

CONCESSION AGREEMENT

DATED AS OF [●], 2018

AT: KARACHI, PAKISTAN

BETWEEN

HEALTH DEPARTMENT

**GOVERNMENT OF SINDH
(AS AUTHORITY)**

AND

**[NAME OF THE LEAD MEMBER OF THE PREFERRED BIDDER TO BE INSERTED]
(AS MANAGER)**

FOR

**MANAGEMENT AND OPERATIONS OF SAFETY & SECURITY SERVICES AT NATIONAL
INSTITUTE OF CHILD HEALTH KARACHI**

CONCESSION AGREEMENT

This AGREEMENT is made at Karachi on this the _____ day of _____, 2018 (the "Signing Date");

BETWEEN:

- (1) **THE GOVERNMENT OF SINDH**, acting through the Secretary, Health Department, Government of Sindh, having its principal office at Sindh Secretariat, Karachi, Pakistan (hereinafter referred to as the "Authority/ GoS", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns), of the one part;

AND

- (2) [●], having its registered office at [●] Karachi (hereinafter referred to as the, which expression shall, unless repugnant to the context or meaning thereof, include its successors-in-interest, permitted assigns and substitute), of the other part;

(the **Authority / GoS** and the **Manager** shall collectively be referred to as the "**Parties**" and individually as the "**Party**").

RECITALS:

- (1) The Authority, through the Public Private Partnership Node Health Department Government of Sindh intends to contract out operations of safety & security services at National Institute of Child Health ("NICH") with the primary aim of safety of new born especially from and overall security of the entire premises of the hospital through management of CCTV cameras and fire plan.
- (2) On [●] [month], 2018, the Authority issued Request for Proposals (the "Request for Proposal" or "RFP") to prospective bidders for, *inter alia*, inviting submission of bids for the management, operations and maintenance of the NICH Karachi, situated at [●] (the "Project") for the period of 5 years.
- (3) After the technical evaluation of the technical and financial bids by the Technical and Financial Evaluation Committee (TFEC) constituted for the Project, the Manager was found to be the successful bidder for the Project pursuant to the RFP. In light of that, a letter of award has been issued to the Manager.
- (4) The Authority now wishes to enter into this Agreement with the Manager for the execution of the Project, subject to and on the terms and conditions set forth herein;

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:

1. DEFINITIONS

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

"**Additional Cost**" means the additional operating cost and / or, any adverse financial impact on the Manager and/or additional taxes and/or all of the above as the case may be, which the Manager has or would be required to incur and which has / have arisen as a consequence of Additional Services or Change in Law; provided, that the Additional Costs shall be paid to the Manager by the Authority in terms as mutually agreed between the Parties;

"**Additional Services**" shall have the meaning ascribed thereto in Section 18.1;

"**Additional Services Notice**" shall have the meaning ascribed thereto in Section 18.2.1;

"**Additional Services Order**" shall have the meaning ascribed thereto in Section 18.3.3;

"**Affected Party**" has the meaning given in Section 20.1;

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

"**Annuity Amount Payment**" means the periodic cost of managing operations of the Project by the Manager as mentioned in the Schedule E and shall be paid to the Manager in accordance with the provisions of this Agreement;

“Annuity Amount Payment Certificate” shall have the meaning ascribed thereto in Section 10.3.1;

“Annuity Amount Payment Date” means each such date on which the Annuity Amount Payments shall be paid by the Authority to the Manager, being the dates set out in the Annuity Amount Payments

Annuity Amount Payment Evaluation Date means:

- (a) in respect of the first (1st) Annuity Amount Payment Date, the Annuity Amount Payment Date;
- (b) in respect of each other Annuity Amount Payment Date, the date falling thirty (10) days immediately prior to such Annuity Amount Payment Date;

“Annuity Amount Payment Evaluation Period” means:

- (a) in respect of the first Annuity Amount Payment Date, a period equal to zero (0) days;
- (b) in respect of each other Annuity Amount Payment Date, the period between the two (2) Annuity Amount Payment Evaluation Dates falling immediately prior to such Annuity Amount Payment Date.

“Annuity Payment Account Funding Amount” means, in respect of an Annuity Amount Payment Account Funding Date relating to an Annuity Amount Payment Date, an amount equal to that set out in the Annuity Amount Payment Certificate.

“Annuity Amount Payment Account Funding Date” means the date on which the Authority shall fund the Annuity Amount Payments in the Authority Annuity Amount Payment Account for each Operational Year, as set out in the Annuity Amount Payment Schedule E;

“Annuity Amount Payment Account Standing Instructions” shall have the meaning ascribed thereto in Section 10;

“Annuity Amount Payment Adjustment” means, in relation to an Annuity Amount Payment Date, the adjustment (being an amount in Pakistani Rupees) to be made to the Annuity Amount Payment relating to such Annuity Amount Payment Date (excluding the first Annuity Amount Payment Date), as calculated through application of the Annuity Amount Payment Adjustment Formula in accordance with KPIs and as set out in the Annuity Amount Payment Certificate;

“Annuity Amount Payment Adjustment Events” shall have the meaning ascribed thereto in Section 10.2.2;

“Annuity Amount Payment Adjustment Formula” means the formula for adjusting each Annuity Amount Payment relating to an Annuity Amount Payment Date due to occurrence of Annuity Amount Payment Adjustment Events during the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date, as set out in **SCHEDULE F**;

“Annuity Amount Payment Invoice” shall have the meaning ascribed thereto 10.4.1(a);

“Applicable Laws” means any laws, promulgated or brought into force and effect by the GoS, the Authority or any local government having jurisdiction over the Project, as well as rules, regulations, orders and notifications made pursuant to such laws, as well as, *inter alia*, judgments, decrees, injunctions, writs and orders of any Pakistan court, as may be applicable;

“Applicable Standards” means the standards, requirements, criterion and timelines (as applicable) in line with the Good Industry Practices and as set out in relation to and applicable to Services and the performance by the Manager of their respective obligations under this Agreement (including all Schedules attached hereto);

“Authority” shall have the meaning ascribed thereto in the Preamble;

“Authority Annuity Amount Payment Account” means the Escrow Account to be established by the Authority and notified to the Manager and the Independent Auditor as an Authority Condition Precedent;

“Authority Condition Precedent” shall have the meaning ascribed thereto in Section 2.2.1.2;

“Authority Representative” means an Authority employee or representative responsible for oversight of certain functions at the Project;

“Bid Security” means the bid security submitted by the Manager pursuant to the RFP in connection with its Bid for the Project;

“Concession” shall have the meaning ascribed thereto in Section 3;

"Change in Law" means the occurrence of any of the following subsequent to the Effective Date: the modification, amendment, variation, alteration or repeal of any existing Applicable Law; or

- (i) the coming into effect of any new Applicable Law;
- (ii) changes in the interpretation, application or enforcement of any Applicable Law or judgment by any court/ Government authority;
- (iii) the introduction of the requirement for the Manager to obtain any new Applicable Permits; or
- (iv) the introduction of any Taxes,

provided that Change in Law shall not include:

- (i) any statute that has been published in draft bill form or as a bill that has been placed before the legislature or that has been passed by the relevant legislature as a bill but has not come into effect prior to the date of this Agreement, which is not in the public domain;
- (ii) a draft regulation or statutory instrument or delegated legislation that has been published prior to the date of this Agreement and which is in the public domain; or

"Concession Period" means a period starting on the Effective Date and ending on the Final Expiry Date or the Termination Date (whichever is earlier);

"Effective Date" means the date notified by the Authority to the Manager as being the date on which each of the Conditions Precedent stand satisfied, waived and/or deferred;

"Events of Default" means the Authority Events of Default and/ or the Manager Events of Default, as the context may require;

"EoD Remedy Period" shall have the meaning ascribed thereto in Section 15.2;

"Escrow Agreement" means the agreement to be entered into between the Authority, the Manager, the Escrow Bank and any other Person agreed by the Parties;

"Escrow Account" means the bank account of the Authority, maintained and operated through irrevocable instructions issued in accordance with the Escrow Account Agreement;

"Escrow Bank" means the bank which will enter into an Escrow Account Agreement with the Authority and be the custodian of the Escrow Account;

"Final Expiry Date" means the date falling on the 5th yearly anniversary of the Effective Date; however, the Authority and the Manager may agree to extend the Final Expiry Date (and, as a result, the Concession and the Concession Period) with mutual written consent;

"Force Majeure Event" shall have the meaning ascribed thereto in Section 20.1;

"Force Majeure Notice" shall have the meaning ascribed thereto in Section 20.3;

"Force Majeure Costs" means all such costs that are directly attributable to, arise from and are a direct result of, in each case, a Force Majeure Event and shall include any additional capital expenditures; any additional construction costs; and any additional operating costs; provided, however, for the purposes of determining such costs, information contained in the Financial Model shall be relied upon;

"Force Majeure Period" means the period commencing from, subject to Section 20.1, the date of occurrence of a Force Majeure Event and ending on the earlier of: (a) the date on which the Affected Party resumes or should have resumed such of its obligations the performance of which it was excused in terms of Section 20.3 or (b) the Termination Date of the Agreement; as applicable.

"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence, and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced contract or Manager engaged in construction, management, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project.

"Commencement Certificate" means the certificate to be issued by the Independent Auditor upon transfer of the Project Site and Project Assets to the Manager by the Authority;

"Health Department" means the Health Department, Government of Sindh;

“Independent Auditor” or “IA” means the expert appointed in respect of the Project in accordance with Section 12 and in terms of the Independent Auditor Agreement;

“Independent Auditor Agreement” means the agreement to be entered into between the Authority, the Manager and the Independent Auditor and any other Person agreed by the Parties in accordance with Section 12 of this Agreement;

“Key Performance Indicators” or “KPIs” mean the key performance indicators that have been developed by the Authority to measure the performance of the Manager against each activity under this Agreement, as set out in **Schedule D** of this Agreement;

“Key Professional Staff” shall have the meaning ascribed thereto in Section 9

“KPI Performance Score” has the meaning ascribed thereto in **Schedule D**;

“Long-stop Date” has the meaning ascribed thereto in Section 2.2.1;

“Manager” shall have the meaning ascribed thereto in the Preamble;

Operations Account means the bank account so entitled and opened at a scheduled bank by the Manager in accordance with Section 11

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

“Material Breach” means breach by either Party of any of its /their obligations under this Agreement which has/is likely to have a Material Adverse Effect on the Project and which such breaching Party shall have failed to cure by the date falling forty-five (45) days following the date of receipt of a notice issued by the non-breaching Party to the breaching Party to cure such breach.

“Manager Condition Precedent” shall have meaning ascribed thereto in Section 2.2.1.1;

“Management Fee” shall mean the fee payable to the Manager by the Authority for the services rendered pursuant to this Agreement as set out in Schedule –E

“Notice of Intent to Terminate” shall have the meaning ascribed thereto in Section 15.1.2;

“Operational Year” means a period of twelve (12) months commencing on Effective Date and ending on the subsequent yearly anniversary of such date;

“Payable Annuity Amount Payment” means, in respect of an Annuity Amount Payment Date, an amount equal to the difference between:

- (a) the Annuity Amount Payment relating to such Annuity Amount Payment Date (as set out in the Annuity Amount Payment Schedule E); and
- (b) the Annuity Amount Payment Adjustment relating to such Annuity Amount Payment Date;

as set out in the Annuity Amount Payment Certificate.

“Performance Security” means the security deposit that the Manager is required to provide as Conditions Precedent and may be renewable during the Concession Period, either in the form of a pay order or demand draft or bank guarantee, issued by a scheduled bank in Pakistan (with a minimum credit rating of at least ‘A+’ as rated by JCR VIS or an equivalent rating by PACRA) acceptable to the Authority, of an amount equal to one percent (1%) of the Pre-Estimated Project Cost;

“Pre-Estimated Project Cost” means the Annuity Amount Payment for the Concession Period, as specified by the Manager in their bids submitted in response to the RFP, as mentioned in the Schedule ●;

“Project” shall have the meaning attributed thereto in the Recitals above.

“Project Site / NICH” means National Institute of Child Health and related infrastructure, the security & safety services of which are being handed over to the Manager according to the terms of this Agreement.

“Project Assets” means physical assets installed and in place at the NICH which would be managed and operated by the Concessionaire according to the terms of this Concession Agreement. List of Project Assets are mentioned in

A.

“**Remedial Action Notice**” shall have the meaning ascribed thereto in Section 15.1.1;

“**Remedial Period**” shall have the meaning ascribed thereto in Section 15.1.1;

“**Services**” means provision of operations and management of security services at NICH, as laid out in Section 5

“**Termination Date**” shall have the meaning ascribed thereto in 15.3.2; and

1.2 **Rules of Interpretation**

1.2.1 In this Agreement unless the context otherwise requires:

- (iii) The words importing the singular mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (iv) Where any word or expression is given a defined meaning, any other grammatical form of that word or expression shall have the corresponding meaning, where the context requires.
- (v) "Section" and "Schedule" shall refer, respectively to Sections of and Schedule to this Agreement. The Schedule to this Agreement shall form part and parcel of this Agreement.
- (vi) The headings and sub-headings in this Agreement (and references to them) are included for convenience only and shall not be taken into account in interpreting this Agreement.
- (vii) The references to any agreement or deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as the same may, from time to time, be amended, varied, supplemented or novated.
- (viii) A requirement that a payment be made on a day which is not a business day shall be construed as a requirement that the payment be made on the following business day.
- (ix) The words "written" and "in writing" includes a facsimile or electronic transmission and any means of reproducing works in a tangible and permanently visible form.

2. **COMMENCEMENT, DURATION & CONDITIONS PRECEDENT**

2.1 **DURATION OF THIS AGREEMENT**

2.1.1 This Agreement shall be for a period commencing from Signing Date and expiring on the fifth (5th) anniversary of Effective Date.

2.2 **CONDITIONS PRECEDENT**

2.2.1 The Parties shall satisfy or procure the satisfaction of their respective Conditions Precedent as soon as reasonably possible and in any event within fifteen (15) days of Signing Date (the **Long-stop Date**).

2.2.1.1 The Conditions Precedent to be satisfied by the Manager (the **Manager Conditions Precedent**) are as follows:

- (a) The Manager has submitted to the Authority certified true copies of all resolutions adopted by the board of directors/management of the Manager authorizing execution, delivery and performance of this Project and the Agreement;
- (b) The Manager has submitted to the Authority certified true copies of all resolutions adopted by the board of directors/management of the Manager authorizing a specified person or persons to execute this Agreement on behalf of the Manager; and all undertake all other acts specifically relating to the Agreement, as contemplated by this Agreement;
- (c) The Manager has provided the Performance Security to the Authority, which shall be effective and valid for at least ninety (90) days beyond the Final Expiry Date;
- (d) The Manager has entered into the Independent Auditor Agreement for the appointment of the Independent Auditor for the project;
- (e) The Manager has opened the Operations Account with a reputable bank acceptable to the GoS and the same has been notified to the GoS and the Independent Auditor; and

- (f) The Manager has taken over the Project Assets and procured the Commencement Certificate from the IA.

2.2.1.2 The Conditions Precedent to be satisfied by the Authority (the **Authority Conditions Precedent**) are as follows:

- (a) The Authority has and handed over the Project Assets free from any encumbrances and clear of all dues and charges and certified by IA in the Commencement Certificate;
- (b) The Authority has established a Authority Annuity Payment Account and notified the same to the Independent Auditor and the Manager;
- (c) The Authority has appointed Authority Representative(s) for the Project; and
- (d) The Authority has entered into the Independent Auditor Agreement for the appointment of the Independent Auditor for the project;

2.2.1.3 Each Party shall promptly inform the other Party in writing (together with copies delivered to the Independent Auditor) when the Conditions Precedent for which it is responsible, have been satisfied.

2.2.1.4 The Parties hereby jointly undertake to procure the Commencement Certificate from the IA within three (3) days of the date on which the IA are satisfied that each of the Conditions Precedent have been satisfied, deferred and/or waived. The IA shall set out in the Commencement Certificate the date on which the Effective Date is achieved.

2.3 CONSEQUENCES OF FAILURE TO FULFILL THE CONDITIONS PRECEDENT

2.3.1 If the Authority fails to fulfill any of the Conditions Precedent that it is required to fulfill under Section 2.2.1.2 by the Long-stop Date (unless waived or deferred by the Manager in its absolute discretion), the Manager shall be entitled to terminate this Agreement by issuing a written notice of fifteen (15) days to the Manager. On such termination, the Authority shall not be entitled to encash the Performance Security of the Manager and shall return the Performance Security to the Manager without any demands or claims.

2.3.2 If the Manager fails to fulfill any of the Conditions Precedent that it is required to fulfill under Section 2.2.1.1 by the Long-stop Date (unless waived or deferred by the Authority in its absolute discretion), Authority shall be entitled to terminate this Agreement by issuing a written notice of 15 (fifteen) days to the Manager. On such termination, the Authority shall be entitled to draw on the Performance Security of the Manager (and if the Performance Security has not been submitted by the Long-stop Date, the Bid Security) in its entirety, as a genuine pre-estimate of and reasonable compensation for loss and damages caused to the Authority as a result of the Manager's failure to fulfill the Conditions Precedent and implement the Project in accordance with the terms and conditions of this Agreement.

3. CONCESSION AND CONCESSION PERIOD

3.1 In consideration of the Manager's obligations contained in this Agreement and relying on the Managers warranties and representations contained herein, the Authority, subject to the terms of this Agreement, hereby grants to the Manager and authorizes it, for the duration of the Concession Period, to implement the Project and to operate, maintain the Project Assets and exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement(the "**Concession**").

4. OBLIGATIONS OF THE AUTHORITY

4.1 The Authority shall, from the Effective Date and until the Final Expiry Date or the Termination Date, perform the following obligations:

- (a) The Authority shall make Annuity Amount Payments to the Manager in accordance with the Agreement;
- (b) All other obligations as set out in this Agreement and/or any other agreement with the Manager in connection with the Project.

5. OBLIGATIONS OF THE MANAGER

- 5.1 The Manager shall, from the Effective Date and until the Final Expiry Date, diligently undertake, perform and complete the following obligations in accordance with the Applicable Standards:
- (a) to effectively operate and maintain the Project Site and the Project Assets with reasonable care and diligence;
 - (b) ensure proper and timely use of baby tagging system for the close monitoring of babies in accordance with the Applicable Standards, *inter alia*, in the following manner:
 - i. Ensure the availability of real time location information at all times;
 - ii. Monitor the real time location information and movement of the infants within the Project Site;
 - iii. Prepare appropriate mechanism for intervention;
 - iv. Timely update and replace the baby tag models / systems;
 - v. Maintain a safe and secure environment for the infants with real-time location information;
 - vi. Prepare and maintain prevention strategies for timely intervention in the event of any unforeseen occurrence such as abduction of babies and/ or illicit attempts to move infants to and from wards;
 - vii. Carry out regular and continuous patrolling at the Project Site;
 - (c) to guard and protect the Project Site, including but not limited to, its paraphernalia against intruders, theft burglary, pilferage, sabotage and damage by miscreants or any other person in a reasonably prudent manner.
 - (d) monitor the Project Site and maintain an extensive coverage of all the access points is to be maintained at all times with the CCTV surveillance cameras with face recognition.
 - (e) ensure and be responsible for the safety of the hospital staff, patients, mothers or their attendants and report any incident immediately to the Authority;
 - (f) develop and maintain a visitor management plan with appropriate checks on key access points and strictly follow the usage of visitor tags;
 - (g) maintain an inventory of appropriate fire safety equipment and prepare a fire safety plan with timely replacement of any equipment which remains out of order for more than two (2) days.
 - (h) Take over the rights and control of all the Project Assets, pertaining to the use and management of the same, subject to the terms and conditions of this Agreement;
 - (i) ensure the provisions of services under this Agreement are provided in a prudent and coherent manner;
 - (j) Procure insurance in respect of the Project Assets;
 - (k) Prevent loss or damage to the Project Assets due to any malpractice and/ or negligence by the Manager or its employees and their subservient.
 - (l) be responsible for the cost of due maintenance of the Security Apparatus (as set out in Schedule – [●]), and ensure that the Project Assets are at all times maintained and operated in accordance with the Applicable Standards and in a reasonably prudent manner, during the term of this Agreement;
 - (m) be responsible for all government taxes, duties and levies including local government tax during the Concession Period;
 - (n) ensure that the Project Assets transferred to the Manager under this Agreement shall be maintained in good working condition and shall solely be used for provision of security services to be provided under this Agreement or any other additional services, as determined by the Authority from time to time;
 - (o) make the best possible use of the services of the Key Professional Staff at the Project Site, subject to the terms and conditions of their appointment, for the optimum performance of its obligations under this Agreement. Provided that the Key Professional Staff shall at all times be deemed as an employee of the Manager;
 - (p) provide to the Independent Auditor (with copies delivered to the Authority), a quarterly progress report in relation to the services performed by the Manager including the expenses incurred by the same. The report shall comprise at least the information as required by the Authority and/or IA;
 - (q) maintain a record of financial transactions and accounts in such manner as is expected of a corporate body and provide the same to the IA (with copies delivered to the Authority) on quarterly basis;

- (r) not assign rights or delegate obligations to any other party under this Agreement, without prior written consent of the Authority;
- (s) hand back to the Authority the Project Assets in the working condition at the Final Expiry Date or Termination Date, whichever comes earlier;
- (t) provide any information pertaining to the Project, Project Site or Project Assets to IA and/or the Authority as and when required;
- (u) carry out the services under this Agreement in accordance with the Annuity Amount Payment and shall not claim for any expenses beyond those as set out in the Annuity Amount Payment.

6. PROJECT ASSETS

- 6.1 Project Assets shall be handed over by the Authority, as an Authority Conditions Precedent to the Manager for the Concession Period.
- 6.2 The Manager shall, upon Effective Date of the Project Site and/or the Project Assets by the Authority, conduct a thorough inspection and evaluation of each asset, equipment and machinery present at the Project Site in the presence of the Independent Auditor and the Authority.
- 6.3 The Manager shall promptly notify the Authority, through the IA, if any of the Project Assets are not in a functional order and the required repair, replacement or servicing of such Project Asset including the costs required for such repair, replacement or servicing.
- 6.4 The Authority may hire an Independent Auditor of the relevant profession for verification (the **Surveyor**) of the fault or breakdown of Project Assets and for estimation of the cost for the repair, replacement or servicing. Cost of hiring the Surveyor is borne by the Manager.
- 6.5 The Authority undertakes to make payments for the repair, replacement or servicing of such Project Assets along with the reimbursement of the cost of hiring the Surveyor, as certified by the IA. The Manager shall make such repair, replacement or servicing within the time period mentioned by the IA and the Authority.
- 6.6 The IA shall verify whether such repair, replacement or servicing has been made in the prescribed time and report the same to the Authority.
- 6.7 In case of fault or breakdown in Project Assets which causes significant impact in the performance of the Manager under this Agreement, the IA may adjust the KPIs for the relevant quarter. Provided that any adjustment by the IA must be made with use of reasonable care, skill, prudence and diligence expected under the circumstances.
- 6.8 The Parties hereby agree and acknowledge that the Project Assets shall at all times be considered as the property of the Authority and remain in the ownership of the Authority and shall be handed back to the Authority on the Final Expiry Date or the Termination Date (whichever is earlier).

7. PERFORMANCE SECURITY

- 7.1 The Manager hereby undertakes to provide and deliver in advance the Performance Security to the Authority for each Operational Year.
- 7.2 The first Performance Security provided shall become effective simultaneously upon issuance and thereafter, each Performance Security provided later shall automatically become effective simultaneously upon return of the previous Performance Security.
- 7.3 The Performance Security shall not be secured through Project Assets and no encumbrance of any nature shall be created on the Project Assets.
- 7.4 All costs, expenses, fees and other charges of any nature, in each case, associated with the issuance, maintenance and encashment of the Performance Security shall solely be on account of the Manager.
- 7.5 The Performance Security shall be encashable in accordance with the terms hereof and shall be payable on the Authority's first written demand without any prior notice, reference or recourse to the Manager or any other entity.
- 7.6 The Performance Security provided by the Manager in respect of an Operational Year shall remain in force and effect until the date that falls on the expiry of such Operational Year subject to receipt by the Authority of a fully valid and effective Performance Security for the subsequent Operational Year in accordance with the terms of this Agreement on or prior to such date (the **Performance Security Expiry Date**). In the event the Performance Security expires prior to the Performance Security Expiry Date, the Manager shall extend the validity of the Performance Security, at least fifteen (15) business days prior to its expiry, so as to keep it valid and enforceable until the Performance Security Expiry Date. In the event of failure by the Manager

to keep valid or extend the validity of any of the Performance Security in accordance with this Section of this Agreement, the Authority shall have the right to encash such Performance Security at any time prior to its expiry to its full outstanding value at any time.

- 7.7 Upon the delivery of an Performance Security for such Operational Year (the **New Performance Security**) to the Authority by the Manager in accordance with this Section 7 (*Performance Security*) on or prior to the commencement of such Operational Year (the **New Operational Year**), the previous Performance Security issued for the previous Operational Year shall be null and void upon receipt of the New Performance Security and commencement of the New Operational Year and shall be returned to the Manager by the Authority simultaneously with the provision of the New Performance Security.
- 7.8 Notwithstanding anything to the contrary, the Manager hereby undertakes and agrees that the Performance Security shall remain valid:
- (i) in case of Termination, for three (3) months after the Termination Notice has been issued; or
 - (ii) in case of expiry of this Agreement on the Final Expiry Date, three (3) months after the Final Expiry Date.

8. REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Manager

8.1.1 The Manager represents and warrants to the Authority that:

- (a) it is incorporated under the laws of Pakistan, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) its registered office is situated at [●]
- (c) it has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (d) it has the financial standing, technical ability and capacity to perform its obligations under 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 will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (f) it is subject to the laws of Pakistan, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising hereunder including any obligation, liability or responsibility hereunder;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitutional document or memorandum and articles of association or any applicable laws or any covenant, contract, agreement, arrangement, understanding, decree or order to, which it or they, is or are a party or by which it or they or any of its or their properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any government department which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with all applicable laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) all rights and interests given to the Manager under this Agreement shall pass to and vest in the Authority or its nominee on the termination of this Agreement free and clear of all liens, claims and encumbrances; and

- (l) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any government department pursuant to this Agreement contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

8.2 Representations and Warranties of the Authority

8.2.1. The Authority represents and warrants to the Manager that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has complied with the Applicable Laws in all material respects; and
- (f) it has valid right to handover the Project Site and the Project Assets to the Manager.

8.3 Disclosure

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

9. STATUS OF STAFF& EMPLOYMENT

9.1 Key Professional Staff

- 9.1.1 The Manager shall employ and engage staff including specialists or any other ancillary staff, as set out in Schedule [●], in order to perform the Services hereunder (“*Key Professional Staff*”);
- 9.1.2 The Key Professional Staff shall be governed by their respective employment contracts with the Manager and shall not have any rights and claims against the Authority, during the term or upon the termination of this Agreement or their respective employment contracts with the Manager. For the purposes of clarity, the Key Professional Staff employed by the Manager shall not be deemed to be the employees of the Authority.
- 9.1.3 The Manager shall be authorized to offer such any benefits or advantages as it deems justified in the context of functions assigned and performance demanded of the Key Professional Staff. These benefits shall, however, be in the nature of an agreement between the Manager and the relevant employee and the relevant employee shall not have any rights and claims against the Authority, provided that such any benefits or advantages shall not have any impact on Annuity Amount Payment.

10. ACCOUNTS AND ANNUITY AMOUNT PAYMENTS

10.1 ANNUITY AMOUNT PAYMENTS

10.1.1 Subject to the provisions of this Agreement and in consideration of the Concession and the undertaking by the Manager to perform and discharge its obligations in accordance with the terms and conditions set out in this Agreement, the Authority agrees and undertakes to pay each Payable Annuity Amount Payment to the Manager on its corresponding Annuity Amount Payment Date in accordance with the terms of this Agreement.

10.2 ANNUITY AMOUNT PAYMENT ADJUSTMENT EVENTS & ANNUITY AMOUNT PAYMENT ADJUSTMENT

- 10.2.1 The Annuity Amount Payments payable by the Authority to the Manager on each Annuity Amount Payment Date shall be subject to Annuity Amount Payment Adjustment (as calculated in accordance with the Annuity Amount Payment Adjustment Formula provided in **Schedule F**) due to occurrence of the Annuity Amount Payment Adjustment Events during the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date.
- 10.2.2 The following events (as certified in writing by the Independent Auditor) shall constitute the Annuity Amount Payment Adjustment Events; provided, that the same shall not constitute an Annuity Adjustment Event in case the same results from the Permitted Events (excluding the Non-Political Events) (the **Annuity Amount Payment Adjustment Events**):

- (a) The Project Assets have remained out of operation at any time during an Operational Year for more than 2 (two) days for reasons attributable to the Manager; or
- (b) during the Annuity Amount Payment Evaluation Period, the Independent Auditor determines that either:
 - (i) the KPI Performance Score falls below 90%;
 - (ii) the actual spending by the Manager for the Services is less than the Annuity Amount Payment.

irrespective of whether the Project Assets have been functioning properly or not.

10.2.3 In the event any of the Project Assets are not operational during a given Operational Year for more than five (5) days for reasons attributable to the Manager (as determined by the Independent Auditor), the same shall constitute as Manager Event of Default and the Authority may at its sole discretion Terminate this Agreement in accordance with *Section 14*.

10.3 **DETERMINATION OF PAYABLE ANNUITY AMOUNT PAYMENT & ANNUITY AMOUNT PAYMENT CERTIFICATE**

10.3.1 Three (3) days prior to the first (1st) Annuity Amount Payment Date and thereafter within five (5) days of each Annuity Amount Payment Evaluation Date relating to an Annuity Amount Payment Date, the Manager shall procure that the Independent Auditor to issue a written certificate in respect of such Annuity Amount Payment Date (the **Annuity Amount Payment Certificate**) to the Manager, the Authority and the Authority Annuity Amount Payment Account Bank setting out (wherever applicable):

- (a) the Annuity Amount Payment Adjustment Events occurring in the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date;
- (b) the Annuity Amount Payment Adjustment calculated on the basis of the Annuity Amount Payment Adjustment Events occurring in the Annuity Amount Payment Evaluation Period relating to such Annuity Amount Payment Date;
- (c) the Payable Annuity Amount Payment to be paid on such Annuity Amount Payment Date; and
- (d) the Annuity Payment Account Funding Amount to be funded by the Authority.

10.4 **PAYMENT OF ANNUITY AMOUNT PAYMENTS**

10.4.1 Following issuance of the Annuity Amount Payment Certificate by the Independent Auditor, the Manager shall (at least ten (10) days prior to the Annuity Amount Payment Date relating to such Annuity Amount Payment Certificate):

- (a) deliver an invoice (together with copies of the Annuity Amount Payment Certificate appended thereto) to the Authority in triplicate demanding payment of the Payable Annuity Amount Payment from the Authority Annuity Amount Payment Account (the **Annuity Amount Payment Invoice**); and
- (b) deliver the Annuity Amount Payment Certificate to the Authority Annuity Amount Payment Account Bank for payment to the Manager of the Payable Annuity Amount Payment on the relevant Annuity Amount Payment Date through, as per Annuity Amount Payment Account Standing Instructions, debiting of funds standing to the credit of the Authority Annuity Amount Payment Account on the Annuity Amount Payment Date in an amount equal to the Payable Annuity Amount Payment and crediting of the same to the Operations Account on the Annuity Amount Payment Date.

10.4.2 Any dispute between the Parties in respect of any matters set out in the Annuity Amount Payment Certificate shall be resolved in accordance with the provisions of Section 16 (*Dispute Resolution*), provided however such dispute shall not affect the payment of the Payable Annuity Amount Payment (as set out in the Annuity Amount Payment Certificate) to the Manager in accordance with the provisions of Article 10.5; provided, further, that following resolution of such dispute, adjustments to the Annuity Amount Payments (to the extent required) shall be made in accordance with the determination/resolution of the dispute.

10.5 **AUTHORITY ANNUITY AMOUNT PAYMENT ACCOUNT**

10.5.1 The Authority shall establish and maintain the Authority Annuity Amount Payment Account as soon as possible after signing of this Agreement and until the Expiry Date.

10.5.2 The Authority shall issue irrevocable standing instructions to the Authority Annuity Amount Payment Account Bank (in form and substance agreed between the Parties) (the **Authority Annuity Amount Payment Account**

Standing Instructions) containing, *inter alia*, instructions to the Authority Annuity Amount Payment Account Bank:

- (a) to debit the Authority Annuity Amount Payment Account on each Annuity Amount Payment Date (upon receipt of an Annuity Amount Payment Certificate relating to such Annuity Amount Payment Date) in an amount equal to the Payable Annuity Amount Payment and credit the same to the Operations Account; and
- (b) in the event of Termination of this Agreement, to debit all the funds standing to the credit of the Authority Annuity Amount Payment Account and credit the same to the designated account of the Authority.

10.5.3 The Authority Annuity Amount Payment Account Standing Instructions issued by the Authority shall be irrevocable and shall remain effective, in each case, until the Expiry Date, and no withdrawal from the Authority Annuity Amount Payment Account may be made by the Authority, except as provided in this Agreement.

10.5.4 The Authority Annuity Amount Payment Account Standing Instructions (or any part thereof) issued by the Authority may be revoked pursuant to a written revocation notice duly executed and confirmed by the Parties.

10.5.5 The Authority Annuity Amount Payment Account shall be strictly operated and maintained in accordance with the Authority Annuity Amount Payment Account Standing Instructions. Further, the Authority hereby undertakes and covenants with the Manager that it shall not create, incur, permit, assume or suffer to exist any encumbrance whatsoever upon or with respect to the Authority Annuity Amount Payment Account.

10.5.6 The Authority shall fund the Authority Annuity Amount Payment Account in an amount equal to the Annuity Payment Account Funding Amount on each Annuity Amount Payment Account Funding Date until the Expiry Date.

11. BANK ACCOUNTS

11.1 OPERATIONS ACCOUNTS

11.1.1 The Manager shall establish the Operations Account as a Manager Conditions Precedent, (with a scheduled commercial bank acceptable to the Parties) and shall maintain the Operations Account until the Final Expiry Date.

11.1.2 All Payable Annuity Amount Payments to be paid by the Authority on each Annuity Amount Payment Date to the Manager during the Operations Period shall be credited into Operations Account by Authority Annuity Amount Payment Account Bank on Annuity Amount Payment Date.

11.1.3 Notwithstanding anything to the contrary set out herein, the payment of the Annuity Amount Payment shall be on the basis of actual spending of the Annuity Amount Payment during the Annuity Amount Payment Evaluation Period, as certified by the Independent Auditor in the Annuity Amount Payment Certificate.

11.1.4 The Operations Account shall be audited by IA at the end of each Annuity Amount Payment Evaluation Period and a report shall be prepared by the Independent Auditor and circulated to the Parties within seven (7) days.

12. INDEPENDENT AUDITOR

13.1 Within fifteen (15) days from the Signing Date, the Manager shall provide the Authority with a list of three (3) reputable firms from Big Four (4) of financial experts for appointment of the Independent Auditor (the IA List).

13.2 Within seven (7) days of receipt by the Authority of the IA List, the Authority shall select a reputed firm of financial experts from the IA List and the Authority and the Manager shall appoint such firm as the Independent Auditor in terms of the Independent Auditor Agreement. If the Authority doesn't respond on the selection of the Independent Auditor from the IA List, the Manager may select one of the firms from IA List.

13.3 In the event the firms of financial experts identified by the Manager in the IA List are not acceptable to the Authority, the Manager shall appoint (in terms of the Independent Auditor Agreement) such firm as recommended by the Authority and such appointment shall be in terms of the Independent Auditor Agreement.

13.4 The Independent Auditor shall provide the services set out in the Independent Auditor Agreement and as requested by the Parties with mutual consent from time to time Provided that the Parties shall require the Independent Auditor to obtain services of an independent technical expert with [●] years of experience in hospital management and security.

- 13.5 The appointment of the Independent Auditor shall be for an initial term of three (3) years (the Appointment Term) from the Effective Date; provided, however, the Appointment Term shall be extended prior to expiry of the same so as to ensure that at all times during the Concession Period, an Independent Auditor is retained/appointed, for the purposes set out in this Agreement.
- 13.6 The Parties shall require the Independent Auditor to designate and notify to the Authority and the Manager of the authorized representatives of the Independent Auditor that shall be authorized by the Independent Auditor to sign for and on behalf of the Independent Auditor, and any communication or document required to be signed by the Independent Auditor shall be valid and effective only if signed by such authorized signatories on behalf of the Independent Auditor; provided, that the IA may, by notice in writing to the Parties, substitute any of the authorized signatories.
- 13.7 The Manager shall be solely responsible for the payment of the fees and expenses payable to the IA pursuant to the Independent Auditor Agreement, notwithstanding that the IA shall be appointed by and shall fulfill its obligations in accordance with the terms of the Independent Auditor Agreement.
- 13.8 The appointment of the Independent Auditor may be terminated:
- a. by either Party if, the Independent Auditor is adjudged insolvent and / or bankrupt and / or the winding up proceedings are filed against the Independent Auditor files winding up proceedings in a court of law and / or any action for malpractice and / or misadministration is filed against the Independent Auditor in a court of law;
 - b. by the Parties with the mutual consent of the Parties.
- 13.9 The occurrence of any of the events listed in section 13.8, the Parties shall have the right to terminate the Independent Auditor Agreement in accordance with the terms of the same or and/or in the event of expiry of the Appointment Term, the Parties shall appoint a new Independent Auditor. In the afore-stated circumstances, the Parties shall replace the appointed IA with another firm of financial experts provided by the Manager pursuant to section 13.1 above; provided, however, that the termination and/or replacement of the Independent Auditor shall not have effect till such time as the replacement Independent Auditor has been appointed.
- 13.10 The Manager shall ensure that all provisions of this Agreement pertaining to the Independent Auditor and its responsibilities in respect of the matters set out herein are duly incorporated in the Independent Auditor Agreement.
- 13.11 The Duties and Responsibilities of the Independent Auditor

The IA shall perform all such roles, duties and functions as are contemplated to be performed by the IA in this Agreement. Without limiting the generality of the foregoing, the IA shall be responsible for:

- (a) assist the Parties if required, in resolving any dispute or make determinations referred to it, pursuant to this Agreement;
- (a) verify Annuity Amount Payments for each quarter in accordance with the terms of this Agreement.
- (b) monitor quarterly the financial progress;
- (c) carry out audits (on an annual basis) to establish compliance or otherwise of the Services with the KPIs, Applicable Laws, Applicable Permits and Good Industry Practices in accordance with the procedures set out in this Agreement;
- (d) assist the Parties in determining, under this Agreement existence and consequences of a Force Majeure Event, an Event of Default, the remedy of defaults and termination procedures, the existence, nature and consequences of a Change in Law, the existence and consequences of any of the other relief items set out in the Agreement, and/or any other matter of a technical nature referred by both Parties;
- (e) review any proposed changes in Annuity Amount Payment / re alignment of budget during the Concession Period.

- (f) carry out any other duties and functions specified or assigned in this Agreement or the Independent Auditor Agreement.

14 EVENTS OF DEFAULT

14.1 The Manager Event of Default

14.1.1 "**Manager Event of Default**" means any of the following events arising out of any acts or omissions of the Manager and which have not occurred as a direct consequence of any Authority Event of Default, or a Force Majeure Event and (unless otherwise provided for in this Agreement) where the Manager has failed to remedy the defects specified in the Remedial Action Notice issued in accordance with Section 15.1.1:

- (a) the Manager fails to achieve at least 900% on KPI Performance Score for two consecutive Annuity Amount Payment Evaluation Periods based on the assessment of Independent Auditor;
- (b) any Material Breach by the Manager of this Agreement which Material Breach has not been cured within forty-five (45) days from the date of written notice thereof by the Authority, or within such time period as provided in the relevant Authority Agreement, respectively;
- (c) Loss of any baby admitted in the hospital due to fault of the Manager in management of baby tagging system
- (d) abandonment by the Manager which means a complete cessation of the Project Assets or the performance of the obligations of the Manager for a period of 3(three) consecutive Days;
- (e) the Manager fails to commence operations within fifteen (15) days from the Effective Date;
- (f) any statement, representation or warranty made by the Manager in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Manager's ability to perform its obligations under this Agreement and/or on the Project or having a Material Adverse Effect on the rights and/or obligations of the Authority hereunder or under the Project Agreements;
- (g) the Manager creates or tries to create any encumbrance on the Project Assets in favor of any Person save and except as otherwise expressly permitted in terms and conditions of this Agreement;
- (h) the transfer of the rights and/or obligations of the Manager under this Agreement, save and except as permitted in terms and conditions of this Agreement;
- (i) the Bid Security or Performance Security in each case, is not issued, renewed, replaced or provided (as the case may be) in accordance with this Agreement or becomes inoperative or ceases to remain valid or in force in breach of the relevant provisions of this Agreement;
- (j) termination of the Agreement as a result of a Material Breach by the Manager that is not remedied in accordance with the terms and conditions of this Agreement;
- (k) any assets or shares of the Manager are expropriated, confiscated, compulsorily acquired or nationalized by any Government Authority or entity due to an act or omission of the Manager, causing a Material Adverse Effect;
- (l) a Material Breach by the contractors, employees, or any other officer or any of their respective contracts with the Manager having a Material Adverse Effect;
- (m) the Manager entering into liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Manager or if the Manager becomes unable to pay its debts as they fall due or the appointment of a receiver or administrator in respect of the Manager, its business and assets or any re-structuring, re-organization, amalgamation, arrangement or compromise affecting the Manager's ability to fulfill its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; and

14.2 Authority Event of Default

14.2.1 "**Authority Event of Default**" means any of the following events, unless such an event has occurred as a consequence of the Manager Event of Default, a Qualifying Change in Law, a Fundamental Change in Law and only where the Authority has failed to remedy the defects specified in the Remedial Action Notice issued in accordance with *Section 15* within the Remedial Period:

- (a) any Material Breach by the Authority of this Agreement and the same has not been cured within forty-five (45) days from the date of written notice thereof by the Manager, or within such time period as provided in the relevant Project Agreement, respectively.

- (g) the Annuity Amount Payment (including the Management Fee) due and payable to the Manager in terms of this Agreement remains unpaid by the Authority for a period of ninety (90) days from the date on which the same was payable in terms of this Agreement; provided, however, this subsection (b) is only applicable to such payments in respect of which there is no bona fide dispute and / or conflict between the Parties.
- (h) any statement, representation or warranty made by the Authority in this Agreement proving to have been incorrect, in any material respect, when made or when reaffirmed and such incorrect statement, representation or warranty having a Material Adverse Effect on the Manager's ability to perform its obligations under this Agreement and/or on the Project.

15 REMEDY OF DEFAULTS AND TERMINATION PROCEDURE

15.1 Performance of Obligations

- 15.1.1 If at any time either Party has failed to perform any of its obligations under this Agreement and that failure is capable of remedy, then the other Party may serve a notice (a "**Remedial Action Notice**") requiring such Party to remedy that failure (and any damage resulting from that failure) within a stipulated period (the "**Remedial Period**").
- 15.1.2 If the Party, on whom a Remedial Action Notice is served, fails to remedy the Event of Default within the Remedial Period, the non-defaulting Party may deliver a notice to the defaulting Party stating its intention to terminate this Agreement ("**Notice of Intent to Terminate**"). The Notice of Intent to Terminate shall specify with reasonable detail, the grounds on which termination is sought and any relevant defaults committed by the defaulting Party.
- 15.1.3 Provided that in case of Section [●] the Authority shall have the right to immediately deliver a Notice of Intent to Terminate, without any obligation to first serve a Remedial Action Notice or to provide a Remedial Period to the Manager.
- 15.1.4 The provisions of this Agreement, to the fullest extent necessary to give effect thereto, shall survive the term of the Agreement or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

15.2 Event of Default Remedy Period

- 15.2.1 Following the service of the Notice of Intent to Terminate, the defaulting Party shall have a period of not less than 90 (Ninety) Days ("**EoD Remedy Period**") to cure the Event of Default; provided that in case of Section 14.1.1(a), the Authority shall have the right to immediately terminate the Agreement herewith on the provision of the Notice of Intent to Terminate, without any obligation to provide an EoD Remedy Period.
- 15.2.2 During the EoD Remedy Period, the defaulting Party may continue to undertake efforts to cure the Event of Default. During the EoD Remedy Period, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed with the objective, as far as possible, of ensuring continued availability of the Project and the continued performance of the Services, failing which the Party in breach shall be liable to compensate the other Party for any loss or damage occasioned or suffered on account of breach of conditions of this Agreement.

15.3 Withdrawal of Notice of Intent to Terminate

- 15.3.1 If, during the EoD Remedy Period, the defaulting Party rectifies or remedies the Event of Default to the satisfaction of the innocent Party or the innocent Party is satisfied with steps taken or proposed to be taken by the defaulting Party or the Event of Default has ceased to exist, the innocent Party shall withdraw the Notice of Intent to Terminate in writing.
- 15.3.2 If following the end of the EoD Remedy Period, the breach has not been remedied or the defaulting Party has not taken steps or proposed to take steps to remedy the Event of Default to the satisfaction of the innocent Party then the innocent Party shall be entitled to issue the a notice to the defaulting Party (the "**Termination Notice**"), whereupon this Agreement shall terminate forthwith. The date on which the Termination Notice is issued shall be the **Termination Date**.

15.4 End of Term Obligations

- 15.4.1 The Manager shall return the Project Site and the Project Assets to the Authority on or earlier of the Final Expiry Date or the Termination Date.

16 DISPUTE RESOLUTION

- 16.1 Any dispute, difference or controversy of whatever nature howsoever arising under or in relation to or in connection with this Agreement (including its interpretation and validity) between the Parties, and so notified in writing by either Party to the other Party shall, in the first instance, be attempted to be resolved amicably between the Parties.
- 16.2 The Parties agree to use their best efforts for resolving all disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any dispute.

17 ARBITRATION

- 17.1 In the event that any dispute between the Parties as to matters arising pursuant to this Agreement is not resolved amicably within thirty (30) days of receipt by one Party of the other Party's request for such amicable settlement, it shall be resolved in accordance with the following provisions:
- (a) Each of the parties unconditionally and irrevocably agrees to the submission of such dispute to binding arbitration governed by the Arbitration Act, 1940, by appointment of a sole arbitrator that is acceptable to both the Parties.
 - (b) Each of the Parties unconditionally and irrevocably agrees to accept the award rendered by the Arbitrator as final and binding and not to hinder, obstruct or nullify the enforcement or execution of any award rendered by the Arbitrator.
 - (c) The cost of the arbitration shall initially be borne by both the Parties equally, however, at the time of award, the cost shall be borne by either of the Party or both the Parties as assessed by the arbitrator.
 - (d) The seat of arbitration, including the venue of hearings and meetings of the arbitral tribunal, shall be Karachi, and the language of arbitration proceedings shall be English.
 - (e) The Parties agree and undertake to carry out the award made by the Arbitrators without delay.
 - (f) The Manager and the Authority agree that an award may be enforced against the Manager and/or the Authority, as the case may be, and their respective assets wherever situated.
 - (g) 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.

18 ADDITIONAL SERVICES

- 18.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority may require a change / amendment in the scope of the Project (the **Additional Services**) in accordance with Applicable Laws.
- 18.2 Additional Services Notice
- 18.2.1 In the event at any time during the Concession Period, the Manager determines that Additional Service(s) is necessary for providing safer and improved services or for additional quantities/ services, the Manager shall issue a request in writing to the Authority through the Independent Auditor to consider issuing an Additional Services Notice in respect of the same. The Authority shall within forty-five (45) days from the date of receipt of such notice, either accept such request for Additional Services or with modifications, and issue the requisite Additional Services Notice in accordance with the provisions of this Section 18.2 (*Additional Services Notice*) or communicate its reasons for not accepting the same to the Manager. Moreover, The Authority may request for an Additional Services by issuing a notice in writing to the Manager through the Independent Auditor (the **Additional Services Notice**) at any time in the event the Additional Service(s) is required in respect of the Operations Period.
- 18.3 Additional Services Order
- 18.3.1 The Manager shall, within fifteen (15) days of receipt of the Additional Services Notice, provide to the Independent Auditor such information as is necessary and reasonable together with the preliminary documentation and details, including the calculations, where necessary, in support of the following:
- (a) the budgeted estimate of the Additional Cost to be incurred by the Manager for implementing the Additional Services;
 - (b) the estimated additional time (number of days) that the Manager would require to complete and implement the Additional Services and any delay, if any, in the Final Expiry Date;

- 18.3.2 The Independent Auditor shall after reviewing the information, documentation and the budgeted estimate of the Additional Cost submitted by the Manager pursuant to Section 18.3.1, settle the rates in light of relevant benchmark inflation rates and other relevant factors, approve the documentation and forward the budgeted estimates of the Additional Cost, as duly certified by the Independent Auditor in consultation with the Manager, to the Authority. Notwithstanding anything to the contrary set out herein, in the event the Manager disagrees with the determinations of the Independent Auditor, the Manager shall not be bound to carry out the additional services.
- 18.3.3 The Authority may, within a period of fifteen (15) days from the date of receipt of such statement, issue an order in writing to the Manager, through the Independent Auditor instructing the Manager to affect the Additional Services (*the Additional Services Order*).
- 18.3.4 In the event, the Authority for any reason whatsoever decides not to issue an Additional Services Order, then the Authority shall reimburse the Manager for the cost/expenses actually incurred by the Manager in the preparation and submission of the documents, estimates and other information in compliance with the Additional Services Notice; provided, such costs and expenses are duly certified by the Independent Auditor.
- 18.3.5 The Additional Services Order shall be effective from the date that the Authority notifies the mode of payment of the Additional Cost to the Manager pursuant to sub-section 18.3.5 of this Section 18.3 (*Additional Services Order*).
- 18.3.6 The Authority shall progressively pay the Additional Cost as mutually agreed between the Parties, only upon receiving a certificate from the Independent Auditor confirming that the Manager has completed the works in accordance with the Additional Services Order.
- 18.3.7 The Additional Cost may be paid by the Authority, in its absolute discretion, to the Manager through its budgetary allocation or through a separate grant in aid in accordance with the Applicable Laws.

19 LIABILITY AND INDEMNITY

- 19.1 The Manager will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Authority is not bound to pay/reimburse for 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 Manager 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 Manager to any Patient and any other users or from any negligence of the Manager under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 19.2 The Manager 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 Manager to comply with Applicable Laws; (b) payment of taxes required to be made by the Manager in respect of the income or other taxes of the Manager's Contractors, suppliers and representatives; or (c) non-payment of amounts due as a result of materials or services furnished to the Manager or any of its Contractors which are payable by the Manager or any of its Contractors.

20 FORCE MAJEURE

- 20.1 A "**Force Majeure Event**" shall mean any event or circumstance or combination of events or circumstances (including the effects thereof) that is beyond the reasonable control of a Party and that on or after the Effective Date materially and adversely affects the performance by such affected Party (**the Affected Party**) of its obligations under or pursuant to this Agreement; provided, however, that, such material and adverse effect could not have been prevented, overcome or remedied in whole or in part by the Affected Party through the exercise of diligence and reasonable care.
- 20.2 Without limiting the generality of the foregoing, Force Majeure Events hereunder shall include each of the following events and circumstances (including the effects thereof), but only to the extent that each satisfies the requirements above:
- i. any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, revolution, , riot, insurrection, civil commotion, or act or campaign of terrorism or political sabotage; or
 - ii. any strike and lockout, work-to-rule, go-slow, or analogous labour action that is politically motivated or is widespread or nationwide; or
 - iii. any lightning, fire, earthquake, tsunami, flood, storm, cyclone, typhoon, or tornado; or

iv. any change in law or legislation, any decision or order of governmental authorities or judicial authorities that impedes the performance under this Agreement.

20.3 Notwithstanding anything contained herein, the Affected Party shall, as soon as practicable, and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or from the date of having knowledge thereof, notify the Independent Auditor and the other Party, of the occurrence of the Force Majeure Event by the issuance of a notice in writing (the **Force Majeure Notice**).

20.4 The Parties shall, as soon as practicable upon the receipt of the Force Majeure Notice and in any case within five (5) days from the date of receipt of the same, convene a meeting, along with the Independent Auditor to :i) assess the impact of the underlying Force Majeure Event; ii) determine the likely duration of Force Majeure Event; and iii) formulate damage mitigation measures and the steps to be undertaken by the Parties for resumption of the obligations, the performance of which had been affected by the Force Majeure Event.

20.5 Upon occurrence of the Force Majeure Event, the obligations of the Parties under this Agreement shall be suspended for the duration of the Force Majeure Event, provided however that the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event and/or of the effects of the same.

20.6 If a Force Majeure Event subsists for a continuous period of sixty (60) days, either Party may in its discretion terminate this Agreement by issuing a notice of termination to the other Party.

21 MISCELLANEOUS

21.1 ENTIRE AGREEMENT

21.1.1 The Parties hereto acknowledge, confirm and undertake that this Agreement, as at the date hereof, constitutes the entire understanding between the Parties regarding this assignment and supersedes all previous written and/or oral representations and/or arrangements regarding this assignment.

21.2 AMENDMENT

21.2.1 The provisions of this Agreement may be amended or modified in writing only with the prior written consent of each of the Parties.

21.2.2 This Agreement may be executed in multiple counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

21.3 SEVERABILITY

21.3.1 The failure by any Party to exercise any right or remedy herein or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future exercise of such right or remedy, but the same shall continue and remain in full force and effect. All rights and remedies that any party may have at law, in equity or otherwise upon breach of any term or condition of this Agreement, shall be distinct, separate and cumulative rights and remedies and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other right or remedy.

21.3.2 Wherever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.

21.4 NOTICES

21.4.1 Any notice or request in reference to this Agreement shall be written in English language and shall be sent by mail, facsimile or email and shall be directed to the other Party at the address mentioned below:

Authority:

Attention:

Address:

Tel:

Email:

Manager:

Attention:

Address:

Tel:

Email:

21.4.2 Any notice or communication by a Party to the other Party, given in accordance here with, 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 email, it shall be deemed to have been delivered on the working day following the date of its delivery.

21.4.3 Each Party may change the above address by prior written notice to the other Party.

21.5 **GOVERNING LAW**

21.5.1 This Agreement shall be governed by and construed in accordance with the laws of Pakistan.

21.6 **CHANGE IN LAW RELATED TO TAXES AND DUTIES**

21.6.1 If, after the Effective Date of this Agreement, any Change in Law with respect to taxes and duties which increases or decreases the cost incurred by the Manager in performance of its obligations under this Agreement, shall be increased or decreased accordingly with mutual consent of the Parties.

19.7 **GOOD FAITH REQUIREMENT**

19.7.1 The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

SIGNATURE PAGE

IN WITNESS WHEREOF the Parties have caused this Agreement to be duly executed by their duly authorized officers as of the date first above written.

For and on behalf of
AUTHORITY

For and on behalf of
MANAGER

Name:
Designation:

Name:
Designation:

WITNESSES:

WITNESSES:

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SCHEDULE – A PROJECT ASSETS

DRAFT

SCHEDULE – SECURITY APPARATUS AND RELATED FUNCTIONS

DRAFT

SCHEDULE – C ASSIGNED HUMAN RESOURCES

DRAFT

SCHEDULE – D KEY PERFORMANCE INDICATORS

Key Performance Indicator	KPI Score Assigned	KPI Score Achieved *	Comments / Justification *
1. Baby Tagging System			
a. Number of babies tagged at any given time	6	-	-
b. Ensuring the moments of babies tagged at different location	7	-	-
c. Ensuring that no baby is discharged without proper record of tagging	7	-	-
	20	-	-
2. CCTV Camera Operations			
a. Functionality of cameras at any given time	4	-	-
b. Maintenance of recording for at least one month off site	4	-	-
c. Capability of cameras for face recognition at strategic location	4	-	-
d. Capability of cameras to cover all incidents reports like thefts, etc.	4	-	-
e. Availability of monitoring staff at all times (24/7)	4	-	-
	20	-	-
3. Parking Management			
a. Ability to have adequate control of parking in the hospital premises	3%	-	-
b. No parking of impermissible vehicles	3%	-	-
c. Marked parking spaces and designated parking for senior staff members	2%	-	-
d. Designated parking areas for other hospital staff and visitors	2%	-	-
	10%	-	-
4. Visitors Management			
a. No undue movement of visitors at any given time	2%	-	-
b. Allowing only authorized attendants in ward along with display of visitor pass	2%	-	-
c. Adequate management of visitors in main and day care operation theaters	2%	-	-
d. Controlled entry of visitors in outpatient area and in elevators	2%	-	-
e. Proper working of public address system at all times	2%	-	-
	10%	-	-
5. Management of Waiting Area			
a. Adequate staffing at waiting area at all times	2%	-	-
b. Ensure the stay of patient attendant in the waiting area	3%	-	-
	5%	-	-
6. Management of Subversive activity threats			
a. Adequate manning at access points at all times	5%	-	-
b. Vigilant staff posting at access points	5%	-	-
c. Adequate camera coverage of access points	5%	-	-

d. Regularly manned security check posts at all times with armed guards	5%	-	-
	20%	-	-
7. Quality Management			
a. Capability to handle minor conflicts amicably	3%	-	-
b. Minimization of incident reports	3%	-	-
c. Resolve minor incidents within 24 hours with corrective action and timely reporting to the authority	3%	-	-
d. Capability to handle major conflicts and timely reporting to authority	3%	-	-
e. Submission of incident handling report on weekly basis	3%	-	-
	15%	-	-
Overall KPI Score	100%	-	-

** To be filled by the Independent Auditor based on the evaluation of records / performance on quarterly basis*

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SCHEDULE – EANNUITY AMOUNT PAYMENT

S. No.	Quarter	Annuity Amount Payment	Management Fee	Total Annuity Amount (Annuity Amount Payment + Management Fee)	Payable Annuity Amount (Total Annuity Amount - Annuity Payment Adjustment)	Annuity Payment Evaluation Period	Annuity Amount Payment Evaluation Date	Annuity Amount Payment Date	Annuity Payment Account Funding Amount	Annuity Amount Payment Account Funding Date
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SCHEDULE – F ANNUITY AMOUNT PAYMENT ADJUSTMENT FORMULA

Computation of Overall KPI Score and Annuity Amount Payment Adjustment

i. Overall KPI Score Achieved

For each of the KPI Score (KS), the formula mentioned in the respective section shall be used to compute score achieved (KSx). The overall KPI Score achieved by the Manager during the preceding quarter shall be the sum of the scores achieved by the Manager for all the KPIs (\sum KSx). For avoidance of any doubt, the overall KPI Score shall be calculated as:

S. No	KPI	Assigned Weight	KPI Score Achieved
1	Baby Tagging System	20%	KS1
2	CCTV Camera Operations	20%	KS2
3	Parking Management	10%	KS3
4	Visitors Management	10%	KS4
5	Management of Waiting Area	5%	KS5
6	Subversive Activity Threats	20%	KS6
7	Quality Management	15%	KS7
	Overall KPI Score	100%	\sum KSx

B. Annuity Amount Payment Adjustment

The Authority shall make deductions from the Annuity Amount Payments based on the level / degree of fulfilment of the overall KPI Score achieved by the Manager. The following adjustments shall be computed by the Independent Auditor based on the evaluation of the KPIs done by the Independent Auditor from time to time and in accordance with this Agreement: The payment for the quarter and adjustment shall be calculated as per the following table:

KPI Performance Score (During the Quarter)	Quarterly Budget [(Operation Cost for each respective Operational Year – Management Fee for each respective Operational Year) x ¼]	Quarterly Management Fee [(Management Fee for each respective Operational Year) x ¼]
90% +	As per actual spending (with a cap of Approved Budget for the quarter)	100%
81% - 89%	As spent (with a cap of Approved Budget for the quarter)	Pro-rata Management Fee
Less than 80%	As spent (with a cap of Approved Budget for the quarter)	Pro-rata Management Fee The event will trigger Authority’s right for encashment of entire performance security (on the basis of (1-KPI Performance)) + top up of the Performance Security (one time) OR Termination right if the performance is below 60% for two consecutive quarters