Phase illustrated in the table below:

S. N.	Phases	Description	Period for Phase	Key Specialties	Major Equipment
	Phase –0	150 bedded Super Specialty facility	18 months from Appointed Date	As per Schedule A	As per Schedule A and Schedule B
	Phase – I	300 bedded Super Specialty facility	4 years 6 months from Appointed Date	As per Schedule A	As per Schedule A and Schedule B
	Optional Development (Optional)	Further development of Super Specialty Hospital	3 years from construction start date of this phase	As per Schedule A	As per requirement in consultation and approval from MbPT
	Medical College (optional)	Medical College having minimum capacity of 100 seats	2 years 6 months from construction start date of Medical College	As per Schedule A	As per requirement in consultation and approval from MbPT

SCHEDULE I

DRAWINGS

The Concessionaire shall furnish the following drawings of the Project Building, Service Block, Residential Complex, Medical College and any other construction in the Site and Additional Leased Premises which will be done by the concessionaire:

- (a) Master Plan of the Project
- (b) Municipality Sanction Drawings
- (c) Detailed Architectural Drawings (floor wise)
- (d) Structural Drawings
- (e) Elevation drawings of all buildings
- (f) Facade design and drawings
- (g) Landscape drawings
- (h) Electrical drawings
- (i) Plumbing and sewerage drawings
- (j) HVAC (Heating, Ventilation and Air Condition) drawings
- (k) Fire Fighting System's drawings
- (l) Medical Gas Pipeline system's drawings
- (m) Lifts design and drawings
- (n) Interior design and drawings
- (o) Drawing for solar system (if any)
- (p) Signage designs
- (q) Any other as may be required

SCHEDULE J

TESTS

COMPLETION TESTS FOR PROJECT

I. Authority shall arrange the Independent Engineer to verify and conduct the following Tests:

- (a) Loose stones and/or plaster and/or bricks in the Project;
- (b) Hanging electrical wire and/or temporary connects for electric supply and distribution system including the diesel generator (DG) sets, UPS systems and stabilizers; and
- (c) Dripping taps and/or leaking pipes and/or blocked swage lines in the water supply and distribution system including supply of hot, cold, potable, ultra-pure water and steam water.

II. Authority shall arrange the Independent Engineer to inspect the following work/ activities for award of Completion Certificate:

- (a) Traction / transportation system;
- (b) Public health engineering system (waste storage / disposal, effluent treatment plant); and
- (c) Installation and commissioning certificates, warranty certificates of all plant and machineries, transformer, electrical panels, and non-medical equipment.

III. The Concessionaire shall conduct the following tests during Project construction by the Government authorised agency and to provide the respective test certificates to Authority:

- a) Soil test of the Project land
- b) Water test of the Project land
- c) Concrete / RMC test
- d) Steel (TMT Bar) test
- e) Cement Test
- f) Brick test

SCHEDULE K

COMPLETION CERTIFICATE FOR PROJECT

1. I/We, (Name of the Independent Engineer and/or Independent Panel), acting as Independent Engineer and/or Independent Panel, under and in accordance with the Concession Agreement dated (the **Agreement**), for the Project in the city of Kolkata, West Bengal through (Name of Concessionaire), hereby certify that the Tests specified in Clause 14.2 and Schedule-J of the Agreement have been successfully undertaken to determine compliance of the [relevant Phase of the Project] with the provisions of the Agreement, and I am satisfied that the [relevant Phase of the Project] can be safely and reliably placed in commercial service thereof.
2. It is certified that, in terms of the aforesaid Agreement, all works forming part of [relevant Phase of the Project] have been completed, and the [relevant Phase of the Project] is ready for entry into commercial operation on this day of, 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER AND/OR INDEPENDENT PANEL by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE L

KEY PERFORMANCE INDICATORS

S. No.	KPI	Measure & Explanation	Baseline Requirement/ Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
1	Periodic painting - interior & exterior	Period painting of interior or exterior buildings	Every 3 years	No painting within 30 days of due date	<ul style="list-style-type: none"> • Maintenance register • Random audit by IM • Report by CMO/Secretary 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	0.01* number of days of default * estimated cost of painting\$
2	Maintenance of Equipment	AMC & CMC	100% of the equipment	Non-renewal of AMC/CMC prior to the expiry for any equipment	<ul style="list-style-type: none"> • AMC/CMC contract • Annual maintenance plan as submitted to CMO/ Secretary 	On 1st day of every quarter for which assessment is being made (calculated from COD of Phase-1)	(0.01 * number of days of default) * cost of AMC/CMC for the equipment
3	Uptime of HMIS	Number of hours for which HMIS is down	Zero except planned maintenance	Any one unplanned occurrence	<ul style="list-style-type: none"> • Authority /CMO/ Secretary reports 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	For every hour of deviation Rs. 5,000

S. No.	KPI	Measure & Explanation	Baseline Requirement/ Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
4	Patient Satisfaction Survey	Patient satisfaction survey (survey of 5% patients in hospital at the time of discharge)	Rating of 3.5 on a scale of 5	Every decimal rating below overall 3.5	<ul style="list-style-type: none"> • Random audit by IM • Satisfaction forms collected by CMO/ Secretary 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	For every decimal point rating below 3.5, 0.1% of PG
5	Patient Complaints	Number of Patient complaints reported	Less than 10% of the patients (for severe category)	Every occurrence beyond threshold	<ul style="list-style-type: none"> • Patient Complaint 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	For every additional complaint Rs. 1000
6	Obtaining and maintaining NABH, NABL and other accreditations	Not obtaining or maintaining the accreditation	Zero default	One or more incidences of default	<ul style="list-style-type: none"> • Accreditation documents (copy to be submitted to SMP each year) 	From COD of Phase-1 onwards	Rs. 100,000 per incidence of default plus reimbursement at Non-NABH rates
7	Priority to SMP IP services (except for emergency or trauma cases)	Priority shall be given to SMP patient in admission	Zero default	One or more incidences of default	<ul style="list-style-type: none"> • HMIS data • Random audit by IM • Report by CMO/ Secretary 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	Rs. 10,000 per incidence of default
8	Waiting time for SMP OP services	Average waiting time of SMP patients <= average waiting time of market patients	Zero default	One or more incidences of default	<ul style="list-style-type: none"> • HMIS data • IT Tool for monitoring online & spot registration 	1st day of subsequent quarter for which assessment is being made	Rs. 10,000 per day extra waiting time

S. No.	KPI	Measure & Explanation	Baseline Requirement/ Threshold limit	Default	Source of Measuring Data	Time for Evaluation of KPI	Indicative Liquidated Damages / Incentives
		(queuing al to take care)				(calculated from COD of Phase-1)	
9	Uptime for Equipment as provided in Schedule O	Ensuring the upkeep of the Equipment during the Concession Period	98% uptime required	One or more incidences of default	<ul style="list-style-type: none"> • HMIS data • Random audit by IM • Report by CMO/ Secretary 	1st day of subsequent quarter for which assessment is being made (calculated from COD of Phase-1)	0.5% (zero point five per cent) of the Performance Security for every instance of default or part thereof, subject to a maximum of 10% (ten per cent) of the Performance Security.

All the Liquidated Damages shall be capped to the value of Performance Security /Guarantee individually as well as collectively during a measurement cycle.

Directive KPIs

S. No.	KPI- Measure & Explanation	Baseline Requirements	Source of measuring Data
1	Adherence to Preventive Maintenance Plan	100% adherence	<ul style="list-style-type: none">• Random audit by IM• Report by CMO/ Secretary
2	Re-infection rate	10%	<ul style="list-style-type: none">• Random audit by IM• Report by CMO/ Secretary• Self-reported
3	Needle stick injury	NA	Self-reported
4	Referral service directory	100% referral to be recorded	Random audit by IM
5	Master Patient Index with a single, unique Medical Record Number for each patient	100% patient to be recorded and should be traceable in the system	Random audit by IM

SCHEDULE M
SPECIALTY SERVICES

The Concessionaire shall have all specialty in the Project as set forth in this Schedule M. Specialty mentioned in red in this schedule are mandatory obligation of the Concessionaire for each phase. The Concessionaire may add any additional specialty based on the market need in its discretion, however the recommended ones in black are preferred. For avoidance of doubt, the Concessionaire shall have all specialty as mentioned in this Schedule in phased manner and continue to operate for the entire Concession Period.

Tables below lists the proposed specialties for the 300-bedded hospital. Specialties have been divided into:

- a. Departments and services
- b. Diagnostics

a. Departments and services

Department	Phase-0	Phase-1
Medicine	<ul style="list-style-type: none"> ▪ Internal Medicine ▪ Pulmonology & Respiratory Medicine ▪ Cardiology with Cath Lab and CCUs ▪ Rheumatology 	<ul style="list-style-type: none"> ▪ Neurology ▪ Geriatric Medicine ▪ Palliative Care ▪ Endocrinology
Anesthesia & Critical Care	<ul style="list-style-type: none"> ▪ Critical care - ICU, NICU, PICU, MICU, HDU, CCU ▪ Multi-organ failure ▪ Palliative care (optional) 	
Transfusion Medicine	<ul style="list-style-type: none"> ▪ Blood Transfusion ▪ Blood product transfusion services (component service) - Plasmapheresis, Apheresis, Cryo-precipitate transfusion, Factor-VIII transfusion 	
Gastroenterology	<ul style="list-style-type: none"> ▪ All scopes for rendering diagnosis and treatment– ▪ Sigmoidoscope(optional) ▪ Colposcope (optional) ▪ Therapies(optional) ▪ Endoscopy - Endoscopy suite 	
Urology & Nephrology	<ul style="list-style-type: none"> ▪ Dialysis 	<ul style="list-style-type: none"> ▪ ESWL, ERCP (optional) ▪ Radical prostatectomy & cystectomy (optional)

Department	Phase-0	Phase-1
Pediatrics	<ul style="list-style-type: none"> ▪ Paediatric medicine services ▪ Immunization services 	<ul style="list-style-type: none"> ▪ Hormone therapies (optional)
Foetal Medicine		<ul style="list-style-type: none"> ▪ Foetal doppler (optional)
Dermatology	<ul style="list-style-type: none"> ▪ Usual / Standard ▪ Cryosurgeries (optional) 	<ul style="list-style-type: none"> ▪ Infrared therapies (optional)
Orthopedics	<ul style="list-style-type: none"> ▪ Splints/braces /plaster cast/ traction for Fractures ▪ Surgically inserted metal rods/plates ▪ Amputation 	<ul style="list-style-type: none"> ▪ Joint Replacement Surgery ▪ Arthroscopic Surgery (optional)
Surgery and Gastro-surgery	<ul style="list-style-type: none"> ▪ General Surgeries 	<ul style="list-style-type: none"> ▪ Laparoscopic Surgery ▪ Nephrectomies (optional) ▪ Hepatobiliary surgeries (optional) ▪ Pancreatic surgery (optional) ▪ Minimally invasive surgeries ▪ Gastro-enterosurgery-- Colposcopic & Sigmoidoscopic surgeries (optional)
Plastic Surgery	Cosmetology and Plasty-- Cosmetology and plastic surgery (optional)	
ENT	<ul style="list-style-type: none"> ▪ Basic upto septal repairs ▪ Tympanic surgeries 	
Accident, Emergency & Trauma medicine	<ul style="list-style-type: none"> ▪ General Trauma and emergency 	
Obstetrics and Gynecology	<ul style="list-style-type: none"> ▪ Reproductive Medicine-- Pregnancy Care, sterilization procedure ▪ Hysterectomy, oophorectomy 	
Neurosurgery		<ul style="list-style-type: none"> ▪ Basic trauma care ▪ Subdural hematoma ▪ Brain tumors
Cardiac Surgery	Cath Lab with all related procedures and CCU unit	<ul style="list-style-type: none"> ▪ CABG (optional) ▪ Valve replacement (optional) ▪ Major surgery (optional)

Department	Phase-0	Phase-1
Ophthalmology	<ul style="list-style-type: none"> Anterior chamber procedures including intraocular transplant Glaucoma Squint 	<ul style="list-style-type: none"> Posterior chamber procedures (optional) Cataract with Phaco-emulsification and IOL implants (optional)
Oncosurgery		Basic resection and amputation (optional)
Behavioral Sciences and mental health	<ul style="list-style-type: none"> Outdoor Consultation De-addiction services Mental Health & Behavioral Science 	
Oncology	OPD consultation	<ul style="list-style-type: none"> Chemotherapy (optional) Immunotherapy (optional) Hormone therapy (optional) Palliative Care (optional)
Dental Medicine	<ul style="list-style-type: none"> Standard dentistry services and procedure 	
Physiotherapy	<ul style="list-style-type: none"> Shoulder, Thigh, Leg, Abdomen strengthening machines Ultrasound therapy Wax Bath therapy Infrared therapy 	

b. Diagnostics

Department	Phase-0	Phase-1
Laboratory Medicine	<ul style="list-style-type: none"> Basic Haematology Biochemistry Clinical Pathology Basic culture-sensitivities ELISA, PCR 	
Imaging (Radiology)	<ul style="list-style-type: none"> Digital x-ray, Dental x-ray 64 slice CT with 64 row detector USG C-Arm 	<ul style="list-style-type: none"> Fluoroscopy (optional) MRI
Cardiology	<ul style="list-style-type: none"> ECG, stress ECG Treadmill, Stress induced treadmill Echo (3d and 2d) Stress Echo T-Echo 	<ul style="list-style-type: none"> Cath lab—Angiography and plasty CCU
Pulmonology	<ul style="list-style-type: none"> Spirometry, Oximetry 	
Molecular Diagnostics	Optional	

Department	Phase-0	Phase-1
Medicine and its super-specialties	<ul style="list-style-type: none"> ▪ Audiology—BERA, Speech Therapy (optional) ▪ Lumbar Puncture studies 	<ul style="list-style-type: none"> ▪ Fine Needle Aspiration Cytology (FNAC) & biopsy (optional) ▪ Mediastinoscopy (optional) ▪ Bronchoscopies(optional) ▪ Bone Marrow Aspiration studies (optional) ▪ Neurology (optional)
Nuclear Medicine	Optional	

Note:

4. Pre-operative beds, daycare beds, beds in emergency department, post-operative beds, baby warmers in the nursery will not be considered as a part of hospital bed compliment.
 5. General surgery OT, Cath Lab and Orthopaedic OT has to be a modular OT
 6. Specialty and Equipment mentioned in Red may be mandatory and rest are desirable
- ▶ Hospital Management Information system is a must to integrate diagnostics and therapeutics.
 - ▶ Occupational therapy and physiotherapy with its advances are must for basic and advanced treatment success.
 - ▶ Kitchen and Dietary services are also an essential service that must be provided to the patients.

SCHEDULE N

INDEPENDENT ENGINEER OR INDEPENDENT PANEL

Part A

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

1.1 These Terms of Reference for the Independent Engineer (the **TOR**) are being specified pursuant to the Concession Agreement dated..... (the **Agreement**), which has been entered into between the Authority and (the **Concessionaire**) for the Project at Kolkata, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2 Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

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

3 Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

- (i) review of the Drawings for the purpose of construction including review of detailed design, construction methodology, quality assurance procedures as set forth in Paragraph 4;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
- (iii) conducting Tests on completion of construction and issuing Completion Certificate as set forth in Paragraph 5;
- (iv) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

- (v) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (vi) assisting the Parties in resolution of disputes as set forth in Paragraph 6; and
- (vii) undertaking all other duties and functions in accordance with the Agreement.

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

4 Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake review of the Drawings to be furnished by the Concessionaire along with supporting data. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documentation sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documentation.
- 4.3 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

5 Construction Period

- 5.1 In respect of the Drawings and Documentation received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Hospital. The Independent Engineer shall send a copy of its Inspection Report to the

Authority and the Concessionaire within 7 (seven) days of the inspection.

- 5.4 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Project is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Commercial Operation Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 5.5 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers, in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.6 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 5.7 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 5.8 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-J and issue a Completion Certificate for Hospital.
- 5.9 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Clause 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

6 Assistance in Dispute resolution

- 6.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 6.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

7 Other duties and functions

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

8 Miscellaneous

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

Part B

TERMS OF REFERENCE FOR INDEPENDENT PANEL

[to be inserted at the time of selection of Independent Panel]

SCHEDULE O

EQUIPMENT

Minimum Equipment requirements

The Concessionaire must have below equipment as per mentioned in this schedule. The minimum specifications of equipment (must have Indian Standard / FDA / CE) required in the Project are as follows:

List of equipment required for SMP Centenary Hospital (300 beds)	Department	Phase
Dialysis machines	Urology & Nephrology	Phase 0
Blood bank with deep freezers, -40degree, and-20 degree	Transfusion Medicine	Phase 0
Operating microscope for microvascular and microneural surgery	Surgery and Gastro-surgery	Phase 1
Sleep lab	Pulmonology	Phase 0
Spirometer	Pulmonology	Phase 0
Oxymeter	Pulmonology	Phase 0
Endoscopic Plastic Surgery Instrumentation	Plastic Surgery	Phase 0
Advanced Vitrectomy machine	Ophthalmology	Phase 0
Pattern Scan Retinal Laser	Ophthalmology	Phase 0
Fundus Fluorescein Angiography Camera	Ophthalmology	Phase 0
Computerised Optical biometry	Ophthalmology	Phase 0
Corneal topographer	Ophthalmology	Phase 0
Corneal cross-linking device (C3R)	Ophthalmology	Phase 0
Automated static perimeter	Ophthalmology	Phase 0
Manual Goldmann Perimeter	Ophthalmology	Phase 0
Corneal Pachymeter	Ophthalmology	Phase 0
A Scan Biometer	Ophthalmology	Phase 0
Non-contact tonometer	Ophthalmology	Phase 0
Autorefractometer	Ophthalmology	Phase 0
Autokeratometer	Ophthalmology	Phase 0
Synoptophore	Ophthalmology	Phase 0
Applanation Tonometer	Ophthalmology	Phase 0
Biochemistry fully automated coulter	Laboratory Medicine	Phase 0
Plasma agitator	Laboratory Medicine	Phase 0
Component separator unit	Laboratory Medicine	Phase 0
Immunoassay analyser	Laboratory Medicine	Phase 0
Platelet apheresis unit	Laboratory Medicine	Phase 0
PCR	Laboratory Medicine	Phase 0
ELISA	Laboratory Medicine	Phase 0
3.0 Tesla MRI	Imaging (Radiology)	Phase 1

List of equipment required for SMP Centenary Hospital (300 beds)	Department	Phase
64 Slice CT	Imaging (Radiology)	Phase 0
3D Echocardiography	Imaging (Radiology)	Phase 0
Digital X-Ray 300mA	Imaging (Radiology)	Phase 0
3D and 4D Ultrasound	Imaging (Radiology)	Phase 0
Radiofrequency ablation system	Imaging (Radiology)	Phase 0
B Scan Ultrasound	Imaging (Radiology)	Phase 0
Dental X-Ray	Imaging (Radiology)	Phase 0
C-Arm	Imaging (Radiology)	Phase 0
Modular OTs (5)	General Surgery & Other departments	Phase 0
Endoscopy Suite	Gastroenterology	Phase 0
Video stroboscope	ENT	Phase 0
CO2 Laser	Dermatology	Phase 0
Cath Lab	Cardiology	Phase 0
Treadmill Test (TMT)	Cardiology	Phase 0
Electrophysiology Study	Cardiology	Phase 0
ECG with 12 para monitor	Cardiology	Phase 0
Holter Monitor	Cardiology	Phase 0
BERA Phone	Audiology—BERA, Speech Therapy	Phase 0
Audiometry and impedance equipment	Audiology—BERA, Speech Therapy	Phase 0
Advanced cardiac life support ambulance	Anesthesia & Critical Care	Phase 0
Critical Care Units Cost (ICU, NICU, PICU, MICU, HDU, CCU - 90 beds)	Anesthesia & Critical Care	As per requirement of each phase
Septic OTs (2)	Accident, Emergency & Trauma medicine	Phase 0

The above list is indicative, Concessionaire shall ensure that any additional equipment required for mandatory services are deployed in accordance with the requirement of each Phase.

SCHEDULE P

EXISTING FACILITY

1. Existing SMP Hospital

SMP Hospital has a capacity of 104 beds which may be increased to a maximum of beds. The Syama Prasad Mookerjee Port, Kolkata Centenary Hospital was established in 1969. The existing 104 bedded hospital is spread over an area of 8.5 acres. It is certified by NABL and is also a recognised teaching institute for Diploma in Medical Laboratory Technology (DMLT) course with 5 seats.

Following is the detail of number of beds:

Existing Infrastructure	
Total Beds	104
One-bed rooms	3
Two-bed rooms	2
ICU beds (all types)	8
Isolation beds	2
Total OPD Consultation Rooms	14
Major OTs	4
Minor OTs	1
Emergency OTs	1
Ward (Male)	1
Ward (Female)	1

The main Hospital building has 3 main floors, with partial development on the third and fourth floors. The ground floor includes the administration section, diagnostics and OPD area along with emergency and pharmacy. The first floor comprises of the male and female wards and OTs. The second floor includes some newly constructed rooms which are currently vacant. A detailed floor wise area statement has been given in adjoining table

S.N	Structure Name	Floor	Area (sqm)
1	Main Hospital Building	G+4+ semi-basement	~13,654
2	Canteen	Ground floor only	~162
3	Bio-Hazard Room	Ground floor only	~27
4	Labour Rest Room cum Store & Generator Room	Ground floor only	~193
5	Health Site Office	Ground floor only	~27
6	CESC, Transformer & Switch room	Ground floor only	~73
7	Laundry	Ground floor only	~26
8	Pump House	Ground floor only	~21
9	Civil Site Office	Ground floor only	~34
10	Drainage Pumping Station	Ground floor only	~10
11	Garage	Ground floor only	185

2. Existing specialties and support services.

SMP Centenary Hospital provides a variety of clinical and support services to its beneficiaries. There are 11 specialties which are provided in the hospital. OPDs are held for most specialties and for further treatment, the patients are referred to empaneled hospitals. Broadly 8 clinical services and 7 non-clinical services are provided. In addition, 4 ancillary services currently available in the SMP Centenary Hospital. These have been listed in table below. These services are provided only to eligible beneficiaries which include SMP employees, CISF employees and contractual employees, except in cases of emergency.

Medical Services	
Specialities Available	Clinical Services
Medicine	Out-patient & In-patient
Ophthalmology	Emergency, Trauma Services
Cardiology (OPD)	Surgical Care
Dermatology & Venereology	Critical Care—ICU
ENT	Endoscopy
General Surgery	Cardiac Care—ECG, ECHO
Obs. & Gynaecology Services	Physiotherapy
Orthopaedics	Occupational therapy
Vascular Surgery	
GI Surgery	
Surgical Oncology	
Support Services	
Non-Clinical Services	Ancillary Services
Pharmacy	Sterilization
Ambulance Service	Laundry
Laboratory Services — Biochemistry, Pathology, Histopathology	Warehousing and Central Store facility
Microbiology	Kitchen
Imaging-USG, X-Ray	

SCHEDULE PP
EXTANT SERVICE CONDITION OF SELECT EMPLOYEES

(to be provided to the Bidder at the time of signing)

SCHEDULE Q

BOARD OF TRUSTEES, for **SYAMA PRASAD MOOKERJEE PORT, KOLKATA**, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963 and having its Administrative Office at [(hereinafter referred to as the **Authority** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns); and

a private limited company incorporated under the provisions of the Companies Act 2013 with its registered office at [•] (hereinafter referred to as the **Concessionaire** which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);

The Authority and the Concessionaire have entered into a concession agreement on [•] (the **Concession Agreement**), in terms of which the Concessionaire has agreed to undertake the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof (the **Project**).

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

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

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

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

repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

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

2 ASSIGNMENT

2.1 Assignment of rights and title

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

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

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

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

3.2 Substitution upon occurrence of Financial Default

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

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

- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

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

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any Material Adverse Effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

- 3.4.5 The Parties herein expressly agree to execute such agreement as shall be required to give effect to the substitution as contemplated herein. The Nominated Company shall also be under the obligation to grant to Authority (if so desired by Authority) the right to subscribe and acquire the Golden Share in the Nominated Company, as it had in the Concessionaire at time of substitution, on same terms and conditions as set forth in Shareholders Agreement

3.5 Selection to be binding

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

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

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

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 33 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

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

5.3 Realisation of Debt Due

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

5.4 Realisation of due amount by Authority

For realisation of the amount mentioned in Clause 6.3.9 of the Concession Agreement from Escrow Account, Authority shall be entitled to make its claim from the Escrow Account, without any recourse or reference to the Concessionaire and Concessionaire and Escrow Bank unconditionally consents to the foregoing, and Escrow bank shall promptly upon receiving related instructions debit the Escrow Account and make relevant payment to Authority in accordance with the provisions of the Concession Agreement read along with the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

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

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

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the [●](the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [●] and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

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

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

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

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

9.8 Severability

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

9.9 Successors and assigns

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

9.10 Notices

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

5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

SCHEDULE R

Draft Shareholders' Agreement

This Shareholders' Agreement has been entered on this [●] day of [●], 2020 at [Kolkata] by and between:

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

AND

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

AND

3. [**Insert the name of the Company**], a company incorporated under the provisions of the Companies Act with its registered office at [●] (hereinafter referred to as the "**Company**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns of the **Third Part**;

OR⁴

The **Parties listed in Schedule 1** hereto who are the consortium members, who having jointly submitting the Bid under RFP, and were awarded the Project (hereinafter referred to as "**Private Participant**" and collectively referred to as the "**Private Participants**" which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include their respective nominees, legal representatives and successors of the **Third Part**;

The {Company or Private Participants}⁵, are hereinafter referred to as the "**Selected Bidder**". The Authority and the Selected Bidder are hereinafter collectively referred to as "**Shareholders**" and individually as a "**Shareholder**".

The Shareholders and the SPV are hereinafter collectively referred to as "**Parties**" and individually as the "**Party**".

WHEREAS

- A. The Authority has constructed and developed hospital on the Site (*as defined hereinafter*), which is the "**Existing Hospital**". The Authority has now resolved to undertake

⁴ To be modified depending on whether Selected Bidder is single entity or consortium of entities

⁵ To be modified in view of the fact whether Selected Bidder is a single entity or consortium of entities.

augmentation, operation, management and development of the Existing Hospital through Public-Private Partnership (the "**PPP**") into a super specialty hospital in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

- B. The Authority had accordingly published its Request for Proposal No. [●] dated [●] (the "**Request for Qualification**" or "**RFP**") for inviting bids for undertaking the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof ("**Project**") and had prequalified certain bidders including, *inter alia*, the Selected Bidder;
- C. Pursuant to the terms of the RFP, bids were received by the Authority on or before [*insert Bid Due Date*] from the bidders shortlisted in the RFQ process. The Selected Bidder also submitted its bid ("**Bid**") for the Project;
- D. After evaluation of the bids received, the Authority had accepted the Bid of the Selected Bidder and issued its letter of award no. [●] [dated] (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of the Concession Agreement within timelines specified therein.
- E. [Private Participants are members of a Consortium (*as defined under the Bidding Documents*), which had bid, and were thereafter short listed and eventually selected by the Authority as the joint venture partners for undertaking the Project and issued its letter of award no. [●] [Dated] (hereinafter called the "**LOA**") to the Selected Bidder requiring, *inter alia*, the execution of the Concession Agreement within timelines specified therein.]⁶
- F. Pursuant to the LOA, the Selected Bidder has incorporated the SPV, and the SPV and Authority has entered into the Concession Agreement, pursuant to which Authority has, among others granted to the SPV the right to undertake the Project in accordance with the terms and conditions therein.
- G. In terms of the Bidding Documents and particularly the Concession Agreement, the Authority would be allotted and issued, and accordingly shall own and hold (legally and beneficially, one non-transferable Golden Share (as defined hereinafter) in the paid up capital of the Concessionaire on the terms and conditions as set out in this Shareholders Agreement.

NOW THEREFORE, in consideration of the above recitals, the mutual covenants of the Parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

CLAUSE 1

DEFINITION AND INTERPRETATION

⁶ This recital shall exist if the Selected Bidder is a Consortium, in which case preceding Recital E shall be deleted.

1.1 In this Shareholders Agreement (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

"Adjourned Meeting" shall have the meaning ascribed to the term in Clause 5.11.2 hereunder;

"Affected Party" shall have the meaning ascribed to the term in Clause 9.3.1 hereunder;

"Alternate Director" shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

"Board of Director(s)" or **"Board"** means the board of director(s) of the SPV;

"Breach Notice" shall have the meaning ascribed to the term in Clause 7.2(a);

"Chairman" means chairman of the SPV;

"Charter Documents" means the Memorandum of Association and Articles of Association of the SPV incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement.

"Claimant(s)" shall have the meaning ascribed to the term in Clause 9.4.3.1 hereunder;

"Companies Act" means the Companies Act, 2013, read along with rules notified thereunder;

"Concession Agreement" means the agreement entered on [***date of concession agreement***] into between the SPV and the Authority to record the terms for the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof;

"Consequential Loss" shall have the meaning ascribed to the term in Clause 9.16.1 hereunder;

"Deed of Adherence" shall have the meaning assigned thereto in Clause 3.3.1 (iii) hereof;

"Defaulting Party" shall have the meaning ascribed to the term in Clause 7.2(a) hereunder;

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

"Fair Market Value" means the fair market value of all of the Securities as calculated and determined by the Independent Valuer (appointed by the Board of SPV from amongst the globally acclaimed Accounting Firms operating in India) in accordance with procedure for valuation set out in Schedule 2 hereof;

"Golden Share" shall mean the fully paid up equity share of a par value of Rs.10 of the Concessionaire, issued to the Authority in accordance with terms hereof;

"Initial Subscription" shall have the meaning ascribed to the term in Clause 3.1.2 hereunder;

"Managing Director" means the whole time managing director of the [•];

"Material Breach" shall have the meaning ascribed to the term in Clause 7.2(a);

"Non-Defaulting Party" shall have the meaning ascribed to the term in Clause 7.2(a) hereunder;

"Original Director" shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;
in Clause 3.4.1(i) hereunder;

"Private Participants" shall have the meaning ascribed to it in the preamble of this Agreement;

"Project" shall have the meaning ascribed to it Recital B hereunder.

"Proprietary Information" shall have the meaning ascribed to the term under Clause 8.1 hereunder;

"Reserved Matters" shall have the meaning ascribed to the term in Clause 6.1.3 hereunder;

"Respondent(s)" shall have the meaning ascribed to the term in Clause 9.4.3.1 hereunder;

"RFP" means the 'Request for Proposal' document issued by Authority on [•];

"Rupee(s)" or **"Rs."** means Indian rupee(s);

"Security(ies)" shall mean all equity shares, compulsorily convertible preference shares, compulsorily convertible debentures, shares membership interests, registered capital, joint venture or other ownership interests held by the Company in the SPV or any options, warrants, rights or other securities that are directly or indirectly convertible into, or exercisable or exchangeable for,

such equity capital, membership interests, partnership interests, registered capital, joint venture or other ownership interests (whether or not such derivative securities are issued);

"Shareholder" or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement;

"Shareholders Agreement" or **"Agreement"** means this shareholders' agreement;

"SHA Effective Date" means the date on which the conditions precedent set forth in Clause 2.1 hereunder are satisfied;

"Third Party" means any Entity not a Party to this Agreement;

"Transfer" shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Law, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one Entity to another Entity or to the same Entity in a different legal capacity, whether or not for value; (iii) the granting of any Encumbrance or charge in or extending or attaching to such securities or any interest therein;

Other Capitalised terms used herein (and not defined herein) but defined under the Concession Agreement shall have the meaning ascribed to the term under the Concession Agreement.

- 1.2 In this Agreement, unless the context otherwise requires, the interpretation rules as mentioned in Clause 1.2 of the Concession Agreement shall apply.

CLAUSE 2

SHA EFFECTIVE DATE

- 2.1 This Agreement shall come into force and effect and be binding upon the Parties from the date of execution of this Agreement; (**"SHA Effective Date"**).

CLAUSE 3

CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE

3.1 Issuance of the Golden Share to the Authority

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Selected Bidder hereby agrees to cause the Concessionaire to issue and allot to the Authority, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par

value of such Golden Share, and deliver the share certificate representing the Golden Share to the Authority.

- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share. The Concessionaire shall ensure and procure that the Concessionaire delivers to Authority certified true copy of all related resolutions and statutory filings evidencing compliance with all Applicable Laws for issue of Golden Share.
- 3.1.3 The Parties agree that the nominee Director of the Authority shall have a right of affirmative vote in the meetings of the Board of Directors, and the Authority (acting through its representative) shall have a right of affirmative vote in the general meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Authority under this Agreement shall be in addition to any other rights that the Authority may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share issued shall, unless otherwise provided for under this Agreement, have identical rights and privileges of equity shares, with respect to dividend and all other matters.
- 3.1.5 The Parties expressly agree that the rights vested in the Authority shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire, Selected Bidder or any of its Associates or Affiliates.
- 3.1.6 The Parties further agree that any divestment of Equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the permitted successors, assigns and substitutes of Concessionaire shall be bound by such undertaking.

3.2 Transfer Restrictions

- 3.2.1 Any Shareholder (other than the Authority) may, subject to the provisions of this Agreement, the Concession Agreement and in compliance with Applicable Laws, Transfer, whether directly or indirectly, all or any of its equity shares or their rights under this Agreement, to a Third Party provided that:
 - (i) The Selected Bidder shall not be in breach of this Agreement and the Concession Agreement;
 - (ii) The Selected Bidder shall in terms of Clause 5.3.1 and Clause 5.3.2 of the Concession Agreement require the consent of the Authority for any Transfer to a Third Party; and
 - (iii) Such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and the Concession Agreement and shall execute a deed of adherence in the form and manner attached in **Annex I ("Deed of Adherence")**.
- 3.2.2 It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Securities in the Concessionaire (such Private Participant being an "**SPV PP**"), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Securities by the SPV PP for the purposes of this Agreement

and be subject to the restrictions on Transfer of SPV PP as set forth in this Agreement, including the requirement of consent of Authority and the execution of a Deed of Adherence by a Third Party transferee.

- 3.3.3 The Parties expressly agree that the Authority shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Authority assumes the rights and obligations of the Authority under the Concession Agreement.

CLAUSE 4

SCOPE AND OBJECTIVE OF THE SPV: BUSINESS PLAN

4.1 Purpose of the SPV and Scope of this Agreement

- 4.1.1 The purpose of the SPV shall be to undertake the Project in terms of the Concession Agreement and as detailed in Recital A of this Agreement.

4.2 Shareholder Commitments

- 4.2.1 Each Shareholder hereby agrees to cooperate with the other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so, to promote the success of the Concessionaire. Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Authority shall be restricted and limited to the matters expressly set forth in the Concession Agreement. Provided further that, nothing contained in this Clause 4.2.1 shall be construed as creating any obligation on the Authority other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Authority.

- 4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and for the benefit of the Concessionaire:

- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
 - (b) Subject to Authority's right of affirmative vote (which may be exercised through a nominee of the Authority) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that: (i) every person for the time being representing it in its capacity as Shareholder; and (ii) every person appointed as a Director in terms of this Agreement, will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote on the equity shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.
- 4.2.3 If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.

- 4.2.4 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Authority's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies.

CLAUSE 5

MANAGEMENT AND THE BOARD OF DIRECTORS

- 5.1 The SPV shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the SPV and the Project. The officers of the SPV shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

5.2 Composition of the Board

- 5.2.1 The Board composition shall be determined as under:

(i) The Authority shall at all times be entitled to nominate a person of its choice for appointment as a Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as a non-retiring Director in accordance with the Applicable Laws.

(ii) The Selected Bidder shall have the right to nominate the remaining 3 (three) Directors.

- 5.2.2 The Shareholders hereby acknowledge and agree to vote in accordance with their respective shareholding in the SPV in such manner so as to ensure appointment of the nominees of Authority, as Directors from time to time.

- 5.2.3 The Parties agree that the non-retiring Director nominated by the Authority shall be entitled to and have the right to issue binding directions to the Board of Directors and the Concessionaire in respect of the following matters and any matter incidental to such matters:

- (a) care and treatment of SMP Beneficiary/Select Patient
- (b) terms and conditions of employment for the Select Employees enlisted in Schedule D
- (c) compliance with the KPI's which are related to the Select Employees and SMP Beneficiaries/Select Patients.

[It is hereby clarified that for the purposes of this Clause 5.2.3, in case of non-adherence by the Concessionaire to the instructions issued by the non-retiring Director nominated by the Authority, as specified above, the non-adherence shall be deemed to be a Material Breach.]

5.3 Chairman

5.3.1 The Parties hereby undertake and agree that the Chairman will be nominated by the Authority.

5.3.3 The Chairman shall preside over all the meetings of the Board or of the Shareholders of the SPV.

5.3.4 If the Chairman is not present at a Board meeting or a Shareholders meeting, the Directors who are present may appoint an acting Chairman from the other nominee Directors.

5.3.5 In the event of any dead lock, the Chairman shall not have the casting vote.

5.4 **Managing Director**

5.4.1 The Board shall appoint the Managing Director of the SPV. The term of each appointment for the Managing Director shall be for such period as would be decided by the Board from time to time and subject to a detailed employment agreement (if considered necessary by the Board) with the appointee.

5.4.2 The Managing Director shall be responsible for day-to-day management of the SPV and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

5.5 **Qualification**

5.5.1 The Directors need not hold any qualification shares in the SPV.

5.6 **Resignation and Removal**

5.6.1 All Directors, except the Directors appointed by the Authority, shall be liable to retire by rotation provided that Authority shall be entitled to nominate the same or any other person as a Director to fill the vacancy caused by retirement/ substitution. Except where a Director is required by Applicable Law or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the shareholders of the SPV to effect such removal and to vote in favour thereof, if so required.

5.7 **Alternate Director**

5.7.1 A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 Such Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in this Clause 5.7.2), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to constitute quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Law his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

5.8 **Vacancy**

5.8.1 If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of one (1) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the election of such replacement Director.

5.9 **Mode of conduct of Board Meeting**

5.9.1 Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the SPV's registered office located at [•]. If and when permitted under Applicable Law, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

5.10 **Notice and Agenda for Meeting**

5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of fourteen (14) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, inter alia, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

- 5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with at least 1 (one) Director nominated by Authority in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

5.11 **Quorum**

- 5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include at least one (1) Director nominated by Authority and at least one (1) Director nominated by the Selected Bidder. Provided that the requirement of having at least one (1) Director nominated by Authority for validly constituting any meeting of the Board or any adjournment thereof shall apply irrespective of its shareholding in the SPV;
- 5.11.2 If within half an hour from the time appointed for holding a meeting of the Board, a quorum is not present, the said Board meeting shall stand adjourned to the same day in the next week, to be held at the same time and place ("**Adjourned Meeting**"). If at the Adjourned Meeting as well, a valid quorum cannot be constituted, the Directors present shall constitute a valid quorum.
- 5.11.3 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

5.12 **Committees of the Board**

- 5.12.1 If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained, Authority shall have the right to nominate one nominee each on every committee and sub-committee constituted by the Board.

5.13 **Decisions**

- 5.13.1 Each member of the Board of Directors shall be entitled to cast one vote with respect to any matter to be decided by the Board of Directors.
- 5.13.2 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of the Board of Directors of the Concessionaire shall be subject to the affirmative vote of the Director nominated by the Authority and no such resolution shall be passed if no such Director nominated by the Authority is present and voting in favour of such resolution.

- 5.13.3 The SPV or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matters without the prior approval by the Board in the manner provided in Clause 5.13.2 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without prior approval shall be null and void.

5.14 Resolution by Circular

- 5.14.1 Subject to Applicable Law and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

5.15 Authority

- 5.15.1 Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the SPV individually.

5.16 Disqualification of Directors

- 5.16.1 Subject to Applicable Law, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

5.17 Inspection and Information

- 5.17.1 It is hereby agreed between the Parties that Authority shall have the right to examine the books, records and accounts to be kept by the SPV and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

- 5.17.2 Without prejudice to the generality of Clause 5.17.1, the SPV shall supply Authority with copies of:

- (a) audited accounts of the SPV (complying with all relevant legal requirements); and
- (b) monthly/quarterly management accounts of each principal division of the SPV; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the SPV including a statement of progress against the relevant Business Plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Financial Year and itemizing all expenditure in relation to the SPV's capital programme entered into by each principal division of the SPV during that period;

CLAUSE 6

SHAREHOLDERS' RIGHTS AND OBLIGATIONS

6.1 Matters Requiring Approval of Shareholders

- 6.1.1 Till such time as Authority holds Golden Share in the Concessionaire, the Concessionaire (or any of its Directors, officers, agents or representatives) shall not and the Selected Bidder and/or other shareholders shall ensure and procure that Concessionaire does not give effect to any decision or resolution in respect of the Reserved Matters, unless the same is approved by the affirmative vote of Authority.
- 6.1.2 The Articles of Association of the SPV shall (a) expressly permit the proxies to vote at the SPV's shareholders' meetings; and (b) expressly permit the appointment of multiple proxies/representatives in respect of the SPV's shares and specify the number of votes that each proxy is authorised to use.
- 6.1.3 Subject to applicable laws, any resolution and/or decisions either taken in shareholders meeting or Board meeting of Concessionaire in respect of all or any of the following or any matter incidental or consequential thereto, shall only be passed/made with the affirmative vote of Authority's representative or its Director, as the case may be:
- (a) to alter or add to the provisions of the memorandum of association;
 - (b) to alter or add to the articles of association;
 - (c) to change the name of the Concessionaire;
 - (d) to reduce the share capital;
 - (e) to commence any new lines of business;
 - (f) to entering into a Related Party transaction as envisaged under Indian Companies Act;
 - (g) to apply to a court to wind-up the Concessionaire ;
 - (h) to wind-up the Concessionaire voluntarily;
 - (i) for various other matters pertaining to the winding up of the Concessionaire;
 - (j) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Company;
 - (k) sale, transfer, lease, license or disposal of all or a substantial part of its business undertaking or assets whether in a single transaction or a series of transactions, related or not.
 - (l) Commencement of Optional Development.
 - (m) matters that have a direct impact on the healthcare services of Select Patients
 - (n) to not to have any shareholding interest or otherwise in any entity, or any other form of arrangement with any person, which may allow it to undertake or perform any Project related activity generating direct revenue;
 - (o) to not to have any subsidiary or be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein

CLAUSE 6A
REPRESENTATIONS AND WARRANTIES

6A.1 Selected Bidder hereby warrants and represents to and for the benefit of Authority, and the SPV that:

- (i) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (ii) The execution and delivery by the Selected Bidder of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (iii) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of Selected Bidder, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (iv) It is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (v) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement.
- (vi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of the Selected Bidder's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or Governmental Authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

6A.2 Authority hereby warrants and represents to and for the benefit of the SPV and the Selected Bidder that:

- (i) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;
- (ii) The execution and delivery by Authority of this Agreement has been duly authorized by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (iii) This Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of Authority, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (iv) Authority is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (v) It has complied with Applicable Law in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement.
- (vi) There are no actions, suits, claims, proceedings or investigations pending or, to the best of Authority's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

6A.3 Each of the Parties to this Agreement hereby acknowledges that (i) other than the representations and warranties made in and/or referred to in this Clause 6A, no Party has relied upon or will rely upon any other representation or warranty (whether written or oral) or any financial projection or forecast or market information delivered to it with respect to the business and operations of the Company for the purposes of this Agreement; and (ii) there are no representations or warranties by or on behalf of any Party or its representatives other than those expressly set forth and/ or referred to in this Clause 6A for the purposes of this Agreement.

CLAUSE 7

TERMINATION

7.1 Termination

- 7.1.1 The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Securities of the SPV, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 8) and dispute resolution (Clause 9.4) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

7.2 Right to Terminate for Cause

- (a) In the event of occurrence of a material breach of any of the terms and conditions of the Agreement, or any covenant, representation, warranty or agreement set forth herein ("**Material Breach**") on the part of a Shareholder (the "**Defaulting Party**"), any other Shareholders ("**Non-Defaulting Party**") may give written notice of the alleged breach ("**Breach Notice**") to the Defaulting Party.

For avoidance of doubt it is hereby clarified that if the SPV commits a default under Concession Agreement due to the act or omission of a Shareholder, or of a Director who is nominated by a Shareholder, then that Shareholder shall be deemed to be a Defaulting Party under this Clause.

- (b) A termination event ("**Termination Event**") shall be deemed to have occurred:
- (i) If such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within thirty (30) days of receipt of the Breach Notice ("**Cure Period**"), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice;
 - (ii) In the event an insolvency, winding up or a bankruptcy petition or other insolvency application is presented against a Shareholder, or a court of competent jurisdiction makes an order, or a resolution is passed, for the winding up, dissolution or judicial management or administration of that Shareholder otherwise than in the course of a reorganisation or restructuring previously approved in writing by the other Shareholders (such approval not to be unreasonably withheld);
 - (iii) In the event any attachment, sequestration, distress, execution or other legal process is levied, enforced or instituted against the assets of a Shareholder, or a liquidator, judicial manager, receiver, administrator, trustee-in-bankruptcy, custodian or other similar officer has been appointed (or a petition for the appointment of such officer has been presented) in respect of any assets of a Shareholder; or
- (c) the Concession Agreement expires or is terminated earlier, in terms therein.
- (d) a resolution is passed to wind up the SPV or if a liquidator is otherwise appointed

7.3 Consequences of Termination Event:

- (a) Upon occurrence of Termination Event on the part of any of the Private Participants/Company, the Authority may in its sole discretion require the Private

Participants/Company to transfer all, but not less than all of its equity shares held by it to the Authority at the lower of Fair Market Value of equity shares or 25% of the Par value thereof; and the transfer of such shares shall take place at the registered office of the SPV within 30 days from date of notice by Authority in this behalf.

- (b) Upon occurrence of Termination Event on the part of Authority, any of Private Participants/Company shall be entitled to call upon Authority to offer whole (but not less than whole) of Authority's Shares in the SPV in favour of Private Participants/Company, against the consideration of the Fair Market Value or at par value of Authority's Shares whichever is higher.
- (c) In other case(s) of Termination Events, Authority shall be entitled to require and forthwith upon Authority notifying the Private Participants/Company in regard to exercise of said entitlement, the Private Participants/Company shall have the obligation to purchase Authority's equity shares in the SPV against payment of face value of Authority's equity Shares or the Fair Market Value thereof, whichever is higher.

CLAUSE 8

CONFIDENTIALITY

- 8.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they, are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(ies).
- 8.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.
- 8.3 This Clause shall not, however, apply to information which:
 - (a) is or becomes publicly available without the fault of any Party;
 - (b) was known to any Party on a non-confidential basis prior to disclosure;
 - (c) is independently developed by any Party without use of the Proprietary Information;
 - (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
 - (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;

(f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Securities; and

(g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

8.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

CLAUSE 9

MISCELLANEOUS

9.1 Notices

9.1.1 Any notice to be given under this Agreement shall be deemed to have been duly given upon receipt when in writing and delivered in person, by facsimile transmission, by telex or by courier, addressed as follows:-

(a) If to Authority:

[•]

(b) If to the SPV:

[•]

9.1.2 Any Party may change its address provided above for the purpose of this Agreement by giving written notice to the other Parties of such change in the manner hereinabove provided.

9.2 Force Majeure

9.2.1 Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

9.3 Specific Performance of Obligations

9.3.1 The Parties to this Agreement agree that, to the extent permitted under Applicable Law, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a Defaulting Party. The Parties

acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

9.4 **Governing Law and Consent to Jurisdiction; Arbitration**

9.4.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of the Republic of India.

9.4.2 The Parties agree that they shall attempt to resolve through good faith consultation, disputes arising in connection with this Agreement, and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation. Provided that if such good faith consultations have not resulted in a resolution of the dispute within sixty (60) days of such consultations having commenced, the provisions of Clause 9.4.3 shall apply.

9.4.3 **Arbitration**

9.4.3.1 Any dispute, which could not be settled by the Parties through amicable settlement (as provided for under Clause 9.4.2 hereinabove) shall be finally settled by arbitration by a board of arbitrators appointed in accordance with 9.4.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, [●], or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of Arbitration and Conciliation Act, 1996. A notice of the intent to refer the dispute to arbitration may be given by a Party or group of Parties ("**Claimant(s)**") to the other Party or group of Parties ("**Respondent(s)**").

9.4.3.2 The disputes shall be referred to a tribunal comprising three (3) arbitrators. The Respondent(s) and the Claimant(s) to the arbitration shall have the right to appoint one arbitrator each and the two arbitrators thus appointed shall choose the third arbitrator who will act as a presiding arbitrator of the tribunal (together forming the "**Arbitral Tribunal**"). In the event of failure by the Respondent(s) and/or the Claimant(s) to appoint their arbitrator(s) or by the two arbitrators appointed by the Respondent(s) and the Claimant(s) respectively to appoint the third arbitrator, the said arbitrator(s) shall be appointed by the High Court of [●].

9.4.3.3 Such arbitration shall, unless otherwise agreeable to the Parties, be held at [●], India. All proceedings of such arbitration shall be in the English language.

9.4.3.4 The decision(s) of the Arbitral Tribunal shall be final and binding on the Parties.

9.4.3.5 Subject to this Clause 9.4, the Courts at [●] shall have jurisdiction over this Agreement.

9.5 **Entire Agreement**

9.5.1 This Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

9.6 **Amendments**

9.6.1 Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorized representative of each Party.

9.7 **Severability**

9.7.1 If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

9.8 **Counterparts**

9.8.1 This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

9.9 **Waivers**

9.9.1 No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a

continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

9.10 No Agency

9.10.1 This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

9.11 No Third Party Beneficiaries

9.11.1 Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any Entity other than the Parties hereto (and their respective successors and permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

9.12 Independence of the Parties with respect of each other and of the SPV

9.12.1 The Parties are and shall remain independent. None of the Parties or any group entity thereof shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the SPV.

9.13 Arm's Length

9.13.1 All relationships between each Party and/or any relevant group entity of such Party of the one part, and the SPV, of the other part, shall be conducted at arms length and on competitive terms.

9.14 Expenses

9.14.1 Each of the Parties shall bear the fees and expenses of its respective counsel, accountants and experts and all other costs and expenses incurred by it incidental to the negotiation, preparation, execution and delivery of this Agreement.

9.15 Encumbrance

9.15.1 Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that the Selected Bidder shall have the right but not the obligation to, in any way, Encumber their shareholding in the SPV in favour of the Lenders for raising Debt for the use of the SPV, in accordance with the provisions of the Concession Agreement.

9.16 Consequential Loss

- 9.16.1 Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. Each party undertakes not to sue any other party, its officers, employees and agents in respect of such Consequential Loss.

For the purposes of this provision, "Consequential Loss" means any indirect or consequential loss (including loss or protection, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach knew or ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

IN WITNESS WHEREOF the Parties have hereunto set their respective hands the day and year first above written.

For and on behalf of Syama Prasad Mookerjee Port, Kolkata:

Signed by _____

Witnessed by:

For and on behalf of [●]:

Signed by _____

Witnessed by:

For and on behalf of [●]:

Signed by _____

Witnessed by:

SCHEDULE 1
PRIVATE PARTICIPANTS

SCHEDULE 2

MECHANISM FOR DERIVING FAIR MARKET VALUE OF EQUITY SHARES

In the event that a determination needs to be made of the Fair Market Value of the Equity Shares, the procedures and approach set forth in this Schedule shall apply:

1. If the SPV at that time is publicly listed company then the Fair Market Value shall be the weighted average of the daily trading price for the shares over the previous twelve (12) week period, with the weights being the value of the daily turnover of the Equity Shares.
2. If the SPV is not publicly listed, then:
 - i. Fair Market Value of the Equity Shares means the value of the Equity Shares determined by a firm of independent chartered accountants of international reputation (the "Valuer") on the basis of a transaction between a willing seller and a willing buyer and in accordance with prevailing Indian accounting standards as applicable from time to time. Provided that in the event Authority is not the defaulting Party, in determining such value, the Valuer shall:
 - a. not ascribe or take into account directly or indirectly, any value per se to the land provided to the SPV under the Lease Deed,
 - b. exclude any value attributable directly or indirectly to the state support granted to the SPV.

Provided however, if Authority is the defaulting Party then the Valuer shall attribute the above value while determining the Fair Market Value of the Equity Shares.

- i. Upon receiving a request from a concerned Party for determination of the Fair Market Value of Equity Shares where required in terms of this Agreement, the Board will select the Valuer and instruct the Valuer to determine the Fair Market Value in accordance with Paragraph 1 above.
 - iii. The SPV will provide the information required by the Valuer for such determination, within a period of seven (7) days of his appointment.
 - iv. The Valuer shall determine the Fair Market Value within a period of twenty (20) days thereafter and provide his report to the Board, with copies to all Parties.
 - v. The costs, including fees of the Valuer, incurred for such determination shall be borne by the seller and / or the buyer, as may reasonably be determined by the Board.

ANNEXURE 1
DEED OF ADHERENCE

[Draft to be formulated by the SPV and approved by its Board]

SCHEDULE S

VESTING CERTIFICATE

- 1 **BOARD OF TRUSTEES**, for **SYAMA PRASAD MOOKERJEE PORT, KOLKATA** (the Authority) refers to the Concession Agreement dated [•] (the Agreement) entered into between the Authority and [•] (the Concessionaire) for the Project.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 34.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

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

AGREED, ACCEPTED AND SIGNED

**For and on behalf of
CONCESSIONAIRE by:**

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

In the presence of:

1.

SIGNED, SEALED AND DELIVERED

**For and on behalf of
AUTHORITY by:**

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

2.

SCHEDULE T
ESCROW AGREEMENT

FORM OF ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [●] day of [●], [Year].

AMONGST

1. [●], a private limited company incorporated under the provisions of the Companies Act, and having its registered office at [●] (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [●][name and particulars of Lenders' Representative] and having its registered office at [●] acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [●] [name and particulars of the Escrow Bank] and having its registered office at [●] (hereinafter referred to as the "**Escrow Bank**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. BOARD OF TRUSTEES, for SYAMA PRASAD MOOKERJEE PORT, KOLKATA, a body corporate constituted under the provisions of the Major Port Trusts Act, 1963, and having its Administrative Office at [●] represented by its [●] (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated [●] with the Concessionaire (the "**Concession Agreement**"), in terms of which the Concessionaire has agreed to undertake the augmentation, upgradation and development of the Existing Hospital to at least 300 bedded super specialty hospital with an option to further develop a Medical College and further expansion of the Hospital, and the operation and maintenance thereof, a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

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

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

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

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

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning

thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

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

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

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [●] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest

payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

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

2.6 Substitution of the Concessionaire

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

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

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

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) towards payment of Gross Revenue Share and other sums payable to the Authority and liquidated damages, if any
- (d) [any other revenues from or in respect of the Project; and]
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow

Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

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

- (a) any monies disbursed by the Authority to the Concessionaire;
- (b) Termination Payments, including Additional Termination Payments, if any.

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 for and in respect of the Project;
- (b) DELETED
- (c) all payments relating to construction of the Project, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (d) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (e) O&M Expenses and other costs 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;
- (f) Concession Fee, Gross Revenue share, Lease Rent and Additional Lease Rent as due and payable
- (g) monthly proportionate provision of Debt Service due in an Accounting Year;
- (h) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) monthly proportionate provision of Debt Service payments due in an Accounting Year in respect

of Subordinated Debt;

- (j) any reserve requirements set forth in the Financing Agreements;
- (k) any dividend payable to the Authority; and
- (l) balance, if any, in accordance with the instructions of the Concessionaire.

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

4.2 Withdrawals upon Termination on account of either party default

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 for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee, Gross Revenue share, Lease Rent and Additional Lease Rent as due and payable;
- (d) all other payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including any claims in connection with or arising out of Termination;
- (e) payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 35 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due excluding subordinate debt;
- (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.

4.2(A) Withdrawal upon end of Concession Period by efflux of time

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

- (a) towards taxes and statutory dues payable by the Concessionaire;
- (b) compensation to Senior Lenders in terms of the Financing Agreements towards discharge of the Concessionaire's liability under such Financing Agreements;
- (c) all amounts due to the Authority and amounts payable towards transfer of the Project and Project Facilities by the Concessionaire in accordance with this Agreement; and the Concessionaire shall be at liberty to withdraw any sums outstanding in the Escrow Account after:
 - (i) all the aforesaid payments due have been made and/or adequate reserves have been created in respect thereof to the satisfaction of the Senior Lenders and the Authority;
 - (ii) the Escrow Agent has received a confirmation of final settlement by the Senior Lenders and/or Authority; and

(iii) Vesting Certificate has been issued by the Authority under the provisions of Clause 34.4.

4.3 Application of insufficient funds

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

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 32 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

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

business day.

5.3 Communications and notices

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

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

5.4 No set off

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

5.5 Regulatory approvals

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

5.6 Verification of Monthly Invoice:

The Escrow Bank shall verify Monthly Invoice for any apparent error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire. In the event that the Escrow Bank notifies any error in writing to the Concessionaire within 30 (Thirty) days of receipt of a Monthly Invoice, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Escrow Bank. The process set out in this Clause 5.6 shall then apply to any re-issued Monthly Invoice.

In the event that the Escrow Bank does not notify within 30 (thirty) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Escrow Bank and the Escrow Bank shall make the payment of the amounts claimed under such invoice, through electronic transfer, to the designated Bank account of the Concessionaire.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or

omission of the Authority or the Lenders' Representative:

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

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

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

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

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

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

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

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

provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

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

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

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

9.2 Notice and contest of claims

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

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the [●] (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on

the Parties. The venue of arbitration shall be [●] and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

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

11.8 Severability

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

11.9 Successors and assigns

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

11.10 Notices

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

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, [who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof]\$:

**SIGNED, SEALED AND
DELIVERED**
**For and on behalf of
THE ESCROW BANK by:**

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

**SIGNED, SEALED AND
DELIVERED**
**For and on behalf of
THE AUTHORITY by:**

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

2.

**SIGNED, SEALED AND
DELIVERED**
**For and on behalf of
THE LENDERS by:**

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

^{\$} To be affixed in accordance with the articles of association of the Concessionaire.

Schedule U
Arbitration Rules of the Society for Affordable Redressal of
Disputes - Ports (SAROD-Ports)

I N D E X

Rule

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
7. Contents of Case Statements
8. Default in Filing and Serving Case Statements
9. Further Written Statements
10. SAROD-PORTS- Ports to Provide Assistance
11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
13. Appointment of Substitute Arbitrator
14. Independence and Impartiality of the Tribunal
15. Code of Ethics for Arbitrators
16. Challenge of Arbitrators
- 1 7. Decision on Challenge
18. Removal of the Tribunal
19. Re-hearing in the Event of Replacement of the Tribunal
20. Jurisdiction of the Tribunal
21. Fees of SAROD-PORTS - Ports and Arbitral Tribunal
22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding
26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings

- 29. Documents - only Arbitration
- 30. Witnesses
- 31. Experts Appointed by the Tribunal
- 32. Rules applicable to substance of dispute
- 33. Closure of Hearings ·
- 34. Additional Powers of the Tribunal
- 35. Deposits to Costs and Expenses
- 36. Decision Making by the Tribunal
- 37. The Award
- 38. Additional Award
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- 40. Settlement
- 41. Interest
- 42. Costs
- 43. Waiver
- 44. Exclusion of Liability
- 45. General Provisions
- 46. Amendment to Rules

PREAMBLE

In order to seek speedy, affordable, just and reasonable Redressal of Dispute/Differences between Major Port Trusts and Concessionaire/Contractor arising out of and during the course of execution of various contracts, a Society for Affordable Resolution of Disputes - Ports (SAROD-PORTS - Ports) has been formed as a Society under Societies Registration Act, 1860 with registration. It has been formed by Indian Ports Association and Indian Private Ports and Terminals Association with founding members as mentioned in the Memorandum of Association of SAROD-PORTS

SAROD-PORTS ARBITRATION

RULES

Rule : 1- Scope of Application

- 1.1 Where any agreement, submission or reference provides for arbitration at the Society for Affordable Resolution of Disputes - Ports ("SAROD-PORTS"), or under the Arbitration Rules of the SAROD-PORTS and where the case is a domestic arbitration, the same shall be conducted in accordance with the following Rules, or such Rules as amended by the SAROD-PORTS where the amendments take effect before the commencement of the Arbitration.
- 1.2 These rules shall come into effect from the day of approval by Governing Body of SAROD-PORTS.

Rule 2 - Definitions

- 2.1 These Rules shall be referred to as "the SAROD-PORTS Arbitration Rules".
- 2.2 In these Rules:

"**Act**" means the 'Arbitration and Conciliation Act 1996' of India and any statutory modifications or re-enactments thereof

"**DOMESTIC ARBITRATION**" means arbitration to be conducted under these rules.

"**SAROD-PORTS**" means the Society for Affordable Redressal of Disputes- Ports.

"**SAROD-PORTS Arbitrator Panel**" means the list of persons admitted to serve as arbitrators under these Rules.

IPA means Indian Ports Association

"**IPPTA**" means Indian Private Ports and Terminals Association

"**GOVERNING BODY**" means Governing Body of SAROD-PORTS as defined in Article 9 of Memorandum of Association.

"PRESIDENT" means President of Governing Body of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"SECRETARY" means Secretary of SAROD-PORTS as defined in Rules & Regulation of SAROD-PORTS.

"TRIBUNAL" means either a Sole Arbitrator or all arbitrators when more than one is appointed.

"PARTY" means a party to an arbitration agreement,

"E-Arbitration" means submission of pleadings, defence statement etc by E-mail and holding of proceedings via video conferencing.

Rule 3 - Notice, Calculation of periods of Time

- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Gazetted public holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 3.3 Without prejudice to the effectiveness of any other form of written communication, written communication may be made by fax, email or any other means of electronic transmission effected to a number, address or site of a party.
- 3.4 The transmission is deemed to have been received on the day of transmission.

Rule 4- Commencement of Arbitration

- 4.1 Any party wishing to commence an arbitration under these Rules ("the Claimant") shall file with the Secretary and serve on the other party {"the Respondent"}, a written Notice of Arbitration ("the Notice of Arbitration") which shall include the following:
 - a. a request that the dispute be referred to arbitration;

- b. the names, addresses, telephone numbers, fax numbers and email addresses of the parties to the dispute;
- c. a reference to the arbitration clause or any separate arbitration agreement that is invoked and provide a copy of the arbitration clause or arbitration agreement;
- d. a reference to the contract out of which the dispute arises and provide a copy of the contract where possible;
- e. a brief statement describing the nature, facts and circumstances leading to the dispute;
- f. the relief or remedy sought, including the amount of claim if quantifiable at the time the Notice of Arbitration is filed;
- g. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed on the number; and
- h. the name of the Claimant's nominated arbitrator.

4.2 A filing fee of Rs. 10,000/- (Ten thousand) or any amount decided by Governing Body from time to time is payable at the time of filing the Notice of arbitration.

4.3 The date of filing of the Notice of Arbitration with the Secretary is the date of commencement of the arbitration for the purpose of these Rules.

Rule 5 - Response by Respondent

5.1 Within 14 (fourteen) days of receipt of the Notice of Arbitration, the Respondent shall file with the Secretary and serve upon on the Claimant, a Response including

- a. A confirmation or denial of all or part of the claims;
- b. Brief statement of the nature and circumstances of any envisaged counterclaims
- c. A comment in response to any proposals contained in the Notice of Arbitration; and
- d. The name of the respondent's nominated arbitrator.

5.2 A filing fee of Rs. 10,000/- or any amount decided by Governing Body from time to time is payable at the time of filing the Response.

5.3 In case parties have objection to the jurisdiction of Arbitral Tribunal, such objection shall be raised not later than 15 days of the commencement of Arbitration proceedings failing which it will be deemed that parties have waived their right to objection.

Rule 6- Filing of Case Statements

- 6.1 Within 30 days after the filing of the Notice of Arbitration, the claimant must file with the Secretary and serve on the Respondent, a Statement of Claimant's Case alongwith all documents to be relied upon by the Claimant.
- 6.2 Within 30 days after the service of the statement of Claimant's Case, the Respondent must file with the Secretary and serve on the Claimant, a statement of respondent's defence and counterclaim (if any) alongwith all documents to be relied upon by the Respondent.
- 6.3 Within 30 days after the service of the statement of Respondent's defence, if the Claimant intends to challenge anything in the statement of Respondent's defence and/or counterclaim, the Claimant must then file with the Secretary and serve on the Respondent, a statement of claimant's reply and if necessary, defence to counterclaim.
- 6.4 No further case statements may be filed without the leave of the Tribunal or if a Tribunal has not been appointed, the Secretary.
- 6.5 The Tribunal or if a Tribunal has not been appointed, the Secretary, may upon the written application of a party, extend the time limits provided under this Rule,
- 6.6 Thy party required to file a case statement must at the same time deposit with the Secretary for eventual transmission to the Tribunal an additional copy or additional copies of the case statement, according to the number of arbitrators constituting or who will constitute the Tribunal.

Rule 7 - Contents of Case Statements

- 7.1 The case statements must contain the detailed particulars of the party's claim, defence or counterclaim and must thus contain a comprehensive statement of the facts and contentions of law supporting the party's position.
- 7.2 It must:
 - a. Set out all items of relief or other remedies sought together with the amount of all quantifiable claims and detailed calculations.
 - b. State fully its reasons for denying any allegation or statement of the other party.
 - c. State fully its own version of events if a party intends to put forward a version of

events different from that given by the other party.

- 7.3 A case statement must be signed by or on behalf of the party making it.

Rule 8 - Default in Filing and Serving Case Statements

- 8.1 If the Claimant fails within the time specified under these Rules or as may be fixed by the Tribunal or by the Secretary, to submit its Statement of Case, the Tribunal or if a Tribunal has not been appointed, the Governing Body may issue an order for the termination of the arbitral proceedings or make such other directions as may be appropriate in the circumstances.
- 8.2 If the Respondent fails to submit a Statement of Respondent's Defence, the Tribunal may nevertheless proceed with the arbitration and make the award.

Rule 9 - Further Written Statements

- 9.1 The Tribunal will decide which further written statements, in addition to the case statement(s) already filed, are required from the parties and shall fix the periods of time for giving, filing and serving such statements.
- 9.2 All such further statements must be given to the Tribunal, filed with the Secretary and served on the Claimant or Respondent, whichever is applicable.

Rule 10 - SAROD-PORTS to Provide Assistance

- 10.1 At the request of the Tribunal or either party, the Secretary will render such assistance as is required for the conduct of the arbitration, including arranging for facilities, suitable accommodation for sittings of the Tribunal, secretarial assistance or interpretation of these rules.
- 10.2 Any additional expenses incurred or to be incurred for any such arrangements shall be borne by the parties.

Rule 11- Appointment of Tribunal

- 11.1 The disputes shall be decided by a Sole Arbitrator when the total claim of dispute is Rs. 3 Crores or less.
- 11.2 In all cases of disputes claimed for more than Rs. 3 Crores, the tribunal shall consist of odd

number of Arbitrators to be nominated by the parties. The Presiding Arbitrator shall be appointed by the Arbitrators nominated by the parties from amongst the panel maintained by SAROD-PORTS. For deciding the Presiding Arbitrator, a draw of lots can be carried out from amongst the names suggested by the Arbitrators nominated by the Parties, The eligibility criteria for empanelment of Arbitrators will be decided by the Governing Body.

- 11.3 If a Sole Arbitrator is to be appointed, the Governing Body will appoint the Arbitrator within 21 days from the date the Respondent's Statement of Defence and Counterclaim (if any) is filed or falls due, whichever is earlier. The Governing Body will appoint the Arbitrator from the panel of Arbitrators by draw of lots,
- 11.4 An Arbitrator/Presiding Arbitrator to be appointed under these Rules shall be a person on the SAROD-PORTS Arbitration Panel as at the date of the appointment,
- 11.5 In the event of any party failing to appoint Arbitrator within 30 days of receipt of the notice of Arbitration, the Governing Body shall appoint the Arbitrator or Presiding Arbitrator as the case may be by a draw of lots.

Rule 12- Multiparty appointment of the Tribunal

- 12.1 If there are more than 2 parties in the arbitration, the parties shall agree on the procedure for appointing the Tribunal within 21 days of the receipt of the Notice of Arbitration.
- 12.2 If the parties are unable to do so, upon the lapse of the 21 day time period mentioned herein, the Tribunal shall be appointed by the Governing Body as soon as practicable.

Rule 13-Appointment of Substitute Arbitrator

In the event of the death or resignation of any of the arbitrators, a substitute arbitrator must be appointed by the same procedure as in Rule 11 by which the arbitrator concerned was appointed, failing which, the Governing Body will make the appointment.

Rule 14 - Independence and Impartiality of the Tribunal

- 14.1 The Tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial, and shall not act as advocate for any party.
- 14.2 A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment, any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

- 14.3 An arbitrator, once nominated or appointed, shall disclose any such circumstance referred to in Rule 14.2 to the Secretary and/ or to all parties.

Rule 15 - Code of Ethics for Arbitrators

An Arbitrator is a fountain of justice and emblem of equity, fairness and good conscience. Therefore he/she is expected to exhibit a noble conduct. The code of conduct prescribed by the Governing Body has to be adopted.

Appointment

- 15.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect,
- 15.2 In this code, the masculine includes the feminine.

Disclosure

- 15.3 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue thorough out the arbitral proceedings with regard to new facts and circumstances, in terms of the arbitration and conciliation Act 1996 as amended from time to time.
- 15.4 A prospective arbitrator shall disclose to the Secretary and any party who approaches him for a possible appointment:
- (a) Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness in the arbitration;
 - (b) The extent of any prior knowledge he may have of the dispute.

Bias

- 15.5 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favours one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

- 15.6 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

Communications

- 15.7 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.
- 15.8 No arbitrator shall Communicate with any of the parties or their Counsel until after the Secretary gives notice of the formation of the Tribunal to the parties.
- 15.9 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

Fees

- 15.10 In accepting an appointment, an arbitrator agrees to the remuneration as prescribed in the rules of SAROD-PORTS, and he shall make no unilateral arrangements with any of the Parties or their Counsel for any additional fees or expenses without the agreement of all the parties and the consent of the Secretary of SAROD-PORTS.

Conduct

- 15.11 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

Confidentiality

- 15.12 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.
- 15.13 This Code is not intended to provide grounds for the setting aside of any award.

Rule 16- Challenge of Arbitrators

- 16.1 An arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence and also if he or she has committed any misconduct
- 16.2 An arbitrator may also be challenged if he does not possess the qualifications required by the agreement of the parties,
- 16.3 A party may challenge an arbitrator appointed on its nomination or with its agreement only for reasons of which it becomes aware after the appointment has been made.
- 16.4 A party who intends to challenge an arbitrator shall file with the Secretary and serve on the other party or all other parties, whichever is applicable, a Notice of Challenge.
- 16.5 The Notice of challenge must be filed and served within 14 days from the appointment of the arbitrator or within 14 days after the circumstances mentioned in Rule 15.1 became known to that party.
- 16.6 The Notice of Challenge must state the reasons for the challenge.
- 16.7 The arbitration shall be suspended until the challenge is resolved or decided upon.
- 16.8 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. However, it is not implied in either case that there has been an acceptance of the validity of the grounds for the challenge. In both cases, the procedure provided in Rule 11 read with Rule 13, shall be used for the appointment of a substitute arbitrator.

Rule 17 - Decision on Challenge

- 17.1 If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge will be made by the Governing Body.
- 17.2 If the Governing Body sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment of an arbitrator as provided in Rule 11 read with Rule 13. If the Governing Body dismisses the challenge, the arbitrator shall continue with the arbitration.

Rule 18 - Removal of the Tribunal

18.1 The Governing Body may on the application of a party remove an arbitrator:

- a. Who is physically or mentally incapable of conducting the proceedings or where there are justifiable doubts as to his ability to do so; or
- b. Who has refused or failed to use all reasonable dispatch in conducting the arbitration or making an award.
- c. Who has continuously absented from attending the proceedings for more than 3 sitting without prior permission of Presiding Arbitrator/Governing Body of SAROD-PORTS.

18.2 The arbitrator(s) concerned is entitled to appear and be heard at the hearing of the application to remove him.

18.3 Upon the removal of the arbitrator, a substitute arbitrator shall be appointed in accordance with Rule 11 read with Rule 13.

18.4 The Governing Body's decision on the application is final and is not subject to appeal or review.

Rule 19 - Re-hearing in the Event of Replacement of the Tribunal

If the sole or presiding Arbitrator is replaced, there shall be a re-hearing. If any other arbitrator is replaced, such re-hearing may take place at the discretion of the Tribunal.

Rule 20 - Jurisdiction of the Tribunal

20.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objection with respect to the existence, termination or validity of the arbitration agreement. For that purpose, an arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.

20.2 The plea that the Tribunal does not have jurisdiction shall be raised not later than in the

Statement of Defense. A plea that the Tribunal is exceeding the scope of its authority shall be raised promptly after the Tribunal has indicated its intention to decide on the matter alleged to be beyond the scope of its authority.[neither case the Tribunal may nevertheless admit a late plea under this Rule if it considers the delay justified. A party is not precluded from raising such a plea by the fact that he has nominated, or participated in the appointment of an arbitrator.

- 20.3 The Tribunal must rule on an objection that it lacks jurisdiction as a preliminary question upon the objection being raised. It may rule on an objection that it exceeds the scope of its authority either as a preliminary question or in an award on the merits, as it deems just and convenient.
- 20.4 In addition to the jurisdiction to exercise the powers defined elsewhere in these Rules, the Tribunal shall have jurisdiction to determine any question of law arising in the arbitration; proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so; and to receive and take into account such written or oral evidence as it shall determine to be relevant, whether or not strictly admissible in law.

Rule 21 - Fees of SAROD-PORTS and Arbitral Tribunal

Fee Schedule

Registration Fee (Non - Refundable): Rs.10,000/- or any amount fixed by Governing Body from time to time. The Schedule of Fees and allied expenditure shall be decided by Governing Body.

Rule 22- Transmission of File to the Tribunal

- 22.1 The Secretary shall, as soon as practicable transmit to the Tribunal, a file containing the Notice of Arbitration, the Response and all case statements.
- 22.2 The Tribunal shall as soon as practicable, after consultation with the parties, issue such orders and/or directions as are necessary for the conduct of the arbitration to conclusion, including a timetable for steps to be taken in the arbitration and for the hearing of the arbitration.

Rule 23- Judicial Seat of Arbitration

- 23.1 Unless otherwise agreed by the parties, the judicial seat of arbitration shall be New Delhi.

- 23.2 Notwithstanding Rule 22.1 and 22.2, the Tribunal may, unless otherwise agreed by the parties, hold hearings and meetings anywhere convenient, subject to the provisions of Rule 28.2.

Rule 24 - Language of Arbitration

The language of arbitrators shall be English. In case of material existing are in any other language, other than English the same has to be translated to English language.

Rule 25 - Conduct of the Proceedings

The Tribunal shall have the widest discretion allowed by the Act to ensure the just, expeditious, economical and final determination of the dispute. The proceedings shall be conducted from 10.AM to 5PM with a recess of one hour.

Rule 26 - Communication between Parties and the Tribunal

- 26.1 Where the Tribunal sends any written communication to one party, it shall send a copy to the other party or parties as the case may be.
- 26.2 Where a party sends any written communication (including Statements, expert reports or evidentiary documents) to the Tribunal, the same shall be copied to the other party or all other parties, whichever is applicable, and show to the Tribunal that the same has been so copied.
- 26.3 The address of the parties for the purpose of all communications during the proceedings shall be those set out in the Notice of Arbitration, or as either party may at any time notify the Tribunal and the other party or parties, whichever is applicable.
- 26.4 A copy of correspondence between the parties and the Tribunal shall be sent to the Secretary.

Rule 27 – Party Representatives

Any party may be represented by legal practitioners or any other representatives, subject to such proof of authority as the Tribunal may require. The names and addresses of such representatives must be notified to the other party or parties. In case one party is represented by non-legal person, another party will also be represented by non-legal person so as to maintain natural justice.

Rule 28 - Hearings

- 28.1 Unless the parties have agreed on documents- only arbitration the tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral submissions.
- 28.2 The Tribunal shall fix the date, time and place of any meetings and hearings in the arbitrations on the first hearing, and complete time table pertaining to all the activities of the Arbitration e.g submission of statement of claim, reply, counter claim, reply therein, admission and denial of documents, visit/inspection of site if any. The tribunal shall stick to the time table with or without any deviations unless there are unavoidable circumstances warranting such deviation which will be with the prior permission of the tribunal.
- 28.3 Prior to the hearing, the Tribunal may provide the Parties with matters or questions to which it wishes them to give special consideration.
- 28.4 In the event that a party to the proceedings without sufficient cause, fails to appear at a hearing of which the notice has been given, the Tribunal may proceed with the arbitration and may make the Award after the party present has submitted evidence to prove its case.
- 28.5 All meetings and hearing shall be in private unless the parties agree otherwise.

Rule 29 - Documents Only Arbitration

- 29.1 The Disputes may be decided without an oral hearing if it is so agreed by the parties.
- 29.2.1 Where the parties agree to dispense with oral hearing, the Tribunal must be promptly informed by either of the parties, as soon as is practicable. The Tribunal must also be promptly informed it, at a later stage, the parties or either of them intends to apply for an oral hearing.
- 29.2.2 Parties may seek discovery of documents if they are not satisfied with existence of documents annexed with statement of claim, reply and counter claim by giving self-contained request to the Tribunal justifying the necessity for such documents. Decision of tribunal shall be final and binding upon the parties.

Rule 30 - Witnesses

- 30.1 The Tribunal may require each party to give notice of the names and designations of the witnesses it intends to call and reasons for legal necessity of such witness.

- 30.2 No party shall call any expert witness without the leave of the Tribunal.
- 30.3 Any witness who gives evidence may be questioned by each party or its representative subject to any rulings made by the Tribunal,
- 30.4 A Witness may be required by the Tribunal to testify under oath or affirmation
- 30.5 Subject to such order or direction which the Tribunal may make, the testimony of witness may be presented in written form, either as signed statements or by duly sworn or affirmed affidavits,
- 30.6 Any party may require a witness to attend an oral examination at a hearing. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, or may exclude it altogether,
30. 7 The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence given by any witness.

Rule 31- Experts Appointed by the Tribunal

- 31.1 Unless otherwise agreed by the parties, the Tribunal may:
- a. appoint one or more experts to report the Tribunal on specific issues;
 - b. require a party to give any such expert any relevant information or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert.
- 31.2 Unless otherwise agreed by the parties, if a party so requests or if the Tribunal deem it fit, the expert shall, after delivery of his written or oral report, participate in an oral hearing, at which the parties may question him and present expert witnesses in order to testify on the points at issue.
- 31.3 Rule 30.2 shall not apply to an assessor appointed by agreement of the parties, or to an expert appointed by the Tribunal to advise solely in relation to procedural matters.

Rule 32 - Rules applicable to substance of dispute - (1) Where the place of arbitration is situated in India

- 32.1 In an arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

Rule 33 - Closure of Hearing

- 33.1 The Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, declare the hearing closed.
- 33.2 The Tribunal may also, in view of exceptional circumstance, reopen the hearings at any time before the award is made.

Rule 34 - Additional Powers of the Tribunal

- 34.1 In addition to the powers conferred by the Act, the Tribunal shall also have the power to:-
- a. Allow any party, upon such terms of as to costs and otherwise) as it shall determine, to amend claims or counterclaims;
 - b. Extend or abbreviate any time limits provided by these Rules;
 - c. Conduct such enquires as may appear to the Tribunal to be necessary or expedient;
 - d. Order the parties to make any property or thing available or inspection
 - e. Order any parties to produce to the tribunal, and to other parties for inspection, and to supply copies of any documents, or classes of documents in their possession, custody, or power which the Tribunal determines to relevant.
 - f. Make orders or give directions to any party for interrogatories;
 - g. Make orders or give directions to any party for an interim injunction or any other interim measure;
 - h. Make such orders or give such directions as it deems fit in so far as they are not inconsistent with the Act or any statutory re-enactment thereof or such law which is applicable or these Rules.
- 34.2 If the parties so agree, the Tribunal shall also have the power to add other parties (with

their consent) to be joined in the arbitration and make a single Final Award determining all disputes between them.

Rule 35- Deposits to Costs and Expenses

- 35.1 The Tribunal's fees and SAROD-PORTS administration fees shall be ascertained in accordance with the Schedule of Fees in Force at the time of commencement of the arbitration.
- 35.2 The Claimant shall deposit with the SAROD-PORTS half of the fees payable at the time of filing of the Statement of Case. The Respondent shall deposit with the SAROD-PORTS one-half of the fees payable at the time of filing the Statement of Respondent's Defence and Counterclaim (if any). The balance of fees payable shall be paid 60 days before the date of the final hearing or on such other date that the Secretary may direct.
- 35.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, the Secretary will make a provisional estimate. The fees will be adjusted in the light of such information as may subsequently become available. If the arbitration is settled or disposed of without a hearing, the amount of the Tribunal's fees and SAROD-PORTS administration fees shall be finally determined by the Secretary who will have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration is settled or otherwise disposed of
- 35.4 The Secretary may from time to time direct parties to make one or more deposit(s) towards any further expenses incurred or to be incurred on behalf of or for the benefit of the parties.
- 35.5 All deposit(s) shall be made to and held by the SAROD-PORTS. Any interest which may accrue on such deposit(s) shall be retained by the SAROD-PORTS.
- 35.6 If a party fails to make the payments or deposits required or directed, the Tribunal may refuse to hear the claims or counterclaims, whichever is applicable, by the non-complying party, although it may proceed to determine claims or counterclaims by any party who has complied with orders
- 35.7 The parties shall remain jointly and severally liable to the SAROD-PORTS for payment of all such fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final Award is made.

Rule 36 - Decision Making by the Tribunal

- 36.1 Where a Tribunal has been appointed, any direction, order, decision or award of the Tribunal must be made by the whole Tribunal or a majority. If an arbitrator refuses or fails to sign the Award, the signatures of the majority shall be sufficient, provided that the reason

for the omitted signature is stated.

- 36.2 If there is no unanimity, the same shall be made by the majority arbitrators as well as by the dissenting arbitrator alone as if acting as a sole arbitrator.
- 36.3 However, in case of a three-member Tribunal the presiding arbitrators may after consulting the other arbitrators, make procedural rulings alone.

Rule 37 - The Award

- 37.1 It will be mandatory for the parties to submit written synopsis of their arguments respectively which will form part of the arbitral proceedings.
- 37.2 The Tribunal shall assemble at the assigned place in SAROD-PORTS and shall exercise utmost secrecy and confidentiality in writing the award,
- 37.3 Unless the Secretary extends the time or the parties agree otherwise, the Tribunal shall make its Award in writing within 30 days from the date on which the hearings are closed and shall state the reasons upon which its award is based. The award shall contain the date and shall be signed by the arbitrator or arbitrators.
- 37.4 The Tribunal may make interim awards or separate awards on different issues at different times.
- 37.5 All Awards must be submitted by the Tribunal to the Secretary and they shall be issued through the Secretary.
- 37.6 The Tribunal must deliver to the Secretary number of originals of the award sufficient for the parties and for filing with the Secretary.
- 37.7 The Secretary shall release the award to the parties only upon receipt of sufficient deposits to cover the fees and expenses due to the Tribunal and to the SAROD-PORTS.
- 37.8 By agreeing to have arbitration under these Rules, the parties undertake to carry out the award without delay.
- 37.9 Stamp duty on award shall be payable by the party in whose favor the award has been pronounced.

Rule 38- Additional Award

- 38.1 Within 30 days after the receipt of the award, either party, with notice to the Secretary and the other party may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall notify all the parties within 7 days of the receipt of the request, that it will make and additional award, and complete the additional award within 30 days after the receipt of the request.

Rule 39 - Correction of Awards

- 39.1 Within 30 days of receiving an Award, unless another period of time has been agreed upon by the parties, a party may by notice to the Secretary and the other party request the Tribunal to correct in the Award, any errors in computation, any clerical or typographical errors or any errors of similar nature.
- 39.2 If the Tribunal considers the request to be justified, it shall make the corrections) within 30 days of receiving the request. Any correction shall be notified in writing to the parties and shall become part of the Award.
- 39.3 The Tribunal may correct any error of the type referred to in Rule 37.1 on its own imitative within 30 days of the date of the Award.

Rule 40- Settlement

- 40.1 If, the parties arrived at amicable settlement of the dispute during the currency proceedings, the parties shall file memo of settlement before the tribunal who shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award,
- 40.2 The Parties shall:
- a. Notify the Tribunal and the Secretary immediately if the arbitration is settled or otherwise terminated
 - b. Make provision in any settlement for payment of all the costs of the arbitration and fees and expenses due to the SAROD-PORTS and the Tribunal.
- 40.3 If the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Rule 38.1, before the award is made, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The

Tribunal shall have the power to issue such an order unless party raises justifiable grounds for objection.

- 40.4 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Tribunal, shall be communicated by the Tribunal to the parties through the Secretary.

Rule 41- Interest

The Tribunal may award interest on any sum awarded at such rate as applicable in fixed deposits of Sate Bank of India in respect of such periods ending not later than the date of the award as the Tribunal considers just.

Rule 42- Costs

- 42.1 The Tribunal shall specify in the final award, the costs of the arbitrations and decide which party shall bear them and in what proportion they shall be borne.

- 42.2 In this Rule, "costs of the arbitration" shall include:

- a. The fees and expenses of the Tribunal and the administration fees of the SAROD-PORTS as determined by the Secretary in accordance with the Schedule of Fees;
- b. The costs of tribunal appointed experts or of other assistance rendered: and
- c. All expenses which are reasonably incurred by the SAROD-PORTS in connection with the arbitration.

- 42.3 The Tribunal has power to order in its Award, that all or part of the legal or other costs (such as legal fees and expenses, costs incurred in respect of party appointed experts etc) of one party shall be paid by the other party.

Rule 43 - Waiver

A party which is aware of non-compliance with these Rules and yet proceeds with the arbitration without promptly stating its objection in writing such non-compliance shall be deemed to have waived its right to object.

Rule 44 - Exclusion of Liability

44.1 The Tribunal, the President, the SAROD-PORTS and any of its officers, employees or agents shall not be liable to any party for any act or omission in connection with any arbitration conducted under these Rules,

44.2 After the Award as been made and the possibilities of corrections and additional Awards have lapsed or been exhausted, neither the Tribunal nor the President shall be under any obligation to make any statement to any person about any matter concerning the arbitration, and no party shall seek to make any arbitrator or the President or the SAROD-PORTS and any of its officers a witness in any legal proceedings arising out of the arbitration.

Rule 45- General Provisions

45.1 In all matters not expressly provided for in these Rules, the President, the Secretary and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the just, expeditious and economical conclusion of the arbitration.

45.2 The Secretary may from time to time issue Practice Notes on the implementation of these Rules.

Rule 46- Amendment to Rules

These Rules may from time to time be amended by the Governing Body of SAROD-PORTS.