

# **Public Private Partnership**

## **Request for Proposal**

**for**

### **OPERATION AND MAINTENANCE OF NUCLEAR MEDICINE FACILITY ESTABLISHED IN CHITTARANJAN NATIONAL CANCER INSTITUTE ON PPP MODE**

**Chittaranjan National Cancer Institute, Kolkata**

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# **Request for Proposal (RFP)**

## Disclaimer

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

This RFP is not an agreement and is neither an offer nor invitation by the Authority to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in making their financial offers (Bids) pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for the Authority, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in 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 may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Authority, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder 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 for participation in this RFP.

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 the Bidder or Concessionaire, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

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

## Glossary

<b>Associate</b>	As defined in Clause 2.2.9
<b>Authority</b>	As defined in Clause 1.1.1
<b>Bidder</b>	As defined in Clause 1.2.1
<b>Bid</b>	As defined in Clause 1.2.1
<b>Bid Due Date</b>	As defined in Clause 1.1.5
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Bidders</b>	As defined in Clause 1.2.1
<b>Bidding Documents</b>	As defined in Clause 1.1.5
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Base Tariff</b>	As defined in Clause 1.2.6(c)
<b>Concession</b>	As defined in Clause 1.1.3
<b>Concession Agreement</b>	As defined in Clause 1.1.2
<b>Concessionaire</b>	As defined in Clause 1.1.2
<b>Conflict of Interest</b>	As defined in Clause 2.2.1(c)
<b>Consortium</b>	As defined in Clause 2.2.1(a)
<b>Damages</b>	As defined in Clause 2.2.1 (c)
<b>Financial Capacity</b>	As defined in Clause 2.2.2
<b>Financial Bid</b>	As defined in Clause 1.2.1
<b>Government</b>	Government of [India]
<b>Highest Bidder</b>	As defined in Clause 1.2.6 (b)
<b>Jt. Bidding Agreement</b>	As defined in Clause 2.2.6 (g)
<b>Lead Member</b>	As defined in Clause 2.2.6 (c)
<b>LOA</b>	Letter of Award
<b>Member</b>	Member of a Consortium
<b>Official Website</b>	As defined in Clause 1.2.10
<b>Project</b>	As defined in Clause 1.1.1
<b>Pre-qualification</b>	As defined in Clause 1.2.1
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in the Disclaimer
<b>Selected Bidder</b>	As defined in Clause 3.4.2
<b>Technical Bid</b>	As defined in Clause 1.2.1

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



## **Invitation for Proposals**



## Chittaranjan National Cancer Institute

### INTRODUCTION

#### 1.1. Background

- 1.1.1. The Chittaranjan National Cancer Institute (“CNCI”) represented by Director & Head, Department of Surgical Oncology (the “**Authority**”) situated in Newtown in Kolkata, West Bengal, 700160, is a premier cancer treatment and research centers and a designated Regional Cancer Centre under the Ministry of Health & Family Welfare, Government of India. As a part of this endeavor, the Authority has developed a Nuclear Medicine Facility at the Newtown Campus in Kolkata for comprehensive cancer care. The Nuclear Medicine Facility is equipped with PET-CT scan, Gamma Camera, High Dose Iodine Therapy Facility. The PET Scan and Nuclear Medicine facilities are spread over an area of 418.30 square metre (sq m) and 189 sq m respectively. The Nuclear Medicine Therapy ward has a total of two beds. No. of scans conducted by CNCI at present have been detailed out in the table below.

Patient category	No. of scans (FY 2022-23)	No. of scans (FY 2023-24)	No. of scans (FY 2024-25)
PET Scan	2,942	3,658	3,816
GA Scan (GA-68)	Facility Not functional	Facility Not functional	234

- 1.1.2. The Nuclear Medicine Facility currently provides services to three categories of patients. Patient category along with the no. of patients served in the last three years is provided in the table below:

Patient category	No. of patients (FY 2022-23)	No. of patients (FY 2023-24)	No. of patients (FY 2024-25)
Non-chargeable Patients	1,313	1,706	2,171
General Patients	1,288	1,291	839
Market Patients	341	661	806
<b>Total</b>	<b>2,942</b>	<b>3,658</b>	<b>3,816</b>

- 1.1.3. With optimum capacity utilization on a 12-hour operational schedule, the Nuclear Medicine Facility will be able to conduct at least 25 PET Scans (per day), 10 Gamma Camera scans (per day) and provide 5 high dose iodine therapy (per week). The underutilization of this facility is hampering timely cancer diagnosis and treatment, affecting both patient outcomes and institutional service delivery standards. This bottleneck is primarily due to manpower and operationalization constraints. For the said purpose, the Authority is considering private sector

participation to operate and maintain the fully developed, furnished and equipped Nuclear Medicine Facility including PET-CT Scan, Gamma Camera and High Dose Iodine Therapy Facility (with 2 bed facility), the (“**Nuclear Medicine Facility**”) on a Operate, Maintain and Transfer (“**OMT**”) mode through Public Private Partnership. (“**PPP**”) (the “**Project**”). Under this model, the Authority will hand over a fully developed, furnished, and equipped Nuclear Medicine Facility to the private entity for operation and maintenance for a period of 5 years (“**Concession Period**”), after which it will be returned to the Authority in operational condition. The Concession Period may be extended further for a period not exceeding Five (5) years at the sole discretion of the Authority, subject to the satisfactory performance of the Concessionaire, as determined by the Authority.

For the purposes of this Project, the intending Bidders are directed to inspect the Nuclear Medicine Facility at the Chittaranjan National Cancer Institute and familiarize itself with the prevalent conditions in all respects.

Authority has, therefore, decided to carry out the bidding process for selection of a bidder to whom the Project may be awarded.

**Brief particulars of the Project are as follows:**

Name of the Project	Scope of Project
<p><b>Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode</b></p>	<p>The private entity shall operate and maintain the Nuclear Medicine Facility throughout the Concession Period. For this purpose, it shall deploy adequate clinical human resources in compliance with applicable laws and as per the details provided in the Concession Agreement.</p> <p>Furthermore, the private entity shall be responsible for maintaining all medical and non-medical equipment at the Nuclear Medicine Facility as procured by the Authority. The private entity shall ensure at its own cost valid and up-to-date Annual Maintenance Contracts (AMC) and Comprehensive Maintenance Contracts (CMC), as required under applicable regulations throughout the Concession Period.</p> <p>The private entity will be required to obtain and maintain all necessary approvals and permits to operate the facility during the concession period.</p> <p>The private entity shall provide services to all categories of patients defined in Clause 1.1.2 as per the terms provided in the Concession Agreement.</p>

The Authority intends to award the Project through an open competitive bidding process in accordance with the procedure set out herein.

- 1.1.4. The Selected Bidder shall be required to incorporate a new company under Companies Act, 2013, prior to execution of the concession agreement for the purpose of execution of the said agreement and discharging the obligations of the concessionaire (the “Concessionaire”) which inter alia shall include the operation, maintenance and Management of the Project under and in accordance with the provisions of the concession agreement (the “Concession Agreement”) to be entered into between the Selected Bidder and the Authority in the form provided by the Authority as part of the Bidding Documents pursuant hereto.
- 1.1.5. The scope of work will broadly include the operating, maintaining and transferring the Nuclear Medicine Facility in accordance with the terms of the Concession Agreement. The detailed terms and conditions for grant of the concession are set forth in the Concession Agreement, including inter alia the scope of the Concessionaire’s services and obligations (the “**Concession**”).
- 1.1.6. Intentionally left blank
- 1.1.7. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents provided by the Authority pursuant to this RFP, as modified, altered, amended and clarified from time to time by the Authority (collectively the “**Bidding Documents**”), 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 (the “**Bid Due Date**”).
- 1.1.8. The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or the Authority’s rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Authority.

## **1.2. Brief description of Bidding Process**

- 1.2.1. The Authority has adopted a single stage two parts bidding process (collectively referred to as the “Bidding Process”) for selection of the Bidder for award of the Project.

The first part (the “Technical Bid”) Pre-qualification (the “Pre-qualification”) of interested parties/ consortia who submit a Bid in accordance with the provisions of this RFP (the “Bidder”, which expression shall, unless repugnant to the context, include the Members of the Consortium). The second part of the process involves the financial proposals (the “Financial Bid”) of the Bidders pre-qualified in the Technical Bid. The Technical Bid and Financial Bid shall collectively be referred as Bid (the “Bid”). For avoidance of doubt it is clarified that if the Financial Bid is submitted in any format

other than that as prescribed in the RFP or if it is submitted along with the Technical Bid, the Bid shall be summarily rejected.

Prior to participation in the Bidding Process, the Bidder shall pay to the Authority a sum of Rs 10,000/- (Rupees Ten Thousand Only), in the form of a Demand Draft issued by a Scheduled Bank in India, drawn in favour of **Director, CNCI**, payable Kolkata, as the cost of the Bid process and submit a proof of payment along with the Technical Bid. ("**Document Fee**").

The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 120 (one hundred and twenty) days ("**Bid Validity**") from the Bid Due Date.

Government of India has issued guidelines (see Appendix-VII) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply mutatis mutandis to this Bidding Process. The Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix-I.

- 1.2.2. At the Pre-qualification stage, the Technical Bids of the Bidders would be evaluated and only those Bidders that are pre-qualified by the Authority shall be eligible for the second part of the Bidding Process comprising of opening and evaluation of their Financial Bids.
- 1.2.3. The Bidding Documents include the draft Concession Agreement for the Project which is enclosed. Subject to the provisions of Clause 2.1.2, the aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.
- 1.2.4. A Bidder is required to deposit, along with its Bid, a bid security of Rs. 17,26,000/- (Rupees Seventeen Lakh Twenty Six Thousand Only) (the "**Bid Security**") as mentioned in clause 2.25, refundable no later than 180 (one hundred and eighty) days from the Bid Due Date, except in the case of the selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement. The Bidders will have an option to provide Bid Security in the form of a Demand Draft or an irrevocable unconditional Bank Guarantee acceptable to the Authority in the format provided at Appendix-IV. In case a bank guarantee is provided, its validity period 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. Where a Demand Draft is provided, its validity, unless encashed, shall be revised as necessary to maintain its validity and enforceability for a period not less than 180 (one hundred and eighty) days from the Bid Due Date for the purposes of encashment thereof by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.
- 1.2.5. 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 thereof.
- 1.2.6. (a) Bids are invited on the discount (in percentage) offered on Base Tariff (the

“**Discount on Base Tariff**”), that Bidders offer on the services rendered at the Nuclear Medicine Facility. The discount on Base Tariff shall constitute the sole criteria for evaluation of Financial Bids. Subject to the provisions of Clause 2.7, 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 discount on Base Tariff offered on services rendered in the Nuclear Medicine Facility commencing from the Operation Date, in accordance with the provision of the Concession Agreement. Subject to the provisions of Clause 1.2.7, the Project will be awarded to the Highest Bidder.

(c) In this RFP, the term “**Base Tariff**” shall mean the reference tariff notified by the Authority for each category of diagnostic and therapeutic service to be provided at the Nuclear Medicine Facility for the purpose of bidding, as more particularly mentioned in Schedule M.

(d) The services rendered in the Nuclear Medicine Facility will be provided to the patients at rates defined in the Concession Agreement (the “User Charges”). In this RFP, the term “User Charges” shall mean the tariff quoted by the Selected Bidder after accounting for the discount on Base Tariff and will be calculated as follow:

$$\text{User Charges} = \text{Base Tariff} * (1 - \text{Discount})$$

1.2.7. 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.

1.2.8. The Concessionaire shall, in consideration of its investment and services, be entitled to [levy and collect user charges] as notified by CNCI from time to time.

1.2.9. All queries by prospective Bidders must be sent only via email to the following email address only: corr.cnci2ncd@gmail.com

All communications pertaining to the RFP shall clearly bear the following identification/ title:

RFP Notice No. 001/2026

**“RFP for Operation and Maintenance of the Nuclear Medicine Facility in, Newtown, Kolkata on PPP Mode”**

1.2.10. The Official Website is: <https://www.cnci.ac.in/>

1.2.11. Bidders are advised to visit this website regularly to keep them updated, for any changes/ modifications related to this RFP.

## 2.1. Schedule of Bidding Process

The Authority shall endeavor to adhere to the following schedule:

Event Description	Date
1. Sale of Bidding Documents	[22.06.2026]
2. Last date for receiving queries	[15.07.2026]
3. Pre-Bid Conference - 1	[22.07.2026]
4. Authority response to queries latest by	[27.07.2026]
5. [Pre-Bid Conference – 2]	[31.07.2026]
6. Authority's additional response, if any	[05.08.2026]
7. Bid Due Date	[22.08.2026]
8. Opening of Technical Bids	Within 10 days of Bid Due date
9. Announcement of qualified Bidders	[Within 15 days of Bid Due date]
10. Opening of Financial Bid	[Within 21 days of Bid Due Date]
11. Letter of Award (LOA)	[Within 30 days of opening of Financial Bid]
12. Validity of Bids	120 days of Bid Due Date
13. Signing of Concession Agreement	Within 30 days of award of LOA

*The above schedule is tentative. The Authority reserves the right to modify the said schedule of the Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever. Such changes, if any, would be uploaded at the website of the Authority from time to time.*

### 1.2 Pre-Bid Conference

The date, time and venue of the Pre-Bid Conference shall be:

Date: 22.07.2026

Time: 03:00 PM

Venue: CNCI, Newtown Campus, 1<sup>st</sup> Floor, Conference Room, Street No:299, DJ Block, Action, Area-1D, Newtown, Kolkata-700160

*The Authority reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting with the interested parties and in such event, the above schedule shall stand modified and amended.*

## INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 3.1. Scope of Bid

- 3.1.1. The Authority wishes to receive Bids under this RFP from eligible Bidders. No Bidder shall submit more than one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 3.1.2. The Bidders are expected to carry out their own surveys, investigations and other detailed examination of the Project before submitting their Bids.
- 3.1.3. 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.
- 2.1.4 The Bid should be furnished in the format as prescribed in this RFP. The Technical Bid shall be as per the format prescribed at Appendix-I along with all enclosures, duly signed by the Bidder's authorised signatory. The Financial Bid shall be submitted in the BoQ format as provided on the Authority's e-procurement portal. Submission of the Financial Bid in any format other than that prescribed in this RFP, or submission of the Financial Bid along with the Technical Bid, shall result in the Bid being summarily rejected. The Financial Bid amount shall be indicated clearly in both figures and words, in Indian Rupees, in the prescribed format of the Financial Bid and shall consist of Discount on Base Tariff to be quoted by the Bidder. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.
- 3.1.4. The Bidder shall deposit a Bid Security of Rs. 17,26,000/- (Rupees Seventeen Lakh Twenty Six Thousand Lakhs Only) in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of an unconditional irrevocable Bank Guarantee acceptable to the Authority, as per format at Appendix-IV.
- 3.1.5. 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. Where a Demand Draft is provided, its validity, unless encashed, shall be revised as necessary to maintain its validity and enforceability for a period not less than 180 (one hundred and eighty) days from the Bid Due Date, for the purposes of encashment by the Authority. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be refundable no later than 180 (one hundred and eighty) days from the Bid Due Date except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a Performance Security under the Concession Agreement.
- 3.1.6. The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorizing the signatory of the Bid to commit the Bidder.
- 3.1.7. In case the Bidder is a Consortium, the Members thereof should furnish a Power of

Attorney in favour of the Lead Member in the format at Appendix–III.

- 3.1.8. Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.
- 3.1.9. The Bidding Documents, including this RFP and all attached documents, provided by the Authority are and shall remain or become the property of the Authority and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.10 shall also apply mutatis mutandis to Bids and all other documents submitted by the Bidders, and the Authority will not return to the Bidders any Bid, document or any information provided therewith.

### 3.2. Eligibility of Bidders

- 3.2.1. For determining the eligibility of Bidders for submission of Bids hereunder, the following shall apply:
- (a) The Bidder may be a single entity or a group of entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidder. The term Bidder used herein would apply to both a single entity and a Consortium.
- (b) The Bidder can either be a company registered in India under the Companies Act, 1956/2013 or a society registered under Societies Registration Act, 1860 or any other Indian law for registration of societies, a registered trust under Indian Trusts Act, 1882 or any other Indian law for registration of public trust or limited liability partnership (LLP) registered under the LLP Act, 2008, a partnership firm under Indian Partnership Act, 1932 or any combination of them with a formal intent to form a Consortium. No foreign entity or entity incorporated outside India shall be eligible to participate neither individually nor as a member of a Consortium. A Consortium shall be eligible for consideration subject to the conditions set out in Clause 2.2.6 below.
- (c) A Bidder shall not have a conflict of interest (the “**Conflict of Interest**”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Authority and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder’s proposal (the “**Damages**”), without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- (i) the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 25% (twenty

five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate is less than 25%(twenty five percent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013. For the purposes of this Clause 2.2.1(c), indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the “**Subject Person**”) shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- (ii) a constituent of such Bidder is also a constituent of another Bidder; or
  - (iii) such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or any Associate thereof or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
  - (iv) such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
  - (v) such Bidder, or any Associate thereof has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each other’s information about, or to influence the Bid of either or each other; or
  - (vi) such Bidder, or any Associate thereof has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
- (b) A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated at least 30 (thirty) days prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Bid Due Date.

*Explanation:* In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.2.1, shall include each Member of such Consortium. Further, a Consortium of permitted entities shall be eligible for consideration subject to the additional requirements set out in Clause 2.2.3 of this RFP.

3.2.2. To be eligible for this RFP, a Bidder shall fulfil the following conditions of eligibility Bidder(s) shall have the requisite Financial Capacity (Clause 2.2.2 (I)) and Technical Capacity (Clause 2.2.2 (II)) as mentioned hereunder:

**I. Financial Capacity:**

For demonstrating financial capacity (the “**Financial Capacity**”), the Bidder shall:

- (a) have a minimum average Annual Turnover (the “**Financial Capacity**”) of Rs. 17 crores (Rupees Seventeen Crore Only) in the last three financial years immediately preceding the Bid Due Date. AND
- (b) The Bidder’s Net Cash Accruals for the last three financial years immediately preceding the Bid Due Date must be positive.

**II. Technical Capacity**

For demonstrating technical capacity (the “**Technical Capacity**”), the Bidder shall have the following:

- (a) Bidder (in case of single entity) or any Member in case of Consortium shall be involved in the Healthcare Business for a minimum period of 2 (two) consecutive years over the past 5 (five) financial years preceding from the Bid Due Date. AND
- (b) Bidder (in case of single entity) or any Member in case of Consortium shall have been engaged in at least one radiology project with experience of operating CT Scan/MRI /PET Scan machines for either the Government of West Bengal or the Government of India or any state government or a public sector undertaking in the last 10 (ten) years preceding the Bid Due Date. AND
- (c) Bidder or any Member of the Consortium should have at least 1 (one) laboratories or diagnostic centers with PET Scan operational as on Bid Due Date. AND
- (d) The Bidder should demonstrate experience of operating at least 1 PET CT machine with 5,000 scans annually for at least 2 years preceding the bid due date

For avoidance of doubt, for the purpose of meeting abovementioned Technical Capacity as mentioned above, two or more entities cannot combine their technical experience. However, two different entities can fulfil the respective requirement under the two

**separate categories.**

In case of a Consortium the combined Technical Capacity and Financial Capacity of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above condition of eligibility; provided that each such Member shall until expiry of Concession Period shall hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV;

3.2.3. The Bidder shall enclose with its Technical Bid, to be submitted as per the format at Appendix-I, complete with its Annexes, the following documents and certificates:

**Documents to be submitted in support of Technical Capacity:**

- a. Certificate(s) from a Chartered Accountant/Statutory Auditor (with valid UDIN) certifying the Bidder's Technical Capacity as per Clause 2.2.2;
- b. Copy of valid NABH/JCI Accreditation certificate, if applicable;
- c. Copy of Agreement/Work Order/Letter of Award and a client Certificate evidencing experience in operating CT Scan/MRI/PET Scan machines under Government or PSU projects;
- d. A valid license under the Shops and Establishments Act / AERB Certificate or any other valid government agency issued certificate to evidence its credentials; and
- e. A machine generated report certifying the no. of scans annually for at least 2 years preceding the bid due date duly certified by a Chartered Accountant/Statutory Auditor (with valid UDIN).

**Documents to be submitted in support of Financial Capacity:**

- a. Certificate(s) from a Chartered Accountant/Statutory Auditor (with valid UDIN) certifying the Bidder's average Annual Turnover and Net Cash Accruals for the last three (3) financial years preceding the Bid Due Date;
- b. Audited Balance Sheets and Profit & Loss Accounts for the corresponding period; and
- c. Where applicable, the Statutory Auditor/Chartered Accountant shall also enclose and certify the Associate's audited financial report relied upon under Clause 2.2.2(I).

Such documentary evidence shall be duly signed by the authorized signatory of the single Bidder or a Member of the Consortium (whose Technical Experience was taken into consideration for the purposes of technical qualification under and in accordance with the RFP), as the case may be.

In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or chartered accountant or the client;

In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make the same available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Balance Sheets and Profit & Loss Accounts for 3 (three)

years preceding the year for which the Audited Balance Sheets and Profit & Loss Accounts is not being provided.

For the purposes of this RFP, “**Turnover**” shall mean the aggregate value of the realization of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year. For avoidance of doubt, it is clarified that it shall not include interest earned from financial instruments.

For the purpose of this RFP “**Net Cash Accruals**” shall mean Profit After Tax plus Depreciation.

3.2.4. The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder along with a Board Resolution in favour of the executant of the Power of Attorney. In the case of a Consortium, the Members should submit a Power of Attorney in favour of the Lead Member as per format at Appendix-III.

3.2.5. Where the Bidder is a single entity, it may be required to form an appropriate Special Purpose Vehicle, a Company incorporated under the Indian Companies Act, 2013 (the “SPV”) to execute the Concession Agreement and implement the Project. In case the Bidder is a Consortium, it shall, in addition to forming a SPV, comply with the following additional requirements:

- (a) Number of members in a consortium shall not exceed 2 (two);
- (b) subject to the provisions of sub-clause (a) above, the Bid should contain the information required for each Member of the Consortium;
- (c) members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share holding of at least 26% (twenty six per cent) of the paid up and subscribed equity of the SPV. The nomination(s) shall be supported by a Power of Attorney, in the format at Appendix-III, signed by all the other Members of the Consortium;
- (d) the Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to their financial and other obligations;
- (e) an individual Bidder cannot at the same time be member of a Consortium. Further, a member of a particular Bidder Consortium cannot be member of any other Bidder Consortium;
- (f) the members of a Consortium shall form an appropriate SPV to execute the Project, if awarded to the Consortium;
- (g) members of the Consortium shall have entered into a binding Joint Bidding Agreement, substantially in the form specified at Appendix-V (the “**Jt. Bidding Agreement**”), for the purpose of making the Bid and submitting a Bid in the event of being qualified. The Jt. Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:

- (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the Concession Agreement and subsequently perform all the obligations of the Concessionaire in terms of the Concession Agreement, in case the concession to undertake the Project is awarded to the Consortium;
- (ii) clearly outline the proposed roles and responsibilities, if any, of each member;
- (iii) commit the minimum equity stake to be held by each member;
- (iv) commit that each of the members, whose Technical Capacity and Financial Capacity will be evaluated for the purposes of this RFP, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member shall, until the expiry of Concession Period, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV;
- (v) members of the Consortium undertake that they shall collectively hold at least 51% (fifty one per cent) of the subscribed and paid up equity of the SPV at all times until expiry of Concession Period; and
- (vi) and include a statement to the effect that all members of the Consortium shall be liable jointly and severally for all obligations of the Concessionaire in relation to the Project until the Appointed Date is achieved in accordance with the Concession Agreement; and
- (h) except as provided under this RFP and the Bidding Documents, there shall not be any amendment to the Jt. Bidding Agreement without the prior written consent of the Authority.

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

3.2.7. A Bidder including any Consortium Member or Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Consortium Member or Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Consortium Member or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.7 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any wilful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder

and the Authority may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

- 3.2.8. In computing the Technical Capacity and Financial Capacity of the Bidder/ Consortium Members under Clauses 2.2.2, the Technical and Financial Capacity of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Members, a person who controls, is controlled by, or is under the common control with such Bidder or Consortium Members, as the case may be (the “**Associate**”). As used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty 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.

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

- (a) Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- (b) information supplied by a Bidder (or other constituent Member if the Bidder is a Consortium) must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms;
- (c) in responding to the qualification submissions, Bidders should demonstrate their capabilities in accordance with Section 3 below;
- (d) in case the Bidder is a Consortium, each Member should substantially satisfy the qualification requirements to the extent specified herein; and

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

in the website of the Ministry of External Affairs.

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

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

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

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

1. In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.  
Explanation –
  - a. "Controlling ownership interest" means ownership of or entitlement to more than twenty-five per cent. of shares or capital or profits of the company,
  - b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements,
2. In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
3. In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals.
4. Where no natural person is identified under (1) or (2) or (3) above, the beneficial owner is the relevant natural person who holds the position of senior managing official.

5. In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership

3.2.11. Notwithstanding anything to the contrary contained herein, in the event that the Bid Due Date falls within 3 (three) months of the closing of the latest financial year of a Bidder, it shall ignore such financial year for the purposes of its Bid and furnish all its information and certification with reference to the 3 (three) years, preceding its latest financial year for which the documents are not available. For the avoidance of doubt, financial year shall, for the purposes of a Bid hereunder, mean the accounting year followed by the Bidder in the course of its normal business.

3.2.12. A Bidder shall be liable for disqualification and forfeiture of Bid Security if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to such Project during the Bidding Process or subsequent to the (i) issue of the LOA or (ii) execution of the Concession Agreement. In the event any such adviser is engaged by the Selected Bidder, as the case may be, after issue of the LOA or execution of the Concession Agreement for matters related or incidental to the Project, then notwithstanding anything to the contrary contained herein or in the LOA or the Concession Agreement and without prejudice to any other right or remedy of the Authority, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Authority may have thereunder or otherwise, the LOA or the Concession Agreement, as the case may be, shall be liable to be terminated without the Authority being liable in any manner whatsoever to the Selected Bidder or Concessionaire for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated at least 30 (thirty) days prior to the Bid Due Date. Nor will this disqualification apply where such adviser is engaged after a period of 3 (three) years from the Bid Due Date.

3.2.13. This RFP is not transferable.

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

### **3.3. Change in Ownership**

3.3.1. By submitting the Bid, the Bidder acknowledges that it will be qualified on the basis of Financial Capacity and Technical Capacity of those of its Consortium Members who shall each, throughout the Concession Period (as defined in the Concession Agreement), hold equity share capital representing not less than: (i) 26% (twenty six per cent) of the subscribed and paid-up equity of the Concessionaire. The Bidder further acknowledges and agrees that the aforesaid obligation shall be the minimum, and shall be in addition to such other obligations as may be contained in the Concession Agreement, and a breach hereof shall, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement and dealt with as such thereunder. For the avoidance of doubt, the provisions of this Clause 2.3.1 shall apply only when the Bidder is a Consortium.

3.3.2. By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in the control of a Consortium Member whose Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with this RFP, the Bidder shall be deemed to have the knowledge of the same and shall inform the Authority forthwith along with all relevant particulars about the same and the Authority may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Concession Agreement but prior to the Appointed Date under the Concession Agreement, it would, notwithstanding anything to the contrary contained in the Concession Agreement, be deemed to be a breach of the Concession Agreement, and the same shall, at the discretion of the Authority, be liable to be terminated without the Authority being liable in any manner whatsoever to the Concessionaire. In such an event, notwithstanding anything to the contrary contained in the Concession Agreement, the Authority shall, at its sole discretion, be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement or otherwise.

#### **3.4. Number of Bids and costs thereof**

3.4.1. No Bidder shall submit more than one Bid for the Project. A Bidder applying individually or as a member of a Consortium shall not be entitled to submit another Bid either individually or as a member of any Consortium, as the case may be.

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

#### **3.5. Site visit and verification of information**

3.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, demand, location, surroundings, state of clinical and para-clinical facilities, 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.

#### **3.6. Acknowledgement by Bidder**

3.6.1. It shall be deemed that by submitting the Bid, the Bidder has:

- (a) made a complete and careful examination of the Bidding Documents;
- (b) received all relevant information requested from the Authority;
- (c) accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Authority relating to any of the matters referred to in Clause 2.5 above;
- (d) satisfied itself about all matters, things and information including matters referred to in Clause 2.5 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 thereunder;

- (e) acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Authority, or a ground for termination of the Concession Agreement by the Concessionaire;
- (f) acknowledged that it does not have a Conflict of Interest; and
- (g) agreed to be bound by the undertakings provided by it under and in terms hereof.

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

### **3.7. Right to accept or reject any or all Bids**

3.7.1. 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 therefor. In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.7.2. The Authority reserves the right to reject any Bid if:

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

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium may be disqualified/ rejected.

3.7.3. If disqualification/ rejection of a Bidder occurs after the Bids have been opened and the Highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:

- (i) invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or
- (ii) take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.

3.7.4. 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 Bidder, without the Authority being liable in any manner whatsoever to the Bidder. The Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, and without prejudice to any other right or remedy which the Authority may have under this RFP, the Bidding Documents, the Concession Agreement or otherwise.

- 3.7.5. 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 and the Bidder shall, when so required by the Authority, make available all such information, evidence and documents as may be necessary for such verification. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.
- 3.7.6. The Authority may, in its sole discretion and on grounds of reciprocity, disqualify a Bidder, if any or all of its constituents are entities incorporated in a country where an entity incorporated in India does not have similar rights of bidding for contracts contemplated hereunder.

## **B. DOCUMENTS**

### **3.8. Contents of the RFP**

- 3.8.1. This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10.

#### Invitation for Bid

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Criteria for Evaluation
- Section 4. Fraud & Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

#### Appendices

- I. Letter comprising the Technical Bid
- II. Power of Attorney for signing of Bid
- III. Power of Attorney for Lead Member of Consortium
- IV. Bank Guarantee for Bid Security
- V. Joint Bidding Agreement for Consortium
- VI. Intentionally Left Blank
- VII. Guidelines of the Department of Disinvestment
- VIII. Associate Relationship with the Bidder

### **3.9. Clarifications**

- 3.9.1. Bidders requiring any clarification on the RFP may notify the Authority only by e-mail in accordance with Clause 1.2.9. They should send in their queries on or before the date specified in the schedule of Bidding Process contained in Clause 1.2.12.
- 3.9.2. The Authority shall endeavour to respond to the queries within the period specified therein, but no later than 10 (ten) days prior to the Bid Due Date. The Authority will post all the queries and its responses on the official Website without identifying the source of queries.
- 3.9.3. The Authority shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Authority reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Authority to respond to any question or to provide any clarification.
- 3.9.4. 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.

### **3.10. Amendment of RFP**

- 3.10.1. At any time prior to the Bid Due Date, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.
- 3.10.2. Any Addendum thus issued hereunder shall be hosted on the website of <https://www.cnci.ac.in/>
- 3.10.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Authority may, in its sole discretion, extend the Bid Due Date.

## **C. PREPARATION AND SUBMISSION OF BID**

### **3.11. Language**

- 3.11.1. The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. Supporting documents and printed literature furnished by the Bidder with the Bid may be in any other language provided that they are accompanied by translations of all the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, may not be considered. For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.

### **3.12. Format and signing of Bid**

- 3.12.1. The Bidder shall provide all the information sought under this RFP. The Authority will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional Bids shall be liable to rejection.
- 3.12.2. The Bid shall be typed or written in indelible ink. It shall be duly signed in digital form by the authorised signatory of the Applicant. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Application. The Bid shall contain page numbers.

### **3.13. Submission of Bids**

- 3.13.1. The Bidder shall submit the Bid no later than the date and time specified as the Bid Due Date, on the website of the Authority at the Official Website @cnci.ac.in, duly signed in digital form by the authorised signatory of the Bidder, by uploading the complete and legible scanned/digital copies of the Technical and Financial Bids in pdf/digital format (i.e. scanned copy of original signed documents and the supporting documents). Any bid submitted only in physical form, or any Financial Bid submitted in hard copy or along with Technical Bid shall be summarily rejected by the Authority. The documents submitted in the Bid should be scanned in at least 100 dpi with black and white option.
- 3.13.2. The Bid is to be submitted on the document downloaded from Official Website, the Bidder shall be responsible for its accuracy and correctness as per the version uploaded by the Authority and shall ensure that there are no changes caused in the content of the downloaded document. In case of any discrepancy between the document used for submission by the Bidder and the version uploaded by the Authority, the latter shall prevail.
- 3.13.3. The documents comprising the Technical Bid referred to in Clause 2.13.1 shall include:
- (i) Technical Bid in the prescribed format (Appendix-I) along with Annexes and supporting documents.
  - (ii) Bid Security in the format at Appendix-IV;
  - (iii) Power of Attorney for signing the Bid as per the format at Appendix-II;
  - (iv) If applicable, the Power of Attorney for Lead Member of Consortium as per the format at Appendix-III;
  - (v) Jt. Bidding Agreement, in case of a Consortium, substantially in the format at Appendix-V;
  - (vi) Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
  - (vi) Bidder's duly audited balance sheet and profit and loss account for the preceding three years;
  - (viii) Concession Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (iii) hereinabove;

3.13.4. The following documents shall be separately submitted in original to the person specified in the Clause 2.13.5 in a sealed envelope on or before the Bid Due Date, failing which the Bid shall be rejected:

- (a) Power of attorney as required under Clause 2.13.3 (iii) and Clause 2.13.3 (iv);
- (b) Joint Bidding Agreement as required under Clause 2.13.3 (v);
- (c) Demand draft towards the cost of the RFP process as required under clause 1.2.1; and
- (d) Bank Guarantee / Demand Draft towards the Bid Security as required under Clause 2.25.

The envelope specified in this Clause 2.13.4 shall clearly bear the following identification:

**“Enclosures of the Bid for Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute on PPP Mode”**

If the envelope is not sealed and marked as instructed above, the Authority assumes no responsibility for the misplacement or premature opening of the contents of the Bid and consequent losses, if any, suffered by the Bidder.

3.13.5. The envelope specified in Clause 2.13.4 shall be addressed to:

ATTN. OF:	Dr. Jayanta Chakrabarti
DESIGNATION:	Director
ADDRESS:	CNCI, Newtown, Street No.: 299, DJ Block, Action Area-1D, Newtown, Kolkata-700160
TELEPHONE NO	033 2324 5015 / 033 3506 0600 [Extn: 1101]
E-MAIL ADDRESS:	corr.cnci2ncd@gmail.com

3.13.6. The Financial Bid shall be submitted in the format specified on the e-procurement portal only. The bidder shall submit his offer in BOQ online in the format provided in the e-Procurement Portal. Financial Bid should not be submitted in hard copy or in any other format other than the format specified..

3.13.7. Bids submitted by special messenger, fax, telex, telegram, e-mail , or in any way other than on the specified e-platform for bidding, shall not be entertained and shall be rejected.

### 3.14. Bid Due Date

3.14.1. The Bid specified in Clause 2.13.1 should be submitted on or before [17:00 hours] on the Bid Due Date, on the Official Website @cnci.ac.in as per the format and in the manner and form as detailed in this RFP.

- 3.14.2. For the purpose of submission of the Bid on the Official Website, registration of the Bidder with Official Website is mandatory. For any assistance regarding e- tendering, the Bidder may go to the helpdesk on the Official Website. A Bidder who is already registered need not register again. However, the Bidder is required to have a Class-III Digital Certificate issued by a licensed Certifying Authority (CA).
- 3.14.3. The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.10 uniformly for all Bidders.
- 3.14.4. 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.

### **3.15. Contents of the Bid**

- 3.15.1. The Technical Bid shall be furnished in the format at Appendix–I along with all the information and documents (complete in all respects) as requested in this RFP.
- 3.15.2. The Financial Bid shall be furnished in the BoQ format on the e-procurement platform of the Authority and shall consist of a Discount on Base Tariff to be quoted in percentage terms by the Bidder. The Bidder shall specify (in Indian Rupees) the discount on Base Tariff in percentage terms to be offered on services rendered in the Nuclear Medicine Facility in accordance with this RFP and the provisions of the Concession Agreement.
- 3.15.3. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.
- 3.15.4. The proposed Concession Agreement shall be deemed to be part of the Bid.

### **3.16. Modifications/ substitution/ withdrawal of Bids**

- 3.16.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that the modification, substitution or withdrawal is received by the Authority prior to the closing time on the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the closing time on the Bid Due Date.
- 3.16.2. Any alteration/ modification in the Bid or additional information or material supplied subsequent to the closing time on the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

## **D. EVALUATION PROCESS**

### **3.17. Opening and Evaluation of Bids**

- 3.17.1. The Authority shall open the Technical Bids at 15:00 hours on the Bid Due Date, at the place specified in Clause 2.13.5 and in the presence of the Bidders who choose to attend.
- 3.17.2. Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.16 shall not be opened.
- 3.17.3. The Authority will subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3.

- 3.17.4. Bidders are advised that selection of Bidders will be entirely at the discretion of the Authority. Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 3.17.5. Any information contained in the Bid shall not in any way be construed as binding on the Authority, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.
- 3.17.6. The Authority reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

### **3.18. Confidentiality**

- 3.18.1. Information relating to the examination, clarification, evaluation, and recommendation of 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 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.

### **3.19. Tests of responsiveness**

- 3.19.1. Prior to evaluation of Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of the RFP. A Technical Bid shall be considered responsive if:
- (a) it is received as per the specified format;
  - (b) it is received by the Bid Due Date including any extension thereof pursuant to Clause 2.14.3;
  - (c) it is signed and marked as stipulated in Clauses 2.12 and 2.13;
  - (d) it is accompanied by the Bid Security as specified in Clause 2.1.5
  - (e) it is accompanied by the Power of Attorney along with Board Resolution in favour of the executant as specified in Clause 2.2.5, and in the case of a Consortium, the Power of Attorney as specified in Clause 2.2.6 (c);
  - (f) it contains all the information and documents (complete in all respects) as requested in this RFP;
  - (g) it contains information in formats same as those specified in this RFP;
  - (h) it contains certificates from its statutory auditors in the formats specified at Appendix-I of the RFP;
  - (i) it is accompanied by the Jt. Bidding Agreement (for Consortium), specific to the Project, as stipulated in Clause 2.2.6(g);
  - (j) it does not contain any condition or qualification;
  - (k) the original documents as stipulated under Clause 2.13.4 have been submitted by the Bidder; and

(l) it is not non-responsive in terms hereof.

3.19.2. A Financial Bid not conforming with the BOQ format specified shall not be considered as responsive to the requirements of the RFP. Also, the Financial Bid has to be only submitted online on the Official Website and any submission of Financial Bid in hard copy shall be summarily rejected.

3.19.3. 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. Provided, however, that the Authority may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Bid.

### **3.20. Clarifications**

3.20.1. To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by the Authority for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

3.20.2. If a Bidder does not provide clarifications sought under Clause 2.20.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

## **E. PRE-QUALIFICATION AND BIDDING**

### **3.21. Submission of Bid**

3.21.1. The Bidder shall submit its Bid in the form and manner to be set out in this RFP.

### **3.22. Pre-Qualification and notification**

3.22.1. After the evaluation of Technical Bids, the Authority would announce a list of qualified Bidders who will be eligible for opening of their Financial Bids. All communications relating to Pre-qualification shall be uploaded on Official Website. The Authority will not entertain any query or clarification from Bidders who fail to pre-qualify.

### **3.23. Proprietary data**

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

### **3.24. Correspondence with the Bidder**

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

## F. BID SECURITY

### 4.1. Bid Security

- 4.1.1. The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.5 and 2.1.6 hereinabove in the form of an irrevocable bank guarantee issued by a nationalized bank, or a Scheduled Bank in India having a net worth of at least Rs. 1,000 crore (Rupees one thousand crore), in favour of the Authority in the format at Appendix–IV (the “**Bank Guarantee**”) and having a validity period of not 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. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.
- 4.1.2. The Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favour of the Authority and payable at [\*\*\*\*\*] (the “**Demand Draft**”) or an irrevocable Bank Guarantee. The Authority shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 4.1.3. Any Bid not accompanied by the Bid Security shall be summarily rejected by the Authority as non-responsive.
- 4.1.4. Save and except as provided in Clause 1.2.4 above, the Bid Security of unsuccessful Bidders will be returned by the Authority, without any interest, as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding process is cancelled by the Authority, and in any case within 180 (one hundred and eighty) days from the Bid Due Date. 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.
- 4.1.5. The Selected Bidder’s Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Security in accordance with the provisions thereof.
- 4.1.6. The Authority shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.25.7 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 period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.
- 4.1.7. The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or under the Concession Agreement, or otherwise, if
- (a) a Bidder submits a non-responsive Bid;
  - (b) a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section

4 of this RFP;

- (c) a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and the Authority;
- (d) the Selected Bidder fails within the specified time limit -
  - (i) to sign and return the duplicate copy of LOA; or
  - (ii) to sign the Concession Agreement; or
  - (iii) to furnish the Performance Security within the period prescribed therefor in the Concession Agreement.
- (e) the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Security.

## CRITERIA FOR EVALUATION

### 5.1. Evaluation of Bids

- 5.1.1. Only those Bidders who meet the eligibility criteria specified in Clauses 2.2.2 and 2.2.3 shall qualify for evaluation under this Section 3. Bids of firms/ consortia who do not meet these criteria shall be rejected.
- 5.1.2. The Bidder's competence and capability is proposed to be established by the Financial Capacity.

### 5.2. Financial information for purposes of evaluation

- 5.2.1. The Bid must be accompanied by the Audited Annual Reports of the Bidder (of each Member in case of a Consortium) for the last 3 (three) financial years, preceding the Bid Due Date.
- 5.2.2. 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/Chartered Accountant 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.
- 5.2.3. The Bidder must establish the minimum its Turnover and Net Cash Accruals specified in Clause 2.2.2, and provide details as per format at Annex-II of Appendix-I.

### 5.3. Pre-Qualification of Bidders

- 5.3.1. The credentials of qualified Bidders shall be measured in terms of Clause 2.2.2.

### 5.4. Selection of Bidder

- 5.4.1. Subject to the provisions of Clause 2.7.1, the Bidders qualified in the Technical Bid shall be informed individually about the time of opening of the Financial Bids. The Authority shall open the Financial Bids of the Bidders qualified in the Technical Bid on the scheduled date and time in the presence of the authorized representatives of the Bidders who may choose to attend.
- 5.4.2. The Bidder whose Bid is adjudged as responsive in terms of Clause 2.19 and who quotes the highest discount on Base Tariff in percentage terms offered on the services rendered in the Nuclear Medicine Facility shall ordinarily be declared as the selected Bidder (the "**Selected Bidder**"). In the event that the Authority rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.
- 5.4.3. In the event that two or more Bidders quote the same amount of discount on Base Tariffs (the "**Tie Bidders**"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend.
- 5.4.4. 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 to revalidate or extend their respective Bid Security, as necessary,

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 second and third highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said second Highest Bidder shall be the Selected Bidder.

- 5.4.5. 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 the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are higher than the Bid of the second highest Bidder in the first round of bidding.
- 5.4.6. 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, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, the Authority may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 5.4.7. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall 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.

## 5.5. Contacts during Bid Evaluation

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

## 5.6. Bid Parameter

- 5.6.1. The Bid shall comprise of the **discount on Base Tariff** in percentage terms, that the Bidder offers for the services to be rendered at the Nuclear Medicine Facility. The discount on Base Tariff in percentage terms shall constitute the sole criteria for evaluation of Financial Bids. The Bidder who offers the highest discount on Base Tariff shall ordinarily be the Selected Bidder. The discount on Base Tariff comprising the Bid shall be offered in accordance with the provisions of Clause 1.2.6.

## FRAUD AND CORRUPT PRACTICES

- 6.1.** The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder if it determines that the Bidder or the 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 be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.
- 6.2.** 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 Concession Agreement, or otherwise, if a Bidder or Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder 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 Concessionaire, as the case may be, is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 6.3.** For the purposes of this Section 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) **“corrupt practice”** means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (d) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the

Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;

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

## **PRE-BID CONFERENCE**

- 7.1.** A Pre-Bid Conference of the potential Bidders shall be convened at the designated date, time and place. A maximum of three representatives of each Bidder shall be allowed to participate on production of authority letter from the Bidder.
- 7.2.** During the course of Pre-Bid Conference(s), the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## MISCELLANEOUS

- 8.1.** The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the courts in the State in which the Authority has its headquarters shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 8.2.** The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) consult with any Bidder in order to receive clarification or further information;
  - (c) qualify or not to qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
  - (d) retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (e) 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.
- 8.3.** It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto, and/ or in connection with the Bidding Process, and waives to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.
- 8.4.** The Concession Agreement and RFP are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RFP, in the event of any conflict between them the priority shall be in the following order:
- (a) Concession Agreement;
  - (b) the RFP.
  - (c) i.e. the Concession Agreement at (a) above shall prevail over the RFP at (b) above.

# Appendices

**APPENDIX-I -  
Letter Comprising the Technical Bid**

*(Refer Clause 2.13.3)*

Dated:

To,

.....  
.....  
.....

**Sub: Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode**

Dear Sir,

1. With reference to your RFP document dated [\*\*\*\*\*], I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of the Bidder for the aforesaid project, and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their respective originals.
3. This statement is made for the express purpose of qualifying as a Bidder for the development, augmentation, operation and management of 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/ any of the Consortium Members or our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/ We declare that:
  - a. I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by the Authority;

- b. I/ We do not have any conflict of interest in accordance with Clauses 2.2.1(c) and 2.2.1(d) of the RFP document;
- c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State; and
- d. I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.17.6 of the RFP document.
9. I/ We believe that we/ our Consortium satisfy(s) the average annual Turnover and Net Cash Accruals criteria and meet(s) all the requirements as specified in the RFP document and am/ are qualified to submit a Bid.
10. I/ We declare that we/ any Member of the Consortium, or our/ its Associates are not a Member of a/ any other Consortium submitting a Bid for the Project.
11. I/ We certify that in regard to matters other than security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
12. I/ We further certify that in regard to matters relating to security and integrity of the country, we/ any Member of the Consortium or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
13. I/ We further certify that no investigation by a regulatory authority is pending either against us/ any Member of the Consortium or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.<sup>1</sup>
14. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM

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<sup>1</sup> In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedules.....hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Bid. The Authority will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

No. 6/4/2001-DD-II dated 13<sup>th</sup> July, 2001 which guidelines apply *mutatis mutandis* to the Bidding Process. A copy of the aforesaid guidelines forms part of the RFP at Appendix-VII thereof. I/ We further certify that we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RFP at Appendix-V thereof.

15. I/We further certify that we/ any Member of the Consortium or any of our/ their Associates are not barred by the Central Government/ State Government or any entity controlled by it, from participating in any project (PPP or otherwise), and no bar subsists as on the date of Bid.
16. I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate the Authority of the same immediately.
17. I/ We acknowledge and agree that in the event of a change in control of a Member whose Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/we shall inform the Authority forthwith along with all relevant particulars and the Authority may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/we further acknowledge and agree that in the event such change in control occurs after signing of the Concession Agreement but prior to commencement of the Appointed Date under the Concession Agreement, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Concession Agreement shall, at the sole discretion of the Authority, be liable to be terminated under and in accordance with Clause 2.3.2 of the RFP without the Authority being liable to us in any manner whatsoever.
18. Intentionally Left Blank
19. I/ We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
20. In the event of my/ our being declared as the Selected Bidder, I/we agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.
21. I/ We have studied all the Bidding Documents carefully and also surveyed the Cardiac Facility. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Authority or in respect of any matter arising out of or relating to the Bidding Process including the award of Project.

22. The Statement of Legal Capacity as per format provided at Annex-III in Appendix-I of the RFP document, and duly signed, is enclosed. The power of attorney for signing of Bid and the power of attorney for Lead Member of consortium, as per format provided at Appendix II and III respectively of the RFP, are also enclosed.
23. I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956/ 2013, or shall incorporate as such prior to execution of the Concession Agreement.
24. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
25. I/ We have the required O&M Experience in accordance with Clause 2.2.2 of the RFP.
26. I/ We certify that in terms of the RFP, my/our Net Cash Accruals is Rs. ....  
(Rupees.....).
27. I/ We offer a Bid Security of Rs 17,26,000/- (Rupees Seventeen Lakh Twenty Six Thousand Only) to the Authority in accordance with the RFP Document.
28. The Bid Security in the form of a {Demand Draft/ Bank Guarantee} has been submitted.
29. The documents accompanying the Bid, required to be submitted in original as specified in Clause 2.13.4 of the RFP, have been submitted in a separate envelope and marked as “Enclosures of the Bid for Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode” and the documents specified in Clause 2.13.3 have been uploaded/ are being uploaded on the Official Website.
30. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/we shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened or rejected.
31. The discount on Base Tariff in percentage terms has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Project.
31. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
32. We, the Consortium Members, agree and undertake to be jointly and severally liable for all the obligations of the Concessionaire under the Concession Agreement till the Appointed Date in accordance with the Concession Agreement.
33. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RFP.
34. I/ We hereby undertake to submit this Technical Bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.

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

Yours faithfully,

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

Place: Name and seal of the Bidder/ Lead Member

**ANNEX-I**  
**General Information of the Bidder**

1. (a) Name:
- (b) Country of incorporation:
- (c) Address of the corporate headquarters and its branch office(s), if any, in India:
- (d) Date of incorporation and/ or commencement of business:
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project:
3. Particulars of individual(s) who will serve as the point of contact/ communication for the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Company:
  - (d) Address:
  - (e) Telephone Number:
  - (f) E-Mail Address:
4. Particulars of the Authorised Signatory of the Bidder:
  - (a) Name:
  - (b) Designation:
  - (c) Address:
  - (d) Phone Number:
  - (e) E-mail Address:
5. In case of a Consortium:
  - (a) The information above (1-4) should be provided for all the Members of the Consortium.
  - (b) A copy of the Jt. Bidding Agreement, as envisaged in Clause 2.2.6(g) should be attached to the Bid.
  - (c) Information regarding the role of each Member should be provided as per table below:

Sl. No.	Name of Member	Role <sup>s</sup>	Percentage of equity in the Consortium <sup>\$\$</sup>
1.			
2.			

§The role of each Member, as may be determined by the Bidder, should be indicated in accordance with Clause 2.2.6 (d) and Annex-II.

§§The percentage of equity should be in accordance with Clause 2.2.6 (a), (f) and (g).

6. The following information shall also be provided for the Bidder, including each Member of the Consortium:

Name of Bidder/ member of Consortium:

No.	Criteria	Yes	No
1.	Has the Bidder/ constituent of the Consortium been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (PPP or otherwise)?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder/ constituent of the Consortium paid liquidated damages of more than 5% 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?		

7. A statement by the Bidder and each of the Members of its Consortium (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past is given below (Attach extra sheets, if necessary):

**ANNEX-II**  
**Financial Capacity of the Bidder**  
*(Refer to Clauses 2.2.2 and 2.2.4 and 3.2 of the RFP)*

Name of single entity Bidder/ Consortium:

**A. Net Cash Accruals**

(In Rs. crore<sup>s</sup>)

Bidder type <sup>ss</sup>	Member Code	Net Cash Accruals		
		Year 1 (3)	Year 2 (4)	Year 3 (5)
(1)	(2)			
Single entity Bidder				
Consortium Member 1				
Consortium Member 2				
<b>TOTAL</b>				

**B. Turnover**

Bidder type <sup>ss</sup>	Member Code	Annual Turnover		
		Year 1 (3)	Year 2 (4)	Year 3 (5)
(1)	(2)			
Single entity Bidder				
Consortium Member 1				

Consortium Member 2				
<b>TOTAL</b>				
<b>Average Annual Turnover:</b>				

Name & address of Bidder's Bankers:

### C. Note:

§For conversion of US Dollars to rupees, the rate of conversion shall be Rupees [88 (Eighty-eight)] to a US Dollar. In case of any other currency, the same shall first be converted to US Dollars as on the date 60 (sixty) days prior to the Bid Due Date, and the amount so derived in US Dollars shall be converted into Rupees at the aforesaid rate. The conversion rate of such currencies shall be the daily representative exchange rates published by the International Monetary Fund for the relevant date.

§§A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidder may be ignored.

£ Member Code shall indicate NA for Not Applicable in case of a single entity Applicant. For other Members, the following abbreviations are suggested viz. LM means Lead Member, TM means Technical Member, FM means Financial Member, and OM means Other Member. In case the Financial Capacity relates to an Associate of the Applicant or its Member, write "Associate" along with Member Code.

££The Bidder should provide details of its own Financial Capacity or of an Associate specified in Clause 2.2.9.

Instructions:

1. The single entity Bidder or Lead Member of the Consortium, as the case may be, shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) three preceding the Bid Due Date. The financial statements shall:
  - (a) reflect the financial situation of the single entity Bidder or Lead Member of the Consortium and its Associates where the Bidder is relying on its Associate's financials;
  - (b) be audited by a statutory auditor;
  - (c) be complete, including all notes to the financial statements; and
  - (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. "Net Cash Accruals" shall mean Profit After Tax + Depreciation.
3. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on. In case the Bid Due Date falls within 3 (three) months of the close of the latest financial year, refer to Clause 2.2.12.

4. In the case of a Consortium, a copy of the Jt. Bidding Agreement shall be submitted in accordance with Clause 2.2.6 (g) of the RFP document.
5. The Bidder shall provide an Auditor's Certificate specifying the Net Cash Accruals of the Bidder and also specifying the methodology adopted for calculating such Net Cash Accruals in accordance with Clause 2.2.4 of the RFP document.

**ANNEX-II A**  
**Technical Capacity of the Bidder**

(Refer to Clauses 2.2.2 and 2.2.3 of the RFP)

**Name of single entity Bidder/ Consortium:**

Supporting documents (CA Certified) as specified in Clause 2.2.4.

- A. Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 2.2.2 and eligible under Clause 3.3.
- B. Proof for laboratories or diagnostic centre Operations
  - i. Installation report and / or Certificate from OEM clearly indicating date of installation of PET Scan at the stated facility
  - ii. No of PET scans undertaken in a year for 1 PET CT machine (last 2 years preceding bid due date – FY 2024-25, 2025-26) as per clause 2.2.2 II (d)

S.N.	Details of radiology project	Does hospital/diagnostic centre have an operational CT Scan/ MRI/ PET Scan? (yes/no) (if yes, provide details)	Years since start of operations	Is this facility/diagnostic centre being operated for either the Government of West Bengal or the Government of India or any state government or a public sector undertaking? (yes/no) (if yes, provide details)	Remarks
1	Name of hospital/diagnostic centre:				
	Address:				
	Owing Entity:				
	Experience (No of scans – CT/MRI/PET Scan undertaken by the Bidder)				
2					



ANNEX-III  
**Statement of Legal Capacity**

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

Ref. Date:

To,

.....  
.....  
.....

Dear Sir,

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

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

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

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorised signatory)

For and on behalf of.....

**APPENDIX-II**  
**Power of Attorney for signing of Bid<sup>2</sup>**

*(Refer Clause 2.2.5)*

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/ the Lead Member of our Consortium and holding the position of ....., as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode proposed or being developed by the ..... (the "Authority") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our bid for the said Project and/ or upon award thereof to us and/ or till the entering into of the Concession Agreement with the Authority.

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

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ..... 2.....

For .....

(Signature, name, designation and address)

Witnesses:

1. ....

2. ....

(Notarised)

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<sup>2</sup> To be submitted in original

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

APPENDIX-III  
**Power of Attorney for Lead Member of Consortium<sup>3</sup>**

*(Refer Clause 2.2.5)*

Whereas the ..... (“the **Authority**”) has invited applications from interested parties for the Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode (the “Project”).

Whereas, ....., ..... and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and

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

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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<sup>3</sup> To be submitted in original

deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF .....2.....

For .....  
(Signature)  
.....  
(Name & Title)

For .....  
(Signature)  
.....  
(Name & Title)

For .....  
(Signature)  
.....  
(Name & Title)

Witnesses:

1.

2.

.....

(Executants)

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

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Apostille certificate.*

APPENDIX-IV  
**Bank Guarantee for Bid Security**

*(Refer Clauses 2.1.5 and 2.25.1)*

B.G. No. Dated:

1. In consideration of you, ....., 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, 1956/2013) and having its registered office at ..... (and acting on behalf of its Consortium) (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown Kolkata on 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 2.1.5 read with Clause 2.1.6 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Authority an amount of Rs..... (Rupees ..... only) (hereinafter referred to as the “Guarantee”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by the Authority stating that the Bidder is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be

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restricted to an amount not exceeding Rs..... (Rupees .....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 fulfilment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
7. In order to give full effect to this Guarantee, the Authority shall be entitled to treat the Bank as the principal debtor. The Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch 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. .... crore (Rupees ..... crore only). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [..... (indicate date falling 180 days after the Bid Due Date)].

Signed and Delivered by..... Bank

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

(Signature of the Authorised Signatory)

(Official Seal)

APPENDIX-V  
**Joint Bidding Agreement**

(Refer Clause 2.13.3)

(To be executed on Stamp paper of appropriate value)

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

AMONGST

1. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at.....(hereinafter referred to as the “**First Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

AND

2. .... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Second Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)

3. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Third Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}

AND

4. {..... Limited, a company incorporated under the Companies Act, 1956/2013 and having its registered office at ..... (hereinafter referred to as the “**Fourth Part**” which expression shall, unless repugnant to the context include its successors and permitted assigns)}<sup>s</sup>

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

WHEREAS,

- (A) The Governor of West Bengal represented by Chittaranjan National Cancer Institute, Newtown, Kolkata (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited applications (the **Bids**) by its Request for Proposal No. ....

dated ..... (the “**RFP**”) for selection of Bidder for Operation and Maintenance of the Nuclear Medicine Facility established in Chittaranjan National Cancer Institute, Newtown, Kolkata on PPP Mode.

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

NOW IT IS HEREBY AGREED as follows:

**1. Definitions and Interpretations**

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

**2. Consortium**

2.1 The Parties do hereby irrevocably constitute a consortium (the “**Consortium**”) for the purposes of jointly participating in the Bidding Process for the Project.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this Consortium and not individually and/ or through any other consortium constituted for this Project, either directly or indirectly or through any of their Associates.

**3. Covenants**

The Parties hereby undertake that in the event the Consortium is declared the selected Bidder and awarded the Project, it shall enter into a Concession Agreement with the Authority and perform all its obligations as the Concessionaire in terms of the Concession Agreement for the Project.

**4. Role of the Parties**

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

- (a) Party of the First Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the Appointed Date under the Concession Agreement when all the obligations shall become effective;
- (b) Party of the Second Part shall be {the Financial Member of the Consortium; and}

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

{(d) Party of the Fourth Part shall be the Financial Member/ Other Member  
of the Consortium.}

## 5. Joint and Several Liability

5.1 The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the RFP and the Concession Agreement, till the Appointed Date under and in accordance with the Concession Agreement.

5.2 The Parties do hereby undertake and declare that the Lead Member shall represent all the members of the Consortium and shall at all times be liable and responsible for discharging the functions and obligations of the Consortium; and that each member of the Consortium shall be bound by any decision, communication, notice, action or inaction of the Lead Member on any matter related to this Agreement and the Authority shall be entitled to rely upon any such action, decision or communication of the Lead Member.

5.3 Intentionally left blank

## 6. Representation of the Parties

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

- (a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Agreement;
- (b) The execution, delivery and performance by such Party of this Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member is annexed to this Agreement, and will not, to the best of its knowledge:
  - (i) require any consent or approval not already obtained;
  - (ii) violate any Applicable Law presently in effect and having applicability to it;
  - (iii) violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
  - (iv) violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree

or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

- (v) create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Agreement;
- (c) this Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and
- (d) there is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfillment of its obligations under this Agreement.

## 7. Termination

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

## 8. Miscellaneous

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

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

<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of</p> <p>LEAD MEMBER by:</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>SECOND PART</p> <p>(Signature)</p> <p>(Name)</p> <p>(Designation)</p>
--	--

(Address)	(Address)
SIGNED, SEALED AND DELIVERED THIRD PART	SIGNED, SEALED AND DELIVERED FOURTH PART
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

In the presence of:

- 1.
- 2.

*Notes:*

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

## APPENDIX-VI

## Base Tariff Rate

**Base Tariff for PET-CT scans across patient categories –**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	GA-68 Scan	2,000
	FDG Scan	2,000
General patients	GA-68 Scan	6,000
	FDG Scan	6,000
Private patients	GA-68 Scan	11,500
	FDG Scan	11,500

**Base Tariff for Gamma Camera scans across patient categories –**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	Whole Body Bone Scan with SPECT	1,250
General patients	Whole Body Bone Scan with SPECT	2,500
Private patients	Whole Body Bone Scan with SPECT	5,000

**Base Tariff for High Dose Iodine Therapy across patient categories –**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750
General patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750
Private patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750

APPENDIX-VII  
**Guidelines of the Department of Disinvestment**  
*(Refer Clause 1.2.1)*

No. 6/4/2001-DD-II  
 Government of India  
 Department of Disinvestment

Block 14, CGO Complex  
 New Delhi.  
 Dated 13<sup>th</sup> July, 2001.

OFFICE MEMORANDUM

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

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

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

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

sd/-

(A.K. Tewari)

Under Secretary to the Government of India

**APPENDIX-VIII**  
**Associate Relationship with the Bidder**

Certificate from the Statutory Auditor/ Company Secretary regarding (if applicable) Associate§

Based on the authenticated record of the Company, this is to certify that more than 50% (fifty per cent) of the subscribed and paid up voting equity of ..... (name of the Bidder/ Consortium Member/ Associate) is held, directly or indirectly, by ..... (name of Associate/ Bidder/ Consortium Member). By virtue of the aforesaid share-holding, the latter exercises control over the former, who is an Associate in accordance with the terms of this RFP.

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

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

Name of the audit firm:

Seal of the audit firm:

Date:

(Signature, name and designation of  
the authorised signatory along with valid UDIN).

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

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

**CHITTARANJAN NATIONAL CANCER  
INSTITUTE, KOLKATA**

**DRAFT CONCESSION AGREEMENT**

**OPERATION AND MAINTENANCE OF NUCLEAR  
MEDICINE FACILITY IN CHITTARANJAN  
NATIONAL CANCER INSTITUTE, KOLKATA ON PPP  
MODE**

**Chittaranjan National Cancer Institute, Kolkata**

**Street No: 299, DJ Block, Action Area-1D, Newtown, Kolkata-700160**

Telephones: 033 2324 5015/033 3506 0600 [Extn: 1101]

Email-corr.cnci2ncd@gmail.com

**June 2026**

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## CONCESSION AGREEMENT

This **CONCESSION AGREEMENT** (“**Agreement**”) is entered into on this the day of \_\_\_\_\_, \_\_\_\_\_ at [\*\*\*\*\*].

BETWEEN

**Chittaranjan National Cancer Institute, Kolkata** represented by Director, and having its head office at 37, S P Mukherjee Road, Kolkata-7000026 [(hereinafter referred to as the “**Authority**” or “**Lessor**”, which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns)] of the one part;

1.

AND

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

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

WHEREAS:

- (A) The **Chittaranjan National Cancer Institute, Kolkata** is considering private sector participation to operate and maintain a fully developed, furnished and equipped Nuclear Medicine Facility including PET-CT scan, Gamma Camera and High Dose Iodine Therapy (“**Nuclear Medicine Facility**”) as per the specification and standards set out in Schedule B for providing access to high quality Nuclear Medicine Services (*as defined hereinafter*), in the Newtown, Kolkata. The aforesaid Nuclear Medicine Facility has already been developed, equipped and furnished by the Authority.
- (B) The Authority had accordingly invited proposals under its [Request for Proposal No. ] dated [ ] (the “**Request for Proposal**” or “**RFP**”) for selection of bidders for undertaking the Project. Pursuant to the terms of the RFP, bids were received by the Authority on or before [\*\*\*]. The {Selected Bidder/consortium comprising ..... and ..... (collectively the “**Consortium**” .....)} with..... as its lead member (the “**Lead Member**”) was one of the bidders who had submitted its bid for the Project (the “**Bid**”).
- (C) Following the evaluation of the bids submitted by the bidders, including that of the Selected Bidder, the Authority had accepted the Bid. Subsequently, the Authority had issued the letter of award no. [ ] dated [ ] (the “**Letter of Award**” or “**LOA**”) to the Selected Bidder, *inter alia*, requiring it to incorporate a private limited company under the Companies

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Act (*as defined hereinafter*) and execution of this Agreement within [30 (thirty)] days of the date of issue thereof.

- (D) The {Selected Bidder/Consortium} has since incorporated the Concessionaire and has requested the Authority, by its [letter dated \_], to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {Selected Bidder/Consortium} including the obligation to enter into this Agreement pursuant to the LOA. {The Concessionaire has further represented to the effect that the ownership and control of the Concessionaire it has been structured by the Selected Bidder/Consortium for the purposes hereof.
- (E) The Authority, through its [letter dated \_\_\_\_\_], had agreed to the request of the Selected Bidder and accordingly intends to enter into this Agreement with the Concessionaire for execution of the Project, subject to and on the terms and conditions set forth hereinafter.

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

## Article 1: DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

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, except where the context otherwise requires:

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye-laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (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 only for convenience of reference and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to such time according to Indian Standard Time;
- (i) 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;
- (j) any reference to a day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) 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;
- (n) any reference to any period commencing '**from**' a specific date or date and '**till**' or '**until**' a specific 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;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**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;
- (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 (s) 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 shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, provisos and Schedules of or to this Agreement; reference to an Annexure shall, subject to anything to the contrary specified therein, be construed as a reference to an Annexure to the Schedule in which such reference occurs; and reference to a paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a paragraph of the Schedule or Annexure, as the case may be, 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-estimate of loss and damages 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 shall be provided free of cost and in 3 (three) copies, and if the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the Party 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) the Agreement;
- (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 Articles or Clauses of this Agreement, the provisions of a specific Article or Clause relevant to the issue under consideration shall prevail over those in other Articles or Clauses;
- (b) between the Articles of this Agreement and the Schedules, the Articles shall prevail;
- (c) between any two Schedules, the Schedule more relevant to the issue under consideration shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail.

## **Part II THE CONCESSION**

## Article 2: SCOPE OF THE PROJECT

- 2.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include during the Concession Period:
- (a) To operate and maintain the Nuclear Medicine Facility and provide Nuclear Medicine Services (“**Services**”) at the Nuclear Medicine Facility as set out in Schedule C, in accordance with the Specifications and Standards set forth in Schedule B, provisions of this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practices and Good Healthcare Practice;
  - (b) To operate, manage and maintain the Nuclear Medicine Facility for the duration of the Concession Period, as per operation and maintenance requirements set forth in Article 13 and Schedule G.
  - (d) To maintain all medical and non-medical equipment of Nuclear Medicine Facility, including maintaining their respective annual maintenance contract (AMC) and comprehensive maintenance contract (CMC) in accordance with the standards set out in this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practices and Good Healthcare Practices;
  - (e) To deploy adequate clinical and non-clinal human resources for operating and maintaining the Nuclear Medicine Facility as per the human resource requirement set forth in Article 19 and Schedule D.
  - (f) Performing and fulfilling all other obligations of the Concessionaire in accordance with the provisions of this Agreement and any matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

## Article 3: GRANT OF CONCESSION

### 3.1 The Concession

- 3.1.1. Subject to and in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, the Authority, awards to the Concessionaire, the concession set forth herein including exclusive leasehold right to operate and maintain the Nuclear Medicine Facility and provide Nuclear Medicine Services (the “**Concession**”) during the Concession Period, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth in this Agreement.
- 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) Right of Way and leasehold right on the Nuclear Medicine Facility for operation and maintenance and for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (b) provide Nuclear Medicine Services in accordance with the standards set out in this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practices and Good Healthcare Practices;
  - (c) demand, collect and appropriate User Charges and Radiopharmaceutical Charges from the Market Patients in accordance with this Agreement;
  - (d) perform and fulfil all the obligations of the Concessionaire 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;
  - (f) appoint Contractors, sub-contractors, agents, advisors and consultants to carry out its obligations under this Agreement in accordance with its provisions;
  - (g) upon Termination of the Concession Period transfer the Nuclear Medicine Facility to the Authority in accordance with the provisions of this Agreement;
  - (h) neither assign, transfer or sub-let 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 sell, transfer, exchange, lease or part possession thereof;
  - (i) set all standards and frame and apply all internal policies, guidelines and procedures as may be appropriate for safety, security, management and operation or maintenance of the Nuclear Medicine Facility, subject to the provisions of this Agreement and in accordance with Applicable Permits, Applicable Laws and Good Industry Practice, Good Clinical Practices and Good Healthcare Practices;
  - (j) exercise such other rights as the Authority may determine as being necessary for the purposes incidental and necessary to implement, manage, operate and

- maintain the Nuclear Medicine Facility;
- (k) do all things incidental or related thereto or which the Concessionaire considers desirable and appropriate to be carried out in connection therewith during the Concession Period.
  - (l) display the applicable User Charges and Radiopharmaceutical Charges at all times;
  - (m) Meet all operational and service quality benchmarks set out in Schedules G, including Equipment AMC/CMC, procedure success, operational efficiency, and staff attendance;
  - (n) shall procure and ensure that all Human Resource engaged in the provision of Nuclear Medicine Services are suitably qualified and receive sufficient training and instructions in accordance with Applicable Laws, Good Industry Practice, Good Clinical Practices, Good Healthcare Practices and standards of their relevant professional body, if any, for execution of their duties and as set forth in Schedule- D.

3.1.3 Upon the termination of this Agreement, either due to expiry of the Concession Period or due to any other reason, the Concessionaire shall comply with obligations provided in Article 29.

### 3.2 Concession Period

Subject to early termination of this Agreement in accordance with its provisions, the term of this Agreement is 5 (five) years from the Appointed Date (the “**Concession Period**”).

The Authority may at its sole discretion or on the request of the Concessionaire on or before 4<sup>th</sup> anniversary of the Appointed Date, can extend the Concession Period for another 5 (five) year, provided the Nuclear Medicine Facility has all approvals under the Applicable Laws to undertake the continued operations of the Nuclear Medicine Facility, and a Concessionaire Default is not subsisting.

## Article 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 7, 8, 9, 10, 12, 20, 21, 22, 25, 31, 32, 33, 35, 36, 37, 38, 39 and any related Schedules or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.

4.1.2. The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9 and at any time after [15 (fifteen)] days from the Execution Date or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of [90 (ninety)] days of receipt of the notice, or such longer period not exceeding [120 (one hundred and twenty)] days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) granted right to way and leasehold right to the Concessionaire for the Nuclear Medicine Facility, under and in accordance with Article 10;
- (b) signing of the joint memorandum as per terms of Clause 10.3.1 hereof;
- (c) Provide for the Concessionaire connection to power supply, water supply and other basic infrastructure that may be required at the Nuclear Medicine Facility for the purposes of the Project and installed sub-meters regarding the same;
- (d) procure (if applicable) approval/clearance with regard to Nuclear Medicine Facility including Equipment and source procurement permission, FDG procurement license, environmental protection and conservation; and
- (e) appointed Independent Expert and constituted a Joint Coordination Committee in accordance with Article 20 of this Agreement.

Provided, that upon request in writing by the Authority, the Concessionaire may, in its discretion, waive the Conditions Precedent set forth in this Clause 4.1.2.

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire within a period of [90 (ninety)] days from the Execution Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided the Performance Security to the Authority pursuant to Article 9;
- (b) executed and procured execution of the Escrow Agreement and opened and

operationalised the Escrow Account in accordance with Article 22;

- (c) procured all Applicable Permits specified in Schedule E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, have been fulfilled as on date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement;
- (d) delivered to the Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in sub-Clause (l), {(m)} and (n) of Clause 7.1;
- (e) 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;
- (f) delivered to the Authority the copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;
- (g) delivered to the Authority copies (certified as true copies by a director of the Concessionaire) of all resolutions adopted by the board of directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire of the Agreement;
- (h) provided proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire;
- (i) Submitted to the Authority the Service Quality Manual in accordance with the Article 13 of this Agreement; and
- (j) procured from the Authority AMC and CMC for all medical and non-medical Equipment of Nuclear Medicine Facility as specified in Schedule A, after paying the cost to the Authority, in accordance with the standards set out in this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practices and Good Healthcare Practices.
- (k) employed fully qualified, experienced, and competent Human Resources and medical personnel, including specialists as specifically set forth in Schedule D, who are suitably qualified and have received sufficient training and instructions in accordance with Applicable Laws and the standards of their relevant professional bodies (if any), to carry out their duties in accordance with the standards set out in this Agreement.

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

4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent

within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5. The Parties shall notify each other in writing at least [once a month] on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.1.6. The Concessionaire shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

#### **4.2 Damages for delay by the Authority**

In the event that: (i) the Authority does not procure fulfilment or waiver of the Condition Precedent set forth in Clause 4.1.2 within the period specified in respect thereof; and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure Event, the Authority shall pay Damages to the Concessionaire of 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 amount equal to the Bid Security.

#### **4.3 Damages for delay by the Concessionaire**

In the event that: (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that Clause; and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure Event, the Concessionaire shall pay Damages to the Authority of an amount calculated at the rate of [0.3% (zero point three per cent)] of the Performance Security for each day's delay until the fulfilment or waiver of such Conditions Precedent, up to the maximum amount equal to the Bid Security and upon reaching such maximum amount, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due and payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

#### **4.4 Commencement of the Concession Period**

The date on which all the Conditions Precedent specified in Clause 4.1, are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of the commencement of the Concession Period. For avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence development of the Project in accordance with the terms of this Agreement.

#### 4.5 **Deemed Termination upon delay**

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of [180 (one hundred and eighty)] days from the Execution Date or the extended period provided in accordance with this Agreement, then all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire and the Agreement may be terminated by the non-defaulting Party. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security or the Bid Security, as the case may be, of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

## **Article 5: OBLIGATIONS OF THE CONCESSIONAIRE**

### **5.1 General Obligations of the Concessionaire**

- (a) Subject to and in accordance with the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, undertake the operation and maintenance of the Nuclear Medicine Facility and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder in relation to the Nuclear Medicine Facility.
- (b) Undertake the operation and maintenance of the Nuclear Medicine Facility and Equipment, deliver Nuclear Medicine Services to Patients, and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder, Applicable Laws, Good Industry Practice, Good Clinical Practices and Good Healthcare Practices.
- (c) The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for undertaking the operation and maintenance obligations, including procuring connection for and supply of water, gas and other utilities as may be necessary or required for the operation and maintenance of the Nuclear Medicine Facility. The Concessionaire shall obtain all Applicable Permits and comply with the conditions thereunder for the operation and maintenance of such Nuclear Medicine Facility.
- (d) During the Concession Period, the Concessionaire shall obtain from the relevant Government Instrumentalities, the Applicable Permits (other than the Applicable Permits required to be obtained by the Authority under Clause 4.1.2) and keep in force and comply with the conditions of all Applicable Permits for the operation and maintenance of the Nuclear Medicine Facility and upon Termination, the transfer of the Nuclear Medicine Facility to the Authority.
- (e) The Concessionaire shall comply with all Applicable Laws and conditions of all Applicable Permits (including keeping them valid and in force as required) while performing its obligations under this Agreement. Further, the Concessionaire shall ensure and procure that its Contractors, if any, comply with all Applicable Permits and Applicable Laws during their performance of any of the Concessionaire's obligations under this Agreement.
- (f) Subject to the provisions of Clauses 5.1(a), (b) and (c), the Concessionaire shall procure that its Contractors, if any, shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- (g) The Concessionaire shall use the Nuclear Medicine Facility only for the purpose of providing Nuclear Medicine Services.

- (h) The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (i) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the operation and maintenance of the Nuclear Medicine Facility;
  - (ii) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - (iii) not do or omit to do any act, deed or thing which may in any manner violate any provision of this Agreement;
  - (iv) ensure the Nuclear Medicine Facility shall have prescribed medical personnel, in accordance with all Applicable Laws and provisions of this Agreement;
  - (v) procure adequate insurance cover for the Nuclear Medicine Facility for the Concession Period in accordance with Article 23;
  - (vi) ensure the Nuclear Medicine Facility shall provide all Nuclear Medicine Services, including but not limited to, PET-CT Scan, Gamma Camera, High Dose Iodine Therapy and any other incidental services available in Nuclear Medicine Facility of similar nature in order to provide efficient and adequate Nuclear Medicine Services to the Patients;
  - (vii) undertake effective operation and maintenance requirement of the Nuclear Medicine Facility in accordance with Schedule G, terms of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice, Good Clinical Practices and Good Healthcare Practices;
  - (viii) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner violate any of the provisions of this Agreement, Applicable Laws and/or Applicable Permits;
  - (ix) operate and maintain all Equipment and diagnostic facilities comprising the Nuclear Medicine Facility, operated and maintained in accordance with the Specifications and Standards, repair and maintenance requirements, safety requirements, Applicable Laws and Good Industry Practices;

- (x) support, cooperate with and facilitate the Authority in the implementation and operation of the Nuclear Medicine Facility in accordance with the provisions of this Agreement;
- (xi) transfer the Nuclear Medicine Facility to the Authority upon Termination in accordance with the provisions of this Agreement;
- (xii) on and from the Appointed Date, effectively perform and discharge all the Nuclear Medicine Services provided in Schedule C;
- (xiii) On and from the Appointed Date, the Concessionaire shall render clinical services at the Nuclear Medicine Facility as per the terms of this Agreement. For avoidance of doubt, it is clarified that, the housekeeping and security services shall be provided by the Authority at its own cost at the Nuclear Medicine Facility;
- (xiv) Shall not deny Nuclear Medicine Services available at the Nuclear Medicine Facility to the Non-Chargeable and General Patients, as per the terms of this Agreement;
- (xv) The Concessionaire shall procure Radiopharmaceuticals required for rendering Nuclear Medicine Services to Patients solely from the Authority. For ensuring timely availability and avoiding supply delays, the Concessionaire shall submit a detailed requisition to the Authority at least one (1) day prior to the date of requirement. Such requisition shall specify the quantities required for each category of Patients as defined under Clause 17.1;
- (xvi) The Concessionaire shall be liable to pay the Authority for all Radiopharmaceuticals supplied by the Authority and utilized for rendering Nuclear Medicine Services to Market Patients, at the rates specified in Schedule M;
- (xvii) Shall ensure that following IEC activities to be undertaken during the concession Period including but not limited to awareness campaigns, patient education initiatives, and community outreach programs. The periodic reporting (i.e., once in a quarter) shall be submitted to the Authority and Independent Expert;
- (xviii) shall ensure timely scheduling and delivery of Services to Non-Chargeable and General Patients referred by the Authority, such that the same are rendered within one (1) week from the date of such referral;
- (xix) the Concessionaire shall provide Services to the Non-Chargeable and General Patients referred by the Authority, free of cost, and the Authority shall be liable to reimburse the User Charges for such Services as per the Article 21;

- (xx) Ensure yearly compliance test report of all equipment by a qualified service engineer (AERB) and report of the same to be submitted to the RSO.
- (xxi) The Concessionaire shall render Services to Market Patients at the applicable User Charges and Radiopharmaceutical Charges, strictly in accordance with the rates and terms specified in Schedule M; and
- (xxii) The Concessionaire shall be responsible for procuring and ensuring the availability of all consumables required for the efficient and uninterrupted delivery of Nuclear Medicine Services in accordance with Schedule C.
- (xxiii) The concessionaire shall be responsible for procuring from the Authority AMC and CMC for all medical and non-medical Equipment of Nuclear Medicine Facility as renewed after paying the cost to the Authority.

## 5.2 Obligations relating to Project Agreements

- 5.2.1. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement. Notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or any other agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 Before finalisation, the Concessionaire shall submit to the Authority the drafts of all Project Agreements and the operation and maintenance contract (if any) or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments and observations, if any, to the Concessionaire. Concessionaire shall appropriately consider all such comments/ observations. Within [7 (seven)] days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For avoidance of doubt, it is agreed that the review and comments/ observations by the Authority on any Project Agreement or failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and/or liabilities under this Agreement in any manner whatsoever nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on any of the Project Assets as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or

## Applicable Laws.

- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For 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 Expiry Date, the Project Agreements shall be deemed to cease to be in force and effect on the Expiry Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of the Contractor and execution of the Project Agreement shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire and undertake that it shall not give effect to any such selection or contract without prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.
- 5.2.6 Subject to other terms of this Agreement, any work or services except for clinical services rendered at the Nuclear Medicine Facility may be sub-contracted by the Concessionaire, always provided and notwithstanding the sub-contract, the Concessionaire retains overall management, responsibility, obligation and liability in relation to the sub-contracted work or services. Any such subcontracting shall not relieve the Concessionaire from any of its obligations in respect of the provision of such work/services under this Agreement. It is clarified that Concessionaire cannot sub-contract any part of clinical services rendered at the Nuclear Medicine Facility, and in respect of other works and services that the concessionaire sub-contracts in accordance with this Agreement, the Concessionaire shall remain liable and responsible for any acts, omissions, or defaults of any sub-contractor, and shall indemnify Authority in respect thereof.

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

- (a) The Concessionaire shall not undertake or permit any Change in Ownership except with the prior written approval of the Authority.
- (b) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that during the Concession Period:
  - (i) 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 [25% (twenty five per cent)] or more of the total equity of the Concessionaire; or
  - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a “**Change in Ownership**” requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this regard being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3(b):

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

#### 5.4 **Obligations relating to management of the Concessionaire**

The Concessionaire shall not, without the prior written approval of the Authority, undertake or cause to be undertaken, any action for all or any of the following or any matter incidental or consequential thereto:

- (c) to alter or add to the provisions of the memorandum of association;
- (d) to alter or add to the articles of association;
- (e) to change the name of the Concessionaire;
- (f) to reduce the share capital;
- (g) to commence any new lines of business;
- (h) to consent to a director or his or her relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (i) to make inter-corporate-loans and investments or guarantee or security (except where such security or payment is to be made to the Authority) to be given, if the aggregate amount thereof, exceeds the limit of [30% (thirty per cent)] of the Concessionaire's paid-up share capital;
- (j) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy Code, 2016;
- (k) for various other matters pertaining to the winding up of the Concessionaire; and
- (l) any other matter which is required by the Companies Act to be passed by a special resolution of the shareholders of the Concessionaire.

#### 5.5 **Obligations relating to the employment of foreign personnel**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be in accordance with Applicable Laws and subject to grant of Applicable Permits, including employment or residential visas and work permits. The Concessionaire shall obtain such Applicable Permits at its own cost and expense. Notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permit or approval by the Concessionaire or any of its Contractors or sub-contractors shall not constitute a Force Majeure Event, or allow any extension of time to the Concessionaire for performance of its obligations under this Agreement and shall not in any manner excuse the Concessionaire from the performance and discharge of its

obligations and liabilities under this Agreement.

#### **5.6 Obligations relating to employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it or by its Contractors in the performance of its obligations under this Agreement are duly qualified and at all times properly trained with adequate and state-of-the-art training for their respective functions in accordance with Applicable Laws, Good Industry Practice, Good Clinical Practices, Good Healthcare Practices and standards of their relevant professional body, if any.

#### **5.7 Obligations relating to operation and maintenance**

The Concessionaire hereby agrees, acknowledges and undertakes to comply with the specifications and standards, Applicable Laws, Applicable Permits and terms of this Agreement to carry out the operation and maintenance of the Nuclear Medicine Facility.

#### **5.8 Obligations relating to the engagement of qualified personnel**

The Concessionaire shall appoint, in accordance with the Applicable Laws, suitably qualified personnel for imparting Services at the Nuclear Medicine Facility shall be qualified and trained in accordance with the Applicable Laws.

#### **5.9 Obligations relating to the Standards of Performance of Services**

The Concessionaire shall discharge its obligations in compliance with Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations relating to the Services under this Agreement.

#### **5.10 Intellectual Property Permits**

The Concessionaire shall ensure that if any designated devices, materials or any process are covered by Intellectual Property, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Intellectual Property owner or person empowered to assign the Intellectual Property. A copy of the agreement shall be filed with the Authority.

#### **5.11 Sole purpose of the Concessionaire**

The Concessionaire shall not, except with the prior written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than the business incidental or consequential to the provisions of this Agreement or any similar business related to Nuclear Medicine Services.

#### **5.12 Obligations relating to Taxes**

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Project. Provided, however, that all payments made by the Concessionaire with respect to GST levied on or in respect of any services provided by the Concessionaire to the Authority for and in respect of the Nuclear Medicine Facility shall be paid by the Authority upon receipt of particulars thereof.

### **5.13 Obligations relating to information**

- 5.13.1 Without prejudice to the provisions of Applicable Laws, Applicable Permits and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 5.13.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

### **5.14 Obligations relating to other charges**

The Concessionaire shall make timely payments for all utility services in respect of the Nuclear Medicine Facility, including water, sewage, telecommunication, electricity, internet and cable charges etc.

### **5.15 Obligations relating to branding and aesthetic quality of the Project**

- 5.15.1 The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Nuclear Medicine Facility through both appropriate design, landscaping in accordance with the Applicable Laws and Good Industry Practices.
- 5.15.2 The Concessionaire shall not change the name of the Nuclear Medicine Facility or any part thereof it shall however be permitted to brand to advertise, display or reflect the name or identity of the Concessionaire in accordance with Applicable Laws.

## **Article 6: OBLIGATIONS OF THE AUTHORITY**

### **6.1 General Obligations of the Authority**

#### 6.1.1 The Authority shall:

- (a) at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement.
- (b) subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform the following:
  - (i) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for operation and maintenance of the Nuclear Medicine Facility, subject to the Concessionaire submitting its applications complete in all respect in a timely manner. The Authority agrees and undertakes that it shall not unreasonably delay or withhold provision of any such reasonable support or assistance to the Concessionaire;
  - (ii) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to government hospitals;
  - (iii) transfer the Nuclear Medicine Facility along with all its existing assets, machinery, plant, equipment etc. in accordance with Article 10 and transfer or modify, whichever necessary, all Applicable Permits in favour of the Concessionaire, in accordance with the Applicable Laws and ensure that no barriers are erected or placed on or about the Nuclear Medicine Facility by any Government Instrumentality or persons claiming through or under any Government Instrumentality, except for reasons of Safety Requirements, emergency, national security, or law and order;
  - (iv) ensure that the fully developed and equipped Nuclear Medicine Facility is handed over to the Concessionaire for operation and maintenance, are constructed as per specification and standards laid down under the Applicable Laws;
  - (v) not do or omit to do any act, deed or thing which may in any manner violate the provisions of this Agreement;

- (vi) support, cooperate with and facilitate the Concessionaire in the implementation, operation and maintenance of the Nuclear Medicine Facility in accordance with the provisions of this Agreement;
- (vii) monitor adherence to all Key Performance Indicators by the Concessionaire during the Concession Period;
- (viii) ensure the transport and processing of the bio medical waste generated from the Nuclear Medicine Facility, which is collected by the Concessionaire at the designated location;
- (ix) Provide the Radiopharmaceutical to the Concessionaire, as requested and required by the Concessionaire, sufficiently in advance of their scheduled use for the rendering of Nuclear Medicine Services to the Patients;
- (x) The Authority shall, at no cost to the Concessionaire, supply the Radiopharmaceuticals requested and required for rendering Nuclear Medicine Services to Non-Chargeable and General Patients referred by the Authority;
- (xi) The Authority shall refer Non-Chargeable and General Patients to the Nuclear Medicine Facility for required Services, directly collect the applicable User Charges and Radiopharmaceutical Charges from such patients, and shall thereafter reimburse the Concessionaire the User Charges in respect of the Services rendered to such patients, in accordance with the provisions of this Agreement;
- (xii) provide access to blood bank located in the hospital to the Concessionaire;  
Provide housekeeping and security services at its own cost at the Nuclear Medicine Facility;
- (xiii) ensure compliance test report of all equipment at the time of installation, prior to regular patient imaging.
- (xiv) Shall transfer the existing AMC and CMC for all medical and non-medical Equipment of Nuclear Medicine Facility as specified in Schedule A, upon receipt of the cost thereof from the Concessionaire; and
- (xv) Shall procure the Gamma Camera on or before the Appointed Date.

Notwithstanding anything in this Article, the Authority shall not be required to provide any financial support or financial assistance to the Concessionaire.

## Article 7: REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

### 7.1 Representations, warranties and undertakings of the Concessionaire

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

- (a) it is duly organised and validly existing under 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;
- (b) it has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (e) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) 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;
- (g) the information furnished in the Bid and as updated on or before the Execution Date is true and accurate in all respects as on the Execution Date;
- (h) the execution, delivery and performance of this Agreement shall not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum and articles of association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (i) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before

any other judicial, quasi-judicial, Government Instrumentality or other authority, the outcome of which may result in the breach of this Agreement or

which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (j) 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;
- (k) 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;
- (l) in case the Concessionaire is constituted as an SPV, it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the [Selected Bidder], hold not less than [51% (fifty-one per cent)] of its issued and paid up equity throughout the Concession Period of the Project. In case, the Selected Bidder is Consortium, the Lead Member shall ensure that towards meeting the aforesaid minimum shareholding requirement, it shall hold at least 26% (twenty-six per cent) of the subscribed and paid-up equity in the Concessionaire throughout the Concession Period;
- (m) the {Selected Bidder/Consortium Members} and {its/their} Associates have the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (n) the {Selected Bidder/Consortium Members} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (o) all its rights and interests in the Nuclear Medicine Facility shall pass to and vest in the Authority on the Expiry 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;

- (p) no representation or warranty given by it contained herein or in any other document furnished by it to the Authority, including the Bid or to any Government Instrumentality in relation to Applicable Permits contains or shall contain any untrue or misleading statement of material fact or omits or shall omit to state a material fact necessary to make such representation or warranty not misleading;
- (q) no sums, in cash or kind, have been paid or shall be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (r) 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;
- (s) agree that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or government acts; and
- (t) consents generally in respect of the enforcement of any judgment against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

## **7.2 Representations, warranties and covenants of the Authority**

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

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

- (f) it has good, legal and valid right and title to the Nuclear Medicine Facility and has the power and authority to handover the Nuclear Medicine Facility as specified in Schedule A to the Concessionaire for the implementation of the Project in accordance with the provisions of this Agreement.

### 7.3 Disclosure

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

## Article 8: DISCLAIMER

### 8.1 Disclaimer

- (a) 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 Proposals, Scope of the Project, Specifications and Standards, Nuclear Medicine Facility, existing facilities, Equipment, local conditions, availability of Users and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- (b) The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in 8(a) above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, Associates or any person claiming through or under any of them.
- (c) The Parties agree that any mistake or error in or relating to any of the matters set forth in 8(a) above shall not vitiate this Agreement or render it voidable.
- (d) In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in 8(a) 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 8(d) shall not prejudice the disclaimer of the Authority contained in 8(a) and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- (e) Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

**Part III**  
**OPERATION AND MAINTENANCE**

## **Article 9: PERFORMANCE SECURITY**

### **9.1 Performance Security**

- 9.1.1. The Concessionaire shall have, for the performance of its obligations hereunder during the Concession Period, provided to the Authority on the Execution Date, an irrevocable and unconditional guarantee from a Bank with a minimum validity of 12 months at a time for a sum equivalent to **Rs. 1.7 Crores (Rupees One Crore and Seventy Lakhs Only)** in the form set forth in Schedule F (the "Performance Security" or "Performance Guarantee"). Thereafter, the Performance Security amount **Rs. 1.7 Crores (Rupees One Crore and Seventy Lakhs Only)** shall be escalated at 5% per annum for the subsequent duration of the Concession Period.
- 9.1.2. The Performance Security shall be rolled over annually and shall be renewed three (3) months prior to the expiry of previous year's Performance Security, meaning thereby that the Concessionaire shall furnish a fresh Performance Security for each subsequent year at the escalated amount, until the expiry of the Concession Period.
- 9.1.3. Until such time the first annual 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.

### **9.2 Appropriation of Performance Security**

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent or failure to make any payment which becomes due and payable to the Authority under and in accordance with this Agreement, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the amounts due and payable as liquidated damages from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent or failure to pay such amounts which are due and payable by the Concessionaire to the Authority under and in accordance with the provisions of this Agreement. Upon such encashment and appropriation of the Performance Security, the Concessionaire shall, within [15 (fifteen)] days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 28. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying 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

Performance Security as Damages, and to terminate this Agreement in accordance with Article 28.

### 9.3 **Release of Performance Security**

The Performance Security shall remain in force and effect for the entire Concession Period until the Divestment Requirements have been fulfilled in accordance with Article 29 of this Agreement, and shall be released pursuant to this Clause 9 after defect liability performance security is provided by the Concessionaire pursuant to Clause 30.2.3 hereto and the same comes into effect; provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9, the Authority shall release the Performance Security forthwith.

## **Article 10: HANDOVER OF THE NUCLEAR MEDICINE FACILITY**

### **10.1 Nuclear Medicine Facility**

The Nuclear Medicine Facility shall comprise the land as described in Schedule A, and in respect of which the Authority shall provide leasehold rights along with the possession of the Nuclear Medicine Facility and all way leaves, easements, unrestricted access and other rights of way howsoever described, necessary for operation and maintenance of the Nuclear Medicine Facility to the Concessionaire upon payment of the lease rent of Re 1/- (Rupee One only) (“**Lease Rent**”) per annum under and in accordance with this Agreement and under the terms of the Lease Agreement to be executed in the form and manner as provided in Annex-I of the Schedule A. The Lease Agreement shall, subject to Applicable Laws, be valid for a term of 5 (five) years and shall be co-terminus with concession agreement.

### **10.2 Access to the Nuclear Medicine Facility**

10.2.1 In consideration of the lease rent, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, Right of Way and leasehold rights in respect of Nuclear Medicine Facility (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Nuclear Medicine Facility including Equipment which is described, delineated and shown in Schedule A of the Concession Agreement (the “**Leased Premises**”); on an “as is where is” basis, free from any Encumbrances, to operate, maintain and manage the Nuclear Medicine Facility including the Equipment, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Nuclear Medicine Facility, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of Concession Period and, for the purposes of the Project as permitted under the Concession Agreement, and for no other purpose whatsoever.

10.2.2 In respect of all the land comprising the Nuclear Medicine Facility and the assets comprising the Nuclear Medicine Facility. The Nuclear Medicine Facility shall be handed-over to the Concessionaire and provided on an 'as is where is' basis, free of any Encumbrances, to operate and maintain the Nuclear Medicine Facility, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Nuclear Medicine Facility, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The access, Right of Way and all other rights to the Nuclear Medicine Facility granted under this Agreement by the Authority to the Concessionaire shall always be subject to existing rights of way.

- 10.2.4 It is expressly agreed that the Concessionaire's rights to the Nuclear Medicine Facility shall terminate automatically and forthwith, without the need for any action to be taken by the Authority, upon the Termination of this Agreement for any reason whatsoever. For avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Nuclear Medicine Facility by the Concessionaire or its Contractors, the rights of the Concessionaire in respect of the Nuclear Medicine Facility shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the rights granted hereunder at any time after the Concession Period has expired or has been Terminated in terms hereof, whichever is earlier, a sufficient proof of which shall be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the site for Nuclear Medicine Facility are the property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

### 10.3 Handover of the Nuclear Medicine Facility

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time but in any event no later than the Appointed Date, inspect the Nuclear Medicine Facility including Equipment outlined in Schedule A and draw, prepare and sign a joint memorandum recording conformance (along with deviation, if any) with details of Nuclear Medicine Facility and Equipment outlined in Schedule A. Such memorandum along with any deviation shall be appended thereto an appendix as Annex of Annex-I of the Schedule A (“**Joint Memorandum**”), and in case of any deviation from the Schedule A, the Authority would be promptly required to remedy, rectify and hand over within reasonable time the relevant portion of the Nuclear Medicine Facility to the Concessionaire. The aforesaid memorandum will accordingly contain an inventory of the Nuclear Medicine Facility including the Encumbrance free land, buildings, structures, road works, trees, existing facilities, Equipment and any other immovable property on or attached to the Nuclear Medicine Facility, and any mismatch or unencumbered portion that cannot be handed over. Further, the said Joint Memorandum would also specify in reasonable detail those parts of the Nuclear Medicine Facility to which access and Right of Way has not been granted to the Concessionaire. The Joint Memorandums shall be signed, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall be deemed to constitute a valid leasehold right and Right of Way to the Concessionaire for free and unrestricted use of the Nuclear Medicine Facility including the Equipment during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid leasehold right and Right of Way with

respect to the parts of the Nuclear Medicine Facility as set forth in the Joint Memorandum shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 In case of any dispute between the Concessionaire and the Authority in relation to the survey of the Nuclear Medicine Facility and the Joint Memorandum, the decision of the Authority shall prevail and shall be binding on the Concessionaire.

10.3.3 On and after signing the Joint Memorandum referred to in Clause 10.3.1, and until the Expiry Date, the Concessionaire shall maintain a round-the-clock vigil over the Nuclear Medicine Nuclear Medicine Facility and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and the Concessionaire shall be reimbursed by the Authority for all costs and expenses relating to such removal.

#### 10.4 **Nuclear Medicine Facility to be free from Encumbrances**

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

#### 10.5 **Protection of Nuclear Medicine Facility from encroachments**

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

#### 10.6 **Special or temporary Right of Way**

The Concessionaire shall bear all costs and charges for any special or temporary Right of Way required by it in connection with access to the Nuclear Medicine Facility which is being provided and granted by the Authority. The Concessionaire shall obtain at its own cost such facilities on or outside the Nuclear Medicine Facility as may be required by it for the purposes of the operation and maintenance of the Nuclear Medicine Facility and the performance of its obligations under this Agreement.

#### 10.7 **Access to the Authority and the Independent Expert**

The right to the Nuclear Medicine Facility granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, Independent Expert or authorised personnel, for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

#### 10.8 **Permitted Use**

The Concessionaire shall use or cause to be used any or all part of the Nuclear Medicine Facility for operating, managing and maintaining the Nuclear Medicine Facility in accordance with Applicable Laws and Applicable Permits. Any use of the Nuclear Medicine Facility in violation thereof shall constitute a Concessionaire Default under this Agreement.

## Article 11: OPERATION OF THE NUCLEAR MEDICINE FACILITY

### 11.1 Operation Date

The rights, privileges, liberties and obligations of the Concessionaire, particularly the Concession shall commence from the date on which all Condition Precedent have been satisfied in accordance with Article 4 (the “**Appointed Date**”), and determination of the Appointed Date by the Authority shall be final, conclusive and binding on the Concessionaire.

The Nuclear Medicine Facility shall for the purpose of this Agreement shall enter into service on the Appointed Date whereupon the Concessionaire shall be entitled to provide Nuclear Medicine Services and perform operation & maintenance obligations subject to and in accordance with the terms of this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practices and Good Healthcare Practice (the “**Operations Date**”).

## Article 12 CHANGE OF SCOPE

### 12.1 Change of Scope

- 12.1.1 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 12.
- 12.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Nuclear Medicine Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within [15 (fifteen)] days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 12 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 12.1.3 Any works or services which are provided under and in accordance with this Article 12 shall form part of the Nuclear Medicine Facility and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

### 12.2 Procedure for Change of Scope

- 12.2.1 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**”).
- 12.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documents in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project if the works or services are required to be carried out during the Concession Period;
  - (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, any impact on the operations or the cost of operation of the Nuclear Medicine Facility, along with the proposed premium or discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable; and
  - (c) its likely impact on the Gross Revenue and profitability of the Nuclear Medicine Facility.

12.2.3 Upon receipt of information set forth in Clause 12.2.2, 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, thereupon of the Independent Expert, make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute.

### **12.3 Payment for Change of Scope**

Within [7 (seven)] days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire of 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 Expert. 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 Documents 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 Expert, as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure in Article 35.

### **12.4 Restrictions on certain works**

Notwithstanding anything to the contrary contained in this Article 12, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay the Operation Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such order shall not be reckoned for the purposes of determining operation and maintenance of the Nuclear Medicine Facility.

### **12.5 Financing by the Concessionaire**

Notwithstanding anything to the contrary contained in this Article 12, the Parties may, subject to this Clause 12.5 agree on determining the Change of Scope which may be financed partly or entirely by the Concessionaire, if such arrangement enables the Concessionaire to provide the financing and undertake its recovery in accordance with the provisions of this Agreement.

## Article 13: OPERATION AND MAINTENANCE

### 13.1 Operation and Maintenance obligations of the Concessionaire

13.1.1 During the Concession Period, the Concessionaire shall operate and maintain the Nuclear Medicine Facility and provide Nuclear Medicine Services to the Users in accordance with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

- (a) submitting [30 (thirty)] days prior to the Appointed Date, in consultation with the Authority and the Independent Expert, a service quality manual (the “**Service Quality Manual**”) outlining strategy to achieve Services specification including the Specifications and Standards outlined and shall ensure and procure that at all times during the Concession Period. The Concessionaire must adhere to the quality parameters for providing Nuclear Medicine Services, as per the applicable guidelines issued under the relevant Applicable Laws(from time to time).
- (b) undertaking operation and maintenance of the Nuclear Medicine Facility, in an efficient, coordinated and economical manner, in compliance with the Specification and Standards, Applicable Law, Applicable Permit, Good Industry Practice, Good Clinical Practice and Good Healthcare Practice;
- (c) undertaking, in compliance with the terms and conditions of this Agreement, including the Specifications and Standards, Applicable Laws, Applicable Permits, the Maintenance Manual, the Service Quality Manual and Good Industry Practice, Good Clinical Practice and Good Healthcare Practice: (i) the operation of the Nuclear Medicine Facility by itself and provide Nuclear Medicine Services to the Users, and (ii) the maintenance of the Nuclear Medicine Facility;
- (d) obtaining and maintaining throughout the Concession Period, recognition of all relevant statutory bodies or Government Instrumentality for the operation of the Nuclear Medicine Facility, rendering the Nuclear Medicine Services and other allied facilities as provided in Schedule C for use by the Users;
- (e) undertaking routine maintenance including prompt repairs of all elements and components of the Nuclear Medicine Facility, so as to ensure compliance with the Maintenance Requirements and the Specification and Standards;
- (f) undertaking major maintenance, replacement of components and parts, repairs to structures, and repairs and development of Nuclear Medicine Facility including the Equipment;

- (g) protection of environment and provision of Equipment and materials thereof in accordance with the Applicable Laws, Applicable Permits, terms of this Agreement and Good Industry Practice;
- (h) ensuring that the food which is served to the Patients is clean, hygienic and of good quality;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Nuclear Medicine Facility and for providing Nuclear Medicine Services in conformity with the Good Industry Practice;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, Government Instrumentality, media and other agencies;
- (k) complying with the Safety Requirements;
- (l) ensuring that the bio-medical waste is segregated and labelled in accordance with the Applicable Laws;
- (m) ensuring that all toilets are clean, hygienic and odour free, the temperature in the Nuclear Medicine Facility is maintained in accordance with the Good Industry Practice, all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they do not have a queue with a waiting time exceeding 5 (five) minutes;
- (n) providing public information systems;
- (o) providing waiting areas with adequate seating capacity for the Users at the Nuclear Medicine Facility with provision for display units for entertainment/news while waiting;
- (p) providing efficient management of the Users visiting the Nuclear Medicine Facility to avail out patient services by introducing token system to ensure smooth functioning of the services;
- (q) ensuring that the Nuclear Medicine Facility building is accessible to the Users round the clock, with provision for monitoring the visiting hours to the Patients admitted in the Nuclear Medicine Facility;
- (r) ensuring provision of wheel chairs in conformity with Specifications and Standards and Good Industry Practice, and at no extra cost to Users requiring special assistance;
- (s) ensuring proper signs, markings and display within the Nuclear Medicine

Facility to direct the Users to the appropriate sections of the Nuclear Medicine Facility;

- (t) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws, Applicable Permits, Good Industry Practice and provisions of this Agreement.
- (u) Ensuring a minimum trained staff availability at the Nuclear Medicine Facility, as set out in Schedule D;
- (v) Creating and maintaining an online database of all services provided and procedures performed and results of all such Patients handled at the Nuclear Medicine Facility. The database shall record all relevant details of the Patient (such as name, age, contact details, referral history, treatment history, etc.) and of all visits (such as time of arrival, reporting time, etc.) The database shall be made available for access by the Authority/Nuclear Medicine Facility till a minimum of 3 (three) years from the Expiry Date. Further, the concessionaire would generate and share management information system (MIS) on a monthly basis with the Authority, in a format shared by the Authority;
- (w) Undertaking all necessary maintenance to ensure the PET Scan, Gamma Camera and other Equipment are operating to best standards and also ensuring that necessary software updates for all Equipment is done, within 3 (three) months of release of the update;
- (x) Ensuring that the operation and maintenance of the Nuclear Medicine Facility shall in no way impact the day-to-day operations at the hospital; and
- (y) Optimally handling waste generated at the Nuclear Medicine Facility, including promptly removing all waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keeping the Nuclear Medicine Facility in orderly, hygienic conditions, in conformity with all Applicable Laws, Applicable Permits and Good Industry Practice, and in compliance with all requirements of NABH , Atomic Energy Regulatory Board (AERB) and any other relevant competent authority;

13.1.2 The Concessionaire shall maintain, in conformity with Good Industry Practice and Applicable Laws and Applicable Permits the structures situated on the Nuclear Medicine Facility.

13.1.3 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire and shall not be claimed from the

Authority. For avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to and independent of the Damages payable under this Agreement. In the event the Authority is required to pay any penalty to the Government Instrumentality under any Applicable Laws then the Authority shall be entitled to be indemnified by the Concessionaire under Article 33.

### **13.2 Maintenance Requirements**

13.2.1 The Concessionaire shall procure that at all times during the Concession Period, the Nuclear Medicine Facility is maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice (the “**Maintenance Requirements**”), as more specifically set out in Schedule G.

13.2.2 The Concessionaire shall procure that at all times during the Concession Period, the Nuclear Medicine Facility conforms to the Service requirements as set forth in Schedule G (the “**Service Requirements**”).

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

- i. preventive maintenance schedule;
- ii. arrangements and procedures for carrying out urgent repairs;
- iii. criteria to be adopted for deciding maintenance needs;
- iv. intervals and procedures for carrying out inspection of all elements of the Nuclear Medicine Facility;
- v. intervals at which the Concessionaire shall carry out periodic maintenance;
- vi. arrangements and procedures for carrying out safety related measures; and
- vii. intervals for major maintenance works and the scope thereof.

### **13.3 Authority’s right to take remedial measures**

In the event the Concessionaire does not maintain, repair and/or rectify any defects and deficiencies in the Nuclear Medicine Facility or any part thereof in conformity with the Maintenance Requirements and fails to commence remedial works within [15 (fifteen)] days of receipt of the O&M Inspection Report or notice in this behalf from the Authority or the Independent Expert, the Authority, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to [20% (twenty per cent)] of such cost shall be paid by the Concessionaire to the Authority as Damages. For avoidance of doubt, the rights of the Authority under this Clause 13.3 shall be without prejudice to its rights and remedies under Clause 13.4.

### **13.4 Overriding powers of the Authority**

- 13.3.1 If in the 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 is likely to cause material hardship or danger to any person or property, 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 removing such hardship or danger as the case may be.
- 13.4.1 In the event the Concessionaire, upon notice under Clause 13.4.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of this Article 13 along with the Damages specified therein.

### **13.5 Restoration of loss or damage to the Nuclear Medicine Facility**

Save and except as otherwise expressly provided in this Agreement, in the event that the Nuclear Medicine Facility, 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 Nuclear Medicine Facility, conforms to the provisions of this Agreement.

### **13.6 Modifications to the Nuclear Medicine Facility**

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

## **Article 14: SAFETY REQUIREMENTS**

### **14.1 Safety Requirements**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice for securing the safety of the Nuclear Medicine Facility, safety of the Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Nuclear Medicine Facility and shall comply with the safety requirement set forth in Schedule H (the “**Safety Requirements**”).

### **14.2 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 15: MONITORING OF OPERATION AND MAINTENANCE**

### **15.1 Annual Status Reports**

During Concession Period, the Concessionaire shall, no later than [30 (thirty)] days after the close of every Accounting Year, furnish to the Authority and Independent Expert an annual report, in a mutually agreed format, stating in reasonable detail the condition of the Nuclear Medicine Facility, including its compliance or otherwise with the Maintenance Requirements and the Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

### **15.2 Inspection**

The Independent Expert shall inspect the Nuclear Medicine Facility at least twice 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 and Safety Requirements and send a copy thereof to the Authority and the Concessionaire within [7 (seven)] days of such inspection.

### **15.3 Tests**

For determining that the Nuclear Medicine Facility conforms to the Maintenance Requirements, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice, Good Healthcare Practice and Good Clinical Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Authority and Independent Expert and furnish the results of such tests forthwith to the Authority and Independent Expert. One half of the cost incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

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

15.4.2. The Independent Expert 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 Nuclear Medicine Facility into compliance with the Maintenance Requirements and the procedure set forth in this Clause 15.4.2 shall be repeated until the Nuclear Medicine Facility conforms to the Maintenance Requirements.

## **Article 16: SAFETY AND SECURITY**

### **16.1 Security obligations of the Concessionaire**

- 16.1.1 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Nuclear Medicine Facility. However, Authority shall be responsible for the security arrangements for the Nuclear Medicine Facility in order to maintain safe and orderly conduct of its business and the security thereof.
- 16.1.2 The Concessionaire can install and operate a closed-circuit television system to monitor the Nuclear Medicine Facility and such other parts of the Nuclear Medicine Facility as may be necessary and expedient for safe operations of the Nuclear Medicine Facility in accordance with Good Industry Practice.
- 16.1.3 The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organization authorised by the Authority other than those resulting from wilful or grossly negligent acts and omissions of the Authority. The Authority agrees that it shall cause the relevant organization to take such actions as reasonably deemed necessary by them for the security of the Nuclear Medicine Facility, without unduly disrupting the operations of the Nuclear Medicine Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organization authorised by the Authority in discharge of their obligations for and in respect to the security of the Nuclear Medicine Facility.
- 16.1.4 The Concessionaire shall abide by and implement any instructions of the Authority and the Independent Expert for enhancing the security within and around the Nuclear Medicine Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the implementation of any instruction of the Authority or the Independent Expert.

## Article 17: SELECTION OF PATIENTS

### 17.1 Patient Mix

The Concessionaire shall provide Nuclear Medicine Services in accordance with Schedule C to the following category of Patients:

- (a) Non-Chargeable Patients
- (b) General Patients
- (c) Market Patients

### 17.2 Identification Process for Non-Chargeable Patients

- (a) If the Authority's representative determines that a Patient is eligible as a Non-Chargeable Patient, the Authority's representative shall issue a certificate to the effect that such Patient is a Non-Chargeable Patient (the "**Authorisation Certificate**"). Any Patient issued an Authorisation Certificate will be deemed to be a Non-Chargeable Patient entitled to avail Nuclear Medicine Services in accordance with the terms of this Agreement. Any Patient approaching the Nuclear Medicine Facility for availing Nuclear Medicine Services and seeking to be treated as a Non-Chargeable Patient must procure from the Authority's designated officer an Authorisation Certificate in accordance with this Clause 17.2.
- (b) The Authority shall at all times ensure that at least one Authority designated representative is stationed and on duty at the Nuclear Medicine Facility.

## **Article 18: NUCLEAR MEDICINE SERVICES**

### **18.1 Nuclear Medicine Services**

18.1.1 The Concessionaire agrees and undertakes to provide the Nuclear Medicine Services from the Appointed Date, in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits, Good Healthcare Practice and Good Clinical Practice and Good Industry Practice.

### **18.2 Quality Nuclear Medicine Services**

18.2.1 The Concessionaire shall procure that all Patients in the Nuclear Medicine Facility receive quality care in accordance with the provisions of this Agreement, Good Industry Practices, Good Clinical Practice and Good Healthcare Practice.

18.2.2 The Concessionaire shall ensure that no Patient or category of Patients is discriminated against or unduly favoured, as the case may be, in the use of the Nuclear Medicine Facility, save and except as provided in this Article 18. The Concessionaire agrees that it shall not refer any Non-Chargeable Patient and/or General Patient to any other Nuclear Medicine facility without a valid reason, which shall be recorded in writing and signed by the designated person.

18.2.3 The Concessionaire shall procure that access, assessment and continuity of care, care of Patients, management of medication, Patient rights and education, infection control and continuous quality improvement are in accordance with Applicable Laws, Applicable Permits, Good Healthcare Practice, Good Clinical Practice and Good Industry Practice.

18.2.4 The Concessionaire shall abide by the Agreement in providing Nuclear Medicine Services and the responsibilities of management outlined in NABH and other Applicable Laws.

### **18.3 Doctors and Department**

The Nuclear Medicine Facility shall have well qualified doctors, technicians/paramedical staff and nurses as per the requirements set out in Applicable Laws, Good Industry Practice, Good Clinical Practices, Good Healthcare Practices and standards of their relevant professional body, if any, for execution of their duties.

### **18.4 Drugs**

Patients shall bear the cost of all medications that are prescribed and/or administered to them.

### **18.5 Nuclear Medicine Services**

The Concessionaire shall ensure that the Nuclear Medicine Services conducted in the Nuclear Medicine Facility are in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits, Good Industry Practice, Good Clinical Practice and Good Healthcare Practice.

The Concessionaire shall not directly collect User Charges or Radiopharmaceuticals Charges from Non-Chargeable and General Patients referred by the Authority for Services availed at the Nuclear Medicine Facility. The Authority shall be liable to reimburse the Concessionaire the User Charges in respect of Services rendered to such referred Non-Chargeable and General Patients, in accordance with Article 21 of this Agreement.

The Concessionaire shall collect User Charges and Radiopharmaceuticals Charges directly from Market Patients for all the Nuclear Medicine Services availed by them at the Nuclear Medicine Facility, at the rate prescribed in the Schedule M of this Agreement. The Authority shall not be liable for any payment in respect of the Services availed by the Market Patients or any other patients which are not expressly mentioned in this Agreement.

For the avoidance of doubt, it is clarified that the Radiopharmaceutical Charges collected by the Concessionaire from Market Patients shall be remitted to the Authority in accordance with the terms of this Agreement.

#### 18.6 **Display of User Charges**

- (a) The Concessionaire shall ensure that the applicable rates of User Charges and Radiopharmaceutical Charges are readily available to Patients on demand and printed User Charges schedules are available at all convenient locations in the Project, including near the counters.
- (b) The Concessionaire shall display the rates for the User Charges and Radiopharmaceutical Charges in the Nuclear Medicine Facility at a place where it is visible to all Patients.

#### 18.7 **Radiopharmaceutical Charges**

The Concessionaire shall procure all radiopharmaceuticals required for rendering Nuclear Medicine Services to Patients solely from the Authority. To ensure timely availability and avoid supply delays, the Concessionaire shall submit a detailed requisition to the Authority at least one (1) day prior to the date of requirement. Such requisition shall specify the quantities required for each category of Patients as defined under Clause 17.1.

Radiopharmaceutical Charges are not included within the User Charges for the respective Nuclear Medicine Services. Accordingly, such charges (“**Radiopharmaceutical Charges**”) may be levied separately by the Concessionaire on Market Patients, in accordance with the rates prescribed in Schedule M.

The Concessionaire shall remit all Radiopharmaceutical Charges collected from Market Patients to the Authority in accordance with the terms of this Agreement.

Notwithstanding the foregoing, no User Charges or Radiopharmaceutical Charges shall be levied on Non-Chargeable and General Patients referred by the Authority. The required

radiopharmaceuticals for such patients shall be provided by the Authority to the Concessionaire free of cost.

In the event that the Concessionaire levies or collects any User Charges or Radiopharmaceutical Charges from Non-Chargeable and General Patients referred by the Authority, such action shall constitute a Concessionaire Event of Default under this Agreement.

**18.8 Operation of software**

The Concessionaire shall ensure to have an HMIS system at the Nuclear Medicine Facility.

**18.10 Deposit in Escrow Account**

The Parties shall collect and appropriate the User Charges, Radiopharmaceutical Charges and other charges from any additional allowed activities from the Nuclear Medicine Facility in accordance with the terms of the Agreement and deposit the same into the Escrow Account and for compliance with the provisions of this Agreement.

## **Article 19: KEY PERFORMANCE INDICATORS**

### **19.1 Key Performance Indicators**

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate and maintain the Nuclear Medicine Facility such that it achieves or exceeds the performance indicators specified in this Article 19 and Schedule I (the “**Key Performance Indicators**”).

### **19.2 Operation of the Nuclear Medicine Facility**

19.2.1 The Concessionaire shall at all times procure that:

- (a) the hours of availability of all services provided by the Nuclear Medicine Facility conforms to Good Industry Practice and are posted on the Nuclear Medicine Facility website and displayed prominently in the Nuclear Medicine Facility;
- (b) all the Nuclear Medicine Services, excluding the PET Scan and Gamma Camera Scan (operational minimum 12 hours a day), as may be required in accordance with Good Industry Practice and Applicable Laws, are available 24 (twenty-four) hours a day and on all days in a year;
- (c) the Nuclear Medicine Services are available at the Nuclear Medicine Facility at least from Monday to Saturday of each week between 9.00 am and 5.00 pm and on Public Holidays between 9.00 am to 2.00 pm. The operational hours of the Nuclear Medicine Facility shall be in conformity with the operational hours of CNCI;
- (d) Emergency services related to Nuclear Medicine Services are available at the Nuclear Medicine Nuclear Medicine Facility, 24 (twenty-four) hours a day and on all days in a year with adequately trained staff to provide these emergency services;
- (e) electricity backup with optimal capacity of genset is maintained, in accordance with Good Industry Practice;
- (f) all toilets are clean, hygienic and odour free;
- (g) adequate lighting and ventilation with minimum air change per hour is provided in the Nuclear Medicine Facility at all times in accordance with Good Industry Practice;
- (h) adequate temperature control and humidity is maintained in the Nuclear Medicine Facility;

- (i) all phone calls relating to the Nuclear Medicine Facility are attended to within [30 (thirty) seconds;
- (k) shall ensure the downtime of PET Scan shall not exceed 96 (ninety-six) consecutive hours at any instance. This shall apply to all manner of downtime, including both scheduled and unscheduled downtime due to maintenance, repairs, and/or breakdown of PET Scan, but not including shut down of PET Scan due to absence of demand;
- (m) In the event of a shutdown of the Nuclear Medicine Facility for the reason solely attributable to the Authority, such period shall not be counted towards the monthly permissible downtime limit of five percent (5%). It is clarified in this regard that, the reasons attributable to the Authority shall be certified by the Independent Expert; and
- (n) shall ensure timely scheduling and delivery of Services to Non-Chargeable and General Patients referred by the Authority, such that the same are rendered within one (1) week from the date of such referral.

19.2.2 The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Clause 19.2 and for repeated shortfall in performance during a quarter, as may be determined by the Authority for reasons to be recorded in writing based on Patient feedback and inspections by the Authority, it shall pay Damages equal to [0.05% (zero point zero five per cent) of the Performance Security] for every such default or part thereof, subject to a maximum of 10% (ten per cent) of the Performance Security.

### 19.3 Periodic status report

19.3.1 The Concessionaire shall during the Concession Period, furnish to the Authority and the Independent Expert, a quarterly report, setting forth the details provided in Clause 19.3.2 and IEC activities, by no later than 7 (seven) days after the close of each quarter.

19.3.2 The report specified in Clause 19.3.1. shall state in reasonable detail the compliance of the Nuclear Medicine Facility with all the Key Performance Indicators specified in this Article 19 and Schedule I 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 Nuclear Medicine Facility.

### 19.4 Patient Charter

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

## 19.5 Human Resources

- (a) The Concessionaire shall procure and ensure that all staff engaged in the provision of Nuclear Medicine Services are suitably qualified and receive sufficient training and instructions in accordance with Good Industry Practice and standards of their relevant professional body, if any, for execution of their duties, which shall at a minimum be compliant with the performance standards set out at Article 18.
- (b) The Concessionaire shall comply with the standards set forth in the Applicable Laws and Schedule D or equivalent authority and other prevailing guidelines/regulations, as the case may be.
- (c) The Concessionaire shall regularly supervise and monitor the performance of the Human Resource to ensure that they comply with this Agreement, Applicable Laws and Good Industry Practice.
- (d) The Concessionaire shall promptly take appropriate remedial measures in the event of any non-compliance with the requirements set forth in this Clause 19.5.
- (e) The Concessionaire shall recruit and manage all the required personnel at each level of the Nuclear Medicine Services and shall bear the cost in respect of all staff/personnel required to be employed by it in order to reasonably deliver the Nuclear Medicine Services and operation & maintenance obligation, subject to and in accordance with term of this Agreement;
- (f) The Concessionaire shall adopt an effective human resources policy in accordance with the Applicable Laws;
- (g) The Concessionaire shall, during the Concession Period employ fully qualified, experienced and competent medical personnel including specialists and designate and appoint suitable officers/staff/representatives to work and supervise in the Project and to deal with the Authority.
- (h) During the Concession Period, the Concessionaire shall replace such personnel at its own cost, in line with the service obligations under this Agreement.

## 19.6 Equipment

- (a) The Concessionaire shall procure and maintain annual maintenance contract (AMC) and comprehensive maintenance contract (CMC) for all the Equipment handed over by the Authority as more specifically specified at Schedule A, throughout the Concession Period.
- (b) The Concessionaire shall operate and maintain all Equipment, medical devices, apparatus, facilities and all other support and ancillary infrastructure as necessary for operations and maintenance of the Nuclear Medicine Facility and providing Nuclear Medicine Services as per the Scope of the Project and as required under the Applicable

Laws.

- (c) The Concessionaire shall operate and maintain the Equipment, including equipment meeting the specifications or equivalent to the specifications set out at Schedule G.
- (d) The Concessionaire shall ensure that all Equipment, medical devices, apparatus and facilities are in running and working condition and are calibrated, upgraded from time to time according to their technical update and in compliance with the certification requirements of the concerned competent authorities.
- (e) All Equipment including PET Scan equipment that may have the potential to cause radiation risk must be AERB approved. It is the responsibility of the Concessionaire to obtain required licenses from AERB to operationalise Nuclear Medicine Facility. It is the responsibility of the Concessionaire to provide a Radiation Safety Officer (RSO) for Nuclear Medicine Facility. Such RSO may be made available when required.

### 19.7 User Survey

19.7.1 The Authority may engage an independent expert agency to conduct a sample survey of User satisfaction (the “**User Survey**”) once every quarter to determine the compliance of the provisions of this Article 19 by the Concessionaire. The nature and content of the User Survey shall be determined by the Authority in consultation with the Concessionaire to procure that the outcome is objective and represents a cross-section of Users. For avoidance of doubt, it is agreed that in designing the User Survey, the Authority shall rely on Good Industry Practice and conform to similar surveys undertaken from time to time such as the surveys conducted at similar Nuclear Medicine Facility in other States.

## **Article 20: INDEPENDENT EXPERT**

### **20.1 Independent Expert**

The Authority shall appoint, no later than [90 (ninety)] days from the Operation Date, a third-party agency (the “**Independent Expert**”) for the Concession Period. Provided that the Authority shall have the right to appoint any of its agencies or departments to monitor the Nuclear Medicine Facility until the Independent Expert is appointed in accordance with this Clause 20.1. The provisions of this Agreement with respect to the Independent Expert shall apply mutatis mutandis to such agency or department until the Independent Expert is appointed in accordance with the provisions of Schedule L and this Clause 20.1 and such provisions shall be repeated after expiry of each appointment.

### **20.2 Duties and functions**

20.2.1 The Independent Expert shall carry out the following duties and functions in accordance with the Agreement:

- (a) discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule L.
- (b) submit regular periodic reports at least [once every quarter] to the Authority in respect of its duties and functions set forth in Schedule L.
- (c) A true copy of all communications sent by the Authority to the Independent Expert, and by the Independent Expert, to the Authority shall be sent forthwith by the Independent Expert, to the Concessionaire.
- (d) A true copy of all communications sent by the Independent Expert, to Concessionaire and by the Concessionaire to the Independent Expert, shall be sent forthwith by the Independent Expert, to the Authority.

### **20.3 Authorised signatories**

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

### **20.4 Remuneration**

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

## **20.5 Joint Coordination Committee**

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

**Part IV**  
**FINANCIAL COVENANTS**

## **Article 21: USER AND RADIOPHARMACEUTICAL CHARGES**

**21.1** On and from the Operation Date of Nuclear Medicine Facility till the Transfer Date, the Authority shall have the sole and exclusive right to demand, collect and appropriate User Charges and Radiopharmaceutical Charges as more particularly detailed in Schedule M, directly from the Non-Chargeable and General Patients referred by the Authority for availing the Services at the Nuclear Medicine Facility.

On and from the Operation Date of Nuclear Medicine Facility till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate User Charges and Radiopharmaceutical Charges as more particularly detailed in Schedule M, directly from the Market Patients for all the Services availed by them at the Nuclear Medicine Facility.

### **21.2 Payment of User Charges for Non-Chargeable and General Patients by the Authority**

Subject to Clause 21.1, the Authority shall reimburse the Concessionaire the User Charges in respect of Services availed by Non-Chargeable and General Patients referred by the Authority to the Nuclear Medicine Facility, in accordance with this Agreement.

Prior to effecting such reimbursement, the Authority shall be entitled, in accordance with Clause 18.7, to adjust and deduct the cost of radiopharmaceuticals (i.e., Radiopharmaceutical Charges) availed by the Concessionaire for rendering Services to Market Patients, from any amounts due and payable by the Concessionaire to the Authority under this Agreement.

In the event that any amount remains payable to the Concessionaire after such adjustment, the Authority shall reimburse the balance amount to the Concessionaire as per the Clause 21.4.

### **21.3 Payment of Radiopharmaceutical Charges for Market Patients by the Concessionaire**

Subject to Clause 18.7, the Concessionaire shall remit all Radiopharmaceutical Charges collected from Market Patients to the Authority in accordance with the terms of this Agreement.

### **21.4 Billing and Payment**

**21.4.1** Commencing from the month immediately following the month in which the Operation Date occurs, the Concessionaire shall, by the 5th (fifth) day of each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit to the Authority and the Escrow Bank, in triplicate, a monthly invoice (the “**Monthly Invoice**”) duly signed by the authorised signatory of the Concessionaire. The Monthly Invoice shall specify the number of referred Non-Chargeable and General Patients to whom the Concessionaire has rendered and completed the Services during the immediately preceding month, together with details of the corresponding User Charges. Such details shall be supported by records duly captured and uploaded in the HMIS. The amounts set out in the Monthly Invoice shall be subject to adjustment to the extent of any damages or payments due from the Concessionaire to the Authority in accordance with the terms of this Agreement. For the avoidance of doubt, it is clarified that the Monthly Invoice shall be based solely on records of Services duly

rendered to Non-Chargeable and General Patients, as evidenced by entries recorded in the HMIS.

- 21.4.2 The Concessionaire shall, with each Monthly Invoice, submit (i) a self-certification along with documentary evidence/proof that the amounts claimed in the invoice are correct and in accordance with the provisions of this Agreement; (ii) details of Radiopharmaceuticals availed by the Concessionaire from the Authority, specifying quantities utilized for each category of Patients; (iii) the net amount of damages which shall be adjusted from the payments due to the Concessionaire; and (vi) proof towards number of Non-Chargeable and General Patients to which Services are rendered as per Clause 21.1.
- 21.4.3 Within 15 (fifteen) days of receipt of a Monthly Invoice, the Authority/Independent Expert shall verify it for any apparent/gross error such as mathematical miscalculations or any errors in light of the documents submitted by the Concessionaire. In the event that the Authority/Independent Expert notifies any error in writing to the Concessionaire within the time period mentioned above, the Concessionaire shall immediately rectify such error and re-issue the Monthly Invoice by no later than 3 (three) days of receipt of notification of such error from the Authority/Independent Expert. The process set out in this Clause 21.4.1 shall then apply to any re-issued Monthly Invoice.

In the event that the Authority /Independent Expert does not notify within 15 (fifteen) days of receipt of the Monthly Invoice, such Monthly Invoice shall be deemed to have been accepted by the Authority only for the payment of 70% of the Monthly Invoice amount.

In case the Authority does not make the payment after adjustment of Radiopharmaceutical Charges and any damages against KPI(s) due from the Concessionaire to the Authority in accordance with the terms of this Agreement within 15 (fifteen) days of receipt of the Monthly Invoice, only 70% of the amount claimed under such Monthly Invoice shall be made by the Escrow Bank through electronic transfer, to the designated Bank account of the Concessionaire.

The Authority shall have additional 30 (thirty) days from date of such payment made to the Concessionaire to clear the remaining 30% of the amount claimed under such Monthly Invoice after adjustment of Radiopharmaceutical Charges and any damages against KPI(s) due from the Concessionaire to the Authority in accordance with the terms of this Agreement. The said adjustment on account of Radiopharmaceutical Charges and damages shall be undertaken regardless of anything to the contrary contained in this Agreement. For avoidance of doubt, it is clarified, that the 30% shall not be automatically or directly paid from the Escrow Account to the Concessionaire, the payment of 30% of the Monthly Invoice amount shall be subject to Authority's approval and directions.

For avoidance of doubt, it is clarified that the Monthly Invoice shall be cleared within a maximum of 45 (forty-five) days of receipt of a Monthly Invoice after adjustment of Radiopharmaceutical Charges and any damages against KPI(s) due from the Concessionaire to the Authority in accordance with the terms of this Agreement.

The Radiopharmaceutical Charges, as specified in Clause 18.7, and any Damages levied in accordance with Schedule I on account of non-performance, breach, or non-observance of

Key Performance Indicators (KPIs) by the Concessionaire, shall be adjusted against and deducted from the Monthly Invoice submitted by the Concessionaire. The net amount payable thereafter shall be paid to the Concessionaire in accordance with Clause 21.4.

## **Article 22: ESCROW ACCOUNT**

### **22.1 Escrow Account**

22.1.1 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.

22.1.2 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 and the Escrow Bank, which shall be substantially in the form set forth in Schedule J.

### **22.2 Deposits into Escrow Account**

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

- (a) all Revenues from the Nuclear Medicine Facility; and
- (b) all payments by the Authority, if any.

### **22.3 Withdrawals during Concession Period**

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

- (a) statutory payments, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) O&M Expenses incurred by the Concessionaire;
- (c) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (d) Radiopharmaceutical Charges for Market Patients due and payable to the Authority;
- (e) 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;
- (f) balance, if any, in accordance with the instructions of the Concessionaire.

22.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 22.3.2, except with the prior written approval of the Authority.

### **22.4 Withdrawals upon Termination**

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

- (a) payroll dues and related statutory payments thereof, all Taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) outstanding Radiopharmaceutical Charges for Market Patients;
- (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.
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 30;
- (f) incurred or accrued O&M Expenses; and
- (g) balance, if any, in accordance with the instructions of the Concessionaire.

22.4.2 The provisions of this Article and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 22 have been discharged.

## **Article 23: INSURANCE**

### **23.1 Insurance during Concession Period**

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

### **23.2 Insurance Cover**

23.2.1 Without prejudice to the provisions contained in Clause 23.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Nuclear Medicine Facility;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (d) above.

### **23.3 Notice to the Authority**

No later than [45 (forty five)] days prior to commencement of the Concession Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 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 hereto, and in the event of any difference

or disagreement relating to any such insurance, the Dispute Resolution Procedure in Article 35 shall apply.

#### 23.4 Evidence of Insurance Cover

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

#### 23.5 Remedy for failure to insure

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

#### 23.6 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 insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, Affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### 23.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, Affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this

Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

### **23.8 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages and balance remaining, if any, shall be applied for any necessary repair, reconstruction, reinstatement, replacement, improvement in the Nuclear Medicine Facility.

### **23.9 Compliance with conditions of insurance policies**

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

## **Article 24: ACCOUNTS AND AUDIT**

### **24.1 Audited accounts**

- 24.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the Revenues from provision of Nuclear Medicine Facility, and all incomes derived or collected by it from or on account of the Nuclear Medicine Facility and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall provide [2 (two)] copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within [90 (ninety)] days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the Revenue records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority only for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 24.1.2 The Concessionaire shall, within [30 (thirty)] days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 24.1.3 On or before the [31st (thirty-first)] day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on Revenues and such other information as the Authority may reasonably require.

### **24.2 Appointment of Auditors**

- 24.2.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its Statutory Auditors, a firm having at least five practicing Chartered Accountants on its rolls. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 24.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of [45 (forty-five)] days to the Authority, subject to the replacement Statutory Auditors being appointed in accordance with the Article 24.
- 24.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right but not the obligation, to appoint at its cost from time to time and at any time, another firm of Chartered Accountants (the “Additional Auditors”) to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are

required to do, undertake or certify pursuant to this Agreement.

### **24.3 Certification of claims by Statutory Auditors**

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

### **24.4 Set-off**

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 24.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

**Part V**  
**FORCE MAJEURE AND TERMINATION**

## Article 25: FORCE MAJEURE

### 25.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 25.2, 25.3 and 25.4 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: (a) is beyond the reasonable control of the Affected Party; and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (c) has Material Adverse Effect on the Affected Party.

### 25.2 Non-Political Event

25.2.1 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 ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of [24 (twenty four)] hours and an aggregate period exceeding [7 (seven)] days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 25.3;
- (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;
- (e) any event or circumstances of a nature analogous to any of the foregoing.

### 25.3 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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty four)] hours and exceeding an aggregate period of [7 (seven)] days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents operation of the Project by the Concessionaire for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
- (e) any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (f) any Indirect Political Event that causes a Non-Political Event; or
- (g) any event or circumstances of any nature analogous to any of the foregoing.

#### **25.4 Political Event**

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 32 and its effect, in financial terms, exceeds the sum specified in Clause 32.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no-objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license,

authorisation, no-objection certificate, exemption, consent, approval or permit;

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

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

25.5.1 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 25 with evidence in support thereof;
- (b) the estimated duration and 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.

25.5.2 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 performance of its obligations under this Agreement.

25.5.3 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 under Clause 25.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

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

25.6.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of the Conditions Precedent, shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

During the Operations Period, whereupon the Concessionaire is unable to provide the Nuclear Medicine Services despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the aforesaid 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 the aforesaid Services on account thereof; provided that in the event of reduction in the Nuclear Medicine Services on account of partial suspension of Services which cause the Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period over the preceding [2 (two) years], the Authority shall extend the Concession Period in proportion to the loss of such Gross Revenue due to Force Majeure. For avoidance of doubt, loss of [25% (twenty-five per cent)] in Gross Revenue for [4 (four)] days as compared to the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two) years] shall entitle the Concessionaire to the extension of [1 (one)] day in the Concession Period.

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

- 25.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 25.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the “**Force Majeure Costs**”) shall be allocated and paid as follows:
- (i) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
  - (ii) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
  - (iii) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.
- 25.7.3 For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues from and all incomes derived or collected by it from or on account of the Nuclear Medicine Facility and the Nuclear Medicine Services, or debt repayment obligations, and for determining such costs, information contained in the financial package may be relied upon to the extent that such information is relevant.

25.7.4 Save and except as expressly provided in this Article, 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.

## **25.8 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 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 the other Party to make a representation and may after the expiry of such [15 (fifteen)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

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

In the event of termination of this Agreement by reason of a Force Majeure Event, the following provisions shall apply:

- a. If Termination is on account of a Non-Political Event, the Authority shall not be liable to make any Termination Payment to the Concessionaire. Such termination shall be deemed to constitute a Concessionaire Default in accordance with Clause 28.3.1 and shall be treated as such for all purposes under this Agreement.
- b. If Termination is on account of a Political Event and Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 28.3.2 as if it were an Authority Default.

## **25.10 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 in accordance with Article 35; 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.

## **25.11 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.

## 25.12 Relief for Unforeseen Events

25.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and Revenues of the Nuclear Medicine Facility. Within [15 (fifteen)] days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 25.12.

25.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise 1 (one) member each to be nominated by both Parties from among persons who have been judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

25.12.3 The conciliation tribunal referred to in Clause 25.12.2 shall conduct its proceedings in accordance with the provisions of Article 35 as if it is an arbitration proceeding under that Article, save and except as provided in Clause 25.12.

25.12.4 The conciliation tribunal referred to in this Clause 25.12 shall conduct preliminary proceedings to satisfy itself that:

- (c) an Unforeseen Event has occurred;
- (d) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (e) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further

proceedings under this Clause 25.12.

25.12.5 Upon completion of the conciliation proceedings referred to in this Clause 25.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;
- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

25.12.6 Within [15 (fifteen)] days of receiving the order referred to in Clause 25.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the obligations relating to the Nuclear Medicine Facility in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have the force and effect as if they form part of the Agreement.

## **Article 26: COMPENSATION FOR BREACH OF AGREEMENT**

### **26.1 Compensation for default by the Concessionaire**

Subject to the provisions of Clause 26.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 26.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

### **26.2 Compensation for default by the Authority**

Subject to the provisions of Clause 26.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material breach or default but shall not include loss on account of Revenues from the Nuclear Medicine Facility and all incomes derived or collected by it from or on account of the Nuclear Medicine Facility, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the financial package may be relied upon to the extent it is relevant.

### **26.3. Extension of Concession Period**

Subject to the provisions of Clause 26.4, in the event that a material breach or default of this Agreement set forth in Clause 26.2 causes delay in achieving Operations Date or leads to reduction in the realisation of Gross Revenues, as the case may be, the Authority shall, in addition to payment of compensation under Clause 26.2, extend the Concession Period, such extension being equal in duration to the period by which Operations Date was delayed or Gross Revenue was reduced on account thereof, as the case may be; and in the event of reduction in Gross Revenue to decline below [75% (seventy five per cent)] of the Average Daily Gross Revenue for the corresponding period during the preceding [2 (two)] years, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Gross Revenue. For avoidance of doubt, loss of [25% (twenty-five per cent)] in realisation of Gross Revenue for [4 (four)] days, as compared to the Average Daily

Gross Revenue for the corresponding period during the preceding [2 (two)] years shall entitle the Concessionaire to extension of [1 (one)] day in the Concession Period.

**26.4 Compensation to be in addition**

Compensation payable under this Article 26 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

**26.5 Mitigation of costs and damage**

The non-defaulting Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of the Agreement by the other Party.

## **Article 27: SUSPENSION OF CONCESSIONAIRE'S RIGHTS**

### **27.1 Suspension upon Concessionaire Default**

Upon occurrence of Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Revenues from the Nuclear Medicine Facility and all other incomes received by it from or on account of the Nuclear Medicine Facility pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorised any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding [180 (one hundred and eighty)] days from the date of issue of such notice; provided that upon written request from the Concessionaire, the Authority shall extend the aforesaid [180 (one hundred and eighty)] days by a further period not exceeding [90 (ninety)] days.

### **27.2 Authority to act on behalf of Concessionaire**

27.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Revenues under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension.

27.2.2 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 in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or take 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 licenses and sub-licenses respectively, the Authority or any other person authorised by it to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Nuclear Medicine Facility and their operation & maintenance, which is used or created by the Concessionaire in performing its obligations under this Agreement.

### **27.3 Revocation of Suspension**

27.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding [90 (ninety)] days from the date of Suspension, it shall

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

27.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding [90 (ninety)] days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### 27.4 Termination

27.4.1 At any time during the period of Suspension under this Article 27, the Concessionaire may by notice request 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 as if it is a Concessionaire Default under Clause 27.1.

27.4.2. 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 27.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a termination Notice had been issued by the Authority upon occurrence of Concessionaire Default.

## Article 28: TERMINATION

### 28.1 Termination for Concessionaire Default

28.1.1 Subject to Applicable Laws and 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 a Cure Period of [60 (sixty)] days, the Concessionaire shall be deemed to be in default of the Agreement (the “**Concessionaire Default**”), unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (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 [15 (fifteen)] days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, or cure of the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of [120 (one hundred and twenty)] days;
- (c) the Concessionaire abandons or manifests intension to abandon the operation of the Nuclear Medicine Facility without the prior written consent of the Authority;
- (d) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (e) Five (5) instances, at any time during the Concession Period, where the Concessionaire breaches any condition of this Agreement or fails to schedule and render Services to Non-Chargeable and General Patients referred by the Authority within one (1) week from the date of referral (provided that Services are operational and being provided to Market Patients)
- (f) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (g) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (h) the Concessionaire repudiates this Agreement or otherwise takes an action or evidences or conveys an intention not to be bound by the Agreement;
- (i) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

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;

- (j) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (l) the Concessionaire has been, or is in the process of being amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect: 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 remain in full force and effect.
- (m) occurrence of any Insolvency Event;
- (n) 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;
- (o) 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;
- (p) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (q) the Concessionaire issues Termination Notice in violation of the provisions of

this Agreement;

- (r) the Concessionaire commits a default in complying with any other provisions of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority;
- (s) the Concessionaire has failed to recruit and deploy duly qualified healthcare professionals / specialists as per the requirements set out in Schedule- D, Applicable Laws and other provisions of this Agreement;
- (t) the concessionaire has failed to maintain annual maintenance contract (AMC) and comprehensive maintenance contract (CMC) for all the Equipment handed over by the Authority as more specifically specified at Schedule A; and
- (u) In case, in any Financial Year during the Concession Period, if the Nuclear Medicine Facility is not operational for 15 days (during operational hours excluding planned maintenance period), the Authority may decide to terminate the Agreement. It is further clarified, in this regard, that the said event shall not be applicable in case where the Nuclear Medicine Facility is not operational due to the reason which are not attributable to the Concessionaire, however, the said reason shall be certified by the Independent Expert in consultation with OEM through its authorised person holding power of attorney.

28.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant [15 (fifteen)] days to the Concessionaire to make a representation, and may after the expiry of such [15 (fifteen)] days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 28.3.3.

## 28.2 Termination for Authority Default

28.2.1 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 fails to handover the Nuclear Medicine facility in accordance with Article 10; or

- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.
- (d) the Authority fails to provide the Radiopharmaceutical to the Concessionaire, as requested and required by the Concessionaire, sufficiently in advance of their scheduled use for the rendering of Nuclear Medicine Services to the Patients;

28.2.2 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.

### **28.3 Termination Payment**

28.3.1 Upon Termination on account of a Concessionaire Default during the Concession Period:

- (a) the entire Performance Security would be forfeited as Damages;
- (b) the Authority shall pay to the Concessionaire the outstanding User Charges in respect of Services rendered to Non-Chargeable and General Patients referred by the Authority, after adjusting and deducting therefrom any amounts due and payable to the Authority on account of Radiopharmaceutical Charges, damages, or other liabilities arising under this Agreement, as determined in accordance with the provisions of this Agreement, as of the Termination Date;
- (c) Concessionaire shall hand over all the Project Assets (including licenses obtained under the Applicable Law and any other Applicable Permit obtained, AMC and CMC of the Equipment). Further, ownership of all databases as well as intellectual property rights for the databases generated shall vest exclusively with the Authority.

28.3.2 Upon Termination on account of an Authority Default during the Concession Period:

- (a) the Authority shall pay to the Concessionaire the outstanding User Charges in respect of Services rendered to Non-Chargeable and General Patients referred by the Authority, after adjusting and deducting therefrom any amounts due and payable to the Authority on account of Radiopharmaceutical Charges, , as determined in accordance with the provisions of this Agreement, as of the Termination Date;
- (b) the Authority shall return the Performance Security to the Concessionaire, after deducting therefrom any amounts due to the Authority on account of damages or other liabilities arising under this Agreement, as determined in accordance with the terms of this Agreement; and

- (c) Concessionaire shall hand over all the Project Assets (including licenses obtained under the Applicable Law and any other Applicable Permit obtained, AMC and CMC of the Equipment). Further, ownership of all databases as well as intellectual property rights for the databases generated shall vest exclusively with the Authority.

28.3.3 Termination Payment shall become due and payable to the Concessionaire within [15 (fifteen)] days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [3% (three per cent) above the Bank Rate] on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days. For avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

28.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 28 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.

#### 28.4 **Other rights and obligations of the Authority**

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

- (i) take possession and control of the Project Assets forthwith;
- (ii) take possession and control of all materials, stores, implements, construction plants and Equipment on or about the Nuclear Medicine Facility;
- (iii) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering the Nuclear Medicine Facility;
- (iv) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 29.1; and
- (v) 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 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 form part of the Termination Payment.

### **28.5 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 28, 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 29: DIVESTMENT OF RIGHTS AND INTEREST**

### **29.1 Divestment Requirements**

29.1.1 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 assets forming part of the Nuclear Medicine Facility;
- (b) deliver forthwith the actual or constructive possession of the Project Assets free and clear of all Encumbrances;
- (c) cure all Project Assets, including all defects and deficiencies so that the Project is compliant with the Safety Requirements, Service Requirements and Maintenance Requirements; provided that in the event of Termination during the Concession Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them in a and good working condition, save normal wear and tear;
- (d) deliver and transfer relevant records, reports, Intellectual Property, AMC and CMC of Equipment (those having validity period) and other licenses pertaining to the Nuclear Medicine Facility and its operation and maintenance, including all programmes and manuals pertaining thereto;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws pertaining to the Nuclear Medicine Facility;
- (f) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights of the Concessionaire in the Nuclear Medicine Facility;
- (g) the Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Project;
- (h) the staff recruited by the Concessionaire including the medical personnel and officers/staff/representatives, shall not be transferred to the Authority upon termination of this Agreement; and
- (i) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee.

29.1.2 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.

## **29.2 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 Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection of the Nuclear Medicine Facility, compliance by the Concessionaire with the Maintenance Requirements of the Nuclear Medicine Facility, 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 of the Nuclear Medicine Facility shall be cured by the Concessionaire at its cost in relation to curing of defects or deficiencies under this Article 29.

## **29.3 Cooperation and assistance on transfer of Nuclear Medicine Facility**

29.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Nuclear Medicine Facility in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Nuclear Medicine Facility.

29.3.2 The Parties shall provide to each other, [9 (nine) months] prior to the Expiry Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Nuclear Medicine Facility following the Expiry Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Nuclear Medicine Facility until the expiry of [6 (six) months] after the Expiry Date.

29.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value, determined by a reputed firm mutually agreed upon and appointed by the Parties, and free from any encumbrance all or any part of Nuclear Medicine Facility but which does not form part of the assets specified in Clause 29.1.1 and is reasonably required in connection with operation of the Nuclear Medicine Facility. For avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure in Article 35 shall apply.

## 29.4 Vesting Certificate

The divestment of all rights, title and interest in the Nuclear Medicine Facility 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 K (the “**Vesting Certificate**”), which shall have the effect of constituting evidence of divestment by the Concessionaire of all of its rights in the Nuclear Medicine Facility, 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 Nuclear Medicine Facility on the footing that all Divestment Requirements have been complied with by the Concessionaire.

## 29.5 Divestment costs

- 29.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights in the Nuclear Medicine Facility 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.
- 29.5.2 In the event of any dispute relating to matters covered by and under this Article, the Dispute Resolution Procedure in Article 35 shall apply.

## **Article 30: DEFECTS LIABILITY AFTER TERMINATION**

### **30.1 Liability for Defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Nuclear Medicine Facility 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 Independent Expert in the Nuclear Medicine Facility 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 Nuclear Medicine Facility 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 funds retained in the Escrow Account under the provisions of Clause 30.2 or from the Performance Guarantee provided thereunder. For avoidance of doubt, the provisions of this Article 28 shall not apply if Termination occurs prior to Operations Date.

### **30.2 Inspection by Independent Expert**

30.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 30.2.3, a sum equal to the average of [monthly Gross Revenue] during the year immediately preceding the Expiry Date shall be retained in the Escrow Account for a period of [180 (one hundred and eighty)] days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 30.1.

30.2.2 Without prejudice to the provisions of Clause 30.2.1, the Independent Expert shall carry out an inspection of the Nuclear Medicine Facility at any time between [210 (two hundred and ten)] and [180 (one hundred and eighty)] days prior to the Termination and if it recommends that the status of the Nuclear Medicine Facility is such that the sum larger than the amount stipulated in Clause 30.2.1 should be retained in Escrow Account and for a period longer than the aforesaid [180 (one hundred and eighty)] days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.

30.2.3 The Concessionaire may, for the performance of its obligations under this Article 30, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 30.2.1 or Clause 30.2.2. as the case may be, and for the period specified therein, substantially in the form set forth in Schedule F (the "**Performance Guarantee**"), to be modified, *mutatis-mutandis*, for this purpose, and the Authority

shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 30. Upon furnishing of the Performance Guarantee under this Clause 30.2.3, the retention of funds in Escrow Agreement in terms of Clause 30.2.1 or 30.2.2, as the case may be, shall be dispensed with.

**Part VI**  
**OTHER PROVISION**

## **Article 31: ASSIGNMENT AND CHARGES**

### **31.1 Restrictions on assignment and charges**

31.1.1 Subject to Clauses 31.2 and 31.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

31.1.2 Subject to the provisions of Clause 31.2, 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.

### **31.2 Permitted assignment and charges**

31.2.1 The restraints set forth in Clause 31.1 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 Nuclear Medicine Facility or liens or encumbrances required by any Applicable Law;
- (b) mortgages, pledges or hypothecation of goods or assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Nuclear Medicine Facility, and as security only for indebtedness to the lenders and/or for working capital arrangements for the Nuclear Medicine Facility; and

31.2.2. The Concessionaire shall not, directly or indirectly, transfer, mortgage, pledge, assign, hypothecate, encumber, let or sub-let or part with the occupation of the Nuclear Medicine Facility or any part thereof and/or the benefits arising out of this Agreement or any part thereof in any manner whatsoever to any person, without the prior written consent of the Authority. The Concessionaire may not permit or sub-let any third party to operate permissible activities in the Nuclear Medicine Facility such as offices, restaurant, coffee shops, or any other facilities within the Nuclear Medicine Facility for a period that shall be coterminous with or, less than the Concession Period and upon expiry of the Concession Period or Termination of the Agreement, all such permissions granted to third parties to operate or maintain any facilities or amenities as aforesaid shall automatically cease and terminate forthwith.

### **31.3 Assignment by the Authority**

31.3.1 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.

- 31.3.2. Any assignment under this Article 31 shall be subject to the approvals and consents required therefore under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

## **Article 32: CHANGE IN LAW**

### **32.1 Increase in costs**

- 32.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds [Rs. 1 crore (Rupees one crore)] in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:
- 32.1.2 Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 35. For avoidance of doubt, it is agreed that this Clause 32.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **32.2 Reduction in costs**

- 32.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds [Rs. 25 lakh (Rupees twenty-five lakh)] in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:
- 32.2.2 Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt

of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 35. For avoidance of doubt, it is agreed that this Clause 32.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### **32.3 Protection of NPV**

Pursuant to the provisions of Clause 32.1 and 32.2 for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall endeavour to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, Revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the debt (if any).

### **32.4 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 32 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

### **32.5 No claim in the event of recovery from Users**

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the services utilised by such Users.

## **Article 33: LIABILITY AND INDEMNITY**

### **33.1 General indemnity**

- 33.1.1 The Concessionaire shall indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority owned and/or controlled entities or enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire 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 the Authority or to any User or from any act and/or omission by the Concessionaire arising out of gross negligence, fraud or wilful misconduct resulting in any harm, loss, damage, bodily injury or sickness to a person or harm, loss or damage to any property, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 33.1.2. The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of: (i) defect in title and/or the rights of the Authority in the land comprised in the Nuclear Medicine Facility; 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.

### **33.2 Indemnity by the Concessionaire**

- 33.2.1 Without limiting the generality of Clause 33.1 the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
  - (b) payment of Taxes required to be made by the Concessionaire in respect of the income or other Taxes of the 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;

- (d) its omissions or acts of fraud, gross negligence and wilful misconduct;
- (e) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (f) loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

33.2.2 Without limiting the generality of the provisions of this Article 33, 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 Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Nuclear Medicine Facility. 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 Nuclear Medicine Facility, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process or modify the same so that it becomes non-infringing.

### 33.3 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 33 (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.

### 33.4 Defense of claims

33.4.1 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, the Indemnifying Party shall be entitled, at its option, to assume and control the defense 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 defense. 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.

33.4.2 If the Indemnifying Party has exercised its rights under Clause 33.3, 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).

33.4.3 If the Indemnifying Party exercises its rights under Clause 33.3, 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;
- (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;
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a Material Adverse Effect upon it beyond the scope of this Agreement:

Provided that if Sub-Clauses (b) (c) or (d) of this Clause 33.4 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.

### **33.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 33, 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.

### **33.6 Limitation of Liability**

33.6.1 Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever shall be subject to the provisions under this Agreement. For avoidance of doubt, the limitation hereunder shall not apply to any or all liabilities in respect of third parties. The Parties agree that the Concessionaire's liability will be uncapped in case of any liabilities arising due to:

- (a) any amount payable as indemnity to the Authority due to its acts or omissions or fraud, gross negligence and wilful misconduct;
- (b) breach of any Applicable Laws or any Applicable Permits;
- (c) any claims or loss on account of Intellectual Property rights violation by the Concessionaire;
- (d) any personal bodily injury or death of any person caused by, arising out of or in connection with its performance of this Agreement; or
- (e) any loss of or physical damage to property of the Authority or any third party caused by, arising out of or in connection with the performance of this Agreement.

### **33.7 Survival on Termination**

The provisions of this Article 33 shall survive Termination.

## **Article 34: RIGHTS TO THE NUCLEAR MEDICINE FACILITY**

### **34.1 Rights to the Nuclear Medicine Facility**

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

### **34.2 Access rights of the Authority and others**

34.2.1 The Concessionaire shall allow free access to the Nuclear Medicine Facility at all times to the Authority Representatives, the Independent Expert, and to the persons duly authorised by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

34.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 10 allow free access to the Nuclear Medicine Facility at all times for the authorised persons and vehicles of the relevant Government Instrumentality.

### **34.3 Property taxes**

All property taxes with respect to the site of Nuclear Medicine Facility shall be payable by the Authority as owner of the site of Nuclear Medicine Facility.

### **34.4 Restriction on sub-letting**

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

## Article 35: DISPUTE RESOLUTION

### 35.1 Dispute resolution

- (a) 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 35.2.
- (b) 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.

### 35.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing referred to in Clause 35.1 (a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 35.3.

### 35.3 Arbitration

- (a) Any Dispute which is not resolved amicably by conciliation, as provided in Clause 35.2, shall be finally decided by reference to arbitration by a board of arbitrators appointed in accordance with Clause 35.3 (b). Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi, 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 Kolkata, and the language of arbitration proceedings shall be English.
- (b) There shall be a board of three arbitrators, of whom each Party shall appoint

one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi.

- (c) The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 35 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.
- (d) 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.
- (e) 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.

#### **35.4 Adjudication by Regulatory Authority or Commission**

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 35.3, 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 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 36: DISCLOSURE

### 36.1 Disclosure of Specified Documents

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

### 36.2 Disclosure of Documents relating to safety

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

### 36.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 36.1 and 36.2, 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 Articles.

*Explanation:*

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 36.1 and 36.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## **Article 37: REDRESSAL OF PUBLIC GRIEVANCES**

### **37.1 Complaints Register**

- (a) The Concessionaire shall maintain a public relations office at the Nuclear Medicine Facility 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**”), and information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Nuclear Medicine Facility and its website so as to bring it to the attention of all Users.
- (b) The Complaint Register shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- (c) Without prejudice to the provisions of Clause 37.1 (a) and (b), the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### **37.2 Redressal of complaints**

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

## **Article 38: MISCELLANEOUS**

### **38.1 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 Karnataka shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

### **38.2 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).

### **38.3 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.

### **38.4 Waiver**

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

### **38.5 Liability for review of Documents**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Expert, of any Project Agreement or Document submitted by the Concessionaire nor any observation or inspection of the operation or maintenance of the Nuclear Medicine Facility 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.

### **38.6 Exclusion of implied warranties**

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

### **38.7 Survival**

Termination shall:

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

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

### **38.8 Entire Agreement**

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

### **38.9 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 shall negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth in Article 35 or otherwise.

### **38.10 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.

### 38.11 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.

### 38.12 Successors and assigns

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

### 38.13 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 the city specified in Sub-Clause (b) below 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:  
Designation:  
Address:  
Fax No:  
Email:}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below 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 the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{Name:  
Designation:  
Address:  
Fax No:

Email:}; 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.

### **38.14 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.

### **38.15 Confidentiality**

- (a) Each Party shall keep the Confidential Information confidential and shall not disclose the same to any other person without the prior written consent of the other Party.
- (b) Sub-Clause (a) shall not apply in the following circumstances:
- (i) any disclosure required by Applicable Laws or in respect of information already in the public domain;
  - (ii) any disclosure required by any applicable stock exchange listing rule; and
  - (iii) disclosure to the extent required for the purposes of raising funds or maintaining compliance with credit arrangements.
- (c) Either Party shall have the right to disclose Confidential Information pursuant to this Agreement or otherwise to the extent required to its personnel and consultants, including technical and legal consultants. Such personnel and/or consultants shall agree and undertake to keep such information disclosed as confidential.
- (d) In the event a disclosure is required by Applicable Law, upon reasonable request by the non-disclosing Party, the disclosing Party shall use all reasonable efforts and co-operate with other Party's efforts to obtain confidential treatment of material so disclosed.
- (e) Each Party shall utilise the same degree of care to preserve and protect the other Party's Confidential Information from disclosure that they use to protect their own Confidential Information, which shall not be less than reasonable care.
- (f) Confidential Information disclosed shall be and remain the property of the

disclosing Party. The obligations of the Parties to protect Confidential Information shall survive [3 (three) years] from Termination.

### **38.16 Stamp Duty**

Any stamp duty, registration charges or other fees, Taxes or charges of any kind whatsoever pertaining to the execution of this Agreement shall be borne by the Authority.

### **38.17 Counterparts**

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

## Article 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**” shall mean 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 25.1;

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

“**Applicable Laws**” shall mean any and all applicable laws including rules, direction, regulations and notifications made thereunder and judgements of the Supreme court of India as may be in force and effect in the state of West Bengal during the subsistence of this Agreement, including but not limited to the regulations, codes, and guidelines issued by the Atomic Energy Regulatory Board (AERB), standards, guidelines, and requirements issued by the NABH, rules, regulations, notifications, directives, policies and office memorandums, made thereunder and as amended from time to time, and judgements, decrees, injunctions, writs and orders of any court of record, that applies to the undertaking of the Scope of the Project and the implementation and performance 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 in connection with the operation and maintenance of the Project during the subsistence of this Agreement and upon termination, the transfer of the Nuclear Medicine Facility to the Authority;

“**Appointed Date**” shall mean the date on which the Conditions Precedent are either satisfied and/or waived in accordance with the terms of this Agreement, and shall be deemed to be the date of commencement of the Concession Period;

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

“**Associate**” or “**Affiliate**” shall mean, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “**control**” means, with respect to a person which is a company or corporation, the ownership,

directly or indirectly, of more than [50% (fifty per cent)] of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

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

“**Authority Default**” shall have the meaning set forth in Clause 28.2.1;

“**Authority Indemnified Persons**” shall have the meaning set forth in Clause 33.1.1;

“**Authority Representative**” shall mean 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 Gross Revenue**” shall mean the average daily Gross Revenue determined upon division of the annual Gross Revenue of the preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by [5% (five per cent)]; provided that the Average Daily Gross Revenue for any period prior to completion of the first Accounting Year following the Operations Date shall be simple average of the Gross Revenue realised with respect to every day during the period between the Operations Date and the last day of the month preceding the date on which the event requiring calculation hereof occurred;

“**Award**” shall have the meaning set forth in Clause 35.3(c);

“**Bank**” shall mean a bank incorporated in India and having a minimum net worth of [Rs 1,000 crore (Rupees one thousand crore)] or any other bank acceptable to the lenders, but does not include a bank in which the lender has an interest;

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

“**Bid**” shall have the meaning set forth in Recital B and 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 Date**” shall mean the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposal;

“**Bid Security**” shall mean the security provided by the Selected Bidder 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;

“**Board of Directors**” shall mean the board of directors of the Concessionaire;

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

- (a) the enactment of any new Indian law as applicable to the Nuclear Medicine Facility;
- (b) the repeal, modification or re-enactment of any existing Applicable Law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (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 Nuclear Medicine Facility;

“**Change in Ownership**” shall mean a transfer of the direct and/or indirect legal and/or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder}, in the total equity to decline below (i) [51% (fifty one per cent)] at any time on or after Execution Date and until the expiry of the Concession Period; and if the Selected Bidder is the Consortium of the entities, then without prejudice to the collective shareholding requirement as aforesaid (ii)if the shareholding of the Consortium Members whose technical and financial capacity has been utilised for qualification purposes under the RFP declines below [26% (twenty six per cent)] until the expiry of the Concession Period and of the Lead Member shareholding of the subscribed and paid up equity of the SPV declines below 26% (twenty-six per cent) until the expiry of the Concession Period shall also amount to Change in Ownership;

“**Change of Scope**” shall have the meaning set forth in Clause 12.1;

“**Change of Scope Notice**” shall have the meaning set forth in Clause 12.2;

“**Change of Scope Order**” shall have the meaning set forth in Clause 12.2.3;

“**Companies Act**” shall mean, as applicable, the Companies Act, 1956 and the Companies Act, 2013 as amended from time to time;

“**Complainant**” shall have the meaning set forth in Clause 37.1(a);

“**Complaint Register**” shall have the meaning set forth in Clause 37.1(a);

“**Concession**” shall have the meaning set forth in Clause 3.1;

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

“**Concessionaire Default**” shall have the meaning set forth in Clause 28.1.1;

“**Concession Period**” shall have the meaning set forth in Clause 3.2;

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

“**Consortium**” shall have the meaning as set forth in Recital B;

{“**Consortium Member or Member**” shall mean a company specified in Recital B as a member of the Consortium;}

“**Contractor**” shall mean the person or persons, as the case may be, with whom the Concessionaire has entered into any of the O&M Contracts except for clinical services, or any other material agreement for the operation and/or maintenance of the Nuclear Medicine Facility or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“**Covenant**” shall have the meaning set forth in Clause 5.2.4.

“**CPI (IW)**” shall mean the consumer price index for industrial workers as published by the Labour Bureau, Government of India and shall include any index which substitutes the CPI (IW) and any reference to CPI (IW) shall unless the context otherwise require, be construed as a reference to CPI (IW) published for the period ending with the preceding quarter;

“**Cure Period**” shall mean 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 Expert, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert, after the receipt of the relevant information to accord their approval;

“**Damages**” shall have the meaning set forth in Clause 1.2.1 (w);

“**Dispute**” shall have the meaning set forth in Clause 35.1(a);

“**Dispute Resolution Procedure**” shall mean the procedure for resolution of Disputes set forth in Article 35;

“**Divestment Requirements**” shall mean the obligations of the Concessionaire for and in respect of Termination as set forth in Article 29;

“**Document**” or “**Documentation**” shall mean 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;

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

“**Encumbrances**” shall mean, in relation to the Nuclear Medicine Facility, 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 Nuclear Medicine Facility, where applicable herein;

“**Equipment**” shall mean all clinical and non-clinical equipment procured and installed by the Authority that is necessary for the Concessionaire to perform its obligations under this Agreement in relation to the Nuclear Medicine Facility, and as more particularly described and set out in Schedule A;

“**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 22.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 22.1.1;

“**Execution Date**” shall mean the date on which this Agreement is executed by the Parties;

“**Expiry Date**” shall mean 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;

“**Financial Year**” shall mean a year commencing on 1<sup>st</sup> April of a calendar year and

ending on 31<sup>st</sup> March of the immediately succeeding calendar year;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 25.1;

“**Force Majeure Costs**” shall have the meaning set forth in Clause 25.7.2;

“**General Patients**” shall mean patient covered under Patients covered under any applicable Insurance Scheme;

“**GOI**” shall mean the Government of India;

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

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

“**Good Industry Practice**” shall mean 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 and includes prudent medical practices in accordance with the relevant applicable regulations and practices generally accepted by the medical and educational industry for ensuring reliable, safe, economical and efficient management, operation and maintenance of the Nuclear Medicine Facility;

“**Government Instrumentality**” shall mean any department, division or sub-division of the Government of India or the [UT Administration/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 [UT Administration/State Government], as the case may be, and having jurisdiction over the Nuclear Medicine Facility or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“**Gross Revenue**” of the Nuclear Medicine Facility for and in respect of any Accounting Year shall mean the total amount of gross Revenues and receipts of every kind (from both cash and credit transactions computed prior to payment of any commission or service charge or fee thereon) derived by the Concessionaire from the operation of the Nuclear Medicine Facility and its facilities and provision of Nuclear Medicine Services, and/or any other activity related to the Nuclear Medicine Facility

including, if any, as certified by the statutory auditors of the Concessionaire, and shall include Revenues [and, patients, vending machines, parking, use of commercial or other spaces for rent or fee of every description and kind, and any other services or facility provided by the Concessionaire], but shall exclude the following:

- (a) All statutory applicable indirect Taxes such as GST and the like by whatever name called now or in future, which the Concessionaire is bound to pay;
- (b) Any revenue earned by the Concessionaire on sale of assets of a capital nature which are owned by the Concessionaire; and
- (c) Interest income from investment made;

For avoidance of doubt, Gross Revenue shall also include any amount received by the Affiliate to whom the Concessionaire has contracted any Nuclear Medicine Services and/or any other activity related to the Nuclear Medicine Facility, and any amount received by the Concessionaire from a third party to whom it has contracted any Nuclear Medicine Services and/or any other activity related to the Nuclear Medicine Facility;

**"Human Resource"** means clinical and non-clinical manpower including but not limited to nuclear medicine specialists, nuclear medicine technologists, patient coordinator, patient care attendant, etc. as more particularly outlined in Schedule D;

**"Indemnified Party"** shall mean the Party entitled to the benefit of an indemnity pursuant to Article 33.3;

**"Indemnifying Party"** shall mean the Party obligated to indemnify the other Party pursuant to Article 33.3;

**"Independent Expert"** shall have the meaning set forth in Article 20.1;

**"Indirect Political Event"** shall have the meaning set forth in Clause 25.3;

**"Insolvency Event"** in respect of a Party shall mean:

- (a) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee, administrator, liquidator or the like of itself or of all or a substantial part of its assets or business; (B) been unable to pay its debts as such debts become due; (C) enters into a compromise arrangement with its creditors ; (D) an attachment or restraint has been levied on the assets of such entity Party which materially affects such Party's ability to perform its obligations under this Agreement; (E) commenced proceedings under the (Indian) Insolvency and Bankruptcy Code, 2016 (the **"Code"**); (F) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or
- (b) a proceeding or case has been commenced without the application or consent of such

Party in any court of competent jurisdiction seeking: (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts; (B) the appointment of an insolvency resolution professional, a trustee, receiver, custodian, administrator, liquidator or the like of such Party under the Code and an order admitting the insolvency petition has been passed in such proceeding and such order has not been stayed or dismissed within a period of [90 (ninety)] days; or (C) directions with the same or similar effect happen under the provisions of the Companies Act or the Code in relation to the winding up of the company;

**“Insurance Cover”** shall mean 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;

**“Insurance Scheme”** means any public insurance scheme brought into force and effect by the Government of India or the State Government for reimbursing the cost of medical treatment provided to the Patients, as may be in force and effect during the subsistence of this Agreement and shall include PMJAY, Swasthya Sathi;

**“Intellectual Property”** shall mean 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, 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;

**“Joint Coordination Committee”** shall have the meaning set forth in Article 20.1;

**“Joint Memorandum”** shall have the meaning set forth in Clause 10.3.1;

**“Key Performance Indicators”** shall have the meaning as set forth in Clause 19.1;

**“Lead Member”** shall have the meaning as set forth in Recital B;

**“Lease Agreement”** shall mean the lease agreement executed between the Authority and the Concessionaire in accordance with Annex-I of the Schedule A for providing the Nuclear Medicine Facility for a lease for a term of 5 (five) years;

**“Leased Premises”** shall have the meaning set forth in Clause 10.2.1;

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

**“LOA or Letter of Award”** shall mean the letter of award referred to in Recital C;

**“Market Patient”** shall mean the Patients other than the General and Non-Chargeable Patient;

**“Maintenance Programme”** shall have the meaning set forth in Clause 13.2.3;

**“Maintenance Requirements”** shall have the meaning set forth in Clause 13.2.1;

**“Material Adverse Effect”** shall mean a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**“Medical Emergency”** shall mean a condition or situation that is likely to endanger the human lives in and around the Nuclear Medicine Facility and hospital such that the persons require immediate medical aid including but not limited to situations such as fire, earthquake, natural calamity, riots, war, terrorist attacks etc. or any other events which are likely to endanger the human lives;

**“MoU”** shall have the meaning as set forth in Clause 25.12.6;

**“Non-Political Event”** shall have the meaning set forth in Clause 25.2;

**"NABH"** means the National Accreditation Board for Nuclear Medicine Facility and healthcare providers;

**"NABH Accreditation"** means the public recognition by NABH of the achievement of accreditation standards by a healthcare organization, demonstrated through an independent external peer assessment of that organization's level of performance in relation to the standards. The achievement of accreditation shall mean the lowest accreditation provided by NABH and “NABH Accredited” shall be construed accordingly;

**"NABL"** means the National Accreditation Board for Testing and Calibration Laboratories;

**“Non- Chargeable Patients”** shall mean all patients which are identified as below poverty line on the basis of their annual family income under any state government or central government initiatives and shall also include all the patients that are identified by the Authority as per the Clause 17.2;

**“NPV”** shall have the meaning set forth in Clause 32.3;

**“Nuclear Medicine Facility”** shall have the meaning set forth in Recital A;

**“Nuclear Medicine Services”** shall mean the provision of clinical and ancillary non-clinical services to patients for the purpose of promoting, maintaining, monitoring, diagnosing, or restoring health; and shall include PET CT Scan, Gamma Camera and High Dose Iodine Therapy including inpatient related High Dose Iodine Therapy, as more particularly set forth in Schedule C of this Agreement;

“**O&M**” shall mean the operation and maintenance of the Nuclear Medicine Facility and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Revenue in accordance with the provisions of this Agreement;

“**O&M Expenses**” shall mean 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, consumables, 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 15.2;

“**Operations Date**” shall have the meaning set forth in Clause 11.1;

“**Operation Period**” shall mean the period commencing from the Operations Date and ending on the Expiry Date;

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

“**Patient**” means a person who uses or intends to use the Nuclear Medicine Facility for Nuclear Medicine Services on payment of User Charges and Radiopharmaceutical Charges, directly or indirectly, in accordance with the provisions of this Agreement;

“**Performance Guarantee**” shall have the meaning set forth in Clause 30.2.3;

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

“**Political Event**” shall have the meaning set forth in Clause 25.4;

“**Project**” means undertaking the operation and maintenance of Nuclear Medicine Facility including Equipment subject to and in accordance with the provisions of this Agreement, and includes all works, facilities, services and Equipment relating to or in respect of the Scope of the Project for undertaking/rendering Nuclear Medicine Services;

“**Project Agreements**” shall mean 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 and maintenance of the Nuclear Medicine Facility, but does not any agreement for procurement of goods and services involving a consideration of up to [Rs. 1,00,00,000 (Rupees one crore)] for each such agreement;

**“Project Assets”** shall mean all physical and other assets relating to and forming part of the Nuclear Medicine Facility including:

- (a) rights over the Nuclear Medicine Facility in the form of Right of Way;
- (b) tangible assets such as civil works including foundations, drainage works, pavements, electrical systems, communication systems, fare collection systems, rest areas and administrative offices;
- (c) existing facilities forming part of the Nuclear Medicine Facility;
- (d) buildings and immovable fixtures or structures forming part of the Nuclear Medicine Facility;
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc.;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Nuclear Medicine Facility;
- (i) AMC/CMC procured with respect to all the Equipment of the Nuclear Medicine Facility.

**“Protected Documents”** shall mean the documents mentioned in Clause 36.3;

**“Public Holiday”** shall mean the days declared as public holidays in accordance with the shops and establishment laws applicable in the State;

**“Radiopharmaceuticals”** means radioactive tracers or medicinal preparations, including FDG/Dyes and PSMA, used in Nuclear Medicine Services for diagnostic or therapeutic purposes, whether procured externally or produced in-house, and administered to patients in calibrated doses in accordance with Applicable Laws, and as more particularly set forth in Schedule M;

**“Radiopharmaceutical Charges”** shall have the meaning set forth in Clause 18.7 and Schedule M;

**“Replacement”** shall have the meaning set forth in Clause 13.7.3;

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

**“Revenue”** shall mean all amounts charged and recovered by the Concessionaire from the Users on mutually agreed terms and shall include User Charges and shall also include but not be limited to all charges, rent, license fees, tariff, fee, compensation, benefits, deposits (whether long term or short term and whether refundable or not), capital receipts, insurance claims, or any other similar payment by whatever name called, received by or paid to the Concessionaire or receivable by the Concessionaire or payable to the Concessionaire or due and realisable by the Concessionaire, for or with respect to use of the Nuclear Medicine Facility;

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

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

**"Safety Requirements"** shall have the meaning set forth in Clause 14.1;

**"Schedule"** shall mean a schedule under this Agreement;

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

**"Selected Bidder"** shall mean the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP);

**"Services"** shall mean the Nuclear Medicine Services to be performed by the Concessionaire under this Agreement;

**"Service Quality Manual"** shall have the meaning set forth in Clause 13.1.1(a);

**"Service Requirements"** shall have the meaning set forth in Clause 13.2.2;

**"Specifications and Standards"** shall mean the specifications and standards relating to the quality, quantity, capacity, operation, maintenance and other requirements for the Nuclear Medicine Facility, as set forth in Schedule B, and any modifications thereof, or additions thereto, as included in the operation and maintenance for the Nuclear Medicine Facility submitted by the Concessionaire to, and expressly approved by, the Authority;

**"Specified Documents"** shall have the meaning set forth in Clause 36.1;

**"Statutory Auditors"** shall mean a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force;

**"Suspension"** shall have the meaning set forth in Clause 27.1;

**"Taxes"** shall mean any Indian taxes including excise duties, customs duties, local taxes, goods and service tax (GST), 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 Nuclear Medicine Facility 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 avoidance of doubt, Taxes shall not include taxes on corporate income;

**“Termination”** shall mean the expiry or termination of this Agreement and the Concession hereunder;

**“Termination Notice”** shall mean the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

**“Termination Payment”** shall mean the amount payable by the Authority to the Concessionaire, under and in accordance with this Agreement, upon termination;

**“Unforeseen Event”** shall have the meaning as set forth in Clause 25.12.1;

**“Users”** shall mean the third parties which use the Nuclear Medicine Facility or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws and includes all Patients and students;

**“User Charges”** means the tariff payable for Nuclear Medicine Services, as quoted by the Selected Bidder after applying the discount on the Base Tariff, and expressly excludes Radiopharmaceutical Charges, which shall be levied separately in accordance with this Agreement. The User Charges shall be calculated as follows:

User Charges = Base Tariff \*(1-Discout %)

**“User Survey”** shall have the meaning set forth in Clause 19.8.1;

**“Vesting Certificate”** shall have the meaning set forth in Clause 29.4.

SIGNATORIES

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

THE COMMON SEAL OF **CONCESSIONAIRE** has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

I, \_\_\_\_\_, hereunto affixed the common seal in the presence of:

[ \_\_\_\_\_, director, who has signed these presents in token thereof<sup>48</sup>; and \_\_\_\_\_, Company Secretary / Authorised Officer who has countersigned the same in token thereof:]

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

\_\_\_\_\_  
(Signature)

(Name)

\_\_\_\_\_  
(Designation)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Fax No.)

\_\_\_\_\_  
(e-mail address)

In the presence of:

1. \_\_\_\_\_, Director
  
2. \_\_\_\_\_, Company Secretary

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48 To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of directors.

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

\_\_\_\_\_  
(Signature)

(Name)

(Designation)

(Address)

For and on behalf of

by:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Designation)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Fax No.)

\_\_\_\_\_  
(e-mail address)

For and on behalf of

by:

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(Signature)

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(Name)

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(Designation)

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(Address)

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(Fax No.)

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(e-mail address)



**CHITTARANJAN NATIONAL CANCER  
INSTITUTE, KOLKATA**

**SCHEDULES TO**

**DRAFT CONCESSION AGREEMENT**

**OPERATION AND MAINTENANCE OF NUCLEAR  
MEDICINE FACILITY ESTABLISHED IN  
CHITTARANJAN NATIONAL CANCER INSTITUTE,  
NEWTOWN, KOLKATA ON PPP MODE**

**Chittaranjan National Cancer Institute, Kolkata**

**Street No: 299, DJ Block, Action Area-1D, Newtown, Kolkata-700160**

Telephones: 033 2324 5015/033 3506 0600 [Extn: 1101]

Email-corr.cnci2ncd@gmail.com

**June 2026**

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## SCHEDULE A

### NUCLEAR MEDICINE FACILITY DETAILS

This Schedule outlines the details of the Nuclear Medicine Facility to be operated and maintained by the Concessionaire within the Chittaranjan National Cancer Institute, Kolkata. The information provided here shall enable the Concessionaire to understand the spatial, functional, and operational aspects of the facility being made available under this Agreement.

#### A. Project Site Overview

Particulars	Description
<b>Project Location</b>	New Town, Kolkata, West Bengal, 700160 (Street Number 299, DJ Block, Action Area 1D)
<b>Total Area of CNCI, New Town (sq. m.)</b>	40470.00
<b>Total Area of Nuclear Medicine Facility (sq. m.)</b>	536.70
<b>Coordinates</b>	22°34'02.90"N, 88°28'06.62"E
<b>Altitude</b>	5 meters above sea level
<b>Land Use Classification</b>	Commercial Land (Institutional use permitted)
<b>Site Shape and Access</b>	Irregular plot with direct road access

#### B. Site Connectivity

The site is well connected via road, rail, and air, enabling accessibility for patients, staff, and supplies:

Mode	Access Point	Approximate Distance
<b>Road</b>	Action Area I, New Town	1 km
<b>Rail</b>	Sealdah Railway Station	15 km
<b>Air</b>	Netaji Subhash Chandra Bose International Airport	12 km

The site is located adjacent to a major arterial road, providing less than 5 minutes of ambulance access time from the bus station.

**C. Indicative Functional Zoning of the Nuclear Medicine Facility**

<b>Component</b>	<b>No. of Beds</b>	<b>Recommended Area per Bed / Unit</b>	<b>Allocated Floor &amp; Area (sq.m)</b>	<b>Total Area (sq.m)</b>
PET-CT Scan Room	-	30-40	45.67	45.67
Gamma Scan Room	-	30-40	39.14	39.14
Nuclear Therapy Ward	2	-	15.52	31.04
Dose Administration Room	-	6.00-12.00	31.60	31.60
Patient Waiting Room	-	15.00	49.00	49.00
<b>Total Core Clinical Area</b>				<b>196.45</b>

**D. Facility Access and Usage**

- The Nuclear Medicine Facility is located on the First Floor of the right wing of the hospital. The layout, including the positioning of scan and therapy rooms, has been carefully planned to facilitate smooth and efficient operations.

**E. Existing Building Condition**

- The CNCI, New Town Campus is a newly constructed structure which has been operational since 2022.
- The Nuclear Medicine Facility is equipped with PET-CT scan room, Hot Lab, Gamma Scan room and Nuclear Medicine Therapy Wards with 2 beds.

**F. Indicative Equipment list to be provided by the Authority**

<b>Department</b>	<b>Equipment Name</b>	<b>Requirement</b>
<b>PET-CT</b>	<b>GE Discovery MI Digital Ready PET-CT System</b>	<b>1</b>
<b>Gamma Camera</b>	<b>Dual Head Gamma Camera</b>	<b>1</b>

**Note:** The specific details with respect to indicative particulars mentioned above shall be provided by the Authority at the time of publication of response to pre-bid queries. The said specific details shall include specifications of each equipment item, including make, model, warranty, and guarantee periods.

This Schedule will also include the details of the Equipment purchased and the AMC/CMC rates offered by the OEM to the Authority for the relevant years. AMC/CMC cost offered by the OEM to the Authority shall be borne by the Concessionaire.

**Annex-I of the Schedule A**  
**LEASE AGREEMENT**

**LEASE AGREEMENT**

This Lease Agreement (“**Lease Agreement**”) together with its Annexes is made and executed on this .....day of .....[●] by and between:

**Chittaranjan National Cancer Institute, Kolkata** represented by Director, and having its head office at 37, S P Mukherjee Road, Kolkata-7000026 [(hereinafter referred to as the “**Authority**” or “**Lessor**”, which expression shall, unless excluded by and/or repugnant to the context, mean and include its successors, legal representatives and permitted assigns)] of the one part;

AND

{\*\*\*\*\* Limited}, having its registered office at [●] represented through its Managing Director (hereinafter referred to as the “**Lessee**”, which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assigns) of the other part.

The Lessor and the Lessee are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

**WHEREAS**

- (A) The Lessor and the Lessee have entered into a Concession Agreement dated ----- (the “**Concession Agreement**”) wherein the Lessee has agreed to operate and maintain the Nuclear Medicine Facility.
- (B) The Lessor has acquired the Nuclear Medicine Facility as described in the Annex hereunder (the “**Nuclear Medicine Facility**”) and is thus owner of the land and now desires to lease the Nuclear Medicine Facility to the Lessee and the Lessee desires to take on lease from the Lessor, the Nuclear Medicine Facility for the purposes of operating and maintaining the Nuclear Medicine Facility as per the terms of the Concession Agreement and all other objects listed in the Memorandum of Association and Articles of Association of the Lessee along with all ancillary works required for the operation of the Project.

NOW THEREFORE, in consideration of the promises and covenants herein set forth and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties mutually agree as hereunder.

**1. Definitions and Interpretation**

**1.1.1 Definitions**

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

**“Applicable Permits”** means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under applicable laws in connection with the Nuclear Medicine Facility and the Project during the subsistence of the Lease Agreement;

**“Nuclear Medicine Facility”** shall have the meaning set forth in Recital (B);

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

**“Encumbrance”** means any encumbrance such as an easement, right of way, licence, mortgage, charge, pledge, lien, hypothecation, pre-emptive right or security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, whether or not registered and howsoever arising, including by statute or common law;

**“Force Majeure”** shall have the meaning set forth in Clause 16.1;

**“Lease Rent”** shall have the meaning set forth in Clause 5.1; and

**“Term”** shall have the meaning set forth in Clause 3.

## 1.2. Interpretations

In this Lease Agreement, except to the extent that the context requires otherwise:

- (a) the Annexes to this Lease Agreement forms part of this Lease Agreement and will be of full force and effect as though it is expressly set out in the body of this Lease Agreement ;
- (b) the terms of this Lease Agreement should be read in consonance with and not in derogation with the terms of Concession Agreement;
- (c) the rules of interpretation in the Concession Agreement shall apply, *mutatis mutandis*, to this Lease Agreement; and
- (d) the words and expressions beginning with capital letters and defined in this Lease Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Lease 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.

## 2. Grant of lease and possession

2.1.1 The provisions of this Lease Agreement shall take effect and become binding on the Parties on the date first above written (**“Effective Date”**).

2.1.2 In consideration of the Lease Rent, the Lessor grants on lease to the Lessee and the Lessee agrees to accept the lease from the Lessor, free from Encumbrances and/or encroachments, of all that piece and parcel of the Nuclear Medicine Facility in the Annex hereto together with all and singular rights, liberties, privileges, easements, benefits, rights of way, paths, passages whatsoever in or appurtenant to the Nuclear Medicine Facility or any part thereof, and to hold, possess, use and enjoy the Nuclear Medicine Facility and/or any part thereof, in accordance with the provisions of this Lease Agreement.

2.1.3 The Lessor hereby grants and transfers physical possession of the Nuclear Medicine Facility specified in Annex, as per the memorandum prepared by the Parties pursuant to Article 10 of the Concession Agreement and annexed hereto at Annex. The Lessor agrees and undertakes to grant vacant possession of the Nuclear Medicine Facility described in Annex, under and in accordance with the provisions of Article 10 of the Concession Agreement.

### 3. Term

The lease granted in pursuance of this Lease Agreement shall be for a period of 5 (five) years from the Effective Date (the “**Term**”) unless the Lease Agreement is determined prematurely in accordance with Clause 7 or renewed in accordance with Clause 4. For avoidance of doubt, this Agreement and shall be co-terminus with the executed Concession Agreement as set forth in Recital A.

### 4. Renewal

4.1 The extension of the Term for another 5 (five) years, provided Nuclear Medicine Facility has all approvals under the Applicable Laws to undertake the continued operations of the Nuclear Medicine Facility , and a Lessee Default is not subsisting.

Provided that the Lessee may request the Lessor for the extension by submitting an application not later than the 4th year anniversary from the Effective Date to the Lessor and the Authority at its sole discretion shall confirm the extension of lease within 90 days.

4.2 Upon receipt of application of renewal of the Lease Agreement, the Lessor may, no later than 9 (nine) months prior to the expiration of the Lease Period, execute an addendum to the Lease Agreement which shall reflect the mutually agreed terms and conditions for the extension of the Term of Lease Agreement.

### 5. Lease Rent

5.1 Upon execution of the Lease Agreement and in consideration of the Lessor leasing the Nuclear Medicine Facility to the Lessee and granting the rights, privileges and benefits set forth in this Lease Agreement, the Lessee shall pay to the Lessor, subject to Clause 5.4, an annual lease rent (“**Lease Rent**”) of [Re 1. (Rupee One Only)] for the Concession Period

5.2 The Lease Rent shall be due and payable within [60 (sixty) days] from the commencement of the year for which the Lease Rent is to be paid. The Lessor shall not be obliged to demand payment of Lease Rent by notice or otherwise, and it shall be incumbent upon the Lessee to pay the Lease Rent as and when it falls due.

5.3 The Lessee shall pay the Lease Rent into such account as may be designated by the Lessor from time to time.

5.4 If the Lessee fails to pay the Lease Rent as aforesaid, the Lessee shall be liable to pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the bank rate.

### 6. Use of Nuclear Medicine Facility

- 6.1 During the Term of this Lease Agreement, the Lessee agrees to use the Nuclear Medicine Facility for the carrying out the following:
- (a) implementing the Project;
  - (b) operating, and maintaining the Nuclear Medicine Facility;
  - (c) operating and maintaining the utilities, services and facilities required for operating and maintaining the Nuclear Medicine Facility;
  - (d) extraction of ground water and harvesting of rain water for the Lessee's requirements;
  - (f) any other purpose incidental or consequential to the development, operation and maintenance of the Project, including production of locomotives and associated products for supply to third parties.
- 6.2 The Parties agree that the Lessee may, with the approval of the Lessor, and in addition to the above stated purposes, utilise the Nuclear Medicine Facility for any other purpose(s), limited to the operation and maintenance of the Nuclear Medicine Facility and which in the Lessee's opinion is:
- (a) conducive or incidental to operation and management of the Project;
  - (b) enhances the efficiency of the Project;
  - (c) improves the commercial viability of the Project; or
  - (d) facilitates further investment in or around the Project.

## 7. Determination of Lease Agreement

- 7.1 This Lease Agreement may be determined earlier by mutual agreement between the Parties in writing.
- 7.3 The Lessor shall have the right to determine this Lease Agreement on occurrence of any one or more default(s) by the Lessee as enlisted hereunder:
- (a) passing of a resolution for winding up of the Lessee or filing of a voluntary bankruptcy petition by the Lessee;
  - (b) institution of winding up proceedings against Lessee and such proceedings not being stayed or discharged by a competent court within [180 (one hundred and eighty)] days;
  - (c) appointment of a receiver of Lessee's assets or any general assignment for the benefit of Lessee's creditors and such appointment or assignment is not stayed by a competent court within [180 (one hundred and eighty)] days;
  - (d) failure of the Lessee to make payments to the Lessor in accordance with the provisions hereof, where such failure continues for a period of [30 (thirty) days] after a written notice from the Lessor;

- (e) material failure by Lessee to perform any of the covenants, conditions, or obligations imposed on it by this Lease Agreement where the failure continues for a period of [60 (sixty) days] after notice from the Lessor;
- (f) transfer or assignment of this Lease Agreement or creation of any Encumbrance on the Nuclear Medicine Facility, without securing prior written approval of the Lessor;
- (g) use of the Nuclear Medicine Facility for any purpose other than the purposes stated under Clause 6 of this Lease Agreement and such breach is not remedied within a period of [60 (sixty) days] after a notice from the Lessor in this behalf; and
- (h) voluntary abandonment by the Lessee of its operations at the Nuclear Medicine Facility for a continuous period of [90 (ninety) days] or more.

7.4 Upon determination under Clause 7.1, Clause 7.2 and Clause 7.3, the Lessor shall have the following additional rights:

- (a) the recovery of any unpaid Lease Rent due and payable at the time of termination;
- (b) the recovery of any damages, costs, fees and expenses incurred by the Lessor as a result of the breach of the Lease Agreement by the Lessee; and
- (c) any other right or remedy, legal or equitable, that the Lessor is entitled to under the Applicable Laws.

7.5 The Lessee shall have the right to determine this Lease Agreement on account of the occurrence of any of the following events:

- (a) any material breach of the terms and conditions of the Lease Agreement by the Lessor, which material breach is not remedied by the Lessor within [90 (ninety)] days of receipt of notice regarding such breach; or
- (b) any interference with the peaceful possession of the Nuclear Medicine Facility by the Lessor due to which the Lessee is not able to carry on its business for a continuous period of [60 (sixty)] days or more, which interference is not rectified by the Lessor within a period of [60 (sixty)] days from the date on which the Lessee notifies the same to the Lessor.

## **8. Lessor's obligations and covenants**

The Lessor hereby agrees and warrants that:

- (a) subject to the terms of the Lease Agreement, the Lessee shall be entitled to possess, hold, use and enjoy the Nuclear Medicine Facility and every part thereof during the Term of the Lease Agreement, without any interruption by the Lessor;
- (b) the Lessee shall, during the Term of the Lease Agreement, enjoy free ingress and egress to and from the Nuclear Medicine Facility without any hindrance;
- (c) subject to timely payment of the Lease Rent and performance of the covenants and conditions of the Lease Agreement, the Lessee shall peacefully hold and enjoy the Nuclear Medicine Facility during the Term of the Lease Agreement;

- (d) upon execution of the Lease Agreement and subject to the terms thereof, the Lessor shall deliver, or cause to be delivered, to the Lessee vacant possession of the Nuclear Medicine Facility. The Lessor shall, at its cost and expense clear any Encumbrances, including possession or occupation, if any, by third parties prior to delivery of vacant possession of the Nuclear Medicine Facility to the Lessee;
- (e) the Lessor shall pay and discharge all property taxes, land revenues, levies, cesses and other payments/dues in respect of the Nuclear Medicine Facility relating to the period up to the commencement of the Lease Agreement. For the avoidance of doubt, all property taxes, land revenues, service tax, levies, cesses and other payments/dues in respect of the Nuclear Medicine Facility shall be borne by the Lessee during the Term of the Lease Agreement;
- (f) upon execution of the Lease Agreement, the Lessor shall provide the Lessee with any consent(s) or no objection(s) of the Lessor in obtaining power, water, telephone and such other facilities that the Lessee may require, to use and enjoy the Nuclear Medicine Facility effectively for the purposes stated in Clause 6 of this Lease Agreement. Such consents or no objection(s) shall be provided by the Lessor within a reasonable time; and
- (g) the Lessor shall not create any Encumbrances on the Nuclear Medicine Facility otherwise part with or alienate any of its rights, title or interest in or to the Nuclear Medicine Facility except as provided in Clause 9 of this Lease Agreement.

## **9. Sale, transfer or disposal of the Nuclear Medicine Facility**

- 9.1 The Lessor may sell, transfer or otherwise dispose of the Nuclear Medicine Facility to any Government Authority or any other entity owned or controlled by the Government of India.
- 9.2 The Parties agree that any sale, transfer or other disposal of the Nuclear Medicine Facility or any part thereof as provided in this Clause 9 shall always be subject to the leasehold rights of the Lessee set out in this Lease Agreement and the Lessor shall ensure that simultaneously with the sale, transfer or other disposal of the Nuclear Medicine Facility or any part thereof, the transferee thereof shall acknowledge the leasehold rights of the Lessee therein and shall execute an agreement on terms and conditions that are identical or not less favourable than the terms and conditions of this Lease Agreement.

## **10. Lessee's obligations and covenants**

Lessee hereby covenants, agrees and represents that:

- (a) upon execution of this Lease Agreement and subject to the terms thereof, the Lessee shall accept the Nuclear Medicine Facility in the condition it is handed over and undertakes to use the same only for the purposes as enlisted in Clause 6 of this Lease Agreement;
- (b) this Lease Agreement has been duly authorized, executed, and delivered by the Lessee after fulfilling all legal formalities and constitutes its legal, valid and binding obligation;

- (c) during the Term of the Lease Agreement, the Lessee shall pay the Lease Rent in accordance with terms and conditions set out in this Lease Agreement and shall observe and fulfill each of its obligations and covenants set forth herein;
- (d) during the Term of the Lease Agreement , the Lessee shall undertake the operation and maintenance of the Nuclear Medicine Facility, and other works which in the reasonable opinion of the Lessee would be required for and in relation to the Project, and obtain necessary approvals/clearances from the appropriate authorities for the same;
- (e) at its own cost and expense, the Lessee shall obtain all utilities such as water, electricity from the appropriate authorities;
- (f) it shall obtain and keep current all Applicable Permits that may be required under the Applicable Laws;
- (g) it shall pay all taxes, service tax, cesses, assessments and levies in respect of the Nuclear Medicine Facility, which are leviable at any time during the Term of the Lease Agreement;
- (h) it shall not create any lien, charge or Encumbrance on the Nuclear Medicine Facility, except as permitted in this Lease Agreement, without prior approval of the Lessor;
- (i) it shall, indemnify the Lessor in respect of any charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Lessee of water, electricity, telephone, communication and other facilities and in relation to any and all third party claims made with respect to the Nuclear Medicine Facility;
- (j) it shall (i) keep and maintain the Nuclear Medicine Facility and the buildings and structures thereon in good and habitable condition at all times, and (ii) shall ensure that the Nuclear Medicine Facility shall be free from encroachments at all times and to the extent that there occur any encroachments on the Nuclear Medicine Facility, it shall make diligent efforts to remove such encroachments from the Nuclear Medicine Facility, as soon as practicable;
- (k) it shall take all necessary care to keep the premises neat and clean and in sanitary conditions consistent with the environment and cleanliness of a modern Factory; and
- (l) it shall, after expiry or termination of the Lease Agreement, forthwith hand over possession of the Nuclear Medicine Facility to the Lessor.

#### **11. Regulatory approvals for operation and maintenance**

The Lessee agrees and covenants that the Lessee shall undertake operation and maintenance of buildings and/or structures at the Nuclear Medicine Facility only after obtaining all Applicable Permits as are necessary for implementation of the Project. The Lessee further agrees that the Lessee shall always comply with the conditions of such Applicable Permits.

**12. Inspection by the Lessor**

- 12.1 The Lessee agrees and covenants that during the Term of the Lease Agreement, the Lessee shall not restrict or obstruct the Lessor and its authorised agents to enter upon and inspect the Nuclear Medicine Facility at all reasonable hours on any working day.
- 12.2 The Lessee undertakes that the Lessee shall notify the Lessor of any material breach by the Lessee of any Applicable Permits acquired in relation to the Nuclear Medicine Facility.

**13. Stamp duty and registration charges**

Subject to the exemption or waiver, if any, granted by Government or any other authority, the Parties agree that all stamp duties and registration charges payable in respect of the lease contemplated herein shall be to the account of and borne by the Lessee.

**14. Indemnities and limitation of liability**

The Lessee shall fully indemnify, defend and hold harmless the Lessor, its officers, servants, agents, against any and all suits, proceedings, actions, demands, claims and liabilities, which may be incurred or suffered by the Lessor and which may arise out of or as a result of any of the following causes:

- (a) any breach by the Lessee of any of its obligations, covenants, agreements, representations or warranties set forth in this Lease Agreement;
- (b) any loss of property, damage to property, personal injury or death occasioned to or suffered by any person, to the extent that the damage to or loss of property or the personal injury or death is caused wilfully or negligently by the Lessee; and
- (c) any breach, violation or non-compliance by the Lessee of any Applicable Laws and/or Applicable Permits.

**15. Assignment**

The Lessee shall not, without the Lessor's prior written consent, transfer, assign, or grant any form of security over any of its rights or obligations under this Lease Agreement.

**16. Force Majeure**

- 16.1 Neither Party shall be liable to the other for non-performance of its obligations under this Lease Agreement (other than the obligation to make payments when due) on account of any event of Force Majeure including but not limited to fire, flood, act of God or irresistible force, civil disobedience, riots, terrorism, strikes, lock-out, act of government, or any other event beyond the reasonable control of such Party.
- 16.2 Where the event of Force Majeure exists for a continuous period of 6 (six) months, the Parties shall mutually decide on the course of action to be adopted, which may include the determination of this Lease Agreement.
- 16.3 Notwithstanding anything to the contrary in this Lease Agreement, if the Lease Agreement is determined in accordance with Clause 16.2 above, neither Party shall be liable to pay any compensation to the other for such termination.

**17. Dispute Resolution**

- 17.1 The Parties shall use their respective reasonable endeavours to settle any dispute, difference, claim, question or controversy between the Parties arising out of, in connection with or in relation to this Lease Agreement (“**Dispute**”) amicably between themselves through negotiation.
- 17.2 Any Dispute which the Parties are unable to resolve pursuant to Clause 17.1, within 60 (sixty) days (or such longer period as the Parties may agree) of notice by one Party to the other of the existence of a Dispute, shall be resolved in accordance with the provisions of Article 45 of the Concession Agreement.

## **18. Governing Law**

This Lease Agreement is governed by and shall be construed in accordance with the laws of India.

## **19. General Provisions**

### **19.1 Entire Agreement**

This Lease Agreement together with the Annexes constitutes the entire agreement between the Parties with respect to the subject matter and the transaction envisaged in this Lease Agreement, but shall be subject to the provisions of the Concession Agreement at all times.

### **19.2 Waiver**

19.2.1 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 Lease 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 Lease 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 Lease Agreement in any manner.

19.2.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Lease Agreement or any obligation there under 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.

### **19.3 Severability**

If for any reason whatever, any provision of this Lease 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 Lease Agreement or otherwise.

#### **19.4 Specific Performance**

In the event of default or breach in performance of obligations by any Party, the Party not in default or breach shall be entitled, without prejudice to its other rights and remedies, to seek and enforce specific performance of this Lease Agreement.

#### **19.5 Expenses**

Each Party shall pay its own costs and expenses (including, without limitation, the fees and expenses of its agents, authorised representatives, advisors, counsel and accountants) necessary for the negotiation, preparation, execution, delivery, performance of and compliance with this Lease Agreement.

#### **20 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 Lease Agreement shall be in writing and shall:

(a) in the case of the Lessee, 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 Lessee may from time to time designate by notice to the Lessor; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier be sent by facsimile or e mail to the number as the Lessee may from time to time designate by notice to the Lessor;

**Attention:**

**Designation:**

**Address:**

**Fax No:**

**Email:**

(b) in the case of the Lessor, be given by facsimile or e-mail and by letter delivered by hand to the address given below with a copy delivered to the Lessor's Representative or such other person as the Lessor may from time to time designate by notice to the Lessee; provided that if the Lessee does not have an office in Delhi, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

**Attention:**

**Designation: Address:**

**Fax No:**

**Email:**

(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.

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

SIGNED, SEALED AND  
DELIVERED

SIGNED, SEALED AND  
DELIVERED

For and on behalf of THE PRESIDENT

For and on behalf of

\_\_\_\_\_  
(Signature)  
(Name)  
(Designation)

\_\_\_\_\_  
(Signature)  
(Name)  
(Designation)

In the presence of:

1.

2.

**Annex of the Annex-I**  
**(Joint Memorandum as per the Clause 10.3.1)**

## SCHEDULE B

### SPECIFICATIONS AND STANDARDS

The Project shall comply with the following standards/norms/guidelines and their latest revisions/amendments for operation, maintenance and management of the Nuclear Medicine Facility.

#### **I. Standard to be followed for operation and management of the Nuclear Medicine Facility:**

- National Accredited Board of Project and Healthcare Providers (NABH) standards for Project (as per prevailing standard);
- National Accredited Board of Project and Healthcare Providers – Accreditation Standards for Medical Imaging Services (as per prevailing standard);
- International Standard ISO 15189:2007 (Medical) laboratories – particular requirement for quality and competence by National Accredited Board for Testing and calibration Laboratories (NABL) (as per prevailing standard);
- Guidelines for High Dependency Unit and Intensive Care Unit under Indian Public Health Standards (as per prevailing standards);
- Bureau of Indian Standards (BIS) and/or International Standard for Medical Devices installed or in operation at the Nuclear Medicine Facility (as per prevailing standards);
- Guidelines for Intensive Care Unit Admission and Discharge Criteria by MoHFW (as per prevailing standards);
- Guidelines for Management of Healthcare Waste as per prevailing Biomedical Waste Management Rules published by the Centre Pollution Control Board;
- Atomic Energy Regulatory Board (AERB) standards on Radiation Safety in Manufacture, Supply and Use of Medical Diagnostic X-ray Equipment (as per prevailing standards);
- U.S. Food and Drug Administration (USFDA) or CE (regulated under the EU Medical Device Regulation) approved implants
- Reuse of any consumable is not desirable, Concessionaire must ensure adhering to Applicable Laws/guidelines
- Compliance required to the respective supplier’s maintenance manuals and guidelines for plant and machinery, laboratories, biomedical and radiology equipment;
- Environmental Sustainability Plan including:
  - (i) Ministry of Environment and Forest (MoEF) Guidelines as applicable; and
  - (ii) The equator principles (<http://www.equator-principles.com>)
- Shall comply with solar energy, rainwater harvesting, zero garbage and waste water

recycling requirements of state municipal corporation as applicable.

## II. Standard to be followed for maintenance of Nuclear Medicine Facility:

<b>S. No.</b>	<b>Description</b>	<b>Guideline</b>	<b>Latest publication</b>
1	General Maintenance of Nuclear Medicine Facility	<ul style="list-style-type: none"> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital</li> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital.</li> </ul>	<p>Prevailing standard</p> <p>Prevailing standard</p>
2	Biomedical Equipment	<ul style="list-style-type: none"> <li>• Compliance also required to the respective supplier's maintenance manuals and guidelines.</li> <li>• International standard ISO 15189:2007 (Medical laboratories-particular requirement for quality and competence) by National Accredited Board for Testing and Calibration Laboratories (NABL)</li> </ul>	<p>As applicable</p> <p>Prevailing standard</p>
3	Laboratory Equipment	<ul style="list-style-type: none"> <li>• Compliance also required to the respective supplier's maintenance manuals and guidelines.</li> </ul>	As applicable
4	Radiology Equipment	<ul style="list-style-type: none"> <li>• National Accredited Board of Project and Healthcare Providers – Accredited Standards for Medical Imaging Services; and</li> <li>• Compliance also required to the respective supplier's maintenance manuals and guidelines.</li> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital.</li> <li>• Atomic Energy Regulatory Board (AERB) standards on Radiation Safety</li> </ul>	<p>Prevailing Standard</p> <p>As applicable</p> <p>Prevailing standard</p>

5	Plant and Machinery	<ul style="list-style-type: none"> <li>• Compliance also required to the respective suppliers' maintenance manuals and guidelines</li> </ul>	As applicable
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### III. Standard to be followed for safety standards:

S. No.	Description	Guidelines	Latest publication
1	Patient and Staff Safety	<ul style="list-style-type: none"> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital</li> <li>• National Accredited Board of Project and Healthcare Providers (NABH) standards for Hospital</li> </ul>	As per prevailing standards
2	Building and Fire Safety	<ul style="list-style-type: none"> <li>• National Building Code of India (NBC) guideline issued by Bureau of Indian Standards.</li> </ul>	Latest available standard and state Govt. guidelines

## SCHEDULE C

### NUCLEAR MEDICINE SERVICES

The Concessionaire shall provide these minimum clinical services at the Nuclear Medicine facility throughout the Concession Period, as per the defined scope of services under the Project.

1. PET-CT imaging
2. Gamma Camera Scans
3. High dose Iodine Therapy

## SCHEDULE D

### HUMAN RESOURCES

Subject to Clause 19.6 of this Agreement, the Concessionaire shall ensure deployment of the following minimum personnel for clinical and non-clinical operations of the Nuclear Medicine facility:

Human Resource Category	Designation	Minimum availability of staff per day
<b>Clinical Staff</b>	Radiation Safety Officer - RSO Level II	1
	Nuclear Medicine Physician/Specialist	2
	Nuclear Medicine Technologist	8
	Staff Nurses	7
	Patient Care Attendant	2
<b>Non-Clinical Staff</b>	Receptionist & Data Entry Operator	2

This staffing requirement represents the minimum baseline and may be calibrated as needed to ensure uninterrupted and high-quality service delivery.

#### **Staff Availability**

The Concessionaire shall ensure that critical clinical and support staff are:

- a) Physically present on-site through appropriate shift-based deployment (wherever applicable), during the operational hours (available on-call thereafter) for various Cancer Care Services .

#### **Licensing and Training**

All clinical and paramedical personnel shall possess valid registrations and certifications. The Concessionaire shall ensure training in infection control, biomedical waste management, and hospital safety prior to operations.

#### **Record Maintenance**

The Concessionaire shall maintain attendance records, duty rosters, and HR files, and submit monthly deployment compliance reports to the Authority.

**Continuous Deployment**

The Concessionaire shall ensure that all required positions remain always filled. Any absence of key personnel shall be immediately addressed through suitable replacement to ensure uninterrupted service.

**SCHEDULE E**  
**APPLICABLE PERMITS**  
**(See Clauses 4.1.2(b) and 4.1.3(c))**

Indicative list of approval is mentioned below, Concessionaire shall have to make assessment of applicable permits, approvals, clearances:

Sr. No.	Licenses/Permits
1.	Consent to operate from the state pollution control board under the Air (prevention and control of pollution) Act, 1981, Water (Prevention and Control of pollution) Act, 1974 and Environment (Protection) Act, 1986.
2.	Atomic Energy (Safe Disposal of Radioactive Wastes) Rules, 1987
3.	Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1999.
4.	Atomic Energy Act, 1954.
5.	Goods and Services Tax Act, 2017.
6.	Registration of Births and Death Act, 1969.
7.	Indian Medical Council Act, 1956, National Medical Commission Act, 2019 and its regulations and Code of Medical Ethics Regulations, 2002.
8.	NoC from Chief Fire Inspector.
9.	Registration of Operation of X-Ray machine with AERS.
10.	Shops and Establishments Act, 1954.
11.	Sale of Goods Act, 1930.
12.	Cable Television Networks Act, 1995.
13.	Radiation Protection Rules, 1971 and Radiation Surveillance Procedures for Medical Application of Radiation, 1989.
14.	Applicable Central and State laws on Labor, Tax, Electricity, Petroleum (for storage), Water and Consumer Protection.
15.	NOC from local municipal office for any Bye Laws.
16.	Food and Safety Standards Act, 2006.
17.	Narcotics and Psychotropic Substances Act, 1985.
18.	Pharmacy Act, 1948.
19.	Societies Regulation Act, 1860.
20.	Excise Permit to store Spirit (Central Excise Act, 1944).
21.	Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
22.	Bio-Medical Management and Handling Rules, 1998.
23.	Boilers Act, 1923.
24.	Indian Nursing Council Act, 1947.
25.	Registration under Pre Conception and Pre Natal Diagnostic Techniques Act, 1994 and Medical Termination of Pregnancy Act, 1971.
26.	West Bengal Clinical Establishment Act, 2007.
27.	Medical Devices Rules, 2017.
28.	Atomic Energy (Radiation Protection) Rules, 2004.

29.	Biomedical Waste Management Rules, 2016.
30.	Narcotic Drugs and Psychotropic substances Rules 1985.
31.	Any other applicable permit, as required time to time.

**SCHEDULE F**  
**PERFORMANCE SECURITY**

(See Clause 9.1(a))

WHEREAS:

- (A) ....., (the “**Concessionaire**”) and the [ ] represented by the \_\_\_\_\_, (“**Authority**”) and having its principal offices at .....have entered into a Concession Agreement dated ..... (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the operation, maintenance and management of the Nuclear Medicine Facility at Chittaranjan National Cancer Institute, Newtown, Kolkata subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of [Rs. \*\*\*\*\* (Rupees\*\*\*\*\*)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the period of 12 months from the Appointed Date.
- (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 and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a Secretary or equivalent, 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 Concession 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

Page | 25

any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than [6 (six) months] from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect after expiry of a period of [12 (twelve)] months from the [Appointed Date], and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the

Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of 12 (twelve) months from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of  
the BANK by:

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

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) 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

### OPERATION & MAINTENANCE REQUIREMENTS

#### 1. Operation and Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Concession Period, conform to the operation and maintenance requirements set forth in this Schedule G (the “**Operation & Maintenance Requirements**”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule G within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in the Concession Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### 2. Repair/rectification of the defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule G within the time limit set forth therein.

#### 3. Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule C, if any defect, deficiency or deterioration in the Project poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

#### 4. Equipment Operation and Maintenance

- 4.1 The Concessionaire shall operate and maintain all medical and non-medical equipment including PET-CT scan, Gamma Camera and High Dose Iodine Therapy (detailed list of equipment provided by the Authority in Schedule A), and other related devices as per Applicable Laws, Applicable Permits, and Good Industry Practice.
- 4.2 The Concessionaire shall enter AMC and/or CMC contracts with Original Equipment Manufacturers (OEM) or authorized vendors or authorised representative, as applicable, for all medical and non-medical equipment installed and operational at the Nuclear Medicine Facility.
- 4.3 In respect of contracts mentioned in Clause 4.2, the Concessionaire shall ensure such contracts shall remain valid and in force throughout the Concession Period.
- 4.4 In respect of all services, maintenance, repair, restoration or replacement, as applicable, of medical or non-medical equipment installed and/or operational at the Nuclear Medicine Facility, the Concessionaire shall maintain detailed service and calibration records of such

activities performed and shall be made available for inspection by the Authority or its authorized representative on request.

## **5. Service Delivery**

- 5.1 The Concessionaire shall provide uninterrupted clinical and non-clinical services at the Nuclear Medicine Facility, including PET-CT scan, Gamma Camera and High Dose Iodine Therapy includes therapy ward, reception and administrative operations as per Applicable Laws, Applicable Permits and Good Industry Practise.
- 5.2 The Concessionaire shall be responsible to maintain the physical infrastructure provided within the allocated areas in clean, hygienic and working conditions during the Concession Period in terms of this Agreement and as per prevailing standards in Applicable Laws, Applicable Permits and Good Industry Practise. The maintenance shall include, but not limited to, cleaning and disinfecting of patient rooms, common areas, and medical equipment, compliance with infection control and hygiene standards specified in the Concession Agreement, including protocols for critical care areas.
- 5.3 The Concessionaire shall ensure periodic and emergency maintenance of building systems including electrical systems, plumbing, HVAC, and interiors including repairs, replacements and civil works as required, and active monitoring and review of fire safety and emergency preparedness in accordance with applicable standards established by relevant Government and statutory bodies.

## **6. Biomedical Waste Management**

- 6.1 The Concessionaire shall ensure the biomedical waste produced in the Nuclear Medicine Facility is segregated, collected, stored at the location designated by the Authority in compliance with Biomedical Waste Management Rules, 2016, as amended from time to time, or any other guidelines or standards established by the Central Pollution Control Board (CPCB), West Bengal Pollution Control Board (WBPCB) or other relevant statutory body. In this respect, the Concessionaire shall secure authorisation from WBPCB.

## **7. Utility and Support Services**

- 7.1 The Concessionaire shall ensure continuous and uninterrupted availability and efficient usage of essential utilities including, but not limited to, electricity, water, and oxygen supply across all areas in the Nuclear Medicine Facility. The Concessionaire shall be responsible to undertake periodic maintenance, monitoring, and managing the essential utilities to avoid any disruption to their access.
- 7.2 The Concessionaire shall be responsible for operating and maintaining necessary power backup systems including Uninterruptible Power Supply or Diesel Generator sets to support uninterrupted power supply to the Nuclear Medicine Facility and its critical areas like PET-CT scan, Gamma Camera and High Dose Iodine Therapy. The Concessionaire shall also undertake management and maintenance of other utilities and support services required for patient and staff functioning.

## **8. Documentation and Monitoring**

- 8.1 The Concessionaire shall prepare, maintain and implement comprehensive Standard Operating Procedures (SOPs) for all functional areas under its scope of operations. The SOPs shall be drafted and updated in accordance with Applicable Laws, Applicable Permits and Good Industry Practises.
- 8.2 The Concessionaire shall maintain detailed documentation of maintenance logs, equipment uptime records, AMC reports, and service call logs at the facility to ensure adequate tracking of equipment upgradation, modification or replacements, as applicable. Such documentation shall be made available to the Authority or its authorized representative as and when requested.
- 8.3 The Concessionaire shall submit periodic O&M performance reports to the Authority in the format and manner as specified under this Agreement.

## **9. Other defects and deficiencies**

- 9.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 9.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the Joint Coordination Committee, may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Joint Coordination Committee.

## **10. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule-G, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Joint Coordination Committee, as the case may be, and conveyed to the Concessionaire and the Authority with reasons thereof.

## **11. Daily Inspection by the Concessionaire**

The Concessionaire shall, through its representative, undertake a daily visual inspection of the Nuclear Medicine Facility and maintain a record thereof in a register to be kept in such form and manner as the Joint Coordination Committee, as the case may be, may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Joint Coordination Committee, as the case may be, at any time during office hours.

## **12. Divestment Requirements**

All defects and deficiencies specified in this Schedule G shall be repaired and rectified by the Concessionaire so that the Nuclear Medicine Facility conforms to the Maintenance Requirements on the Transfer Date.

### **13. Display of Schedule**

The Concessionaire shall keep a copy of this Schedule G at the reception of the Nuclear Medicine Facility along with the Complaint Register as per the terms of the Concession Agreement.

Annex - I  
(Schedule-G)

**Repair/Rectification of Defects and Deficiencies**

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-G within the time limit set forth herein.

<b>Nature of defect or deficiency</b>	<b>Time limit for repair/ rectification</b>
---------------------------------------	---

**I. NUCLEAR MEDICINE FACILITY:**

- |  |                |
|--|----------------|
| (i) Breakage of glass                          | - [24 hours]   |
| (ii) Breakage of furniture                     | - [24 hours]   |
| (iii) Waste bins when 3/4 <sup>th</sup> full   | - [15 minutes] |
| (iv) Dirt, garbage, litter, stains or spillage | - [30 minutes] |

**II. Equipment**

The Concessionaire shall operate and maintain the Equipment in accordance with manufacturer's guidelines, Applicable Laws and Good Industry Practice.

## SCHEDULE H

### SAFETY REQUIREMENTS

#### 1. Guiding Principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Nuclear Medicine Facility, irrespective of the person(s) at fault;
- 1.2 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;
- 1.3 Safety Requirements include measures associated with fire and life safety, radiation safety, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule H.

#### 2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- a. Applicable Laws and Applicable Permits;
- b. Provisions of this Agreement;
- c. Relevant Standards/Guidelines contained in nationally accepted codes; and
- d. Good Industry Practice.

#### 3. Safety Measures during Concession Period

- 3.1 The Concessionaire shall develop, implement and administer a safety programme for the Nuclear Medicine Facility, staff, Users and other persons, which shall include 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 with the standards specified in NABL and NABH guidelines regarding safety during the Concession Period of the Nuclear Medicine Facility.
- 3.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Nuclear Medicine Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 3.4 The Concessionaire shall submit to the Authority before the [31st (thirty first) May] of each year, an annual report [(in 3 (three) copies)] containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Clause 3.1 of this Schedule H for averting or minimising such accidents in future.

- 3.5 Once in every Accounting Year, a safety audit in respect of the Nuclear Medicine Facility shall be carried out by the Authority or its representative (“**Safety Report**”). It shall review and analyse the annual report and unusual occurrences data of the preceding year and undertake an inspection of the Nuclear Medicine Facility. The Authority or its representative 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 Nuclear Medicine Facility. A copy of these recommendations shall be forwarded to the Concessionaire.
- 3.6 The Concessionaire shall endeavour to incorporate the recommendations as provided in Clause 3.5, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, NABH, NABL, AERB, Specifications and Standards, 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.
- 3.7 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**

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

**Annex-I**  
**(Schedule-H)**  
**Safety Guidelines**

The Concessionaire shall ensure compliance with all applicable safety infrastructure, statutory requirements, and operational safety protocols during the development and operation of the Nuclear Medicine facility.

**1. Fire Safety**

- 1.1 The Concessionaire shall adopt and comply with fire safety requirements prescribed under Applicable Laws.
- 1.2 To prevent fire in the Nuclear Medicine Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 1.3 To deal with incidents of fire, the Concessionaire shall provide a hydrant based firefighting system in conformity with the provisions of Schedule B.
- 1.4 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 Nuclear Medicine Facility in case of emergency.
- 1.5 Escape routes shall be clearly marked by arrows in the correct direction, and no cryptic symbols shall be used. All notices and signages shall be uniform and standardised.

**2. Radiation Safety**

- 2.1 The Concessionaire shall obtain necessary licenses from the Atomic Energy Regulatory Board (AERB) as per applicable rules.
- 2.2 The following radiation safety measures shall be implemented:
  - Radiation shielding (e.g., ceiling-mounted lead glass)
  - Monitoring of personnel using TLD badges
  - Periodic radiation safety audits

**4. Safe movement**

In the operation and maintenance of the Nuclear Medicine Facility, particular care shall be taken to ensure safety of the Patients, staff and visitors. This shall include facilities for safe and efficient evacuation in case of emergency.

**5. System integrity**

In the design of power supply, lifts and Equipment, particular care shall be taken to minimise the likely incidence of failure.

**6. Restoration of service**

The Nuclear Medicine Facility shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

## **7. Safety management**

A safety statement shall be prepared by the Concessionaire once every year to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Nuclear Medicine Facility and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. [2 (two)] copies of the statement shall be sent to the Authority within [15 (fifteen)] days of the close of every year.

## **8. 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 as laid down in a manual for management of disasters (the **Disaster Management Manual**) to be prepared and published by the Concessionaire prior to Operations Date. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority no later than [30 (thirty)] days prior to Operations Date.

## **9. Surveillance and Safety Manual**

The Concessionaire shall, no later than [60 (sixty)] days prior to Operations Date, evolve and adopt a manual for surveillance and safety of the Nuclear Medicine Facility, in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Nuclear Medicine Facility, including its gate control, sanitation, fire prevention, environment protection.

## **10. Watch and Ward**

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, maintain all lighting, fencing for the safety of the Nuclear Medicine Facility and all persons affected by it.

## **11. Containment of Infections**

11.1 The Concessionaire shall take adequate measures to prevent and contain infections in the Nuclear Medicine Facility, including ensuring usage of appropriate materials and consumables such as masks, hand gloves, disinfectant etc by the staff and Patients, as the case may be. In this regard, the Concessionaire shall conform to the provisions of NABH, NABL and Good Industry Practice.

11.2 The Concessionaire shall formulate appropriate policy for evaluation and care of staff, and Patients who suffer from accidental needle stick exposures.

## **12. Waste Disposal**

The Concessionaire shall dispose of waste in accordance with Applicable Laws, the provisions of NABH, NABL and Good Industry Practice.

**SCHEDULE I**  
**MONTHLY KEY PERFORMANCE INDICATORS**

<b>S. No.</b>	<b>Implementation activity/ Operational parameter</b>	<b>Threshold limit</b>	<b>Time for evaluation</b>	<b>Source for Measuring Data</b>	<b>LD/ Compensation / in case of default</b>
1	<p><b>Equipment Uptime -</b> PET Scan / Gamma Camera Service is not operational at the Nuclear Medicine Facility. Downtime shall be considered in case of: Non-operation of PET Scan/ Gamma Camera services due to any technical/ administrative reason on part of the Service Provider</p>	<p>Service Provider to maintain an uptime of 95% in a year. However, in case the machine is out of order/ broken down for period greater than 72 hours, the Service Provider shall make alternative arrangements for provision of services (including free transportation of patients). It is further clarified that if downtime extends beyond 5% in a year due to technical and/or administrative reasons on the part of service provider, may lead to termination of the agreement.</p>	Upon completion of a year	Annual Review Quarterly Review	Amount= Average Cost per Scan* x total no. of Scan done per day (during previous month) x no. of downtime days

2	<b>Denial of services to non-chargeable patients</b>	No instances of denial to non-chargeable patients per month	1st week of subsequent month for which assessment is being made	Records Grievances	Rs. 20,000 for every such instance reported
3	<b>Turn Around Time (Upload scan images)</b> Service Provider to upload PET Scan / Gamma Camera images on the server	Within 120 mins of completion of each PET Scan / Gamma Camera performed	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report	Penalty in an amount calculated at the rate of INR 2000 for every instance of default in excess of 10 (ten) defaults per month shall be paid by the Concessionaire to the Authority.
4	<b>Turn Around Time (Report Generation)</b> Service Provider to provide Hard Copy & Soft Copy of the Report and PET Scan / Gamma Camera images to the patient/referral doctor	Hard Copy & Soft Copy of the Report and PET Scan / Gamma Camera scan images to be submitted to the patient/ referral doctor within 12 hrs	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report	Penalty in an amount calculated at the rate of INR 2000 for every instance of default in excess of 10 (ten) default per month shall be paid by the Concessionaire to the Authority.
5	<b>Appointment / Investigation slots for non-chargeable patients</b>	The appointment/ investigation slot for PET CT / Gamma services should be given to patient within 48 hrs of registration on a first come-first-serve basis	1st week of subsequent month for which assessment is being made	Periodic (monthly) data reported Grievances	Penalty in an amount calculated at the rate of Rs 10,000 for every instance of default.
6	<b>Charge fee directly from patients: If fee is collected directly from patient</b>	Every instance of default	1st week of subsequent month for which	Periodic (monthly) status report Patient complaints	For every default (measured monthly),

	for which reimbursement has to be made by Authority		assessment is being made		INR 10,000 shall be charged
7	<b>On-Time Scan Start Rate</b>	% of scans starting within 15 minutes of scheduled time of appointment $\geq 90\%$	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report Patient complaints	For delay beyond 90%, INR 1,000 shall be charged
8	<b>Average Turnaround Time Per Patient for Iodine therapy (except for critical cases verified by CNCI)</b>	Time from admission to discharge $\leq 3$ days	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report Patient complaints	For every default, (measured monthly), INR 10,000 shall be charged
9	<b>Staff Availability</b>	Nuclear medicine physician & technologist coverage 100% availability during operating hours	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report Patient complaints	For every default, (measured monthly), INR 10,000 per day shall be charged for NM Specialist; INR 5,000 per day for NM Technologists
10	<b>Services to Non-Chargeable and General Patients referred by the Authority</b>	Services to Non-Chargeable and General Patients referred by the Authority to be rendered within one (1) week from the date of such referral	1st week of subsequent month for which assessment is being made	Periodic (monthly) status report Patient complaints	For every default (measured monthly), INR 20,000 shall be charged

*\*Average cost for each type of scan*

***All the Liquidated Damages shall be capped to the value of Performance Security /Guarantee individually as well as collectively during a measurement cycle.***

In the event, the Concessionaire is liable to pay damages beyond the specified threshold limit for any KPI (as mentioned above) during any financial year, it shall be considered as Concessionaire's Event of Default in accordance with Clause no. 28.1 of this Agreement.

**SCHEDULE J**  
**ESCROW AGREEMENT**

(See Clause 22.1.2)

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

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 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 [ ..... ] represented by the ..... and having its principal offices at ..... (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- A. The Authority has entered into an agreement dated ..... with the Concessionaire (the “**Concession Agreement**”) for operating and maintaining a fully developed, furnished and equipped Nuclear Medicine Facility including PET- CT scan, Gamma Camera and High Dose Iodine Therapy , in the Chittaranjan National Cancer Institute, Kolkata, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. 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, 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;

“**Indemnified Party**” shall have the meaning ascribed thereto in Clause 9.2;

“**Indemnifying Party**” shall have the meaning ascribed thereto in Clause 9.2;

“**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. 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.

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

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

## 2. ESCROW ACCOUNT

### 2.1. Escrow Bank to act as trustee

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority 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.

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 and the Concessionaire and applied in accordance with the terms of this Agreement. No person other than the Authority 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 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 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, 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.

#### 2.5. **Rights of the Parties**

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

### 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 Nuclear Medicine Facility; and
- (b) 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. **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 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) O&M Expenses incurred by the Concessionaire;
- (c) O&M Expenses and other costs and expenses incurred by the Authority in

accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

- (d) Radiopharmaceutical Charges for Market Patients due and payable to the Authority;

;

- (e) 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;

- (f) 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, 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, 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 Radiopharmaceutical Charges for Market Patients;
- (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;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 30;
- (f) incurred or accrued O&M Expenses; and
- (g) balance, if any, in accordance with the instructions of the Concessionaire.

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

#### 4.3. **Application of insufficient funds**

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

#### 4.4. **Application of insurance proceeds**

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

#### 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 as to the relevant Payment Dates), the Escrow Bank shall notify the Authority 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 Authority 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 Authority 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:

- (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, 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, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and arrangements are made satisfactory to the Authority 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 Authority made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

## **8. SUPPLEMENTARY ESCROW AGREEMENT**

### **8.1. Supplementary escrow agreement**

The Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of 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 and Escrow Bank, 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.

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.

9.1.2. 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 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 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

<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 ....., Director, who has signed these presents in token thereof and .....,</p>	<p>SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address)</p>
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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

For and on behalf of ESCROW  
BANK by:  
(Signature)  
(Name)  
(Designation  
) (Address)  
(Fax No.)  
(e-mail address)

**SCHEDULE K**  
**VESTING CERTIFICATE**  
**(See Clause 29.4)**

[The \_\_\_\_\_] represented by ..... (the “**Authority**”) refers to the Concession Agreement dated .....(the “**Agreement**”) entered into between the Authority and ..... (the “**Concessionaire**”) for a Nuclear Medicine Facility, at Chittaranjan National Cancer Institute, Kolkata on operation and maintenance basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 29.1 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 Nuclear Medicine Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

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.....

<p>AGREED, ACCEPTED AND SIGNED</p> <p>For and on behalf of Concessionaire by: (Signature) (Name) (Designation) (Address)</p>	<p>SIGNED, SEALED AND DELIVERED</p> <p>For and on behalf of Authority by: (Signature) (Name) (Designation) (Address)</p>
--	--

In the presence of:

1. \_\_\_\_\_
2. \_\_\_\_\_

**SCHEDULE L**  
**SELECTION OF INDEPENDENT EXPERT**  
**(See Clauses 20.1)**

**1. Selection of Independent Expert**

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from auditing firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-J and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “Panel of Auditing Firms”) and convey its decision to the Concessionaire.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Auditing Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-J shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

**2. Fee and expenses**

- 2.1 In determining the nature and quantum of duties and services to be performed by the by the Independent Expert during the Operations Period the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed [1% (one per cent)] of the project cost. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the

provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

- 2.2 All payments made to the Independent Expert on account of fee and expenses, shall be borne equally by the Authority and the Concessionaire.

### **3. Appointment of government entity as Independent Expert**

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

### **4. Terms of Reference for the Independent Expert**

#### **4.1 Role and functions of the Independent Expert**

The role and functions of the Independent Expert shall include the following:

- (a) review inspection and monitoring of O&M as set forth in Paragraph 5;
- (b) review inspection and monitoring of Divestment Requirements in accordance with the Agreement;
- (c) assisting the Parties in resolution of Disputes as set forth in Paragraph 6; and
- (d) undertaking all other duties and functions in accordance with the Agreement.

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

### **5. Concession Period**

- 5.1 In respect of the documents received by the Independent Expert for its review and comments during the Operation Period. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within [15 (fifteen)] days of receipt of such documents. In particular, such comments shall specify the conformity or otherwise of such documents with the Scope of the Project and Specifications and Standards. The Independent Expert shall review any documents or modified documents or supporting documents sent to it by the Concessionaire and furnish its comments within [7 (seven)] days of receiving such documents.
- 5.2 The Independent Expert shall review the annual status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within [7 (seven)] days of receipt of such report.

- 5.3 The Independent Expert shall inspect the Nuclear Medicine Facility, at least twice every year, preferably after receipt of the yearly status report for the relevant year from the Concessionaire, but before the [30th (thirtieth) day] after the close of each year in any case, and make out an Inspection Report setting forth an overview of the safety of operations and their conformity with the Maintenance Requirements and Safety Requirements. In a separate section of the O&M inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Nuclear Medicine Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within [7 (seven)] days of the inspection.
- 5.4 The Independent Expert may inspect the Nuclear Medicine Facility more than twice a year.
- 5.5 The Independent Expert shall in its Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Nuclear Medicine Facility is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 5.6 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-L, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.7 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay. The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in the Agreement.
- 5.8 In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Nuclear Medicine Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within [15 (fifteen)] days.
- 5.9 The Independent Expert shall also carry out the following obligations in relation to the Nuclear Medicine Facility:
- (a) shall monitor the Nuclear Medicine Services and Services Requirements in accordance with the Specifications and Standards;
  - (b) shall monitor the testing of Equipment and performance of the Nuclear Medicine Services; and
  - (c) shall prepare and submit quarterly reports to the Authority in respect of its duties and functions.

## **6. Assistance in Dispute resolution**

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

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 Expert, shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

## **7. Other duties and functions**

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

## **8. Miscellaneous**

- 8.1 The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 8.2 A copy of all communications, comments, instructions, Documents sent by the Independent Expert to the Concessionaire pursuant to this Schedule, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.
- 8.3 The Independent Expert 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 Expert, whereupon the Independent Expert shall send one of the copies to the Authority along with its comments thereon.
- 8.4 Upon completion of its assignment hereunder, the Independent Expert 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. Two copies of the said document shall also be furnished in microfilm form or in such other medium as may be acceptable to the Authority.

**SCHEDULE M**  
**SCHEDULE RATES**

(See Clause 18.6 and 18.7)

**Base Tariff for PET-CT scans across patient categories**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	GA-68 Scan	2,000
	FDG Scan	2,000
General patients	GA-68 Scan	6,000
	FDG Scan	6,000
Private patients	GA-68 Scan	11,500
	FDG Scan	11,500

**Base Tariff for Gamma Camera scans across patient categories –**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	Whole Body Bone Scan with SPECT	1,250
General patients	Whole Body Bone Scan with SPECT	2,500
Private patients	Whole Body Bone Scan with SPECT	5,000

**Base Tariff for High Dose Iodine Therapy across patient categories –**

Type of patient	Details of services	User Charge (INR)
Non-chargeable patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750
General patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750
Private patients	Iodine Ablation Therapy (30-50 mCi)	11,500
	High Dose Adjuvant Radioiodine Therapy (100-150 mCi)	11,750

List of Radiopharmaceuticals & Iodine Therapy medicine/capsule Charges for Chittaranjan National Cancer Institute, Kolkata as on May, 2026 is given below:

<b>Radiopharmaceuticals (RP)</b>	<b>Charges (INR)</b>
FDG	3,000
GA-68	7,000
RP used in Gamma Camera Scan	3,000
Medicine used in High dose Iodine therapy per patient (30-50 mCi)	6,000
Medicine used in High dose Iodine therapy per patient (100-150 mCi)	18,750

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**\*NOTE:**

- The room tariff may vary across patient categories and duration of stay and any additional procedures.
- Room tariff per day for non-chargeable patients is zero.
- Room tariff per day for general patients is INR 300/-
- Room tariff per day for private patients is INR 1,500/-