

## **Draft Concession Agreement**

**CONCESSION AGREEMENT**

**THIS AGREEMENT** is entered into on this the ..... day of ....., 2013

**AMONGST**

The Governor of the State of Himachal Pradesh for and on behalf of the Government of the State of Himachal Pradesh, acting through the Director, Health Services, Department of Health and Family Welfare, Himachal Pradesh (hereinafter referred to as the “Concessing authority” or “DoH&FW”) which expression shall, unless the context otherwise requires, include its successors and assigns) of the FIRST PART;

AND

Mission director, National Rural Health Mission (MD, NRHM), HP State Health and Family Welfare society acting (hereinafter referred to as the “Confirming Party or SH&FWS” which expression shall, unless the context otherwise requires, include its successors and assigns) of the SECOND PART;

AND

M/s \_\_\_\_\_, a Company/Society/Hospital/Trust incorporated under the relevant Act,..... and having its registered office at \_\_\_\_\_ (hereinafter referred to as the “Concessionaire” which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the OTHER PART.

**WHEREAS:**

- (A) The Concessing Authority had resolved to commit towards providing sound health infrastructure to its citizens within, or passing through its jurisdiction, and / or outside its jurisdiction pursuant to any mutual or automatic aid agreement with other government agencies.
- (B) As part of this endeavour, the Concessing Authority along with Confirming Party are in process of procuring equipments and infrastructure in the Trauma Center, \_\_\_\_\_ (Kullu or Bilaspur).
- (C) The Concessing Authority, alongwith Confirming Party, had accordingly invited bids by its Notice dated -----, 2013 (the “Tender Notice”) for selection of Concessionaire for operating and maintaining 24\*7 hours Trauma Centers in the State of Himachal Pradesh under PPP format.
- (D) The Concessing Authority had prescribed the technical and commercial terms and conditions, and invited bids from interested parties for undertaking the Project.
- (E) After evaluation of the technical and financial bids received, the Concessing Authority alongwith Confirming Authority, had accepted the bid of ----- -- (the “Successful Bidder”) and issued its letter of acceptance No.----- dated --/--/2013 (hereinafter called the “LOA”) to the Successful Bidder requiring, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of issue thereof.
- (F) The Successful Bidder has since fulfilled the conditions of “LOA”, and has requested the Concessing Authority and Confirming Party, to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (G) By its letter dated --/--/2013, the Concessionaire / newly formed SPV (in case of consortium) has also joined in the said request of the Successful Bidder to the Concessing Authority and Confirming Party to accept it as the entity which shall

undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Successful Bidder for the purposes hereof.

- (H) The Concessioneing Authority and Confirming Party has agreed to the said request of the Consortium / Concessionaire, and has accordingly agreed for the Concessioneing Authority and Confirming Party to enter into this Concession Agreement with the Concessionaire for execution of the Project on PPP basis, subject to and on the terms and conditions set forth hereinafter.
- (I) The role of the Concessioneing Authority shall be the overall review and monitoring of the Project and shall supplement the role of Confirming Party, wherever applicable. The Concessioneing Authority reserves the right to intervene in the Project as per the provisions of this Agreement. The Concessioneing Authority hereby agrees to serve as a guarantor towards the roles and obligations of the Confirming Party as detailed out in this Concession Agreement.

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

ARTICLE 1  
DEFINITIONS AND INTERPRETATION

**1.1 Definitions**

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

**1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
- (f) references to “**construction**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Shimla are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Georgian calendar;
- (k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (l) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this

Agreement is not a business day, then the period shall run until the end of the next business day;

- (m) the words importing singular shall include plural and vice versa;
- (n) references to any gender shall include the other and the neutral gender;
- (o) “lakh” means a hundred thousand (1,00,000) and “crore” means ten million (10,000,000);
- (p) “indebtedness” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (r) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Concessions Authority/ Confirming Party hereunder or pursuant hereto in any manner whatsoever;
- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (t) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (u) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).

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

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

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

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

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

### **1.4 Priority of agreements and errors/discrepancies**

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

(a) this agreement; and

(b) all other agreements and documents forming part hereof;

i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

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

**ARTICLE 2**  
**SCOPE OF THE PROJECT**

**2.1 Scope of the Project**

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

- (a) Upgradation, operation and maintenance of the Trauma Centre in accordance with the provisions of this Agreement and relevant statutory guidelines as amended from time to time;
- (b) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement; and
- (c) transfer the Trauma Centre to the Concessing Authority or the nominated agency upon Termination of this Agreement, in accordance with the provisions thereof.

**ARTICLE 3**  
**GRANT OF CONCESSION**

**3.1 The Concession**

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Concessions Authority hereby grants to the Concessionaire the Concession set forth herein including the exclusive right, licence and authority during the subsistence of this Agreement to upgrade, operate and maintain the Project (the “Concession”) for a period of 5 (five) years commencing from the Appointed Date, 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, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) upgrade the Trauma Centre and make it operational;
  - (b) manage, operate and maintain the Trauma Centre and regulate the use thereof by third parties;
  - (c) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
  - (d) 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;
  - (e) transfer the Trauma Centre to the Concessions Authority or its nominated agency upon Termination of this Agreement, in accordance with the provisions thereof; and
  - (f) not 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 Trauma Centre nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.
- 3.1.3 Upon the expiry of the aforesaid Concession Period (and not in case of any premature Termination), the Concessions Authority/ Government, at its sole discretion, shall have the right to retain or re-plan the existing project structure. However, the Concessions Authority/ Confirming Party shall have the discretionary right to extend the existing Concession Period to a further period of 5 (five) years, subject to the satisfactory performance of the Concessionaire’s duties/ obligations as laid down in the Concession Agreement.



**ARTICLE 4**  
**CONDITIONS PRECEDENT**

**4.1 Conditions Precedent**

- 4.1.1 Save and except as expressly provided in this Agreement, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “Conditions Precedent”).
- 4.1.2 The Concessionaire may, upon providing the O&M Performance Security to the Concessions Authority in accordance with Article 9, at any time after 45 (forty five) days from the date of this Agreement or on an earlier day acceptable to the Concessions Authority, by notice require the Concessions Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 15 (fifteen) days of the notice, or such longer period not exceeding 45 (forty five) days as may be specified therein, and the conditions precedent required to be satisfied by the Concessions Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Concessions Authority shall have:
- (a) provided to the Concessionaire the Trauma Centre at \_\_\_\_\_ comprising of the existing equipments and infrastructure on *as is where is* basis.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided O&M Performance Security to the Confirming Authority;
  - (b) made operational the Trauma Centres at \_\_\_\_\_ with the equipments and infrastructure, as provided by the Concessions Authority;
  - (c) executed the Financing Agreements and delivered to the Confirming Party 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
  - (d) delivered to the Confirming party 3 (three) true copies of the Financial Package, duly attested by a Director of the Concessionaire;
  - (e) delivered to the Confirming Party 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; and
  - (f) delivered to the Confirming Party a legal opinion from the legal counsel of the Concessionaire with respect to the ability of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

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

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a week 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 by the Concessions Authority**

In the event that (i) the Concessions Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period

specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Concessions Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the O&M Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the O&M Performance Security.

## ARTICLE 5

## OBLIGATIONS OF THE CONCESSIONAIRE

**5.1 Obligations of the Concessionaire**

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the upgradation, operation and maintenance of the Trauma Centre 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 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 all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated in the Trauma Centre;
  - (c) operate and maintain Trauma Centre as per Performance Parameters defined in **Schedule-** ;
  - (d) perform and fulfil its obligations under the Financing Agreements;
  - (e) 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;
  - (f) 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;
  - (g) 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;
  - (h) support, cooperate with and facilitate the Concessioneing Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (i) transfer the Trauma Centres to the Concessioneing Authority or its nominated agency upon Termination of this Agreement, in accordance with the provisions thereof.

**5.2 Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Confirming Party the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Confirming Party shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of

- execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Confirming Party a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Confirming Party and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Concessioning Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Confirming Party if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessioning Authority/Confirming Party, 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 Concessioning Authority/Confirming Party. For the avoidance of doubt, the Concessioning Authority/Confirming Party acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Concessioning Authority/Confirming Party to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension.

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

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Concessioning Authority/Confirming Party. A Change of Ownership shall be subject to prior approval of the Concessioning Authority/Confirming Party from national security and public interest perspective, the decision of the Concessioning Authority/Confirming Party in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Concessioning Authority/Confirming Party. It is also agreed that the Concessioning 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 5.3.1, 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, 1997 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;

### **5.4 Employment of foreign nationals**

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

### **5.5 Employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly

trained for their respective functions. The minimum standards for persons employed in various positions, including the minimum training standards shall be as set forth in Schedule B of this Agreement.

#### **5.6 Sole purpose of the Concessionaire**

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

## ARTICLE 6

## OBLIGATIONS OF THE CONCESSIONING AUTHORITY

## 6.1 Obligations of the Concessioneing Authority

- 6.1.1 The Concessioneing Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Concessioneing Authority agrees to provide support to the Concessioneaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessioneaire, and subject to the Concessioneaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessioneaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Concessioneaire, assist the Concessioneaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessioneaire than those generally available to commercial customers receiving substantially equivalent services;
  - (c) undertake to coordinate with the concerned authorities in the Police, Fire, Transport and other departments to issue appropriate instructions to the field officers of these departments for making available required assistance and resources to the Concessioneaire towards the discharge of its obligations as per this Agreement;
  - (d) make best endeavours to procure that no local Tax or charge is levied or imposed on the use of whole or any part of the Trauma Centre;
  - (e) constitute technical committee to decide the upgradation requirement of Trauma Center and recommending sanction of capital grant for the upgradation of Trauma Center after completion of 5 (five years) from the appointed date.
  - (f) provide equipments and infrastructure alongwith copies of AMC/CMC any other warranty, guiding manuals, to the Concessioneaire, within the Trauma Centres, on *as is where is basis*;
  - (g) ensure that all the patients, before referring to Trauma Centre, have initially been seen/ examined/ dealt by the on-duty Medical Officer of Regional Hospital in Casualty Section or otherwise. The patients, as referred by the Casualty Section or otherwise of the Hospital shall only be treated in the Trauma Centres; However the patients referred by other hospitals shall not be required to go through casualty section / on duty medical officer of Regional Hospital.
  - (h) 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;
  - (i) support, cooperate with and facilitate the Concessioneaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (j) upon written request from the Concessioneaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessioneaire and any expatriate personnel of the Concessioneaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessioneaire or its Contractors their obligations under this Agreement and the Project Agreements.
  - (k) Medico-Legal Cases: In the event of Medico-Legal Cases, the Concessioneaire shall submit a preliminary report to the Concessioneing Authority's Representative and Hospital's Representative in relation to the relevant

Patient. The Hospital shall prepare the preliminary report and then and sign a final report. Any judicial obligation to participate in legal proceedings as a witness or expert relating to a Medico-Legal Case shall consequentially be the responsibility of the Hospital, except where expressly required otherwise by a court. For the avoidance of doubt, the Concessionaire shall be responsible for all the services rendered by it. Further it is expressly clarified here that the Concessionaire shall be liable for any cases/ allegations of medical negligence as well as solely responsible for vicarious liability arising due to any/ all services rendered by the Concessionaire to any/ all category (ies) of patients.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Concessing Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and Concessing Authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or those of any member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other Concessing 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 Lead Member of the Consortium hold not less than 51 % (fifty one percent) of its issued and



paid up Equity during the Concession Period; that the respective holding of each Consortium Member conforms to the representation made by the Consortium and accepted by the Concessing Authority as part of the Bid; and that no member of the Consortium shall hold less than 26% (twenty six per cent) of such Equity during the Concession Period;

- (l) the Consortium Members and their Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) each Consortium Member is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessing Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Trauma Centre shall pass to and vest in the Concessing 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 Concessing Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Concessing Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty; and
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessing Authority in connection therewith.

## 7.2 Representations and Warranties of the Concessing Authority

The Concessing Authority represents and warrants to the Provider that:

- (a) it has full power and Concessing Authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other Concessing Authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse

effect on the Concessioneing Authority’s ability to perform its obligations under this Agreement;

- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (i) upon the Concessionaire submitting the Performance Guarantee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.

### **7.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

**ARTICLE 8**  
**DISCLAIMER**

**8.1 Disclaimer**

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Tender Notice, Scope of the Project, Specifications and Standards, local conditions, physical qualities of the terrain, emergency call volumes and all information provided by the Concessions Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Concessions Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessions Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Concessions Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium/Society Members and their Associates or any person claiming through or under any of them.

## ARTICLE 9

## OPERATION &amp; MAINTENANCE (O&amp;M) PERFORMANCE SECURITY

**9.1 O&M Performance Security**

The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Confirming Party no later than 45 (forty five) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 25 Lakh (Rupees Twenty Five Lakh) in the form set forth in **Schedule-E** (the “O&M Performance Security”). Until such time the O&M 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 O&M Performance Security pursuant hereto, the Confirming Party shall release the Bid Security to the Concessionaire.

**9.2 Appropriation of O&M Performance Security**

Upon occurrence of a Concessionaire Default during the Concession Period, the Confirming Party shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the O&M Performance Security as Damages for such Concessionaire Default. Upon such encashment and appropriation from the O&M Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the O&M Performance Security, and in case of appropriation of the entire O&M Performance Security provide a fresh O&M Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh O&M Performance Security as aforesaid failing which the Concessions Authority/Confirming Party shall be entitled to terminate this Agreement in accordance with Article 19. Upon replenishment or furnishing of a fresh O&M 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, and in the event of the Concessionaire not curing its default within such Cure Period, the Confirming Party shall be entitled to encash and appropriate such O&M Performance Security as Damages, and to terminate this Agreement in accordance with Article 19.

**9.3 Release of O&M Performance Security**

The O&M Performance Security shall be released on successful completion of the Concession Period.

## ARTICLE 10

### OPERATION AND MAINTENANCE

#### 10.1 O&M obligations of the Concessionaire

10.1.1 During the Concession Period, the Concessionaire shall upgrade, operate and maintain the Trauma Centre in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Trauma Centre to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) providing round-the-clock response to medical emergencies as per the Performance Standards defined in **Schedule C** of this Agreement during normal operating conditions;
- (b) carrying out periodic preventive maintenance of the Trauma Centre;
- (c) undertaking routine maintenance to ensure uninterrupted operation of the Trauma Centre and Ambulances;
- (d) operate and maintain the Trauma Centre providing emergency services 24\*7 hours (without any break in the continuity of services, if any) as per IPHS guidelines;
- (e) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Trauma Centre;
- (f) adhere to the guidelines issued by Government of Himachal Pradesh from time to time;
- (g) recruit and manage all human resources including their salaries and all responsibilities and liabilities as per existing labour laws;
- (h) maintain all movable and immovable assets of the Trauma Centres;
- (i) Consumables:
  - (i) The Concessionaire shall also maintain adequate inventory of all consumables. The Concessionaire shall procure only the best quality consumables. The quality of consumables would be subjected to periodic inspection by the representatives of the Concessions Authority.
  - (iv) The Concessionaire shall use consumables to the patients of the Trauma centre only and not to outsiders. However, in case of emergency to any outside patient, the Concessionaire can sell consumables after the approval of Chief Medical Officer (CMO) of the Regional Hospitals\_\_\_\_\_.
- (j) provide services to various category of free patients, as defined in the State policy or relevant guidelines, free of any user charges and consumables. However, the Concessionaire shall have the right to claim reimbursements for the amount spent on the treatment of such Patients from the Concessions Authority. However, these reimbursements will be on the rates of various procedures prescribed by Rogi Kalyan Samiti (RKS)/ Rashtriya Bima Seva Yojna (RBSY).
- (k) keep Trauma Centres in good working condition;
- (l) abide by the existing policies/ applicable statutory guidelines of the Concessions Authority and undertake all statutory responsibilities;
- (m) In case of emergency situations like natural disaster, epidemic etc, on receipt of written or verbal notice from the Concessions Authority, provide services in the affected area. On the receipt of information the

Concessionaire shall immediately deploy requisite number of doctors and other clinical staff, resources in the affected area on priority basis;

- (n) prepare, in consultation with the Concessioneing Authority, an emergency plan for mobilization of staff and other resources from the existing Trauma Centre to the affected site. The Concessioneing Authority shall arrange for mobilising clinical and other resources during emergency situations.
- (o) provide security services for maintaining a secure environment within the Trauma Centres and responding to security incidents within the Trauma Centres. The Concessionaire shall ensure that all system and controls are in place and are functional to safeguard property, cash and commodities.
- (p) provide comprehensive linen and laundry service to ensure clean and appropriate linen is available in all areas and for all users including the smooth running of the Trauma Centres.
- (q) undertake regular and periodic pest control to ensure that Trauma Centers are free from the pests and rodents. It shall ensure the use of chemicals for pest control is in compliance with statutory compliance and banned chemicals are not used for this purpose. Concessionaire shall maintain the record on number, type and location of infestation reported and signed and dated pest control activity reports.
- (r) ensure that staff involved in the handling of biomedical/clinical wastes shall be offered appropriate immunization including tetanus and hepatitis B. The Concessionaire shall ensure that the entire staff is adequately trained in relation to the safe handling and segregation of waste.
- (s) provide sterilization facility to disinfect all instruments on regular basis to ensure high level of hygiene and effective treatment of patients.
- (t) adhere to discharge protocols in accordance with Good Clinical and Good Health Care Practice. The Concessionaire shall avoid discharges of Patients which would not be in accordance with Good Clinical and Good Health Care Practice or which may put Patients' health at risk and will use all reasonable endeavors to avoid circumstances and discharges likely to or leading to emergency re-admissions.
- (u) provide high quality catering/dietary services for patients which offer a range of appetizing and nutritious food and drinks to enable patients to have a choice which reflects their dietary needs and tastes. The Concessionaire may either provide the services on its own or may outsource the Catering / Dietary Services to a Contractor. However in both the cases the Concessionaire shall be solely responsible for providing Catering / Dietary Services in accordance with the provisions of this Agreement.
- (v) The catering service to patients shall be as per the Good Healthcare Practices and shall provide
  - a wide and varied selection of food and beverages to meet the dietary needs and preferences of the care groups serviced; including healthy eating, ethnic, cultural, patients too ill to eat normal food, prescribed therapeutic diets, religious vegetarian options
  - Good quality, safe, wholesome and nutritious meals, snacks and beverages in compliance with requirements of all food safety legislations, and to frequency and standards
  - The hospital shall develop and implement appropriate operational policies, procedures and practices to ensure that food safety and hygiene standards including personal hygiene and personnel apparel are maintained at all times.

- It shall implement quality control procedures for all incoming ingredients and foodstuffs to ensure goods are within their stated expiry date and free from damage and pest infestation.
  - It shall provide all necessary infrastructure like hardware, menus, crockery, utensils, and any other items required for efficient delivery of the catering service.
  - Crockery and cutlery shall include specialist crockery and cutlery for patients with special requirements.
  - The facilities in the catering /dietary service department shall have adequate provision for receiving space for fuel and eatables, cooking area, trolley loading for distribution, cold storage, washing area and refuse disposal.
- (w) protection of the environment and provision of equipment and materials therefore;
- (x) carry out the upgradation of any machines/ equipments/ infrastructure, if required, during the Concession Period;
- (y) ensure that all the patients, before coming to Trauma Centre, have initially been seen/ examined/ dealt by the on-duty Medical Officer of Hospital in Casualty Section. The patients, as referred by the Casualty Section of the Hospital shall be treated in the Trauma Centres. However, this requirement will not be applicable in case the patient is referred from any other hospital.
- (z) ensure to charge rates for any kind of procedure/ surgery/ minor surgery/ operation, as stipulated in RKS/ RBSY;
- (aa) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Trauma Centre;
- (bb) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (cc) complying with Safety Requirements in accordance with Article 11.

10.1.2 The Concessionaire shall maintain, in conformity with Good Industry Practice, equipments, infrastructure, software, building and furniture forming part of the Trauma Centre.

## 10.2 Maintenance Requirements

Not later than 30 (thirty) days from the Appointed Date, the Concessionaire shall, in consultation with the Concessions Authority, define a set of maintenance requirements (the “**Maintenance Requirements**”). The Maintenance Requirements shall be based on industry best practises to be identified by the Concessionaire.

The Concessionaire shall procure that at all times during the operations period; the Trauma Centre conform to the Maintenance Requirements.

## 10.3 Maintenance Manual

Not later than 60 (sixty) days from the Appointed Date, the Concessionaire shall, in consultation with the Concessions Authority, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Trauma Centre in conformity with the Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Concessions Authority. The Maintenance Manual shall be revised and updated once every 2 (two) years and the provisions of this Clause 10.3 shall apply, *mutatis mutandis*, to such revision.

#### 10.4 Maintenance Programme

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

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) procedures for carrying out inspection of all elements of the Trauma Centre;
- (e) arrangements and procedures for carrying out safety related measures; and
- (f) proposals for major maintenance works and the scope thereof.

10.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Concessions Authority shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

10.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 10.4.1 and 10.4.2 shall apply *mutatis mutandis* to such modifications.

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#### 10.7 Damages for breach of maintenance obligations

10.7.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Concessions Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.5% (zero point five per cent) of total Fixed Operating Fee payable to the Concessionaire per month. Recovery of such Damages shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.

10.7.2 The Concessions Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

#### 10.8 Concessions Authority’s right to take remedial measures

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



10.8.2 The Concessioneing Authority shall have the right, and the Concessionaire hereby expressly grants to the Concessioneing Authority the right to recover the costs and Damages specified in Clause 10.8.1 directly from the O&M Performance Security.

#### **10.9 Overriding powers of the Concessioneing Authority**

10.9.1 If in the reasonable opinion of the Concessioneing Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Performance Parameters, and such breach is causing or likely to cause material hardship or danger to the Users, the Concessioneing Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

10.9.2 In the event that the Concessionaire, upon notice under Clause 10.9.1, fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing Authority may exercise overriding powers under this Clause 10.9.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Concessioneing Authority in discharge of its obligations shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 10.9 along with the Damages specified therein.

10.9.3 In the event of a national emergency, civil commotion or any other act specified in Clause 17.3, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Concessioneing Authority, and exercise such control over the Trauma Centre or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Concessioneing 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 Concessioneing Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 17.

#### **10.10 Restoration of loss or damage to Trauma Centre**

Save and except as otherwise expressly provided in this Agreement, in the event that the Trauma Centre 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 Trauma Centre conform to the provisions of this Agreement.

#### **10.11 Modifications to the Trauma Centre**

The Concessionaire shall not carry out any material modifications to the Trauma Centre save and except where such modifications are necessary for the Trauma Centre to operate in conformity with the Maintenance Requirements and Good Industry Practice.

#### **10.12 Excuse from performance of obligations**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Trauma Centre is not available to users on account of any of the following for the duration thereof:

- (a) an event of Force Majeure;
- (b) measures taken to ensure the safe use of the Trauma Centre except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Concessioneing Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Trauma Centre.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Trauma Centre open to public use provided they can be operated safely.

#### **10.13 Advertising on Trauma Centre**

The Concessionaire shall undertake or permit any form of commercial advertising, display or hoarding at any place on the Trauma Centre, as per the approved standard practices.

## ARTICLE 11

### SAFETY REQUIREMENTS

#### 11.1 Safety Requirements

11.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for operation and maintenance of the Trauma Centre, and shall comply with the safety requirements (the “**Safety Requirements**”).

11.1.2 The Concessioneing Authority reserves the right to appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Trauma Centre in accordance with the Safety Requirements, and take all other actions necessary for securing compliance with the Safety Requirements.

#### 11.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 10. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall be borne by the Concessioneing Authority or a substitute thereof.

## ARTICLE 12

### MONITORING OF OPERATION AND MAINTENANCE

#### 12.1 Monthly status reports

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

#### 12.2 Inspection

The Concessioneing Authority shall inspect the Trauma Centre at least once every three months. 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, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Concessionaire within 7 (seven) days of such inspection.

#### 12.3 Remedial measures

12.3.1 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 Concessioneing Authority within 15 (fifteen) days of receiving the O&M Inspection Report.

12.3.2 In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessioneing Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 10.7.

## ARTICLE 13

### FREE PATIENTS

#### 13.1 Constitution

The Concessioing Authority shall form a Free Patient Cell wherein representative/s of the Concessioing Authority, Confirming Party and concerned Regional Hospital (hereinafter referred as “Official/s”) shall be appointed. The fees and expenses of the Official/s shall be borne by the Concessioing Authority.

#### 13.2 Role and Responsibility

The Cell shall be responsible for setting the guidelines for confirming the status of the patients as Free Patients as per the State Policy / Guidelines by checking all the relevant documents available with the patients, claiming to be a Free Patient. The patients confirmed as Free patients shall be referred to the Trauma Center for free procedures and consumables. The Concessionaire shall ensure that the free patients are being treated at par with the general patients, without any delay and with the same quality.

#### 13.3 Reimbursements

The Concessionaire shall have the right to claim reimbursements for the amount spent on the consumables and procedures for free patients. The Concessionaire shall submit a list of such patients with details of procedures conducted and amount as claimed for conducting the procedures within 7 days of the end of every month. The Concessioing Authority shall, without any delay, reimburse the amount due within a period of 21 (Twenty One) days from the date of receipt of the bills from the Concessionaire as per RKS / RBSY rates.

**ARTICLE 14****OPERATING FEE****14.1 Collection and appropriation of Fee**

- 14.1.1 On and from the Appointed Date till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Monthly Fixed Operating Fee from the Concessioneing Authority in accordance with this Agreement.
- 14.1.2 The Concessionaire acknowledges and agrees that upon payment of Monthly Fixed Operating Fee by the Concessioneing Authority, any User shall be entitled to use the Trauma Centre and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 14.1.3 The Monthly Fixed Operating Fee shall be disbursed to the Concessionaire by way of Fixed Operating Fee in accordance with the provisions of Clause 14.2.

**14.2 Fixed Operating Fee**

- 14.2.1 A monthly fixed Operating Fee of Rs. \_\_\_\_\_/- (Rupees \_\_\_\_\_ only) will be paid by the Confirming Party to the Concessionaire. It is clarified that this payment is payable for each month and the amount so payable is to be rounded off to the nearest rupees hundred. It is pertinent to mention here that the Fixed Operating Fee shall be increased at the rate of 10% after every year, over the previous year Monthly Fixed Operating Fee.
- 14.2.2 The Monthly Fixed Operating Fees is payable by the Concessioneing Authority not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.
- 14.2.3 The Parties hereby agree that any request for the payment of Monthly Fixed Operating Fees shall be raised at the end of each calendar month.

**14.3 Penalty due to non-conformance to the Performance Parameters**

- 14.3.1 The Concessioneing Authority would deduct a portion of the Total Fixed Operating Fee due to the Concessionaire for any calendar month falling after Appointed Date, if the Concessionaire fails to meet during that calendar month, the average Response Times as defined in the **Performance Parameters (“Performance Shortfall”)** as specified in **Schedule-C** of this Agreement.
- 14.3.2 Performance Shortfall for 3 (three) consecutive calendar months shall be considered as a Concessionaire Default leading to action as per provisions of Article 19 of this Agreement.

## ARTICLE 15

### INSURANCE

#### 15.1 Insurance during Concession Period

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

#### 15.2 Notice to the Concessions Authority

Not later than 30 (thirty) days prior to commencement of the Concession Period, the Concessionaire shall by notice furnish to the Concessions Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 15. Within 15 (fifteen) days of receipt of such notice, the Concessions 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.

#### 15.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 15 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 Concessions 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 Concessions Authority.

#### 15.4 Remedy for failure to insure

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

#### 15.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 15 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Concessions 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.

#### 15.6 Concessionaire’s waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessions 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.

#### **15.7 Application of insurance proceeds**

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



## ARTICLE 16

### ACCOUNTS AND AUDIT

#### 16.1 Audited accounts

16.1.1 The Concessionaire shall maintain books of accounts recording all its receipts, income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. The Concessions 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 Auditors, to be provided to the Concessions Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

16.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessions Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

16.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Concessions Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the count for number of calls received and number of Dispatches achieved, (b) Fee charged and received, and (c) such other information as the Concessions Authority may reasonably require.

#### 16.2 Appointment of auditors

16.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

16.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Concessions Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

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

16.2.4 The Concessions Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Concession Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

#### 16.3 Certification of claims by Statutory Auditors

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

#### **16.4 Dispute resolution**

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

**ARTICLE 17****FORCE MAJEURE****17.1 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 17.2, 17.3 and 17.4 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.

**17.2 Non-Political Event**

A Non-Political Event shall mean one or more of the following acts or events: (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Trauma Center; (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Trauma Centre 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 17.3;

- (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 judgement or order of any court of competent jurisdiction or statutory Concessioning Authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Concessioning Authority; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

**17.3 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 failure or delay of a vendor/supplier 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;
- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

**17.4 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) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (b) 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 to perform its obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (c) any failure or delay of a vendor/supplier 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
- (d) any event or circumstance of a nature analogous to any of the foregoing.

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

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 17 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

17.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 17.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

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

17.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the Conditions Precedent Period as set forth in Article 4 shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) whereupon the Concessionaire is unable to provide the Trauma Services during the period for which Force Majeure exists, no Monthly Fixed OPERATING Fee shall be paid by the Concessions Authority/Confirming Party to the Concessionaire for the days on which the Trauma Service is not made available by the Concessionaire. For the avoidance of doubt, the amounts due and payable by the Concessions Authority to the

Concessionaire for such period, shall be calculated as per the provisions of Clause 14.2.1 of this Agreement.

17.6.3 Upon the occurrence of Force Majeure Event, not being for a continuous period of 90 (ninety) days, if the Concessionaire is unable to provide Trauma Service during the period for which Force Majeure exists, the Concession Period will be extended by the Concessing Authority for a period not exceeding  $\frac{1}{2}$  (one half) of the duration for which Trauma Services were suspended by the Concessionaire due to the subsistence of Force Majeure during the Concession Period. It is clarified that the total extension in the Concession Period as per this Clause 17.6 shall not exceed a period of 180 (one hundred and eighty) days. In case of occurrence of Force Majeure Event for more than a continuous period of 90 (ninety) days or for a total/cumulative time period of more than 360 (three hundred and sixty) days during the Concession Period, the provisions of Clause 17.8 shall be applicable.

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

17.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date and during the Concession Period, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

17.7.2 Save and except as expressly provided in this Article 17, 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.

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

If a Force Majeure Event subsists for more than a continuous period of 90 (ninety) days or for a total/cumulative time period of more than 360 (three hundred and sixty) days during the Concession Period, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 17, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

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

17.9.1 If Termination is on account of any of the Force Majeure Events, the Concessing Authority shall not make any Termination Payment to the Concessionaire. However, the O&M Performance Security shall be returned back to the Concessionaire.

#### **17.10 Dispute resolution**

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

#### **17.11 Excuse from performance of obligations**

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

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

damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

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

## ARTICLE 18

**SUSPENSION OF CONCESSIONAIRE’S RIGHTS****18.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Concessing 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 Monthly Fixed Operating Fee, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the “Suspension”). Suspension hereunder shall be effective forthwith upon issue of notice by the Concessing Authority to the Concessionaire and may extend up to a period not exceeding 90 (ninety) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Concessing Authority shall extend the aforesaid period of 90 (ninety) days by a further period not exceeding 60 (sixty) days.

**18.2 Concessing Authority to act on behalf of Concessionaire**

18.2.1 During the period of Suspension, the Concessing Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement.

18.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Trauma Centre shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Concessing 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 Concessing Authority for all costs incurred during such period.

**18.3 Revocation of Suspension**

18.3.1 In the event that the Concessing Authority shall have rectified or removed the cause of Suspension within a period not exceeding 45 (forty five) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

18.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 45 (forty five) days from the date of Suspension, the Concessing Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

**18.4 Termination**

18.4.1 At any time during the period of Suspension under this Article 18, the Concessionaire may by notice require the Concessing Authority to revoke the Suspension and issue a Termination Notice. The Concessing Authority shall within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 19.

18.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 90 (ninety) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 18.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Concessing Authority upon occurrence of a Concessionaire Default.

## ARTICLE 19

### TERMINATION

#### 19.1 Termination for Concessionaire Default

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

- (a) the O&M Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh O&M Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh O&M Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the O&M Performance Security was appropriated;
- (c) the Concessionaire is in material breach of its obligations as laid down in this Concession Agreement;
- (d) the Concessionaire abandons or manifests intention to abandon the operation and maintenance of the Trauma Centre without the prior written consent of the Concessions Authority;
- (e) the Concessionaire is in breach of the Maintenance Requirements;
- (f) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Concessions Authority to undertake Suspension and the Concessionaire fails to cure the default within a period of 15 (fifteen) days of such notice;
- (g) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (h) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (i) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (j) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (l) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (m) 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;
- (n) 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 Concessions Authority, a Material Adverse Effect;
- (o) a resolution for winding up of the Concessionaire is passed, or any petition



for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (p) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- (q) the Concessionaire submits to the Concessing Authority any statement which has a material effect on the Concessing Authority's rights, obligations or interests and which is false in material particulars;
- (r) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (s) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Concessing Authority.

19.1.2 Without prejudice to any other rights or remedies which the Concessing Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Concessing Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessing 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 19.1.3.

19.1.3 The Concessing Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 19.1.2 to inform the Lenders' Representative:

## 19.2 Termination for Concessing Authority Default

19.2.1 In the event that any of the defaults specified below shall have occurred, and the Concessing 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 Concessing Authority shall be deemed to be in default of this Agreement (the "Concessing Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Concessing Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Concessing Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;

- (c) the Concessing Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement; or
- (d) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Concessing Authority.

19.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Concessing Authority Default, the Concessionaire shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Concessing Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Concessing Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Concessing 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.

### 19.3 Termination Payment

19.3.1 Upon Termination on account of a Concessionaire Default during the Concession Period, the no Termination Payment shall be due or payable to the Concessionaire. In addition to this, the Concessing Authority shall forfeit the O&M Performance Security of the Concessionaire and terminate the Concession Agreement, as per the provisions detailed out in this Concession Agreement.

19.3.2 Upon Termination on account of Concessing Authority Default, no termination Payment shall be due or payable to the Concessionaire. However, the Concessing Authority shall return back the O&M Performance Security to the Concessionaire.

### 19.4 Other rights and obligations of the Concessing Authority

Upon Termination for any reason whatsoever, the Concessing Authority shall:

- (a) be deemed to have taken possession and control of the Trauma Centre forthwith;
- (b) take possession and control of all materials, stores, implements, and equipment on or about the Call Centre;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Trauma Centre Building or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 20.1; and
- (e) succeed upon election by the Concessing 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 Concessing Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Concessing Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Concessing Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessing Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessing Authority for this purpose shall be deducted from the Termination Payment.

### **19.5 Survival of rights**

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

## ARTICLE 20

### DIVESTMENT OF RIGHTS AND INTEREST

#### 20.1 Divestment Requirements

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

- (a) notify to the Concessioneing Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of all the Project Assets and the Trauma Centre, free and clear of all Encumbrances;
- (c) cure all Project Assets, including the Ambulances, equipment, and software, of all defects and deficiencies so that the Trauma Centre is compliant with the Maintenance Requirements; provided that in the event of Termination during the Project Implementation Period, all Project Assets and data generated in the course of the Concession Period shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver relevant records, including medical records of all the individuals treated under Project in the form of software database and licence(s) and hard copy documents, apart from all the reports pertaining to the Trauma Centre and its design, engineering, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- (e) transfer and/or deliver all Applicable Permits/software license(s) relating to the Project to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Concessioneing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Trauma Centre, including the right to receive outstanding insurance claims to the extent due and payable to the Concessioneing Authority, absolutely unto the Concessioneing Authority or its nominee; and
- (g) 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 Trauma Centre, free from all Encumbrances, absolutely unto the Concessioneing Authority or to its nominee.

#### 20.2 Inspection and cure

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before the effective date of such Termination, the Concessioneing Authority shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, 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 21 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 20.

#### 20.3 Vesting Certificate

The divestment of all rights, title and interest in the Trauma Centre shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Concessioneing Authority shall, without unreasonable delay, thereupon issue a certificate (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Trauma Centre, and their vesting in the Concessioneing 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 Concessions Authority or its nominee on, or in respect of, the Trauma Centre on the footing that all Divestment Requirements have been complied with by the Concessionaire.

#### **20.4 Additional Facilities**

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

#### **20.5 Divestment costs etc.**

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

20.5.2 In the event of any dispute relating to matters covered by and under this Article 20, the Dispute Resolution Procedure shall apply.

**ARTICLE 21****DEFECTS LIABILITY AFTER TERMINATION****21.1 Liability for defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Trauma Centre for a period of 90 (ninety) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Concessing Authority in the Trauma Centre during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Concessing Authority in this behalf, the Concessing Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Trauma Centre conform to the Maintenance Requirements. All costs incurred by the Concessing Authority hereunder shall be reimbursed by the Concessionaire to the Concessing Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Concessing Authority shall be entitled to recover the same from the O&M Performance Security.

**21.2 ASSIGNMENT AND CHARGES****21.1 Restrictions on assignment and charges**

21.1.1 This Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessing Authority, which consent the Concessing Authority shall be entitled to decline without assigning any reason.

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

21.1.3 The Concessionaire shall not mortgage/pledge/hypothecate any Project Asset except with prior consent in writing of the Concessing Authority, which consent the Concessing Authority shall be entitled to decline without assigning any reason.

**21.2 Assignment by the Concessing Authority**

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

## ARTICLE 22

## LIABILITY AND INDEMNITY

**22.1 General indemnity**

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

22.1.2 The Concessioneing Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of breach by the Concessioneing Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

**22.2 Indemnity by the Concessionaire**

22.2.1 Without limiting the generality of Clause 22.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority and the Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

22.2.2 Without limiting the generality of the provisions of this Article 22, the Concessionaire shall fully indemnify, hold harmless and defend the Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the 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 Trauma Centre, 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 Concessioneing Authority a

licence, at no cost to the Concessioneing 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.

### 22.3 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 22 (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.

### 22.4 Defence of claims

22.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 22, 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.

22.4.2 If the Indemnifying Party has exercised its rights under Clause 22.3, 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).

22.4.3 If the Indemnifying Party exercises its rights under Clause 22.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are



different from or additional to those available to the Indemnifying Party; or

- (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 22.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

#### **22.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 22, 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.

#### **22.6 Survival on Termination**

The provisions of this Article 22 shall survive Termination.

**ARTICLE 23**  
**RIGHTS AND TITLE OVER THE TRAUMA CENTRE**

**23.1 Licensee rights**

23.1.1 For the purpose of this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Concessions Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of the Trauma Centre Building (the “Licensed Premises”), free of any Encumbrances, to operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

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

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

**23.2 Access rights of the Concessions Authority and others**

23.2.1 The Concessionaire shall allow free access to the Trauma Centre Building and the Trauma Centre at all times for the authorised representatives of the Concessions Authority and Senior Lenders, and for the persons duly authorised by any Government Instrumentality to inspect the Trauma Centre or to investigate any matter, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

23.2.2 The Concessionaire shall allow free access to the Trauma Centre Building at all times for the authorised persons of the controlling body of such utility or Trauma Centre.

**23.3 Property taxes**

The Concessionaire shall pay any property taxes for the Trauma Centre Building, if detailed out in the license deeds/ agreement executed between the Concessionaire and the third party.

**23.4 Restriction on sub-letting**

The Concessionaire shall not sublicense or sublet the whole or any part of the Trauma Centre Building, 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 Trauma Centre.

## ARTICLE 24

### DISPUTE RESOLUTION

#### 24.1 Dispute resolution

- 24.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 24.2.
- 24.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### 24.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Concessions Authority to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Concessions Authority, either Party may require such Dispute to be referred to the Chairman of the Concessions Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 24.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 24.3.

#### 24.3 Arbitration

- 24.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 24.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 24.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Shimla, and the language of arbitration proceedings shall be English.
- 24.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 24.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 24 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessions Authority agree and undertake to carry out such Award without delay.
- 24.3.4 The Concessionaire and the Concessions Authority agree that an Award may be enforced against the Concessionaire and/or the Concessions Authority, as the case may be, and their respective assets wherever situated.
- 24.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

#### 24.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the

Concessioneing Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 24.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

## ARTICLE 25

### REDRESSAL OF PUBLIC GRIEVANCES

#### 25.1 Complaints Register

25.1.1 The Concessionaire shall maintain a public relations office at the Trauma Centre and shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire so as to bring it to the attention of all Users.

25.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

25.1.3 Without prejudice to the provisions of Clauses 25.1.1 and 25.1.2, the Concessioneing Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

#### 25.2 Redressal of complaints

25.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

25.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Concessioneing Authority and to the Concessioneing Authority 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 Concessioneing Authority may, in its discretion, advise the Concessionaire to take such further action as the Concessioneing Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Concessioneing Authority of its decision thereon, and if the Concessioneing 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 26**  
**MISCELLANEOUS**

**26.1 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 Shimla shall have jurisdiction over matters arising out of or relating to this Agreement.

**26.2 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).

**26.3 Depreciation**

For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Concessioning 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.

**26.4 Delayed payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five 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.

**26.5 Waiver**

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly

authorised representative of the Party; and

- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

## 26.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Concessioneing Authority of any Project Agreement, Document, Design or Drawing submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Trauma Centre 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 Concessioneing Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

## 26.7 Exclusion of implied warranties etc.

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

## 26.8 Survival

26.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Concessioneing 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.

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

## 26.9 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.

## 26.10 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one

or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

#### **26.11 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 Concessions 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.

#### **26.12 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.

#### **26.13 Successors and Assigns**

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

#### **26.14 Notices**

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

- (a) in the case of the Concessionaire, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Concessions Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to the Concessions Authority;
- (b) in the case of the Concessions Authority, be given by facsimile and by letter delivered by hand and be addressed to the Chairman of the Concessions Authority with a copy delivered to the Concessions Authority Representative or such other person as the Concessions Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

#### **26.15 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.

#### **26.16 Counterparts**

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



## ARTICLE 27

### DEFINITIONS

#### 27.1 Definitions

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

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

**“Additional Facilities”** means the facilities such as training centres which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Project, and which are in addition to the Trauma Centre, and not situated within the Trauma Centre Building;

**“Affected Party”** shall have the meaning set forth in Clause 17.1;

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

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

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

**“Appointed Date”** means the date on which the Conditions Precedent of both the Parties have met and shall be deemed to be the date of commencement of the Concession Period;

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

**“Associate”** or **“Affiliate”** means, in relation to either Party and/or 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);

**“Concessions Authority Default”** shall have the meaning set forth in Clause 19.2.1;

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

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

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

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Concessionaire/Consortium in response to the request for proposal (RFP) and the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire/Successful Bidder to the Concessions Authority along with the Bid in a sum of Rs.2 Lakh (Rupees Two Lakh), in accordance with the Bid documents, and which is to remain in force until substituted by the O&M Performance Security;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares in the Concessionaire during Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process) in the proportion of the equity holding of any Consortium Member to the total Equity, if it occurs during the Concession Period, shall constitute Change in Ownership;

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

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

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

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire Default**” shall have the meaning set forth in Clause 19.1.1;

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

“**Consortium**” shall have the meaning set forth in Recital (C);

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

“**Contingency**” means a condition or situation that is likely to endanger the individuals within the territorial jurisdiction of the State of Himachal Pradesh;

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Concessions Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Concessions

Authority to accord their approval;

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

“Dispute” shall have the meaning set forth in Clause 24.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 24;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 20;

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

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

“Encumbrances” means, in relation to the Trauma Centre, 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 Trauma Centre, where applicable herein;

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

“Financial Package” means the financing package indicating the total capital cost of Project Implementation and the means of financing thereof approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, if any;

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 17.1;

“GOI” means the Government of India;

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

“Government Instrumentality” means any department, division or sub-division of the Government or the Government of India and includes any commission, board, Government, agency or municipal and other local Government or statutory body including Panchayat under the control of the Government or the Government of India, as the case may be, and having jurisdiction over all or any part of the Trauma Centre or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 22;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 22;

**“Indirect Political Event”** shall have the meaning set forth in Clause 17.3;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 15, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

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

**“Lead Member”** means one of the members nominated by the Members of the consortium to be the lead member who shall have an equity share of at least 51% (fifty one percent) in the consortium. The Lead Member shall be appointed as per terms and conditions set forth in Volume I of the RFP.

**“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;

**“Maintenance Manual”** shall have the meaning ascribed to it in Clause 10.3;

**“Maintenance Programme”** shall have the meaning ascribed to it in Clause 10.4.1;

**“Maintenance Requirements”** shall have the meaning set forth in Clause 10.2;

**“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;

**“Non-Political Event”** shall have the meaning set forth in Clause 17.2;

**“O&M”** means the operation and maintenance of the Trauma Centre 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 the O&M Contractor for performance of all or any of the O&M obligations;

**“O&M Contractor”** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire, and the Concessionaire shall and will remain solely responsible for the overall obligations and liabilities of the O&M Contractor engaged under this Agreement and/or the respective “Project Agreements”;

**“Operating Day”** means the day of a month, wherein the driver (as appointed by the Concessionaire) is ready with the Ambulance for transporting the pregnant women or the sick children from public health facility to the home or nearest connecting road;

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

with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning set forth in Clause 12.2;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 16.2.1;

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

“**Performance Shortfall**” shall have the meaning set forth in Clause 14.4.

“**O&M Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Political Event**” shall have the meaning set forth in Clause 17.4;

“**Project**” means the operation, maintenance and transfer of the Trauma Centre in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Agreements**” means this Agreement, the Financing Agreements and any other agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project;

“**Project Assets**” means all physical and other assets relating to and forming part of the Trauma Centre Building including (a) rights over the Trauma Centre Building in the form of licence or otherwise; (b) tangible assets such as Vehicles along with fittings, communication systems; (c) assets such as software database and licence(s), and Intellectual Properties; (d) Facilities situated within the Trauma Centre Building; (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 Trauma Centre, but does not include Additional Facilities;

“**Trauma Centre**” means all the Equipments, infrastructure and Software procured or installed or furnished as part of the Project;

“**Real Estate**” means land and anything fixed, immovable, or permanently attached to it such as appurtenances, buildings, fences, fixtures, improvements, roads, shrubs and trees (but not growing crops), sewers, structures, utility systems, and walls

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

“**Safety Consultant**” shall have the meaning set forth in Clause 11.1.2;

“**Safety Requirements**” shall have the meaning set forth in Clause 11.1.1;

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

“**Senior Lenders**” means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold parri passu charge on the assets, rights, title and interests of the Concessionaire;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Trauma Centre, as set forth in Schedule-B, and any modifications thereof, or additions thereto, as included in the design and engineering for the Trauma Centre submitted by the

Concessionaire to, and expressly approved by, the Concessing Authority;

“**State**” means the State of Himachal Pradesh and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 16.2.1;

“**Successful Bidder**” shall have the meaning set forth in Recital (C);

“**Suspension**” shall have the meaning set forth in Clause 18.1;

“**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 Trauma Centre 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;

“**Total Operating Fees**” or “**Total Fee**” shall mean the total of the Fixed Operating Fee, as quoted by the Concessionaire in its Financial Proposal.

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

- (a) the capital cost of the Project as set forth in the Financial Package; or
- (b) the actual capital cost of the Project upon completion of the Trauma Centre.

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

“**User**” means a pregnant women or the children upto the age of 1 (one) year, within the territorial jurisdiction of the State of Himachal Pradesh, who is transported from the public healthcare facility to residence/ home or the nearest connecting road, after discharge, on an Ambulance forming part of the Project and its Facilities;

“**Vesting Certificate**” shall have the meaning set forth in Clause 20.3; and

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND  
DELIVERED  
For and on behalf of  
CONCESSIONING AUTHORITY by:

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

(Signature)  
(Name)  
(Designation)

(Signature)  
(Name)  
(Designation)

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

CONFORMING PARTY by:

(Signature)

(Name)

(Designation)

In the presence  
of: 1.

2.