

REQUEST FOR PROPOSAL

Invitation to Tender

for

**Commissioning, Operation, Maintenance and Management of
Cancer Care Hospital in Jharsuguda on PPP mode**

Issued by:

**Department of Health & Family Welfare
Government of Odisha**

LETTER OF INVITATION

To whomsoever it may concern

Sub: Request for Proposal for Commissioning, Operation, Maintenance and Management of the Cancer Care Hospital at Jharsuguda in Odisha in PPP Mode

Dear Sir/Madam

Department of Health & Family Welfare, Government of Odisha seeks to select one of the interested parties for commissioning, operation, maintenance & management of a Cancer Care Hospital at Jharsuguda in Public Private Partnership (PPP) Mode through transparent open bidding procedure. As a part of the selection process, the Request for Proposal is enclosed with this letter.

You are requested to participate with the objective of submitting your bid for the aforesaid project in accordance with the RFP.

Please note that Department of Health & Family Welfare, Government of Odisha reserves the right to accept or reject all or any of the bids without assigning any reason whatsoever.

Thanking you,

Yours faithfully,

Commissioner-cum-Secretary
Department of Health & Family Welfare, Government of Odisha

GLOSSARY

Appointed Date	Shall have the meaning as set forth under Clause 10.1.1 of the Draft Concession Agreement
Authority	Clause 1.1.1
Average Annual Turnover	Clause 2.1.1.4.(c)
Annual Bed Days	number of Beds available for Inpatients multiplied by 365 days
Bid Due Date	Clause 1.2.3
Bidding Process	Clause 1.2.1
Bid Security	Clause 1.2.5
Concessionaire	Clause 1.1.2
Concession Agreement	Clause 1.1.3
Concession	Clause 1.1.10
Concession Period	Clause 1.1.10
Conflict of Interest	Clause 2.2.13
Financial Capacity	Clause 2.1.1.3 (b)
First round of bidding	Clause 3.4.4
Highest Bidder	Clause 1.1.5
Inpatient	means a Patient who is admitted to the Cancer Care Hospital,
LOA	Letter of Award
Net Worth	Clause 2.1.1.4(c)
OPD	Out Patient Department
OPD Consultations	mean the consultation services provided in the OPD
Outpatients	Shall be those Patients availing OPD services
PPP	Public Private Partnership
Project	Clause 1.1.1
Qualification Bid	Clause 1.2.1
Qualified Bidders	Clause 1.2.2
RFP	Request for Proposal
Second round of bidding	Clause 3.4.4
Selection Bid	Clause 1.2.1
Selected Bidder	Clause 3.4.2
SPV	Clause 2.1.2
Technical Capacity	Clause 2.1.1.3 (a)
Third round of bidding	Clause 3.4.5
Tie Bidders	Clause 3.4.3

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

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DISCLAIMER

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

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

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

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

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

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

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

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

1 INTRODUCTION

1.1 Background & Scope of Work

- 1.1.1 Department of Health & Family Welfare (the “**Authority**”) on behalf of Government of Odisha intends to establish a Cancer care hospital in Jharsuguda, Odisha and looking for a private partner to commission, operate, maintain, and manage the Cancer care Hospital (the “**Project**”) and has decided to carry out the bidding process for selection of the private partner. Brief particular of the project is as below:

Name of the Project	Number Beds (Capacity)
Commission, Operate, Maintain and Manage the Cancer care Hospital at Jharsuguda in PPP mode	120 beds

- 1.1.2 The Selected Bidder who is required to be a Company incorporated under the Companies Act 1956 or Companies Act 2013 or an organization registered under the Societies Registration Act 1860 or any relevant Act of the Government of India (GoI) or any relevant Act of a State or Union Territory, shall incorporate a Special Purpose Vehicle (the “**Concessionaire**”) for the Project.
- 1.1.3 The Authority shall construct the Cancer care Hospital and procure the required medical equipment/furniture and shall handover to the Concessionaire. The Concessionaire shall provide required technical inputs to the Authority during construction stage as per the provisions of the Concession agreement (the “**Concession Agreement**”) to be entered into between the Concessionaire and the Authority, in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.4 The Concessionaire shall be responsible for installation of the medical equipment/furniture, project commissioning, operations, maintenance, management, and replacement of the medical equipment/furniture under and in accordance with the provisions of the Concession Agreement.
- 1.1.5 (a) Bids are invited for the Annual Concession Fee by a bidder against the implementation of the project. A Bidder shall, pay an **Annual Concession Fee** to the Authority in terms of the Concession Agreement (the “**Annual Concession Fee**”). The Concession Period and other terms are pre-determined, as indicated in the draft Concession Agreement, and the Annual Concession Fee shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.6, the Project will be awarded to the Highest Bidder.
- (b) In this RFP, the term “**Highest Bidder**” shall mean the Bidder who is offering the highest Annual Concession Fee payable for the 1st Accounting Year commencing from the Operations Date in accordance with the provisions of the Concession Agreement. Subject to the provisions of Clause 1.1.6, the Project will be awarded to the Highest Bidder.
- (c) The Annual **Concession Fee** quoted by the Highest Bidder shall be increased for each subsequent year by an additional 5% (five per cent) of the **Annual Concession Fee** for the previous Accounting Year.
- 1.1.6 Generally, the Highest Bidder shall be the selected Bidder. The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in the RFP, be invited to match the Bid submitted by the Highest Bidder in case such Highest Bidder withdraws or is not selected for any reason. In the event that none of the other Bidders match the Bid of the Highest

Bidder, the Authority may, in its discretion, invite fresh Bids from the remaining Bidders or annul the Bidding Process, as the case may be.

- 1.1.7 The Concessionaire shall, in consideration of its investment and services, be entitled to levy and collect service charges in accordance with Article 21 of the draft Concession Agreement.
- 1.1.8 At the end of the Concession period, the Concessionaire shall hand over the Cancer care Hospital including the medical equipment/furniture, other assets including the other associated buildings and infrastructure, in a well maintained and proper condition, normal wear and tear excepted, to the Authority.
- 1.1.9 Detailed scope of work is provided in the Draft Concession Agreement. The Bidders are advised to review and familiarize themselves with the provisions of the Draft Concession Agreement before submitting their Bid.
- 1.1.10 The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "**Concession**") for a period of 15 years from the Appointed Date ("the "**Concession Period**").
- 1.1.11 The statements and explanations contained in this RFP are intended to provide a comprehensive understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by Authority.
- 1.1.12 The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by the Authority pursuant to this RFP (collectively the "Bidding Documents"), as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids.
- 1.1.13 For the selection of Concessionaire, the Authority has adopted a selection process as stated in Clause 1.2.

1.2 Brief description of Bidding Process

- 1.2.1 The Authority has adopted a single stage 2 (two) envelope process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project. All Bidders shall simultaneously submit their relevant qualification details for the purpose of meeting the Minimum Eligibility Criteria ("the "**Qualification Bid**") as per Clause 2.1 of this RFP and selection proposal as per Clause 3.4 ("the "**Selection Bid**") for the Project against this RFP in 2 (two) separate envelopes submitted simultaneously, both separately sealed envelopes enclosed together in an outer single sealed envelope.
- 1.2.2 In the first step, Qualification Bids of all Bidders shall be evaluated as to whether they meet the Minimum Eligibility Criteria as set forth in Clause 2.1 of this RFP document for undertaking the Project. At the end of this stage, the Authority shall announce the qualified Bidders. The Selection Bids of only those Bidders who meet the Minimum Eligibility Criteria and are shortlisted in accordance with this RFP (the "**Qualified Bidders**") would be opened and evaluated for the purpose of identifying the Selected Bidder. The Selection Bids of the remaining Bidders shall be

returned sealed and unopened by the Authority.

- 1.2.3 The Bid shall be valid for a period of not less than 120 days from the date specified in Clause 1.3 for submission of bids (the "**Bid Due Date**").
- 1.2.4 The Bidding Documents include this Invitation to Tender and Draft Concession Agreement for the Project. A Project Information Memorandum is also provided along with the Bidding Documents for reference purpose. The aforesaid documents and any addenda issued subsequent to this RFP Document, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.
- 1.2.5 A Bidder is required to deposit, along with its Bid, a bid security (the "**Bid Security**") of Rs. 40,00,000 (Rupees Forty Lakhs only) as specified in Clause 2.19 refundable not later than 120 days from the Bid Due Date except in the case of the Selected Bidder. The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to the Authority. The validity period of the bank guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days and may be extended as may be mutually agreed between the Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid security.
- 1.2.6 Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Project including implementation of the Project.
- 1.2.7 The Concessionaire will be entitled to levy and charge the user fee from users of the Project as per the terms of the Concession Agreement.
- 1.2.8 Further and other details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.
- 1.2.9 Any query or request for additional information concerning this RFP shall be submitted in writing by fax or e-mail to the persons designated in Clause 2.11.5 as per the Schedule of the Bidding process under Clause 1.3. The communication shall clearly bear the following identification/ title: "Queries/Request for Additional Information: Request for Proposal for commissioning, operation, maintenance & management of Cancer care Hospital in Jharsuguda on PPP mode".

1.3 Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule and reserves the right to alter the schedule:

#	Event Description	Date
1.	Date of Site Visit	16 December 2022, 11:00 am onwards
2.	Last Date for receiving queries	17 December 2022
3.	Pre-Bid Meeting	20 December 2022, 11:00 am
4.	Bid Due Date and time	On or before 20 January 2023, 4:00 pm
5.	Opening of Qualification Bids	20 January 2023, 4:30 pm
6.	Opening of Selection Bids	To be intimated later
7.	Issue of Letter of Award (LOA)	To be intimated later
8.	Signing of Concession Agreement	To be intimated later

RFP for Commissioning, Operation, Maintenance & Management of Cancer care Hospital at Jharsuguda in PPP mode

#	Event Description	Date

2 INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 Eligibility of Bidders

2.1.1 For determining the eligibility of Bidders, the following shall apply:

2.1.1.1 The Bidder shall be a single entity. No consortium is allowed. The term Bidder used herein would apply to the single entity.

2.1.1.2 A Bidder may be an organization under the Companies Act 1956 or Companies Act 2013 or an organization registered under the Societies Registration Act 1860 or any relevant Act of the Government of India (GoI) or any relevant Act of a State or Union Territory. The Bidder should be registered in India and permissible by the statutory laws of GoI to provide healthcare services in India.

2.1.1.3 **Minimum eligibility criteria** - To be eligible for bidding, a Bidder shall fulfill the following conditions of eligibility as on bid due date:

(a) Technical Capacity: For demonstrating technical capacity and experience (the “**Technical Capacity**”), the Bidder must meet the following criteria and shall provide details & proofs as per Appendix-I;

- i. The Bidder should have at least 1 multi-specialty or super-specialty hospital offering cancer care including medical oncology, surgical oncology, and radiation oncology services
- ii. The Bidder should have at least three years of experience in providing cancer care including medical oncology, surgical oncology, and radiation oncology services
- iii. The Bidder should have treated an annual average of 700 patients in radiation oncology during last three years
- iv. The Bidder should have performed an annual average of 5000 chemotherapy sessions during last three years
- v. The Bidder should have a NABH/JCI accreditation for one of its multi-specialty or super-specialty hospital

(b) Financial Capacity: The Bidder shall demonstrate, a minimum Average Annual Turnover of Rs. 50 crores for preceding three financial years (2021-2022, 2020-21, 2019-20) and Net Worth of Rs. 15 crores (the “**Financial Capacity**”) as at the close of the preceding financial year (2021-22).

2.1.1.4 The Bidder shall enclose with its Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following:

(a) Certificate(s) from a chartered accountant certifying the Technical Capacity of the Bidder;

(b) Copy of the NABH/JCI Accreditation certificate and

(c) Certificate(s) from its statutory auditors specifying the annual turnover for preceding three financial years (2021-2022, 2020-21, 2019-20) and net worth of the Bidder, as at the close of the preceding financial year (2021-22), and also specifying that the methodology adopted for calculating such Annual Turnover and net worth conforms to the provisions of this clause.

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

For Companies under Companies Act 1956 or Companies Act 2013: - the sum of subscribed and paid up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off.

For entities other than Companies:- the total assets minus total liabilities

For the purposes of this RFP, average annual turnover (the “**Average Annual Turnover**”) shall mean simple mean average of the preceding three financial years of gross annual revenue not including income from other sources like interest, dividend, rent etc.

- .
- 2.1.2 The Bidder will be required to form a Special Purpose Vehicle, incorporated under the Indian Companies Act 2013 (the “**SPV**”), to execute the Concession Agreement and implement the Project.
 - 2.1.3 The Bidder should submit a Power of Attorney as per the format at Annexure C, authorizing the signatory of the Bid to commit the Bidder.
 - 2.1.4 Any entity which has been barred by the Central/ State Government or any entity controlled by them, from participating in any project, and the bar subsists as on the date of Bid, would not be eligible to submit Bid
 - 2.1.5 A Bidder or Associate should, in the last three years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or Associate, as the case may be, nor been expelled from any project or contract by any public entity nor have had any contract terminated for breach by such Bidder or Associate.
 - 2.1.6 In computing the Technical Capacity and Financial Capacity of the Bidder under Clause 2.1, the Technical Capacity and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder. As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

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

2.2 General terms of Bidding

- 2.2.1 A Bidder is eligible to submit only one Bid for the Project. A Bidder shall not be entitled to submit another bid for the Project.
- 2.2.2 The Bidding Documents shall be available on the Authority’s website at <https://health.odisha.gov.in/Tenders.asp?GL=10>. All updates to the bidding documents shall be uploaded on the website of the Authority.
- 2.2.3 The Project Information Memorandum for the Project is being provided only as a reference

document. Bidders are expected to carry out their own surveys, investigations, and other detailed examination before submitting their Bids. Nothing contained in the Project Information Memorandum shall be binding on the Authority nor confer any right on the Bidders, and the Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Project Information Memorandum.

2.2.4 Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the Concession Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Concession Agreement.

2.2.5 The Qualification Bid shall be furnished as per formats provided in Appendix - I. The Qualification Bid shall include the following:

ANNEXURE A: Proposal Checklist
ANNEXURE B: Letter comprising the Bid
ANNEXURE C: General Information of Bidder
ANNEXURE D: Power of attorney for signing of Bid
ANNEXURE E: Bid Security (Bank Guarantee)
ANNEXURE F: Technical Capacity of Bidder
ANNEXURE G: Financial Capacity of Bidder

2.2.6 The Selection Bid should be furnished in the format at Appendix–II, clearly indicating in its bid the Annual Concession Fee which shall constitute the sole criteria for evaluation of Bids. Subject to the provisions of Clause 2.6, the Project will be awarded to the Highest Bidder.

In this RFP, the term “Highest Bidder” shall mean the Bidder who is offering the highest Annual Concession Fee payable for the 1st Accounting Year commencing from the Operations Date in accordance with the provisions of the Concession Agreement. Subject to the provisions of Clause 1.1.6, the Project will be awarded to the Highest Bidder.

2.2.7 The Selection Bid must be signed by the Bidder’s authorized signatory.

2.2.8 The Bidder shall deposit a Bid Security of Rs. 40,00,000 (Rupees Forty Lakhs only) in accordance with the provisions stated in Clause 2.19.

2.2.9 The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

2.2.10 Any condition or qualification or any other stipulation apart from those contained in the Bidding documents shall render the Bid liable to rejection.

2.2.11 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language.

2.2.12 The Bidding Documents including this RFP and all attached documents are and shall remain the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The Authority will not return any Bid or any information provided along therewith.

2.2.13 A Bidder shall not have conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal, without prejudice to any other right or remedy

that may be available to the Authority hereunder or otherwise. Without limiting the generality of the above, a Bidder shall be considered to have a Conflict of Interest that affects the Bidding Process, if:

- (i)** the Bidder or Associate and any other Bidder, or any Associate thereof have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder or an Associate thereof (or any shareholder thereof having a shareholding of more than 5 % (per cent) of the paid up and subscribed share capital of such Bidder or Associate, as the case may be) in the other Bidder, or Associate is less than 5 % (per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act 1956. For the purposes of this Clause 2.2.13(i), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “Subject Person”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or
- (ii)** a constituent of such Bidder is also a constituent of another Bidder; or
- (iii)** such Bidder, or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or any Associate thereof; or
- (iv)** such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- (v)** such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- (vi)** such Bidder, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design, or technical specifications of the Project.

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

the same. Provided that this disqualification shall not apply where such advisor is engaged after a period of 2 years from the date of commencement of operation of the Project.

2.2.15 Any award of Concession pursuant to this RFP shall be subject to the terms of Bidding Documents.

2.3 Shareholding of the Selected Bidder in the Concessionaire

2.3.1 The Selected Bidder shall be required to form an appropriate Special Purpose Vehicle (the "SPV"), incorporated under the Indian Companies Act 2013, which would be the Concessionaire to execute the Concession Agreement and implement the Project. The Selected Bidder shall incorporate conditions in the Articles of Association of the SPV to prevent the Selected Bidder's equity in the SPV falling below 51% at any point of time during the Concession Period. The Selected Bidder further acknowledges and undertakes to hold 100% of the issued and paid up equity in the SPV until 3 (three) years from the Appointed Date and thereafter the Selected Bidder may, at its option, reduce its holding to 51%. The Selected Bidder shall hold at least 51% of the issued and paid up equity in the SPV at all times during the Concession Period.

2.4 Cost of Bidding

The Bidders shall be responsible for all the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are advised/ encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. For the purpose of examination of the Site, an official site visit shall be organized on the date specified in Clause 1.3 of this RFP. Authority shall facilitate in organizing the official site visit. Bidders shall do their own arrangement and bear all costs related to their travel, accommodation, conveyance, and other expenses for the site visit.

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

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

and

f) agreed to be bound by the undertakings provided by it under and in terms hereof

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

2.6 Right to accept and to reject any or all Bids

2.6.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection, or annulment, and without assigning any reasons thereof.

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

- a)** At any time during the Bid stage, a material misrepresentation by the Bidder is made or uncovered, or
- b)** The Bidder does not provide, within the reasonable time specified by the Authority, supporting information sought by the Authority for evaluation of the Bid.

Such misrepresentation/inadequate response shall lead to the disqualification of the Bidder. If such disqualification / rejection occurs after the Bids have been opened and the highest Bidder gets disqualified / rejected, then the Authority reserves the right to:

- a)** Call upon the other qualified bidders.
- b)** Take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

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

2.6.4 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of the Authority to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority there under.

B. DOCUMENTS

2.7 Contents of the RFP

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

Invitation for Bids

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

Appendices

I. APPENDIX I - Formats for Qualification Bid

- ANNEXURE - A : Proposal Checklist
- ANNEXURE - B : Letter comprising the Bid
- ANNEXURE - C : General Information of Bidder
- ANNEXURE - D : Power of Attorney for Signing of Bid
- ANNEXURE - E : Bid Security (Bank Guarantee)
- ANNEXURE - F : Technical Capacity of Bidder
- ANNEXURE - G : Financial Capacity of Bidder

II. APPENDIX II - Format for Selection Bid

III. APPENDIX III – Draft Concession Agreement

2.8 Clarifications

- 2.8.1 Bidders requiring any clarification on the RFP may notify the Authority in writing or by fax or e-mail in accordance with Clause 1.2.9. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The Authority shall endeavour to

respond to the queries within the period specified therein. The Authority will put the queries and its responses thereto on its website, without identifying the source of queries.

- 2.8.2 The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question(s) or provide any clarification(s), in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 2.8.3 The Authority may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by Authority or its employees or representatives shall not in any way or manner be binding on the Authority.

2.9 Amendment of RFP

- 2.9.1 At any time prior to the deadline for submission of Bids, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 2.9.2 Any Addendum thus issued shall be uploaded on the Authority's website.
- 2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the timelines mentioned in Clause 1.3, having due regard for the time required by the bidders to address such amendment.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

- 2.10.1 The Bidder shall provide all information sought under this RFP. The Authority will, in normal course, evaluate only those Bids that are received in the required formats and complete in all respects. However, the Authority will be at liberty to seek any additional/ supplementary information after opening of the Bids.
- 2.10.2 The Bid shall be neatly typed in indelible ink and signed by the authorized signatory of the Bidder who shall also put his initials on each page, in blue ink. All the alterations, omissions, additions, or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

2.11 Sealing and Submission of Bids

- 2.11.1 The Bidder shall submit the Qualification Bid in the formats specified under Appendix-I, and seal it in an envelope and mark the envelope as "QUALIFICATION BID for commissioning, operation, maintenance and management of Cancer care Hospital in Jharsuguda on PPP mode

The Qualification Bid shall include the following documents:

- a.** Proposal Checklist (Appendix – I – ANNEXURE A);
- b.** Letter comprising the Bid (Appendix – I - ANNEXURE B);
- c.** General Information of Bidder (Appendix – I - ANNEXURE C)
- d.** Power of Attorney for signing of Bid in the prescribed format (Appendix – I - ANNEXURE D);
- e.** Bid Security in the prescribed format (Appendix – I - ANNEXURE E);

- f. Technical Capacity of the Bidder (Appendix – I - ANNEXURE F);
- g. Financial Capacity of the Bidder (Appendix – I - ANNEXURE G);

2.11.2 The Bidder shall separately submit the Selection Bid of the Project in the format specified in Appendix – II and seal it in an envelope and mark the envelope as “SELECTION BID for commissioning, operation, maintenance and management of Cancer care Hospital in Jharsuguda on PPP Mode”.

2.11.3 A true copy of the Qualification Bid shall be placed in hard/ spiral binding and the pages shall be numbered serially. Each page thereof shall be initialed in blue ink by the authorized signatory. 1 (One) copy of this document shall be placed in a separate envelope and marked “COPY OF DOCUMENTS”.

2.11.4 The three envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

"Bid for commissioning, operation, maintenance and management of Cancer care Hospital in Jharsuguda on PPP Mode"

Each of the four envelopes shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5 Each of the envelopes shall be addressed to:

ATTN. OF	The Commissioner-cum-Secretary to Government
AUTHORITY	Department of Health & Family Welfare, Government of Odisha
ADDRESS	Odisha Secretariat, Bhubaneswar – 751001
PHONE NO.	0674 – 2536632
EMAIL ID	orhealth@nic.in

2.11.6 If the envelopes are not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.11.7 Bids should be submitted at the address mentioned in Clause 2.11.5 by registered post or speed post or in person. In case of Bids submitted in person, a receipt thereof should be obtained from the person specified at Clause 2.11.5 or a designated person authorized by him for this purpose.

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

2.12 Bid Due Date

2.12.1 Bids should be submitted as per the timelines in Clause 1.3 at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP.

2.12.2 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 Late Bids

Bids received by the Authority after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. The Authority will not be responsible in any manner for the late receipt of Bids.

2.14 Modifications/ Substitution/ Withdrawal of Bids

- 2.14.1 The Bidder may modify, substitute, or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Authority prior to Bid Due Date and time specified as per Clause 2.12.1. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.
- 2.14.2 The modified or substituted Bid shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.
- 2.14.3 Any alteration/modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.15 Rejection of Bids

- 2.15.1 The Authority reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for the Authority to accept any Bid or to give any reasons for their decision. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 2.15.2 The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reason(s).

2.16 Validity of Bids

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

2.17 Confidentiality

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

2.18 Correspondence with the Bidder

The Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

D. BID SECURITY

2.19 Bid Security

- 2.19.1 The Bidder shall furnish as part of its Bid, a Bid Security of Rs. 40,00,000/- (Rupees Forty Lakhs only) in the form of a crossed demand draft (the "Demand Draft") issued by a Scheduled Bank in India, payable at par in Bhubaneswar in favour of the **“DDO–cum–Under Secretary, Health**

& Family Welfare Department". The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free. In case of the Demand Draft, the Bidder shall have to ensure that the Bid Security is valid throughout the validity of the Bid by taking necessary and required actions.

- 2.19.2 The Bid Security can also be in the form of a bank guarantee issued by a Nationalised Bank or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rs. One thousand crore) in the format at Annexure E (the "Bank Guarantee") and having a validity period of not less than 180 days from the Bid Due Date inclusive of a claim period of 60 (sixty) days and may be extended as may be extended by the Bidder from time to time.
- 2.19.3 Any Bid not accompanied by the Bid Security shall be rejected by the Authority as non-responsive.
- 2.19.4 Save as provided in Clauses 2.19.7 and 2.2.9 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority. Where Bid Security has been paid by Demand Draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Authority give the name and address of the person in whose favour the said demand draft shall be drawn by the Authority for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.19.5 The Selected Bidder's Bid Security will be returned, without any interest, upon the Bidder signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Authority may, at the Selected Bidder's option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Concession Agreement.
- 2.19.6 The Authority shall be entitled to forfeit and appropriate the Bid Security in any of the events specified in Clause 2.19.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that the Authority will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 2.19.7 The Bid Security shall be forfeited and appropriated by the Authority as mutually agreed genuine pre-estimated compensation and damages payable to the Authority for, inter alia, time, cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid;
 - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
 - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
 - d) In the case of Selected Bidder, if it fails within the specified time limit –
 - to sign and return the duplicate copy of LOA;
 - to sign the Concession Agreement; or
 - to furnish the Performance Security within the period prescribed in the Concession Agreement;
 - In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

3 EVALUATION OF BIDS

3.1 Opening and Evaluation of Bids

- 3.1.1 The Authority shall open the Qualification Bid as per the Schedule mentioned in Clause 1.3, at the address specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.
- 3.1.2 The Authority will subsequently examine and evaluate the Qualification Bid in accordance with the provisions set out in Section 3.
- 3.1.3 To facilitate evaluation of Qualification Bid, the Authority may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

3.2 Tests of responsiveness

- 3.2.1 Prior to evaluation of Qualification Bid, the Authority shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
 - a) it is received as per the format at Appendix – I;
 - b) it is received by the Bid Due Date including any extension there of pursuant to Clause 2.12.2;
 - c) it is signed, sealed, spiral/firmly bound and marked as stipulated in Clauses 2.10 and 2.11;
 - d) it is accompanied by the Bid Security as specified in Clause 2.2.8;
 - e) it is accompanied by the Power(s) of Attorney as specified in Clause 2.1.3;
 - f) it contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
 - g) it does not contain any condition or qualification; and
 - h) it is not non-responsive in terms hereof.
- 3.2.2 The Authority reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution, or withdrawal shall be entertained by the Authority in respect of such Bid.

3.3 Evaluation Parameters

- 3.3.1 The Bidders adjudged as responsive in terms of Clause 3.2.1 and fulfilling the Minimum Eligibility Criteria as set forth in Clause 2.1.1.3 shall qualify for evaluation under this Section 3.
- 3.3.2 The Bidder's competence and capability for the purpose of this RFP is proposed to be established by the following parameters:
 - a) Technical Capacity; and
 - b) Financial Capacity
- 3.3.3 The Bidders must provide the necessary information relating to Technical Capacity as per format

in Appendix-I.

3.3.4 Financial information for purpose of evaluation

- (a) The Bid must be accompanied by the Audited Annual Reports of the Bidder for the last 3 (three) financial years (2021-2022, 2020-21 and 2019-20), preceding the year in which the Bid is made.
- (b) In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided.
- (c) The Bidder must establish the minimum Average Annual Turnover and Net Worth specified in Clause 2.1.1.4 (c), and provide details as per format at Annexure G, Appendix-I.

3.4 Selection of Bidder

- 3.4.1 Selection Bids of only Qualified Bidders shall be considered for evaluation. Only Qualified Bidders shall be invited for the opening of Selection Bids; the date on which the Selection Bids will be opened shall be intimated to the Qualified Bidders. Selection Bids of those Bidders who have not been declared as Qualified Bidders will not be opened and will be returned unopened to the relevant Bidders.
- 3.4.2 The Bidder adjudged as responsive in terms of Clause 3.2.1 and quoting the highest Annual Concession Fees for the Project in Selection Bid shall be declared as the selected Bidder (the "**Selected Bidder**").
- 3.4.3 In the event that two or more Bidders quote the same amount of Annual Concession Fees (the "**Tie Bidders**"), the Bidder which has highest Average Annual Turnover shall be declared as the Selected Bidder for the Project. In the event the Tie Bidders have same Average Annual Turnover, the Bidder which has highest Net Worth shall be declared as the Selected Bidder for the Project.
- 3.4.4 In the event that the highest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the Authority may invite all the remaining Bidders and match the Bid of the aforesaid highest Bidder (the "**second round of bidding**"). If in the second round of bidding, only one Bidder matches the highest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said highest Bidder in the second round of bidding, then the Bidder whose Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said highest Bidder in the second round of bidding, the said third highest bidder shall be the Selected Bidder.
- 3.4.5 In the event that no Bidder offers to match the highest Bidder in the second round of bidding as specified in Clause 3.4.4, the Authority may, in its discretion, invite fresh Bids (the "**third round of bidding**") from all Bidders except highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 3.4.6 After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by the Authority to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA acknowledge receipt thereof, and sign and return the duplicate copy of the LOA in acceptance of

its terms and conditions within 15 days of the date of the LOA. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

- 3.4.7 After acknowledgement of LOA as aforesaid by the Selected Bidder, it shall cause the Concessionaire to execute the Concession Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification, or amendment in the Concession Agreement.

3.5 Contacts during Bid Evaluation

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

4 FRAUD AND CORRUPT PRACTICES

- 4.1** The Bidders and their respective officers, employees, agents, and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority shall reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Authority shall appropriate the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Authority hereunder or otherwise.
- 4.2** Without prejudice to the rights of the Authority under Clause 4.1 hereinabove and the rights and remedies which the Authority may have under the LOA or the Concession Agreement, if a Bidder or the Selected Bidder, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or selected private partner shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder or selected private partner, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- 4.3** For the purposes of Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- a)** "corrupt practice" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project. Provided that this clause shall not apply where such advisor is engaged after a period of 2 years from the commencement of operation of the Project.
 - b)** "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process
 - c)** "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Bidding Process;
 - d)** "undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- e) "restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process

5 PRE-BID CONFERENCE

- 5.1** Pre-Bid conferences of the Bidders shall be convened at the designated date and time mentioned under Clause 1.3 and at the following place:

Venue of Pre-bid meeting and address:

Office of National Health Mission,
Unit 8, Mission Directorate, NHM, Annex Building,
SIHFW, Nayapalli,
Bhubaneswar – 751 012

- 5.2** Bidders can either join the meeting physically or through virtual platform. The link for joining the pre-bid meeting will be notified 3 (three) working days prior to the date of the pre-bid meeting in the official website of Health & Family Welfare Department, Government of Odisha. In case of physical presence, a maximum of one representatives of each Bidder shall be allowed to participate on production of Authority letter from the Bidder.
- 5.3** During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent, and competitive Bidding Process.

6 MISCELLANEOUS

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

7 APPENDICES

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Appendix I - Formats for Qualification Bid

Annexure A: Proposal Checklist

S. No	Item	Checked by Bidder	Checked by Authority
1	Letter comprising the Bid (Appendix – I - ANNEXURE B);		
2	General Information of Bidder (Appendix – I - ANNEXURE C)		
3	Power of Attorney for signing of Bid in the prescribed format (Appendix – I - ANNEXURE D);		
5	Bid Security in the prescribed format (Appendix – I - ANNEXURE E);		
7	Technical Capacity of the Bidder (Appendix – I - ANNEXURE F);		
8	Financial Capacity of the Bidder (Appendix – I - ANNEXURE G);		

Annexure B - Letter Comprising the Bid

Dated:

To,

The Commissioner-cum-Secretary to Government,
Department of Health & Family Welfare, Government of Odisha
Odisha Secretariat, Bhubaneswar - 751001

Sub: Bid for “Commissioning, operation, maintenance & management of Cancer care Hospital in Jharsuguda on PPP Mode”

Dear Sir,

With reference to your RFP document dated,

1. I/we, having examined the RFP document and understood its contents, hereby submit my/our Bid for the aforesaid project. The proposal is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid project, and we certify that all information provided in the Bid are true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the aforesaid Project.
4. I/ We shall make available to the Authority any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/ We certify that in the last three years, we or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
 - (a) I/ We have examined and have no reservations to the RFP document, including any addendum issued by the Authority;
 - (b) I/ We do not have any conflict of interest in accordance with the RFP document
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in this document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
 - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the

RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

- 8.** I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders.
- 9.** I/ We believe that we satisfy(s) the Average Annual Turnover and Net Worth criteria and meet(s) all the requirements as specified in the RFP document and are/ is qualified to submit a Bid.
- 10.** I/ We certify that in regard to matters other than security and integrity of the country, we or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 11.** I/ We further certify that in regard to matters relating to security and integrity of the country, we or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
- 12.** I/ We further certify that no investigation by a regulatory authority is pending either against us or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
- 13.** I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
- 14.** I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the selection/ Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 15.** I/ We agree and undertake to abide by all the terms and conditions of the RFP document.

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

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place:

Name and seal of the Bidder

Annexure C – General Information of Bidder

1. Particulars of Bidder

a)	Name:	
b)	Country of Incorporation	
c)	Address of the corporate headquarters and its branch office(s) if any in India	
d)	Date of incorporation and/or commencement of business	

2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:

3. Details of Individual (s) who will serve as the point of contact/communication for the Authority:

1.	Name:	
2.	Designation	
3.	Company	
4.	Address	
5.	Tel No.	
6.	E mail address	

4. Details of Authorized Signatory:

1.	Name:	
2.	Designation	
3.	Company	
4.	Address	
5.	Tel No.	
6.	E mail address	

5.

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

6. A statement by the Bidder or any of their Associates disclosing material non-performance or contractual noncompliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary).

Annexure D: Power of Attorney for signing of Bid

(To be executed on Stamp paper of appropriate value)

Know all men by these presents, We, _____
_____ (Name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the “Commissioning, operation, maintenance & management of Cancer care Hospital at Jharsuguda in PPP Mode” including but not limited to signing and submission of bids and other documents and writings, participate in bidders' and other conferences and providing information / responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with the Authority.

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

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

For _____

(Signature)

(Name, Title and Address)

Accepted

(Signature)

(Name, Title and Address)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

Annexure E: Bank Guarantee for Bid Security

(To be executed on Stamp paper of appropriate value)

B.G. No.

Dated:

1. In consideration of you, Department of Health & Family Welfare, Government of Odisha, having its office at _____, (hereinafter referred to as the “Authority”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of a company registered under the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “Bidder”) which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns, for the “Commissioning, operation, maintenance and management of Cancer care Hospital at Jharsuguda in PPP mode” (hereinafter referred to as “the Project”) pursuant to the RFP Document dated issued in respect of the Project and other related documents including without limitation the draft concession agreement (hereinafter collectively referred to as “Bidding Documents”), we (Name of the Bank) having our registered office at and one of its branches at (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.2.8 read with Clauses 2.2.9 and 2.19 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs. 40,00,000 (Rupees Forty Lakhs only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest, or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive, and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 40,00,000 (Rupees Forty Lakhs only).
4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between the Authority and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
5. We, the Bank, further agree that the Authority shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for

submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

- 8.** Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by speed post or registered post or by registered mail to the Bank at the address set forth herein.
- 9.** We undertake to make the payment on receipt of your notice of claim on us addressed to name of Bank along with branch address and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.
- 10.** It shall not be necessary for the Authority to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
- 11.** We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
- 12.** The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.
- 13.** For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 40,00,000 (Rupees Forty Lakhs only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before _____ (indicate date falling 180 days after the Bid Due Date).

Signed and Delivered by Bank
By the hand of Mr/Ms., its and authorised official.

(Signature of the Authorised Signatory)
(Official Seal)

Annexure F: Technical Capacity of the Bidder

(Refer to Clauses 2.1, 2.11.1 and 3.3 of the RFP)

1. Details of Multi-specialty or Super-specialty hospital offering cancer care including medical oncology, surgical oncology, and radiation oncology services under our management:-

S. No.	Name & Address of Hospital	Number of Beds	Date of Commencement of Operation	Specialties Offered

2. Annual average number of patients treated in radiation oncology during last 3 years

S. No.	Name of the hospital (s)	Type of treatment in radiation oncology	Number of patients treated			
			2021-22	2020-21	2019-20	Average
1						
2						

3. Annual average number of chemotherapy sessions performed during last 3 years

S. No.	Name of the hospital (s)	Type of Chemotherapy session	Number of chemotherapy sessions performed			
			2021-22	2020-21	2019-20	Average
1						
2						

4. Details of NABH/JCI accredited facility

S. No.	Name of multi-specialty / super-specialty hospital	Type of accreditation (NABH/JCI)	Date of obtaining accreditation	Date till which the accreditation is valid

5. Number of years of experience in providing cancer care including medical oncology, surgical oncology and radiation oncology services: _____

Signature of Authorized Signatory
Name:

Note: Following documents need to be submitted as supporting documents:

- Certificate from a Chartered Accountant certifying the above details
- Copy of the NABH/JCI Accreditation certificate for the hospital whose details have been provided under (4) above.

Annexure G: Financial Capacity of the Bidder
(Refer to Clauses 2.1, 2.11.1 and 3.3 of the RFP)

Average Annual Turnover (In Rs. Crores)

Bidder	Annual Turnover for preceding three financial years (Rs. In Cr)			Average
	2021-22	2020-21	2019-20	
(1)	(2)	(3)	(4)	(5)

Net worth (2021-22)

S No.	Particulars	Amount (2021-22)
A		
B		
C		
D		
	Net Worth	

Note:

The Bidder shall attach copies of the audited financial statements for 3 (three) years preceding the Bid Due Date (2021-22, 2020-21 and 2019-20). The financial statements shall:

- (a) reflect the financial situation of the Bidder and its/ their Associates where the Bidder is relying on its Associate's financials;
- (b) be audited by the statutory auditor;
- (c) be complete, including all notes to the financial statements; and
- (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).

Note: The above details about the financial capacity shall be certified by the statutory auditor of the firm.

Appendix – II: Selection Bid

Dated: << >>

To,

The Commissioner-cum-Secretary to Government
Department of Health & Family Welfare, Government of Odisha
Odisha Secretariat, Bhubaneswar

Sub: Selection Bid for Commissioning, Operation, Maintenance & Management of Cancer care Hospital at Jharsuguda, Odisha in PPP Mode

Sir,

1. With reference to your Request for Proposal vide Tender No: << >>, dated << >>, I/we are herewith submitting our Selection Bid for the subject project.
2. I/We agree to keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date as specified in the RFP.
3. The Bid is unconditional and unqualified.
4. I/We agree and undertake to abide by all the terms and conditions of the RFP document. In witness thereof, I/we submit this Bid under and in accordance with the terms of the RFP document.
5. I/We offer an **Annual Concession Fees of Rs..... (Rupees**) payable for the 1st Accounting Year commencing from the Operations Date in accordance with the provisions of the Concession Agreement.
6. I/We agree that the Annual Concession Fee quoted shall be increased for each subsequent year by **an additional 5% (five per cent) of the Annual Concession Fee for the previous Accounting Year.**
7. I/we shall agree and undertake to abide by all the terms and conditions of the Concession Agreement.

Signature of Authorized Signatory
Name & Designation:

(Name & Seal of the Bidder)

Note: Bidders need to quote Annual Concession Fees in positive figures. Annual Concession Fees amounting to zero or negative figures shall be rejected.

Appendix – III: Draft Concession Agreement

DRAFT CONCESSION AGREEMENT

FOR

**COMMISSIONING, OPERATION, MAINTENANCE & MANAGEMENT
OF CANCER CARE HOSPITAL IN JHARSUGUDA ON PUBLIC
PRIVATE PARTNERSHIP (PPP) MODE**

**DEPARTMENT OF HEALTH & FAMILY WELFARE,
GOVERNMENT OF ODISHA**

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CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this _____ day of _____, 20_____

BETWEEN

1 **THE GOVERNOR OF ODISHA**, represented by Department of Health & Family Welfare, Government of Odisha and having its principal office at Odisha Secretariat, Bhubaneswar (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 _____, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at _____ (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) The Authority had resolved to establish a cancer care hospital (the “**Cancer Care Hospital**”) along with Utilities and other Project Assets in the city of Jharsuguda, and to partner with private entities, which are engaged in the task of managing and operating hospitals for commissioning, operation, maintenance and management of the Project Assets, in accordance with the terms and conditions to be set forth in the Concession Agreement.
- (B) The Authority had accordingly invited proposals vide its Request for Proposal No. _____ dated _____ (the “**Request for Proposal**” or “**RFP**”), prescribing the technical and financial terms and conditions for selection of a bidder for commissioning, operation, maintenance and management of the Project Assets in Jharsuguda on Public Private Partnership (PPP) mode.
- (C) After evaluation of the bids received, the Authority had accepted the bid of _____ (“**Selected Bidder**”) and issued a Letter of Award vide no. _____ dated _____ (hereinafter called the “**LOA**”) to the Selected Bidder requiring, *inter alia*, the execution of this Concession Agreement within the prescribed time period.
- (D) The Selected Bidder has since promoted and incorporated the Concessionaire as a company under the Companies Act 2013, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for Operation of the Project.
- (E) The Authority has accordingly agreed to enter into this Agreement with the Concessionaire with respect to the Operation of the Project, subject to and on the terms and conditions set forth hereinafter.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, 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 in Article 39) 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 Odisha, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Jharsuguda are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - (m) 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;
 - (n) the words importing singular shall include plural and vice versa;
 - (o) references to any gender shall include the other and the neutral gender;
 - (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
 - (q) “**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;
 - (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
 - (s) 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;
 - (t) 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 Panel shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or Independent Panel, as the case may be, in this behalf and not otherwise;
 - (u) 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;
 - (v) 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;
 - (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
 - (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent

Panel shall be provided free of cost and in three copies, and if the Authority and/or the Independent Panel is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, 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, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein;

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

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;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) 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 Hospital Buildings shall be constructed on the Project Site, which is delineated in Schedule A (the “**Project Site**”) of this Concession Agreement. The Project Assets will be located at the Project Site. Subject to the terms hereof and the Applicable Laws & Applicable Permits, the scope of the Operation of the Project shall be providing inputs for finalization of Drawings, technical specifications for construction of the Hospital Buildings, providing inputs for finalizing the list of medical equipment and medical furniture to be procured, commissioning, operation, maintenance, management and replacement of the Project Assets as required and includes (without limitation) the performance and execution, by the Concessionaire, of:

- (i) providing inputs for finalization of Drawings, technical specifications for construction of Hospital Buildings;
- (ii) providing inputs for finalization of list and technical specifications of required medical equipment and medical furniture to be procured by the Authority;
- (iii) Project Commissioning;
- (iv) recruiting and maintaining sufficient human resources, their training and management required for smooth functioning of the Project Assets and provisioning of services to the Patients;
- (v) operating and providing all Clinical Services and Non-Clinical Services in the Cancer Care Hospital to the Patients;
- (vi) charging, collecting, retaining and appropriating Service Charge, as per the provisions of this Concession Agreement;
- (vii) furnishing the Staff Accommodation, managing and maintaining the Project Assets so as to ensure efficiency and quality in services rendered to the Patients;
- (viii) repairing and replacement of Project Assets as and when required to ensure all such assets are in proper working condition.
- (ix) providing for all expenses for the operations and maintenance of the Project Assets;
- (x) upgrading and replacing the medical equipment and medical furniture as and when required to ensure uninterrupted and efficient services;
- (xi) paying Annual Concession Fees to the Authority as mentioned under Article 37 of this Agreement;
- (xii) create an Escrow Account in accordance with the provisions of Article 38 of this Agreement;
- (xiii) transferring the Project Site along with the Project Assets to the Authority or its duly nominated agency, on the Transfer Date.

The scope of Operation of the Project shall also include the performance and fulfilment of other and incidental obligations by the Concessionaire under this Concession Agreement. The Concessionaire shall undertake the performance of all its obligations under this Concession Agreement at its own cost and expense.

ARTICLE 3: GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to commission, operate, maintain and manage the Cancer Care Hospital (the “**Concession**”) for a period of 15 (fifteen) years (the “**Concession Period**”) commencing from the Appointed Date as defined under Clause 10.1.1, 10.1.2 and 10.1.3 of this Agreement, and the Concessionaire hereby accepts the Concession and agrees to carry out the Operation of the Project subject to and in accordance with the terms and conditions set forth herein. Provided that in the event the Concessionaire shall have discharged its obligations without any material breach thereof for a period of 15 (fifteen) years from the Appointed Date, it may by notice to be given no later than the 14th (fourteenth) anniversary of the Appointed Date, seek extension of the Concession Period, and in such an event, it shall be entitled to an additional Concession Period of 15 (fifteen) years on the terms and conditions set out herein. For the avoidance of doubt, material breach shall for the purposes hereof mean Suspension and/or cumulative levy of Damages exceeding a sum equivalent to Performance Security.

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

- a) all the rights, powers, benefits, privileges, Concessions and entitlements, to utilize the Project Assets for the Operation of the Project;
- b) commission, manage, operate and maintain the Project Assets in accordance with this Agreement;
- c) to enter into agreements with such Persons, as it may deem necessary and appropriate, for performing its obligations under this Concession Agreement
- d) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- e) bear and pay all costs, expenses, and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- f) neither assign, transfer, or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Assets nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except Article 4, 9, 24, 32, 36 and as expressly provided in this Agreement, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- a) designate the members and formation of Project Commissioning Panel;
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have:
- a) provided the Performance Security to the Authority within 90 days from the date of this Agreement;
 - b) designate & appoint the member(s) to Project Commissioning Panel; and
 - c) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;

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

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

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

Upon levy of Damages equivalent to 20% (twenty percent) of the Performance Security or non-fulfilment of Conditions Precedent by the Authority within 12 months from the date of Concession Agreement, whichever is earlier, the Concessionaire shall be entitled to terminate this Agreement by issuing a 15 (fifteen) day notice to the Authority and in such case the Performance Security shall be returned to the Concessionaire after recovery of all amounts payable by the Concessionaire to the Authority.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

Upon levy of Damages equivalent to 20% (twenty percent) of the Performance Security or non-fulfilment of Conditions Precedent by the Concessionaire within 12 months from the date of Concession Agreement, whichever is earlier, the Authority shall be entitled to terminate this Agreement by issuing a 15 (fifteen) day notice to the Concessionaire. On such termination, the Authority shall be entitled to forfeit the Performance Security in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Authority as a result of the Concessionaire's failure to fulfil the Conditions Precedent.

ARTICLE 5: OBLIGATIONS OF THE CONCESSIONAIRE

In addition to and not in derogation or substitution of any of the obligations, undertakings, terms and conditions or covenants set out elsewhere in this Concession Agreement, the Concessionaire shall, without qualification, at its own cost and expense observe, undertake, perform, and comply during the Concession Period with the following obligations:

5.1 Project Implementation

The Concessionaire shall

- a) provide details of the required additional support clinical specializations/disciplines if any (in addition to the minimum clinical specialties mentioned under Schedule E) to the Project Commissioning Panel within a period of 1 (one) month from the Effective Date for approval and finalization of the list of clinical specialties to be introduced in the Cancer Care Hospital.
- b) provide inputs to the Project Commissioning Panel for finalization of Drawings
- c) provide inputs to the Project Commissioning Panel for finalization of the list of medical equipment and medical furniture within 1 (one) month from the Effective Date. No additional request for procurement of additional medical equipment and medical furniture shall be entertained by the Authority after the final approval of the final list of medical equipment and medical furniture. The Concessionaire can procure and install additional medical equipment and medical furniture at its own cost and in accordance with Good Industry Practice and subject to Applicable Laws and upon approval of the Authority, as required for uninterrupted Healthcare Services to the Patients during the Concession Period.
- d) submit the technical specifications of the finalized/approved list of medical equipment and furniture within a period of 1 (one) month from the date of finalization of list of medical equipment and furniture by Project Commissioning Panel.
- e) provide support during construction period of the Hospital Buildings as per the scope detailed under Schedule P of this Agreement.
- f) install the medical equipment and medical furniture procured and provided by the Authority in the Cancer Care Hospital.
- g) ensure that all medical equipment and medical furniture is installed, checked and functions according to manufacturer's instructions, current best practice guidelines and legislation.
- h) implement HMIS as per the terms of this Agreement.
- i) implement standard operating procedures for all departments of the Cancer Care Hospital.
- j) nominate required members from its side for the Project Commissioning Panel and Independent Panel
- k) pay Annual Concession Fees to the Authority as mentioned under Article 37 of this Agreement
- l) create an Escrow Account in accordance with the provisions of Article 38 of this Agreement;

5.2 Project Commissioning

- a) The Concessionaire shall commission the Project Assets for providing the services as per the terms of Article 11 of this Agreement within 6 months from the Appointed Date.

5.3 Applicable Permits for Operation

- a) The Concessionaire shall procure and maintain at its cost all Applicable Permits for the Operation of the Project, including commissioning, managing, operating, and maintaining the Project Assets in accordance with the terms of the Concession Agreement.
- b) Subject to the Concessionaire complying with the applicable laws and good industry practices, the Authority shall use best efforts to facilitate securing of such applicable permits/approvals from the relevant government authority but is not obliged to do this and the Concessionaire shall remain solely responsible for securing such applicable permits/approvals.

5.4 Operations & Maintenance

The Concessionaire shall comply with the obligations related to operation & maintenance of the Project Assets as specified under Article 12 of this Agreement.

5.5 Quality and Accreditation

- a) The Concessionaire shall ensure that the service standards and quality medical practices comparable with the best domestic as well as international standards are adopted towards rendering the services and that it achieves or exceeds the Key Performance Indicators.
- b) The Concessionaire shall adhere to the provisions of Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha.
- c) The Concessionaire shall, within 2 years from achieving Project Commissioning obtain, and thereafter maintain throughout the Concession Period, NABH certification based on the assessment criteria defined by NABH for >100 bed hospital for the Cancer Care Hospital and shall provide a certified copy thereof to the Authority forthwith.

5.6 Revenues and Billing

- a) The Concessionaire shall be responsible for the entire revenue generation from the Operation of the Project.
- b) The Concessionaire shall in due consultation with the Authority, structure, generate and maintain a standardized billing system which can be accessible to the Authority as well as other monitoring agencies, as and when required;
- c) The Concessionaire shall ensure that an online software system should be used for the billing of Patients at its own cost. The billing receipt should mention the name, beneficiary card number, treatment done, date of visit/payment and mode of payment (self/ insurance).

5.7 Employees, Personnel and Labour

- a) The Concessionaire shall recruit and maintain required human resources for providing services as per provision of this Concession Agreement.
- b) The Concessionaire shall ensure that the human resources engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- c) The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors or sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute

Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

- d) At no point in time the services of the Cancer Care Hospital should suffer for lack of staff.
- e) The Concessionaire shall be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all personnel and labour employed by the Concessionaire in connection with the Operation of the Project under or through whatever legal relationship. The Authority shall not be liable in any manner whatsoever in respect of any such employees and labour.
- f) The Concessionaire shall make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Concessionaire's obligations under the Concession Agreement and will be the principal employer in respect of such labour and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by itself for Operation of the Project.
- g) The Concessionaire shall purchase and maintain required insurance, in addition to the insurance coverage statutorily required under applicable laws of labour throughout the Concession Period.
- h) The Concessionaire understands and agrees that its employees shall not be considered officers, employees or agents of the Authority and liabilities pertaining to such employees/contractors etc will be the sole responsibility of the Concessionaire. The Concessionaire shall 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 claims by its employees.
- i) The Concessionaire shall be responsible for any injury/accident to persons employed / deployed by it at the Cancer Care Hospital.

5.8 Information, Records and Customer Relationship Management

The Concessionaire shall be required to

- a) maintain a HMIS comprising of patient records including name, age, category of Patients (including Patients treated under BSKY or any amendment or substitute or thereof), appointments, procedures, history, line of treatment, diagnosis and prescription and other details as per the provisions under Article 19, Schedule L and Applicable Laws;
- b) Maintain record of Patients treated under BSKY or any amendment or substitute or thereof, and provide quarterly report to the Authority mentioning the name, treatment done and date of visit;
- c) Provide the Authority and other monitoring agencies access to the HMIS;
- d) Structure and establish processes to safeguard Patient information. This will need to be supported by appropriate training of staff; and
- e) Keep and maintain all such books, records and reports as are required to be maintained by the Concession Agreement and/or Applicable Law and shall submit to appropriate government authorities, monitoring agencies all information and reports as required under the Concession Agreement or any other Applicable Law;

5.9 Obligations relating to Project Agreements

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

- 5.9.2 Within 7 (seven) days of execution of any Project Agreement of value more than Rs 5.0 lakhs or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. It is hereby clarified that the Authority is under no obligation to review the Project Agreements, and submission of such Project Agreements or amendments thereto shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.9.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Substitution Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Substitution Covenant shall expressly provide for such eventuality. The Concessionaire hereby expressly agrees to include the Substitution Covenant in all its Project Agreements.

5.10 Obligations relating to Change in Ownership

- 5.10.1 The Concessionaire shall not undertake or permit any Change in Ownership during the Concession Period, except with the prior written approval of the Authority.
- 5.10.2 Subject to Clause 5.10.1, the Concessionaire agrees and acknowledges that:
- a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty-five per cent) of the total Equity of the Concessionaire; or
 - b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall require the Concessionaire to inform the Authority forthwith along with all relevant particulars about the same for its review and comments from national security and public interest perspective, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 45 (forty-five) days of the receipt of such information. The Concessionaire shall not be obliged to wait for the observations of the Authority on the proposed acquisition beyond the said 45 (forty-five) days period and may allow the acquirer to undertake such acquisition process. The Concessionaire agrees that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior information to the Authority, and the observations of the Authority, if any, shall be binding on the Concessionaire. For the avoidance of doubt, it is expressly agreed that comments and observations of the Authority hereunder shall be limited to national security and public interest perspective.

It is also agreed that the Authority shall not be liable in any manner on account of providing its observations, consent or otherwise on such proposed acquisition and that such consent or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.10.2:

- a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment

thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

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

5.11 Obligations relating to cleanliness and hygiene

The Concessionaire shall maintain a standard of sanitation, cleanliness, and hygiene, including in relation to disposal of waste, in the Cancer Care Hospital as per Good Industry Practices to maintain aesthetics of the facility, minimise potential spread of infection and to provide an appropriate and pleasant environment and experience for Patients.

5.12 Obligations relating to Branding of Cancer Care Hospital

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

The Parties agree that the Cancer Care Hospital will, unless changed in accordance with this Clause 5.12, be branded jointly by the Parties and that the Cancer Care Hospital shall initially be known, promoted, displayed, and advertised by the name of _____.

5.13 Obligations relating to facilities for physically challenged and elderly persons

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

5.14 Obligations relating to replacement / refurbishment / renovation

- 5.14.1 The Concessionaire shall replace/refurbish/renovate the Project Assets or procure any new asset/equipment/furniture other than the Project Assets at its own cost and in accordance with Good Industry Practice and subject to Applicable Laws, as required for uninterrupted Healthcare Services to the Patients during the Concession Period (the “**Concessionaire’s Assets**”).

- 5.14.2 The Concessionaire shall maintain record of Concessionaire’s Assets with details including particulars of asset, specifications, date of replacement / refurbishment / renovation / procurement, value of asset and supporting documents towards creation / procurement / refurbishment / renovation and value of asset. The Concessionaire shall provide a report covering these details within 30 days of completion of replacement / refurbishment / renovation / procurement of Concessionaire’s Asset(s). Upon submission of report by the Concessionaire, the Independent Panel shall have the right to inspect the Concessionaire’s Assets. The Concessionaire’s Assets shall become part of Project Asset.

5.15 Obligations relating to bio medical waste management

- 5.15.1 The Concessionaire shall adhere to the Service Level Specifications with respect to bio medical waste management as specified under Schedule G.

ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 In addition to its other obligations set out elsewhere in this Concession Agreement, Authority shall, at its own cost and expense undertake, comply with, and perform with the following obligations:

6.2 Applicable Permits

- a) The Authority shall obtain at its cost Applicable Permits, required for construction of the Hospital Buildings
- b) The Authority shall, upon written request, grant all applicable permits/approvals with reasonable promptness that are required for the Operation of the Project and which are in its authority to grant, subject to the Concessionaire or the relevant applicant complying with the eligibility criteria for the grant of such applicable permits/approvals and making the requisite payments.
- c) The Authority shall facilitate the Concessionaire to obtain requisite permits/approvals from government authorities for and during Operation of the Project but is not obligated to do so.

6.3 Construction of Project Assets and Procurement of medical equipment and medical furniture

- a) The Authority shall construct the Hospital Buildings as per the Drawings approved by the Project Commissioning Panel or competent authority as applicable.
- b) The Authority shall bear all associated costs with respect to construction of the Hospital Buildings, survey, investigations, any consultant(s)/ expert(s)/ contractor(s) appointed by Authority for construction of Hospital Buildings.
- c) The Authority shall procure the medical equipment and medical furniture as per the list and technical specifications finalized/approved by the Project Commissioning Panel. Any additional medical equipment or furniture, other than the ones identified in the list finalized by the Project Commissioning Panel, required by the Concessionaire shall be procured by the Concessionaire at its own cost.
- d) The Authority shall ensure that the suppliers/manufacturers of the medical equipment and medical furniture extend assistance to the Concessionaire as applicable with respect to setting up and installing the medical equipment and medical furniture and also extend the warranty obligations with respect to the medical equipment and medical furniture to the Concessionaire. The Authority shall assign, to the extent possible, in favour of the Concessionaire the warranty obligations of the manufacturer.
- e) The Authority shall handover to the Concessionaire physical possession of the Hospital Buildings in accordance with the provisions of Concession Agreement on as-is-where-is basis, free from all encumbrances and all medical equipment and medical furniture, on the Appointed Date;
- f) Permit peaceful use of the Project Assets by the Concessionaire under and in accordance with the provisions of the Concession Agreement.
- g) The Authority shall designate required number of members from its side and form the Project Commissioning Panel and Independent Panel.

6.4 Obligations relating empanelment under BSKY

The Authority shall facilitate in empanelment of the Cancer Care Hospital after an application has been made by the Concessionaire in accordance with the Applicable Laws,

for empanelment with Authority to become eligible for providing services under BSKY or any amendment or substitute or thereof.

6.5 Obligations relating bio medical waste management facility

- 6.5.1 Authority shall be required to provide a waste treatment facility at the Cancer Care Hospital for bio-medical waste treatment emanating from the Cancer Care Hospital.
- 6.5.2 Authority shall procure and set up the requisite biomedical waste treatment facilities for treatment of the bio medical waste.
- 6.5.3 The bio medical waste treatment facility for the Cancer Care Hospital shall be in place prior to the Appointed Date.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- c) it along with its Associates has the financial standing and capacity to undertake the Operation of the Project in accordance with the terms of this Agreement;
- d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.10; and that the Selected Bidder shall hold

100% (hundred per cent) of the issued and paid up Equity of the Concessionaire until 3 (three) years from the Appointed Date and thereafter the Selected Bidder may, at its option, reduce its holding to 51% in the Concessionaire. Notwithstanding anything contained to the contrary herein, the Selected Bidder shall at all times maintain a minimum of 51% of the issued and paid up Equity of the Concessionaire during the Concession Period;

- l) the Selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has incorporated the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- m) all its rights and interests with respect to the Operation of the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- n) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- o) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- p) all information provided by the Selected Bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- c) it has the financial standing and capacity to perform its obligations under this Agreement;
- d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the Authority's ability to perform its obligations under this Agreement;
- f) it has complied with Applicable Laws in all material respects; and

- g) it has good and valid right to the Project Site, Project Assets and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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

ARTICLE 8: DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, availability of Patients and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Selected Bidder or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Operation of the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

ARTICLE 9: PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority no later than 90 (ninety) days, from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum of Rs 8,50,00,000 (Rupees Eight Crores Fifty Lakhs only) in the form set forth in Schedule F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 90 (ninety) 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 Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to achieve Project Commissioning or as provided herein, 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 for such Concessionaire Default or failure to meet any Condition Precedent or failure to achieve Project Commissioning or as provided herein. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 27. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such subsequent Performance Security as Damages, and to terminate this Agreement in accordance with Article 27.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for the entire period of the Concession Period and a period of 6 (six) months thereafter and shall be released thereafter in accordance with this Agreement.

ARTICLE 10: HANDOVER AND USE OF PROJECT ASSETS

10.1 Handover, Rights, Title and Use of the Project Assets

- 10.1.1 The Authority shall construct the Hospital Buildings within 3 (three) years from the date of finalization of the Drawings and obtaining the Applicable Permits for Construction. Upon completion of the construction of the Hospital Buildings in accordance with the Drawings, the Authority shall notify the Project Commissioning Panel and upon the Project Commissioning Panel receiving such notification from the Authority, it shall verify the Hospital Buildings against the Drawings. If upon verification, the Project Commissioning Panel finds the Hospital Buildings in accordance with the Drawings, it shall certify the same. Upon certification by the Project Commissioning Panel, the Authority shall handover the physical possession of the Hospital Buildings to the Concessionaire (“**Appointed Date**”).
- 10.1.2 The Authority shall procure all the medical equipment and medical furniture as per the list and specifications finalized by the Project Commissioning Panel. The medical equipment and medical furniture shall be delivered on the Project Site prior to or on the Appointed Date but not earlier than 2 (two) months of the Appointed Date. Upon the medical equipment and medical furniture being made available on the Project Site, the Authority shall notify the Project Commissioning Panel for verification. The Project Commissioning Panel shall certify that the medical equipment and medical furniture made available to the Concessionaire is in accordance with the list and specifications finalized by the Project Commissioning Panel.
- 10.1.3 From the Appointed Date as specified under Clause 10.1.1 and Clause 10.1.2 above, the Concessionaire shall have the exclusive right, license and authority to the use the Project Assets as per the provisions of this Concession Agreement. The Authority shall provide Hospital Buildings and medical equipment and medical furniture free from all encumbrances.
- 10.1.4 The Concessionaire shall, in accordance with the terms of this Concession Agreement, have the right to operate, maintain and replace the Project Assets and to demand and collect Service Charges during the Concession Period as per the provisions of Article 21, in accordance with the terms of this Concession Agreement.
- 10.1.5 The Concessionaire shall not, without the prior written approval of the Authority, use the Project Assets for any purpose other than for the Operation of the Project and purposes incidental or ancillary thereto, as per the provisions of this Concession Agreement.
- 10.1.6 Notwithstanding anything contained in this Concession Agreement, the Concessionaire acknowledges the absolute and exclusive right & title of the Authority over the Project Site and Project Assets.

10.2 Peaceful Possession

- 10.2.1 The Concessionaire shall, subject to complying with the terms and conditions of this Concession Agreement, remain in peaceful occupation and enjoyment of the Project Assets during the Concession Period.
- 10.2.2 In the event the Concessionaire is obstructed by any person claiming any right, title or interest in or over the Project Assets or any part thereof, or in the event of any enforcement action including any attachment, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Assets or any part thereof, the Authority shall, if called upon by the Concessionaire, defend such

claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge, except where such obstructions or any enforcement action is for reasons attributable to the Concessionaire.

10.3 Access to the Project Site and the Project Assets

- 10.3.1 From the Appointed Date, the Concessionaire shall, at all reasonable times and on reasonable notice, during the Concession Period accord access to the Authority, independent consultant appointed by the Authority or persons duly authorized by the Authority or by any other relevant Government Authority (including those concerned with safety, security or municipal protection or otherwise) to inspect the Project Assets and carry out their respective duties and functions and to investigate any other matter within their authority.
- 10.3.2 The Persons obtaining access pursuant to Clause 10.3.1 above, shall conduct their activities and operations at their own risk, cost and expense and in such manner so as to cause minimum disruption to the management, operation and maintenance of the Project Assets consistent with the purpose of the Person gaining such access.

ARTICLE 11: PROJECT COMMISSIONING

- 11.1.1 The Concessionaire shall commission the Operation of the Project and the Operation of the Project shall be considered to be commissioned upon completion of the following activities (the “**Project Commissioning**”):
- a) Completion of installation of medical equipment and medical furniture in the Cancer Care Hospital;
 - b) The minimum required specialties and services as specified under Schedule E of the Concession Agreement are available in the Cancer Care Hospital and the Cancer Care Hospital is ready to provide such specialties and services to the Patients;
 - c) Other Project Assets are ready for operation; and
 - d) The Project Commissioning is certified by the Project Commissioning Panel.
- 11.1.2 The Concessionaire shall have to achieve Project Commissioning within 6 months from the Appointed Date.
- 11.1.3 The Concessionaire shall prior to 30 days from the likely date of Project Commissioning, notify the Project Commissioning Panel about the completion of Project Commissioning. Within 7 days of the date of the notification, the Project Commissioning Panel shall inspect and verify the completion of activities mentioned under Clause 11.1.1. The Project Commissioning Panel shall either certify the Project Commissioning or communicate the deficiencies if any within 7 days of completion of inspection.
- 11.1.4 In case certain deficiencies are observed by the Project Commissioning Panel, the same shall be rectified by the Concessionaire within 7 days or such date mentioned in the communication by the Project Commissioning Panel. Upon rectification, the process specified under Clause 11.1.3 shall be repeated.
- 11.1.5 In case no communication received from the Project Commissioning Panel till 15th day of the date of notification by the Concessionaire, the Project Commissioning is deemed to be approved by the Project Commissioning Panel.
- 11.1.6 For the avoidance of doubt, the Project Commissioning is considered to be completed upon certification by the Project Commissioning Panel.
- 11.1.7 In the event that the Concessionaire does not achieve Project Commissioning within 6 months from the Appointed Date and the delay has not occurred as a result of the Authority’s failure to fulfil its obligations hereunder or Force Majeure, the Concessionaire shall pay to the Authority Damages equivalent to an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day’s delay until Project Commissioning is not achieved, subject to a maximum of 20% (twenty per cent) of the Performance Security. Upon levy of Damages equivalent to 20% (twenty percent) of the Performance Security or failure to achieve to Project Commissioning within 12 months from the Appointed Date, whichever is earlier, the Authority shall be entitled to terminate this Agreement by issuing a 15 (fifteen) day notice to the Concessionaire. On such termination, the Authority shall be entitled to forfeit the Performance Security in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Authority as a result of the Concessionaire's failure to achieve Project Commissioning.

ARTICLE 12: OPERATION AND MAINTENANCE

12.1 O&M obligations of the Concessionaire

12.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Project Assets in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- a) nominate required number of members from its side for the Independent Panel;
- b) responsible for furnishing the Staff Accommodation building
- c) responsible for entire operations and management of the Project Assets provided by the Authority for the entire Concession Period diligently and efficiently and in accordance with Good Industry Practice;
- d) responsible for provisioning of all Clinical Services and Non-Clinical Services and at a minimum, the services specified under Schedule E of this Agreement;
- e) provide safe, smooth and uninterrupted provision of Healthcare Services and facilities to the Patients during normal operating conditions;
- f) comply with NABH latest standards, Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha and Atomic Energy Regulatory Board (AERB) guidelines as applicable
- g) The concessionaire shall conduct clinical audits in medical oncology, surgical oncology, and radiation oncology once in 6 months and submit the audit report to Authority and Independent Panel.
- h) comply with Safety Requirements as per the provisions of Article 13 and Schedule I of this Agreement;
- i) make the Cancer Care Hospital available for use round the clock 24 (twenty-four) hours a day and 365/366 (three hundred and sixty-five/six) days a year during the Concession Period and meeting the Service Level Specifications as defined under Schedule G of this Agreement;
- j) make payment for water charges, electricity charges and other applicable charges and/or Taxes as per the Applicable Laws for the Operation of the Project;
- k) ensure adequate staffing for the Cancer Care Hospital in all categories of manpower;
- l) responsible for availability of staff at all times during the Concession Period such that provision of uninterrupted Healthcare Services to the Patients is ensured;
- m) collect and appropriating the Service Charges as per the provisions under Article 21;
- n) treat Patients enrolled under the BSKY, Odisha or any substitute thereof,
- o) not outsource any critical activity with respect to Operation of the Project. Critical activity is one which directly or indirectly affects the quality of care and services being provided to the Patients. The Authority shall decide what constitutes critical activity which shall be final and binding on the Concessionaire. However, some of the activities like housekeeping, food and beverages, laundry etc may be outsourced. The Concessionaire shall be responsible for all such services and shall keep the Authority informed on all such arrangements and share the sub contract details with the Authority;
- p) responsible for maintenance, replacement and/or upgradation of the Project Assets as required during the Concession Period. The Concessionaire shall enter into Comprehensive Annual Maintenance Contracts (CAMCs) as required with the suppliers for medical equipment and medical furniture and other support equipment. The CAMCs shall be valid for the entire Concession Period and shall cover each and every aspect of maintenance and pay the required CAMC charges to the CAMC services provider on regular basis.
- q) carrying out periodic preventive maintenance of the Project Assets;
- r) undertaking routine maintenance including prompt repairs of the Project Assets;
- s) operation and maintenance of all communication, control and administrative systems necessary for the Operation of the Project;
- t) maintaining punctuality and reliability in Operation of the Project;

- u) maintaining a high standard of cleanliness and hygiene in the Hospital Buildings;
- v) maintaining a public relations unit to interface with and attend to suggestions from the Patients, visitors, government agencies, media and other agencies;
- w) complying with Safety Requirements in accordance with Article 13; and
- x) responsible for proper usage of all infrastructures provided by the Authority for the Operation of the Project.

12.1.2 The Concessionaire shall ensure that immediate medical aid is provided to all Patients, including medico legal cases as per Applicable Laws. Any judicial obligation shall be the responsibility of the Concessionaire.

12.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Concession Period the Cancer Care Hospital conforms to the maintenance requirements set forth in Schedule G, in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Maintenance Requirements**”).

12.3 Maintenance Manual

12.3.1 No later than 60 (sixty) days from the Appointed Date, the Concessionaire shall, in consultation with the Independent Panel, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project Assets and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Panel. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 12.3 shall apply, *mutatis mutandis*, to such revision.

12.3.2 Without prejudice to the provision of Clause 12.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets including replacement thereof, such that its overall condition conforms to Good Industry Practice.

12.4 Safety, breakdowns and accidents

12.4.1 The Concessionaire shall ensure safe conditions for the Patients, visitors and staff in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. In the event of unsafe conditions, structural damages, equipment breakdowns and accidents, it shall follow the relevant operating procedures and undertake safe removal of obstruction, debris and dangerous spills and leakages without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

12.4.2 The Concessionaire’s responsibility for rescue operations in the Cancer Care Hospital, shall include safe evacuation of all Patients, visitors and staff from the affected area as an initial response to any particular incident requiring evacuation and shall also include prompt and safe removal of dangerous spills, leakages, debris or any other obstruction, which may endanger or interrupt the Healthcare Services.

12.5 Overriding powers of the Authority

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

12.5.2 In the event of a national emergency, civil commotion or any other act specified in Clause 24.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project Assets or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 24. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 12.5, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

12.6 Restoration of loss or damage to the Project Assets

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

12.7 Modifications to the Project Assets

The Concessionaire shall not carry out any material modifications to the Project Assets save and except where such modifications are necessary for the Project Assets to operate in conformity with the Service Level Specifications, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify and take approval of the Independent Panel of the proposed modifications before commencing work on such modifications. For the avoidance of doubt, all modifications made hereunder shall be subject to the approval of the Independent Panel and comply with the Specifications, Applicable Laws and the provisions of this Agreement. The Concessionaire shall bear all costs for carrying out such modifications.

12.8 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Assets is not available to Patients, visitors or staff, as the case may be, 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 Project Assets except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Cancer Care Hospital and/or rendering of Healthcare Services.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Assets open to Patients, staff or visitors; provided they can be operated safely.

ARTICLE 13: SAFETY REQUIREMENTS

13.1 Safety Requirements

13.1.1 The Concessionaire shall comply with the safety requirements set forth in Schedule I, in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Safety Requirements**”).

13.2 Expenditure on Safety Requirements

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

ARTICLE 14: PROJECT COMMISSIONING PANEL

14.1 Project Commissioning Panel

- 14.1.1 A project commissioning panel comprising of members nominated by the Authority and 1 member nominated by the Concessionaire (“**Project Commissioning Panel**”) shall be constituted by the Authority within 180 days from the date of execution of Concession Agreement as a Condition Precedent. Project Commissioning Panel shall oversee and review the construction & handover of the Hospital Buildings, procurement and handover of the medical equipment and medical furniture and Project Commissioning. Authority and the Concessionaire shall nominate required members to the Project Commission Panel. Authority may appoint independent experts/advisors to be part of the Panel, as required. Payment to such experts will be made by the Authority. The chairperson of this panel is one of the members appointed by the Authority. Project Commissioning Panel shall meet at least once every month to review the construction of the Hospital Buildings.
- 14.1.2 Costs of the members of the Authority shall be borne by Authority and costs of the members of the Concessionaire shall be borne by the Concessionaire.

14.2 Roles & Responsibilities

Project Commissioning Panel shall:

- a. prepare and finalize the Drawings of the Hospital Buildings;
- b. finalize the list of clinical specialties to be introduced in the Cancer Care Hospital within a period of 3 (three) months from the Effective Date subject to the minimum clinical specialties as provided under Schedule E and based on the details provided by the Concessionaire as per the provision under Clause 5.1 (a) of this Agreement.
- c. finalize the list and quantity of medical equipment and medical furniture based on the inputs provided by the Concessionaire within a period of 3 (three) months from the Effective Date; An indicative list of medical equipment and medical furniture is provided under Schedule B. Project Commissioning Panel can modify the list and/or quantity provided under Schedule B as deemed appropriate while finalization, provided the final list of medical equipment and medical furniture should be related to the clinical specialties finalized as per the provisions under Clause 14.2 (b) above.
- d. finalize the technical specifications of finalized list of medical equipment and medical furniture within a period of 2 (two) months from the date of finalization of list of medical equipment and medical furniture;
- e. verify the medical equipment and medical furniture procured by Authority and certify handing over of the same to the Concessionaire as per the provisions under Article 10;
- f. verify the completion of Hospital Buildings and certify the handing over to the Concessionaire as per the provisions of Article 10; and
- g. review availability of all services & facilities as per the requirement of Concession Agreement and certify achievement of Project Commissioning by the Concessionaire as per the provisions of Article 11.

14.3 Decision Making

All decisions by the Project Commissioning Panel shall be taken with the consensus of all the members of the Project Commissioning Panel. In the event consensus of all the members is not achieved/obtained, the view of the majority members of the Project Commissioning Panel shall be final and binding on the parties.

ARTICLE 15: MONITORING OF OPERATION & MAINTENANCE

15.1 Quarterly status reports

During Concession Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Independent Panel a quarterly report in a form acceptable to the Independent Panel, stating in reasonable detail the condition of the Project Assets including its compliance or otherwise with the Service Level Specifications, Maintenance Requirements, Maintenance Manual, and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Panel. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

15.2 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Independent Panel as the case may be, by facsimile or e-mail, a report stating accidents and unusual occurrences in the Cancer Care Hospital relating to the safety and security of the Patient, staff or visitors. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month. For the purposes of this Clause 15.2, accidents and unusual occurrences in the Cancer Care Hospital shall include:

- (a) death or injury to any person;
- (b) episode of sexual assault or rape;
- (c) suicide of a Patient or a staff;
- (d) haemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities;
- (e) surgery on the wrong Patient or wrong body part;
- (f) smoke or fire;
- (g) unintended retention of a foreign object in the body of any Patient after surgery or other procedure;
- (h) Any other incident akin to any of the incidents listed above; and
- (i) such other relevant information as may be reasonably required by the Authority or the Independent Panel.

15.3 Inspection

The Independent Panel shall inspect the Project Assets, at any reasonable time on giving notice of not less than 1 (one) day, but at least once a year. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

15.4 Remedial measures

15.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 15.4.2 and furnish a report in respect thereof to the Independent Panel and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

15.4.2 The Independent Panel shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Project Assets into compliance with the Maintenance Requirements and the procedure set forth in this Clause 15.4 shall be repeated until the Project Assets conforms to the Maintenance Requirements.

ARTICLE 16: KEY PERFORMANCE INDICATORS

16.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Cancer Care Hospital such that it achieves or exceeds the key performance indicators specified in this Article 16 and Schedule H (the “**Key Performance Indicators**” or “**KPI**”).

16.2 Operation of the Cancer Care Hospital

16.2.1 The Concessionaire shall at all times procure that:

- (a) the Cancer Care Hospital is clean and hygienic;
- (b) there is adequate lighting within the Cancer Care Hospital;
- (c) the temperature inside the necessary areas of the Cancer Care Hospital such as ICU, laboratory, operation theatre, etc. is maintained according to Good Industry Practice;
- (d) The hours of availability of all services provided by the Cancer Care Hospital conform to Good Industry Practice and are posted on the website of the Cancer Care Hospital and displayed prominently in the Cancer Care Hospital premises;
- (e) all lifts, public address systems and lighting systems function efficiently and their availability is no less than 95% (ninety five percent) in a month.

16.2.2 The Concessionaire shall at all times procure that the Cancer Care Hospital complies with the Key Performance Indicators as specified in Schedule H and in this Clause 16.2.

16.3 Patient Satisfaction Survey for Patients treated under the BSKY, Odisha or any substitute thereof

16.3.1 The Concessionaire shall conduct a patient satisfaction survey of the Cancer Care Hospital by handing out a patient satisfaction form as set forth in Schedule K or a similar form designed by the Concessionaire in consultation with the Independent Panel, to all Patients treated under the BSKY, Odisha or any substitute thereof, who are receiving Healthcare Services at the Cancer Care Hospital. The Concessionaire shall submit a report of the findings of such survey to the Authority and Independent Panel at the end of each quarter and shall ensure that the Cancer Care Hospital achieves and maintains an overall of at least 3.0 (three point) out of 5.0 (five point) in such survey. Such survey shall include responses from at least 60% of total Patients treated under the BSKY, Odisha or any substitute thereof who received Healthcare Services in the Cancer Care Hospital during the respective quarter for which the Patient Satisfaction Survey report is submitted.

16.3.2 In addition, the Authority may, at its discretion, cost and expense, conduct Patient Satisfaction Survey not more than twice in every calendar year to determine the compliance of the provisions of this Article 16 by the Concessionaire. For avoidance of doubt, it is agreed that in designing the Patient Satisfaction Survey, the Authority shall rely on Good Industry Practice and conform to similar surveys undertaken from time to time at several international hospitals or at clinical establishments, as the case may be.

- 16.3.3 In the event that the Patient Satisfaction Survey reveals that more than 30% (thirty percent) of the Patients enrolled under the BSKY, Odisha or any substitute thereof, surveyed by the Concessionaire or the Authority, as the case may be, ranked the services of the Cancer Care Hospital, as the case may be, below 3.0 (three point) rating, the Authority shall levy and collect from the Concessionaire, Damages in an amount equal to 2% (two percent) of the Performance Security and in case more than 50% (fifty percent) of the Patients enrolled under the BSKY, Odisha or any substitute thereof, surveyed by the Concessionaire or the Authority, as the case may be, ranked the services of the Cancer Care Hospital, as the case may be, below 3.0 (three point) rating, the Authority shall levy and collect from the Concessionaire, Damages in an amount equal to 5% (five percent) of the Performance Security.

16.4 Periodic status report

- 16.4.1 The Concessionaire shall during the initial 3 (three) years of the Concession Period, furnish to the Authority and/or the Independent Panel, as the case may be, a report, setting forth the details provided in Clause 16.4.2, no later than 7 (seven) days after the close of each such quarter. Thereafter, during the remaining Concession Period, such report shall be furnished by the Concessionaire annually, no later than 7 (seven) days after the close of each financial year.
- 16.4.2 The report specified in Clause 16.4.1 shall state in reasonable detail the compliance with Key Performance Indicators as specified in Schedule H along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Cancer Care Hospital.

16.5 Accreditation for the Cancer Care Hospital

- 16.5.1 The Concessionaire shall, within 2 years from achieving Project Commissioning, and thereafter maintain throughout the Concession Period, obtain NABH certification (based on the assessment criteria defined by NABH for >100 bed hospital) for the Cancer Care Hospital, and shall provide a certified copy thereof to the Authority forthwith.
- 16.5.2 In the event of default in obtaining or maintaining the accreditation specified in Clause 16.5.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining or maintaining such accreditation.
- 16.5.3 If the period of default in obtaining or maintaining the NABH accreditation in accordance with this Clause 16.5 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority an amount equal to 2% (two per cent) of the total monthly revenue from Service Charge for every 1 (one) month of default.

16.6 Patient Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Patients (the “**Patient Charter**”) substantially in accordance with the Applicable Laws, Applicable Permits and Good Industry Practice and shall display the Patient Charter in the main reception area and OPD. The Concessionaire shall at all times be accountable and liable to Patients in accordance with the provisions of the Patient Charter and Applicable Laws.

16.7 Medical Equipment Availability

The Concessionaire shall ensure that all medical equipment installed and available in the Cancer Care Hospital shall be available for operation with 95% uptime. The uptime of medical equipment is the duration for which each particular medical equipment is

available for use. The Concessionaire shall maintain a record of the availability of each medical equipment for operation such as equipment downtime, uptime, duration of breakdown etc. and make it available for inspection by Authority and its appointed agencies/consultants as and when required. Also, the Concessionaire shall provide the Authority a report on semi-annual basis with respect to the availability of the medical equipment. In the event the Concessionaire fails to maintain the availability of the medical equipment as provided for herein, the Concessionaire shall thereafter pay Damages to the Authority in an amount as per provisions specified in Schedule H.

16.8 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in Schedule H and for any shortfall in performance, it shall pay Damages within 30 (thirty) days of every quarter in which the shortfall occurred as per provisions specified in Schedule H.

ARTICLE 17: HEALTHCARE SERVICES

17.1 Quality of Healthcare Services

- 17.1.1 The Concessionaire shall ensure that all Patients in the Cancer Care Hospital receive quality Healthcare Services in accordance with Good Industry Practices. The Healthcare Services to be provided shall include, but not be restricted to, the services specified in Schedule E.
- 17.1.2 The Concessionaire shall, during the Concession Period, ensure that the Healthcare Services are provided in accordance with the norms as per Good Industry Practice.
- 17.1.3 The Concessionaire shall ensure that access, assessment and continuity of care, care of Patients, management of medication, Patient's rights and education, Cancer Care Hospital infection control and continuous quality improvement are in accordance with the applicable sections of NABH. The Concessionaire shall abide by the responsibilities of management outlined in NABH.
- 17.1.4 The Concessionaire shall adhere to the Clinical Establishments Act and Rules as applicable in the State of Odisha.

ARTICLE 18: OPD SERVICES & INPATIENT SERVICES

18.1 OPD Services

- 18.1.1 The Concessionaire shall provide OPD services for at least six days a week from Monday through Saturday at least from 08:00 hours to 14:00 hours.
- 18.1.2 The Concessionaire shall be free to determine, demand and collect Service Charge for OPD Consultations, OPD Diagnostics Services and OPD Procedures for Other Outpatients after approval from the Authority.

18.2 Inpatient Services

- 18.2.1 The Concessionaire shall provide Healthcare Services to Inpatient at the Cancer Care Hospital for seven days a week for 24 (twenty four) hours and 365 (three hundred and sixty five) days a year.
- 18.2.2 The Concessionaire shall provide inpatient services to all the Patients enrolled under the BSKY, Odisha or any substitute thereof.
- 18.2.3 The Concessionaire can utilize applicable insurance or assurance schemes of Government of Odisha and Government of India for providing treatment to Patients enrolled under the BSKY, Odisha or any substitute thereof, in accordance with provisions of the respective schemes.

ARTICLE 19: INFORMATION TECHNOLOGY SYSTEM

19.1. Hospital Management Information System

- 19.1.1 The Concessionaire shall at its own cost install, operate and maintain a computerized Hospital Management Information System (“**HMIS**”) so as to ensure that the records of Cancer Care Hospital are computerized and maintained in a structured manner.
- 19.1.2 The HMIS shall cover the stages of Patient care and Cancer Care Hospital management. It shall be capable of generating individual reports on each service area separately along with the ability to generate consolidated reports.
- 19.1.3 The HMIS shall be capable of providing online information on real time basis. Necessary software and hardware shall be put in place in the Cancer Care Hospital in this regard. The Concessionaire shall control access to this information on a “need to know” basis by granting passwords to authorised personnel.
- 19.1.4 The HMIS should have the modules and information as specified in Schedule L.

19.2. Website of the Cancer Care Hospital

The Concessionaire shall also commission, operate and maintain a comprehensive website exclusively for the Cancer Care Hospital. The website should contain the relevant information as required.

ARTICLE 20: INDEPENDENT PANEL

20.1 Appointment of Independent Panel

20.1.1 An Independent Panel comprising of at least 2 members of the Authority and 1 member of the Concessionaire shall be constituted by the Authority prior to the Project Commissioning. Independent Panel shall oversee the operation, maintenance, and management of the Project Assets. Authority and the Concessionaire shall nominate required members to the Independent Panel. Authority may appoint independent experts/advisors to be part of the Independent Panel, as required. Payment to such experts will be made by the Authority. The chairperson of this panel is one of the members appointed by the Authority. Independent Panel shall meet at least once every 3 (three) months.

20.1.2 Costs of the members of the Authority shall be borne by Authority and costs of the members of the Concessionaire shall be borne by the Concessionaire.

20.2 Roles & responsibilities

In addition to and not in derogation or substitution of any of the roles & responsibilities set out elsewhere in this Concession Agreement, Independent Panel shall perform the roles & responsibilities mentioned in Schedule M.

20.3 Decision Making

All decisions by the Independent Panel shall be taken with the consensus of all the members of the Independent Panel. In the event consensus of all the members is not achieved/obtained, the view of the majority members of the Independent Panel shall be final and binding on the parties.

ARTICLE 21: SERVICE CHARGE

21.1 Collection and appropriation of Service Charge

- 21.1.1 On and from the Project Commissioning till the Transfer Date, the Concessionaire shall provide OPD Services to Outpatients as per provisions of Clause 18.1.
- 21.1.2 The Concessionaire can utilize applicable insurance or assurance schemes of Government of Odisha and Government of India for providing treatment to Patients enrolled under the BSKY, Odisha or any substitute thereof, in accordance with provisions of the respective schemes.
- 21.1.3 The Concessionaire acknowledges and agrees that upon payment of Service Charge in terms of this Agreement, any of the Patients other than Patients enrolled under the BSKY, Odisha or any substitute thereof ("**Other Patients**") shall be entitled to use the Cancer Care Hospital and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.
- 21.1.4 The Concessionaire shall be free to determine, demand and collect the Service Charge for Inpatient services to Other Patients admitted in the Cancer Care Hospital.

ARTICLE 22: RENEGOTIATION OF CONCESSION AGREEMENT

22.1 Alteration to terms and conditions of the Concession Agreement

In entering into this Concession Agreement, the Parties recognize, bearing in mind that the term of the Concession Agreement is long, the need of operating in fairness and without causing detriment to either of the Parties. Therefore, the Parties agree, notwithstanding anything to the contrary contained in this Agreement, to meet on the date of Project Commissioning and every 3 (three) years thereafter and as and when required at a mutually convenient time and place, to determine whether in light of the relevant circumstances prevalent at that time the terms and conditions of the Concession Agreement are operating equitably to the Parties and without any major detriment to either of the Parties. Subject to the approval of the Empowered Committee of Infrastructure (constituted by the State pursuant to the Orissa Public Private Partnership Policy, 2007), the Parties may determine to modify/alter the terms and conditions of the Agreement, provided the modification and/or alteration do not lead to change in the underlying spirit and objective of this Agreement. For the purpose of clarity, the approval of the Empowered Committee of Infrastructure on the amendment/modification is mandatory for implementing the same. The decision of the Empowered Committee of Infrastructure with respect to any suggested modification/amendment by the Parties shall be final and binding on the Parties.

ARTICLE 23: INSURANCE

23.1 Insurance during Concession Period

23.1.1 The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurances for such maximum sums as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured.

23.1.2 Without prejudice to the provisions contained in Clause 23.1.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets;
- (ii) comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others who may enter the Cancer Care Hospital;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (i) to (v) above.

23.2 Notice to the Authority

No later than 60 (sixty) days from the Project Commissioning, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 23. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant to Good Industry Practice.

23.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 23 shall be maintained with the insurance company on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premium payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

23.4 Remedy for failure to insure

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

23.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 23 shall include a waiver of any and all rights of subrogation or recovery of the insurance company thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurance companies and underwriters, and of any right of the insurance companies 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.

23.6 Concessionaire's waiver

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

23.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Assets and the balance remaining, if any, shall be paid to the Authority.

ARTICLE 24: FORCE MAJEURE

24.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 24.2, 24.3 and 24.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

24.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Cancer Care Hospital for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 15 (fifteen) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 24.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection.

24.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 15 (fifteen) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents rendering of Healthcare Service, collection of Service Charge by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event.

24.4 Political Event

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

- (a) Change in Law,
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire; or
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit.

24.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 24 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.

24.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

24.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 24.5.1, and such other information as the other Party may reasonably request from the Affected Party to provide.

24.6 Effect of Force Majeure Event on the Concession

24.6.1 At any time after the Appointed Date, if any Force Majeure Event occurs whereupon the Concessionaire is unable to render Healthcare Services despite making best efforts or it is

directed by the Authority to suspend the Healthcare Services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from providing Healthcare Services on account thereof; provided that in the event of partial collection of Service Charge where the daily collection is less than 90% (ninety per cent) of the Average Daily Service Charge, the Authority shall extend the Concession Period in proportion to the loss of Service Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Service Charge as compared to the Average Daily Service Charge for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

24.7 Allocation of costs arising out of Force Majeure

24.7.1 Upon occurrence of a Force Majeure Event, the costs incurred and attributable to such event and directly relating to the Operation of the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

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

For the avoidance of doubt, Force Majeure Costs shall include O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Service Charge or debt obligations.

24.7.2 Save and except as expressly provided in this Article 24, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

24.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 24, 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.

24.9 Termination Payment for Force Majeure Event

24.9.1 If Termination is on account of a Force Majeure Event, Authority shall return the Performance Security and make the Termination Payment to the Concessionaire an amount equal to Depreciated Historic Cost of the Concessionaire’s Assets. The guideline for estimation of Depreciated Historic Cost is provided under Schedule O. Upon payment of the Termination Payment, all the Project Assets shall get transferred to the Authority.

24.10 Dispute resolution

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

24.11 Excuse from performance of obligations

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

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

ARTICLE 25: COMPENSATION FOR BREACH OF AGREEMENT

25.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 25.5, in the event of the Concessionaire being in Material Default or Breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs and indirect costs suffered or incurred by the Authority as a consequence of such Material Default or Breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 25.1 for any Material Default or Breach in respect of which Damages are expressly specified and payable under this Agreement.

25.2 Compensation for default by the Authority

Subject to the provisions of Clause 25.5, in the event of the Authority being in Material Default or Breach of this Agreement at any time after the date of signing of this Agreement, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such Material Default or Breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any Material Default or Breach in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable shall not include loss of Service Charge revenues, debt obligations or other consequential losses.

25.3 Extension of Concession Period

25.3.1 Subject to the provisions of Clause 25.5, in the event that a Material Default or Breach of this Agreement set forth in Clause 25.2 causes delay in achieving the Project Commissioning or leads to suspension of or reduction in collection of Service Charge, as the case may be, the Authority shall, in addition to payment of compensation under Clause 25.2, extend the Concession Period, such extension being equal in duration to the period by which Project Commissioning was delayed or the collection of Service Charge remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Service Charge where the daily collection is less than 90% (ninety per cent) of the Average Daily Service Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Service Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Service Charge as compared to the Average Daily Service Charge for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

25.4 Compensation to be in addition

Compensation payable under this Article 25 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

25.5 Mitigation of costs and damage

The Party claiming or entitled to compensation under this clause shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 26: SUSPENSION OF CONCESSIONAIRE'S RIGHTS

26.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default and the Concessionaire fails to cure the default within the Cure Period set forth under Clause 27.1.1, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Service Charge and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice. Upon written communication from Concessionaire, the Authority may extend the Suspension for an additional period of 90 (ninety) days.

26.2 Authority to act on behalf of Concessionaire

26.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Service Charge and other revenues under and in accordance with this Agreement. The Authority shall be entitled to use the Service Charge collected in accordance with this Clause 26.2 for meeting the costs incurred by it for remedying and rectifying the cause of Suspension.

26.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 26.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Cancer Care Hospital, which is used or created by the Concessionaire in performing its obligations under the Agreement.

26.3 Revocation of Suspension

26.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

26.3.2 Upon the Concessionaire having cured the Concessionaire Default during the Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

26.4 Termination

26.4.1 At any time during the period of Suspension under this Article 26, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. The Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 27.

26.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of

Suspension hereunder or within the extended period, if any, set forth in Clause 26.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 27: TERMINATION

27.1 Termination for Concessionaire Default

27.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified then within a Cure Period of 60 (sixty) days (except in the case of sub clauses (d), (i), (j), (m), (n), (o) & (p), where there shall be no cure period), the Concessionaire shall be deemed to be in default of this Agreement (the “**Concessionaire Default**”), unless the default has occurred solely as a result of any Material Default or Breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 60 (sixty) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- c) the Concessionaire does not achieve the Project Commissioning as per the provisions of Article 11;
- d) the Concessionaire abandons or manifests intention to abandon the operation of the Cancer Care Hospital without the prior written consent of the Authority;
- e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits default in conforming to the Service Level Specifications;
- f) the Concessionaire has failed to make any payment towards Damages to the Authority within the period specified in this Agreement;
- g) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- h) the Concessionaire creates any Encumbrance in breach of this Agreement;
- i) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- j) a Change in Ownership has occurred in breach of the provisions of Clause 5.10;
- k) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- l) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- m) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Operation of the Project;

- n) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- o) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - (iii) each of the Project Agreements remains in full force and effect;
- p) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- q) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- r) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- s) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- t) the Concessionaire has failed to make any payment to the Authority including the Annual Concession Fee within the period specified in Article 37 of this Agreement;

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

27.2 Termination for Authority Default

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

- a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- b) 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.

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

27.3 Termination Payment

27.3.1 Upon Termination by the Authority on account of Concessionaire Default, the Authority shall be entitled to appropriate the Performance Security towards damages. With regard to the Concessionaire's Assets, the Authority shall pay an amount equal to 80% of the Depreciated Historic Cost of the Concessionaire's Assets less any payment due and payable by the Concessionaire including due and payable Annual Concession Fee, if any to the Authority under this Agreement on the date of Termination.

27.3.2 Upon Termination by the Concessionaire on account of Authority Default, the Authority shall return the Performance Security post 6 months from the date of such Termination. With regard to the Concessionaire's Assets, the Authority shall pay an amount equal to Depreciated Historic Cost of the Concessionaire's Assets less any payment due and payable by the Concessionaire to the Authority under this Agreement on the date of Termination.

27.3.3 Upon payment of Termination Payment, all Project Assets shall be transferred to the Authority.

27.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 5% (five per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations hereunder.

27.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 27 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

27.3.5 Upon Termination on account of efflux of time (i.e. on expiry of the Concession Period) and/or Force Majeure, the Authority shall return the Performance Security post 6 months from the date of such Termination. With regard to the Concessionaire's Assets, the Authority shall pay an amount equal to Depreciated Historic Cost of the Concessionaire's Assets less any payment due and payable by the Concessionaire to the Authority under this Agreement on the date of Termination.

27.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project Assets;
- (b) take possession and control of all civil structures, materials, stores, implements, construction plants, equipment and any other equipment on or about the Project Site. It is clarified that the employees including contractual employees of the Concessionaire will not stand transferred to the Authority on the expiry of the Concession Period;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project Assets;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 28.1;
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment; and
- (f) have, at its option, the right to engage the Concessionaire for rendering the Healthcare Service for an interim period of 6 (six) months, or for a longer period as mutually agreed between the Parties. In the event the Authority so elects to exercise this right, the Concessionaire is hereby bound to continue to render the Healthcare Services for a minimum period of 6 (six) months from the date of Termination. For the purposes of clarity, the Authority may choose to exercise such right for a shorter duration than 6 (six) months, and under no circumstances can the Concessionaire compel engagement by the Authority to render the Healthcare Services. The Authority shall bear the cost, with respect to the rendering of Healthcare Services by the Concessionaire for such interim period.

27.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 27.3.3, 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 28: DIVESTMENT OF RIGHTS AND INTEREST

28.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project Assets free and clear of all Encumbrances;
- (c) cure all Project Assets of all defects and deficiencies so that the Project Assets are compliant with the Maintenance Requirements;
- (d) deliver and transfer relevant records, reports, manuals, Intellectual Property and other licences pertaining to the operation, maintenance and management of Cancer Care Hospital. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the operation, management and maintenance of the Cancer Care Hospital and shall be assigned to the Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any 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
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Assets free from all Encumbrances, absolutely unto the Authority or to its nominee.

28.1.2 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 Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

28.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Panel shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements and Safety Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements and Safety Requirement shall be cured by the Concessionaire at its cost and the provisions of Article 29 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 28.

28.3 Cooperation and assistance on transfer of Project

- 28.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project Assets in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients and other members of the public or the lawful occupiers of any part of the Project Site.
- 28.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation, management and maintenance of the Project Assets following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation, management and maintenance of the Project Assets until the expiry of 6 (six) months after the Transfer Date.

28.4 Vesting Certificate

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

28.5 Divestment costs etc.

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

ARTICLE 29: DEFECTS LIABILITY AFTER TERMINATION

29.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Assets for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Project Assets during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Assets conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Performance Security.

ARTICLE 30: ASSIGNMENT AND CHARGES

30.1 Restrictions on assignment and charges

- 30.1.1 Subject to Clause 30.2, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent, the Authority shall be entitled to decline without assigning any reason.
- 30.1.2 Subject to the provisions of Clause 30.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent, the Authority shall be entitled to decline without assigning any reason.

30.2 Permitted assignment and charges

The restraints set forth in Clause 30.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Cancer Care Hospital;
- (b) liens or encumbrances required by any Applicable Law.

30.3 Assignment by the Authority

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

ARTICLE 31: LIABILITY AND INDEMNITY

31.1 General indemnity

- 31.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government 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 Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any Patient and any other users or from any negligence of the Concessionaire 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.
- 31.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Project Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

31.2 Indemnity by the Concessionaire

- 31.2.1 Without limiting the generality of Clause 31.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits; or
 - (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s Contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors; or
 - (d) claims by employees of the Concessionaire
- 31.2.2 Without limiting the generality of the provisions of this Article 31, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Operation of the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable

effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project Assets or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense 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.

31.3 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 31 (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.

31.4 Defence of claims

- 31.4.1 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 31, 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.
- 31.4.2 If the Indemnifying Party has exercised its rights under Clause 31.3, 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).
- 31.4.3 If the Indemnifying Party exercises its rights under Clause 31.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

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

Provided that if Sub-clauses (a), (b), (c) or (d) of this Clause 31.4.3 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.

31.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 31, 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.

31.6 Survival on Termination

The provisions of this Article 31 shall survive Termination.

ARTICLE 32: DISPUTE RESOLUTION

32.1 Dispute resolution

- 32.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 32.2.
- 32.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

32.2 Conciliation

In the event of any Dispute between the Parties, either Party may notify the Independent Panel to mediate and assist the Parties in arriving at an amicable settlement. Upon such notification, the Independent Panel shall meet no later than 7 (seven) days from the date of notification to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or such longer period as may be mutually agreed upon by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 32.3.

32.3 Arbitration

- 32.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 32.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 32.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) except Rule 17 of the Rules, or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be at Jharsuguda, and the language of arbitration proceedings shall be English.
- 32.3.2 There shall be a board of 3 (three) arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.
- 32.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 32 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.
- 32.3.4 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 32.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.
- 32.3.6 The fees payable to the Tribunal shall be as per the Rules, as amended from time to time.

32.4 Fast Track Arbitration

The Parties hereby agree, that in the event either of the Parties require urgent interim relief/adjudication of Dispute, the said Party shall approach the International Centre for Alternate Dispute Resolution, New Delhi for fast-track arbitration as provided for, and in accordance with, the Rules, and that the other Party shall have deemed to provide its consent for the same.

32.5 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 32.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 33: DISCLOSURE

33.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person as directed by the Authority, copies of this Concession Agreement, the Maintenance Manual and all reports mentioned in Schedule J and all other reports prepared pursuant to this Agreement (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and Cancer Care Hospital.

33.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person as directed by the Authority copies of all Documents and data relating to safety of the Cancer Care Hospital, free of charge, during normal business hours on all working days, at the Concessionaire’s registered office.

33.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 33.1 and 33.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 33.1 and 33.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 34: REDRESSAL OF PUBLIC GRIEVANCES

34.1 Complaints Register

- 34.1.1 The Concessionaire shall develop a grievance redressal policy to monitor and address any issues or complaints regarding quality of services, denial of services, staff behaviour, any environmental and social issues related to Cancer Care Hospital's operations and other issues.
- 34.1.2 The process of grievance handling shall be displayed at the reception during Concession Period in local language and English for Patient and public information. It should also mention the name of the concerned authorised person and contact details of the authorised personnel handling such complaints.
- 34.1.3 The Concessionaire shall maintain a public relations office at the Cancer Care Hospital 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**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Cancer Care Hospital so as to bring it to the attention of all the Patients and other users.
- 34.1.4 The Complaint Register shall be securely bound, and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 34.1.5 Without prejudice to the provisions of Clauses 34.1.1, 34.1.2 and 34.1.3, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

34.2 Redressal of complaints

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

ARTICLE 35: CHANGE OF SCOPE

35.1 Change of Scope

- 35.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 35 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 35.3.
- 35.1.2 Any works or services which are provided under and in accordance with this Article 35 shall form part of the Project Assets and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

35.2 Procedure for Change of Scope

- 35.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 35.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall examine the Change of Scope Notice and at its own discretion may decide to undertake or refuse to undertake the additional works and services as specified in the Change of Scope Notice. In the event the Concessionaire agrees to undertake the said additional works and services, it 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 Operation of the Project; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Panel as reasonable.
- 35.2.3 Upon receipt of information set forth in Clause 35.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Panel thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree or the Concessionaire refuses for any reason whatsoever, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute. The Dispute shall be resolved by applying the Dispute Resolution Procedure.
- 35.2.4 The provisions of this Agreement, insofar as they relate to construction and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 35.

35.3 Payment for Change of Scope

- 35.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the

cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Panel, as the case may be. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Panel as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the decision emanating from the Dispute Resolution Procedure.

ARTICLE 36: MISCELLANEOUS

36.1 Governing law and jurisdiction

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

36.2 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).

36.3 Depreciation and interest

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

36.3.2 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.

36.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

36.5 Waiver

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

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

36.5.2 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.

36.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

36.7 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.

36.8 Survival

36.8.1 Termination shall:

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

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

36.9 Entire Agreement

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

Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposal, as the case may be, shall be deemed to form part of this Agreement and treated as such.

36.10 Severability

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

36.11 No partnership

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

36.12 Government Order

The Cancer Care Hospital shall be subject to, and the Concessionaire shall ensure compliance with, applicable government orders issued by the State Government time to time with respect to providing urgent/emergency medical services to persons identified under such government orders.

36.13 Third parties

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

36.14 Successors and assigns

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

36.15 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Jharsuguda may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

Name of Concessionaire:

Address:

Attention:

Email id:

Tel. No.:

Fax No.:

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to _____, Department of Health & Family Welfare, Government of Odisha, with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Bhubaneswar 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.

36.16 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.

36.17 Counterparts

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

ARTICLE 37: ANNUAL CONCESSION FEE

37.1 Annual Concession Fee

37.1.1 In consideration of the grant of concession, the Concessionaire agrees to pay to the Authority for the year commencing from the Operations Date, an Annual Concession Fee (the "Annual Concession Fee") as specified below:

- a)** for the 1st (First) Accounting Year commencing after the Operations Date, the Annual Concession Fee shall, be subject to the provisions of Clause 37.1, to be a sum of (____)¹;
- b)** for each subsequent Accounting Year following the Accounting Year specified in Sub-Clause (a) above, the aforesaid Annual Concession Fee shall be revised hereunder and the Annual Concession Fee shall, subject to the provisions of Clause 37.1 be determined by increasing the Annual Concession Fee for the previous Accounting Year by 5% (five per cent) thereof. For avoidance of any doubt, and by way of illustration, in the event the Annual Concession Fee quoted for the 1st (first) Accounting Year is Rs. 1 cr. (Rupees one crore), the Annual Concession Fee applicable for the 2nd (second) Accounting Year shall be increased by 5% (five per cent) thereof for determining the Annual Concession Fee payable in the 2nd (second) Accounting Year i.e. Rs. 1.05 cr. (Rupees one crore and five lakh), and the Annual Concession Fee payable for the 3rd (third) Accounting Year shall be determined by increasing the aforesaid Annual Concession Fee for the 2nd (second) Accounting Year by 5% (five per cent) thereof;
- c)** for the period, if any, between the Operations Date and the 1st (first) Accounting Year referred to in Sub-Clause (a) above, the Annual Concession Fee shall be a sum proportionate to the sum specified in Sub-Clause (a) above. For avoidance of any doubt and by way of example, if the period between Operations Date and the 1st (first) Accounting Year is 73 (seventy-three) days, the Concession Fee for such period shall be 20% (twenty per cent) of the Annual Concession Fee specified in Sub-Clause (a) above;
- d)** during the last Accounting Year of the Concession Period, the Annual Concession Fee shall not be due and payable for the period after Termination and only amount due on a proportionate basis shall be payable for the period prior to Termination.

37.2 Payment of Annual Concession Fee

37.2.1 The Annual Concession Fee payable under Clause 37.1 shall be due and payable by the Concessionaire within 15 (fifteen) days of the commencement of the Accounting Year

37.2.2 In the event of delay beyond such period as specified in 37.2.1, the Concessionaire shall pay interest for the period of delay calculated at a rate equal to 1% (one per cent) per month on the due Annual Concession Fee for each 15 (fifteen) days delay thereof, subject to maximum allowable extension period of 3 (three) months from the last due date of payment of Annual Concession Fee.

¹ The amount of Annual Concession Fee payable for the Project shall be determined by open competitive bidding and the amount to be inserted shall be the Annual Concession Fee for the first Accounting Year.

ARTICLE 38: ESCROW ACCOUNT

38.1 Escrow Account

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

38.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule D.

38.1.3 Deposits into Escrow Account

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

- a. all Revenues from the Cancer Care Hospital;
- b. Annual Concession Fee as per provisions of Article 37; and
- c. all payments by the Authority, if any.

38.2 Withdrawals during Concession Period

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

- (a) statutory payments, all Taxes due, and payable by the Concessionaire for and in respect of the Project;
- (b) Annual Concession Fee due and payable to the Authority;
- (c) all payments as may be due and payable to the Authority pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement; and
- (d) balance, if any, in accordance with the instructions of the Concessionaire.

38.2.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 38.3.1, except with the prior written approval of the Authority.

38.3 Withdrawals upon Termination

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

- (a) payroll dues and related statutory payments thereof, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Annual Concession Fee;

- (c) all other amounts which are outstanding to be paid by the Concessionaire to the Authority, as on the date of the Termination;
- (d) all payments as may be due and payable to the Authority pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire; and
- (e) balance, if any, in accordance with the instructions of the Concessionaire.

38.3.2 The provisions of this Article 38 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 38 have been discharged.

ARTICLE 39: DEFINITIONS

39.1 Definitions

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

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

“Affected Party” shall have the meaning set forth in Clause 24.1;

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

“Annual Concession Fee” shall have the meaning set forth in Clause 37.1;

“Appointed Date” shall have the meaning set forth in clause 10.1.1;

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

“Applicable Permits” shall mean all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws for undertaking, performing or discharging the obligations or fulfilment of the purposes contemplated by this Concession Agreement;

“Applicable Permits for Construction” shall have the meaning set forth in Clause 6.2;

“Applicable Permits for Operation” shall have the meaning set forth in Clause 5.3;

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

“Associate” or **“Affiliate”** means, in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression “control” shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner);

“Authority Default” shall have the meaning set forth in Clause 27.2.1;

“Authority Indemnified Persons” shall have the meaning set forth in Clause 31.1.1;

“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;

“Average Daily Service Charge” means the amount arrived at by dividing the total Realisable Service Charge of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily Service Charge for any period prior to completion of the first Accounting Year following Project Commissioning, shall be a simple average of the Service Charge collected every day during the period between Project Commissioning, and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Service Charge payable by any Patient

has not been realised for any reason, an assessment thereof shall be made by the Independent Panel as regards whether such Service Charge to form part of the Average Daily Service Charge for such period;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore);

“**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;

“**Beds**” means the beds in the Cancer Care Hospital used for Patients and includes the following:

- (i) Ward Beds;
- (ii) ICU Beds;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**Cancer Care Hospital**” shall have the meaning set forth in Recital A;

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

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

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Selected Bidder in the total Equity of the Concessionaire to decline below:

- 100% (hundred percent) during the period till 3 (three) years from the Appointed Date and
- below 51% (Fifty One percent) thereafter during Concession Period;

“**Clinical Services**” shall mean the Medical Oncology, Surgical Oncology, Radiation Oncology, diagnostics, radiology and other required treatment facilities and services to be provided by the Concessionaire in the Cancer Care Hospital through approved procedures under Applicable Laws and as per the provisions of the Concession Agreement;

“**Complainant**” shall have the meaning set forth in Clause 34.1.3;

“**Complaint Register**” shall have the meaning set forth in Clause 34.1.3;

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

“**Concessionaire**” shall have the meaning attributed thereto as set forth in the Name Clause;

“Concessionaire’s Assets” shall have the meaning set forth in Clause 5.14.1;

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

“Concessionaire Default” shall have the meaning set forth in Clause 27.1.1;

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

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Panel hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Panel to accord their approval;

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

“Depreciated Historic Cost” shall be the depreciated value of Project Assets estimated as per the guidelines specified under Schedule O;

“Dispute” shall have the meaning set forth in Clause 32.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 32;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 28.1;

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

“Drawings” means all of the drawings, calculations and documents pertaining to the Project Assets and shall include ‘as built’ drawings of the Project Assets;

“Effective Date” shall mean the date on which all conditions precedent mentioned in Clause 4 have been satisfied by the Authority and/or the Concessionaire;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals in the Cancer Care Hospital, including Patients, staff and any other users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Project Assets, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees

or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Assets, where applicable herein;

“EPC Contract” shall mean the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more EPC Contractors for, inter alia, for repair/ refurbishment and/ or replacement of the Project assets in the Cancer Care Hospital in accordance with the provisions of this Agreement;

“EPC Contractor” shall mean the person with whom the Concessionaire has entered into an EPC Contract;

“Equity” means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire and shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire;

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

“Escrow Agreement” shall have the meaning set forth in Clause 38.1.2;

“Escrow Bank” shall have the meaning set forth in Clause 38.1.1;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 24.1;

“Force Majeure Costs” shall have the meaning set forth in Clause 24.7.1;

“GOI” means the Government of India;

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

“Government Instrumentality” or **“Government Authority”** 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 all or any part of the Project Assets or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Healthcare Services” means the Clinical Services and Non-Clinical Services to be provided by the Concessionaire in terms of this Concession Agreement;

“HMIS” shall have the meaning set forth in Clause 19.1.1.

“Hospital Buildings” shall mean the following:

- (a) Cancer Care Hospital and Utilities;
- (b) Staff Accommodation (unfurnished) & Utilities;
- (c) tangible assets such as civil works including foundations, structures, drainage works, rolling stock, electrical systems, communication systems, fee collection systems, rest areas and administrative offices, refurbishments, additions, alterations, and improvements if any;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 31;

“Independent Panel” shall have the meaning set forth in Article 20;

“Indirect Political Event” shall have the meaning set forth in Clause 24.3;

“Inpatient” means a Patient who is admitted to the Cancer Care Hospital;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 23, and includes all insurances required to be taken out by the Concessionaire under Clause 23.1 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, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, Drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“Key Performance Indicators” shall have the meaning set forth in Clause 16.1;

“LOA” or **“Letter of Award”** means the letter of award referred to in Recital (C);

“Maintenance Manual” shall have the meaning ascribed to it in Clause 12.3;

“Maintenance Requirements” shall have the meaning set forth in Clause 12.2;

“Material Adverse Effect” means circumstances which may or do (i) render any right vested in a Party by the terms of this Concession Agreement ineffective; or (ii) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement or; (iii) which may adversely affect the legality, validity, binding nature or enforceability of this Concession Agreement;

“Material Default or Breach” means a breach by either Party of any of its obligations in this Concession Agreement which shall be deemed to have a Material Adverse Effect on the Operation of the Project and which it shall have failed to cure within the Cure Period;

“Medical Emergency” means any condition or symptom, resulting from any unanticipated cause or event, requiring urgent Healthcare Services;

“Movable Equipment” means any movable equipment employed by the Concessionaire for the operation, maintenance and management of the Cancer Care Hospital and which can be detached from the Cancer Care Hospital. Movable Equipment may amongst others include medical equipment and medical furniture detailed in Schedule B, ambulances, computers, Beds etc.

“NABH” means the Standards for Hospitals, Second Edition: November 2007, issued by the National Accreditation Board for Hospitals and Healthcare Providers and shall include any amendments, updates or replacements thereof;

“Non-Clinical Services” shall mean all services other than the Clinical Services to be provided by the Concessionaire under Applicable Laws and as per the provisions of the Concession Agreement;

“Non-Political Event” shall have the meaning set forth in Clause 24.2;

“Other Outpatient” means a Patient other than Patients enrolled under the BSKY, Odisha or any substitute thereof, who uses or intends to use the OPD Services;

“O&M” means the operation and maintenance of the Project Assets and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Service Charge in accordance with the provisions of this Agreement;

“O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the Contractor for performance of all or any of the O&M obligations;

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

O&M Inspection Report” shall have the meaning set forth in Clause 15.3;

“OPD Consultations” shall mean the consultation services provided in the OPD;

“OPD Diagnostic Services” shall mean the diagnostic services provided in the OPD;

“OPD Procedures” shall mean the procedures undertaken as a part of the OPD Services;

“OPD Services” means the Healthcare Services provided in the OPD and includes the OPD Consultations, OPD Diagnostic Services and OPD Procedures;

“Operation of the Project” means the operation, maintenance and management of the Project Assets in accordance with the provisions of this Agreement, and includes all works, services and equipment incidental to the Scope of the Project;

“Operations Date” shall include commercial operations date of the Cancer Care Hospital after achievement of Project Commissioning;

“Other Patients” means shall have the meaning set forth under Clause 21.1.3;

“Outpatient” shall be those Patients availing OPD Services;

“Out Patient Department” or **“OPD”** means the area earmarked for providing Healthcare Services to Patients other than InPatients;

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

“Patient(s)” means a person who uses or intends to use the Cancer Care Hospital for Healthcare Services, in accordance with the provisions of this Agreement and Applicable Laws;

“Patient Charter” shall have the meaning set forth in Clause 16.6;

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

“Political Event” shall have the meaning set forth in Clause 24.4;

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

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

- (a) Hospital Building;
- (b) Movable Equipment;
- (c) medical equipment and medical furniture;

- (d) insurance proceeds;
- (e) Applicable Permits; and
- (f) Concessionaire's Assets;

"Project Commissioning" shall have the meaning set forth in Clause 11.1;

"Project Commissioning Panel" shall have the meaning set forth in Clause 14.1;

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

"Realisable Service Charge" means all the Service Charge due and realisable under this Agreement, but does not include Service Charge that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Service Charge shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

"Request for Proposal" or **"RFP"** shall have the meaning set forth in Recital (B);

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

"Safety Requirements" shall have the meaning set forth in Clause 13.1.1;

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

"Service Level Specifications" shall have the meaning set forth in Schedule G;

"Service Charge" means the charge(s) levied on and payable by a Patient for use of the Cancer Care Hospital in accordance with the provisions of this Agreement;

"Selected Bidder" shall have the meaning as set forth in Recital (C);

"Specified Documents" shall have the meaning as set forth in Clause 33.1;

"Staff Accommodation" means unfurnished building with Utilities that shall accommodate select staff as decided by the Project Commissioning Panel. It shall include tangible assets such as civil works including foundations, structures, drainage works, rolling stock, electrical systems, refurbishments, additions, alterations, and improvements if any;

"State" means the State of Odisha and **"State Government"** means the government of the State;

"Substitution Covenant" shall have the meaning set forth in Clause 5.9.4;

"Suspension" shall have the meaning set forth in Clause 26.1;

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project Assets charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

"Termination Notice" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"Termination Payment" means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination. For the avoidance of doubt, it

is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 27.4;

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

“**Utilities**” means basic infrastructure facilities including access roads, water supply and power supply and also includes fixtures in buildings including mechanical, electrical and plumbing fixtures excluding medical equipment and medical furniture installations;

“**Vesting Certificate**” shall have the meaning set forth in Clause 28.4.

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

<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of THE AUTHORITY by:</p> <p>Signature: Name: Designation:</p> <p>In the presence of:</p> <p>1.</p> <p>2.</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of THE CONCESSIONAIRE by:</p> <p>Signature: Name: Designation:</p> <p>In the presence of:</p> <p>1.</p> <p>2.</p> <p>THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, who has signed these presents in token thereof and, company Secretary / Authorised Officer who has countersigned the same in token thereof §:</p>
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§ To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULES

SCHEDULE - A: PROJECT SITE

SCHEDULE - B: INDICATIVE LIST OF MEDICAL EQUIPMENT AND MEDICAL FURNITURE

Indicative List of Medical Equipment and Medical Furniture

Department	Equipment and furniture	Quantity
Radiotherapy	Accelerator system, linear (Provision of 2 nd bunker to be made)	2 (1 in 1 st year and 2 nd Accelerator system, linear in the 2 nd year of operation)
	Patient table (special table, hard surfaced and no mattress)	1
	Water bath	1
	Treatment planning system	1
	Scanning, digitalize	2
	Patient monitoring systems, general physiology, single patient	2
Nuclear Medicine	Gamma camera (spect)	1
	Injector, contrast media	1
	Scanning systems, positron emission tomography with CT 64	1
	Injector, contrast media	1
	Stress exercise monitoring system, cardiac	1
	ERGO cycle	1
	Defibrillator, Monitor, w/Pacemaker	1
Internal radiotherapy	Brachytherapy systems	1
Radiology Imaging Department	MRI-3 tesla	1
	CT-64 slice	1
	CT injector	1
	Defibrillator	1
	X-ray -500 ma	1
	X-ray Digital	1
	Mammography	1
	OPG	1
	Ultrasound, radiology, Mid end	1
	CR system	1
Pathology	Ph meter	1
	Balances, electronic	1
	Analyzer, blood gas/ph/electrolyte/metabolite	1
	Clinical Chemistry Analyzers, Automated, immunology, combination	1
	Microscope, light, laboratory	1
	Baths, water, laboratory	1
	Centrifuge, table top	2
	Balances, electronic	1
	Microscope, light, laboratory	2
	Haematology Analyzers, automated (fac scanto 2)	1
	Analyzer, coagulation	1
	Slide warmer	1
	Roller, mixer	1
Centrifuge, table top	1	

Department	Equipment and furniture	Quantity
	Elisa reader washer automatic	1
	Immunology	1
	Microscope, light, laboratory	1
	Automatic Tissue processor	1
	Tissue embedding system	1
Pathology	Automatic Knife sharpener	1
	Auto Slide Stainer	1
	Microtome	1
	Cryostat	1
	Microscope	2
	Incubators, laboratory,	1
	Wax bath	1
	Blood culture analysers, automated One big & One small	1
	Microscope, light, laboratory	1
	Incubators, laboratory,	1
	Baths, water, laboratory	1
	Equipment, safety cabinet, laminar flow cabinet class2	1
	Hot plate	1
	Hoods, chemical fume	1
	Centrifuge, table-top	1
	Centrifuge, table-top	1
	Urine analyzer	1
ESR analyzer	1	
Sterilizer vertical	2	
Cold storage	Cold storage, Supply Reagent Storage, Radioimmunoassay	1
	Apheresis machine	2
	Donor couch	3
	Blood collection monitor	3
	Platelet incubator and shaker	1
	Deep Freeze (-35 Degree)	1
	Deep Freeze (-70 Degree)	1
	Blood Bank Refrigerator	1
	Tube Sealer	1
	Insulated transport containers	1
	Sterilizer vertical	2
	Centrifuge Table Model for 8 tubes	1
	Water Bath / Air bath with temp range 37-56 degree centigrade	1
	Incubator with Thermostatic Control	1
	Microscopes Binocular	1
	Refrigerators (Medicine Refrigerator) with temperature indicator	1
	Automated Red Cell Washer	1
	ELISA System (Automated washer with reader). Thermal printer, with interface capabilities to HIS	1
	Compoduct	1
	Centrifuge table-top for 8 tubes	1

Department	Equipment and furniture	Quantity
Blood Bank	Incubator with temperature control and indicator	1
	VDRL shaker	1
	Centrifuges, cell washing; cytological	1
	Plasma expressor manual	1
	Plasma expressor automatic	1
	Gel matrix (Bio-Rad)	1
	Refrigerator (Medicine Refrigerator) with temperature indicator	1
	Refrigerated Centrifuge	1
	Plasma Expressor	1
	Electronic Balance for bag weighing	1
	Cryo-bath for thawing for cryoprecipitate	1
	Laminar Flow hood	1
	Tube Sealer	1
	Platelet incubator and shaker	1
	Deep Freeze (-35 Degree)	1
	Deep Freeze (-70 Degree)	1
	Blood Bank Refrigerator	1
	OPD	Tube Sealer
Insulated transport containers		1
Pulmonary function test		1
EEG		1
EMG		1
Uroflowmetry		1
Multi-head microscope		1
Speech therapy box		1
Video and Optical Laryngoscopes with light source & camera		1
Microdermabrasion with Hand pieces & Diamond Tips		1
Motorized Chair		2
RF Cautery		1
PUVA Therapy (UVA & UVB)		1
Dermatoscope		1
2D Echo		1
TMT		1
ECG		1
BERA		1
ENT workstation		1
Audiometry		1
Audiometry booth (acoustic room 10*10 feet)	1	
Impedance audiometry	1	
Endoscopy room	Dental Chair with x-ray, RGV & accessories	1
	Table, operation, universal mobile (indigenous)	1
	Electrosurgical units; electrosurgical units, capable of argon-enhanced coagulation	1
	Anaesthesia unit, general purpose, medium end	1
	Infusion pumps, syringe	2
Fluoroscopic x-ray system, general-purpose, mobile, analogue (C arm)	1	

Department	Equipment and furniture	Quantity
	Complete flexible endoscope with light camera (recording)	1
	Trolley, endoscopy	1
OT/Surgery Department	Table, operation, universal mobile	3
	Electrosurgical diathermy system, general purpose	3
	Electrosurgical diathermy system, vessel sealing system & general-purpose combination	1
	Patient monitoring systems, general physiology, single patient	3
	Light system, surgical(ceiling), OT, 2 dome, LED	3
	Surgical facility booms, ceiling-mounted anaesthesia	3
	Surgical facility booms, ceiling-mounted, surgeon	3
	Infusion pumps, syringe	6
	Infusion pump, general-purpose(volumetric)	6
	Anaesthesia unit, general purpose, medium end	3
	Intracranial Pressure monitoring	1
	Stereotaxic frame	1
	Microscope, Neuro, high end	1
	Fluoroscopic x-ray system, general-purpose, mobile, analogue (C arm)	1
	Electromechanical and pneumatic impact lithotripters	1
	Surgical set	15
	Prefabrication of operation theatres	2
	Defibrillator, Monitor, w/Pacemaker	2
	Surgical set – specialized	3
	Defibrillator, Monitor, w/Pacemaker	3
CUSA Knife	1	
Laparoscopy Set	1	
Minor OT	OT Table	1
	OT Light	1
	Anaesthesia Machine	1
	Critical care Monitor	1
	AGM	1
	Defibrillator	1
	Suction Machine	1
	Transport Stretcher	1
	Electrosurgical Cautery	1
	Surgical Set	1
Pre-Op / Post Op Beds (6 Beds)	Patient monitoring systems, general physiology, single patient	6
	Infusion pumps, syringe	12
	Electrocardiographs, multichannel, interpretative & portable trolley, interpretative	2
	Warming units, blood/solution	1
Frozen section LAB	Infusion pumps, syringe	15
	Sterilization autoclave, free standing	1
	Washer disinfectant	1
	Cleaner, Ultrasonic	1
	ETO steriliser (5 cuft)	1

Department	Equipment and furniture	Quantity
CSSD	Dryer	1
	SS furniture	1
Medical Gas Pipeline System (MGPS)	MGPS	
Nurse Call System	Nurse Call System	120
Biomedical waste management	Incinerator	1
Power Back up	DG set (600 to 650 KVA)	1
	Hospital beds	120

Following service specifications shall be complied with for procurement of medical equipment:

- a) All medical equipment must be new and must be either CE or USFDA certified.
- b) All medical equipment and medical furniture procured by the Authority shall be in accordance with the Good Industry Practice.
- c) Wherever required approval from AERB to be obtained for equipment installation

Note: The list and specifications of medical equipment and medical furniture provided under this Schedule is indicative. The final list and specifications of medical equipment and medical furniture will be finalized by the Project Commissioning Panel as per the provisions under Clause 14.2 (c) of this Concession Agreement.

SCHEDULE - C: PROJECT ASSETS TO BE HANDED OVER BY AUTHORITY

S. No.	Project assets to be handed over to the Concessionaire
1.	Hospital Buildings
2.	Medical equipment and medical furniture

SCHEDULE - D: ESCROW AGREEMENT

ESCROW AGREEMENT

(See Clause 38.1.2)

THIS ESCROW AGREEMENT is entered into on this the day of20...

AMONGST

..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

....., (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

..... (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

THE GOVERNOR OF ODISHA, represented by Department of Health & Family Welfare, Government of Odisha and having its principal office at Odisha Secretariat, Bhubaneswar (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- A. The Authority has entered into an agreement dated with the Concessionaire (the “Concession Agreement”) for commissioning, operation, maintenance and management of the Project Assets of Cancer Care Hospital at Jharsuguda in, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Senior Lenders have agreed to finance the Cancer Care Hospital in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

DEFINITIONS AND INTERPRETATION

1.1. Definitions

Unless contrary to the provisions of this Agreement, the capitalised terms used in the Agreement but not defined in this Agreement, shall have meaning assigned to it under the Concession Agreement. In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

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

“**Board of Arbitrators**” shall mean an arbitral tribunal comprising of one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board;

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

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

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

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

“**Indemnified Party**” shall have the meaning ascribed thereto in Clause 9.2 of this Escrow Agreement;

“**Indemnifying Party**” shall have the meaning ascribed thereto in Clause 9.2 of this Escrow Agreement;

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

“**Nominated Company**” shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement; “**Parties**” shall mean the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually;

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

“Rules” shall have the meaning ascribed thereto in Clause 9.1; and

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

1.2. **Interpretation**

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

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

1.2.3. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

1.2.4. The rules of interpretation stated in Article 1 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. **ESCROW ACCOUNT**

2.1. **Escrow Bank to act as trustee**

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. **Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the

Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

2.3.1. Within [30 (thirty)] days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

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

2.5. Rights of the Parties

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

2.6. Substitution of the Concessionaire

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

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

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

- (a) all Revenues from the Cancer Care Hospital; and
- (b) Annual Concession Fee as per provisions of the Concession Agreement signed on
- (c) all payments by the Authority, if any.

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

3.2. Deposits by the Authority

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

- (a) Any monies disbursed by the Authority to the Concessionaire;
- (b) all Revenues collected by the Authority, if any, in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1 of this Escrow Agreement, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

3.3. Deposits by Senior Lenders

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

3.4. Interest on deposits

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

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. **Withdrawals during Concession Period**

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

- (a) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) Annual Concession Fee due and payable to the Authority;
- (c) all payments as may be due and payable to the Authority pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire under this Agreement;
- (d) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. **Withdrawals upon Termination**

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

- (a) payroll dues and related statutory payments thereof, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Annual Concession Fee;
- (c) all other amounts which are outstanding to be paid by the Concessionaire to the Authority, as on the date of the Termination;
- (d) all payments as may be due and payable to the Authority pursuant to this Agreement and/ or the Damages certified by the Authority as due and payable to it by the Concessionaire; and
- (e) balance, if any, in accordance with the instructions of the Concessionaire.

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

4.3. Application of insufficient funds

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

4.4. Application of insurance proceeds

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

4.5. Withdrawals during Suspension

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

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

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

5.2. Notification of balances

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

5.3. Communications and notices

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

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

5.4. **No set off**

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

5.5. **Regulatory approvals**

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

6. **ESCROW DEFAULT**

6.1. **Escrow Default**

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

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach

by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

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

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

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

7.2. Substitution of Escrow Bank

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

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

7.3. Closure of Escrow Account

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

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary escrow agreement

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

9. **INDEMNITY**

9.1. **General indemnity**

- 9.1.1. The Concessionaire shall indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third-party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 9.1.2. The Authority shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3. The Escrow Bank shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. **Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 of this Escrow Agreement or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify

the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. **DISPUTE RESOLUTION**

10.1. **Dispute resolution**

Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. **MISCELLANEOUS PROVISIONS**

11.1. **Governing law and jurisdiction**

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

11.2. **Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

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

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

11.3. **Priority of agreements**

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

11.4. **Alteration of terms**

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

11.5. **Waiver**

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

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

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

11.6. **No third-party beneficiaries**

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

11.7. **Survival**

11.7.1. Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

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

11.8. **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Escrow Agreement or otherwise.

11.9. **Successors and assigns**

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

11.10. **Notices**

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

11.11. **Language**

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

11.12. Authorised representatives

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

11.13. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed resolution passed by the Board of Directors of the Concessionaire at its meeting held on theday of 20 ... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address) SIGNED, SEALED AND DELIVERED	SIGNED, SEALED AND DELIVERED pursuant to the For and on behalf of For and on behalf of ESCROW BANK by: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address) SENIOR LENDERS by the Lenders' Representative: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)
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SIGNED, SEALED AND

DELIVERED

For and on behalf of

THE AUTHORITY by:

(Signature)

(Name)

(Designation)

(Address) (Fax
No.)

(e-mail address)

SCHEDULE - E: MINIMUM CLINICAL SPECIALTIES TO BE PROVIDED BY CANCER CARE HOSPITAL

The Cancer Care Hospital will require the integration of the following specialties across multiple disciplines:

S. No.	Clinical Specialty
1.	Surgical Oncology
2.	Medical Oncology & Haemato-Oncology
3.	Radiation Oncology
4.	Onco-Pathology
5.	Pain and Palliative Care
6.	Preventive Oncology
7.	Psycho-oncology
8.	Nuclear Medicine
9.	Diagnostic and Interventional Radiology
10.	Radiology
11.	Pathology
12.	Critical Care

To support the specialties, the following Supportive & Auxiliary Departments may be introduced:

S. No.	Clinical Specialty
1.	Laboratory
2.	Pharmacy
3.	Medical informatics
4.	Medical records
5.	Rehabilitations
6.	Counselling centre
7.	Radiation Sterilization Plant
8.	Radio-Pharmaceutical Complex
9.	Mobile Cancer Education & Detection Unit
10.	Spiritual services
11.	Central Sterilization & power laundry
12.	Centralized medical gas & suction
13.	Freezer mortuary
14.	Ambulance

Note: The list of Clinical Specialties as well as Supportive & Auxiliary Departments to be introduced in the Cancer Care Hospital shall be finalized by the Project Commissioning Panel as per the provisions under Clause 14.2 (b) of this Agreement.

The overall scope of treatment at the Cancer Care Hospital would encompass:

S. No.	Treatment
1.	Cancer Surgery- Curative, palliative & Reconstructive.
2.	Radiation Therapy
3.	Chemotherapy - High intensity chemotherapy
4.	Bone man-ow transplant
5.	Radiotherapy- 3D-CRT / IMRT I TGRT I Brachytherapy
6.	Intra-Operative Radiotherapy

7.	Cryo-surgery I Radio-frequency ablation therapies.
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The treatments would be provided for the following types of cancers:

- Head & neck
- Breast
- Thoracic (Oesophageal, Lung, Mediastinum)
- Gastrointestinal (stomach, Pancreas, Hepatobiliary, Colorectal & Anal canal)
- Gynaecological (Ovary, Endometrial, Vaginal)
- Kidney & Prostate
- Skin

Note: *The scope and list of treatments to be introduced in the Cancer Care Hospital shall be finalized by the Project Commissioning Panel as per the provisions under Clause 14.2 (b) of this Agreement.*

SCHEDULE - F: FORMAT OF PERFORMANCE SECURITY

The Commissioner-cum- Secretary to Government,
Department of Health & Family Welfare, Government of Odisha

WHEREAS:

- (A) (the “**Concessionaire**”) and the Department of Health & Family Welfare, Government of Odisha (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the operation, maintenance and management of Project Assets at Jharsuguda on PPP mode, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs 8,50,00,000/- (Rupees Eight crores Fifty Lakhs only) (the “**Security Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the entire Concession Period (as defined in the Agreement) and for a period of 6 (six) months after expiry of the Concession Period (the “**Security Period**”).
- (C) We, through our Branch at(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Security Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Security Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Commissioner-cum-Secretary to Government that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Security Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Security, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Security.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Security.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Security, to vary at any time, the terms and conditions of the Agreement

or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Performance Security and the Bank hereby waives all of its rights under any such law.

6. This Performance Security is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Performance Security is restricted to the Security Amount and this Performance Security will remain in force and effect for the Security Period after which all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect upon the expiry of the Security Period. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required to satisfy the expiry of Security Period, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Performance Security during its currency, except with the previous express consent of the Authority in writing and declares and warrants that it has the power to issue this Performance Security and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in providing such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Performance Security shall come into force with immediate effect and shall remain in force during the Security Period pursuant to the provisions of the Agreement

Signed and sealed this day of, 20..... at

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

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (1) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (2) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE - G: SERVICE LEVEL SPECIFICATIONS

The Concessionaire shall be required to adhere to the following minimum Service Level Specifications for the Operation of the Project:

Operational & Technical Requirements

- a) Proper signage displaying access to various departments & facilities in the premises of Hospital Buildings should be provided.
- b) Fire-fighting equipment, fire extinguishers, sand buckets, etc. should be maintained and readily available.
- c) Detailed standard operating protocols for calibration and maintenance of equipment should be maintained.
- d) The concessionaire shall obtain & maintain ISO 9001 quality certifications.
- e) The Concessionaire shall enter into comprehensive Annual Maintenance Contracts (AMCs) with the suppliers for all medical equipment and other support equipment for the entire duration of Concession Period.
- f) All the medical equipment must be serviced at least once every 6 (six) months.
- g) The Concessionaire shall ensure back up services including power backup as required.
- h) Proper arrangement of housekeeping shall be maintained in all area.
- i) The hospital should be NABH accredited within 2 years from commencement of hospital operations.
- j) The hospital should be empanelled under BSKY or any substitute thereof.
- k) The hospital should adhere to the Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha.

Employees/Personnel and Labour

The concessionaire shall ensure the availability of required manpower (senior doctors, duty doctors, nurses, technicians, paramedical and administration staff) as per Good Industry Practice.

Bio medical waste management

- a) Bio medical waste should be properly segregated at all patient activity area, diagnostics, operation theatre and treatment rooms.
- b) The trolleys/collection bin used to collect hospital waste should be properly checked for any leakage or spillage of bio medical waste while transporting.
- c) It should be ensured that waste bags are filled up to three-fourth capacity, tied securely and removed from the site of generation.
- d) No untreated bio medical waste shall be kept stored beyond a period of 48 Hrs.
- e) Maintain records about the generation, collection, storage, transportation, treatment, disposal and / or any form of handling of bio-medical waste.
- f) To follow and practise as per NABH latest and Odisha State Pollution Control Board
- g) After end of useful life of radioactive source used in radiotherapy, the source should be disposed safely as per AERB standards

Disaster Management Guidelines

Concessionaire shall prepare a disaster management plan and train the staffs for the same. The disaster management plan shall be displayed at prominent locations in the Cancer Care Hospital. The Concessionaire shall comply with disaster management guidelines/regulations as applicable.

SCHEDULE - H: KEY PERFORMANCE INDICATORS

KPIs listed below will provide the primary performance parameters of the Cancer Care Hospital. The non-adherence of the KPIs shall lead to Damages. KPIs along with Damages in case of non-adherence of KPIs have been given in the table below.

Sr. No	KPIs	Target Benchmark	Monitoring frequency	Damages (To be paid and assessed on an annual basis)
Availability KPIs				
1 Service KPIs				
1.1	Medical Equipment availability	95% uptime	Semi-annual	2% of Performance Security (@ 1% of Performance Security per half year)
1.2	Patient satisfaction Survey for Patients enrolled under the BSKY, Odisha or any substitute thereof	Rating of at least 3.00	Quarterly	2% of Performance Security if more than 30% of Patients enrolled under the BSKY, Odisha or any substitute thereof, surveyed ranked the services below 3.00 & 5% of Performance Security if more than 50% of Patients enrolled under the BSKY, Odisha or any substitute thereof, surveyed ranked the services below 3.00
2 Quality KPIs				
2.1	Chemo related Adverse Drug Reactions	<2% of the total chemotherapy administrations	Quarterly	2% of Performance Security (@ 0.5% of Performance Security per quarter)
2.2	Return to OT within 48 hours for re exploration	<2% of all Surgeries	Quarterly	2% of Performance Security (@ 0.5% of Performance Security per quarter)
2.3	TLD dose limit audit as per AERB	As per AERB	Quarterly	2% of Performance Security (@ 0.5% of Performance Security per quarter)
2.4	Number of Redo of radiology test within 48 hours of completion of test and generation of report	<5% of all radiology tests	Quarterly	2% of Performance Security (@ 0.5% of Performance Security per quarter)

SCHEDULE - I: SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents in the Cancer Care Hospital, irrespective of the person(s) at fault.
- 1.2 Users of the Cancer Care Hospital include staff of the Concessionaire and its contractors working in the Cancer Care Hospital.
- 1.3 Safety Requirements apply to all phases of operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same and implementation of appropriate remedial measures.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines by AERB and specified in Annex - I of this Schedule I.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the users, Patients, employees, staff, consultants and visitors:

- (a) Applicable Laws and Applicable Permits;
- (b) Provisions of this Agreement;
- (d) Relevant Standards/Guidelines contained in internationally accepted codes including NABH latest, AERB, Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha; and
- (e) Good Industry Practice

3 Safety measures during Concession Period

- 3.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Patients, staff and visitors, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2 The Concessionaire shall conform to the standards specified in NABH latest, Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha and AERB regarding safety during the Concession Period.
- 3.3 The Concessionaire shall submit to the Authority and/or the Independent Panel, as the case may be, before the 31st (thirty first) May of each year, an annual report (in ten copies) containing details of the measures taken by the Concessionaire pursuant to the provisions of Clause 3 of this Schedule I.

- 3.4 Once in every Accounting Year, a safety audit in respect of the Cancer Care Hospital shall be carried out by the Independent Panel or any agency/authority as nominated by Independent Panel. It shall review and analyse the annual report and unusual occurrences data of the preceding year and undertake an inspection of the Cancer Care Hospital. The Independent Panel shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Cancer Care Hospital. One copy of the Safety Report shall be forwarded by the Authority to the Concessionaire forthwith.
- 3.5 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the Cancer Care Hospital, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, NABH latest, Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha, Service Level Specifications, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith.
- 3.6 Without prejudice to the provisions of Paragraph 3, the Concessionaire shall, within 15 (fifteen) days of receiving the Safety Report, send its comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify.

4 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Clause 2 of this Schedule, shall be borne by the Concessionaire.

Annex - I
(Schedule I)

Safety Guidelines

1 Safe movement

In the operation of Cancer Care Hospital, particular care shall be taken to ensure safety of the Patients, staff and visitors. This shall include safe and efficient evacuation in case of Emergency.

2 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises.

3 Fire safety

3.1 The Concessionaire shall adopt and comply with fire safety requirements prescribed under Applicable Laws.

3.2 To prevent fire in the Cancer Care Hospital, the Concessionaire shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

3.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Cancer Care Hospital in case of emergency.

3.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. All notices and signage shall be uniform and standardised.

4. Containment of Infections

4.1 The Concessionaire shall take adequate measures to prevent and contain infections in the Cancer Care Hospital, including ensuring usage of appropriate materials and consumables such as masks, hand gloves, disinfectant etc. by the staff, users, employees, consultants, visitors and Patients, as the case may be. In this regard, the Concessionaire shall conform to the provisions of NABH latest, and Good Industry Practice.

4.2 The Concessionaire shall formulate appropriate policy for evaluation and care of staff, users, and employees, consultants, visitors and Patients who suffer from accidental needle stick exposures.

5 Waste Disposal

5.1 The Concessionaire shall dispose of waste in accordance with Applicable Laws, the provisions of NABH latest, NABL, Clinical Establishments Act and Rules and its latest amendments made time to time as applicable in the State of Odisha and Good Industry Practice.

SCHEDULE - J: REPORTING OBLIGATIONS

The Concessionaire must submit the following reports to the Authority at such frequency as provided:

Report	Details (The report shall definitely include the below mentioned data and additional data as decided from time to time)	Frequency
Hospital Statistics	a) OP and IP statistics by specialty b) Number of Chemotherapy sessions performed c) Number of Patients availing Radiation Oncology services d) Number of bed days for Surgical Oncology e) Bed utilization f) OT utilization g) Utilisation of diagnostics h) Laboratory tests statistics i) Readmission rate	Monthly, Quarterly, Annually
Compliance with KPIs	Patient Satisfaction Survey for Patients enrolled under BSKY, Odisha or any substitute thereof	Quarterly
	Medical equipment availability	Semi-annual
	Chemo related Adverse Drug Reactions	Quarterly
	Return to OT within 48 hours for re exploration	Quarterly
	TLD dose limit audit as per AERB	Quarterly
Manpower Deployment	Manpower deployment vis-à-vis minimum requirement as per Concession Agreement	Monthly
Maintenance Manual	Manual for regular and preventive maintenance of the Project Assets including life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project	<ul style="list-style-type: none"> • 60 (sixty) days from the Appointed Date • Revision and updation once in every 3 years

Report	Details (The report shall definitely include the below mentioned data and additional data as decided from time to time)	Frequency
	Assets including replacement thereof, such that its overall condition conforms to Good Industry Practice.	
Status Report	<p>a) Condition of the Project Assets including its compliance or otherwise with the Annual Maintenance Plan and Safety Requirements</p> <p>b) Identify and state in reasonable detail the defects and deficiencies that require rectification</p>	Quarterly
Report on unusual occurrence	<p>a) Accidents and unusual occurrences in the Cancer Care Hospital relating to the safety and security of the Patient, staff or visitors</p> <p>b) accidents and unusual occurrences in the Cancer Care Hospital shall include:</p> <ul style="list-style-type: none"> i. death or injury to any person; ii. episode of sexual assault or rape; iii. suicide of a Patient or a staff; iv. haemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities; v. surgery on the wrong Patient or wrong body part; vi. smoke or fire; vii. unintended retention of a foreign object in the body of any Patient after surgery or other procedure; viii. Any other incident akin to any of the incidents listed above; and ix. Such other relevant information as may be reasonably required by the Authority or the Independent Panel. 	Daily and Monthly
Safety Measures	Safety measures undertaken pursuant to the provisions of Schedule - I	Annual
Concessionaire's	Particulars of asset, specifications, date of	Within 30 days of

Report	Details (The report shall definitely include the below mentioned data and additional data as decided from time to time)	Frequency
Asset	replacement / refurbishment / renovation / procurement, value of asset and supporting documents towards creation / procurement / refurbishment / renovation and value of asset.	completion of replacement / refurbishment / renovation / procurement of Concessionaire's Asset

SCHEDULE - K: PATIENT SATISFACTION SURVEY

1. Patient feedback & grievance handling

- a) Cancer Care Hospital shall ensure the provision of Patient feedback forms as provided in this Schedule which will be provided to the Patients enrolled under BSKY, Odisha or any substitute thereof.
- b) Concessionaire shall develop a Grievance Redressal Policy to monitor and address any issues or complaints regarding quality of services, denial of services, staff behaviour etc. with respect to the Patients enrolled under BSKY, Odisha or any substitute thereof.
- c) Cancer Care Hospital should also have a provision of complaint drop box at suitable & visible location where any aggrieved Patient can register his/her complaint. Patient can also raise the concern/complaint orally with the concerned authority.
- d) The process of grievance handling shall be displayed at reception in local language & English for Patient information. It should also mention the concerned authorised person name and phone number.
- e) Concessionaire shall act promptly on receiving any complaint and the same should be addressed within 48 hrs.
- f) It shall also be ensured that preventive mechanism is in place in the system so that complaints are not repeated again.
- g) All Patient complaints should be captured in digitised way and feed into the HMIS. Concessionaire shall produce the quarterly reports on Patient feedback received from Patients enrolled under BSKY, Odisha or any substitute thereof, and share with the Authority.
- h) The patient satisfaction form to be used for obtaining feedback from Patients enrolled under BSKY, Odisha or any substitute thereof, should be substantially in the form provided below.

FORMAT OF PATIENT SATISFACTION SURVEY

Dear Sir/Madam,

We would like to express our appreciation to you for choosing [] (Name of Cancer Care Hospital) to serve your health care needs. We understand that no one enjoys spending time in the hospital, so we try to do our best to make your stay with us as comfortable as possible.

Your health, safety and comfort are of utmost importance to us. We strive to improve with every suggestion we receive. Your candid observations will help us in further improving our services and achieving the highest quality standard in health care.

We value your opinion. We would appreciate if you would spare us a moment of your valuable time in providing us your feedback regarding various aspects of medical care and hospitality that were extended to you during your stay here with us.

We wish you the very best of health and longevity

Thank You
Regards
Director

Patient Details:

Address:

Phone :

E-mail :

Hospital ID No.:

Date of filling out this form:

Date of Service provided at the Cancer Care Hospital:

Were you being:-

Outpatient

Inpatient

Emergency Room patient

Specialty of Treatment:

Name of Treating Doctor:

Please rate the following services that you may have received, with 1 being of the worst quality and 5 the best:

	1	2	3	4	5
Admission Process					
Front office staff courteous, polite & responsive					
Ease of getting admitted					
Explanation about your rights and responsibilities.					
Clarity on processes involved					
Admission formalities completed within	More than 3 hours	2-3 hours	1-2 hours	30 minutes to 1 hour	Less than 30 minutes
Medical Services					
Care & concern shown by the doctors					
Regular visits by treating doctor					
Medical condition explained well and discussed					

	1	2	3	4	5
Reassuring patient about medical treatment & possible side effects					
Time devoted by duty doctor in taking clinical history & examination					
Regular progress updates					
Counselling at time of discharge about follow up visits, treatment schedule					
Promptness in managing your pain					
Diagnostic Services					
Waiting time for investigation					
Waiting time for reports					
Nursing Services					
Nurses friendly & courteous					
Prompt and attentive in providing medication					
Ease of communication / understanding					
Response to your calls / needs					
Respect for your privacy					
Food & Beverage Services					
Relevant Diet Counselling					
Service staff courteous					
Quality of food served					
Timely delivery					
Housekeeping Services					
Courtesy & helpfulness of the staff					
Room readiness at admission					
Cleanliness & hygiene standards of room and toilet					
Adequate supply of clean linen & toiletries					
Maintenance of Rooms					

	1	2	3	4	5
Equipment in rooms in working condition					
Promptness in service					
Discharge Process					
Discharge formalities were completed	In more than 3 hours	Within 3 hours	Within 2 hours	Within 1 hour 30 minutes	In less than 1 hour
Patient Welfare					
Ability of patient welfare officers to understand and resolve your problems					
Facilities					
Signage's					
Seating arrangements					
Facilities for attendants					
Cafeteria					
Overall Experience					
What overall score would you give to [] (Name of Cancer Care Hospital)?					
How do you feel about the service you experienced					
Based on your experience, would you recommend [] (Cancer Care Hospital) to your friends and family?					

How can we make the experience at [] even better for Patients & their families?

Were you asked to buy any drugs or supplies with your own money? Yes/No, Please provide details.

Were you asked to get any tests done from an outside facility? Yes/No, Please provide details.

Were you asked to provide any money to anyone during your stay at the hospital? Yes/No, Please provide details.

Were you given instructions about after discharge care, tests and follow-up appointment at the time of discharge? Yes/No

Were you given any medications at the time of discharge? Yes/No, Was this a prescription or a supply of drugs?

SCHEDULE - L: HOSPITAL MANAGEMENT INFORMATION SYSTEM

The HMIS should have functionalities to record and maintain the information including but not limited to:

- (i) Patient registration (outpatient, inpatient) with identification number
- (ii) Schedule of appointment and status of Patients enrolled under BSKY, Odisha or any substitute thereof
- (iii) Number of Patients (Patients enrolled under BSKY, Odisha or any substitute thereof, Other Patients and total Patients)
- (iv) Total number of OPD Consultations (Patients enrolled under BSKY, Odisha or any substitute thereof and Other Patients)
- (v) Total number of Patients availing OPD Diagnostic Services and OPD Procedure (Patients enrolled under BSKY, Odisha or any substitute thereof and Other Patients)
- (vi) Total number of Patients availing day care (chemotherapy services), radiation therapy, and palliative care (Patients enrolled under BSKY, Odisha or any substitute thereof and Other Patients)
- (vii) Available bed status (status of available beds, based on admission & discharge cycle)
- (viii) Monthly bed occupancy report (Patients enrolled under BSKY, Odisha or any substitute thereof and Other Patients)
- (ix) Inpatient record; records & details related to admitted Patients, including line of treatment, diagnosis, prescription and whether Patients enrolled under BSKY, Odisha or any substitute thereof, or Other Patient
- (x) Service Charge collected (Patients enrolled under BSKY, Odisha or any substitute thereof and Other Patients)
- (xi) Outpatient record; records & details related to outpatient including line of treatment, diagnosis, prescription and whether patient is enrolled under BSKY, Odisha or any substitute thereof, or Other Outpatient
- (xii) Discharge summary and final disease diagnosis;
- (xiii) Patient billing for all Patients (for all departments)
- (xiv) Human resource management including doctors, nurses and other staff;
- (xv) Operation theatre utilization – Patients treated under BSKY and other Patients
- (xvi) All the Key Performance Indicators to be recorded

SCHEDULE - M: ROLES & RESPONSIBILITIES FOR INDEPENDENT PANEL

1. The role and functions of the Independent Panel shall include the following:
 - a) review, inspection and monitoring of operation & maintenance of Project Assets in accordance with this Agreement;
 - b) review the reports as specified under Schedule J and any other data and information provided by the Concessionaire in accordance with this Agreement;
 - c) monitor the compliance of the Concessionaire with the terms of this Agreement;
 - d) inspect the Cancer Care Hospital, once every year, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. Independent Panel shall also inspect the register records of daily visual inspection of the Cancer Care Hospital maintained by the Concessionaire. In a separate section of the O&M Inspection Report, the Independent Panel shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Cancer Care Hospital. The Independent Panel shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
 - e) conduct the Safety Audit of the Cancer Care Hospital not less than once every year and provide a Safety Report recommending specific improvements, if any, required to be made in the Cancer Care Hospital.
 - f) monitor the quality of Healthcare Services provided at the Cancer Care Hospital and recommend changes, if required;
 - g) inspect the Cancer Care Hospital more than once in a year, if any lapses, defects or deficiencies require such inspections.
 - h) determine the Damages, if any, payable by the Concessionaire as per the provisions of this Agreement.
 - i) monitor and review the curing of defects and deficiencies by the Concessionaire
 - j) monitor the manpower employed at the Cancer Care Hospital in accordance with this Agreement and recommend changes, if required;
 - k) review, inspection and monitoring of Divestment Requirements;
 - l) undertaking all other duties and functions in accordance with this Agreement.
2. The Independent Panel shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.
3. In the event that the Concessionaire notifies the Independent Panel of any modifications that it proposes to make to the Cancer Care Hospital, the Independent Panel shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
4. **Assistance in Dispute resolution**
 - a) When called upon by either Party in the event of any Dispute, the Independent Panel shall mediate and assist the Parties in arriving at an amicable settlement.

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

5. Miscellaneous

- a) The Independent Panel shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- b) A copy of all communications, comments, instructions, Documents sent by the Independent Panel to the Concessionaire and a copy of all the test results with comments of the Independent Panel thereon shall be furnished by the Independent Panel to the Authority forthwith.
- c) The Independent Panel shall obtain and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Panel, whereupon the Independent Panel shall send one of the copies to the Authority along with its comments thereon.
- d) Upon completion of its assignment hereunder, the Independent Panel shall duly classify and list all communications, comments, instructions, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof.

SCHEDULE - N: VESTING CERTIFICATE

- 1 The Governor of Odisha represented by Commissioner-cum-Secretary, Department of Health & Family Welfare, Government of Odisha (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and _____ (the “**Concessionaire**”) for the operation, maintenance and management of Cancer Care Hospital and other Project Assets in Jharsuguda on PPP mode.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 28.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project Assets shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

AUTHORITY by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE - O: COMPUTATION OF DEPRECIATED HISTORIC COST

1. The Depreciated Historic Cost, wherever applicable, shall be computed based on the following norms:

The depreciation shall be calculated in accordance with the provisions of the Companies Act 2013 and Indian Accounting Standard issued by Institute of Chartered Accountants of India, as may be amended from time to time.

2. In case of a new asset/equipment/furniture other than Project Assets created/procured by the Concessionaire for the Operation of the Project during the Concession Period at its own cost, the date of existence of such asset for the computation of the depreciated value shall be the date on which it was scheduled to be completed in all respects or the date on which it becomes capable of being put to or used for operation, whichever is earlier. In case of such assets, the Depreciated Historic Cost shall be estimated based on the original cost of such assets.
3. In case of replacement of Project Assets, the asset shall be deemed to have come into existence when the same is capable of being put to or used for operation as the replaced asset or the date when it was actually put to use, whichever is earlier. In case of such assets, the Depreciated Historic Cost shall be estimated based on the cost of the replaced asset less the disposal value of the original asset replaced.
4. The Depreciated Historic Cost based on the provisions of this Schedule shall be certified by the Statutory Auditor of the Concessionaire and submitted to the Independent Panel. Independent Panel may appoint an independent auditor for verifying the Depreciated Historic Cost. The decision of Independent Panel in this regard shall be final and binding on both Parties.

**SCHEDULE - P: SCOPE OF CONCESSIONAIRE WITH RESPECT TO DRAWINGS
AND CONSTRUCTION SUPERVISION OF HOSPITAL BUILDINGS**

S No.	Activities	Scope of Services of the Concessionaire
1	Drawings related activities	<ul style="list-style-type: none"> • Provide inputs related to as-built drawings to contractor/Works Department • Review the as-built drawings prepared by contractor/any other agency and provide views to Works Dept. if any • Provide its views on any variation in drawings, change in scope if any during construction
2	Monitoring of Construction	<ul style="list-style-type: none"> • Appoint a full-time engineer at the project site during the construction period • Review and inspect the construction and provide inputs to Works Department if there are any deviation from approved Drawings • Participate in the review meetings to be held at site by Works Department and provide inputs on project timelines and construction works • Deployment of a service engineer on the project site to inspect and witness commissioning of the activities of various electro mechanical equipment being tested and commissioned.
3	Reporting	<ul style="list-style-type: none"> • Provide monthly report to Works Dept. on its observations/inputs for incorporation in the monthly progress report. • Provide clarification as required by Works Dept. and H&FW Department
4	Completion certificate, approval of change of scope of contractor if any	<ul style="list-style-type: none"> • Provide its views/confirmation for issue of completion certificate and change of scope of contractor if any

Project Information Memorandum

**Commissioning, Operation, Maintenance
and Management of Cancer Care Hospital
in Jharsuguda on PPP Mode**

Disclaimer

This Project Information Memorandum is for reference purpose only and does not constitute part of the Bidding Documents. Nothing contained in the Project Information Memorandum shall be binding on the Authority nor confer any right and/or obligation on the Bidders. Authority shall have no liability whatsoever in relation to or arising out of any or all contents of the Project Information Memorandum

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Project Snapshot

General Project Details

Project Name	Commissioning, Operation, Maintenance and Management of Cancer Care Hospital at Jharsuguda Under PPP Framework
Location	Near Jharsuguda Jail and District Circuit House
Land Area	Around 5.65 acres
Authority	Department of Health & Family Welfare, Government of Odisha
Concessionaire	Special Purpose Vehicle (SPV) incorporated by the selected bidder for the Project.
Concession Type	Operation & Management
Construction Period	3 years from the date of finalization of project Drawings and obtaining applicable permits
Commissioning Period	6 months from the date of handing over of the Project assets by Authority
Concession Period	15 years from the date of handing over of the Project assets by Authority (extendable for additional 15 years if Concessionaire shall have discharged its obligations without any material breach)
Authority Obligation	Building the cancer care hospital, procuring the medical equipment and furniture, facilitating peaceful use of the project facility by the concessionaire and designating required number of members from its side for the project commissioning panel and independent panel (The detailed Authority obligations are as specified in the Draft Concession Agreement)
Concessionaire Obligation	Installing the equipment & furniture provided by Authority, Project Commissioning, operation, maintenance and management of Project Assets, upgrade/replace equipment, furniture and other assets including the equipment and furniture provided by Authority as and when required to render uninterrupted and efficient services, paying annual concession fees as per provisions of the Concession Agreement. (The detailed Concessionaire obligations are as specified in the Draft Concession Agreement)
Project Facilities	<ul style="list-style-type: none"> • 120 beds • 3 Major Operation Theatres (OTs) and 1 Minor Operation Theatre • 2 linear accelerators • Diagnostics & imaging facility • Hospital building along with ancillary facilities • Staff accommodation
Minimum Clinical Specialties	<ul style="list-style-type: none"> • Surgical oncology • Medical Oncology & Haemato-Oncology • Radiation oncology • Onco-Pathology • Pain and Palliative Care • Preventive Oncology • Psycho-oncology • Nuclear medicine • Diagnostic and Interventional Radiology • Radiology • Pathology • Critical care

Bidding Terms

Project Name	Commissioning, Operation, Maintenance and Management of Cancer Care Hospital in Jharsuguda Under PPP Framework
Eligibility criteria	<p><u>Technical Capacity</u> The Bidder,</p> <ul style="list-style-type: none">• Bidder should have at least 1 multi-specialty or super-specialty hospital offering cancer care including medical oncology, surgical oncology and radiation oncology services• Bidder should have at least three years of experience in providing cancer care including medical oncology, surgical oncology and radiation oncology services• Bidder should have treated an annual average of 700 patients in radiation oncology during last three years• Bidder should have performed an annual average of 5000 chemotherapy sessions during last three years• Bidder should have a NABH/JCI accreditation for one of its multi-specialty or super-specialty hospital <p><u>Financial Capacity</u> The Bidder shall demonstrate, a minimum Average Annual Turnover of Rs. 50 crores for preceding three financial years (2021-22, 2020-21, 2019-20) and Net Worth of Rs. 15 crores (the “Financial Capacity”) as at the close of the preceding financial year (2021-22).</p>
Bid Parameter	Highest Annual Concession Fee payable for the first Accounting Year commencing from the Operations Date in accordance with the Concession Agreement.
Bid Validity	120 days from due date of submission of bid
Bid Security	Rs 40,00,000 (Rupees Forty Lakhs only) in the form of Bank Guarantee/Demand Draft valid for a period of 180 days from the due date of submission of bid
Performance Security	Rs 8,50,00,000 (Rupees Eight Crores Fifty Lakhs only) in the form of Bank Guarantee valid during the Concession Period to be submitted within 90 days from the date of signing of Concession Agreement
Schedule of Pre-bid Meeting	20 December 2022, 11:00 am
Due Date of Bid Submission	On or before 20 January 2023, 4:30 pm

1. Overview of State of Odisha

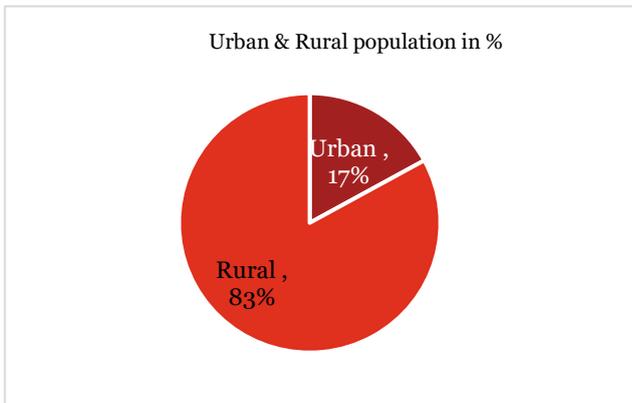
Odisha is located in the eastern India with a population of around 42 million (census 2011), which is expected to reach ~49 million by 2022. The State comprises of 3 revenue divisions, 30 districts, and 314 blocks. The State shares its borders with West Bengal in north-east, Jharkhand in north, Andhra Pradesh in the south, Chhattisgarh in west and Bay of Bengal in the east. Bhubaneswar, Mayurbhanj, Baleswar, Khordha, Sundargarh, Ganjam, Cuttack are some of the large cities in terms of population. Nearly 85% of State's population live in the rural areas depending mostly on agriculture and allied activities for their livelihood



Parameters of Odisha

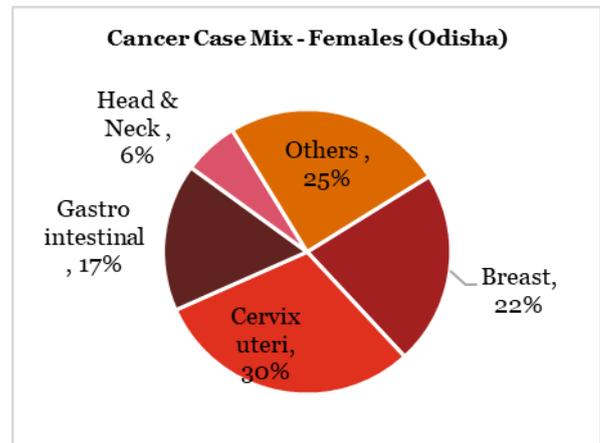
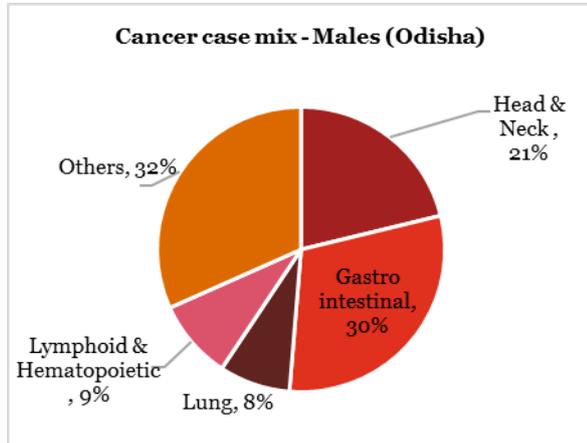
Parameters	Odisha
Population (in mn. Census 2011)	41.97
Geographical area (lakh sq.km)	155,707
Administrative districts (No.)	30
Per capita income INR (2016-17)	72,780
Literacy rate (2011)	72.8%

Urban and Rural Population of Odisha (2011)



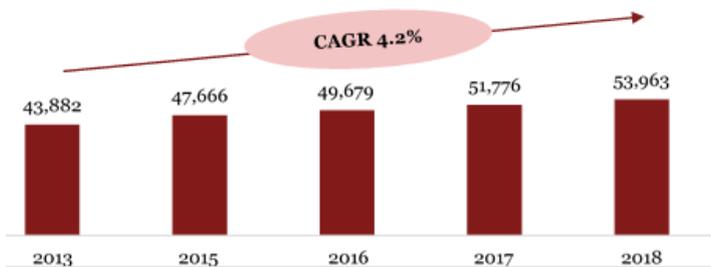
2. Odisha Oncology Market

In Odisha head & neck and gastrointestinal tract are the leading cancer cases among males constituting 51% of total cancer cases among males. Breast, cervical and ovarian cases together constitute 52% of cancer cases among females. Odisha has highest proportion of cervix cases (30%) as compared to India (17%).

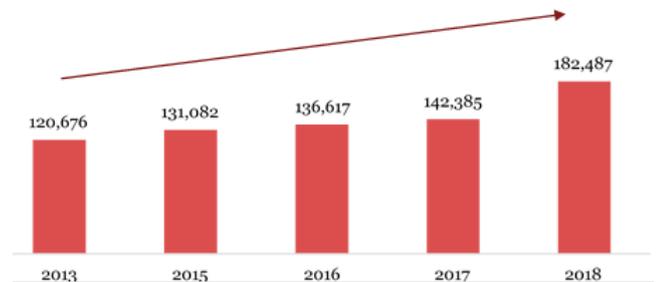


The estimated cancer incidence and prevalence in 2018 was 53,963 and 182,487 respectively. The cancer incidence and prevalence are 0.12% and 0.39% of the State's population respectively. The cancer mortality in the State is 0.06% of the State's population.

Estimated cancer incidence in Odisha



Estimated cancer prevalence in Odisha



Odisha has only few hospitals providing comprehensive cancer care services in both public and private. Centres providing comprehensive cancer care are located in Bhubaneswar and Cuttack. The supply scenario of cancer care services in Odisha is detailed below:

Existing Linear Accelerators (LINACs)

Odisha has six hospitals having 8 LINACs. Out of which 4 are in Bhubaneswar and 4 are in Cuttack. The hospitals having LINACs are tabulated as below:

Cancer care hospitals with LINAC in Odisha

Name of the hospital	Type of facility	No. of LINACs	Location

Acharya Harihar Regional Centre (AHRCC)	Public	2	Cuttack
HCG Panda Cancer Centre	Private	2	Cuttack
All India Institute of Medical Sciences	Public	1	Bhubaneswar
Hemalata Hospital and Research Centre	Private	1	Bhubaneswar
Apollo Hospital	Private	1	Bhubaneswar
Utkal Hospital	Private	1	Bhubaneswar

Odisha is inadequately served with only 8 linear accelerators as against a requirement of around 45 linear accelerators. On account of unavailability of adequate facilities in the State, patients are travelling outside Odisha for availing oncology services. Around 35-40% of patients travel outside Odisha for oncology services. The rest ~60-65% of patients travel to Bhubaneswar and Cuttack as linear accelerators are available in these cities only.

3. Jharsuguda Overview

Jharsuguda district has a population of more than 5 lakhs people which constitutes only 1.3% population of Odisha and has the 4th lowest population among all districts in the state of Odisha. However it ranks higher (10th) in population density which is 274 persons per sq. km and which is more than the State's average of 270 persons per sq. km. The demographic indicators of Jharsuguda and Odisha as per 2011 census are provided in the table below:

Parameters	Jharsuguda
Population	579,505
Male	296,690
Female	282,815
Population Growth	13.69%
Area (Sq. Km)	2,114
Density/km ²	274
Proportion to Orissa Population	1.38%
Sex Ratio (Per 1000)	953
Average Literacy	78.86
Male Literacy	86.61
Female Literacy	70.73
Total Child Population (0-6 Age)	64,794
Literates	405,879
Male Literates	228,092
Female Literates	177,787

Jharsuguda district urban demographic profile

Out of the total Jharsuguda population for 2011 census, 39.89% lives in urban regions of district. This is more than double that of the state which has only 16.69% of its population living in urban areas. In total 231,165 people lives in urban areas of which males are 120,528 and females are 110,637. Sex Ratio in urban region of Jharsuguda district is 918 as per 2011 census data which is below the Odisha state average. Average literacy rate for urban areas in Jharsuguda district as per census 2011 is 83.92 % (which is slightly below the Odisha state average) of which males and females are 90.05 % and 77.24 % literates respectively. In actual numbers 170,917 people are literate in urban region of which males and females are 95,644 and 75,273 respectively.

Jharsuguda district rural demographic profile

As per 2011 census, 60.11 % population of Jharsuguda districts lives in rural areas of villages which is much lower than that of the overall state at 83.31%. The total Jharsuguda district population living in rural areas is 348,340 of which males and females are 176,162 and 172,178 respectively. In rural areas of Jharsuguda district, sex ratio is 977 females per 1000 males. Literacy rate in rural areas of Jharsuguda district is 75.54% considerably higher than the state average of 70.22%, as per census data 2011. Gender wise, male and female literacy stood at 84.29% and 66.61% respectively. All the three literacy rates are higher than the corresponding rates of the state as a whole. In total, 234,962 people were literate of which males and females were 132,448 and 102,514 respectively.



Parameters	Jharsuguda
Population (in mn. Census 2011)	0.58
Geographical area (lakh sq.km)	2,114
Tehsils	5
Literacy rate (% ,2011)	78.8
Sex ratio (females per 1000 males, 2011)	953

Jharsuguda district is well connected with other parts of the state and the neighboring districts of Chhattisgarh and Jharkhand.

Railway station:

Jharsuguda railway station is an important junction on Tatanagar – Bilaspur section of Howrah –Nagpur-Mumbai line and Jharsuguda - Vizianagaram line

Road Network:

Jharsuguda is connected to various towns of the state by State Highway 10 and National Highway. The district is well connected to primary catchment area (Sundergarh, Sambalpur and Bargarh) and secondary catchment area through road network

Airport

Jharsuguda has an operational airport with connectivity to major metros and tier II cities. Going forward, the connectivity is expected to further improve.

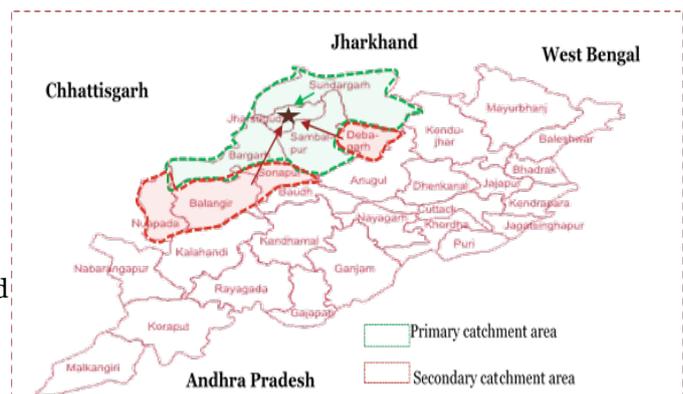
Patients seeking cancer care outside from Jharsuguda and Western Odisha

Western Odisha has limited number of cancer care facilities. VSSIMSAR medical college in Burla (Sambalpur district) is the only referral hospital for oncology services in western Odisha. The Medical college, Burla has cobalt therapy machine for radiotherapy services. Patients from Western Odisha are seeking treatment in AHRCC, Cuttack and in neighbouring states like Chhattisgarh and Andhra Pradesh. AHRCC, Cuttack has around 10-15% of patients coming from western Odisha. Due to less accessibility and poor awareness most of the cases reporting to hospitals are in stage III and IV.

Catchment area analysis

Jharsuguda has a primary catchment base of 5.6 million population and secondary catchment base of 2.5 million population. Considering a distance of 100 km from Jharsuguda, the Primary catchment area consists of districts namely Jharsuguda, Sundergarh, Sambalpur, and Bargarh. The secondary catchment consists of Balangir, and

Catchment Area of Jharsuguda

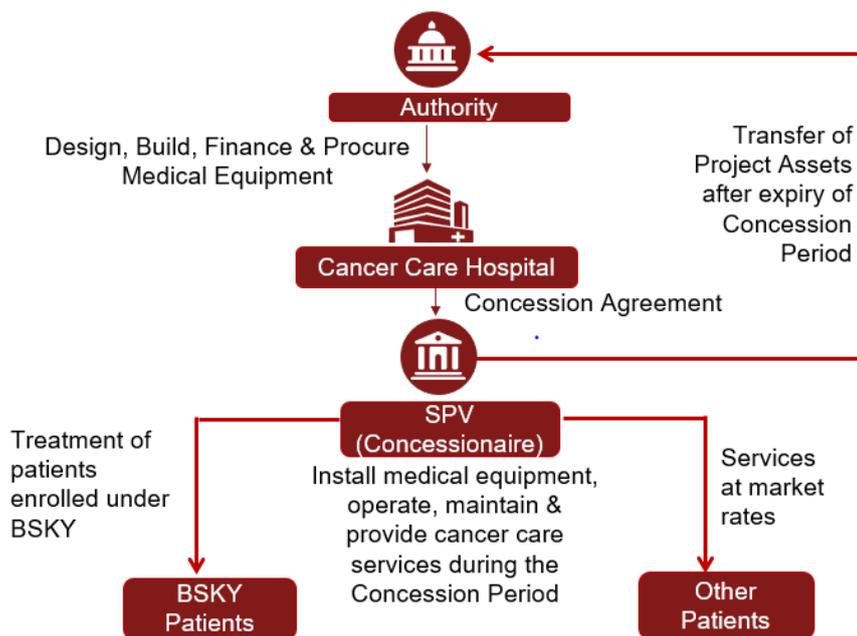


Nuapada. Catchment area has limited cancer care services with VSSIMSAR medical college, Burla providing conventional cobalt therapy services and district hospitals providing chemotherapy services. The estimated requirement of number of LINACs for catering to the need of catchment area is 7.

4. Project Structure

4.1 PPP Structure

As per the proposed PPP structure, the selected bidder shall form a Special Purpose Vehicle (SPV) (the “**Concessionaire**”) for operation and management of the Project. A concession agreement will be executed between Health & Family Welfare Department (H&FW Department) and the Concessionaire. H&FW Department shall design, build, finance the project facilities and procure the medical equipment and furniture. Concessionaire shall install the medical equipment, operate, manage, maintain and provide healthcare services for a period of 15 years (the “**Concession Period**”). The Concession Period will be extended by additional 15 years if the Concessionaire discharged its obligations without any material breach. Upon expiry of the concession period, all Project assets shall be transferred to the authority, provided the Project assets created by the concessionaire shall be transferred to the authority at book value of the assets as per the terms of the concession agreement. The PPP structure of the project is shown in the following diagram:



4.2 Authority Obligations

The key Authority obligations are summarized as below:

- The authority shall construct the project as per the designs and layouts approved by the project commissioning panel.
- The authority shall procure the medical equipment and medical furniture as per the requirement/specifications approved by project commissioning panel so that the medical equipment and medical furniture is delivered not earlier than 2 months before handing over of the project facility to the concessionaire.
- Within three years of the finalization of project designs & layouts and obtaining required approvals, handover to the concessionaire, physical possession of the project facility and the medical equipment and medical furniture procured in accordance with the provisions of concession agreement on as-is-where-is basis, free from all encumbrances;

- Permit peaceful use of the project facility by the Concessionaire under and in accordance with the provisions of the concession agreement.
- The authority shall form the project commissioning panel and independent panel.
- The authority shall obtain at its cost applicable permits/approvals, required for construction of the project, in accordance with the terms of concession agreement.
- The authority shall, upon written request, grant all applicable permits/approvals with reasonable promptness that are required for the operation of the project and which are in its authority to grant, subject to the concessionaire or the relevant applicant complying with the eligibility criteria for the grant of such applicable permits/approvals and making the requisite payments.
- The authority shall facilitate the concessionaire to obtain requisite permits/approvals from government authorities for and during operation of the project but is not obligated to do so.

Note: The detailed obligations of the Authority are as specified in the Draft Concession Agreement.

4.3 Concessionaire Obligations

The key Concessionaire's obligations are summarized as below:

The concessionaire shall

- provide details of the required additional support clinical specializations/disciplines if any (in addition to the minimum clinical specialties mentioned under Schedule E) to the Project Commissioning Panel within a period of 1 (one) month from the Effective Date for approval and finalization of the list of clinical specialties to be introduced in the Cancer Care Hospital.
- provide inputs to the Project Commissioning Panel for finalization of Drawings
- provide inputs to the Project Commissioning Panel for finalization of the list of medical equipment and medical furniture within 1 (one) month from the Effective Date. No additional request for procurement of additional medical equipment and medical furniture shall be entertained by the Authority after the final approval of the final list of medical equipment and medical furniture. The Concessionaire can procure and install additional medical equipment and medical furniture at its own cost and in accordance with Good Industry Practice and subject to Applicable Laws and upon approval of the Authority, as required for uninterrupted Healthcare Services to the Patients during the Concession Period.
- submit the technical specifications of the finalized/ approved list of medical equipment and furniture within a period of 1 (one) month from the date of finalization of list of medical equipment and furniture by Project Commissioning Panel.
- provide support during construction period of the Hospital Buildings as per the scope detailed under Schedule P of the Concession Agreement.
- install the medical equipment and medical furniture procured and provided by the Authority in the Cancer Care Hospital.
- ensure that all medical equipment and medical furniture is installed, checked and functions according to manufacturer's instructions, current best practice guidelines and legislation.
- implement HMIS as per the terms of the Concession Agreement.
- implement standard operating procedures for all departments of the Cancer Care Hospital.
- nominate required members from its side for the Project Commissioning Panel and Independent Panel
- pay Annual Concession Fees to the Authority as mentioned under Article 37 of the Concession Agreement
- create an Escrow Account in accordance with the provisions of Article 38 of the Concession Agreement;
- Procures applicable NABH/JCI accreditation within 2 years of inaugurating the hospital and maintains its accreditation with respect to operation of hospital at all times.
- Procure and maintain at its cost all applicable permits/approvals, for the purpose of the project (after handover by authority), including commissioning, managing, operating and maintaining the project facilities in accordance with the terms of the concession agreement.
- Comply with other obligations as specified in the Concession Agreement

Note: The detailed obligations of the Concessionaire are as specified in the Draft Concession Agreement.

4.4 Project Monitoring Framework

The monitoring of the project shall be undertaken during construction & commissioning phase and operation phase. The monitoring of project construction & commissioning shall be undertaken by Project Commissioning Panel to be appointed by Authority comprising members designated by Authority and 1 member designated Concessionaire. Monitoring of project operation, maintenance and management shall be undertaken by Independent Panel to be appointed by Authority comprising of members designated by Authority and 1 member designated by Concessionaire. Costs of the members of the Authority shall be borne by Authority and costs of the members of the Concessionaire shall be borne by the Concessionaire. Both the panels can appoint additional independent experts/advisors for providing assistance in monitoring the project. Payment to such experts/advisors will be made by the Authority. In addition to this, Authority shall have the right to appoint third party auditors to carry out periodic inspection to ensure that the services to be provided by the Cancer Care Hospital meet the set quality standards. The detailed terms & conditions along with roles & responsibilities of Project Commissioning Panel and Independent panel are as specified in the Draft Concession Agreement.