

**Strengthening of District Level
Healthcare Facilities
Under Public Private Partnership**

DRAFT PPP CONTRACT

Uttarakhand Health & Family Welfare Society

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PPP CONTRACT

THIS AGREEMENT¹ is entered into on this the day of....., 20.....

BETWEEN

1 THE UTTARAKHAND HEALTH AND FAMILY WELFARE SOCIETY represented by its [Executive Director] and having its principal office at Directorate of Health, Government of Uttarakhand, Danda Lakhond, P.O. Gujarada, Sahastradhara Road, Dehradun 248001 (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

AND

2 [.....], a [company/LLP] incorporated under the provisions of the [Companies Act/LLP Act], and having its registered office at [●], (hereinafter referred to as the “**Service Provider**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes).

WHEREAS:

(A) The Government of Uttarakhand (“**GoUK**”) has resolved to improve and enhance health infrastructure facilities, operations and improve access to good quality healthcare services to the predominantly remote population in the State of Uttarakhand through the Uttarakhand Health Systems Development Project.

As a component of the Uttarakhand Health Systems Development Project, the GoUK aims to utilize innovative mechanisms for engaging private healthcare service providers in meeting the unmet access needs of the state’s population through the augmentation of an integrated network of primary care, referral services and emergency care at the district-level.

(B) The Government of India has availed credit from the International Development Association (the “**Bank**”) in an amount equivalent to US\$ 100,000,000 (“**Credit**”). A portion of the proceeds of this Credit is intended to be applied to eligible payments under this Agreement, it being understood that: (i) payments by the Bank will be made only at the request of the Authority and upon approval by the Bank; (ii) such payments will be subject, in all respects, to the terms and conditions of the agreement providing for the Credit, and (iii) no party other than the Authority shall derive any rights from the agreement providing for the Credit or have any claim to the Credit proceeds.

(C) The GoUK has nominated the Uttarakhand Health & Family Welfare Society, a society that is under the administrative control of the GoUK, as the nodal agency for the implementation of the Uttarakhand Health Systems Development Project. However, the Site and the Existing Assets at **Tehri** are currently owned, operated and maintained by the Directorate of Medical Health & Family Welfare, a technical wing of the Family Health & Family Welfare Department, GoUK (“**DMH&FW**”). Therefore, the GoUK has issued a G.O No. [●] dated [●] 2015 requiring the DMH&FW to: (i) transfer legal and construction possession of the Site and the Existing Assets to the Authority for operation and maintenance thereof and provision of Healthcare Services to the Patients, either directly or through the appointment of the Service Provider; and (ii) provide

assistance to the Authority in the contract management and monitoring required under this Agreement.

(D) In order to achieve the aforementioned objectives, GoUK has mandated the Authority to undertake an International Competitive Bidding (ICB) for selection of the Service Provider and award of this Agreement for the augmentation, development, operation and maintenance of integrated Healthcare Facilities (*defined later*) and provision of Healthcare Services (*defined later*) on a pilot PPP basis in Tehri district.

(E) On 27th April 2017, the Authority commenced an international commercial selection process and invited bids by its Request for Proposal No. UKHFWS/UKHSDP/PPP/2017-18/11280 dated 27th April 2017 (the “**Request for Proposal**” or “**RFP**”) for short listing of bidders and award of this Agreement for the augmentation, development, operation and maintenance of:

- (i) the District Hospital Boradi located at Boradi, New Tehri described at **Schedule A** (the “**District Level Facility**”);
- (ii) 2 (two) community health centres located at Beleswar and Devprayag in Tehri-Garhwal district described at **Schedule A** (collectively, the “**CHCs**”); and
- (iii) 3 (three) mobile health vehicles (collectively, the “**MHV**s”) to be deployed within Tehri-Garhwal district,

(collectively, the “**Healthcare Facilities**” and each a “**Healthcare Facility**”) and for the provision of Healthcare Services at the Healthcare Facilities, on a PPP basis.

(F) Pursuant to the RFP, the bidders submitted their bids for the award of the Agreement for the Project. The [selected bidder (the “**Selected Bidder**”)/consortium comprising [●],[●] and [●] (collectively, the “**Consortium**” and each a “**Member**”) with [●] as its lead member (the “**Lead Member**”)] also submitted its bid to the Authority on [●] 2015 (the “**Bid**”).

(G) Following a process of qualification, evaluation of the qualification bids and evaluation of the financial bids received, the Authority accepted the Bid of the [Selected Bidder/Consortium] and issued its Letter of Award No. [●] dated [●] (the “**LOA**”) to the [Selected Bidder/Consortium] and requested the [[Consortium] to incorporate a special purpose vehicle to act as the Service Provider and to cause such special purpose vehicle]/[the Selected Bidder] to fulfil certain conditions precedent to the execution of this Agreement and to execute this Agreement within 45 days of the date of issue thereof. [The Selected Bidder/Consortium has accordingly incorporated the Service Provider as the special purpose vehicle to exercise its rights and perform its obligations under this Agreement.]

(H) The [Selected Bidder/Consortium] has represented and warranted in its Bid that it has the expertise, experience, capability and know-how in providing operation and maintenance services for health care facilities of the type and nature similar to the Healthcare Facilities and providing healthcare services to patients similar to the Healthcare Services.

(I) The Authority acting on behalf of GoUK, now wishes to grant the Service Provider the exclusive right to operate and maintain the Healthcare Facilities in Tehri district and to provide the Healthcare Services in accordance with this Agreement. Consequently, the Parties have agreed to enter into this Agreement and the Service Provider agrees to augment, develop, operate and maintain the Healthcare Facilities and to provide the

Healthcare Services at these Healthcare Facilities in accordance with the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this PPP Contract, the receipt and sufficiency 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 defined in Article 28) 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 Uttarakhand, laws of India 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 Uttarakhand and 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 **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation, equipping, installation and other activities incidental thereto, and **“develop”** 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 Uttarakhand are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (k) 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;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “**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;
- (o) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a person shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction to which such person belongs or is incorporated or any jurisdiction in which such person carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (p) save and except as otherwise provided in this Agreement, 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 Authority hereunder or pursuant hereto in any manner whatsoever;
- (q) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
- (r) 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;
- (s) 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
- (t) 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 (“**Damages**”). If, for any reason, any provisions regarding the payment of Damages are held to be void, invalid or otherwise inoperative and so as to disentitle either Party from claiming Damages, then such Party will be entitled to claim against the other Party for general damages for the relevant default.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any document required to be provided or furnished by the Service Provider to the Authority or the Independent Expert shall be provided free of cost and in three copies, and if the Authority or the Independent Expert is required to return any such document 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 Clauses and Schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement.
- 1.4.2 Subject to the provisions of 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 two Schedules, the Schedule relevant to the issue shall prevail;
and
 - (d) 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 Term of this Agreement:

- (a) the augmentation and development of the Healthcare Facilities at the Site that has been described at **Schedule A**, to meet the minimum infrastructure, equipment and Personnel requirements set forth in **Schedule B**;
- (b) operation and maintenance of the Healthcare Facilities in accordance with the provisions of this Agreement;
- (c) making available the Healthcare Facilities for the Patients and providing at a minimum the Healthcare Services to the Patients that are set out in **Schedule B**, so as to achieve at a minimum the baseline requirements for the Key Performance Indicators set forth in **Schedule C**; and
- (d) performance and fulfilment of all other obligations of the Service Provider 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 Service Provider under this Agreement.

ARTICLE 3
GRANT OF RIGHTS

3.1 The Grant of Rights

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Service Provider the exclusive right, licence and authority to augment, develop, operate and maintain the Healthcare Facilities and to provide the Healthcare Services to the Patients at the Healthcare Facilities during the Term in accordance with the terms of this Agreement.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the rights hereby granted for the Term shall oblige or entitle (as the case may be) the Service Provider to:
- (a) Licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) finance, develop, up-grade and equip the Healthcare Facilities;
 - (c) manage, operate and maintain the Healthcare Facilities and provide the Healthcare Services;
 - (d) perform and fulfil all of the Service Provider's obligations under and in accordance with this Agreement; and
 - (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Provider under this Agreement.

3.2 Conditions Precedent to the Appointed Date

- 3.2.1 Save and except as provided in Articles 1, 3, 6, 7, 8, 9, 19, 20, 22, 25 and 27 and related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 3.2 (the "**Conditions Precedent**"), save and except to the extent of waiver, if any, that the Authority may grant in accordance with the provisions of Clauses 3.2.2.
- 3.2.2 The Service Provider shall, within 15 (fifteen) days from the date of this Agreement, fulfil the following Conditions Precedent:
- (a) extend the validity of the Bid Security and submit to the Authority the Performance Security, in accordance with Article 8;
 - (b) incorporate the Change in Ownership provisions set out in Clause 4.6 into the Service Provider's [articles of association]/[constitutional documents];
 - (c) provide to the Authority certified true copies of the Service Provider's [memorandum and articles of association]/[constitutional documents];
 - (d) provide to the Authority a certified extract of [the board resolution of the directors]/[the resolution of the governing body] of the Service Provider (or equivalent) authorising the Service Provider to enter into this Agreement;

- (e) submit to the Authority the Legal Opinion; and
- (f) if requested by the Authority, deliver to the Authority the Financial Model, duly certified by [a Director]/[a Designated Partner] of the Service Provider.

Provided that upon request in writing by the Service Provider, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 3.2.2 or grant extension of time not exceeding 15 (fifteen) days for fulfilment thereof, as the case may be. For the avoidance of doubt, the Authority may in its sole discretion grant any waiver hereunder with such conditions as it may deem fit.

3.2.3 Conditions Precedent of the Authority

Subject to the Service Provider fulfilling all its Conditions Precedent as specified in Clause 3.2.2 (other than any Condition Precedent that has been waived by the Authority), the Authority shall, within a period of 45 (forty five) days from the date of the notice from the Service Provider notifying fulfilment of its Conditions Precedent, fulfil the following Conditions Precedent:

- (a) procure functional water and electricity connections at the District Level Facility and both the CHCs; and
- (b) grant the Licence to the Site and the Existing Assets in relation to the District Level Facility and the CHCs and hand over legal and constructive possession to and provide access to the Site and Existing Assets in accordance with Article 9, with the exception of the staff quarters, possession of which shall be handed over in accordance with Clause 9.2.2.

3.2.4 Appointed Date

The date on which the Authority fulfils its Conditions Precedent in accordance with Clause 3.2.3 shall be the “**Appointed Date**”.

For the avoidance of doubt, the Authority may complete the handing over of the Site and Existing Assets in a staggered manner, in which case the Appointed Date shall be the date on which the handing over of all of the Site and the Existing Assets in relation to the District Level Facility and both CHCs, with the exception of the staff quarters, has been completed.

3.2.5 Damages for Delay by the Service Provider

In the event that: (i) the Service Provider does not procure fulfilment or waiver of any or all of its Conditions Precedent set forth in Clause 3.2.2 within the period specified in respect thereof; and (ii) the delay has not occurred due to Force Majeure, the Service Provider shall pay to the Authority Damages calculated at the rate of Rs. 10,000 (Rupees ten thousand) for each day’s delay until the fulfilment or waiver of all Conditions Precedent, subject to a maximum of Rs. 12,00,000 (Rupees twelve lakh).

3.2.6 Damages for delay by the Authority

In the event that: (i) the Authority does not procure fulfilment of its Conditions Precedent set forth in Clause 3.2.3 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Service Provider or due to Force Majeure, the Authority shall pay to the Service Provider

Damages calculated at the rate of Rs. 10,000 (Rupees ten thousand) for each day's delay commencing from the expiry of the period specified in Clause 3.2.3 until the fulfilment of such Conditions Precedent, subject to a maximum of Rs. 12,00,000 (Rupees twelve lakh).

3.3 Termination upon delay

Without prejudice to the provisions of Clause 3.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason other than breach by the Party seeking termination or Force Majeure, within 6 (six) months from the date of this Agreement, then the Party who is entitled to have the Conditions Precedent set out in Clause 3.2 satisfied shall be entitled to terminate this Agreement forthwith by issuing a written notice to the other Party for that other Party's failure. Upon such termination, all rights, privileges, claims and entitlements of the Parties under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Parties.

Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Service Provider, the Performance Security of the Service Provider or the Bid Security of the [Selected Bidder]/[Consortium] shall be encashed and appropriated by the Authority as Damages thereof in accordance with Clause 8.3.

3.4 Term

3.4.1 This Agreement shall be in full force and effect for a period commencing on the Appointed Date and shall continue to be in effect, unless extended or terminated earlier in accordance with the terms of this Agreement, until the expiration of 4 years commencing from the COD ("**Term**").

3.4.2 If the Authority is satisfied, on or before the expiration of 42 months from the COD, that the Service Provider shall have discharged its obligations in compliance with the Minimum Performance Benchmark for a period of 39 months from the COD, the Term shall be extended by an additional term of 2 years on the terms and conditions set out herein (other than the right of extension under this Clause 3.4.2). For the avoidance of doubt, on such extension the Term shall include such extended period of 2 years.

For the purpose of this Clause 3.4.2, the Service Provider shall be deemed to have complied with the "**Minimum Performance Benchmarks**" if: (i) it has achieved at a minimum the baseline measures for the KPIs set out in **Schedule C** of this Agreement for the 39 month period commencing from the COD; **OR** (ii) the cumulative deductions from the Volume Adjusted Service Fee made by the Authority in the 39 month period commencing from the COD, has not exceeded a sum equivalent to the value of the Performance Security.

ARTICLE 4

GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

4.1 Cost of Performance

Subject to and on the terms and conditions of this Agreement, the Service Provider shall, at its own cost and expense, procure finance for and undertake the procurement, augmentation, development, operation and maintenance of the Healthcare Facilities and for the provision of the Healthcare Services and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

4.2 Standards of Performance

The Service Provider shall augment, develop, operate, maintain and make available the Healthcare Facilities and provide the Healthcare Services during the Term in accordance with:

- (a) all Applicable Laws and Applicable Permits (including renewals as required), including, all environmental laws and regulations and the Environmental and Social Management Plan relating to the handling and disposal of bio-medical waste and hazardous waste; laws protecting the rights of persons with disabilities; and any disaster management policy as may be notified and revised by a Government Instrumentality from time to time;
- (b) the provisions of this Agreement;
- (c) the minimum infrastructure, Personnel and equipment requirements set out in **Schedule B** and the applicable quality standards and the service performance requirements set out in **Schedule F**, so as to achieve or exceed the baseline measures for the KPIs set out in **Schedule C**;
- (d) any conditions and operating and maintenance restrictions applicable to warranties available in respect of the Existing Assets or the New Assets procured and installed by the Service Provider;
- (e) the Environmental and Social Management Plan published and approved by the State Government for the Uttarakhand Health Systems Development Project, as may be amended from time to time; and
- (f) Good Industry Practice and as a reasonable and prudent person.

4.3 General Obligations of the Service Provider

The Service Provider shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws and in a timely manner;
- (b) procure, as required, the appropriate Intellectual Property rights, licences, agreements and permissions for materials, methods, processes, equipment,

systems and Intellectual Property used or incorporated into the Healthcare Facilities or the provision of the Healthcare Services, for itself and for the benefit of the Authority; provided that except for amounts included in the Service Fee, no royalties, revenue share, license fee or other payment shall be due or payable by the Authority to the Service Provider or any third party;

- (c) unconditionally assign and grant all Intellectual Property rights in and to any data, information, reports, specifications, designs, databases, computer software (including any upgrades, plug-ins, customisations or any other enhancements) and any other proprietary property or information that is prepared by the Service Provider or otherwise incorporated in the Healthcare Facilities in the course of or in connection with the performance of the Healthcare Services by the Service Provider, in the Authority at no additional cost to the Authority and immediately upon such Intellectual Property coming into existence. The Service Provider acknowledges and confirms that such assignment and vesting of the Intellectual Property rights shall entitle the Authority to further assign or grant licenses in respect of such Intellectual Property;
- (d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Service Provider's obligations under this Agreement;
- (e) procure, as necessary, infrastructure and utilities required for the operation and maintenance of the Healthcare Facilities, including water, electricity and sanitation, and pay all rates and charges in respect of such utilities consumed by the Service Provider, its Personnel, agents, Contractors, Patients and licensees at the Healthcare Facilities; and
- (f) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement.

4.4 Personnel of Service Provider and its Contractors

4.4.1 The Service Provider shall engage a sufficient number of adequately skilled, competent and experienced Personnel, for the purpose of the performance of its obligations under this Agreement in compliance with all Applicable Laws and Applicable Permits and the terms of this Agreement. Without prejudice to the foregoing, the Service Provider shall, at a minimum, engage such number of skilled, competent and experienced Personnel as is required to comply with the minimum Personnel requirements set out in **Schedule B**.

4.4.2 The Service Provider shall ensure that those Personnel that it hires for providing the Healthcare Services in the positions identified in **Schedule B** (the "**Key Medical Personnel**") shall:

- (a) be qualified as Medical Practitioners in Uttarakhand or at least should have applied for and received provisional certification from the Uttarakhand Medical Council; and
- (b) meet, at a minimum, the qualification and experience requirements specified at **Schedule B** for the positions for which they are being hired.

The Service Provider shall notify the Authority of the appointment, substitution or replacement of each of the Key Medical Personnel hired by it, along with the qualification and experience of such Key Medical Personnel within 15 days of such appointment, substitution or replacement.

- 4.4.3 In the event any of the Key Medical Personnel have acted negligently, recklessly or without regard to the safety of the Patients, or have committed any Abuse or Fraud in providing the Healthcare Services, or committed any Medical Malpractice or any other serious misconduct or been charged with having committed a criminal action or if the Authority has reasonable cause to be dissatisfied with the performance of any of the Key Medical Personnel, the Authority shall have the right to require the services of such Key Medical Personnel to be suspended or terminated by issuing a notice to the Service Provider.

Within fifteen (15) days of receipt of a notice from the Authority, the Service Provider shall suspend or terminate the employment of or repatriate such Key Medical Personnel and replace such Key Medical Personnel with other person(s) having the requisite level of skill, qualification and experience as specified in Clause 4.4.2. The Service Provider shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Key Medical Personnel.

Any period for which any position of the Key Medical Personnel remains vacant as a result of a removal or suspension under this Clause 4.4.3 shall be counted for the purpose of determining whether the Service Provider has complied with the baseline requirements for the Availability KPIs set out in **Schedule C**.

- 4.4.4 The Service Provider shall have the freedom to rotate and roster its Personnel, including the Key Medical Personnel, across all the Healthcare Facilities provided that the Service Provider is able to achieve at a minimum the baseline measures for the Availability KPIs that are set forth in **Schedule C**.

The Service Provider shall ensure that the Key Medical Personnel based at the District Level Facility shall be available for outreach programmes and long-distance consultations, including telephonically through the Personnel stationed in the MHVs or at the CHCs.

- 4.4.5 The Service Provider shall comply with all applicable labour laws and shall ensure that the Personnel receive wages and enjoy conditions of service in accordance with Applicable Laws.
- 4.4.6 The Service Provider shall ensure that the Personnel engaged by it or its Contractors in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- 4.4.7 The Service Provider shall make reasonable efforts to maintain harmony and good relations among the Personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement.
- 4.4.8 The failure of the Service Provider to comply with this Clause 4.4 or any failure to perform or any misconduct by its Personnel shall not:
- (a) affect or limit the Service Provider's obligations or liabilities under this Agreement, including its obligation to achieve or exceed the baseline measures for the KPIs set out at **Schedule C**; or

- (b) otherwise entitle the Service Provider to any additional payment or other form of relief under this Agreement.

4.4.9 The Service Provider acknowledges, confirms and undertakes that:

- (a) The Authority is not and shall not be the 'principal employer' of the Personnel employed or otherwise hired by the Service Provider or its Contractors;
- (b) The Service Provider shall be the 'principal employer' of the Personnel and shall comply with all Applicable Laws (including but not limited to the Contract Labour (Regulation and Abolition) Act, 1970 and rules issued thereunder);
- (c) Except as expressly stated in this Agreement, the Service Provider will exercise direct control and supervision over the Personnel hired by it and its Contractors and shall comply with all Applicable Laws (including but not limited to the Contract Labour (Regulation and Abolition) Act, 1970 and rules issued thereunder) in relation to the terms of employment and conditions of service of the Personnel; and
- (d) the Service Provider shall not represent or warrant to any of the Personnel that the Personnel have any direct relationship with or have the ability to claim direct employment with or absorption by the Authority, at any time during the Term or on the Transfer Date and shall not induce any persons to enter into employment with the Service Provider or its Contractors on the basis of such representations or warranties.

4.4.10 Without limiting the Service Provider's other obligations and liabilities under this Agreement, the Service Provider shall be responsible for, and shall release and indemnify the Authority, the State Government and related Government Instrumentalities and their directors, employees and representatives from and against all liabilities including losses, claims, expenses arising:

- (a) as a result of a breach of this Clause 4.4 by the Service Provider; or
- (b) from a claim by any of the Personnel against the Authority (including but not limited to any claims by the Personnel that they should be deemed to be direct employees of the Authority and should be absorbed by the Authority).

4.5 Obligations relating to Project Agreements

4.5.1 It is expressly agreed that the Service Provider shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any Project Agreements or any other agreement, and no default by the Service Provider or its Contractor under any Project Agreement or other agreement shall excuse the Service Provider from its obligations or liability hereunder.

4.5.2 The Service Provider shall ensure that all the Project Agreements entered into provide for assignment of the Service Provider's rights under those Project Agreements in favour of the Authority or the Authority's nominee and contain an undertaking by the Contractors that they shall execute all necessary deeds and documents to give effect to such assignment, in a form substantially satisfactory to the Authority.

4.5.3 The Service Provider shall ensure that the warranties obtained by the Service Provider from any Contractor under a Project Agreement are assignable in favour of the Authority or the Authority's nominee upon Termination.

4.5.4 The Service Provider shall be solely responsible for the payments to be made to the Contractors in accordance with their respective Project Agreements. If the Service Provider: (i) fails to make timely payments to any Contractor engaged by it; and (ii) fails to satisfy the Authority that such failure to make timely payments to any Contractor will not affect the continuity of the availability of the Healthcare Facilities or the continuity of the Healthcare Services, the Authority may, at its sole discretion, make direct payments to the Contractor and recover the amount paid from any payment due to the Service Provider under this Agreement.

Provided however that, the Authority shall not at any time make or be required to make any payments due from the Service Provider to the Personnel in accordance with Applicable Laws.

4.5.5 The Service Provider shall procure that each Project Agreement shall contain provisions that entitle the Authority or the Authority's nominee to step into such Project Agreement, in substitution of the Service Provider, if this Agreement is Terminated in accordance with the terms hereof.

[4.6 Change in Ownership]

4.6.1 The [Selected Bidder/the Consortium] has caused the Service Provider to be incorporated as a special purpose vehicle that is a [private limited company/LLP], to perform the obligations under this Agreement. The legal and beneficial ownership of the Equity and voting rights of the Service Provider are held by the Selected Bidder/the Members of the Consortium in the following proportion:

[Insert Equity and voting rights structure of the Service Provider]

4.6.2 [The Service Provider shall ensure that the Selected Bidder:

- (a) retains Control over the Service Provider; and
- (b) at least 51% (fifty one percent) of the legal and beneficial ownership in Service Provider's Equity and voting rights,

from the date of this Agreement and at all times during the Term.]

OR

[The Service Provider shall ensure that:

- (a) All Consortium Members shall, acting together, retain Control over the Service Provider;
- (b) All Consortium Members shall, acting together, hold at least 51% (fifty one percent) of the legal and beneficial ownership of the Service Provider's Equity and voting rights; and
- (c) Each of the following Consortium Members: *[insert names of Consortium Members whose Technical Capacity and Financial Capacity has been relied*

on] shall hold at least 26% (twenty six percent) of the legal and beneficial ownership of the Service Provider's Equity and voting rights,

from the date of this Agreement and at all times during the Term.]

[Note: The first option shall be chosen if the Selected Bidder is a single entity and it has decided to incorporate an SPV. The second option shall be chosen if the Selected Bidder is a Consortium. This clause should be omitted if the Selected Bidder is a single entity and chooses not to incorporate a SPV.]

4.6.3 Without prejudice to Clause 4.6.2, any:

- (a) transfer of Equity and/or voting rights of the Service Provider; or
- (b) change of Control over the Service Provider; or
- (c) assignment, transfer, pledge, charge, mortgage or creation of any Encumbrance over the Equity of the Service Provider, including by way of re-structuring or amalgamation,

shall require the prior approval of the Authority, provided that the Authority shall not withhold its approval if such change in the legal or beneficial ownership of the Equity or voting rights of the Service Provider will not result in a breach of Clause 4.6.2.

If such change in the legal or beneficial ownership of the Equity or voting rights of the Service Provider results in a breach of Clause 4.6.2, such breach shall be deemed a Service Provider Default.]

[Note: This Clause 4.6 shall be "omitted", if the Selected Bidder is also the Service Provider and no SPV has been incorporated.]

4.7 Branding of Healthcare Facilities

4.7.1 The Healthcare Facilities or any part thereof shall not be branded in any manner to advertise, display or reflect the name of the Service Provider [or the Selected Bidder/any Member of the Consortium]. Provided that the Service Provider may within the Healthcare Facilities display or advertise itself as being the entity undertaking operation and management of the Healthcare Facilities on behalf of the Authority. Notwithstanding the foregoing restriction, the Service Provider shall be solely responsible for quality of Healthcare Services provided at the Healthcare Facilities.

4.7.2 The Authority shall provide the Service Provider with the branding to be used in respect of the Healthcare Facilities within 30 (thirty) days of the Appointed Date. The Parties agree that the Healthcare Facilities shall be known, promoted, displayed and advertised only with the branding provided by the Authority.

4.8 Website

The Service Provider shall, within 6 (six) months from the COD, commission, operate and maintain a comprehensive website exclusively for the Healthcare Facilities. The following information shall be provided on the website in respect of each Healthcare Facility:

- (a) names of all the Key Medical Personnel, with qualifications, experience and contact information;

- (b) Healthcare Services available with timings;
- (c) procedure for seeking appointment and facility to book appointment online;
- (d) facility for providing feedback, registering complaints and other grievance redressal information;
- (e) medical emergency contact numbers, including numbers for the MHVs and ambulance services;
- (f) Patient Charter;
- (g) any camps or other health activities planned; and
- (h) general information for Patients such as details of referral arrangement with any other hospitals.

4.9 Coordination of Healthcare Services with other Services

The Service Provider acknowledges that the GoUK, acting through the Authority and through other Government Instrumentalities, has undertaken or is planning on further strengthening the health system in the State of Uttarakhand by itself or through public private partnerships, including: telemedicine, central health line services, an ambulance network, the Health Insurance Scheme and other programmes.

The Service Provider shall ensure that the provision of the Healthcare Services are coordinated with other health care services or related services, including those specified above, that are being provided or that will be provided in the State of Uttarakhand.

4.10 Prohibition of Conflicting Activities

- 4.10.1 During the Term, neither the Service Provider nor its Personnel shall engage, either directly or indirectly, in any business or professional activities within the district boundaries of *Tehri-Garhwal district* which would conflict with the rights and obligations assigned to them under this Agreement.

Provided however that the Service Provider shall be permitted to engage private doctors or consultants with existing medical practices within the boundaries of Tehri-Garhwal district on a temporary basis to substitute for the Key Medical Personnel during their absence or non-availability. Provided further that no Key Medical Personnel shall be substituted by such private doctors or consultants for more than 15 (fifteen) days in each quarter of a year.

- 4.10.2 During the Term, neither the Service Provider nor its Contractors shall:

- (a) use or otherwise undertake any revenue earning activities at the Healthcare Facilities, other than in accordance with this Agreement; or
- (b) hire serving employees of the Authority, the State Government or other Government Instrumentalities, whether in active duty or on any other type of leave, to perform any obligation of the Service Provider under this Agreement.

Without prejudice to the foregoing, the Authority agrees that the Service Provider or its Contractors may provide Healthcare Services that are in addition to the minimum Healthcare Services specified in **Schedule B**; provided that (i) the User Charges for

such service shall be determined and collected in accordance with Clause 13.22; and (ii) the Service Provider shall not be entitled to receive any fee, commission or other revenue from the Authority or the Patient, other than the monthly Service Fee determined in accordance with Clause 15.1 or the Health Insurance Incentive determined in accordance with Clause 15.2.

ARTICLE 5

OBLIGATIONS OF THE AUTHORITY

5.1 Obligations of the Authority

5.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Authority agrees to provide support to the Service Provider 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 Service Provider, and subject to the Service Provider complying with Applicable Laws, provide reasonable support and assistance to the Service Provider in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Healthcare Facilities or for the provision of the Healthcare Services, including assistance in procuring registration or provisional registration of the Personnel appointed by the Service Provider with the relevant regulatory bodies in the State of Uttarakhand;
- (b) transfer such Applicable Permits to the Service Provider which are available with the Authority and are permitted to be transferred under Applicable Laws;
- (c) upon written request from the Service Provider, and subject to the Service Provider preparing the necessary application, procure such Applicable Permits which are required to be obtained in the name of the Authority;
- (d) upon written request from the Service Provider, provide reasonable assistance to the Service Provider in procuring all necessary infrastructure facilities and utilities, including any modification to the capacity of water and electricity connections;
- (e) appoint the following persons to be the Authority's representatives at each Healthcare Facility: the Chief Medical Officer at the district level for the District Level Facility; and the Block Medical Officer at the block level for each CHC and MHV attached to such CHC (each an "**Authority Representative**"). In addition, the Authority may appoint another government employee to assist the Authority Representative in fulfilling its duties and responsibilities under this Agreement.

The Authority Representative shall be the liaison between the Authority and the Service Provider in respect of the Healthcare Facility(ies) for which it is appointed. The Authority Representative shall in addition, be responsible for performing the following duties and responsibilities:

- (i) performing public health functions;
- (ii) supervising the Service Provider's activities in relation to medico-legal cases, including Healthcare Services that are provided at the Healthcare Facilities and compliance with procedures specified in the relevant guidelines issued by the State Government;

- (iii) administering the Health Programmes and the Health Insurance Scheme and undertaking such other duties and responsibilities set out in this Agreement;
 - (iv) supervising the collection of the User Charges from Patients; and
 - (v) assist the Authority in the monitoring of the performance of the Service Provider's obligations in respect of the Healthcare Facilities for which the Authority Representative is appointed.
- (f) support, cooperate with and facilitate the Service Provider in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (g) make all payments that are due and payable to the Service Provider, in the manner and within the time period specified in this Agreement and subject to the terms of this Agreement.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

6.1 Representations and warranties of the Service Provider

The Service Provider makes the following representations and warranties to the Authority, each of which the Service Provider further covenants, warrants and represents shall remain true and correct for the duration of the Term:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws (including obtaining all necessary Applicable Permits) to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it [and the Selected Bidder/Members of the Consortium] [has/have] the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement creates legal, valid and binding obligations of and are enforceable against the Service Provider [and the Selected Bidder/Member of the Consortium] in accordance with the terms hereof;
- (e) the Service Provider [and the Selected Bidder/each Member of the Consortium] is subject to the laws of India, and hereby expressly and irrevocably waives any immunity to which it may be or it may become entitled to in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder, including immunity from jurisdiction, enforcement, execution, proceedings, injunctions and all other legal proceedings and relief, both in respect of itself and its assets and consents to such proceedings and relief;
- (f) all the information (financial or otherwise), facts or documents or statements furnished in the Bid , whether relating to the Selected Bidder/any Member of the Consortium and as updated on or before the date of this Agreement are true and accurate in all respects;
- (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 of association, articles of association]/[constitutional documents] or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which would adversely affect the performance of or its capacity or 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 or its capacity or ability to perform any its obligations under this Agreement;
- (j) it has complied with and will continue to comply with all Applicable Laws in all material respects and is not 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 the performance of or its ability or capacity to perform its obligations under this Agreement;
- (k) the Service Provider has satisfied itself and has made itself aware of the extent and nature of the Healthcare Services required to be performed by it under this Agreement, including the personnel, materials and equipment, drugs, consumables and other facilities required for making available the Healthcare Facilities and the provision of the Healthcare Services and is satisfied that the amounts to which it is entitled to be paid under this Agreement are sufficient to allow it to perform all of its obligations under this Agreement;
- (l) The Service Provider [and the Selected Bidder/[the Lead Member and *[insert name of Member whose Technical Capacity is relied on]*] have the requisite skill, competence, qualifications and experience for the augmentation, development, operation and maintenance of the Healthcare Facilities and the provision of the Healthcare Services in compliance with the terms of this Agreement; and the Service Provider shall have the benefit of [the Selected Bidder's]/[Members'] expertise, experience, capability and know-how for the performance of its obligations under this Agreement;
- (m) Neither the Service Provider [nor the Selected Bidder/any Member of the Consortium] is subject to an Act of Insolvency;
- (n) [As of the date of this Agreement, the legal and beneficial ownership of the Equity and voting rights of the Service Provider is as stated at Clause 4.6.1;] *[Note: To be deleted if the Selected Bidder itself is the Service Provider.]*
- (o) [As at the Appointed Date and any time thereafter during the Term, the legal and beneficial ownership of the Equity and voting rights of the Service Provider shall comply with Clause 4.6.1 and the Service Provider shall not permit a Change in Ownership in breach of Clause 4.6.2;] *[Note: To be deleted if the Selected Bidder itself is the Service Provider.]*
- (p) all its rights and interests in the Healthcare Facilities shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (q) neither the Service Provider [nor the Selected Bidder/any Member of the Consortium] has or will commit any Prohibited Act in relation to the award of this Agreement or any of the subcontracts; and

- (r) no representation or warranty made by it whether contained in this Agreement or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

6.2 Representations and warranties of the Authority

The Authority makes the following representations and warranties to the Service Provider, each of which the Authority further covenants, warrants and represents shall remain true and correct for the duration of the Term:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein;
- (b) it has taken all necessary corporate and other actions under Applicable Laws (including obtaining all necessary Applicable Permits) to authorize 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 perform its obligations under this Agreement;
- (d) this Agreement creates legal, valid and binding obligations of and are enforceable against the Authority in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws and will continue to comply with all Applicable Laws in all material respects;
- (g) the Authority is not the subject of an Act of Insolvency; and
- (h) the DHF&WS has good and valid title, right and interest to and in the Site and the Existing Assets, and the Authority has the power and authority to grant the Licence in respect of the Site and the Existing Assets to the Service Provider under this Agreement.

6.3 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 right, remedy or obligation of either Party under this Agreement.

ARTICLE 7
DISCLAIMER

7.1 Disclaimer

7.1.1 The Service Provider acknowledges that prior to the execution of this Agreement, [the Selected Bidder/the Consortium] has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, this Agreement, the Scope of the Project, the Site (including soil and environmental conditions at the Site), the condition of the Existing Assets and existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of power, water and other utilities, availability of human resources, Applicable Laws and Applicable Permits and all information provided by the Authority or obtained procured or gathered otherwise and has made its own assessment as to all relevant factors for quoting the Base Service Fee for the first year in its Bid, including the cost of making available the Healthcare Facilities and providing the Healthcare Services in accordance with the terms and conditions of this Agreement, case mix, case load, volume of Patients, bed occupancy, average length of stay and other performance or productivity parameters. The Service Provider is deemed to have knowledge of and to be satisfied with all such findings, information and assessments.

7.1.2 The Selected Bidder/the Consortium and consequently, the Service Provider have determined to their satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards that are likely to arise or that may be faced by the Service Provider in the course of performance of its obligations hereunder.

Without prejudice to the foregoing, the Service Provider acknowledges and confirms that any failure of the Selected Bidder/the Consortium or its own failure to: (a) acquaint itself with the Site or such information; or (b) its failure to make a reasonable assessment as to the costs, Patient volumes or other matters specified in Clause 7.1.1; or (c) identify any defect or deficiency in the design, construction, installation or maintenance of the Site or the Existing Assets, shall not relieve the Service Provider from its responsibility for properly estimating the difficulty or cost of successfully performing its obligations and providing the Healthcare Services under the Agreement.

The Service Provider shall keep harmless and indemnify the Authority against all losses, liabilities, damages, costs, expenses, actions, claims, proceedings incurred by or made against the Authority as a result of any adverse conditions or defects or environmental damage at or affecting the Site or the Existing Assets (whether pre-existing or caused by or arising from the use of the Healthcare Facilities). Such indemnity shall cover all consequential, indirect or extraordinary damages.

7.1.3 The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any statement or information provided by it or any assessment or assumption made by the Selected Bidder/the Consortium and the Service Provider and the Service Provider confirms that it shall have no claim whatsoever against the Authority in this regard.

7.1.4 The Service Provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 7.1.1 and Clause 7.1.2 above and hereby acknowledges and agrees that the Authority shall not be liable or responsible to the Service Provider, the Selected Bidder/any Member of the Consortium or any of their Affiliates or any person claiming through or under any of

them for the same in any manner whatsoever, whether in contract, tort, for breach of statutory duty or otherwise arising.

7.1.6 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 7.1.1 or Clause 7.1.2 above shall not vitiate this Agreement, or render it voidable.

7.1.7 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Service Provider and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 8

PERFORMANCE SECURITY

8.1 Submission of Performance Security

8.1.1 The Service Provider shall submit to the Authority on or before the date of execution of this Agreement, an irrevocable, unconditional and on-demand bank guarantee from a Scheduled Bank for a sum of Rs. 2.5 crore (Rupees two crore and fifty lakh only) that is payable or confirmed for payment in Dehradun, in the form set forth in **Schedule D** (the “**Performance Security**”), to secure the due performance of the Service Provider’s obligations and the discharge of the Service Provider’s liabilities under this Agreement, whether during or after the Term.

8.1.2 Until such time that the Performance Security is submitted by the Service Provider , the Service Provider shall ensure that the Bid Security submitted by [it]/[the Selected Bidder/the Consortium] shall remain in full force and effect.

If the validity of the Bid Security is scheduled to expire prior to submission of Performance Security and the validity of the Bid Security is not extended or if the Bid Security is not replaced by the Service Provider [or the Selected Bidder/the Consortium] at least 15 (fifteen) days prior to such scheduled expiry date, the Authority shall be entitled to forfeit and appropriate the total amount of the Bid Security as Damages and terminate the Agreement in accordance with Clause 3.3.

Upon submission of the Performance Security in accordance with Clause 8.1.1, the Authority shall release the Bid Security to the Service Provider [or to the Selected Bidder/the Consortium].

8.1.3 Notwithstanding anything to the contrary contained in this Agreement, if the Performance Security is not submitted by the Service Provider within a period of 15 (fifteen) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Service Provider. Further, the Authority shall be entitled to terminate this Agreement in accordance with Clause 3.3.

8.2 Validity of Performance Security

8.2.1 The Performance Security shall remain in full force and effect from the date of its issuance until the expiration of sixty (60) Business Days following the Transfer Date.

8.2.2 If the Performance Security is scheduled to expire prior to the period specified in Clause 8.2.1, then, no less than sixty (60) Business Days prior to the scheduled expiry of the Performance Security, the Service Provider shall arrange for an extension or replacement of the Performance Security meeting the requirements of this Agreement. If the Service Provider fails to extend or replace the Performance Security within the specified time period, the Authority shall be entitled to encash and appropriate the full value of the Performance Security as Damages and to terminate this Agreement in accordance with Article 20.

8.3 Appropriation of Performance Security

- 8.3.1 Upon occurrence of a Service Provider Default or failure by the Service Provider to pay any amount due or to discharge any liability to the Authority in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages.
- 8.3.2 Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Service Provider shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 20. Provided that upon failure of the Service Provider to replenish the Performance Security in case of partial appropriation, the Authority shall also be entitled to encash and appropriate the remaining value of the Performance Security.
- 8.3.3 Upon replenishment of the Performance Security, whether by renewal or replacement, the Service Provider shall be entitled to an additional Cure Period of 30 (thirty) days for remedying the Service Provider Default or other failure that resulted in the encashment and appropriation of the Performance Security. If the Service Provider fails to cure the Service Provider Default or other failure within such 30 day period, the Authority shall be entitled to encash and appropriate the full value of the Performance Security as Damages, and to terminate this Agreement in accordance with Article 20.

ARTICLE 9
LICENSE RIGHTS

9.1 License

9.1.1 In consideration of the Service Provider's covenants and warranties set out in this Agreement, the Authority hereby grants to the Service Provider an exclusive License in respect of the Site for the District Level Facility and the CHCs (which is described, delineated and shown in **Schedule A** hereto) and the Existing Assets (that will be listed in the Asset Register) free of any Encumbrances, for the sole purpose of augmenting, developing, operating and maintaining the District Level Facility and CHCs and providing the Healthcare Services at the Healthcare Facilities in accordance with the terms of this Agreement for the duration of the Term (as may be extended), and for no other purpose whatsoever.

The Service Provider accepts the Site and the Existing Assets on an "as is, where is" basis and accepts that the Authority makes no warranty or guarantee as to the suitability, fitness for purpose or condition of the Site and the Existing Assets.

9.1.2 The Service Provider expressly agrees that the Licence granted to it shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Licence, upon the expiration or Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site or the installation of any New Assets at the Site by the Service Provider or its sub-licensees, the Licence in respect of the Site and the Existing Assets shall automatically terminate, without any further act of the Parties, upon the expiration or Termination of this Agreement.

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

9.2 Possession of the Site and Existing Assets

9.2.1 The Authority Representative and the Service Provider shall, on a mutually agreed date and time and in any event on or before 45 (forty five) days from the date of satisfaction of the Conditions Precedent by the Service Provider (unless waived by the Authority in accordance with Clause 3.2.2), inspect the Site and the Existing Assets in respect of each Healthcare Facility and prepare the Asset Register for such Healthcare Facility containing a detailed inventory of the Site, the land, buildings (including staff quarters), structures, road works, trees, any other immovable property on or attached to the Site, all other assets, equipment, machinery, materials, spare parts, consumables and any other moveable property located at or installed at the Site.

9.2.2 The Authority Representative shall, acting on behalf of the Authority, hand over vacant, peaceful and exclusive possession of the Site and the Existing Assets in respect of the Healthcare Facility to the Service Provider, free of any Encumbrances, after the inspection mentioned in Clause 9.2.1 above is completed.

Provided however that, the Authority shall not be required to hand over vacant, peaceful and exclusive possession of the staff quarters simultaneously with the handing over of the rest of the Site and Existing Assets. The Authority agrees that it shall hand over vacant, peaceful and exclusive possession of the staff quarters as and when they are vacated by the Authority's or DMH&FW's staff, and shall make best endeavour to hand over the staff quarters at the Site to the Service Provider within 1 (one) year from the COD.

- 9.2.3 The Parties agree that the signing of the Asset Register in respect of any Healthcare Facility, in two counterparts (each of which shall constitute an original), by the Authorised Representative of the Authority and a representative of the Service Provider shall be deemed to constitute evidence of: (i) the grant of the Licence to the Service Provider in respect of that Healthcare Facility in accordance with Article 9; and (ii) the handing over of vacant and peaceful possession of the Site and the Existing Assets to the Service Provider in respect of that Healthcare Facility in accordance with the terms of this Agreement.

Provided however that the inclusion of details regarding the staff quarters at any Healthcare Facility in and the signing of the Asset Register shall not be deemed to be a grant of the License to the Service Provider in respect of such staff quarters. The Service Provider agrees that it shall be granted the License in respect of the staff quarters only on and from the date(s) that physical possession is handed over by the Authority.

9.3 Access to the Site and Existing Assets

- 9.3.1 The Authority hereby grants to the Service Provider access to the Site and the Existing Assets for carrying out any surveys and investigations that the Service Provider may deem necessary prior to the Appointed Date, provided that such access shall be subject to: (i) applicable health, safety, environment and security requirements of the Authority; and (ii) any other reasonable restrictions imposed by the Authority or Government Instrumentality under Applicable Law.

The Service Provider expressly agrees and understands that the Authority shall have no liability whatsoever in respect of survey and investigations carried out or work undertaken by the Service Provider on or about the Site or the Existing Assets prior to the Appointed Date, in the event of a Termination or otherwise.

- 9.3.2 On and after the Appointed Date and during the subsistence of the Term, but subject to Clause 9.2.3, the Authority acknowledges the right of the Service Provider to:
- (a) enter upon, access and utilise the Site and the Existing Assets in accordance with the terms of this Agreement, in order to facilitate compliance with the terms of this Agreement;
 - (b) provide the Patients with such rights of use and access or rights of way on, over, through or across the areas of the Healthcare Facilities to avail of the Healthcare Services, subject to the terms of this Agreement and such reasonable rules of access that the Service Provider may create.

- 9.3.3 The Authority agrees that during the Term, it shall in no way interfere with, interrupt, impede or hinder the execution of the Development Works, the operation and maintenance of the Healthcare Facilities or provision of the Healthcare Services by the Service Provider at the Site or affect in any way the fulfilment of any of the obligations or the vesting of any rights or benefits of the Service Provider under this Agreement.

If the Authority's failure to comply with this Clause 9.3.3 prevents, impedes or delays the Service Provider from performing its obligations under this Agreement, the Service Provider shall be excused from its obligations under this Agreement to the extent of such prevention, impediment or delay, provided that the Service Provider has made all reasonable efforts to mitigate the effect of such prevention, impediment or delay.

9.4 Site to be free from Encumbrances

9.4.1 The Site and the Existing Assets shall be made available by the Authority to the Service Provider pursuant hereto free from all Encumbrances and occupations and without the Service Provider being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of the Site or the Existing Assets for the duration of the Term, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site and the Existing Assets shall not be deemed to be Encumbrances.

9.4.2 The Service Provider agrees, accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site and the Existing Assets.

9.5 Protection of Site from encroachments

On and from the Appointed Date and during the Term, the Service Provider shall protect the Site and the Existing Assets, including all improvements thereon or New Assets brought or installed thereat, from any and all occupations, encroachments, adverse possession or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Service Provider to place or create any Encumbrance over all or any part of the Site or the Existing Assets, or on any rights of the Service Provider therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

9.6 Access to the Authority and the Independent Expert

9.6.1 During the Development Period, the Authority shall have access to and use of the Site and the Healthcare Facilities for all purposes necessary to provide the Healthcare Services until the COD in order to ensure the continued provision of Healthcare Services to the Patients.

9.6.2 The Licence, right of way and right to the Site granted to the Service Provider hereunder shall always be subject to the right of access of the Authority and the Independent Expert, and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

9.6.3 The Service Provider agrees that it shall demarcate and set aside adequate space within the Site (i.e., at the District Level Facility and each of the CHCs) for the exclusive use of the Authority Representatives ("**Authority Area**") on and from the COD and at all times thereafter during the Term. The Parties agree that they shall identify, agree and demarcate such Authority Area in the Site layout included in **Schedule A**, as part of the Transition Management Plan, provided that the Authority Area shall not exceed 10% of the total carpet area of each Healthcare Facility.

ARTICLE 10

TRANSITIONAL ARRANGEMENTS

10.1 Obligations of the Parties relating to Transition of Healthcare Services

10.1.1 The Service Provider shall within 30 (thirty) days of the date of this Agreement, submit a management plan for consultation and finalization by the Parties, setting out the plan of the Parties regarding the manner in which they will manage the transition of the provision of Healthcare Services from the Authority (or the DMH&FW or other Government Instrumentality acting on its behalf) to the Service Provider (the “**Transition Management Plan**”).

Following is an indicative list of issues that the Parties may consider including in the Transition Management Plan:

- (a) sharing of information regarding the condition of various assets at the Healthcare Facilities in advance of the formal survey and creation of the Asset Register in accordance with Clause 9.2.1;
- (b) identification and demarcation of Authority Area within the Site in accordance with Clause 9.6.3;
- (c) required coordination measures for the simultaneous conduct of Development Works and the provision of Healthcare Services to Patients, to prevent or minimize interruption in Healthcare Services to Patients;
- (d) measures to be taken to maintain Patient satisfaction during transition and to minimize any negative Patient feedback;
- (e) the information/data to be handed over by the Authority (or Government Instrumentality providing the Healthcare Services) to the Service Provider before it commences provision of Healthcare Services on the COD, including but not limited to: contract management information in relation to Existing Assets such as outstanding defects liability obligations, outstanding warranties, spare part supply, consumables supply and maintenance obligations; existing Patient records; facility management records in relation to the operation and maintenance of the Site and Existing Assets; existing User Charges Policy; Standard Treatment Protocols; incidence of diseases and treatments, etc.;
- (f) plan for sharing of any best practices, problems/issues in operation and maintenance of the Healthcare Facilities or other adverse events relating to ongoing provision of the Healthcare Services;
- (g) briefing/training to be provided by the Authority (or other Government Instrumentality) to the Service Provider’s Personnel, if any;
- (h) hiring of the Personnel, including the Key Medical Personnel, and their presence at the Healthcare Facilities prior to COD;
- (i) nomination of representatives of both Parties who will be responsible for oversight of the transition and/or for resolving any operational problems or issues;

- (j) the Authority's plan for movement of its staff and personnel to other State Government owned facilities;
 - (k) the proposed schedule for completion of the Development Works, fulfilment of conditions precedent to COD and achievement of COD; and
 - (l) any other issues that the Parties consider relevant or necessary for achieving a smooth, efficient and safe transition of Healthcare Services.
- 10.1.2 The Parties agree that the Authority, acting directly or through another Government Instrumentality, shall continue to provide the Healthcare Services to Patients at the District Level Facility and the CHCs until the COD and meet its other obligations in relation to the transition of the Healthcare Services, in accordance with the Transition Management Plan.
- 10.1.3 The Service Provider undertakes that it will and will cause its Contractors to undertake the Development Works in accordance with the Transition Management Plan, so as to prevent any undue hindrance or impediment to the continued provision of Healthcare Services by or on behalf of the Authority or any undue inconvenience being caused to the Patients at the premises of the District Level Facility and the CHCs.
- 10.1.4 The Authority shall make best endeavours to ensure that its continued provision of the Healthcare Services during the Development Period will not unduly hinder or delay the Development Works being undertaken by the Service Provider or its Contractors.
- 10.1.5 The Service Provider shall co-operate with the Authority and other Government Instrumentalities in respect of the co-ordination of and proper interface between the Development Works to be undertaken by the Service Provider with the provision of Healthcare Services by or on behalf of the Authority, in order to ensure a smooth, efficient, safe and stable transition of Healthcare Services provision from the Authority to the Service Provider and with minimum disruptions to the provision of Healthcare Services during the Development Period.
- 10.1.6 The Parties agree to do all other things necessary to be done in compliance with the Transition Management Plan to ensure a smooth, efficient transition of the Healthcare Services.
- 10.1.7 The Service Provider shall ensure that all of its Personnel (other than the Key Medical Personnel) are hired at least 15 (fifteen) days and its Key Medical Personnel are hired at least 7 (seven) days, prior to the proposed COD. The Service Provider shall ensure that its Key Medical Personnel shall be present at the Healthcare Facilities for at least 7 (seven) days prior to the proposed COD and shall shadow and assist the staff of the Authority or other Government Instrumentality. Notwithstanding the foregoing, the Authority agrees that the Service Provider shall bear no risk in relation to the Healthcare Services that are provided to the Patients prior to the COD.
- 10.1.8 The Authority agrees that on and from the COD and during the subsistence of the Term, the Authority shall not and shall not permit any other Government Instrumentality or Government employees to provide any Healthcare Services at the Healthcare Facilities.

The Authority agrees that it shall or shall cause all persons hired by the State Government at the Healthcare Facilities to be transferred to other facilities owned or operated and maintained by the State Government and such transfer shall take effect no later than 15 (fifteen) days of the COD. For the avoidance of doubt, such staff shall

include all medical, para-medical and Class IV staff, whether they have been hired on employment or contract basis.

10.2 Maintenance and Management of District Level Facility and CHCs prior to COD

10.2.1 On and after the Appointed Date but prior to COD, the Service Provider shall be responsible for maintaining and managing the District Level Facility and the CHCs in accordance with the Transition Management Plan. Provided that the KPIs set out in **Schedule C** will not apply during the Development Period.

During such period, the Authority (or the DMH&FW or other Government Instrumentality acting on its behalf) shall make available its personnel and staff to assist the Service Provider in undertaking maintenance and management of the Healthcare Facilities.

10.2.2 The Service Provider may at any time after the Appointed Date but prior to the COD, require the Authority to remove any of the Existing Assets from the Site. The Authority shall as soon as reasonably possible remove such Existing Assets from the Site. On the date of physical removal from the Site, the Parties shall amend the Asset Register and such Existing Assets shall be removed from the list.

10.2.3 During the Development Period and thereafter during the Operation Period, the Service Provider shall have the right to assume all obligations, liabilities and rights of the Authority (or other Government Instrumentality) under any contracts that the Authority (or other Government Instrumentality) may have entered into in relation to the operation and maintenance of the Existing Assets, whether for the operation, rectification of defect, supply of spares or consumables or performance of maintenance services. Upon such assumption, the Service Provider shall be solely responsible for undertaking the necessary contract management under such contracts.

If the Service Provider chooses not to exercise its right above in respect of any such contract, the Authority shall have the right to terminate such contract in accordance with the terms thereof.

If the Service Provider exercises its right above, the Authority shall provide the Service Provider with all necessary assistance to give effect to such assumption of obligations, liabilities and rights, including (if necessary) procuring consent for and entering into (or causing the other Government Instrumentality to enter into) novation or assignment deeds in respect of such contracts.

The Service Provider agrees that once it has assumed such obligations, liabilities and rights under any such contract, any default of the contractor under such contract occurring after the Appointed Date shall be at the sole risk and cost of the Service Provider. Such third party contractor default shall not relieve the Service Provider from its performance obligations or discharge of its liabilities under this Agreement, including its obligation to achieve or exceed the baseline measures for the KPIs set out in **Schedule C**.

ARTICLE 11

DEVELOPMENT WORKS IN RESPECT OF HEALTHCARE FACILITIES

11.1 Obligations prior to commencement of Development Works

Prior to commencement of Development Works, the Service Provider shall:

- (a) submit to the Authority its detailed development methodology, quality assurance procedures, and the procurement time schedule for the completion of the Development Works in accordance with the terms of this Agreement;
- (b) appoint its representative having sufficient skill and expertise as the Service Provider's representative to supervise the completion of the Development Works and who shall be duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to the Development Works; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of Development Works under and in accordance with this Agreement and the Applicable Laws, including obtaining any Applicable Permits that may be required for the Development Works.

11.2 Development Works in respect of the Healthcare Facilities

11.2.1 On or after the Appointed Date, the Service Provider shall undertake development of the District Level Facility and CHCs and procure the MHVs and install the equipment in the MHVs, such that each of the Healthcare Facilities shall meet at a minimum the requirements set out at **Schedule B**.

The Service Provider shall be responsible for procuring all necessary personnel, construction equipment, goods, materials, technology, equipment and utilities (including electricity, water, telecommunications, sanitation and fuel) required for completion of the Development Works in accordance with Clause 11.2.2.

11.2.2 The Service Provider shall complete the Development Works in respect of the Healthcare Facilities at its own cost and risk, such that:

- (a) each of the Healthcare Facilities meets at a minimum the infrastructure, Personnel and equipment requirements set out at **Schedule B** and are in compliance with Applicable Laws and Applicable Permits;
- (b) the equipment and materials procured by the Service Provider in undertaking the Development Works are in good working condition and suitable for their intended use in the Healthcare Facilities, whether owned, leased or procured on a hire-purchase basis; and
- (c) the Healthcare Facilities are safe, reliable and fit for: (i) operation and maintenance during the entire Operation Period, subject only to fair wear and tear; and (ii) the provision of the Healthcare Services during the Operation Period, in accordance with the terms of this Agreement.

For the avoidance of doubt, any equipment, other asset or consumables that is in addition to or that is replacing the Existing Assets and that is required for the performance of the Service Provider's obligations under this Agreement (including the MHV and equipment to be installed therein, maintenance equipment, maintenance tools, spares parts, vehicles, IT equipment, office furniture and other equipment, materials and consumables) shall be provided by the Service Provider at its own cost and risk.

11.3 Commercial Operations Date

11.3.1 The earlier of the date on which the Completion Certificate or the Provisional Certificate has been issued by the Independent Expert or the Authority in accordance with Clause 12.4 or Clause 12.5, as the case may be, shall be deemed to be the commercial operations date of the Healthcare Facilities (the "**COD**").

11.3.2 Upon occurrence of the COD, the obligation of the Service Provider to provide the Healthcare Services to Patients shall commence and it shall be entitled to receive the Service Fee in accordance with Article 15. If the COD does not occur on the last day of the month, then the Service Provider shall be entitled to the pro-rata Service Fee for the month in which the COD occurs.

11.4 Timeline for Completion of the Development Works

11.4.1 The 90th (ninetieth day) from the Appointed Date shall be the scheduled date for completion of the Development Works in respect of the Healthcare Facilities (the "**SCOD**"). The Service Provider agrees and undertakes that it shall complete the Development Works and satisfy the Completion Conditions in respect of all the Healthcare Facilities on or before the SCOD.

11.4.2 If the Service Provider delays, for reasons other than Authority Default or Force Majeure, completion of the Development Works in respect of the Healthcare Facilities and/or the satisfaction of the Completion Conditions beyond the SCOD, then the following consequences shall follow:

- (a) The Service Provider acknowledges that the Authority shall suffer actual damages and the Service Provider shall: (i) be liable to pay Damages for each day of delay beyond the SCOD at the rate of Rs. 25,000 (Rupees twenty five thousand) per day (the "**Delay Damages**"); and (ii) subject to payment of Delay Damages, the SCOD will be extended on a day-for-day basis corresponding to the period of delay. The Service Provider shall be liable to pay the Delay Damages for the period of delay, but only until the earlier of COD or Termination under Clause 20.

The Authority shall be entitled to call upon the Service Provider to pay the Delay Damages; deduct the Delay Damages from any amounts due or to become due to the Service Provider; or to invoke the Performance Security to the extent of Delay Damages.

The payment or deduction of Delay Damages shall not relieve the Service Provider from its obligations to complete the Development Works, fulfil the Completion Conditions and achieve the COD in respect of the Healthcare Facilities, or from any of its other duties, obligations or responsibilities under this Agreement. The Service Provider shall use and continue to use its best endeavours to avoid or reduce further delay in achieving the COD.

- (b) Without prejudice to sub-Clause (a) above, if the period of delay exceeds 120 (one hundred and twenty) days beyond the original SCOD, then such delay shall be deemed to be a Service Provider Default and the Authority shall be entitled to terminate the Agreement in accordance with Article 20.

11.4.3 If the Service Provider delays completion of the Development Works in relation the Healthcare Facilities and/or satisfaction of the Completion Conditions beyond the SCOD due to an Authority Default or Force Majeure, then the SCOD shall be extended on a day-for-day basis corresponding to the period of delay caused by such events.

11.5 Completion Conditions

The Service Provider shall be responsible for fulfilling the following conditions as a condition precedent to the issuance of the Completion Certificate by the Independent Expert (collectively, the “**Completion Conditions**”) in respect of each Healthcare Facility on or before the SCOD:

- (a) submission to the Authority of at least 3 sets of “as built” drawings of such Healthcare Facility;
- (b) appointment and training of the Personnel, including the Key Medical Personnel, required to be hired for the operation, maintenance and management of such Healthcare Facility and for the provision of the Healthcare Services and making them available for provision of Healthcare Services for at least 1 week prior to the proposed COD;
- (c) procuring all consumables necessary for operation and maintenance of such Healthcare Facility and provision of Healthcare Services for at least 1 month after the COD, including the buffer stock of Authority Supplied Drugs required to be maintained in accordance with Clause 13.5.2;
- (d) obtaining all necessary Applicable Permits required for the operation and maintenance of such Healthcare Facility and for the provision of the Healthcare Services, including registration of the Healthcare Facilities under the Clinical Establishments (Registration and Regulation) Act, 2010, if applicable;
- (e) obtaining all necessary insurance covers that the Service Provider is required to obtain during the Operation Period in respect of such Healthcare Facility, in accordance with Article 18; and
- (f) submission and approval of a route plan for each MHV that is tagged to such Healthcare Facility, in accordance with Clause 13.4.4.

ARTICLE 12

MONITORING OF DEVELOPMENT WORKS AND COMPLETION

12.1 Appointment of Independent Expert

12.1.1 The Authority shall notify to the Service Provider the name and other necessary particulars of a qualified independent entity appointed by the Authority, at its own cost, (the “**Independent Expert**”). The Authority shall satisfy itself that the Independent Expert appointed by it has the experience and necessary qualifications to review the design, augmentation, development, equipping, operation and maintenance of healthcare facilities similar to the Healthcare Facilities and to supervise the provision of clinical/medical services similar in scope to the Healthcare Services.

The Independent Expert appointed by the Authority shall be entitled to monitor and inspect the Healthcare Facilities and the performance of the Service Provider’s obligations, on behalf of the Authority, and in accordance with the provisions of this Agreement.

12.1.2 The role of the Independent Expert shall be as provided in this Agreement or as may be notified by the Authority to the Service Provider from time to time; provided however that the Independent Expert shall have no authority, whether express or implied, to amend, vary or curtail the rights and obligations of the Parties under this Agreement.

12.1.3 The Independent Expert shall be required to exercise its duties and functions under this Agreement:

- (a) as a fiduciary of the Parties;
- (b) independently, reasonably, fairly and expeditiously; and
- (c) by exercising such level of care and skill as is required from a professional or a consultant acting in accordance with Good Industry Practice,

to facilitate the smooth completion of the Development Works and the timely monitoring of the performance of the Service Provider’s obligations during the Operation Period.

12.1.4 Notwithstanding any inspection, approval, review, witnessing or instructions given by the Authority or the Independent Expert acting on behalf of the Authority or a failure to do so, the Service Provider shall remain solely responsible for the completion of the Development Works and for the performance of its obligations under this Agreement.

12.1.5 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after the appointment of another Independent Expert in accordance with this Clause 12.1.

12.1.6 If the Service Provider acting reasonably, is satisfied that the Independent Expert is not discharging its duties and functions in the manner specified in Clause 12.1.3, it may make a written representation to the Authority seeking a replacement of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Service Provider and the Independent Expert for an amicable resolution. In the event any difference or disagreement between the Authority and the Service Provider remains unresolved, the Dispute shall be settled in accordance with

the Dispute Resolution Procedure. If the appointment of the Independent Expert is terminated, the Authority shall forthwith appoint another Independent Expert in accordance with this Clause 12.1.

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

12.2 Monitoring of Completion Conditions

The Service Provider shall notify the Independent Expert and the Authority of the fulfilment of the Completion Conditions in respect of each Healthcare Facility promptly and provide documentary evidence of such fulfilment.

12.3 Monitoring and Inspection of Development Works

- 12.3.1 During the Development Period, the Independent Expert shall have the right to monitor and inspect the Healthcare Facilities as and when required and on any such inspection the Independent Expert shall issue a report, in writing, to the Service Provider and the Authority (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project. The Service Provider shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Service Provider of its obligations and liabilities hereunder in any manner whatsoever.

- 12.3.2 Upon the Service Provider being satisfied that any Healthcare Facility has been completed such that the Service Provider can commence operations and maintenance of the Healthcare Facility in a safe and reliable manner for the provision of the Healthcare Services and that it has satisfied the Completion Conditions in respect of such Healthcare Facility, the Service Provider shall issue a notice to the Independent Expert and the Authority. Such notice shall be issued at least 15 days prior to the proposed COD and shall require the Independent Expert and the Authority or their representatives to be present at the Site of such Healthcare Facility on the specified date(s), to inspect such Healthcare Facility and to witness the tests and commissioning of such Healthcare Facility conducted by the Service Provider. The purpose of such inspection and witnessing of tests and commissioning shall be to determine if such Healthcare Facility meets the requirements of Clause 11.2.2.

- 12.3.3 The Independent Expert and the Authority shall have the right to confirm their/its availability for conducting the inspection and witnessing the tests and commissioning on the date(s) specified in the Service Provider’s notice. If the Independent Expert and/or the Authority are unable to conduct the inspection or witness the testing and commissioning on the date(s) specified in the Service Provider’s notice, they/it shall inform the Service Provider at least 5 days prior to the date(s) specified in the Service Provider’s notice.

- 12.3.4 Subject to the Independent Expert and the Authority confirming their availability to attend as per Clause 12.3.3, the Service Provider shall, on the date(s) specified in its notice, make arrangements for the Independent Expert and the Authority to conduct the inspection and to witness the testing and commissioning of the Healthcare Facility.

- 12.3.5 The Service Provider shall undertake the testing and commissioning of the Healthcare Facility in the presence of the Independent Expert and/or the Authority, in accordance with Good Industry Practice for quality assurance. The Independent Expert or the

Authority may require the Service Provider to carry out or cause to be carried out additional inspection or tests, in accordance with Good Industry Practice, for determining the compliance of the Healthcare Facility with the requirements of Clause 11.2.2. The Service Provider shall not be entitled to any extension of time or compensation for any costs incurred in carrying out such additional inspections or tests.

The Authority shall bear all costs of the Independent Expert's attendance and inspection of tests and commissioning conducted by the Service Provider.

12.3.6 If the Independent Expert or the Authority is not reasonably satisfied with the results of any tests conducted under this Clause 12.3 or if the Independent Expert or the Authority reasonably anticipates or determines any defects or deficiencies in the Development Works or in the Healthcare Facilities, the Service Provider shall carry out remedial measures and furnish a report to the Independent Expert and the Authority in this behalf. The Authority shall require the Service Provider to carry out or cause to be carried out tests to determine that such remedial measures have brought the Development Works and the Healthcare Facilities into compliance with Clause 11.2.2. The procedure set forth in this Clause 12.3.3 shall be repeated until such time that the Independent Expert verifies that the Development Works and the Healthcare Facilities conform with Clause 11.2.2.

12.3.7 Notwithstanding the instructions by or supervision of the conduct of the inspection and witnessing of tests and commissioning by the Independent Expert and/or the Authority, the Service Provider shall bear all risk, loss and liability for compliance with the requirements of the Agreement and for the adequacy, safety and fitness of purpose of each Healthcare Facility for the performance of the Services.

12.4 Completion Certificate

12.4.1 Upon completion of Development Works for all the Healthcare Facilities in compliance with the requirements set out at Clause 11.2.2 and the Independent Expert determining that the tests in respect of all of the Healthcare Facilities are successful and the Independent Expert satisfying itself that the Service Provider has complied with all of the Completion Conditions, the Independent Expert shall forthwith issue to the Service Provider a completion certificate substantially in the form set forth in **Schedule E** (the "**Completion Certificate**").

12.4.2 If the Independent Expert has not been appointed by the time of declaration of completion of the Development Works for any of the Healthcare Facilities by the Service Provider, then it shall be sufficient if the Authority conducts the inspection of the tests and commissioning of the Healthcare Facilities, satisfies itself regarding the compliance with the Completion Conditions and issues the Completion Certificate in accordance with this Clause 12.4.

12.5 Provisional Certificate

12.5.1 If the Service Provider is satisfied that: (i) any Healthcare Facility is complete such that the Service Provider can commence operations and maintenance of the Healthcare Facility in a safe and reliable manner for the provision of the Healthcare Services; and (ii) it has satisfied the Completion Conditions in respect of such Healthcare Facility, **but for** the installation and operationalization of the CT Scan, X-Ray or other radiology equipment at such Healthcare Facility, which are outstanding solely due to delays in obtaining the relevant Applicable Permits for reasons beyond the control of the Service Provider; then the Service Provider may issue a notice for and conduct testing and commissioning in accordance with Clause 12.3 in respect of such Healthcare Facility

and request for the issuance of a Provisional Certificate in accordance with this Clause 12.5.

12.5.2 Upon:

- (a) completion of the Development Works for all the Healthcare Facilities in compliance with the requirements set out at Clause 11.2.2, with the **only** exception of the equipment listed in Clause 12.5.1;
- (b) the Independent Expert determining that the tests in respect of all of the Healthcare Facilities, with the **only** exception of the equipment listed in Clause 12.5.1, are successful; and
- (c) the Independent Expert satisfying itself that the Service Provider has complied with all the Completion Conditions, including the requirement for hiring of the radiologists for the Healthcare Facilities in accordance with Clause 11.5(b),

the Independent Expert shall forthwith issue to the Service Provider, a provisional certificate of completion substantially in the form set forth in **Schedule E** (the “**Provisional Certificate**”).

Provided that, the Independent Expert shall not issue the Provisional Certificate if: (i) any part of the Healthcare Facilities other than the equipment listed in Clause 12.5.1 is incomplete or not capable of being safely and reliably operated for any reason whatsoever; or (ii) the delay in procurement of Applicable Permits for the equipment listed in Clause 12.5.1 is attributable to the Service Provider.

12.5.3 The Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Service Provider (the “**Punch List**”), provided that such Punch List shall be limited to the equipment listed in Clause 12.5.1. All items in the Punch List shall be completed by the Service Provider within 90 (ninety) days of the COD.

12.5.4 If the Service Provider delays completion of the Punch List items beyond such 90 (ninety) day period, other than for reasons solely attributable to the Authority or due to Force Majeure, the Service Provider shall be liable to pay Damages for each day of delay beyond such 90 (ninety) day period until all Punch List items are completed, at the rate of Rs. 10,000 (Rupees ten thousand) per day (the “**Punch List Damages**”). Subject to payment of such Punch List Damages, the Service Provider shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items.

The Authority shall be entitled to call upon the Service Provider to pay the Punch List Damages; deduct the Punch List Damages from any amounts due or to become due to the Service Provider; or to invoke the Performance Security to the extent of Punch List Damages.

The Parties agree that during the 90 (ninety) day period and subject to payment of the Punch List Damages, during the further 120 (one hundred and twenty) day period, the Authority shall not be entitled to make any deductions from the monthly Volume Adjusted Service Fee on account of the Service Provider's failure to achieve the baseline KPI measures for the Availability KPIs relating to the Healthcare Services affected by delay in completion of the Punch List items.

- 12.5.5 If the Service Provider fails to complete all the Punch List items within the period specified in Clause 12.5.4 for any reason, other than Force Majeure or reasons solely attributable to the Authority, then on and from the date of completion of the period specified in Clause 12.5.4, the Authority shall be entitled to make deductions from the monthly Volume Adjusted Service Fee on account of the Service Provider's failure to achieve the baseline KPI measures for the Availability KPIs relating to the Healthcare Services affected by the delay in completion of the Punch List items.
- 12.5.6 Upon completion of the Punch List items, in compliance with the terms of this Agreement and the Independent Expert determining that the tests in respect of the Punch List items are successful and the Independent Expert satisfying itself that the Service Provider has complied with all of the Completion Conditions, the Independent Expert shall forthwith issue to the Service Provider the Completion Certificate.

ARTICLE 13
OPERATION PERIOD OBLIGATIONS

13.1 O&M obligations of the Service Provider

During the Operation Period, the Service Provider shall at its own cost and risk, operate and maintain the Healthcare Facilities in accordance with this Agreement either by itself, or subject to Clause 4.4 through a Contractor, in good working condition, normal wear and tear excepted, and if required, modify, repair or otherwise make improvements to the Healthcare Facilities, to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and to conform with Good Industry Practice. The obligations of the Service Provider hereunder shall include:

- (a) permitting safe, smooth and uninterrupted treatment and care of Patients during normal operating conditions;
- (b) making the Healthcare Facilities available for the Patients in accordance with Clause 13.14;
- (c) instituting standards and processes that comply with the service quality requirements set out in **Schedule F**;
- (d) achieving or exceeding the KPI baseline measures in respect of the KPIs set out in **Schedule C**;
- (e) minimising disruptions to the provision of Healthcare Services to Patients in the event of any Emergency and providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (f) carrying out periodic preventive maintenance of the Healthcare Facilities;
- (g) undertaking routine maintenance, including prompt repairs of the Healthcare Facilities, their structures and equipment;
- (h) undertaking major maintenance such as repair or replacement of equipment, repairs to structures, and repairs and refurbishment of the Healthcare Facilities, as required from time to time;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Healthcare Facilities;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, Personnel, Government Instrumentalities, media and other agencies;
- (k) maintaining punctuality and reliability in operating the Healthcare Facilities and providing the Healthcare Services; and
- (l) maintaining a high standard of cleanliness and hygiene at the Healthcare Facilities.

13.2 Liability for Defects in Healthcare Facilities

13.2.1 The Service Provider agrees that on and after the Appointed Date and during the subsistence of the Term, the Service Provider shall be solely responsible for rectifying

any defects or deficiencies that it detects in the Healthcare Facilities, the Site, the Existing Assets or the New Assets, irrespective of whether such defect has arisen: (a) from the design, construction or operation or maintenance thereof; or (b) due to an event or cause that occurred prior to the Appointed Date.

- 13.2.2 During the period that remedial actions are being taken by the Service Provider, the Service Provider shall not be relieved from its performance obligations under this Agreement, including the obligation to achieve or exceed the baseline KPI measures for the KPIs set out at **Schedule C**. The Service Provider shall be subject to any deductions that may apply for its failure to achieve the KPIs set out at **Schedule C** during such period.

13.3 Waste Management Obligations

The Service Provider shall remove promptly from the Site all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste (including, without limitation, biomedical waste), safely dispose off of all such waste or hazardous materials and keep the Healthcare Facilities in a clean, tidy and orderly condition, and in full compliance with the Applicable Laws, Applicable Permits, Good Industry Practice and the Environmental and Social Management Plan.

For the avoidance of doubt, it is agreed that the bio-medical and other waste material shall be carried to and safely disposed off in accordance with the Bio-Medical Waste (Management and Handling) Rules, 1998, any other applicable environmental laws or regulations that may be issued from time to time and the Environmental and Social Management Plan.

13.4 Safety Requirements

- 13.4.1 The Service Provider shall, at its own expense, comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Patients, visitors and Personnel. In particular, the Service Provider shall develop, implement and administer a safety programme for providing a safe environment on or about the Healthcare Facilities.
- 13.4.2 The Service Provider shall analyse accident or adverse incident reports periodically and take reasonable precautions for the prevention of accidents or adverse incidents at the Healthcare Facilities in accordance with Applicable Laws and Good Industry Practice. The Service Provider shall be responsible for reporting all accidents or other adverse incidents at the Healthcare Facilities to the Authority on a real-time basis.
- 13.4.3 The Service Provider shall be responsible for activating a response as soon as possible after the occurrence of an accident or adverse incident, taking into account the seriousness and complexity of the accident or adverse incident, in accordance with Good Industry Practice and all Applicable Laws.
- 13.4.4 If during the Operation Period there exists, in the reasonable opinion of the Service Provider, an Emergency which warrants the closing to the Patients of the whole or any part of any Healthcare Facility, the Service Provider shall consult with the Authority and, unless objected to by the Authority, shall close the whole or part of such Healthcare Facility to Patients for so long as such Emergency and the consequences of such Emergency warrant.

The Service Provider shall re-open the Healthcare Facility or part thereof that is closed due to an Emergency as quickly as practicable after the Emergency or related circumstances cease to exist.

13.5 Procurement of Drugs and Consumables

13.5.1 At all times during the Term, the Service Provider shall procure and maintain all drugs and consumables, including spare parts, maintenance equipment required for operating and maintaining the Healthcare Facilities and providing the Healthcare Service, at its own cost, with the exception of drugs and consumables which are to be supplied by the Authority (“**Authority Supplies**”) as indicated in **Schedule G**.

13.5.2 The Service Provider shall submit to the Authority, with a copy to the DMH&FW a requisition for procurement of the Authority Supplies (“**Medicine Requisition**”) on a rolling basis at least 3 months in advance, starting from the COD. On receipt of the Medicine Requisition, the Authority shall use its best efforts to procure and provide to the Service Provider, the Authority Supplies at least 45 days prior to the date for which the requisition is submitted.

The Service Provider shall be required to procure and maintain a buffer stock of the Authority Supplies which shall equal its requirements for 1 (one) month of provision of Healthcare Services at all times, at its own cost and risk.

If the Authority delays the provision of the Authority Supplies specified in the Medicine Requisition to the Service Provider and the Service Provider’s buffer stock falls, then the Service Provider shall have the right to procure such Authority Supplies either from generic manufacturers or under the Authority’s supply contract for such drugs and consumables. In either case, the Authority shall reimburse the Service Provider for the procurement and purchase of such drugs and consumables at the rate fixed by the Authority for purchase of such drugs and consumables or at the actual rate of procurement of such drugs and consumables, whichever is lower. For the avoidance of doubt, such reimbursement shall be in addition to the Service Fee payable to the Service Provider.

Provided however, any non-availability or reduction in the Authority Supplies due to a delay by the Authority or DMH&FW in providing the Authority Supplies, shall not result in the Service Provider being relieved of its obligations under this Agreement, whether by extension of time or relief of its obligation to achieve at a minimum the baseline measures for the KPIs.

13.5.3 The Service Provider shall not be required to purchase any implants. To the extent that such implants are covered under the list of Authority Supplies, the Authority shall supply the required implants in accordance with Clause 13.5.2 above. If the implants are not covered under the said list, then the Authority agrees that:

- (a) to the extent that the Patient and the required treatment are covered by the Health Insurance Scheme, the Authority Representative shall ensure that the necessary implant is provided to the Service Provider in a timely manner; and
- (b) to the extent that the Patient or the required treatment is not covered by the Health Insurance Scheme, the Patient will be required to procure such implants itself.

13.6 Scope of Healthcare Services

- 13.6.1 The Service Provider agrees to provide at a minimum the Healthcare Services that are listed at **Schedule B** in respect of each Healthcare Facility.
- 13.6.2 Without prejudice to the Service Provider's obligation under Clause 13.6.1 above, the Service Provider agrees that if a Patient visiting a Healthcare Facility requires Healthcare Services that are not listed at **Schedule B**, but that falls within the level of care which is within the competence of the relevant Healthcare Facility, then the Service Provider shall ensure that its Key Medical Personnel use their best efforts to provide such Healthcare Services instead of referring such Patient to another Healthcare Facility or to a third party medical or clinical establishment.

13.7 Responsibility for Provision of Healthcare Services

- 13.7.1 The Service Provider shall be solely and wholly responsible for the provision of the Healthcare Services to the Patients, including the quantity and appropriateness of care and the Healthcare Services.

The Service Provider acknowledges and confirms that the monitoring of the Healthcare Services, including the monitoring of its achievement of the KPIs set out in **Schedule C**, are solely for the purpose of determining whether the Service Provider is meeting the minimum infrastructure and resource availability requirements and the service quality requirements set out in **Schedule F**. Accordingly, any determination of the Service Provider's achievement of the KPIs set out in **Schedule C** shall in no way affect the decision of the Service Provider to provide appropriate Healthcare Services to the Patients.

- 13.7.2 The Service Provider shall ensure that its Personnel only provide Healthcare Services that are Medically Necessary. The Service Provider shall not provide any Healthcare Services or prescribe any procedures that are not Medically Necessary. The Service Provider agrees to provide the Authority with all the information, records and data necessary for the Authority or the Independent Expert to conduct a clinical audit.

13.8 Access to Healthcare Services

Once the COD has occurred in relation to the Healthcare Facilities, the Service Provider shall:

- (a) manage and operate the Healthcare Facilities on a common user basis and provide non-discriminatory Healthcare Services to all Patients that visit the Healthcare Facilities in accordance with the provisions of this Agreement;
- (b) ensure that Patients are treated with due courtesy and consideration and provided with ready access to the Healthcare Services and information;
- (c) not restrict Patients' access to the Healthcare Facilities or the Healthcare Services;
- (d) not adopt any unfair or discriminatory practice against any Patient;
- (e) at all times maintain Patient confidentiality, making an exception only in relation to its data reporting and management obligations under this Agreement for the provision of data or information to the Authority, the Independent Expert or any other duly authorized third party; or

- (f) stop or suspend the provision of the Healthcare Services, in whole or part, unless: (i) otherwise provided by this Agreement; or (ii) instructed by the Authority in cases of Emergency or in compliance with Applicable Laws.

13.9 Patient Charter

- 13.9.1 The Service Provider shall prominently publish and implement a charter articulating the rights and expectations of Patients, both in Hindi and English (the “**Patient Charter**”). The Service Provider shall at all times be accountable and liable to the Patients in accordance with the provisions of the Patient Charter and Applicable Laws.
- 13.9.2 In addition to the Patient Charter, the Service Provider shall ensure that details pertaining to the availability of Healthcare Services, including availability timings of specialists, are displayed prominently in English and Hindi at the reception / Patient registration desk of the Healthcare Facilities.

13.10 Standard Treatment Protocols

- 13.10.1 The Service Provider shall ensure that its Personnel comply with the Standard Treatment Protocol issued by the State Government or the Government of India under the Clinical Establishments (Registration & Regulation) Act, 2010 (on and from the date of applicability of that Act to clinical establishments in the State) and as set out in **Schedule N**.
- 13.10.2 The Parties agree that in any given case of a Patient at a Healthcare Facility, the Service Provider may modify or deviate from the Standard Treatment Protocols if deemed necessary. Provided that the Service Provider shall record detailed reasons in writing in such Patients medical records for such deviation and such records shall be submitted to the Authority as a part of the report submitted pursuant to Clause 13.10.3.
- 13.10.3 The Service Provider shall keep a record of all cases in which it has deviated from the Standard Treatment Protocols and shall submit a monthly report of all such deviations to the Authority in the format specified in **Schedule H**.
- 13.10.4 If the Service Provider is of the view that the Standard Treatment Protocols require amendments, then it shall be permitted to make changes to the Standard Treatment Protocols that will be applicable to Healthcare Services provided at the Healthcare Facilities only if such changes are made in consultation with the Authority Representative and subject to the prior written approval of the DMH&FW.

13.11 Prescription of Drugs

- 13.11.1 The Service Provider recognizes that it and its Personnel are under ethical and professional responsibility to prescribe drugs and other supplies rationally and only if Medically Necessary, in compliance with the Standard Treatment Protocols and any other code of conduct applicable to it or them.
- 13.11.2 The Service Provider agrees that it shall not charge Patients for the drugs and consumables covered under the list of drugs and consumables to be supplied by the Authority.

13.12 Emergency Care

13.12.1 The Service Provider shall ensure that emergency care is provided as required to any Patient that is admitted to any Healthcare Facility. The Service Provider shall provide all the Healthcare Services required by such Patient, if the necessary level of care is required to be provided by it under **Schedule F**.

13.12.2 If the Healthcare Facility does not have the capacity to provide the necessary level of care, the Service Provider shall ensure that the condition of any Patient requiring emergency care is stabilized, i.e., treatment is provided so as to stabilize the condition of such Patient and to assure with reasonable probability that there will be no deterioration in the medical condition of the Patient either due to or during transport of the Patient to another healthcare facility or clinical establishment capable of providing the level of care required.

13.12.3 The Service Provider shall, at its own cost, ensure the availability of round-the-clock ambulance services for transporting Patients that have received emergency care and been stabilized from any of the Healthcare Facilities to any other healthcare facility situated in any other adjacent district.

13.13 Obligations relating to Medico-Legal Cases

13.13.1 The Service Provider shall ensure that its Personnel shall provide emergency care to all Patients, including any Patients likely to be involved in any medico legal case. Such emergency care shall be provided in accordance with Applicable Laws, under the supervision of the Authority Representative. Further, the Service Provider shall be responsible for following any prescribed procedures for dealing with such medico-legal cases.

13.13.2 The Service Provider shall be responsible for submitting a report to the Authority Representative within 24 hours of providing emergency care to any Patient likely to be involved or involved in a medico legal case.

13.13.3 The Service Provider is further required to comply with all procedures prescribed in the guidelines of the State Government and Applicable Laws in relation to medico-legal cases.

13.14 Availability of the Healthcare Facilities and Healthcare Services

13.14.1 The Service Provider shall at all times procure that:

- (a) the hours of availability of all Healthcare Services provided by the District Level Facility and the CHCs conform to the provisions of **Schedule F** and are posted on the website and displayed prominently in the District Level Facility and CHCs;
- (b) the District Level Facility and the CHCs are operational 24 (twenty four) hours a day, seven days a week throughout each year; and
- (c) the Healthcare Services relating to trauma and emergency care are available at the District Level Facility and each CHC for 24 (twenty four) hours a day, seven days a week throughout each year; and
- (d) the Healthcare Services provided to OPD Patients are available for at least 6 hours per day (from 8:00 am to 2:00 pm during the months of April to

September and from 9:00 am to 3:00 pm during the months of October to March), at each CHC and the District Level Facility, on all working days of each year.

13.14.2 The Service Provider shall at all times procure that each MHV operated by it conducts medical camps for the minimum number of days as specified below in each month during the year in accordance with the Route Plan, and that each such camp lasts for at least 5 hours per day:

- (a) 20 days in months of January, February, July, August and September; and
- (b) 23 days in months of March, April, May, June, October, November and December.

If any MHV is unable to travel to specific location(s) due to route disruption owing to reasons outside the control of the Service Provider, the Service Provider shall, on a best effort basis, modify the Route Plan and conduct medical camps in other areas.

13.14.3 In addition to the requirements of Clause 13.14.1 and Clause 13.14.2, the Service Provider shall at all times procure that it achieves, at a minimum, the baseline KPI measure for each Availability KPI set out in **Schedule C**.

13.14.4 The Service Provider shall submit to the Authority a draft route plan for the deployment of each MHV in Tehri-Garhwal district within 15 (fifteen) days of the Appointed Date. In preparing such draft route plan, the Service Provider shall take the following factors into account: the minimum number of camps to be conducted in accordance with Clause 13.4.2; each MHV shall serve at least 2 CHCs in the district; the area to be covered in the district; the road connectivity; locations at which medical camps can be conveniently conducted; population dispersal and gender ratio; age wise distribution of the district population; epidemiological profile; and any other relevant factor. The Authority shall consider the draft route plan and provide its comments within 30 (thirty) days of receipt. Thereafter, the Service Provider shall incorporate the Authority's comments and submit the final route plan (the "**Route Plan**") to the Authority within 5 days of receipt of the Authority's comments. Provided that the Route Plan may be revised from time to time as may be mutually agreed between the Parties. The Service Provider agrees to ensure that each MHV owned and operated by it is present at each location mentioned in the Route Plan and conducts the medical camp at that location in accordance with Clause 13.14.

The Service Provider shall further undertake to widely publicize (through various media) the Route Plan for the district, along with the dates and time when the MHV will be present at each location, in advance. If, for any reason, the Service Provider is unable to dispatch the MHV to any location on the specified date and time or if it proposes to make any amendments to the Route Plan with the prior approval of the Authority, it shall use its best efforts to notify the population of that location through the closest Gram Panchayat offices by giving at least 48 hours' advance written notice.

13.14.5 If the Service Provider suffers or anticipates any disruption in the provision of Healthcare Services at any of the Healthcare Facilities, the Service Provider shall provide the Authority and the Patients with notice of such proposed disruption as soon as possible and in any event within 24 hours of such disruption occurring. The Service Provider shall take all measures to minimize the adverse consequences of such disruption to the provision of Healthcare Services to Patients.

13.14.6 The Service Provider shall make available the timetable for the provision of the Healthcare Services at a prominent place within the premises of each Healthcare Facility.

13.15 Other Key Performance Indicators

13.15.1 The Service Provider shall at all times procure that the Healthcare Facilities and the Healthcare Services provided by it achieve, achieve at a minimum, the baseline KPI measures for each Performance KPI that is set forth in **Schedule C**.

13.15.2 The Service Provider shall not be considered in breach of its obligations under this Agreement during the Operation Period, if any part of the Healthcare Facilities are not available to Patients or if the Healthcare Services are not provided in accordance with this Agreement 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 Healthcare Facilities or in an Emergency, except when unsafe conditions or the Emergency occurred because of failure of the Service Provider to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Healthcare Facilities.

Notwithstanding the above, the Service Provider shall keep all unaffected parts of the Healthcare Facilities in running condition and available and provide the Healthcare Services to Patients, provided that such Healthcare Services can be provided safely.

13.16 Medical Records

13.16.1 The Service Provider shall maintain and cause its Personnel to maintain full and adequate Medical Records for each Patient in compliance with the guidelines issued by the State Government. The Service Provider shall permit the Authority to inspect and audit (according to the audit provisions in Clause 14.4) for purposes related to the measurement of the Service Provider's achievement of the KPIs.

13.16.2 The Service Provider shall maintain and shall not destroy all Medical Records for a minimum period of 2 years following the date of last Healthcare Service to the Patient or until the expiry of this Agreement, whichever is later.

13.17 NABH Accreditation

The Service Provider shall have the right to obtain the NABH entry level certification/accreditation or higher, in respect of the District Level Facility and each CHC. Once such accreditation has been obtained, the Service Provider shall ensure that it maintains such accreditation for the remainder of the Term.

For the avoidance of doubt, the Service Provider may choose to undertake necessary structural changes required for obtaining NABH accreditation at its own cost and risk, without seeking or being entitled to any additional Service Fee or any adjustment to or modification of the Base Service Fee, except for the volume adjustments and the additions made on account of achieving the Performance KPI relating to the NABH accreditation in accordance with Article 15.

13.18 Health Programmes

13.18.1 The Service Provider shall and shall cause its Personnel to provide all the Healthcare Services required to be provided to Patients under the Health Programmes, at its own cost and risk, at the Healthcare Facilities without seeking or being entitled to any additional Service Fee or any adjustment to or modification of the Base Service Fee. Further, the Service Provider shall submit such reports in such formats as the Authority Representative may require from it, in relation to the Healthcare Services provided by it at the Healthcare Facilities.

13.18.2 Without prejudice to the foregoing, the Authority acknowledges that the Service Provider shall not be responsible for the promotion, field work, administration or funding of the Health Programmes, which shall be the remit of the Authority Representative.

13.18.3 In the event any funds are received by the Authority or the Authority Representative under the Health Programmes, for payment to the Patients or any third parties such as ASHA workers, then the Authority Representative shall ensure that such payment is made to such Patients or third parties and the Service Provider shall not have any obligation to make payment to such Patients or third parties.

The Authority agrees that if any other non-monetary benefits, such as drug supplies, are available for the Healthcare Facilities under the Health Programmes, then the Authority Representative shall ensure provision of such benefits to the Service Provider for its exclusive use for provision of Healthcare Services; provided that the Authority shall be entitled to retain all monetary benefits or grants available for the Healthcare Facilities under the Health Programmes; except for family planning incentives, which shall be provided to the employees of the Service Provider.

13.19 Implementing the Health Insurance Scheme

13.19.1 The Service Provider acknowledges and confirms that the State Government, either through the Authority or another Government Instrumentality, is seeking to implement the Health Insurance Scheme in the State of Uttarakhand. However, the Service Provider further acknowledges and confirms that:

- (a) the Authority makes no representation, warranty or undertaking that the Health Insurance Scheme will continue, either in its current form or subject to amendments for the entire Term; and
- (b) the Authority provides no certainty that any or all of the Healthcare Facilities shall be empanelled by the insurer under the Health Insurance Scheme.

13.19.2 The Service Provider undertakes and agrees to ensure that:

- (a) all the Healthcare Facilities shall be promptly empanelled under any Health Insurance Scheme that is implemented in the State, provided that they meet the empanelment requirements specified in the Health Insurance Scheme, and that such empanelment shall continue at all times during the subsistence of such Health Insurance Scheme;
- (b) it shall provide covered Healthcare Services to all eligible beneficiaries that are enrolled under such Health Insurance Scheme on a cashless basis, i.e.,

without claiming or collecting any User Charges from such beneficiaries, subject to the available limits of insurance cover for such beneficiaries;

- (c) the Healthcare Services are provided to all such eligible beneficiaries in accordance with this Agreement and the terms of the Health Insurance Scheme;
- (d) all necessary hardware and software or other IT equipment, required for making claims and providing cashless access services to eligible beneficiaries under such Health Insurance Scheme, is installed, operated and maintained in good working condition at the Healthcare Facilities;
- (e) it raises claims on the insurer appointed under such Health Insurance Scheme through the electronic transaction management software provided by the insurer, for covered Healthcare Services provided to eligible beneficiaries, in accordance with the procedure set out in the Health Insurance Scheme or as prescribed by the insurer; and
- (f) if the Service Provider is aggrieved regarding any denial of claim or delay in claim payment, it shall take such necessary steps to have such grievance redressed in accordance with the terms of the Health Insurance Scheme.

13.19.3 The Service Provider expressly agrees that all claim payments made by the insurer in relation to the covered Healthcare Services provided to eligible beneficiaries at the Healthcare Facilities under the Health Insurance Scheme shall be deposited into such account as may be instructed by the Authority. In consideration of providing covered Healthcare Services to eligible beneficiaries, the Authority shall pay the Service Provider the Health Insurance Incentive in the manner set out at Clause 15.2. Other than the Health Insurance Incentive, the Service Provider shall not be entitled to any additional Service Fee or any change or modification to the Base Service Fee.

13.19.4 The Service Provider shall not be required to make any payments to the Patients, in relation to any amounts that empanelled hospitals are required to pay in cash to beneficiaries under the Health Insurance Scheme. To the extent that such cash payments have to be made to Patients that are beneficiaries under the Health Insurance Scheme, the Authority shall be responsible for making such payments to the Patients. However, the Service Provider shall be required to provide the Authority or the Authority Representative with necessary Patient information and the amount to be paid to such Patient in relation to the benefits utilized under the Health Insurance Scheme.

13.19.5 The Service Provider shall procure that its Personnel shall mandatorily swipe the smart card issued to each beneficiary or other card that forms the basis of insurance under the Health Insurance Scheme at the time of use of Healthcare Facilities or registration of Patients, irrespective of whether or not the proposed Healthcare Services are covered under the Health Insurance Scheme.

13.20 Health Promotion Activities

In consultation with the Authority and the DMH&FW, the Service Provider shall plan for and undertake health promotion activities from time to time, including but not limited to health camps, health screening camps, etc. The Service Provider shall undertake such health promotion activities at its own cost and risk, without seeking or being entitled to any additional Service Fee or any adjustment to or modification of the Base Service Fee.

13.21 Obligations relating to Relief Work

13.21.1 In the event of occurrence of any natural calamity, disaster or epidemic, the Service Provider shall promptly make available its Personnel, the Healthcare Facilities and other resources (including drugs and consumables) on a priority basis and in accordance with the instructions of the Authority for providing Healthcare Services to people affected by such natural calamity, disaster or epidemic at such areas and for such duration as may be required by the Authority (the “**Deployment Period**”). Provided however that the Service Provider shall be excused from this obligation if the relevant Healthcare Facility has been directly impacted by such natural calamity, disaster or epidemic.

During the Deployment Period, the Service Provider shall continue to receive the Base Service Fee and shall be relieved from its obligations to achieve at a minimum the baseline measures for the KPIs.

13.21.2 The Authority shall, in addition to the payment of Base Service Fee reimburse to the Service Provider, on actual basis, the additional expenditure incurred by the Service Provider in performing the Healthcare Services during the Deployment Period. On cessation of Deployment Period, the Service Provider shall submit to the Authority an invoice providing the details of additional expenditure incurred by the Service Provider during the Deployment Period along with the supporting documents, to the extent available, evidencing such additional expenditure.

13.21.3 The Authority shall, within 30 (thirty) days of receipt of an invoice in accordance with Clause 13.21.2, make payment of the amount claimed directly, through electronic transfer, to the designated bank account of the Service Provider, save and except any amounts which it determines as not payable or disputed.

13.21.4 The provisions of this Agreement, insofar as they relate to disputed payments and delayed payments, shall apply, *mutatis mutandis*, to the payment invoiced under Clause 13.21.2.

13.21.5 The Service Provider shall:

- (a) comply with the Applicable Laws and the disaster management manuals prepared by the State Government or any of its Government Instrumentalities;
- (b) provide its Personnel with disaster preparedness training in accordance with the relevant guidelines issued under Applicable Laws; and
- (c) incorporate disaster preparedness procedures into its standard procedures for operation and maintenance of each Healthcare Facility.

13.22 User Charges

13.22.1 The Authority shall be entitled to determine at its own discretion the User Charges (if any) to be charged to the Patients (including exemptions) from time to time in respect of the Healthcare Facilities, and shall notify the Service Provider of its policy setting out such User Charges and exemptions (“**User Charges Policy**”). The Authority shall promptly notify the Service Provider of any changes or proposed changes to the User Charges Policy.

13.22.2 The Service Provider shall publish the User Charges as per the latest User Charges Policy at a prominent place within each Healthcare Facility. Further, the Service

Provider shall ensure that its staff give clear and correct information to the Patients or their family members regarding the User Charges and the basis for charging, including the fact that User Charges will not be charged or collected if the Healthcare Services are covered under the Health Insurance Scheme.

13.22.3 The Authority hereby appoints the Service Provider as its agent for the collection of User Charges from the Patients in accordance with the User Charges Policy. The Service Provider accepts its appointment as the Authority's agent and in its capacity as collection agent, the Service Provider shall:

- (a) collect the User Charges from the Patients visiting the Healthcare Facilities;
- (b) make best endeavours to recover User Charges from Patients and prevent any leakage of revenue to the Authority as a result of the Patients' failure to pay User Charges;
- (c) deposit the weekly User Charges collected by each Healthcare Facility into an account as may be instructed by the Authority for that Healthcare Facility, either through cash deposit or electronic transfer on or before the first Business Day of each week;
- (d) upon failure to deposit any monies collected as User Charges, pay interest to the Authority at the default rate of interest on such amount for the period of delay in such deposit;
- (e) maintain accurate and correct records of all User Charges collected from Patients at each Healthcare Facility and provide records and accounts to the Authority on a weekly basis; and
- (f) provide weekly information on the reconciliation of User Charges collected from Patients and deposited in the account of the Authority.

To facilitate the collection of the User Charges by the Service Provider, the Authority will or will cause DMH&FW to provide the Service Provider with the cash receipt booklets authorized by the State Government.

13.22.4 The Service Provider agrees that its appointment as the Authority's collection agent shall not vest in it any right to:

- (a) set or collect any fee, commission, gratuity or any other amount or consideration, by whatever name called, from the Patients or their relatives or attendants that visit the Healthcare Facilities or for the provision of the Healthcare Services to any Patients visiting the Healthcare Facilities, other than as expressly permitted by this Agreement;
- (b) create any Encumbrance over or divert any of the User Charges collected by it;
- (c) retain or use any of the User Charges collected by it for any purpose; or
- (d) mix the User Charges collected from Patients with its own funds.

13.22.5 In respect of any monies collected by the Service Provider as User Charges from the Patients, but not deposited into the account of the Authority, the Authority may:

- (a) encash and appropriate the Performance Security to the extent of such monies and interest thereon; or
- (b) deduct such monies and interest thereon from the Service Fee due and payable to the Service Provider.

Nothing in this Clause 13.22.5 affects the right of the Authority to recover the whole of these monies as a debt due from the Service Provider.

13.23 Advertising on the Healthcare Facilities

The Service Provider shall not undertake or permit any form of commercial advertising, display or hoarding at any place at the Healthcare Facilities or at the Site.

ARTICLE 14

MONITORING OF SERVICE PROVIDER'S OPERATION PERIOD OBLIGATIONS

14.1 Hospital Management Information System

14.1.1 The Service Provider shall, at its own cost and risk, procure and maintain a HMIS, which shall be an IT enabled system and web-based software.

In addition, the Service Provider shall maintain a HMIS dashboard that will act as a visual interface to provide at-a-glance views on key ratios and measures of data regarding the performance of the Service Provider's obligations under this Agreement. This shall be done through a web based system. The Service Provider shall ensure that the HMIS that it installs shall provide data that can be exported in a format compatible with the Hospital MIS system that the GoUK is currently using for the monitoring of public health facilities. The MIS dashboard shall consist of such information as is required to be submitted in the monthly reporting formats set out at **Schedule H** and **Schedule I**.

14.1.2 The Service Provider shall update the information on the MIS dashboard on a real-time basis. The Service Provider shall provide the Authority and the Independent Expert with access to the various modules on the MIS dashboard. The Authority and the Independent Expert shall have the right to download, print or store the data available on the MIS dashboard.

14.2 Monthly Reports

14.2.1 During the Operation Period, the Service Provider shall, no later than 7 (seven) days after the close of each month, furnish to the Authority those reports referred to in **Schedule H** and in the formats specified therein. Such monthly reports shall state in reasonable detail the information required to be provided in such reporting format.

14.2.2 On the basis of these reports, the Service Provider shall also prepare periodic analysis of trends and shall promptly provide written reports on such trends analysis to the Authority.

14.2.3 In addition to the reports that the Service Provider is required to submit under this Clause 14.2, the Service Provider shall submit such other data or information as may be requested by the Authority or the Independent Expert and to submit such reports in the formats specified by them.

14.2.4 The Service Provider agrees that all data generated by the Service Provider in the operation and maintenance of the Healthcare Facilities and in the provision of Healthcare Services and otherwise in the performance of its obligations under this Agreement, shall be the property of the Authority. The Service Provider shall handover all such information and data (including Patient records) to the Authority on or before the Transfer Date.

14.2.5 The Service Provider acknowledges and consents to the Authority's use of other data that it obtains from the insurer under the Health Insurance Scheme, regarding the performance of the Service Provider, for the purpose of monitoring of the Service Provider's performance under this Agreement.

14.2.6 The Authority may inspect the Healthcare Facilities for the purpose of monitoring the obligations of the Service Provider during the Operation Period. In the event, the

Authority discovers any defects or deficiencies in the performance of the Service Provider, it shall make a report of such inspection stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Key Performance Indicators, and send a copy thereof to the Service Provider.

14.3 GPS, Biometric and Other Independent Monitoring Devices

- 14.3.1 The Service Provider agrees that it shall install and maintain biometric devices at all the Healthcare Facilities and a GPS tracking device in each MHV. The Service Provider shall be responsible for ensuring that these devices are at all times functioning and in good working condition.
- 14.3.2 The Service Provider shall ensure that each of its Personnel shall be issued unique biometric cards and shall procure that each of its Personnel shall swipe such biometric cards at the time of entry into and exit from any Healthcare Facility.
- 14.3.3 The Service Provider shall procure that the Authority and the Independent Expert shall have direct access to the records maintained by the GPS tracker and the biometric devices, in order for the Authority and the Independent Expert to verify the availability of the Healthcare Facilities in terms of the KPIs set forth in **Schedule C**.
- 14.3.4 The Service Provider agrees that the Authority shall be entitled to install its independent monitoring devices at the Healthcare Facilities, including biometric devices, a GPS tracking device and CCTV. For the avoidance of doubt, such installation by the Authority shall not absolve the Service Provider of its obligations under Clause 14.3.

14.4 Medical Audits

- 14.4.1 The Independent Expert shall carry out regular inspection of each Healthcare Facility and conduct periodic medical audits, to ensure proper care and counselling for the Patients, by coordinating with the authorities of the Healthcare Facilities.
- 14.4.2 The Independent Expert shall share its plan for conducting medical audits with the Service Provider and the Authority. The plan shall include at least one audit of each Healthcare Facility in each week, with four such audits being conducted in a month.
- 14.4.3 The medical audit will include a review of medical notes and a review of the medical appropriateness in the formats specified in **Schedule H**. The medical cases to be audited will be identified randomly or can be specified by the Authority's audit team for specific conditions or cases.

The medical audit should compulsorily be done by a qualified Medical Practitioner who is a part of the Independent Expert's organization or is otherwise duly authorized to undertake such medical audit by the Independent Expert.

- 14.4.4 The process for conducting a medical audit is set out below:
 - (a) The auditor shall check the POS data before meeting the Patients, and all admitted Patients at that time are to be audited.
 - (b) The audit should preferably be conducted in the presence of the physician/treating doctor at the Healthcare Facility.
 - (c) While cross examining the Patients, the indoor Patient file should be made available by the Service Provider to the Independent Expert. The auditor shall

review the complete file and note down the anomalies observed in the audit sheet.

- (d) If any triggered Patient is already discharged, only the indoor Patient file shall be examined and the auditor shall note down the anomalies observed in the audit sheet.
- (e) Scanned/photocopy of indoor Patient files of all examined/triggered Patients shall be compulsorily collected from the Healthcare Facility where such audit is taking place, along with a pre-texted format mentioning complete documents pertaining to the Patients are handed over to the auditor duly signed by the authority of such Healthcare Provider.
- (f) Finally, the auditor shall discuss all anomalies observed with the treating doctor and seek his explanation/opinion on a case to case basis and the report shall be signed by both the auditor and the authority of the Healthcare Facility. The report should also mention any Abuse or Fraud or Medical Malpractice identified during the medical audit.

14.4.5 The Independent Expert shall submit a report to the Authority within [15 (fifteen)] days of the close of each month during each year regarding the medical audits conducted in that month.

14.5 Patient Satisfaction Survey

14.5.1 The Independent Expert shall conduct periodic Patient Satisfaction Surveys of each Healthcare Facility by handing out a Patient Satisfaction Form, in the format prescribed at **Schedule J** or a similar form designed by the Independent Expert, to the Patients and their relatives, randomly chosen by the Independent Expert. The Patient Satisfaction Survey shall include responses from at least 2% (two percent) of the total number of Patients who have received Healthcare Services at each such Healthcare Facility during such year.

In designing the Patient Satisfaction Survey, the Independent Expert shall rely on Good Industry Practice and conform to similar surveys undertaken from time to time at several international hospitals.

14.5.2 The Independent Expert shall submit a report of the findings of such a survey to the Authority in every year, within 45 (forty five) days of the end of each year.

14.5.3 The Service Provider shall use its best efforts to procure that at each Healthcare Facility, it shall achieve and maintain an overall rating of at least 3.0 (three point zero) on a scale of 5 in such Patient Satisfaction Survey.

14.6 Compliance Reports

14.6.1 The Independent Expert shall within 20 (Twenty) days of the close of every month during the year, furnish to the Authority a report in the format specified in **Schedule H**, setting forth details regarding compliance by the Service Provider with each of the KPIs in the previous month of the year and such other information as the Authority may require (a “**Compliance Report**”). In preparing such monthly Compliance Report, the Independent Expert shall rely on the information provided by the Service Provider and any independent verification conducted by the Independent Expert.

14.6.2 The report specified in Clause 14.6 shall state in reasonable detail the compliance of the Healthcare Facilities and the Healthcare Services with each of the KPIs set forth in **Schedule C**, along with an analysis of the reasons for the Service Provider's failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Healthcare Facilities. Such report shall also include a quantification of the deductions and incentives earned by the Service Provider and calculated in accordance with **Schedule K**. In submitting such Compliance Report, the Independent Expert shall take into account the adverse observations (if any) of the Authority Representative for each Healthcare Facility.

14.7 Inspection

The Independent Expert shall inspect the Healthcare Facilities at least once every six months from the COD. 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 Key Performance Indicators, and send a copy thereof to the Service Provider within 15 (fifteen) days of such inspection.

14.8 Cooperation with the Independent Expert and Authority

The Service Provider agrees that it shall at all times cooperate with the Authority and the Independent Expert and provide them and their employees/representatives with access to its records (including Patient records), the Healthcare Facilities and to its Personnel.

14.9 Authority's Obligations in relation to Monitoring

14.9.1 The Authority shall have the following obligations in relation to monitoring of the Service Provider's performance of its obligations under this Agreement:

- (a) To organize periodic review meetings with the Service Provider to review the Service Provider's performance. In the first 6 months of the first year, such periodic review meetings shall be held on a fortnightly basis. Thereafter, the Parties shall meet on a monthly basis.
- (b) To consider the observations and recommendations made by the Patient Committee from time to time.
- (c) To work with the technical team of the Independent Expert and the Service Provider to study and analyse the data for improving the Service Provider's performance under this Agreement.

14.9.2 The Authority agrees that the Independent Expert shall submit at least one copy of each report that it creates in accordance with Article 14 to the Service Provider.

14.10 Remedial measures

14.10.1 The Service Provider shall rectify any defects or deficiencies in the Healthcare Facilities or take such measures as may be suggested by the Authority, the Independent Expert or the Patient Committee to resolve any deficits in the Healthcare Services, including any failure to achieve the KPIs, if any, as set forth in any of the reports prepared and submitted by the Independent Authority.

14.10.2 The Service Provider shall furnish a written report in respect of any remedial measures taken by it under Clause 14.10.1 to the Authority (with a copy to the Independent

Expert) within 15 (fifteen) days of receiving the Independent Expert's report(s) or such other period as may be reasonable.

14.11 Patient Committee

14.11.1 The Authority may at anytime after the Appointed Date and at its discretion, establish a joint committee with the Service Provider for such Healthcare Facility (the "**Patient Committee**"). The Patient Committee shall comprise of at least one representative each of the Authority and the Service Provider and at least three representatives from the local community, which may include a current or former Patient. The role of the Patient Committee shall be advisory only and it shall extend to:

- (a) generally exercise oversight over the Service Provider's performance of its obligations during the Operation Period in respect of each Healthcare Facility;
- (b) exercise oversight over the quality of Healthcare Services provided by the Service Provider and the level of Patient satisfaction;
- (c) identify and monitor any deficits in the availability of the Healthcare Facilities or the provision of the Healthcare Services; and
- (d) make suggestions to the Service Provider in relation to the resolution of any deficits in service quality or performance of the Service Provider's obligations under this Agreement.

The Parties agree that the Patient Committee shall have no power or authority to amend or adjust the rights or obligations of the Parties under this Agreement.

14.11.2 The Patient Committee shall meet regularly and at least once every quarter during each year.

14.11.3 The Service Provider shall endeavour to continuously increase the quality and efficiency of the Healthcare Services that it provides. Accordingly, the Service Provider agrees that it shall take into account any observations or suggestions of the Patient Committee and resolve any deficits in the availability of Healthcare Facilities or in the Healthcare Services that it provides to the Patients

14.11.4 If at any time, the Independent Expert has not been appointed, the Parties agree that the Patient Committee shall also be additionally responsible for performing the duties and functions of the Independent Expert, until such time that the Authority makes another appointment.

14.12 Additional Independent Experts

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, additional experts, including any Government Instrumentality or Government employee to inspect the Healthcare Facilities and monitor the performance of the Service Provider during the Operation Period.

14.13 Inspection and Audit by the Bank

The Service Provider shall permit and cause its Contractors, suppliers, and their subcontractors, agents, personnel, consultants and service providers to permit the Bank to inspect all accounts, records, and other documents relating to the submission of bids,

the operation and maintenance of the Healthcare Facilities and the performance of the Healthcare Services and to have them audited by auditors appointed by the Bank, if so required by the Bank.

14.14 Rights and Remedies of the Authority in Relation to Abuse, Fraud, Medical Malpractice or Prohibited Activity

14.14.1 If at any time the Authority believes that the Service Provider or any of its Contractors or Personnel is perpetrating any financial irregularity, Abuse or Fraud or has committed any Medical Malpractice or Prohibited Activity or that any doubts are raised as to the performance of the Service Provider, the Authority shall have the right to take action in accordance with Clause 14.14.2.

An indicative list of circumstances that will be viewed by the Authority as financial irregularities, Abuse, Fraud or Medical Malpractice are set out in **Schedule L**.

14.14.2 If the Authority is of the belief that the Service Provider or any of its Personnel is perpetrating any financial irregularity, Abuse, Fraud or Medical Malpractice or if the Authority believes that the performance of the Service Provider raises any doubts, then the following steps may be followed by the Authority:

- (a) The data of the Service Provider shall be analysed very closely on a daily basis by the Authority or the Independent Expert for patterns, trends and anomalies.
- (b) The Authority shall or shall cause the Independent Expert to undertake a detailed investigation, which may include field visits to the Healthcare Facilities, examination of case papers, meetings with the Patients (if needed), examination of hospital records, etc. The Service Provider shall be required to fully cooperate with and provide access to all information to the Authority, the Independent Expert and its representatives that are conducting such investigation.
- (c) If the investigation reveals that the report, complaint or allegation against the Service Provider is correct then the following procedure shall be followed:
 - (i) The Service Provider shall be issued a "show-cause" notice seeking an explanation for its conduct and a copy of the show cause notice shall be sent to the Authority Representative.
 - (ii) After receipt of the explanation from the Service Provider and its examination, the Authority may either drop the charges or terminate this Agreement in accordance with Article 20.

The entire process shall be completed within 30 days from the date of suspension of the concerned Empanelled Health Care Provider.

14.14.3 Without limiting the Service Provider's other obligations and liabilities under this Agreement, upon the completion of the process set out in Clause 14.14.2, the Service Provider shall, if found guilty, be responsible for, and shall release and indemnify the Authority, its representatives, directors, employees and officers and their successors from and against all liability for all losses, damages, costs, expenses, actions, claims, proceedings etc. arising from any financial irregularity, Abuse, Fraud, Medical Malpractice or Prohibited Activity undertaken by the Service Provider, its Contractors or Personnel.

The Authority may encash and appropriate the Performance Security to the extent of such indemnified amount or deduct such indemnified amount from the Service Fee that is due and payable to the Service Provider or recover the whole of such indemnified amount as a debt due from the Service Provider.

14.14.4 In addition to the rights of the Authority to be indemnified under Clause 14.14.3, upon termination of this Agreement in accordance with Clause 14.14.2, the Authority shall have the following further rights:

- (a) The Authority shall have the right to recover from the Service Provider any benefit or gain earned by the Service Provider or its Contractors or Personnel or any loss suffered by the Authority (whether direct or indirect, whether foreseeable or consequential) as a result of any financial irregularity, Abuse, Fraud, Medical Malpractice or Prohibited Activity.

The Authority may encash and appropriate the Performance Security to the extent of such amount or deduct such amount from the Service Fee that is due and payable to the Service Provider or recover the whole of such amount as a debt due from the Service Provider.

- (b) The Authority's obligation to pay the Service Fee, whether due and payable or to become due, shall cease upon termination.
- (c) The Service Provider's appointment as agent for the collection of the User Charges from Patients shall cease upon termination, and the Service Provider shall immediately cease to collect the User Charges from Patients on and from the date of being notified of such termination.

Provided that the Authority shall not be required to issue a notice to the Service Provider or take any other action prior to exercising any of its rights and remedies under this Clause 14.14.4.

ARTICLE 15

SERVICE FEE

15.1 Determination of Service Fee

15.1.1 The annual Base Service Fee for the first year of the Operation Period is set out at **Schedule K**.

15.1.2 The annual inflation adjusted Base Service Fee for the subsequent years of the Operation Period shall be determined as follows:

- (i) The annual Base Service Fee shall remain the same for each block of two consecutive years during the Operation Period, i.e., the annual Base Service Fee shall remain the same for the first and second years; and then it shall be determined for the third and fourth years and so on.
- (ii) Upon completion of each block of two years, the annual Base Service Fee for each year in the next block of two years shall be automatically determined as an amount equivalent to 110% of the annual Base Service Fee in the previous block of two years.
- (iii) The Service Provider shall determine the average CPI in the previous block of two years within 1 month of the commencement of the next block of two years. If the average CPI in the previous block of two years falls below 5% or is higher than 15%, then the annual Base Service Fee for each year in the next block of two years shall be calculated as follows:

$$\mathbf{BSF}_n = \mathbf{BSF}_{n-1} \times [1 \pm \mathbf{CPI}_{av}/100]$$

Where:

n is the first year of the block of two years for which the Base Service Fee is being determined;

n-1 is the second year of the previous block of two years

BSF_n is the Base Service Fee being determined for each year of the successive block of two years

BSF_{n-1} is the Base Service Fee for each year in the previous block of two years

CPI_{av} is the average CPI over the previous block of two years immediately preceding the date on which the Base Service Fee is being determined. For this purpose, CPI values will be taken by reference to the last day of the month occurring immediately prior to the month in which the Base Service Fee for the successive block of two years is being determined.

15.1.2 For each month of any year, the Authority shall be liable to pay one twelfth of the Base Service Fee applicable for that year, subject to adjustments made in accordance with Clause 15.1.3 and Clause 15.1.4.

15.1.3 If the volume of Patients visiting the Healthcare Facilities in any month of a year exceeds the Base Volume of Patients specified in **Schedule K**, then the Base Service

Fee for that month of the year shall be adjusted in the manner specified in **Schedule K** (the adjusted Base Service Fee shall be the “**Volume Adjusted Service Fee**” determined on a monthly basis).

- 15.1.4 In each month during a year, the Volume Adjusted Service Fee shall be subject to additions and deductions in respect of the Service Provider’s performance as compared with the baseline KPI measures set out in **Schedule C**, and calculated in accordance with **Schedule K**. The monthly Volume Adjusted Service Fee, as subject to the additions and deductions, shall be the “**Service Fee**” for that month.

Provided that the Volume Adjusted Service Fee shall not be subject to additions and deductions on account of:

- (a) a failure to achieve the baseline KPI measures set out in Schedule C that is attributable to Force Majeure, an Emergency or a disaster situation; and
- (b) Performance KPIs for a period of 6 (six) months from the COD. For the avoidance of doubt the additions and deductions on account of Availability KPIs shall continue to be applicable during such period.

- 15.1.5 For each month during a year, the Authority shall pay to the Service Provider the Service Fee for that month determined in accordance with this Clause 15.1. Such payment shall be made in accordance with Clause 15.3.

15.2 Payment of Health Insurance Incentive

For each month of each year, the Authority shall pay or shall cause to be paid the Service Provider an amount equal to 20% (twenty percent) of all Claim payments received by the Authority or other Government Instrumentality from the insurer under the Health Insurance Scheme in each month during each year (the “**Health Insurance Incentive**”). Such payment shall be made in accordance with Clause 15.3.

15.3 Billing and Payment

- 15.3.1 During the Operation Period, the Service Provider shall submit an invoice within 5 (five) days of the end of each month occurring after the COD. Each such invoice shall be in the format set out in **Schedule K** and shall set out the Service Fee and the Health Insurance Incentive to which the Service Provider considers itself to be entitled to in respect of the immediately preceding month in accordance with this Agreement. Each monthly invoice submitted by the Service Provider shall be accompanied by the supporting documents listed at **Schedule K**. The Service Provider shall submit one copy of the monthly invoice along with all supporting documents to the Authority, and another copy of the full set of documents to the Independent Expert.

- 15.3.2 Upon receipt of the monthly invoice and supporting documentation from the Service Provider, the Authority shall satisfy itself regarding the amount to be paid to the Service Provider. If the Authority is satisfied that the full amount stated in the monthly invoice is due and payable to the Service Provider, then the full Service Fee shall be paid within 30 (thirty) days of receipt of an invoice (the “**Payment Due Date**”).

If the Authority is not satisfied that the full amount stated in the monthly invoice is due and payable to the Service Provider, the Authority shall pay 100% of the undisputed amount and also pay provisionally 80% of the disputed amount on or before the Payment Due Date, and shall refer such payment Dispute to the Dispute Resolution Procedure.

Upon resolution of such payment Dispute, the provisional payment shall be reconciled and any balance remaining due and payable by the Authority or any excess amount to be refunded by the Service Provider (“**Reconciliation Amount**”) shall be paid within 15 (fifteen) days of receiving a conciliation settlement or Award. If a payment Dispute under this Clause 15.3.2 is not resolved within 90 (ninety) days from the Payment Due Date, then simple interest, calculated at a rate equal to 12% (twelve percent) per annum, shall be payable on the Reconciliation Amount commencing from the Payment Due Date. For the avoidance of doubt, no interest shall be payable if the Dispute is resolved within the 90 day period.

15.3.3 Unless otherwise agreed by the Parties, all payments between the Parties will be by electronic funds transfer to the bank account notified by each Party to the other Party.

15.3.4 Payment of all or part of any invoiced amounts shall not be deemed to indicate the Authority’s acceptance, approval, consent or satisfaction with the performance of or relieve the Service Provider of its obligations or liabilities under this Agreement.

15.4 Pre-conditions to Payment

The Authority shall have no obligation to pay any amount to the Service Provider unless:

- (a) the Performance Security remains valid and in full force and effect; and
- (b) in respect of each monthly invoice, the Authority has received all of the supporting documents listed in **Schedule K**.

If the Authority withholds any amount from the Service Provider under this Clause 15.4, the Authority shall not be liable for default interest under Clause 15.5 in respect of the amount so withheld.

15.5 Delayed payments

All amounts due and payable to the Service Provider under the provisions of this Agreement shall be paid on or before the Payment Due Date. In the event of delay beyond the Payment Due Date, the Authority shall pay simple interest for the period of delay, calculated at a rate equal to 12% (twelve percent) per annum on the amount due and payable.

15.6 Taxes

15.6.1 The Service Provider shall pay and observe all statutory formalities (including issue of commercial invoices, requisite declarations or returns and providing necessary deposits) in respect of all taxes, duties, levies, cess and charges, including income tax or other direct and indirect taxes, that may be levied, claimed or demanded from time to time by any Government Instrumentality in respect of the Healthcare Services and Service Fee.

Provided that payments made by the Service Provider towards service tax in respect of the Service Fee shall be reimbursed by the Authority within 30 (thirty) days of receipt of particulars thereof from the Service Provider.

15.6.2 The Service Provider may seek exemptions or special benefits that may be available to it under any Applicable Law and the Service Provider agrees and acknowledges that while the Authority may assist the Service Provider in seeking such exemptions or

special benefits, the Authority is in no way responsible for ensuring that the Service Provider obtains such exemptions or special benefits.

The Service Provider shall pass on to the Authority all the benefits of any exemptions, concessions, rebate, set off or credits pertaining to all taxes, duties, levies, cess and charges, in respect of the performance of its obligations under this Agreement or on any goods, materials, spare parts or consumables or services bought or received by the Service Provider for use in performing its obligations under this Agreement or otherwise in relation to the Agreement.

15.6.3 All payments made by the Authority to the Service Provider shall be subject to deductions and withholding of applicable taxes in accordance with Applicable Laws.

The Authority shall issue a tax deduction or withholding certificate to the Service Provider evidencing the amounts deducted or withheld and deposited by the Authority on payments made to the Service Provider to enable the Service Provider to claim the credit of the tax deducted or withheld by the Authority.

15.6.4 The Service Provider shall protect, indemnify and hold harmless the Authority, from any and all claims or liability:

- (a) to pay any taxes, duties, levies, cess and charges assessed or levied by any Government Instrumentality on the Service Provider or its Contractors or on the Authority on account of any act of or omission by the Service Provider or its Contractors or on account of any breach of this Clause 15.6.4, other than any taxes, duties, levies, cess or charges that are assessed or levied on or in connection with the revenues earned by the Authority from the collection of User Charges in connection with the provision of the Healthcare Services; or
- (b) on account of the Service Provider's or its Contractors' failure to file tax returns as required by Applicable Laws or comply with reporting or filing requirements under Applicable Laws relating to taxes; or
- (c) arising directly or indirectly from or incurred by reason of any misrepresentation by or on behalf of the Service Provider or its Contractors to any Government Instrumentality in respect of taxes, duties, levies, cess or charges.

15.6.5 The Service Provider shall provide to the Authority copies of documents required for the Authority to avail itself of any credit of taxes, duties, levies, cess and charges collected by the Service Provider, including but not limited to: tax invoices; tax payment challans; and any other documents as may be considered relevant under any Applicable Law.

15.7 Set-off

15.7.1 The Authority may, without any requirement to provide prior notice of the same to the Service Provider, deduct from any monies which are payable by the Authority to the Service Provider or which the Authority may hold as security for the Service Provider's proper performance of this Agreement (including any retained or withheld sums or any amounts available under the Performance Security) any money which is payable by the Service Provider to the Authority. Nothing in this Clause 15.7.1 affects the right of the Authority to recover from the Service Provider the whole of the debt or any balance that remains owing after any deduction. Any exercise by the Authority of its rights

under this Clause 15.7.1 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

- 15.7.2 The Service Provider shall not be entitled to deduct from any monies which are or may be payable by the Service Provider to the Authority, any money which may be or is payable by the Authority to the Service Provider.

ARTICLE 16
CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”), whether such Change of Scope is for the provision of additional Healthcare Services and/or for any addition or augmentation of the Healthcare Facilities in order to provide Healthcare Services to a larger pool of Patients. Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Service Provider and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Service Provider determines at any time that a Change of Scope is necessary for providing safer and improved Healthcare Services to the Patients or if the Service Provider wishes to provide any additional specialist Healthcare Services to the Patients, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Service Provider in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Healthcare Facilities and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 If the Authority determines that a Change of Scope is necessary, it shall issue to the Service Provider a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Service Provider shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the SCOD if the works or services are required to be carried out during the Development Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof.
- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Service Provider, and the Parties shall, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Service Provider to proceed with the performance thereof. Without prejudice to the foregoing, the Parties agree that the Service Provider has quoted the break-up of its Base Service Fee for the first year, and that such break-up shall be used by the Parties for the purpose of agreeing on the cost implications of each Change of Scope Order. The Service Provider agrees that any

Change of Scope Order issued as a result of the Service Provider's misconduct, omission or default will not result in any payment to the Service Provider or any increase in the Service Fee.

If the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Service Provider to proceed with the performance thereof pending resolution of the Dispute.

16.2.4 The Authority agrees that it shall compensate the Service Provider for any direct, additional costs incurred by it in complying with a Change of Scope Order, to the extent that such direct additional costs are not compensated through any change made to the Service Fee in accordance with Clause 16.2.3.

16.2.5 The provisions of this Agreement, insofar as they relate to Development Works, shall apply *mutatis mutandis* to the works undertaken by the Service Provider under this Article 16.

16.3 Payment for Change of Scope

Upon completion of Change of Scope works, the Service Fee payable to the Service Provider shall be increased in proportion to the cost of such works undertaken by the Service Provider and the Parties shall, to the extent possible, rely on the Base Service Fee for the relevant component of the Project quoted by the Selected Bidder in its Financial Bid for arriving at the additional Fee.

ARTICLE 17

RIGHTS, TITLE AND RISK

17.1 Licensee Rights to Site and Existing Assets

17.1.1 The Service Provider acknowledges and agrees that the Authority has, and shall retain, right, title to and ownership of the Site, the Existing Assets and the Healthcare Facilities (i.e., the District Level Facility and the CHCs but not the MHVs) that the Service Provider has no title to, or ownership interest in the Site, the Existing Assets or the Healthcare Facilities (other than the MHVs).

17.1.2 For the purpose of this Agreement, the Service Provider shall have rights to the use of the Site and the Existing Assets as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Healthcare Facilities by third parties (including the Patients) in accordance with and subject to the provisions of this Agreement.

17.2 Right, Title and Ownership over New Assets

17.2.1 The Authority acknowledges and agrees that the Service Provider shall acquire and retain all right, title and interest in or leasehold rights or the right to use (under hire purchase agreements) the assets that the Service Provider procures, installs or uses in connection with the Project (the “**New Assets**”) and the performance of its obligations under this Agreement, but not including those assets that it procures and that are permanently fixed or attached to the Site or buildings thereon.

The Service Provider agrees that the New Assets shall preferably be new, whether owned or leased or procured on hire-purchase by the Service Provider. The Service Provider will not be permitted to procure refurbished equipment as part of the New Assets, unless such refurbished equipment is certified by the original equipment manufacturer as being in good working condition and fit for the purpose.

17.2.2 The Service Provider agrees to transfer all right, title and interest in such New Assets created, procured and installed or used at the Site by it to the Authority on the Transfer Date, free of all Encumbrances, and execute all necessary deeds and documents to give effect to this Clause 17.2.2.

17.3 Access rights of the Authority and others

The Service Provider shall allow free access to the Site at all times for the authorised representatives of the Authority and the Independent Expert, and for the persons duly authorised by any Government Instrumentality to inspect the Healthcare Facilities and to investigate any matter within their authority, and upon reasonable notice, the Service Provider shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

17.4 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Service Provider under Applicable Laws for use of the Site and the Existing Assets shall not be reimbursed or payable by the Authority.

17.5 Restriction on sub-letting

The Service Provider shall not sub-license or sub-let the whole or any part of the Site or the Existing Assets, save and except as may be expressly set forth in this Agreement; provided that nothing in this Clause 17.5 shall be construed or interpreted as restricting the right of the Service Provider to appoint Contractors for the performance of its obligations hereunder, including for operation and maintenance of all or any part of the Healthcare Facilities.

17.6 Risk of Loss or Damage to the Site, the Existing Assets or the Healthcare Facilities

17.6.1 Notwithstanding the ownership of the Site, the Existing Assets and the Healthcare Facilities, as between the Authority and the Service Provider, the Service Provider shall be responsible for the care and custody of the Healthcare Facilities from the Appointed Date until the Transfer Date.

17.6.2 From the Appointed Date if any loss or damage affects the Site, the Existing Assets or the Healthcare Facilities, the Service Provider shall proceed to rectify the loss or damage so that the Site, the Existing Assets and the Healthcare Facilities conform with the requirements of this Agreement. The cost of making good such loss or damage shall, unless otherwise provided in the Agreement, be borne by the Service Provider. The Service Provider shall use any proceeds of insurance received by it towards such loss or damage, to meet the costs of making good such loss or damage.

17.7 Risk of Loss of Life or Injury to Patients or other Patients

17.7.1 Notwithstanding the ownership of the Site, the Existing Assets and the Healthcare Facilities, as between the Authority and the Service Provider, the Service Provider shall be responsible the loss of life or injury to Patients, the Personnel or any other persons present at the Healthcare Facilities that occurs during the Operation Period.

17.7.2 During the Operation Period, the Service Provider shall be responsible to pay (or, if the Authority is liable to pay, reimburse the Authority) compensation for any loss of life or injury in accordance with Applicable Laws, provided that such loss of life or injury is attributable to the Service Provider's act, omission or fault or negligence or any Medical Malpractice.

17.7.3 During the Operation Period, the Authority shall be responsible to pay compensation for any loss of life or injury in accordance with Applicable Laws, if such loss of life or injury is directly attributable to the Authority or its representatives.

17.7.4 The Party responsible for paying compensation under this Clause 17.7 shall be entitled to use the proceeds of insurance that are available and received by it or by the other Party under insurance policies obtained in accordance with Article 18 to compensate for such loss of life or injury.

17.8 Disputes

Any Disputes arising in relation to any of the matters specified in this Clause 17 shall be determined in accordance with the Dispute Resolution Procedure.

ARTICLE 18

INSURANCE

18.1 Insurance during the Term

18.1.1 The Service Provider shall effect and maintain at its own cost, during the Development Period and the Operation Period, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to protect the interests of the Service Provider and the Authority. The Service Provider shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Service Provider during the Development Period. The Service Provider shall procure that in each insurance policy, the Authority shall be a co-insured.

18.1.2 Without prejudice to the provisions contained in Clause 18.1.1, the Service Provider shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including the Site and Existing Assets handed over by the Authority to the Service Provider, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Healthcare Facilities;
- (c) Patient and professional indemnity insurance, to cover all Patients for legal or financial liability on account of injury or death, whether arising from Medical Malpractice or otherwise and to cover its failure to perform under this Agreement;
- (d) crime insurance or equivalent to protect the Authority from any Fraud, Abuse, financial irregularity or Prohibited Activity by the Service Provider or its Contractors or Personnel;
- (e) the Service Provider's general liability arising out of the Project;
- (f) liability to third parties for goods or property damage;
- (g) workmen's compensation insurance; and
- (h) any other insurance that may be necessary to protect the Service Provider and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (g) above.

18.2 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Development Period or the Operation Period, as the case may be, the Service Provider shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 18. Within 30 (thirty) days of receipt of such notice, the Authority may require the Service Provider 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.

18.3 Evidence of Insurance Cover

All insurances obtained by the Service Provider in accordance with this Article 18 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any Insurance Cover, the Service Provider shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Service Provider to the Authority.

18.4 Remedy for failure to insure

If the Service Provider shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Service Provider.

18.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Service Provider pursuant to this Article 18 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

18.6 Service Provider's waiver

The Service Provider hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Provider 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 Service Provider 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.

18.7 Application of insurance proceeds

The proceeds from all insurance claims, except proceeds received towards loss of life and injury and proceeds received under the third party liability insurance, shall be paid to the Service Provider and it shall, notwithstanding anything to the contrary contained in this Agreement, firstly apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Healthcare Facilities.

ARTICLE 19

FORCE MAJEURE

19.1 Force Majeure

19.1.1 As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in Uttarakhand of any or all Non-Political Events or occurrence in India of any or all Political Events, as defined in Clauses 19.2 and 19.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

19.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Service Provider, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Healthcare Facilities for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being a Political Event set forth in Clause 19.3;
- (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 Service Provider by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver Equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Service Provider in any proceedings for reasons other than (i) failure of the Service Provider to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (g) any event or circumstance of a nature analogous to any of the foregoing.

19.3 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) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, revolution, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 23;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any Applicable Permit required by the Service Provider or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such Applicable Permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor; or
- (e) 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 a year;
- (f) any civil commotion, boycott or political agitation which prevents rendering of Healthcare Services and collection of User Charges by the Service Provider for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (f) any event or circumstance of a nature analogous to any of the foregoing.

19.4 Duty to report Force Majeure Event

19.4.1 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 19 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.

19.4.2 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 and given particulars of the probable material effect that the Force

Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence.

- 19.4.3 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 19.4.1, and such other information as the other Party may reasonably request the Affected Party to provide.

19.5 Mitigation of Force Majeure Event

Upon receipt of a Force Majeure notice, the Affected Party shall:

- (a) mitigate or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
- (b) take all action reasonably practicable to mitigate any loss suffered by the other Party as a result of the Affected Party's failure to carry out its obligations under this Agreement.

19.6 Effect of Force Majeure Event on the Term

- 19.6.1 Upon the occurrence of any Force Majeure Event at any time after the Appointed Date, but subject to compliance with Clauses 19.4 and 19.5, if any Force Majeure Event occurs:

- (a) before COD, the SCOD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists and the Parties shall bear their respective costs;
- (b) after COD and the Force Majeure Event is a Non-Political Event, the Term shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists and the Parties shall bear their respective costs and no Service Fee shall be paid by the Authority to the Service Provider where the Service Provider is unable to provide Healthcare Services; or
- (c) after COD and the Force Majeure Event is a Political Event, the Service Provider shall not be entitled to compensation for any increased costs, but the Authority shall pay the Base Service Fee during the subsistence of such Force Majeure Event where the Service Provider is unable to provide Healthcare Services.

19.7 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 19, 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.

19.8 Termination Payment for Force Majeure Event

- 19.8.1 If Termination is on account of a Non-Political Event, the Authority shall not be liable to make any Termination Payment to the Service Provider.
- 19.8.2 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Service Provider in an amount that would be payable under Clause 20.3.2 as if it were a Authority Default.

19.9 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.

19.10 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, then subject to compliance with Clause 19.4 and Clause 19.5, the Affected Party 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; and
- (b) 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.

19.11 Emergency and Step-in by Authority

- 19.11.1 If the Authority reasonably believes that it or a Government Instrumentality needs to take action in connection with the Services due to an Emergency, including any Non-Political Event, then the Authority shall issue a notice to the Service Provider notifying it of the proposed step-in actions, reasons for such actions and the time period of step-in.
- 19.11.2 The Authority shall take such step-in actions mentioned in the notice and any consequential additional action as it reasonably believes is necessary. The Service Provider shall provide all reasonable assistance to the Authority while it is taking the required step-in actions, including providing the Personnel employed in performing this Agreement, access to the Site and the Healthcare Facilities for use by the Authority or other Government Instrumentality. The Authority shall provide the Service Provider with notice of completion of the step-in actions as soon as reasonably practicable. Upon completion of the step-in actions, the Authority shall instruct the Service Provider to resume performance of the Healthcare Services and its obligations under the Agreement, in which case the Service Provider shall do so as soon as is reasonably practicable and in any event within fifteen (15) days of receiving such instructions.
- 19.11.3 If such step-in actions are taken by the Authority, then for so long as such step-in actions are taken, and this prevents the Service Provider from carrying out its

obligations under this Agreement, the Service Provider shall be relieved from performance, including achieving the KPIs set.

19.11.4 If the required step-in actions are not due to a breach by the Service Provider of its obligations under this Agreement, then for the period during which the Authority is taking the required step-in actions and provided that the Service Provider provides the Authority with reasonable assistance, the Authority shall pay to the Service Provider the Base Fixed Fee during such period.

19.11.5 If the required step-in actions are due to a breach by the Service Provider of its obligations under this Agreement, then the Service Provider will not be entitled to receive the Base Service Fee for the period of step-in.

ARTICLE 20

TERMINATION

20.1 Termination for Service Provider Default

20.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Service Provider fails to cure the default within the Cure Period set forth below or such other Cure Period as has been expressly provided in this Agreement, the Service Provider shall be deemed to be in default of this Agreement (the “**Service Provider Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 8.2 and the Service Provider fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 8.2, the Service Provider fails to cure, within a Cure Period of 30 (thirty) days, the Service Provider Default for which whole or part of the Performance Security was appropriated;
- (c) the Service Provider suspending or abandoning or manifesting an intention to abandon wholly or partially, the development or operation and management of the Healthcare Facilities or the performance of the Healthcare Services for a continuous period of 7 (seven) days without the prior written consent of the Authority;
- (d) a delay in achieving the COD which is deemed to be a Service Provider Default under Clause 11.4.2;
- (e) the deductions for failure to meet the baseline KPI measures:
 - (i) is greater than or equal to 40% (forty percent) of the Volume Adjusted Service Fee, but for the aggregate cap on deductions, for any 2 (two) months during the Term; or
 - (ii) is greater than or equal to 20% (twenty percent) of the Volume Adjusted Service Fee for a period of:
 - (aa) 3 (three) consecutive months; or
 - (bb) any 4 (four) months within a continuous period of 12 (twelve) months; or
 - (cc) any 8 (eight) months during the Term of this Agreement;
- (f) the availability of Specialists, either individually or cumulatively with reference to the baseline KPI measure for the Availability KPI for Specialist Services, is less than or equal to 50% (fifty percent) compliance at any one or more Healthcare Facilities, for a period of:
 - (i) 3 (three) consecutive months; or

- (ii) any 4 (four) months within a continuous period of 12 (twelve) months;
or
- (iii) any 8 (eight) months during the Term of this Agreement;
- (g) the Service Provider has failed to make any payment to the Authority within the period specified in this Agreement and such default is not cured within 30 (thirty) days from the payment due date;
- (h) the Service Provider or any of its Contractors or Personnel is perpetrating any financial irregularity, Abuse or Fraud or has committed any Medical Malpractice or Prohibited Activity;
- (i) a breach of any of the Project Agreements or financing agreements by the Service Provider has caused a Material Adverse Effect;
- (j) the Service Provider creates any Encumbrance in breach of this Agreement;
- (k) the Service Provider repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of Clause 4.6.2 and such default is not cured within a period of 30 (thirty) days;
- (m) there is a transfer, pursuant to law either of: (i) the rights and/or obligations of the Service Provider under any of the Project Agreements; or (ii) all or part of the assets or undertaking of the Service Provider, and such transfer causes a Material Adverse Effect;
- (n) the Service Provider is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Service Provider or for the whole or material part of its assets that has a material bearing on the Project;
- (o) the Service Provider has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect and such process does not cease within 15 (fifteen) days of its initiation;
- (p) a resolution for winding up of the Service Provider is passed, or any petition for winding up of the Service Provider 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 Service Provider is ordered to be wound up by Court
- (q) the [Selected Bidder/any Member of the Consortium], the Service Provider, its Contractors or Personnel or any other persons acting on their behalf being found to have committed any Prohibited Act;
- (r) any representation or warranty of the Service Provider herein contained which is found to be materially false, incorrect or misleading or the Service Provider is at any time hereafter found to be in breach thereof; or
- (s) the Service Provider has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement.

20.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Service Provider Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Service Provider and the Termination shall become effective on the 90th (ninetieth) day from the date of Termination Notice or an earlier date as may be specified in the Termination Notice.

20.2 Termination for Authority Default

20.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 30 (thirty) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Service Provider or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Authority has failed to pay any amount that is due and payable to the Service Provider within 60 (sixty) days from the Payment Due Date as specified in this Agreement; or
- (b) any representation or warranty of the Authority contained in this Agreement which is found to be materially false, incorrect or misleading; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

20.2.2 Without prejudice to any other right or remedy which the Service Provider may have under this Agreement, upon occurrence of an Authority Default, the Service Provider shall be entitled to terminate this Agreement by issuing a Termination Notice to the Authority and the Termination shall become effective on the 90th (ninetieth) day from the date of Termination Notice or an earlier date as may be mutually agreed between the Parties.

20.3 Termination Payment

20.3.1 Upon Termination on account of a Service Provider Default, a Non-Political Event or upon Termination by the Authority for any other reason specified in the Agreement, the Authority shall not be liable to make any Termination Payment.

Without prejudice to the foregoing, the Authority shall be entitled to encash and appropriate the whole of the value of the Performance Security upon the occurrence of a Termination on account of a Service Provider Default.

20.3.2 Upon Termination on account of an Authority Default, or a Political Event, the Authority shall pay to the Service Provider by way of Termination Payment an amount calculated as follows in accordance with the table below:

Termination Date	Termination Payment
Year 1	4.5 months Base Service Fee
Year 2	3.5 months Base Service Fee
Year 3	2.0 months Base Service Fee
Year 4 - 6	1.5 months Base Service Fee

Upon Termination on account of an Authority Default or Force Majeure Event, the Authority shall return the Performance Security to the Service Provider on the Transfer Date, after appropriating any monies that may be due and payable by the Service Provider to the Authority as on the Transfer Date.

- 20.3.3 The Termination Payment that the Authority is liable for under this Clause 20.3 shall be the Authority's sole and exclusive liability in connection with a termination of this Agreement. The Authority shall not be liable for any loss of income, loss of profit, loss of revenue, loss of business or any other consequential losses that the Service Provider incurs or may incur as a result of such termination.
- 20.3.4 Termination Payment shall become due and payable to the Service Provider within 45 (forty five) days of a demand being made by the Service Provider to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 12% (twelve percent) per annum on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days beyond the due date. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations under this Agreement.
- 20.3.5 Upon Termination on expiry of the Term by efflux of time, no Termination Payment shall be due and payable to the Service Provider.
- 20.3.6 The Service Provider expressly agrees that Termination Payment under this Article 20 shall constitute a full and final settlement of all claims of the Service Provider on account of Termination of this Agreement for any reason whatsoever and that the Service Provider or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

20.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Healthcare Facilities on the Transfer Date;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site on the Transfer Date;
- (c) be entitled to restrain the Service Provider and any person claiming through or under the Service Provider from entering upon the Site or any part of the Healthcare Facilities; and
- (d) require the Service Provider to comply with the Divestment Requirements set forth in Clause 21.1.

20.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 20.3, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and

Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 21

DIVESTMENT OF RIGHTS AND INTEREST

21.1 Divestment Requirements

21.1.1 On or prior to the Transfer Date, the Service Provider shall comply with the following Divestment Requirements:

- (a) submit to the Authority a full and complete asset register, setting out the location and particulars of all Project Assets, consumables, materials or other things that are present at the Healthcare Facilities;
- (b) deliver forthwith the vacant and peaceful possession of the Healthcare Facilities, the Site and the Project Assets, free and clear of all Encumbrances, in good working condition;
- (c) transfer all of its right, title and interest in the New Assets and execute such deeds and documents as may be necessary for the purpose and complete all related legal or other formalities;
- (d) assign or cause to be assigned in favour of the Authority or its nominee, the Project Agreements that the Authority has chosen to step-into;
- (e) deliver and transfer relevant records, reports, information and documents, pertaining to the operation, maintenance and management of the Healthcare Facilities and the provision of the Healthcare Services; these shall include but shall not be limited to: medical reports, documents or information relating to the medico-legal cases, design, engineering, development, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' drawings of the Healthcare Facilities as on the Transfer Date;
- (f) transfer or assign all of the Intellectual Property rights, including any license rights that the Service Provider has obtained, in favour of the Authority. For the avoidance of doubt, the Service Provider represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, development, operation and maintenance of the Healthcare Facilities and shall be assigned to the Authority free of any Encumbrance;
- (g) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (h) remove from the Healthcare Facilities, the Personnel employed by the Service Provider, unless otherwise agreed between the Parties;
- (i) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Service Provider in the Healthcare Facilities, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

- (j) 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 Service Provider in the Healthcare Facilities, the Site and the Project Assets, free from all Encumbrances, absolutely unto the Authority or to its nominee.

21.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Service Provider, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Transfer Date and until the Divestment Requirements have been complied with to the satisfaction of the Authority.

21.2 Surveys Prior to Expiry

- (a) No later than the date that is ninety (90) days prior to the date of expiration of the Term, the Authority shall be entitled to procure the carrying out of a final survey of the Healthcare Facilities, the Site, the Existing Assets and the New Assets to assess whether they have been and are being maintained by the Service Provider in accordance with its obligations under this Contract and if they are in a condition that will meet the Divestment Requirements.
- (b) The Authority shall notify the Service Provider in writing a minimum of ten (10) days in advance of the date it wishes to procure the carrying out of the final survey. The Authority shall consider, in good faith, any reasonable request by the Service Provider for the final survey to be carried out on a different date if such request is made at least five (5) days prior to the notified date and the Service Provider (acting reasonably) is able to demonstrate that carrying out the final survey on the notified date would materially prejudice the Service Provider's ability to provide the Healthcare Services.

21.3 Surveys on Termination

During the period of any Termination Notice issued under this Agreement, the Authority shall be entitled to carry out or procure the carrying out of the final survey of the Healthcare Facilities, the Site, the Existing Assets and the New Assets to assess whether they have been and are being maintained by the Service Provider in accordance with this Agreement and if they are in a condition that will meet the Divestment Requirements.

21.4 Results of Survey

21.4.1 If the final survey shows that the Service Provider has not complied with or is not complying with its obligations under this Agreement, the Authority shall:

- (a) notify the Service Provider of the rectification and/or maintenance work which is required to ensure that the condition of the Healthcare Facilities is restored to the condition required by the Divestment Requirements by the Transfer Date;
- (b) recover the cost of the survey from the Service Provider.

21.4.2 The Service Provider shall carry out such rectification and/or maintenance work notified under Clause 21.4.1 (the "**Outstanding Work**") in order to put the Healthcare Facilities in the condition required by the Divestment Requirements within the thirty

(30) day period and any costs it incurs in carrying out the Outstanding Work shall be at its own expense.

21.4.3 Within ten (10) days of receiving the Authority's written notification under Clause 21.4.1 of the Outstanding Work, the Service Provider shall submit an irrevocable, unconditional and on-demand bank guarantee from a Scheduled Bank for an amount equal to hundred per cent (100%) of the value of the Outstanding Work, as determined by the Authority, and valid until the expiry of thirty (30) days beyond the Transfer Date (the "**Divestment Security**"), to secure the Service Provider's obligations to carry out the Outstanding Work.

If the Service Provider fails to submit the Divestment Security to the Authority in accordance with this Clause 21.4.3, the Authority shall be entitled to withhold any amounts that are or that will become due and payable to the Service Provider in lieu of the Divestment Security as a cash security.

If the Service Provider fails to complete the Outstanding Work by the Transfer Date, the Authority shall have a right to draw upon the Divestment Security or the cash security and to draw upon the Performance Security (if the cash security is insufficient) for the value of the Outstanding Work remaining incomplete as of the Transfer Date. If the Service Provider completes the Outstanding Work to the satisfaction of the Authority by the Transfer Date, the Authority shall return the Divestment Security or the cash security retained by it to the Service Provider.

21.5 Transition of Healthcare Services

21.5.1 In the final 6 months prior to expiration of the Term or during the period of the Termination Notice, the Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Healthcare Facilities and the transition of the Healthcare Services in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients, other members of the public or the lawful occupiers of any part of the Site.

For the purpose of this Clause 21.5.1, cooperation shall include but not be limited to:

- (a) liaising with the Authority and/or any new operator and providing reasonable assistance and advice concerning the operation and management of the Healthcare Facilities and the provision of Healthcare Services and their transfer to the Authority or to such new operator;
- (b) allowing the Authority or any new operator access (at reasonable times and on reasonable notice) to the Healthcare Facilities, the Site, the Existing Assets or the New Assets, but not so as to interfere with or impede the provision of the Healthcare Services;
- (c) providing to the Authority and/or to any new operator all and any information concerning the Healthcare Facilities, the Site, the Existing Assets and the New Assets, the Healthcare Services, the Personnel, its Contractors and the insurances obtained by the Service Provider which is reasonably required for the efficient transfer of responsibility for the performance of the Healthcare Services; and
- (d) not allowing levels of spare parts, consumables and other items used for the operation and management of the Healthcare Facilities or for the provision of

the Healthcare Services to fall to a level which might reasonably be expected to prejudice the continuing efficient operation and maintenance of the Healthcare Facilities or the provision of the Healthcare Services in accordance with Good Industry Practice and the provisions of this Agreement.

- 21.5.2 During the period specified in Clause 21.2.1, the Service Provider shall continue to operate and maintain the Healthcare Facilities and provide the Healthcare Services to the Patients in accordance with this Agreement, with the intent that the Authority or any new operator would be able to take over that business and secure continuity of the Healthcare Services on a going concern basis immediately following the Transfer Date. The Service Provider shall be entitled to continue receiving the Service Fee for the continued operation and maintenance of the Healthcare Facilities and the provision of the Healthcare Services in accordance with the terms of this Agreement.
- 21.5.3 The Service Provider shall use all reasonable efforts so as to facilitate the smooth transfer of responsibility for the Healthcare Services to the Authority or a new operator, as the case may be, with the minimum of disruption and so as to prevent or mitigate any inconvenience or risk to health or safety of the Patients or the employees of the Authority or the new operator and the Service Provider shall take no action at any time during the Term or thereafter which is calculated or intended, directly or indirectly, to prejudice or frustrate or make more difficult such transfer.
- 21.5.4 If the Authority is of the reasonable belief that the transfer of responsibility for the Healthcare Services to the Authority or to a new operator will not occur on or before the Transfer Date, for any reason whatsoever, the Authority may at its discretion and by giving the Service Provider written notice, extend the Transfer Date for three (3) month periods until the transfer has occurred to the satisfaction of the Authority. The Service Provider shall continue to perform its obligations under this the Agreement during such extended periods. The Service Provider shall be entitled to continue receiving the Service Fee for the continued operation and maintenance of the Healthcare Facilities and the provision of the Healthcare Services during such periods in accordance with the terms of this Agreement.

21.6 Vesting Certificate

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

21.7 Divestment costs etc.

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

21.7.2 In the event of any dispute relating to matters covered by and under this Article 21, the Dispute Resolution Procedure shall apply.

ARTICLE 22

ASSIGNMENT AND ENCUMBRANCES

22.1 Restrictions on Assignment and Encumbrance by Service Provider

22.1.1 Subject to Clauses 22.2, neither this Agreement nor any right, interest or claim under this Agreement, the License to the Site and Existing Assets, or any obligations or liabilities of the Service Provider arising under this Agreement, or any sum or sums which become due and payable to the Service Provider as a result of the Service Provider's performance under this Agreement, may be assigned by the Service Provider to any person, save and except with the prior written consent of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

22.1.2 Subject to the provisions of Clause 22.2, the Service Provider shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Service Provider is a party except with prior written consent of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

22.1.3 Subject to the provisions of Clause 22.2 and Clause 17.5, the Service Provider shall not create or permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights or interests in the Site, the Existing Assets or the Healthcare Facilities, except with the prior written consent of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

22.2 Permitted Assignment and Encumbrances

The restraints set forth in Clause 22.1 shall not apply to:

- (a) liens or Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the operation and maintenance of the Healthcare Facilities or the provision of the Healthcare Services;
- (b) any Encumbrances created by the Service Provider over any new assets (i.e., assets other than the Site, the Existing Assets or assets that are permanently fixed on or to the buildings at the Site) that the Service Provider procures, installs or uses in connection with the Project and the performance of its obligations under this Agreement, and their related documents of title, whether such Encumbrance arises or is created in the ordinary course of business of the Healthcare Facilities or is created as security for indebtedness to the lenders under financing agreements and/or working capital arrangements obtained by the Service Provider for meeting its obligations under this Agreement;
- (c) assignment of rights, interest or claims under this Agreement, the License to the Site and Existing Assets, or any obligations or liabilities of the Service Provider arising under this Agreement, or any sum or sums that may become due and payable to the Service Provider as a result of the Service Provider's performance under this Agreement, as security for indebtedness to lenders under financing agreements and/or working capital arrangements obtained by the Service Provider for meeting its obligations under this Agreement; or
- (d) any sale or disposal of the Existing Assets or any of the New Assets procured, installed or used by the Service Provider in performing its obligations under

this Agreement, provided that: (i) such sale occurs after the Appointed Date; (ii) such Existing Assets or New Assets have reached the end of their useful life or is required to be disposed off in accordance with Applicable Law; (iii) such asset is replaced with another asset that is in a condition that will permit the Service Provider to achieve or exceed the baseline measures of the KPIs set out in **Schedule C**; and (iv) the proceeds of such sale or disposal is deposited in the account instructed by the Authority.

22.3 Assignment by the Authority

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

22.4 Effect of Assignment Not Permitted

Any assignment not expressly permitted under this Agreement shall be null and void and of no further force and effect.

ARTICLE 23

CHANGE IN LAW

23.1 Increase in costs

If as a result of Change in Law, the Service Provider suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 25,00,000 (Rupees twenty five lakh) in any Accounting Year, the Service Provider may so notify the Authority and the Parties shall mutually agree for compensation parameters so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Service Provider, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Service Provider may by notice require the Authority to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Service Provider, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 23.1 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

23.2 Reduction in costs

If as a result of Change in Law, the Service Provider benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 25,00,000 (Rupees twenty five lakh), the Authority may so notify the Service Provider and the Parties shall mutually agree for making necessary adjustments in compensation or other relevant parameters, as the case may be, so as to place the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than 30 (thirty) days from the date of notice, and agree on mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Service Provider to pay an amount that would place the Service Provider in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Service Provider shall pay the amount specified therein to the Authority; provided that if the Service Provider shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 23.2 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

23.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 23 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

ARTICLE 24

LIABILITY AND INDEMNITY

24.1 General indemnity

24.1.1 The Service Provider will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Service Provider 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 Service Provider to any User or from any negligence of the Service Provider under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

24.1.2 The Authority will indemnify, defend, save and hold harmless the Service Provider against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Service Provider 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 Service Provider, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Service Provider.

24.2 Indemnity by the Service Provider

24.2.1 Without limiting the generality of Clause 24.1, the Service Provider shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

24.2.2 Without limiting the generality of the provisions of this Article 24, the Service Provider shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of

infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or by the Service Provider's Contractors in performing the Service Provider'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 Service Provider 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 Healthcare Facilities, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Service Provider shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Service Provider is unable to secure such licence within a reasonable time, the Service Provider shall, at its own expense, 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.

24.3 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 24 (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.

24.4 Defence of claims

24.4.1 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 24, 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.

24.4.2 If the Indemnifying Party has exercised its rights under Clause 24.3, 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).

24.4.3 If the Indemnifying Party exercises its rights under Clause 24.3, 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, as and when 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 24.4.3 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.

24.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 24, 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.

24.6 Survival on Termination

The provisions of this Article 24 shall survive Termination.

ARTICLE 25

DISPUTE RESOLUTION

Any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to the interpretation, performance, breach or termination of this Agreement, whether during or after the Term (a “**Dispute**”) shall be determined in accordance with the procedure set out in this Article 25 (the “**Dispute Resolution Procedure**”).

25.1 Notice of Dispute and Manner of Dispute Resolution

25.1.1 Either Party may notify the other Party in writing of a Dispute (a “**Dispute Notice**”). The Parties shall attempt to resolve the Dispute amicably in accordance with the conciliation procedure set forth in Clause 25.2.

25.1.2 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 without unnecessarily resorting to arbitration, 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.

25.2 Conciliation

25.2.1 In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to [Project Director, Uttarakhand Health Systems Development Project] and the [Chairman of the Board of Directors]/[governing body] of the Service Provider for amicable settlement. 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.

25.2.2 If: (a) such conciliation meeting does not take place within the 7 (seven) day period; or (b) the Dispute is not amicably settled within 15 (fifteen) days of the conciliation meeting; or (c) the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the Dispute Notice 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 25.3.

25.3 Arbitration

25.3.1 [Any Dispute which is not resolved amicably by conciliation under Clause 25.2 shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 25.3.2. 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 and Conciliation Act, 1996. The venue of such arbitration shall be Dehradun, and the language of arbitration proceedings shall be English.]²

Or

² This clause is to be retained if the Selected Bidder is an Indian Entity.

[Any Dispute which is not resolved amicably by conciliation under Clause 25.2 shall be finally decided by reference to arbitration to be conducted in accordance with the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules.]³

25.3.2 The Board of arbitrators shall consist of 3 arbitrators, with each Party appointing one arbitrator and the third arbitrator being appointed by the two arbitrators so appointed. In the event of a failure of a Party to appoint an arbitrator or disagreement between the two arbitrators appointed by the Parties, the appointment shall be made in accordance with the Rules.

25.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 25 shall be final and binding on the Parties as from the date it is made, and the Service Provider and the Authority agree and undertake to carry out such Award without delay.

25.3.4 The Service Provider and the Authority agree that an Award may be enforced against the Service Provider and/or the Authority, as the case may be, and their respective assets wherever situated.

25.4 Performance Pending Disputes

This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending written settlement in any conciliation proceedings or the Award in any arbitration proceedings hereunder, unless: this Agreement has been terminated; or expressly provided otherwise in this Agreement.

³ This clause is to be retained if the Selected Bidder is not an Indian Entity.

ARTICLE 26

REDRESSAL OF PATIENT GRIEVANCES

26.1 Complaints Register

- 26.1.1 The Service Provider shall maintain a public relations office at each of the Healthcare Facilities where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). The Service Provider shall also depute a public relations officer at the public relations office, who shall be present at all times to receive complaints from Complainants. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Service Provider at each Healthcare Facility so as to bring it to the attention of all Patients.
- 26.1.2 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 Service Provider. Immediately after a complaint is registered, the Service Provider shall give a receipt to the Complainant stating the date and complaint number.
- 26.1.3 Without prejudice to the provisions of Clauses 26.1.1 and 26.1.2, the Authority may, in consultation with the Service Provider, specify the procedure for making complaints in electronic form and for responses thereto.

26.2 Redressal of Complaints

- 26.2.1 The Service Provider 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 Service Provider to the Complainant under a certificate of posting.
- 26.2.2 Within 7 (seven) days of the close of each month, the Service Provider shall send to the Authority a true photocopy of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Service Provider to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Service Provider shall consider such advice and inform the Authority of its decision thereon. If the Authority is still of the opinion that a grievance has not been fairly and justly redressed and 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 27

MISCELLANEOUS

27.1 Governing law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India. The courts at Dehradun shall, subject to any reference to arbitration under Clause 25.3, have exclusive jurisdiction over matters arising under, out of or relating to this Agreement.

27.2 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).

27.3 Depreciation

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

27.4 Delayed Payments and Default Interest

27.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 12% (twelve per cent), and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

27.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

27.5 Waiver

27.5.1 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 its 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 its 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.

27.5.2 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.

27.6 No Liability for Review

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority of any Project Agreement or any observation or inspection of the augmentation, development, operation or maintenance of the Healthcare Facilities or the provision of the Healthcare Services or the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Service Provider from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

27.7 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.

27.8 Survival

27.8.1 Expiration or Termination shall:

- (a) not relieve the Service Provider or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive expiration or 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 expiration or Termination or arising out of such Termination.

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

27.9 Entire Agreement

27.9.1 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.

27.9.2 All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that the Bid of the Selected Bidder/the Consortium shall be deemed to form part of this Agreement and treated as such.

27.9.3 No amendment or modification (including any Change of Scope) 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.

27.10 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.

27.11 No partnership

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

27.11.2 Without prejudice to Clause 27.11.1 above, the Parties agree that they will cooperate, act equitably, perform their respective obligations under this Agreement in a coordinated manner and take a collaborative approach to achieving the objectives of this Agreement and resolving any issues or Disputes, including increasing access to quality and efficient Healthcare Services for the Patients.

27.12 Third parties

27.12.1 This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns. 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.

27.12.2 Without prejudice to the foregoing, references to the Authority shall, as relevant, include a reference to the DMH&FW for the purpose of exercising the rights of the Authority and/or for performing the obligations of the Authority under this Agreement, other than the Authority's payment obligations under this Agreement.

27.13 Successors and Assigns

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

27.14 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 Service Provider, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of: [*insert name, designation and contact details*] or to such other person as the Service Provider may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Dehradun may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Service Provider may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to Project Director, Uttarakhand Health Systems Development Project with a copy delivered to the Authority Representative and the Principal Secretary, Medical Health and Family Welfare, Government of Uttarakhand or such other person as the Authority may from time to time designate by notice to the Service Provider; provided that if the Service Provider does not have an office in Dehradun, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

27.15 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.

27.16 Counterparts

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

27.17 Rights Cumulative

27.17.1 Subject to any express provision in this Agreement to the contrary, the rights of the Authority under this Agreement are cumulative and are in addition to any other rights of the Authority at law or in equity.

27.17.2 The Service Provider shall have no rights, whether at Applicable Law, in equity or under or pursuant to this Agreement or otherwise, to any extension of the time limits contained in this Agreement or to any adjustment to the Base Service Fee, the Volume Adjusted Service Fee or the Service Fee or to claim any additional sums or other forms of relief or to treat this Agreement as terminated, except to the extent expressly provided for in this Agreement.

27.17.3 Without prejudice to Clause 27.17.1 and Clause 27.17.2 above, neither Party shall be entitled to seek a remedy under more than one provision of this Agreement and/or to claim on any insurance, guarantee or bond in respect of the same event or circumstance where to do so would enable it to recover the same Loss twice, and each Party shall pursue its remedies under this Agreement and/or such insurance policy, guarantee or bond (as the case may be) in such a manner as it in good faith believes will not result in one Party unfairly compensating the other Party.

27.18 Costs and Stamp Duty

27.18.1 Subject to any express provision in this Agreement to the contrary, each Party shall bear its own costs and expenses relating directly or indirectly to the negotiation, preparation, execution of and performance of its obligations under this Agreement.

27.18.2 All stamp duty that may be payable on or in connection with this Agreement and any instrument executed under this Agreement shall be borne by the Authority.

ARTICLE 28

DEFINITIONS

28.1 Definitions

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

“Abuse” means any practices of the Service Provider that are inconsistent with sound fiscal, business or medical practices and which result in an unnecessary cost to the Authority, or for payment of the Service Fee for Healthcare Services to Patients that are not Medically Necessary or that fail to meet professionally recognized standards of healthcare. In contrast to Fraud, Abuse is not of criminal intent.

“Accounting Year” means each 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.

“Act of Insolvency” means, in relation to a person:

- (a) it is, or is deemed for the purposes of any law to be, unable to pay its debts as they fall due or insolvent;
- (b) it admits its inability to pay its debts as they fall due;
- (c) by reason of actual or anticipated financial difficulties, it begins negotiations with any creditor for the suspension of payment or rescheduling of any of its indebtedness;
- (d) a moratorium is declared in respect of any of its indebtedness;
- (e) any step is taken with a view to a moratorium or a composition, assignment or similar arrangement with any of its creditors;
- (f) a meeting of its shareholders, directors, partners, governing body or other officers is convened for the purpose of considering any resolution for, to petition for or file documents with a court or any registrar for its winding-up, administration or dissolution, or any such resolution is passed;
- (g) any person presents a petition, or files documents with a court or any registrar, for its winding-up, administration or dissolution, unless it is a petition for winding-up presented by a creditor which is being contested in good faith and with due diligence and is discharged or struck out within thirty (30) days of the date of receipt of notice of such petition;
- (h) an order for its winding-up, administration or dissolution is made;
- (i) any liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer is appointed in respect of it or any of its assets;
- (j) its directors, shareholders, partners, governing body or other officers request the appointment of, or give notice of their intention to appoint a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer; or

- (k) any other step or procedure analogous to those set out in paragraphs (a) through (j) above is taken in any jurisdiction.

“**Affected Party**” shall have the meaning set forth in Clause 19.1.

“**Affiliate**” means, in relation to either Party [and/or each Consortium Member], a person who Controls, is Controlled by, or is under common Control with such Party [or Consortium Member].

“**Agreement**” or “**PPP Contract**” means this Agreement, its Recitals, the Schedules hereto, the Annexures to the Schedules 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 Government of India or the State Government including ordinances or rules, regulations, bye-laws, notifications, guidelines, policies, directions, directives and orders made thereunder by any Government Instrumentality, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement, the Healthcare Facilities, the Healthcare Services and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, that are 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 augmentation, development, operation and maintenance of the Healthcare Facilities and the provision of Healthcare Services to Patients at the Healthcare Facilities, during the subsistence of this Agreement.

“**Appointed Date**” shall have the meaning ascribed to it in Clause 3.2.4.

“**Asset Register**” in relation to each Healthcare Facility, means the register prepared by the Parties in accordance with Clause 9.2 listing the assets that comprise that Healthcare Facility and that will be handed over to the Service Provider for the augmentation, development, operation and maintenance of such Healthcare Facility and the provision of the Healthcare Services at such Healthcare Facility.

“**Authority Default**” shall have the meaning set forth in Clause 20.2.1.

“**Authority Indemnified Persons**” shall have the meaning set forth in Clause 24.1.1

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

“**Authority Supplies**” shall refer to and include the drugs and consumables to be supplied by the Authority, the GoUK or any Government Instrumentality and shall include the drugs and consumables indicated in **Schedule G**.

“**Award**” shall have the meaning set forth in Clause 25.3.3.

“**Bank**” shall have the meaning set forth in Recital (B).

“**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.

“**Base Service Fee**” in relation to the first year, means the fixed annual amount quoted by the Selected Bidder and that is payable by the Authority in terms of this Agreement for: (i) making available the Healthcare Facilities so as to achieve at a minimum the baseline measures for the Availability KPIs set out in **Schedule C**; (ii) providing the Healthcare Services to Patients in the year, provided that the number of Patients in the year does not exceed the Base Volume; and (iii) providing the Healthcare Services, so as to achieve at a minimum the baseline measures for the Performance KPIs set out in **Schedule C**. The Base Service Fee for each year after the first year shall be adjusted for inflation, in the manner set out in Clause 15.1 read with **Schedule K**.

“**Base Volume**” means the baseline number of Patients set out at **Schedule K** that will be considered for the payment of the Base Service Fee, it being clarified that the Service Provider shall not be obligated to provide Healthcare Services to such number of Patients.

“**Bid**” shall have the meaning ascribed to it in Recital E, and includes the documents in their entirety comprised in the bid submitted by the {Selected Bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the irrevocable and unconditional bank guarantee provided by [the Service Provider]/[the Selected Bidder/the Consortium] to the Authority along with the Bid in a sum of Rs. 25,00,000 (Rupees Twenty Five Lakhs only), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security.

“**Business Day**” shall mean any day, that is not a Sunday or a day that the GoUK has declared as a public holiday.

“**CHC**” means each of the community health centres at Tehri-Garhwal district to be developed, equipped and operated and maintained by the Service Provider in accordance with this Agreement.

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

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

provided that such event was not reasonably foreseeable as on the date of the Bid and such event applies to: (x) the Healthcare Facilities and not to other similar healthcare facilities, whether publicly or privately owned in the State; (y) the Service Provider and not to other healthcare providers; or (z) healthcare providers, but not to other persons;

and provided further that the following events shall not be treated as a Change in Law, if occurring after the date of the Bid:

- (i) any change to or roll-back of the Health Insurance Scheme; or
- (ii) any introduction of or amendments to or change in the rates of any direct Taxes, such as but not limited to income tax, wealth tax, etc.; or
- (iii) the notification of the applicability of the Clinical Establishments (Registration & Regulation) Act, 2010 to the State of Uttarakhand or the issuance of any Rules or Guidelines thereunder; or
- (iv) any change to or roll-back of the Health Programmes.

“Change in Ownership” means:

- (a) any sale, transfer or disposal of the direct and/or indirect legal, beneficial or equitable ownership or interest in the Equity of the Service Provider (including any direct or indirect change in the Control over the exercise of voting rights conferred on the Equity, control over the right to appoint or remove directors or the rights to dividends); and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a),

that results in a breach of the restrictions set out at Clause 4.6.2.

“Change of Scope” shall have the meaning set forth in Clause 16.1.1.

“Change of Scope Notice” shall have the meaning set forth in Clause 16.2.1.

“Change of Scope Order” shall have the meaning set forth in Clause 16.2.3.

“COD” or **“Commercial Operation Date”** in respect of all the Healthcare Facilities, shall mean the date on which the Completion Certificate is issued to the Service Provider for all the Healthcare Facilities in accordance with Clause 12.4.

“Companies Act” shall mean the Companies Act, 1956, provided that references to any repealed provision contained in the Companies Act, 1956 shall be read as references to the corresponding provision contained in the Companies Act, 2013.

“Complainant” shall have the meaning set forth in Clause 26.1.1.

“Complaint Register” shall have the meaning set forth in Clause 26.1.1.

“Completion Certificate” shall have the meaning set forth in Clause 12.4.

“Completion Conditions” shall have the meaning set forth in Clause 11.5.

“Compliance Report” shall have the meaning set forth in Clause 14.6.1.

“Conditions Precedent” shall have the meaning set forth in Clause 3.2.

[**“Consortium”** shall have the meaning set forth in Recital E.]

“**Contractor**” means the person or persons, as the case may be, with whom the Service Provider has entered into any sub-contract for the development, operation and/or maintenance of the Healthcare Facilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Service Provider.

“**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).

“**CPI**” means the Indian Consumer Price Index for Industrial Workers applicable to Dehradun, as published from time to time by the Labour Bureau, Government of India on <http://labourbureau.nic.in/indnum.htm>, or any successor Government Instrumentality officially authorized to publish such index. Failing such publication or in the event of a fundamental change to the CPI, such other index as the Parties may agree, or such adjustments to the CPI as the Parties may agree (in each case with the intention of putting the Parties in a no better no worse position than they would have been had the CPI not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined pursuant to the Dispute Resolution Procedure.

“**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 Service Provider requires any reasonable action by the Service Provider that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord its approval.

“**DMH&FW**” shall have the meaning set forth in Recital B.

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

“**Delay Damages**” shall have the meaning set forth in Clause 11.4.2 (a).

“**Deployment Period**” shall have the meaning set forth in Clause 13.21.2.

“**Development Period**” means the period from the Appointed Date until the COD.

“**Development Works**” means all works and things necessary to procure equipment, augment, rehabilitate and complete the Healthcare Facilities such that the Healthcare Facilities are capable of meeting the requirements set out in Clause 11.2.2 and can be used for the purpose of providing the Healthcare Services in accordance with this Agreement, including the KPIs set out at **Schedule C**.

“**Dispute**” shall have the meaning set forth in Article 25.

“**Dispute Notice**” shall have the meaning set forth in Clause 25.1.1.

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 25.

“District Level Facility” means the district hospital or part thereof that is located at Boradi, New Tehri and that is described at **Schedule A** that is to be developed, equipped and operated and maintained by the Service Provider in accordance with this Agreement.

“Divestment Requirements” means the obligations of the Service Provider for and in respect of Termination as set forth in Clause 21.1.

“Divestment Security” shall have the meaning set forth in Clause 21.4.3.

“Emergency” means a condition or situation that is likely to endanger the safety of the individuals at any Healthcare Facility, including Patients, or which poses an immediate threat or material damage to any Healthcare Facility.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment by way of security, retention of title, privilege or priority of any kind having the effect of security interest or other arrangement or agreement having substantially the same effect, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy.

“Environmental and Social Management Plan” means the environmental and social management plan published and approved by the State Government for the Uttarakhand Health Systems Development Project, as may be amended from time to time.

“Equity” in respect of the Service Provider, means the total capital of the Service Provider that will be raised from its [shareholders by the issuance of equity shares or convertible instruments or subordinated shareholder loans / partners].

“Existing Assets” in relation to each Healthcare Facility, means the assets that are existing at the Site and which will be inspected and listed in the Asset Register. An indicative list of the Existing Assets is set out at **Schedule A**.

“Financial Model” means the financial model, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by [the Selected Bidder]/[the Consortium], and includes a description of the assumptions and parameters used for making calculations and projections therein, including the break-up of the annual estimated cost of each MHV, each CHC and the District Level Facility on a line item basis.

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 19.1.

“Fraud” means an intentional act of deception by any person which has as its purpose the objective of: (a) obtaining a financial or other benefit or advantage under this Agreement; or (b) causing or exposing the Authority or another other person to a financial or other loss or disadvantage related to the operation of this Agreement, whether or not such act in fact achieves its intended purpose. For the avoidance of doubt, **“Fraud”** includes any false or inaccurate statement or declaration being made or false or inaccurate records being submitted with any of the objectives above.

“Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability, prudence and foresight 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 operation, maintenance and management of the Healthcare Facilities and provision of Healthcare Services and performance of related obligations by the Service Provider in accordance with this Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner.

“**GoUK**” shall have the meaning set forth in Recital A.

“**Government Instrumentality**” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over the Healthcare Facilities, the provision of the Healthcare Services or the exercise of all or any of the rights of the Service Provider or the performance of all or any of the obligations of the Service Provider under or pursuant to this Agreement. The Authority shall not be a Government Instrumentality for the purpose of this Agreement.

“**Health Insurance Incentive**” in any month during the year, means the amount determined as 20% (twenty percent) of the total Claim payments received by the Authority in its bank account in that month in respect of the covered Healthcare Services provided to eligible beneficiaries under the Health Insurance Scheme.

“**Health Insurance Scheme**” means any health insurance scheme issued and/or implemented by the Government of India and/or the State Government to all or part of the population of the State of Uttarakhand for the provision of cashless access healthcare services or healthcare services against reimbursement to defined beneficiaries, as such scheme may be issued or amended from time to time. For the avoidance of doubt, as on the date of this Agreement, “**Health Insurance Scheme**” shall include the Rashtriya Swasthya Bima Yojana and the Mukhyamantri Swasthya Bima Yojana.

“**Health Programmes**” shall mean any national or state health programmes that are implemented or will be implemented by the Government of India or the State Government of Uttarakhand for improvement in the health status of the population of the State of Uttarakhand, as these may be amended from time to time.

“**Healthcare Facilities**” means the healthcare facilities to be operated and maintained under this Agreement, including the District Level Facility, the CHCs and the MHVs listed at Recital D.

“**Healthcare Services**” means the medical, clinical or surgical services provided or to be provided to Patients at the District Level Facility, the CHCs and the MHVs or at any other place, which shall at a minimum include the Healthcare Services listed at **Schedule B**.

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Clause 24.3.

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Clause 24.3.

“**Independent Expert**” shall have the meaning set forth in Clause 12.1.1.

“**Inspection Report**” shall have the meaning set forth in Clause 12.3.1.

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Service Provider pursuant to Article 18, and includes all insurances required

to be taken out by the Service Provider under Clause 18.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.

“Intellectual Property” means all patents, inventions (whether patentable or not), trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether existing under statute, common law or equity, whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

“Key Medical Personnel” shall have the meaning set forth in Clause 4.4.2.

“Key Performance Indicators” or **“KPIs”** mean the key performance indicators to be achieved by the Service Provider in making available the Healthcare Facilities and in providing the Healthcare Services, as set out in **Schedule C**.

“LLP” means a Limited Liability Partnership incorporated in terms of the LLP Act;

“LLP Act” means the Limited Liability Partnership Act, 2008, as amended from time to time;

“Lead Member” shall have the meaning set forth in Recital E.

“Legal Opinion” means one or more legal opinions addressed to the Authority from the Service Provider’s external legal counsel in form and substance satisfactory to the Authority covering, amongst other things: (i) the capacity, power and authority of the Service Provider to enter into this Agreement; (ii) the legality, validity, binding nature and enforceability of this Agreement; and (iii) the legality, validity, binding nature and enforceability of the Performance Security.

“License” means the right to use the Site and Existing Assets in relation to the District Level Facility and the CHCs, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for development, operation and maintenance of the Healthcare Facilities and the provision of the Healthcare Services at the Healthcare Facilities and for the performance of the Service Provider’s obligations and exercise of its rights under this Agreement.

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital F.

“Loan” shall have the meaning set forth in Recital (B).

“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.

“Medical Practitioner” means a person who holds a valid registration from the medical council of Uttarakhand and is thereby entitled to practice medicine within its jurisdiction, acting within the scope and jurisdiction of his/her license.

“Medical Malpractice” occurs when there is a medical fault due to: (a) a negligent act or lack of required standard of care deviating from the standard treatment protocols or other duly accepted standards of practice performed by a Medical Practitioner; or (b) lack of awareness of technical knowledge supposed to be acquired by all Medical Practitioners, which caused damage or harm to a Patient while treating and/or diagnosing the Patient and as a result thereof,

the Medical Practitioner and/or the Health Care Facility is convicted of medical malpractice by the relevant authority having jurisdiction.

“**Medical Record**” in relation to a Patient, includes but is not limited to Patient information, Patient history, medical reports, exam findings, test results or reports, prescriptions for medication, referrals ordered or received from other health care providers, case management plan, progress notes and follow-up visits.

“**Medically Necessary**” means Healthcare Services that a Medical Practitioner, exercising prudent clinical judgement would provide to a Patient for the purpose of evaluating, diagnosing or treating an illness, disease or injury or its symptoms, and that:

- (i) are clinically appropriate in terms of type, frequency, extent, site and duration and that are required for the effective medical management of the illness, disease or injury suffered by the Patient;
- (ii) does not exceed the level of care necessary to provide safe, adequate and appropriate medical care in scope, duration or intensity;
- (iii) in compliance with generally accepted standards of medical practice including the Standard Treatment Protocols specified in Clause 13.10; and
- (iv) are not primarily for the convenience of the patient or the physician and not more costly than an alternative service or sequence of services at least likely to provide an equivalent therapeutic or diagnostic result.

For this purpose, “**generally accepted standards of medical practice**” means standards that are based on the standard treatment protocols that are issued by the State Government or the Government of India, as may be amended from time to time; and if such standard treatment protocols are unavailable then: (i) credible scientific evidence published in peer-reviewed, medical literature generally recognized by the relevant medical community; (ii) the views of Medical Practitioners in the relevant clinical area in India and internationally; and (iii) any other relevant factors.

“**Medicine Requisition**” shall have the meaning set forth in Clause 13.5.2.

[“**Member**” shall have the meaning set forth in Recital E.]

“**Minimum Performance Benchmarks**” shall have the meaning set forth in Clause 3.4.2.

“**MHV**” means each mobile health vehicles to be procured, equipped and operated and maintained by the Service Provider in accordance with this Agreement.

“**New Assets**” means any assets that the Service Provider procures, installs, uses or replaces at the Healthcare Facilities, but which does not include any asset that forms part of the Site or the Existing Assets.

“**Non-Political Event**” shall have the meaning set forth in Clause 19.2.

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

“**Outstanding Work**” shall have the meaning set forth in Clause 21.4.2.

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

“**Patient**” means a person who uses or intends to use the Healthcare Facilities for receiving Healthcare Services, in accordance with the provisions of this Agreement and Applicable Laws, whether such person pays the User Charges or is a member of the public with a special right of free access.

“**Patient Charter**” shall have the meaning set forth in Clause 13.9.

“**Patient Committee**” shall have the meaning set forth in Clause 14.11.1.

“**Payment Due Date**” shall have the meaning set forth in Clause 15.3.3.

“**Performance Security**” shall have the meaning set forth in Clause 8.1.

“**Personnel**” shall mean all those persons engaged by the Service Provider, whether as employees or consultants or on a contract basis through its Contractors, for the operation, maintenance and management of the Healthcare Facilities and for the provision of the Healthcare Services to Patients.

“**Political Event**” shall have the meaning set forth in Clause 19.3.

“**Prohibited Act**” means in relation to this Agreement or any of the Project Agreements:

- (a) offering, giving or agreeing to give to any employee, representative, agent, advisor or servant of the Authority, any other Government Instrumentality or the Service Provider any gift or consideration of any kind as an inducement or reward:
 - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or the Project Agreements; or
 - (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or the Project Agreements;
- (b) committing any offence:
 - (i) under the Indian Prevention of Corruption Act, 1988;
 - (ii) at common law in respect of Fraudulent acts in relation to this Agreement or the Project Agreements;
- (c) committing Fraud or attempting to commit Fraud or conspiring to commit Fraud against the Authority or any other Government Instrumentality; or
- (d) otherwise committing or omitting to commit any other act that will be construed as a “corrupt practice”, “fraudulent practice”, “collusive practice”, “coercive practice”, “undesirable practice”, “restrictive practice” or “obstructive practice” in accordance with Clause 4 of the Request for Proposals.

“**Project**” means the development, operation and maintenance of the Healthcare Facilities and providing the Healthcare Services to the Patients 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 Agreement” means any agreement with any Contractor that may be entered into by the Service Provider in connection with matters relating to, arising out of or incidental to the development, operation, maintenance or management of the Healthcare Facilities, but does not include any agreement for procurement of goods and services involving a consideration of upto Rs. 5 (five) lakh.

“Project Assets” means all physical and other assets relating to and forming part of the Site including:

- (a) rights over the Site in the form of License;
- (b) tangible assets such as civil works including foundations, drainage works, electrical systems, communication systems, rest areas, administrative offices, including Existing Assets and New Assets;
- (c) all rights of the Service Provider under the Project Agreements;
- (d) insurance proceeds; and
- (e) Applicable Permits and authorisations relating to or in respect of the Healthcare Facilities.

“Provisional Certificate” shall have the meaning ascribed to it under Clause 12.5.1;

“Punch List” shall have the meaning ascribed to it under Clause 12.5.3;

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital (B).

“Route Plan” shall have the meaning set forth in Clause 13.14.4.

“Rules” shall have the meaning set forth in Clause 25.3.1.

“Scheduled Bank” means a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934 and that has been listed in the Second Schedule to the Reserve Bank of India Act, 1934 and includes a scheduled commercial foreign bank in India, but does not include a co-operative bank.

“SCOD” shall have the meaning set forth in Clause 11.4.1.

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

[**“Selected Bidder”** shall have the meaning set forth in Recital E.]

“Service Fee” means the fee payable by the Authority to the Service Provider after such additions, limitations and deductions as may be made in accordance with Clause 15.1, for making available the Healthcare Facilities and providing the Healthcare Services in accordance with the terms of this Agreement, all of which shall be determined in accordance with Clause 15 read with **Schedule K**.

“Service Provider” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals.

“Service Provider Default” shall have the meaning set forth in Clause 20.1.1.

“**Site**” in relation to all the Healthcare Facilities, means the land and all buildings or structures situate thereon or other property permanently fixed to the land or to such building or structure. A description of the Site is set out at **Schedule A**.

“**State**” means the State of Uttarakhand and “**State Government**” means the government of that State.

“**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 Healthcare Facilities 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.

“**Term**” shall have the meaning set forth in Clause 3.4.

“**Termination**” means the expiry or termination of this Agreement and the Grant hereunder.

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement.

“**Termination Payment**” means the amount payable, under and in accordance with this Agreement, by the Authority to the Service Provider upon Termination.

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

“**Transition Management Plan**” shall have the meaning set forth in Clause 10.1.1.

“**User Charges**” means the payments to be collected from the Patients for the use of any Healthcare Facility and for availing the Healthcare Services pursuant to this Agreement and Applicable Law.

“**User Charges Policy**” shall have the meaning set forth in Clause 13.22.1.

“**Vesting Certificate**” shall have the meaning set forth in Clause 21.3.

“**Volume Adjusted Service Fee**” for each month of each year, shall mean the monthly Base Service Fee for that year that is adjusted in accordance with **Schedule K**, based on the actual number of Patients provided the Healthcare Services across all the Healthcare Facilities in that month of that year.