



**Operation, Maintenance and Management of Health Sector Projects of GMDC-  
GVT in Gujarat**

**VOLUME II: DRAFT CONCESSION AGREEMENT**

**Issued by  
Gujarat Mineral Development Corporation-  
Gramya Vikas Trust (GMDC-GVT)**

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**Volume II: Draft Concession Agreement**

**Concession Agreement for Refurbishment, Operations, Maintenance and Management of Health Sector Projects of GMDC-GVT in Gujarat**

This Concession Agreement (hereinafter referred to as “**Agreement**”) is entered into on this ..... day of ..... 2024, at Ahmedabad, Gujarat

**BY & BETWEEN**

**Gujarat Mineral Development Corporation-Gramya Vikas Trust (GMDC-GVT)**, having its Principal Office at ‘Khanij Bhawan’, 132 Ft. Ring Road, Near University Ground, Vastrapur, Ahmedabad - 380052 (herein referred to as “**The Authority**” which expression shall, unless repugnant to the context or meaning thereof, include it’s administrators and assigns) as Party of the **FIRST PART**;

**AND**

.....[Details of the Successful Bidder], having its principal/head/registered office at ....., duly represented through its authorized signatory .....duly authorized by its a power of attorney dated ..... executed in his favour (hereinafter referred to as the “**Concessionaire/Successful Bidder**” which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) as Party of the **SECOND PART**;

The expressions ‘**The Authority**’/and ‘**Concessionaire**’/‘**Successful Bidder**’ shall hereinafter, as the context may admit or require, be individually referred to as “the **Party**” and collectively as “the **Parties**”.

**WHEREAS**

- A.** The Authority with an aim to extend quality health services to the people of the mining areas intend to establish GMDC-GVT Health Sector Projects with the support of private participation who shall undertake refurbishment, operations, maintenance and management of the GMDC-GVT Health Sector Projects at Lakhpat and Kawant in accordance with the terms and conditions to be set forth in a concession agreement.
- B.** The Authority had accordingly invited proposals from interested private entities under a single stage competitive Bidding Process for the Project in terms of the prescribed qualification criteria and other terms & conditions as delineated in the Request for Proposal dated, \_\_\_\_\_ (“**RFP**”).
- C.** After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder} and issued its Letter of Intent No. .... dated .....(hereinafter called the “**LOI**”) to the {selected bidder } requiring, inter alia, the execution of this Agreement within 30 (thirty ) days of the date of issue thereof.
- D.** In response to the Lol, the Selected Bidder vide its letter dated .....to the Authority communicated its acceptance of the Lol and agreed to enter into the Concession Agreement for the implementation of the Project on the terms, conditions and covenants hereinafter set forth in this Agreement.

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

## **ARTICLE 1: DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions:**

The words and expressions beginning with capital letters and defined in this Concession Agreement shall, unless the context otherwise requires, have the meaning ascribed herein. Any word and expression with capital letters not specifically defined herein shall have the meaning ascribed to it under the Concession Agreement.

- i. **“Affected Party”** shall mean the Party claiming to be affected by a Force Majeure Event in accordance with 14.1.1;
- ii. **“Agreement/Concession Agreement”** shall mean this Agreement, and includes any schedules thereto and amendments thereto made in accordance with the provisions hereof;
- iii. **“Annual Fee”** shall have the meaning ascribed thereto at ARTICLE 9 herein;
- iv. **“Applicable Permits”** means all clearances, concessions, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained (under Applicable Laws) from any Government [State Government and/or Central Government], and /or Statutory Authorities in connection with the performance of obligations hereunder (including undertaking the operation and maintenance of the Project) during the subsistence of the Concession Agreement;
- v. **“Applicable Laws”** shall mean all laws, brought into force and effect by the Government of India or Government of Gujarat including rules, regulations, circulars, guidelines, policy initiatives and notifications made there under, any guidelines and regulations of any regulatory authority / Statutory Authority (including but not limited to National Medical Commission) and judgments, decrees, injunctions, writs and orders of any court, applicable to this Project and/or the exercise, performance and discharge of the rights and obligations of the respective parties hereunder, as may be in force and effect during the subsistence of the Concession Agreement;
- vi. **“Authority Event of Default”** shall have the meaning ascribed thereto in Clause 17.1.1 herein;
- vii. **“Authority Proposal to Rectify”** shall have the meaning ascribed thereto in Clause 15.3.2b of this Agreement;
- viii. **“Condition Precedent”** shall have the meaning ascribed in ARTICLE 4 of this Agreement;
- ix. **“Contractor”** shall mean any Person with whom the Concessionaire has entered into/may enter into any of the Project Agreements;
- x. **“Cure Period”** shall have the meaning ascribed thereto in Clause 15.3.1c of this Agreement;

- xi. **“Concession Period”** shall have the meaning ascribed thereto in Clause 3.2.1 of this Agreement;
- xii. **“Concessionaire's Proposal to Rectify”** shall have the meaning ascribed thereto in Clause 15.3.1(b) of this Agreement;
- xiii. **“Concessionaire Event of Default”** shall have the meaning ascribed thereto in Clause 17.2.1;
- xiv. **“Due Date of Payment of Annual Management Fee”** shall have the meaning ascribed thereto in the SCHEDULE 6 of this Agreement;
- xv. **“Due Date of Payment of Salary Component”** shall have the meaning ascribed thereto in Schedule 7 of this Agreement;
- xvi. **“Effective Date”** shall have the meaning ascribed thereto in Clause 4.1.2 of this Agreement;
- xvii. **“Emergency”** shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project;
- xviii. **“Encumbrance(s)”** shall mean any encumbrance 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility;
- xix. **“Event of Default”** shall have the meaning ascribed thereto in ARTICLE 15 of this Agreement;
- xx. **“Financial Year”** shall mean the period commencing from 1<sup>st</sup> day of April of any given calendar year up to 31<sup>st</sup> day of March in the immediately succeeding calendar year; provided in the first year of this Agreement, the financial year shall be a time period commencing from the date of Project Commissioning up to 31<sup>st</sup> day of March in the immediately succeeding calendar year, and in the last year of subsistence of this Agreement, it shall be the time period commencing from 1<sup>st</sup> April up to handover of possession of the Project Facility date;
- xxi. **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in ARTICLE 14 of this Agreement;
- xxii. **“Good Working Condition”** shall mean that the operating condition of all the medical instruments and equipment [including machineries, fittings and fixtures] installed by the Authority in the Hospital premises, in terms hereof, conforms to and is as per the specifications [including purpose] prescribed by the manufacturer of such equipment/machineries;
- xxiii. **“Government Agency”** shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

- xxiv. **“Guidelines”** shall mean the applicable specifications, norms, regulations, bye-laws etc. issued from time to time, by the Government of India/Government of Gujarat/ Authority/Other Statutory Authorities (including but not limited to the National Medical Commission), in complete adherence where to, the Concessionaire shall undertake the operation and maintenance of relevant Project Facility; and shall specifically include any amendment/modifications made thereto, at any time and from time to time during the term of Concession Agreement;
- xxv. **“Good Industry Practice”** means the exercise of that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, efficient and experienced services provider and a person engaged in provision of clinical services and which inter alia includes those practices, methods, specifications and standards of safety, operation and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and prudent operator, in the implementation, operation and maintenance and supervision of a project of the type and size similar to the Project;
- xxvi. **“GoI”** shall mean Government of India;
- xxvii. **“GoG”** shall mean Government of Gujarat;
- xxviii. **“Healthcare Services”** shall have the meaning ascribed thereto in the Schedule 2 of this Concession Agreement;
- xxix. **“KPI or Key Performance Indicator”** shall mean the performance indicators as specifically set out and/or defined in Schedule 4 of this Agreement, in accordance where of the Concessionaire shall be required to undertake and perform its obligations hereunder;
- xxx. **“Material Adverse Effect”** shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement;
- xxxi. **“Material Breach”** shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure;
- xxxii. **“O&M Requirements”** shall mean the requirements as to operation and maintenance of the Project Facility as envisaged under Schedule 3 of this Agreement;
- xxxiii. **“Operation Performance Security”** shall have the meaning ascribed thereto in the Clause 10.1.2 of this Concession Agreement;
- xxxiv. **“Project Agreements”** shall mean collectively this Agreement, O&M contract, and any other material contract (other than financing documents, if any) entered into or may hereafter be entered into by the Concessionaire in connection with the Project;
- xxxv. **“Project”** shall mean and refer to refurbishment, operation, maintenance and management of the Project Facility in accordance with the applicable guidelines, KPIs, the specifications and

standards set out in respect thereof herein, Applicable Permits, Good Industry Practice and Applicable Laws, as set out in terms hereof;

- xxxvi. **“Project Facilities”** shall mean and refer to the GMDC-GVT Health Sector Projects, located at Lakhpat and Kawant, either alone or together as the case maybe, which the Authority has for the purpose of the Project and shall include all the equipment/machineries/fittings/fixtures installed therein by the Authority or the Concessionaire during the Concession Project for the purpose of implementation of Project in accordance with the terms and conditions herein.
- xxxvii. **“Project Monitoring Committee”** shall have the meaning ascribed thereto in the Article 8 of this Agreement;
- xxxviii. **“Project Commissioning Performance Security”** shall have the meaning ascribed thereto in in the Clause 10.1.1 of this Concession Agreement;
- xxxix. **“Project Site”** The site on which Project Facility (s)/GMDC Health Sector Project(s) is/are located;
- xl. **“Project Plan”** shall have the meaning ascribed thereto in the Clause 6.4.1 of this Agreement;
- xli. **“Reimbursable Component”** shall mean cost of drugs/medicines (only those drugs/medicines specified in Schedule 9), consumables, disposables and repair and maintenance of medical equipment, furniture, fixtures, insurance cost, utility cos and any other operational cost, which shall be reimbursed by Authority on actual basis as per approved Project Plan ;
- xlii. **“Salary Component”** shall mean the Authority shall pay to the Concessionaire towards meeting cost of manpower as indicated in the Schedule 1 and Schedule 7 of this Agreement;
- xliii. **“Statutory Authority”** shall mean Government, quasi Government, administrative, judicial, public or statutory body, department, instrumentality, agency, authority, board entrusted with and carrying any statutory functions, as required from time to time in connection with performance by the Concessionaire of its obligations hereunder;
- xliv. **“Scope of the Project”** shall have the meaning ascribed thereto in Clause 2.1.1 of this Agreement;
- xlv. **“Rupees”** or **“Rs.”** refers to the lawful currency of the Republic of India;
- xlvi. **“Tax”** shall mean and includes all taxes, fees, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law;
- xlvii. **“Termination”** shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course;
- xlviii. **“Termination Date”** shall mean the date specified in the Termination Notice as the date on which Termination occurs;
- xlix. **“Termination Notice”** shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement;

- l. **“Transfer Date”** shall mean the date of expiry or earlier termination (as the case may be) of the Concession Agreement subject to and in accordance with terms hereof;

## **1.2. Interpretation**

**1.2.1.** In this Concession Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of State of Gujarat, laws of India or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of Gujarat/India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- c) the table of contents, headings or sub-headings in this Concession Agreement are for convenience of reference only and shall not be used in, and shall not affect, the operation or interpretation of this Concession Agreement;
- d) 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;
- e) references to **“clause”**, **“Article”** and **“Schedules”** herein shall mean reference to the Clause, Article and Schedules to this Concession Agreement
- f) this Concession Agreement constitutes the entire agreement between the Parties hereto with respect to the matters dealt with herein and supersedes any previous agreement, Bid documents between the Parties in relation to the Project.
- g) Words importing the singular shall include the plural and vice-versa where the Concession Agreement requires.
- h) Words importing one gender include other genders.
- i) 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.
- j) Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.



## ARTICLE 2: SCOPE OF THE PROJECT

### 2.1. Scope of the Project

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

- a) Refurbish the Project Facilities and procure and install the equipment, machineries, furniture, fixture and other requisite facilities for providing Healthcare Services in accordance with the terms and conditions of this Agreement.
- b) Operate and maintain the Project Facilities as per the Schedule 3 of this Agreement and provide Healthcare Services as mentioned in the Schedule 2 of this Agreement at the GMDC-GVT Health Sector Project Site(s).
- c) Deploy minimum number qualified medical and non-medical personnel having minimum qualification and experience as prescribed in the Schedule 1.
- d) Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
- e) Maintenance of daily records of patients, inventories etc. of the Project Facility.
- f) Maintenance of all movable and immovable assets of the Project Facility in Good Working Condition and abide by the existing policies of the Government and Applicable Permits.

### ARTICLE 3: GRANT OF CONCESSION

#### 3.1. Grant of Concession

- 3.1.1. In accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the non- exclusive right, permission, leave and concession rights in respect of the Project Facility, free of any Encumbrances, for the implementation of the Project during the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever (hereinafter the “**Concession**”); and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. For avoidance of doubt, it is clarified that at all times the Authority shall have the absolute, unencumbered legal ownership rights in respect of the Project Facility and the Project Site and the Concessionaire shall only be entitled to exercise its Concession rights and/or operate and maintain the Project Facility in Good Working Condition till the expiry or earlier termination of the Concession Period.
- 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. Non-exclusive access, to the Project Site and Project Facility;
  - b. Refurbish, operate, maintain and manage the Project Facility as per the terms of this Concession Agreement;
  - c. Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Concession Agreement;
  - d. Perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
  - e. Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement and/or Project Site and/or Project Facility ,or the Concession hereby granted or on the whole or any part of the Project Facility nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement;
- 3.1.3. Notwithstanding anything to the contrary contained herein, it is hereby clearly understood, agreed, confirmed and recorded between the Parties as follows:
- i. the legal possession in respect of the Project Facility and Project Site shall continue to vest in the Authority and the Concessionaire shall only be entitled to non-exclusive Concession to undertake the implementation of the Project in terms hereof and shall not be entitled to use of the Project Site and/or the Project Facility for any purpose other than those expressly permitted in terms hereof;
  - ii. the grant of Concession in terms hereof shall not vest or create any proprietary interest in the Project Facility or any part thereof in favour of the Concessionaire or any other person claiming

under the Concessionaire;

- iii. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise create encumbrance in respect of the Project Facility and Project Site, or assign or transfer this Concession Agreement in favour of any person at any time and for any reason whatsoever; save and except as otherwise provided in terms of the Concession.

3.1.4. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein forms the essence of this Agreement and shall duly bind the Concessionaire and/or any person claiming under it.

### **3.2. Concession Period**

3.2.1. The Concessionaire has been granted the Concession to operate, maintain and manage the Project Facility for the Concession Period of 3 (three) years commencing from the date of Project Commissioning (the "**Concession Period**"). The Authority may, in its sole discretion, subject always to the Concessionaire not being in any material breach of its obligations during the Concession Period, consider granting extension of Concession Period for another term of 3 (three) years to the Concessionaire on such terms as Authority would then deem appropriate.

3.2.2. The Concessionaire shall request to the Authority in writing at least 3 month prior to expiry of the Concession Period for granting extension of the Concession Period and the Authority subject to conditions stipulated in Clause 3.2.1 may grant the extension of the Concession Period for another term of 3 (three) years.

3.2.3. Notwithstanding anything to the contrary contained herein such renewal shall always be subject to the condition that the Authority/Government of Gujarat shall not have decided to close the Project Facility to serve larger public good or the Project Facility has not been in non- operational condition owing to Force Majeure or other events beyond Authority's and/or Concessionaire's reasonable control.

### **3.3. Actions in Support of the Concession**

- a) The Authority shall, on best effort basis, and subject always to Concessionaire fulfilling the eligibility criteria and duly complying with all requirements, render such assistance as the Concessionaire may reasonably require, from time to time, for availing and obtaining all Applicable Permits and for completion of formalities relating to the Project provided the Concessionaire is in compliance with the rules, regulations and guidelines prescribed by the Statutory Authorities;
- b) The Authority shall, on best effort basis, provide all assistance and recommendations to the Statutory Authority, including Gol, in support of the Concessionaire's applications for Applicable Permits that may be needed from time to time for the implementation of the Project provided that the Concessionaire has made the requisite applications and is in compliance with the necessary norms and regulations of the Statutory Authority for the grant of such Applicable Permits.

## ARTICLE 4: CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided herein, the respective rights and obligations of the Parties under this Concession Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1.
- 4.1.2 **Conditions Precedent to be fulfilled by the Concessionaire:** The Conditions Precedent required to be satisfied by the Concessionaire shall be deemed to have been fulfilled when the Concessionaire shall have:
- a) Procured, all the Applicable Permits required for refurbishing, operation, maintenance and management of Project Facility and for rendering of Healthcare Services unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
  - b) Furnished the Operation Performance Security to the Authority in accordance with Clause 10.1.3;
  - c) Furnished Project Commissioning Performance Security upon receipt of communication from the Authority in accordance with Clause 10.1.1,;
  - d) Nominate one (1) member for the Project Monitoring Committee within 15 days of signing of the Concession Agreement;
  - e) Undertaken a joint visit along with Authority to the Project Facility (s) and provided inputs to the Authority with respect to the requirement of refurbishment of the GMDC-GVT Health Sector Projects, list of required medical equipment ,furniture and fixtures required along with draft Project Plan as mentioned in the Clause 6.4 of this agreement within 1 month from the date of signing of this Agreement ;
- 4.1.3 Provided that upon request in writing by the Concessionaire, the Authority may, at its discretion, waive and extend the timeline any of the Conditions Precedent set forth in this Clause 4.1.2. For the avoidance of doubt, the Authority may, at its sole discretion, grant any waiver and extend the timeline hereunder with such conditions as it may deem fit.
- 4.1.4 **Conditions Precedent to be fulfilled by the Authority:** The performance of obligations set out herein by the Concessionaire shall be subject to fulfilment of following Conditions Precedent by the Authority:
- a) Constitute, within one month of signing of the Concession Agreement, Project Monitoring Committee, comprising of its representatives, domain experts and representative of Concessionaire;
  - b) Within 1 month of signing the Concession Agreement, identify the Project Sites in consultation with the Concessionaire, take the sites on lease (where the sites are not identified) and handover the physical possession of Project Site through a memorandum detailing the inventory of facilities being handed over duly signed by both Parties.
  - c) Finalization of list of medical equipment and furniture to be procured based on the inputs from the

Concessionaire within 1 month from the receipt of inputs from the Concessionaire;

4.1.5 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated in respect thereof 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.

**4.1.6 Obligation to Satisfy Conditions Precedent**

- i. Subject to the timeline mentioned for each of the Conditions Precedent under Clause 4.1.3 and 4.1.4, each Party shall make reasonable endeavors to comply in full with the Conditions Precedent relating to it within maximum 3 (three) months of the date of signing of Concession Agreement or such later date as may be mutually agreed by the Parties (the **“Effective Date”**).
- ii. In the event that any of the Conditions Precedent has not been fulfilled with the time period specifically prescribed in this Agreement or such time period as may be mutually agreed to by the Parties, then (subject to terms hereof) Authority (in case of non-fulfillment of Concessionaire Condition Precedent) or Concessionaire (in case of non-fulfillment of Authority Condition Precedent) may terminate this Agreement.
- iii. Provided, however that neither Party shall be entitled to terminate this Agreement if non-fulfillment of Condition Precedent by either party is result and/or consequence of a Force Majeure event.
- iv. Provided further that in the event Agreement is terminated on account of non-fulfillment of Condition Precedent to be fulfilled by the Concessionaire, then Authority shall be entitled to appropriate and forfeit the Bid Security.

## ARTICLE 5: PROJECT COMMISSIONING

- 5.1. The commissioning of the Project (the "**Project Commissioning**") shall be deemed to be achieved when:
- a) Medical equipment, furniture and fixtures have been installed at the Project Facility (s)
  - b) Required manpower as per Schedule 1 has been recruited and is available at the Project Facility.
  - c) Healthcare Services, as specified under SCHEDULE 2 of this Agreement are available in the Project Facility (s) and the Project Facility (s) is ready to provide such specialties and services to the Patients;
- 5.2. The Concessionaire shall have to achieve Project Commissioning for GMDC-GVT Health Sector Projects within 3 (three) months from the date of handing over of the Project Facility by Authority.
- 5.3. The Concessionaire shall prior to 15 days from the likely date of Project Commissioning, notify the Project Monitoring Committee about the completion of Project Commissioning. Within 7 days of the date of the notification, the Project Monitoring Committee shall inspect and verify the completion of activities mentioned under Clause 5.1. The Project Monitoring Committee shall either certify the Project Commissioning or communicate the deficiencies/observations, if any, within 7 days of completion of inspection. In case certain deficiencies are observed by the Project Monitoring Committee, the same shall be rectified by the Concessionaire within 7 days or such date mentioned in the communication by the Project Monitoring Committee. Upon rectification, the process specified under this Clause 5.1 shall be repeated. In case no communication received from the Project Monitoring Committee till 15<sup>th</sup> day of the date of notification by the Concessionaire, the Project Commissioning is deemed to be approved by the Project Monitoring Committee. For the avoidance of doubt, the Project Commissioning is considered to be completed upon certification by the Project Monitoring Committee.
- 5.4. In case the Concessionaire does not commence operations within 3 (three) months of handing over of the Project Site to the Concessionaire, then the Authority in its discretion may extend the timeline upon receiving written request of the Concessionaire. In the event, the Concessionaire fails with the Project Commissioning within the extended timeline, the Authority shall be entitled to terminate the Agreement and forfeit the Performance Security furnished by the Concessionaire. Provided however that if the Concessionaire is unable to commence operation for reasons solely attributable to Force Majeure the same shall not be considered as its event of default.
- 5.5. In the event that the Concessionaire does not achieve Project Commissioning as specified under Clause 5.3 and the delay has not occurred as a result of the Authority's failure to fulfil its obligations hereunder or Force Majeure, the Concessionaire shall pay to the Authority Damages equivalent to an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until Project Commissioning is not achieved, subject to a maximum of 10% (ten per cent) of the Performance Security. Upon levy of Damages equivalent to 10% (ten percent) of the Performance Security or failure to achieve to Project Commissioning within 6 months from the Effective Date, whichever is earlier, unless any further extension of such time for achieving Project Commissioning is agreed among the parties, the Authority

shall be entitled to terminate this Agreement by issuing a 15 (fifteen) day notice to the Concessionaire. On such termination, the Authority shall be entitled to forfeit the Performance Security in its entirety, as a genuine pre- estimate of and reasonable compensation for loss and damages caused to the Authority as a result of the Concessionaire's failure to achieve Project Commissioning.

## **ARTICLE 6: CONCESSIONAIRE'S OBLIGATION**

**6.1** In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

### **6.2 Refurbishment**

On taking possession of the Project Site, the Concessionaire shall refurbish the Project Facility and procure and install all medical equipment, furniture, fittings and fixtures as per the approved Project Plan and as provided in this Agreement and agreed with the Authority.

### **6.3 Operation & Maintenance**

- a. The Concessionaire shall operate and maintain the Project Facility in accordance with the Applicable Laws, provisions of this Concession Agreement and any latest/applicable regulations as issued by Government of India and or Government of Gujarat.
- b. The Concessionaire shall undertake to provide Healthcare Services by itself and will not outsource the Healthcare Services to third party.
- c. The Concessionaire shall undertake operations and maintenance of the Project Facility other than Healthcare Services by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements of the Agreement.
- d. The Concessionaire shall, during the Concession Period and subsistence of this Agreement:
  - i. shall designate and appoint suitable officers/representatives as it may deem appropriate to supervise the Project Facility, to deal with the Authority and to be responsible for all necessary exchange of information required pursuant to this Agreement;
  - ii. shall, for the purposes of determining that the Project Facility is being maintained in accordance with the O&M Requirements as mentioned in this Agreement, the Concessionaire shall with due diligence carry out necessary tests in accordance with and as per the instructions of the Authority or its Authorized representatives and such tests shall be carried out under the supervision of the Authority or its Authorized Representatives. The Concessionaire shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the tests results.
- e. No items comprising the Project Facility shall be disposed off during the Concession Period, unless specifically approved by the Authority in writing.

### **6.4 Project Plan**

**6.4.1** The Concessionaire shall, within one month of signing of this Agreement, prepare and submit for review and approvals from the Authority and Project Monitoring Committee, a draft plan (the "**Project Plan**") for each of the GMDC-GVT Health Sector Projects. The Project Plan shall include but not limited to the following:



- i. Design and specification with respect to refurbishment of the Project Facility (s)
- ii. Understanding of regulations and approval with respect to the GMDC-GVT Health Sector Project
- iii. Estimated cost to be incurred towards refurbishment of each of the Project Facility (s)
- iv. Required minimum medical equipment, furniture and fixtures, IT infrastructure and estimated capital cost towards purchasing of medical equipment, furniture and fixtures IT infrastructure
- v. Annual operating plan such as operational mechanism, OPD timing, minimum required essential drugs and medicines (generic), inventory management of minimum required drugs and medicines (generic), and estimated operational cost with respect to the Salary Component and Reimbursable Component

6.4.2 In addition to the above Clause 6.4.1 , the Concessionaire may be required to provide any further information as may be reasonably required by the Authority and/or the Project Monitoring Committee.

6.4.3 On receipt of the draft Project Plan, the Project Monitoring Committee shall review the Project Plan submitted by the Concessionaire and provide its comments/observations and suggestions for approval of the Project Plan within 15 (fifteen) days from the date of the receipt of such Project Plan by the Project Monitoring Committee.

## **6.5 Project Commissioning**

The Concessionaire shall commission the Project Facility for providing the Healthcare Service as per the terms of ARTICLE 5.

## **6.6 Recruitment, Training and Remuneration**

- i. The Concessionaire shall at its cost and expenses recruit and train all personnel required for the operation, management and maintenance of the Project Facilities under this Agreement.
- ii. The recruitment, training and remuneration of the manpower (personnel, employees and staff) required for the Project shall be the responsibility of the Concessionaire and be in compliance with this Agreement and all statutory provisions enacted by Government of Gujarat.
- iii. Provided, no personnel, staff or employee under the Concessionaire whether temporary or permanently employed for the purposes of implementation of this Project shall, under any circumstances, be deemed to be in employment with the Authority or Government of Gujarat and the Concessionaire shall ensure that its operations are conducted in a manner so that any employer-employee relationship is not imputed between the Authority and the employees, personnel and staff of the Concessionaire.
- iv. The Concessionaire shall ensure that all the staffs engaged in the delivery of the services are all times properly and adequately notified, trained and instructed in accordance with good clinical and good healthcare practice and the standards of their relevant professional body, if any, in the execution of their duties and information records are maintained accordingly.

- v. The Concessionaire shall retain on file at all times, copies of all current and valid concessions, certifications and/or accreditations of all the medical personnel performing services. Concessionaire shall further provide to the Authority a list of currently employed trained medical personnel and shall update the list whenever they enter or leave the Concessionaire's employment/ payroll/contract.
- vi. The Concessionaire shall ensure that all staff/personnel are offered immunization having regard to the nature of the duties carried out by the staff/personnel pursuant to the services.
- vii. The Concessionaire shall ensure that all staff are properly and presentably dressed in appropriate uniforms and work wears (including protective clothing and foot-wears wherever required), maintain a high standard of personal hygiene commensurate with their allocated tasks and wear identification badges at all times while working in the Project Facility.
- viii. In the event that the Authority decides that a particular staff / personnel should be removed from the position due to lack of requisite qualification, training or has consistently demonstrated lack of capability in providing the required services, the Concessionaire shall have to abide by such decision and act on the advice of the Authority promptly. The decision of the Authority in this regard shall be final.

#### **6.7 Healthcare Services in the Project Facility:**

The Concessionaire shall throughout the Concession Period provide all the Healthcare Services as mentioned in the Schedule 2 of this Concession Agreement.

#### **6.8 Security**

- i. Concessionaire shall ensure security of the Project Facility at all times during the Concession Period and;
- ii. Ensure the safety and security of all patients, staff and bona fide visitors to the Project Facility;
- iii. Maintain the safety of all persons, and their belongings, within the Project Facility. This includes the protection of patients, staff, service providers and visitors against violent acts or abuse;
- iv. Protect the Project Facility and property, patients, staff, and visitors against theft, vandalism, malicious tampering and criminal damage; and
- v. Ensure only bona fide visitors are allowed access to the Project Facility. This includes restricting access of undesirable persons to the Project Facility in general and restricting access to sensitive areas to authorized personnel only.
- vi. The Concessionaire shall provide reports on all incidences of crime to the concerned government department and to the Authority within the Project Facility.

#### **6.9 Pest Control**

The Concessionaire shall undertake regular and periodic pest control to ensure that facility is free from the pests and rodents. It shall ensure the use of chemicals for pest control is in compliance with statutory compliance and banned chemicals are not used for this purpose. Concessionaire shall maintain the record

on number, type and location of infestation reported and signed and dated pest control activity reports.

#### **6.10 Waste Management**

- i. The Concessionaire shall put in place comprehensive waste management system for managing and undertaking the safe segregation, handling, transport and disposal of waste from designated generation point to its point of final disposal. This shall include but shall not be limited to clinical / biomedical waste as defined under Biomedical Waste (Management and Handling) Rules, 1998 (or any updated guidelines as applicable), hazardous wastes, radioactive waste, and non-clinical waste. The Concessionaire shall comply with all statutory standards and requirements including Biomedical Waste (Management and Handling) Rules 2016 as amended from time to time, Hazardous Waste (Management, Handling and Transboundary Movement) Rules 2016 as amended from time to time, Water (Prevention and Control of Pollution) Act 1974 as amended from time to time etc. Concessionaire shall maintain full and auditable records in connection with the waste management detailing volumes, weights and type of waste collected, stored, transported and disposed.
- ii. The Concessionaire can enter into contractual agreement with concerned medical waste treatment service provider for treatment and disposal of the biomedical/clinical waste.
- iii. The Concessionaire shall ensure that staffs involved in the handling of biomedical/clinical wastes shall be offered appropriate immunization. The Concessionaire shall also ensure that all staffs are adequately trained in relation to the safe handling and segregation of all sort of wastes.

#### **6.11 Sterilization Services**

- i. Sterilization facility to disinfect all instruments on regular basis should be provided by the Concessionaire to ensure high level of hygiene and effective treatment of patients
- ii. The Concessionaire shall institute an effective monitoring system for the above.

#### **6.12 Equipment Maintenance**

- i. The Concessionaire shall undertake comprehensive planned and proactive maintenance of equipment to ensure that equipment is safe, accurate and working to optimum performance and to achieve maximum availability and continuity of services by minimizing the inconvenience caused by equipment breakdowns and interruptions, and achieving effective delivery of service from all medical equipment and services by maintaining standards set by the equipment manufacturer. For abundant clarity, the Concessionaire shall have alternate arrangements during any sort of maintenance/repair of equipment/machines/apparatus to ensure delivery of services as envisaged in this Agreement is not hampered/hindered/stopped.
- ii. The maintenance shall include:
  - a. Planned protective maintenance designed to keep unplanned breakdown and disruptions minimum;
  - b. Reactive maintenance providing rectification or arranging similar system to provide continuity of services; and

- c. Implement and maintain a planned replacement system of time/performance expired asset to maintain quality of performance and service availability.
- d. The Concessionaire shall maintain logbook of planned and reactive maintenance.
- e. The Concessionaire shall enter into comprehensive maintenance contract with equipment manufacturers/suppliers valid throughout the Concession Period. The Concessionaire shall enter into appropriate contractual arrangement for supply of spare parts and equipment parts/components. The Concessionaire should also ensure to get these equipment insured at their own cost, the day the equipment is installed at the Project Facility.
- f. The Concessionaire shall share copies of all the contracts/agreements (maintenance Agreements, insurances, etc.) entered into by it by with the third parties
- g. The Concessionaire shall ensure sufficient stocks of materials and consumables are maintained for the provisions of the services and that such materials shall be stored in a clean and tidy manner in earmarked areas.

### **6.13 Clinical Record Keeping**

- i. Concessionaire shall create, maintain, preserve professionally the records (including diagnosis, treatment and care given) for all patients receiving treatment. A medical record shall document the health of a patient, including past and present illness or illness and treatment prescribed, with special attention to the events affecting the patient during episode of care.
- ii. Concessionaire will ensure that patient receives a high quality of medical care, which is documented completely, accurately and timely in the medical record. The Project Facility will issue a unique registration number to every patient. All records and data shall be kept in reference to this number.
- iii. The Concessionaire shall comply with any duty arising from the Patient's entitlement to confidentiality of his/her health record and any other information (including Personal Data) relating to him/her as a Patient in accordance with the Applicable Laws and Good Industry Practice.
- iv. The Concessionaire shall promptly return any records on Patient's health and any other personal data relating to Patients treatment to the Patient's attendant upon request at any time.

### **6.14 Record Keeping and Reporting**

- a. All records and plans related to the Project and Project Facility shall be kept at the Project Facility(s). The list of records to be maintained shall include following:
  - i. The Project Agreement, its Schedules and the project documents including all amendments to such agreements;
  - ii. All other documents, software or other information expressly referred to in the Agreement;
  - iii. Records relating to the appointment and supersession of the Concessionaire's representative and the Authority's representative;
  - iv. Documents relating to applications, consents, refusals and referrals;
  - v. Records relating to any specialist or statutory inspections of the Facilities;

- vi. Notices, reports, results and certificates relating to completion of the Works and completion of the commissioning activities;
  - vii. Documents relating to events of Force Majeure, delay events, Events of Default and relief events and the consequences of the same;
  - viii. All formal notices, reports or submissions made to or received from the Authority in connection with the provision of services, the monitoring of performance, or the availability of the facilities;
  - ix. All certificates, concessions, registrations or warranties related to the provision of Project Facility and services;
  - x. Documents related to referrals to the dispute resolution procedure;
  - xi. Documents related to change in ownership or any interest in any or all of the shares in Concessionaire;
  - xii. Records related to taxes;
  - xiii. Financial records, including audited and unaudited accounts of parent company and Concessionaire and related reports;
  - xiv. Documents relating to testing;
  - xv. Records required by law and all consents;
  - xvi. Documents relating to insurance and insurance claims;
  - xvii. All other records, notices or certificates required to be produced and/or maintained by Concessionaire pursuant to Concession Agreement.
- b. Compliant register shall be available at the Project Facility at all the times. The Complaint register shall be made available to the Authority as and when asked for.
- c. The Concessionaire acknowledge that in order to monitor the Healthcare Services, there needs to be timely regular exchange of detailed and accurate information and accordingly the Concessionaire shall collate and provide the information as mentioned under Schedule 8 on a quarterly basis.

#### **6.15 Retention of Records and Backup of Operations**

The Concessionaire shall retain all records and reports pertaining to this Agreement for a period of at-least five (5) years from the date of expiry of the Concession Period; for any further period required by Law; and until all audits are completed and exceptions resolved for the term of the Agreement. Upon request and except as otherwise restricted by Applicable Law, Concessionaire shall make these records available to authorized representatives of the Authority.

#### **6.16 Environmental Compliance**

The Concessionaire shall, ensure that all aspects of operation of the Project Facility during the Concession Period and processes employed in the operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

### **6.17 Indemnity by Concessionaire**

The Concessionaire shall indemnify and hold harmless the Authority, their representatives and their employees from and against all third party claims, damages, losses and expenses arising out of or resulting from Concessionaire's negligence or breach in execution of the operation & maintenance works and any activity incidental thereto.

### **6.18 Medicines/drugs**

6.18.1 The Concessionaire shall ensure that the Project Facility maintains an effective supply chain of medicines/drugs (generic) as specified under Schedule 9 of this Agreement. However in order to avoid a stock out situation, the Concessionaire shall keep an inventory equivalent of fifteen (15) days consumption of the medicines/drugs.

6.18.2 The cost of drugs/medicines shall be reimbursed by Authority on actual basis upon submission of supporting documents as mentioned under Schedule 6 of this Agreement. The Concessionaire shall procure and dispense only generic drugs/medicines.

### **6.19 Responding to emergency situations**

6.19.1 In case of emergency situations like natural disaster, epidemic etc., the Authority may through a written or verbal notice direct the Concessionaire to provide services in the affected area. On the receipt of information the Concessionaire shall immediately deploy available manpower, resources in the affected area on a priority basis.

6.19.2 Any additional capital expenditure and/or the additional operating costs or both as the case may be incurred by the Concessionaire arising out of the Emergency Situation shall be bring into notice of the Authority and Project Monitoring Committee. Such expenses shall be reviewed by the Project Monitoring Committee and upon approval of Project Monitoring Committee and Authority ,the cost incurred towards the same shall be reimbursed by the Authority.

### **6.20 General Obligations**

The Concessionaire during the Concession Period shall at its own cost and expense:

- a. Investigate, study, design, operate and maintain the Project Facility in accordance with the provisions hereof;
- b. Obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- c. Comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;
- d. Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, concessions, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;

- e. Appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- f. Be responsible for all the health, security, environment and safety aspects of the Project Site/Project Facility, as the case may be, at all times during the Concession Period;
- g. Ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- h. Upon receipt of a request thereof, provide access to the Project Facility to the authorized representatives of the Authority for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions;
- i. Pay all taxes(except house tax), duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period;
- j. Provide and maintain all necessary accommodation and welfare facilities for its staff and labour. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Project Facility;
- k. Take precautions to ensure the health and safety of its staff and labour;
- l. Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staffs and labour and to preserve peace and protection of persons and property in the neighborhood of the Project Facility against such conduct;

#### **6.21 Annual Maintenance Contract (AMC)**

The Concessionaire will also ensure to get the annual maintenance contract ("AMC") done for the procured items/equipment with the vendor(s). All the expenses toward the AMC will be borne by the Concessionaire; provided however, that the Concessionaire shall, notwithstanding such AMC arrangements, always retain overall management, responsibility, obligation and liability in relation to the services/activities/functions rendered or performed through the AMC. Any such AMC shall not relieve the Concessionaire from any of its obligations in respect of the Project and the provision of the health services.

#### **6.22 No Breach of Obligations**

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to ARTICLE 14;
- b. the Authority Event of Default;

- c. Compliance with the instructions of the Authority or the directions of any /court/tribunal/government agency;
- d. Closure of the Project Facility or part thereof with the approval of the Authority.

**6.23 Access and Assured Availability of the Project Facilities**

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to the Authority/person nominated by the Authority.

**6.24 Erection of Sign Board**

- a. The Concessionaire shall erect a signboard carrying the branding of the GMDC-GVT Health Sector Project as agreed with the Authority, at the main entrance to the Project Facility in a manner such that it is ordinarily visible to any person using such entrance.
- b. The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period



## **ARTICLE 7: OBLIGATIONS OF THE AUTHORITY**

### **7.1 Obligations of the Authority**

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

### **7.2 Obligations related to Handing over of Project Facility**

7.2.1 The Authority shall handover the Project Site (s) to the Concessionaire free from all encumbrances;

7.2.2 The Authority shall grant in a timely manner all such approvals, permissions and concessions which the Concessionaire may require or is obliged to seek from the Authority under this Agreement, in connection with implementation of the Project and the performance of its obligations.

7.2.3 Facilitate upon request from the Concessionaire for availing utilities such as power, water, sewerage, telecommunications or any other incidental services/ utilities as required.

7.2.4 The Authority shall provide the Concessionaire the warranty card, user manuals, documents related to any procured item being provided by the Authority. The same shall be returned by the Concessionaire at the end of Concession Period or at the termination of the Concession Agreement, whichever is earlier.

7.2.5 In case, due to demand and requirement, it warrants the Project Facility/(s) to provide additional services, then in that case any additional equipment/ machinery as required under such circumstances may be procured and installed by the Concessionaire in the Project Facility and the Authority shall reimburse costs towards the same subject to approval of such procurement from the Project Monitoring Committee.

7.2.6 The Authority shall pay to the Concessionaire the Annual Management Fee as mentioned in the Schedule 6 and Salary Component as mentioned in Schedule 7 of this Agreement;

7.4.1. In case of replacement of medical equipment and furniture & fixtures in the Project Facility(s);

- a) Having regard inter alia to the operational life of the equipment/fixtures/fittings as certified by the manufacturer thereof and the degree of its usage for implementation of the Project, the Concessionaire shall in the event it determines that such equipment/fixtures/fittings have run their life cycle/utility and the same is not a case of and/or attributable to non-observance of KPIs [including routine maintenance activities which shall be Concessionaire's obligations] notify in writing (along with relevant applicable details) the Authority shall verify the requirement of replacing such equipment/fixtures/fittings; in which case the Authority may appoint in consultation with the Concessionaire an independent expert (cost whereof shall be borne by the Authority) from the relevant industry to verify whether the actual operation condition of such equipment/fixtures/fittings corroborates on ground the requirement of replacement as conveyed by the Concessionaire.

- 7.4.2. In the event Authority/any such independent expert found that such replacement is due to the running out of the life cycles of the respective equipment and not due to the non-observance of KPIs, then Authority shall undertake the replacement thereof as per their original manufacturer. However, if the independent expert certifies that such replacement is due to the miss handling then, the cost of all such replacements shall be borne by the Concessionaire.

### **7.3 Other Obligations**

#### 7.3.1 The Authority shall:

- a. Upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- b. Assist the Concessionaire in obtaining police assistance, upon payment of prescribed costs and charges, if any, for traffic regulation, patrolling and provision of security on the Project Site/Project Facility and implementing this Agreement in accordance with the provisions hereof;
- c. Observe and comply with all its obligations set forth in this Agreement.

## ARTICLE 8: PROJECT MONITORING COMMITTEE

- 8.1. The Authority, shall set up a project monitoring committee (the "**Project Monitoring Committee**") to periodically monitor the Project.
- 8.2. The Project Monitoring Committee would be chaired by Commissioner of the Authority.
- 8.3. The other members of the Project Monitoring Committee would be as under:
  - a. Representative of the Authority
  - b. Representative of Concessionaire
  - c. Representative of other departments, if required
  - d. Any technical/domain expert (independent)
- 8.4. The basic roles & responsibilities of Committee is as under:
  - a. Review the Project Plan submitted by the Concessionaire
  - b. Review and decide the maximum amount of Reimbursable Component for providing the Healthcare Services
  - c. Review and decide the Salary Component of minimum required manpower to be deployed at the GMDC-GVT Health Sector Project (s)
  - d. Review and assess the any addition of Healthcare Services
  - e. Review and assess the requirement of new medical equipment, furniture and fixture with respect to addition of healthcare services during the Concession Period
  - f. Assess the requirement of major repairs and replacements
  - g. Quarterly performance review of the GMDC-GVT Health Sector Project keeping in view the Key Performance Indicators as mentioned in Schedule 4 of this Agreement.
  - h. Review and provide decisions on any matter related to the Project, as maybe required.
- 8.5. The Project Monitoring Committee shall meet quarterly once (within 15 days of end of every quarter) to review the Project. The Annual Management Fee will be based on the achievement of the KPIs. For the avoidance of doubt, in case of non-achievement of any KPI, the penalty as mentioned under Schedule 4 of this Agreement, will be deducted, from the quarterly amount of Annual Management Fee payable, .

## ARTICLE 9: ANNUAL FEE

### 9.1 Annual Management Fee

In consideration of the Concessionaire performing its obligations in accordance with and subject to terms hereof, Authority shall (subject to terms hereof) pay from the date of Project Commissioning to the Concessionaire the annual management fee as quoted in the Financial Bid (the “**Annual Management Fee**”) on the basis and manner outlined under Schedule 6 of this Agreement. It is clarified that the Annual Management Fee shall include all indirect costs incurred by the Concessionaire for day to day supervision and regular monitoring of the Project. The Reimbursable Component and Salary Component shall not be part of the Annual Management Fee.

### 9.2 Salary Component

In consideration of the Concessionaire performing its obligations in accordance with and subject to terms of the Agreement, Authority shall pay commencing from the date of Project Commissioning to the Concessionaire an amount equivalent of the Salary Component on the basis and manner outlined under Schedule 7 of this Agreement separately on quarterly basis.

### 9.3 Reimbursable Component

9.3.1 The Authority shall reimburse all operating and maintenance costs of the Project on production of bills and supporting documents on a monthly basis, subject to the annual ceiling agreed in the annual operating plan for the year.

9.3.2 The reimbursable component shall be reimbursed on actual basis upon submission of the following supporting documents.

- For Drugs/Medicine
  - Chartered Accountant certificate certifying the cost incurred towards drugs/medicines
  - The detailed breakup of the cost incurred towards the drugs/medicines
- For Consumables and disposables
  - Chartered Accountant certificate certifying the cost incurred towards consumables and disposables
  - The details breakup of the cost incurred towards the consumables and disposables
- For maintenance of medical equipment
  - Chartered Accountant certificate certifying the cost incurred towards maintenance of medical equipment
  - The copy of Annual Maintenance Contract (AMC) executed for annual maintenance of medical equipment.

## ARTICLE 10: PERFORMANCE SECURITY

### 10.1 Performance Security

- 10.1.1 The Concessionaire shall submit a performance security for an amount equivalent to 10% of total cost of medical equipment, furniture and fixtures as per approved Project Plan in the form of a bank guarantee in favour of “GMDC Gramya Vikas Trust” which shall be valid till achievement of Project Commissioning (the “Project Commissioning Performance Security”) for handing over the medical equipment and furniture. The Project Commissioning Performance Security shall be submitted at the time of handing over of medical equipment and furniture by Authority and this shall be a pre-condition for handing over of medical equipment and furniture by Authority. The Project Commissioning Performance Security shall be returned by Authority to the Concessionaire upon achievement of Project Commissioning.
- 10.1.2 The Authority may also disburse the amount equivalent to the cost of medical equipment, furniture and fixture to the Concessionaire for procuring the required medical equipment, furniture and fixture as per the approved Project Plan in advance. The Concessionaire shall need to submit the Project Commissioning Performance Security as mentioned herein above under Clause 10.1.1 of this Agreement.
- 10.1.3 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority as Conditions Precedent, an irrevocable and unconditional guarantee from a Bank for a sum of Rs..... (in words) (10% of total contract) (the “**Operation Performance Security**”). Until such time the Operation 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 Operation Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 10.1.4 The validity of the Operation Performance Security for the first year will be for a period of 15 months from the date of submission.
- 10.1.5 The Concessionaire shall provide Operation Performance Security every year to make it corresponding to 5% of the total contract value (i.e. Annual Management Fee and Salary Component) of the respective year.
- 10.1.6 The Operation Performance Security of a particular year will be returned back to the Concessionaire only after the submission of Operation Performance Security for the next year.
- 10.1.7 In case of the last year, the Operation Performance Security shall be returned back to the Concessionaire within 1 month of the expiry of the Concession Period.
- 10.1.8 Notwithstanding anything to the contrary contained in this Agreement, in the event Operation Performance Security is not provided by the Concessionaire within a period of 90 (ninety) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and

to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the parties.

## **10.2 Appropriation of Performance Security**

- 10.2.1 Upon occurrence of a Concessionaire Event of Default in achieving Project Commissioning, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Project Commissioning Performance Security as Damages for such Concessionaire Event of Default to achieve Project Commissioning. Upon such encashment and appropriation from the Project Commissioning Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Project Commissioning Performance Security, and in case of appropriation of the entire Project Commissioning Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Project Commissioning Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with ARTICLE 15. Upon replenishment or furnishing of a fresh Project Commissioning Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Event of Default within such Cure Period, the Authority shall be entitled to encash and appropriate such subsequent Project Commissioning Performance Security as damages, and to terminate this Agreement in accordance with ARTICLE 15.
- 10.2.2 Upon occurrence of a Concessionaire Event of Default or failure to meet any Condition Precedent or failure to fulfill the obligations under this Concession Agreement (other than the obligation related to Project Commissioning for GMDC-GVT Health Sector Project, for which the medical equipment and furniture is handed over to the Concessionaire), the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Operation Performance Security as Damages for such Concessionaire Event of Default. Upon such encashment and appropriation from the Operation Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Operation Performance Security, and in case of appropriation of the entire Operation Performance Security provide a fresh Operation Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Operation Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with ARTICLE 15 of this Agreement. Upon replenishment or furnishing of a fresh Operation Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Concessionaire Event of Default within such Cure Period, the Authority shall be entitled to encash and appropriate such subsequent Operation Performance Security as damages, and to terminate this Agreement in accordance with ARTICLE 15 of this Agreement.

## ARTICLE 11: OPERATION AND MAINTENANCE REQUIREMENTS

### 11.1 General

11.1.1 The Concessionaire shall comply with the O&M Requirements set out in this section and Schedule 3 of this Concession Agreement. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the standards and specifications as set out in the Agreement.

11.1.2 In the planning and implementation of all works and functions associated with the O&M Requirements of the Project Facilities, the Concessionaire shall take all such actions and do all such things (including without limitation, organizing itself, adopting measures and standards, executing procedures including inspection procedures, and engaging Contractors, if any, agents and employees) in such manner, as will:

- a. Keep the Project Facilities from undue deterioration and wear;
- b. Ensure safety of personnel deployed for operation & maintenance of facilities permit unimpaired performance of statutory duties and functions of any party in relation to the Project.

11.1.3 During the Concession Period, the Concessionaire shall ensure that:

- a. Project Facility is kept free from undue deterioration and undue wear;
- b. Applicable and adequate safety measures are taken;
- c. Adverse effects on the environment and to the owners and occupiers of property and/or land in the vicinity of the Project Facility, due to any of its actions, is minimized;
- d. Any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimized;
- e. Disturbance or damage or destruction to property of third party by operations of the Project Facility is controlled/minimized;
- f. Members of the public are treated with due courtesy and consideration by its employees/ agents;
- g. Users are provided with adequate information and forewarned of any event or any other matter affecting the Project Facility to enable them to control/minimize any adverse consequences by such event or matter;
- h. A complaint register to record grievances of any member of the public in relation to the operations and maintenance of the Project Facility is duly maintained;
- i. The personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.

## **ARTICLE 12: INFORMATION TECHNOLOGY SYSTEM**

### **12.1 Management Information System**

12.1.1 The Concessionaire shall install and maintain a computerized Management Information System ("MIS") so as to ensure the records of all GMDC-GVT Health Sector Projects are computerized and maintained in an integrated manner. The Concessionaire shall operate from its own resources the MIS at the GMDC-GVT Health Sector Projects to record and maintain the information as required by the Authority and for the purpose of performance monitoring. The minimum details to be recorded in the MIS is mentioned under SCHEDULE 8 of this Concession Agreement.

12.1.2 The Authority shall be given access to the MIS.

12.1.3 The MIS shall be capable of generating reports required for performance monitoring and assessment as specified under the Schedule 4 and 11 of this Agreement.

12.1.4 The MIS shall be capable of providing online information on real time basis. Necessary software and hardware shall be put in place in the Project Facility(s) in this regard.

12.1.5 The cost towards installation of the MIS system shall be reimbursed by the Authority on actual basis upon production of supporting documents.



## **ARTICLE 13: LEVY AND COLLECTION OF REGISTRATION FEE AND OTHER CHARGES**

### **13.1 Registration Fee**

- a. Upon registration of the patients, the Concessionaire shall issue an unique patient identification number which will be used in future while the patient will visit the GMDC-GVT Health Sector Projects.
- b. The Concessionaire shall not collect any money from the users/patients of the Project Facility. , Any breach by the Concessionaire of this sub - clause (b) shall entitle the Authority to terminate the Agreement and forfeit the Performance Security.

### **13.2 Advertisement/Hoarding Charges**

- a. The Concessionaire shall not permit/allow advertisement/hoarding or other commercial activity in the Project Site/Project Facility.

### **13.3 Biometric Attendance System**

The Concessionaire would install a central electronic infrastructure which would include the recording and uploading biometric based attendance system for all staff and ensure that staff members are marking their attendance every day at the time of beginning and end of the duty hours. The data from such centrally functional electronic data centre (including biometric system) shall be available on MIS so that the same could be accessed by the Authority at its discretion.

## **ARTICLE 14: FORCE MAJEURE AND CHANGE IN LAW**

### **14.1 Force Majeure**

14.1.1 As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in sub-clauses 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Concessionaire claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### **14.2 Non-Political Event**

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

- a. 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 and/or the, operation and maintenance of the Project Facility (s) for a continuous period of 24 (twenty four) hours and an aggregate period, exceeding 30 (thirty) days in a financial year, and not being an Indirect Political Event set forth in Clause 14.3;
- b. 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 GoG;
- c. the discovery of geological conditions, toxic contamination or archaeological remains on the premises of the Project Facility(s) that could not reasonably have been expected to be discovered through inspection; or
- d. any event or circumstances of a nature analogous to any of the foregoing.

### **14.3 Indirect Political Event**

14.3.1 An Indirect Political Event shall mean an act of war (whether declared or undeclared), invasion, industry-wide or State-wide strikes or industrial action, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents operation of the Project Facility(s) by the Concessionaire for period exceeding a continuous period of 30 (thirty) days in a financial year.

#### **14.4 Political Event**

14.4.1 A Political Event shall mean one or more of the following acts or events by GoJ or GoI:

- a. Change in Law,
- b. compulsory acquisition in national interest or expropriation of the Project Site assets, if any created by the Concessionaire under the Project or rights of the Concessionaire;
- c. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, concession, permit, Concession, no objection certificate, consent, approval or exemption required by the Concessionaire to perform their respective obligations under this Concession Agreement; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, concession, Concession, no objection certificate, exemption, consent, approval or permit; or
- d. any event or circumstance of a nature analogous to any of the foregoing.

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

- 14.5.1 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 with evidence in support thereof;
  - b. the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
  - d. any other information relevant to the Affected Party's claim.
- 14.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (Seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 14.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by sub-clause 9.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

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

14.6.1 The Concessionaire shall be eligible for extensions as provided hereunder only on the occurrence of Force Majeure Events, with respect to the Project.

a. at any time after the Effective Date, if any Force Majeure Event occurs:

- I. after Project Commissioning, whereupon the Concessionaire is unable to operate and maintain the Project Facility(s) in terms of the Concession Agreement despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was unable to perform its obligation under the Agreement.

14.6.2 Save and except as expressly provided in this ARTICLE 14, 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.

14.6.3 Notwithstanding anything contained in this ARTICLE 14, in the event Force Majeure Event subsists for a continuous period of 180 days, Authority shall be entitled to terminate this Agreement in which case the Authority shall pay to the Concessionaire the pro-rata Annual Management Fee and Salary Component payable for the period during which Concessionaire has carried out its obligations in compliance with the Concession Agreement, in terms hereof until date of such termination. The Performance Security shall also be returned in case of such termination by adjusting any due of Concessionaire to Authority.

## **14.7 Dispute Resolution**

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

## ARTICLE 15: EVENTS OF DEFAULT

### 15.1 The Authority Event of Default

15.1.1 Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, shall be considered for the purposes of this Concession Agreement as events of default of the Authority (the “**Authority Event of Default**”) which, if not cured within the time period permitted, if any, shall provide the Concessionaire with the right to terminate this Concession Agreement in accordance with ARTICLE 15 hereof:

- a) A material breach by the Authority of its obligations under this Concession Agreement which is not remedied within 90 days from the date [ or such later date as parties may mutually agree,) of receipt of written notice from the Concessionaire specifying such breach and requiring the Authority to remedy the same;
- b) A breach of any express obligation(s) by the Authority which has a Material Adverse Effect and such breach is not remedied within 90 (Ninety) days from the date (or such later date as parties may mutually agree) of receipt of written notice from the Concessionaire specifying such breach and requiring the Authority to remedy the same.

### 15.2 Concessionaire Event of Default

15.2.1 Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure, shall be considered for the purposes of this Concession Agreement as Events of Default of the Concessionaire (the “**Concessionaire Event of Default**”) which, if not cured within 90 days of notice as issued by the Authority, if any, shall provide the GoJ, with the right to terminate this Concession Agreement in accordance with ARTICLE 15 hereof:

- a. A material breach of its obligations under the Concession Agreement which has a Materially Adversely Effect on the Authority or the Project and such breach is not remedied within 90 days of notice as issued by the Authority of specifying such breach and requiring the Concessionaire to remedy the same;
- b. In case, the failure of Concessionaire to adhere to KPI’s resulted in penalty of more than 20% of Performance Security, such failure shall be treated as Concessionaire Events of Default.
- c. Such events as have been specified as Concessionaire Events of Default under the provisions of the Concession Agreement;
- d. A breach of any obligation(s) by the Concessionaire which has a Material Adverse Effect and such breach is not remedied within 90 days of notice as issued by the Authority from the Authority specifying such breach and requiring the Concessionaire to remedy the same;
- e. Any actions or omissions attributable to Concessionaire, including delay on the part of the Concessionaire to discharge any of its obligations, that has a Material Adverse Effect on the implementation of the Project;

- f. Dissolution of the Concessionaire pursuant to Applicable Law, except for the purpose of a merger, consolidation or reorganization that does not affect the ability of the resulting entity to perform all the obligations of the Concessionaire under this Concession Agreement and provided further that such resulting entity expressly assumes all such obligations;
- g. Declaration of insolvency or the appointment of a liquidator in a proceeding for dissolution of the Concessionaire after lawful notification and due hearing, which declaration or appointment has not been set aside within 60 (Sixty) days thereof;
- h. Abandonment of the Project by the Concessionaire;
- i. If there is a change in the rights of ownership of the Concessionaire or in the powers of any trustee/member of the governing body/ management to direct the management or the policies of the Concessionaire where such change would be reasonably likely to have a Material Adverse Effect on the ability of the Concessionaire to comply in all material respects with its obligation under this Concession Agreement;
- j. The Concessionaire creates or permits to subsist any Encumbrance, or otherwise transfers or disposes of all or any of its rights and benefits under this Agreement.
- k. If the Concessionaire leases, sub-concessions, encumbers, sells/transfer any part or whole of the Project Site/Project Facility to any person in any form or under any arrangement, device or method
- l. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Test) Act 1994 –If the Concessionaire is found to be in violation of any of the rules of the act.
- m. The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection Test) Act 1994 - If any medical or non-medical person engaged by the Concessionaire either full time or part time or on advisory role, is found to be involved in sex determination, the Authority will take appropriate action including filing FIR against that person(s) and the director(s) of the Concessionaire [Chapter VII rule 23 of the Act]. On such events, this Concession agreement shall be terminated with immediate effect and Performance Security shall be forfeited.
- n. Such other events which have been specifically set out in this Agreement as Concessionaire Event of Default.

### **15.3 Termination due to Event of Default**

#### **15.3.1 Termination for Concessionaire Event of Default**

- a. Without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, the Authority may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 15.3.1 (b).
- b. If the Authority decides to terminate this Agreement pursuant to preceding Clause 15.3.1 (a), it shall in the first instance issue notice of intention to terminate to the Concessionaire. Within 30 days of receipt of the notice of intention to terminate, the Concessionaire shall submit to the Authority in sufficient detail, the manner in which it proposes to cure the underlying Event of

Default (the **“Concessionaire's Proposal to Rectify”**). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, the Authority shall be entitled to terminate this Agreement by issuing termination notice ("Termination Notice").

- c. If the Concessionaire's Proposal to Rectify is submitted within the period stipulated there for, the Authority shall have further period of 60 days (the **“Cure Period”**) to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, the Authority shall be entitled to terminate this Agreement, by issue of Termination Notice.

### **15.3.2 Termination for the Authority Event of Default**

- a. Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of the Authority Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- b. If the Concessionaire decides to terminate this Agreement pursuant to preceding Clause 15.3.2 (a), it shall in the first instance issue Notice of intention to terminate to the Authority. Within 30 days of receipt of Notice of intention to terminate, the Authority shall forward to the Concessionaire its proposal to remedy/cure the underlying Event of Default (the **“Authority Proposal to Rectify”**). In case of non-submission of the Authority Proposal to Rectify within the period stipulated above, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- c. If the Authority Proposal to Rectify is forwarded to the Concessionaire within the period stipulated there for, the Authority shall have further period of 60 days to remedy/cure the underlying Event of Default. If, however the Authority fails to remedy/cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

### **15.4 Completion of 3 years from the Project Commissioning**

Before 30 days of the completion of 3 years from the Project Commissioning, the Concessionaire shall communicate its intent for extension of the Concession Period to the Authority. Upon receipt of such notice, the Authority may in its sole discretion, subject always to the Concessionaire not being in any material default of its obligations hereunder, consider granting another concession term to the concessionaire on such terms as Authority would then deem appropriate.

In the event the Concessionaire doesn't communicate its intent on extension of the Concession Period to the Authority and the Authority does not decide to grant another concession term to the Concessionaire, then upon expiry of the Concession Period, vacant possession in respect of all the Project Facility [along with Project Site and all assets] shall revert to Authority free and clear from all Encumbrances.

#### **A. Termination Notice**

If a Party, having become entitled to do so, decide to terminate this Agreement pursuant to the

preceding sub Clause 15.3 (a) or (b), (c) it shall issue Termination Notice setting out:

- a. sufficient detail underlying Event of Default;
- b. The Termination date which shall be a date occurring not earlier than seven days from the date of Termination Notice;
- c. The estimated termination payment including the details of computation thereof; and,
- d. Any other relevant information.

**B. Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- a. Until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- b. The termination payment, if any, payable by the Authority in accordance with the terms hereof is paid to the Concessionaire on the Termination Date and
- c. the Project Facility is handed back to the Authority by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the Authority

**C. Termination Payments**

- a. In case of termination of the Concession Agreement on account of Authority Event of Default, the Concessionaire, shall forthwith transfer and hand over the peaceful possession of the Project Facility, together with Project Site and all movable & immovable assets created by the Authority to the Authority without any Encumbrances, charge or lien. In such circumstances, the Authority shall, provided there are no outstanding claims of the Authority on the Concessionaire , pay to the Concessionaire by way of termination payments the following within 180 days of the transfer date:
  1. Pro-rata amount of Annual Management Fee, Salary Component payable until date of termination for the period during which the Concessionaire has carried out its obligations in compliance with Concession Agreement,
  2. Reimbursable Amount for which the invoice & supporting documents have been submitted by the Concessionaire until the date of termination for the period during which the Concessionaire has carried out its obligations in compliance with Concession Agreement. Such payment shall be made by Authority upon verification of the supporting documents.
  3. Performance Security shall be returned
- b. Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessionaire, shall forthwith transfer and hand over the peaceful possession of the Project Facility, together with Project Site and all movable & immovable assets created by the Authority to the Authority without any Encumbrances, charge or lien. In such circumstances, the Authority shall, provided there are no outstanding claims of the Authority on the



Concessionaire, pay to the Concessionaire by way of termination payments the following within 180 days of the transfer date:

1. Pro-rata amount of Annual Management Fee payable until date of termination for the period during which the Concessionaire has carried out its obligations in compliance with Concession Agreement
2. Reimbursable Amount for which the invoice & supporting documents have been submitted by the Concessionaire until the date of termination for the period during which the Concessionaire has carried out its obligations in compliance with Concession Agreement. Such payment shall be made by Authority upon verification of the supporting documents.
3. Performance Security shall be forfeited

### **15.5 Rights of the Authority on Termination**

- a. Upon Termination of this Agreement for any reason whatsoever, the Authority shall upon making (subject to terms hereof) the Termination Payment, if any, to the Concessionaire have the power and authority to:
  - I. enter upon and take possession and control of the Project Site/Project Facility forthwith;
  - II. prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/dealing with the Project Site/Project Facility
- b. Notwithstanding anything contained in this Agreement, the Authority shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to the Authority shall be free from any such obligation.

### **15.6 Accrued Rights of Parties**

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 16: TERMINATION OR EXPIRY OF AGREEMENT

- 16.1 Upon Termination or expiry of the Agreement (the “**Transfer Date**”), the possession of the Project Site and Project Facility along with all the movable & immovable assets shall revert back to the Authority or its nominee, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire.
- 16.2 The Concessionaire or its nominee(s) or sub-contractor or sub-concessionaire, and or persons claiming through or under them, as the case may be, shall cease to conduct all commercial activities within the Project Site from the Transfer Date.
- 16.3 The Concessionaire shall hand over to the Authority or its nominated agency all documents including the operations manuals if any, designs, documents, and records relating to the Users, bookings made and such other information relating to the Project and the Project Facility.
- 16.4 To the extent possible the Concessionaire shall assign to the Authority or its nominated agency at the time of handover/transfer all unexpired guarantees and warranties by sub-contractors and suppliers and all insurance policies in respect of the Project Facility and assets.
- 16.5 On the Transfer Date, the Project Facility shall be in fair condition/Good Working Condition, subject to normal wear and tear, having regard for the nature of the asset, the construction and life of the facilities, constructions, structures etc.
- 16.6 The Concessionaire shall at its cost remove from the Project Site all such moveable assets which are not taken over by or transferred to the Authority or its nominated agency. In the event the Concessionaire fails to remove such objects within the stipulated time, the Authority or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Concessionaire notice of its intention to do so to a suitable location for safe storage. The Concessionaire shall be liable to bear the reasonable cost and the risk of such removal, transportation and storage.
- 16.7 The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and reverting back of the Project Facility/Premises shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Authority.
- 16.8 Till the time the possession of the Project Facility reverts back to the Authority, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project Facility, unless the loss or damage is due to an act or omission of the Authority in contravention of its obligations under this Concession Agreement.
- 16.9 The handover of the Project Facility and the Project Site along with all the movable & immovable assets shall be deemed to be a termination of concession rights granted to the Concessionaire in relation to the Project Site and the Project Facility.

- 16.10 Pursuant to the reverting back of the possession of the Project Facility to the Authority, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Authority, and the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Concession Agreement.

## **ARTICLE 17: LIABILITY AND INDEMNIFICATION**

### **17.1 Liability to Third Parties**

- 17.1.1 A Party shall promptly inform the other Party of any claims or proceedings or anticipated claims or proceedings against the other Party in respect of which the other Party is entitled to be indemnified under this Article 17.
- 17.1.2 As soon as a Party becomes aware of the same. Each Party shall give reasonable assistance to the other in defending such claims and the Party giving such assistance shall be entitled to be indemnified to the extent of the costs incurred by it in this regard;
- 17.1.3 None of the Parties shall permit any claim or proceedings referred to in sub- Clause 17.1.1 above to be settled without the prior written consent of the other Party;
- 17.1.4 The Authority shall not be liable in any manner whatsoever for the obligations and liabilities incurred by the Concessionaire for the Project Facility during the Concession Period and for the Concessionaire's contracts with third Parties.

### **17.2 Indemnification**

- 17.2.1 The Concessionaire shall indemnify, defend and hold harmless the Authority, its officers, servants, agents, Authority Instrumentalities and Authority owned and/or controlled entities/enterprises during and after the term of this Concession Agreement from and against any and all suits, proceedings, actions, demands and claims from third parties for any liabilities, damages, losses, expenses, deaths, demands, actions, proceedings, costs and claims of any nature whatsoever, including without limitation legal fee and expenses, suffered by the Authority or any Third Party as a result of or arising out of or in any way connected with the acts, omissions, negligence, nuisance, breach of this Concession Agreement and failure to perform obligations hereunder of or by the Concessionaire and its employees, agents, representatives and Contractors, including the use or violation of any copyright work or literary property or patented invention, article or appliance, except to the extent that such injury, damage or loss is attributable to a negligent or willful act or omission of the Authority.

The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of 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.

### **17.3 Risk and Liability**

- 17.3.1 Except as expressly provided in the Concession Agreement, the Concessionaire shall carry out and perform its rights and obligations under the Concession Agreement at its own cost and risk. It shall be fully responsible for and shall bear the financial risks in relation to the Project and all its rights and obligations under or pursuant to the Concession Agreement.

## **ARTICLE 18: INSURANCE**

### **18.1 Coverage**

18.1.1 The Concessionaire shall, on and from the date of date of Project Commissioning, up to the end of Concession Period, maintain or cause to be maintained, at its own expense, the following insurance policies in the name of the Authority:

- a. Insurance against Fire & Theft;
- b. Insurance against loss or damage to Equipment/Instruments/machines installed at the Project Facility, Project Site and assets created by the Authority and the Concessionaire, due to events like earthquake, floods, lightening etc.; and
- c. In respect of claims for personal injury to or death of any person employed by the Concessionaire or its Contractor, subcontractors and arising out of such employment.

18.1.2 The premiums payable on insurance coverage as indicated above, including any costs and expenses incidental to the procurement and enforcement of such insurance coverage shall be reimbursed by the Authority on actuals basis as per approved Project Plan and upon submission of copies of certificates of insurance in respect of the insurance policies.

### **18.2 Evidence of Insurance Coverage**

18.2.1 The Concessionaire shall furnish to the Authority copies of certificates of insurance in respect of the insurance policies as soon as reasonably practicable after they are received by the Concessionaire and from time to time shall furnish evidence to the Authority that all premiums have been paid, and that the relevant policies remain in existence. In the event that the Concessionaire fails to maintain the insurance policies as required under this Concessionaire Agreement, the Authority may take such required policies and recover the costs and expenses incurred in this regard from the Concessionaire.

## **ARTICLE 19: TRANSFER OF PROJECT**

### **19.1 Scope of Transfer**

- 19.1.1 The Concessionaire shall at the end of the Concession Period or earlier termination of the Concession Agreement, as the case may be, forthwith and in any case not later than 90 days from expiry or earlier termination of the Agreement, hand over to the Authority, Project Site, Project Facility and all other Assets created/installed during the Concession Period by the Authority, free and clear of any liability, charge, lien, Encumbrances along with all of the Concessionaire's right, title and interest in the assets constructed/installed free of cost on the Project Site. The Concessionaire shall also deliver to the Authority on such date operating manuals if any, plans, design drawings and other information as may reasonably be required by the Authority to enable it to continue the operation of the Project Facility;
- 19.1.2 All project agreements entered by the Concessionaire in respect of the Project shall specify the Transfer Date and its corresponding effect. Failure to specify the Transfer Date and its corresponding effect in the project agreements shall not adversely affect the Authority and the Concessionaire shall be solely responsible for handover of the Project Facility along with Project Site and Assets on the Transfer Date at its own risk and cost.

### **19.2 Right of the Authority to choose Insurance and Contractor Warranties**

- 19.2.1 The Authority shall on the Transfer Date have the right to choose and retain all or any of the unexpired Insurance Policies, contractor warranties in relation to the Project Facility. The Concessionaire shall ensure that any rights which are to be so assigned are capable of assignment and such assignment has been approved under the terms of the relevant contract by the counterparty to the Concessionaire.

### **19.3 Assignment of Contracts**

- 19.3.1 The Authority may, in its sole and absolute discretion, have the right to choose and retain on the Transfer Date all or any of the contracts, equipment maintenance contracts, supply contracts and all other contracts except project agreements with the Staff entered into by the Concessionaire and subsisting as on the Transfer Date;

### **19.4 Condition of the Facility upon Transfer**

- 19.4.1 On the Transfer Date the Project Facility shall be in fair, usable/habitable and in a state of good working conditions as per Good Industry Practices, subject to normal wear and tear, having regard for the nature, construction and life span of the asset.

### **19.5 Passing of Risk**

- 19.5.1 Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project Facility, Project Site during the Concession Period. On and from the Transfer Date all risks except risks arising out of project agreements, if any, in relation to the transferred Project Facility and Project Site created by the Concessionaire during the Concession Period shall be deemed to have been

transferred to and lie with the Authority.

## **19.6 Transfer Costs**

- 19.6.1 The Concessionaire shall transfer the possession of Project Site, Project Facility to the Authority free from any charge, Encumbrance, liability or obligation in terms of this Concession Agreement, through appropriate legal document executed in respect thereof, if any;
- 19.6.2 The Concessionaire shall be responsible for the costs and expenses with the transfer of the possession of the Project Facility and Project Site. The Concessionaire hereby undertakes to indemnify the Authority against any liability arising out of any statutory liability till the Transfer Date that may be sought to be or is imposed on a later date on the Authority by any statutory authorities, in relation to the Project Facility and the assets there under.

## **19.7 Handing Over Procedure**

- 19.7.1 Two months prior to the expiry of the Concession Period, the Authority and the Concessionaire shall meet and agree by mutual consensus on detailed procedures for the handing over of the possession of the Project Facility along with the Project Site. In the event, the handing over of the possession of Project Facility is required pursuant to ARTICLE 19 hereof, the Parties shall meet to agree on such procedures as soon as possible and in any event within 3 (three) days of either Party giving notice to the other Party requesting such meeting. At the time of such meeting, the Concessionaire shall submit a detailed list of the structures, equipment created by the Authority to be handed over to the Authority in terms hereof and the names of its representatives in charge of such transfer, and the Authority shall inform the Concessionaire of the identity of its representatives in charge of the handing over procedure;
- 19.7.2 During the two month period prior to the handing over of the Project Facility at the expiry of the Concession period, the Concessionaire shall provide such training services to the representatives and employees of the Authority as may be reasonably necessary for them to operate and maintain the Project Facility efficiently and safely following such transfer;
- 19.7.3 Notwithstanding anything contained in this Concession Agreement, in the event the Parties do not go through the transfer procedure, the Authority shall suo moto enter the Project Site and take possession of the Project Facility and assets created by the Authority on the Project Site.

## **19.8 Effect of Transfer**

- 19.8.1 On the Transfer Date, the Concessionaire shall hand over peaceful possession, of the Project Facility, Project Site to the Authority and the Concessionaire, its Contractors, sub-contractors, agents, employees appointed by the Concessionaire shall vacate the Project Facility and the Project Site, assets if any;
- 19.8.2 From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Authority and the Authority shall take over the Project Facility and its operation and maintenance and any other rights or obligations arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement.



**19.9 Deemed Transfer**

- 19.9.1 Notwithstanding anything contained in this Concession Agreement, failure of the Concessionaire to :
- a. handover the Physical possession of the Project Facility with Project Site, and;
  - b. execute a conveyance deed, if required, stating that the Concessionaire shall have no claim on the Project Facility along with the Project Site;
  - c. shall not adversely affect the transfer of the Project Facility along with Project Site to the Authority.
- 19.9.2 Notwithstanding anything contained above, on the end of the Concession Period the Project Facility along with the Project Site shall be deemed to have reverted to the Authority on the expiry of the Concession Period or on the date of termination of this Concession Agreement, as the case may be, and from such date the Authority shall be deemed to have assumed full ownership/charge over such Project Facility and Project Site without any liability and/or Encumbrance.

## **ARTICLE 20: DISPUTE RESOLUTION**

### **20.1 Amicable Settlement**

20.1.1 In the event that any dispute, controversy or claim arises among the Parties in connection with or under this Concession Agreement or the interpretation of any of its provisions or upon the occurrence of an Event of Default, the Authority and the Concessionaire shall constitute a consultation panel consisting of one senior representative appointed by each Party, and such consultation panel shall endeavor to resolve such dispute, controversy or claim. All such disputes shall be amicably settled through mutual consultation and negotiation between the representatives in the consultation panel. The decision of the consultation panel shall be binding upon the Parties. Each Party shall bear all the expenses of its representative. The Parties hereto agree to use their respective best efforts to resolve all disputes arising hereunder through the consultation panel. The consultation panel shall be situated at Ahmedabad.

### **20.2 Arbitration**

20.2.1 In the event the Parties are unable to resolve any dispute, controversy, or claim in accordance with sub-clause 20.1.1, such dispute, controversy or claim shall be settled in accordance with The Arbitration and Conciliation (Amendment Act 1996) and as amended from time to time.

20.2.2 There shall be a tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act 1996 as amended from time to time.

20.2.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in arbitration held pursuant to this Article 20.2 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.

20.2.4 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.

### **20.3 Performance during Dispute Resolution**

20.3.1 Pending the submission of a dispute, controversy or claim to the consultation panel or to the arbitral tribunal, and thereafter until the final decision of the consultation panel or the arbitral tribunal, as the case may be, the Parties shall continue to perform all of their obligations under this Concession Agreement, without prejudice to a final adjustment in accordance with such decision. Further, this Concession Agreement shall remain subsisting and operative during the consultation or adjudication proceedings and no payment due and payable to either Party shall be withheld except the payment in dispute, if any.

## ARTICLE 21: MISCELLANEOUS

### 21.1 Amendments

21.1.1 Except as otherwise provided herein, no modification, amendment or waiver of any provision of this Concession Agreement shall be effective unless such modification, amendment or waiver is approved in writing by each of the Parties.

### 21.2 Severance of Terms

21.2.1 Whenever possible, each provision of this Concession Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Concession 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 shall not affect any other provision or any other jurisdiction, but this Concession Agreement shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

### 21.3 Language

21.3.1 All notices, certificates, correspondence or other communications under or in connection with this Concession Agreement shall be in English.

### 21.4 Notices

21.4.1 Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by registered post, telex, facsimile transmission, electronic mail in written form. The service of notice shall be given to the Parties at their respective addresses set forth below:

Concessionaire	
the Authority	Gujarat Mineral Development Corporation- Gramya Vikas Trust, (GMDC-GVT) 'Khanij Bhawan', 132 Ft. Ring Road, Near University Ground, Vastrapur, Ahmedabad – 380052

or such other address, telex number, or facsimile number as may be notified by that Party to any other Party from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex, facsimile or electronic mail, when transmitted properly addressed to such telex number, facsimile number or electronic mail. In case any Party changes its address, communication numbers, or directed attention as set forth above, it shall notify the other Parties in writing prior to the adoption thereof.

### **21.5 Governing Law**

21.5.1 This Concession Agreement shall be governed by and construed in accordance with the Laws of India and the courts at Gandhinagar shall have jurisdiction over the disputes arising between the Parties.

### **21.6 Original Document**

21.6.1 This Concession Agreement is made in two original copies, each having the same contents and the Parties have read and thoroughly understood the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

### **21.7 Relationship**

21.7.1 Nothing in this Concession Agreement shall constitute or be deemed to constitute a partnership between the Parties or confer on any Party any authority to bind the other or to contract in the name of the other or to incur any liability or obligation on behalf of the other or make or deem to be the agent of the other in any way.

### **21.8 Survival**

21.8.1 The provision relating to liability and indemnification, intellectual property and confidentiality and dispute resolution contained in this Concession Agreement shall survive the termination or expiry of this Concession Agreement.

### **21.9 Authorized Representative**

21.9.1 Any action required or permitted to be taken and any document required or permitted to be executed under this Concession Agreement may be taken or executed

- a. on behalf of the Governor of Gujarat by the authorized representative
- b. on behalf of the Concessionaire by the authorized representative

21.9.2 Each Party hereto undertakes and agrees that in case of replacement of its authorized representative, it shall notify the other Party hereinabove of its name and title at least five days prior to his taking office. In the event of default of this undertaking, all the notices, instructions, correspondences, received from or addressed to the last recorded authorized representative shall be deemed valid for all purposes.

**21.10 Waiver**

21.10.1 The failure of any Party to insist upon strict adherence to any term of the Agreement on any occasion shall not be considered a waiver of any right hereunder nor shall it deprive such Party of the right thereafter to insist upon strict adherence to that term or any other terms of the Agreement.

**IN WITNESS WHEREOF** this Concession Agreement has been executed by the duly authorized representatives of the Parties hereto on the day and year first above written.

**SIGNED ON BEHALF OF**

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

**SIGNED ON BEHALF OF**

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

**In the presence of**

Witness:

1.

2.

Witness

1.

2.

**SCHEDULE 1: MANPOWER TO BE DEPLOYED**

**1. GMDC-GVT Health Sector Project in Lakhpat**

Position of Manpower	No of Manpower Required				Qualification and Relevant Experience
	Morning Shift	Evening Shift	Night Shift	Total	
Medical Officer- MBBS	1	1	On call	2	MBBS
Specialists (Part time)	5	NA	NA	5	MBBS with MD/MS in concerned speciality
Dental Surgeon	1	NA	NA	1	BDS
Pharmacist	1	NA	NA	1	Degree in Pharmacy and having 1 year of relevant experience
Nurse-midwife (Staff-Nurse)	5	5	2	12	Degree in Nursing or Diploma in Nursing with minimum 2 years of relevant Experience
Laboratory Technician	1	1	On call	2	Degree in Medical Lab technology with 1 year of relevant experience
Radiology Technician	1	1	NA	2	Degree in Radiography with 1 year of relevant experience
Administrative Officer	1	NA	NA	1	Any Degree with 3 years relevant experience
Accountant	1	NA	NA	1	Degree in Commerce with 1 year relevant experience
Cold chain Assistant	1	NA	NA	1	
Dresser	1	NA	NA	1	
Driver	1	1	On call	2	
Multi-skilled worker	1	1	NA	2	
Sanitary worker	1	1	On call	2	
<b>Total</b>				<b>35</b>	

**2. GMDC-GVT Health Sector Project in Kawant**

Position of Manpower	No of Manpower Required				Qualification and Relevant Experience
	Morning Shift	Evening Shift	Night Shift	Total	
Medical Officer- MBBS	1	1	On call	2	MBBS
Specialists (Part time)	5	NA	NA	5	MBBS with MD/MS in concerned speciality
Dental Surgeon	1	NA	NA	1	BDS
Pharmacist	1	NA	NA	1	Degree in Pharmacy and having 1 year of relevant experience
Nurse-midwife (Staff-Nurse)	2	1	1	4	Degree in Nursing or Diploma in Nursing with minimum 2 years of relevant Experience

Laboratory Technician	1	1	On call	2	Degree in Medical Lab technology with 1 year of relevant experience
Radiology Technician	1	NA	NA	1	Degree in Radiography with 1 year of relevant experience
Data Entry Operator	1	NA	NA	1	Any Degree with 3 years relevant experience
LDC	1	NA	NA	1	Degree in Commerce with 1 year relevant experience
Cold chain Assistant	1	NA	NA	1	
Dresser	1	NA	NA	1	
Driver	1	On call	On call	1	
Multi-skilled worker	1	NA	NA	1	
Sanitary worker	2	On call	On call	2	
Total				<b>24</b>	

*Note:* The Concessionaire shall provide all relevant documents including copies of educational certificates, council registration – medical and nursing and any other documents which authenticate the fulfilment of minimum qualification and experience.

**SCHEDULE 2: HEALTHCARE SERVICES TO BE PROVIDED**

**GMDC-GVT Health Sector Project- Lakhpat** - List of Healthcare Services to be provided (indicative)

**GMDC-GVT Health Sector Project- Kawant** - List of Healthcare Services to be provided (indicative)



**SCHEDULE 3: OPERATIONAL SPECIFICATIONS & PERFORMANCE STANDARDS**

SI No	Serviceability Indicator	Required Operation Level
1	<p><b>Records and Reports</b></p> <ol style="list-style-type: none"> <li>1. Records such as history, physical examination</li> <li>2. Progress reports shall be updated immediately and continuously</li> <li>3. Medico legal case</li> </ol>	<ol style="list-style-type: none"> <li>1. The reports must be completed within stipulated time frame</li> <li>2. Daily data back-up to be taken and history files to be created</li> <li>3. Medico legal cases shall be carried out by the Concessionaire as per applicable rules. Three copies of the medico-legal case report will be prepared. Original copy will be handed over to the concerned police officer and the duplicate will be filed and kept in safe custody by the GMDC-GVT Health Sector Project (s). A third copy will be given to the patient or his /her family</li> </ol> <p>In case of a medico-legal case, the report will be completed and handed over to the police within 24 hours of the arrival of the patient. Records will be kept as per the rules and guidelines issued from time to time by GoG/Gol</p> <p>The Medico-Legal cases record shall be retained for a period of 10 years</p>
2	<p><b>Out Patient Department (OPD)</b></p> <ol style="list-style-type: none"> <li>1. OPD services availability and functionality</li> <li>2. Delivery of laboratory/ diagnostic tests results and reports</li> <li>3. Records of patients using the facility</li> </ol>	<ol style="list-style-type: none"> <li>1. OPD services to be available as per the demand of the local population and agreed Project Plan</li> <li>2. The tests of the results will be given on the same day or within reasonable time required for the tests</li> <li>3. Records would be maintained for a period of 5 years or as per applicable government guidelines</li> </ol>
3	<p><b>Diagnostics</b></p> <ol style="list-style-type: none"> <li>1. Availability of diagnostics facilities</li> <li>2. Reports</li> <li>3. Quality Assurance</li> </ol>	<ol style="list-style-type: none"> <li>1. Diagnostics facilities required should be available along with OPD services</li> <li>2. The tests reports shall be given on the same day or within reasonable time as required for the tests.</li> <li>3. Equipment calibration is to be done regularly and documented to maintain the report quality.</li> </ol>

<p><b>4</b></p>	<p><b>General</b></p> <p>1. Bio Medical Waste Disposal mechanism</p> <p>2. Staff Uniform</p>	<p>1. The provisions of Bio Medical Waste (Management &amp; Handling) Rules 1998 and any subsequent amendments to be adhered to</p> <p>2. Every staff in the hospital shall have to be provided with proper uniform and badge for easy identification at all times</p>
<p><b>5</b></p>	<p><b>Grievance Redressal</b></p>	<p>1. The Concessionaire shall keep a grievance redressal box in the reception area of the hospital which shall be prominently displayed to all patients.</p> <p>2. On monthly basis, the Concessionaire shall submit to Authority a report on grievances received and action taken to redress the same.</p>

#### SCHEDULE 4: KEY PERFORMANCE INDICATORS

The Concessionaire shall adhere to the KPIs as detailed below:

- (i) Availability of manpower:** The Concessionaire shall be required to deploy manpower as provided under Schedule 1 of this Agreement. If the Concessionaire fails to deploy any of the required manpower as mentioned under Schedule 1 of this Agreement, then the corresponding salary of such manpower shall be deducted from the Salary Component for the period during which such manpower is not deployed.
- (ii) Attendance of Manpower:** Following standards should be maintained each quarter throughout the Concession period-

Sl. No	Number of days absent during a quarter of required manpower as mentioned under Schedule 1 of this Agreement) at each of the Project Facility	Penalty
1	5 days	N/A
2	6-10 days	Deduct 2% of the payable quarterly Management Fee for the quarter in which the KPI is reviewed
3	More than 10 days	Deduct 5% of the payable quarterly Management fee for the quarter in which the KPI is reviewed  If absenteeism of the minimum manpower is more than 10 days for two consecutive quarters in a year and unless such default is not on account of Authority default, the same shall be considered as Concessionaire Event of Default and Authority has the right to terminate the Concession Agreement as per the provisions under ARTICLE 15.

- (iii) Total Number of cases referred outside:** Following standards should be maintained each quarter throughout the Concession Period:

Sl. No	Patients referred as percentage of total OPD volume per month at each of the Project Facility	Penalty
1	10% and less	N/A
2	Less than 20% but more than 10%	Deduct 2% of the payable quarterly

Sl. No	Patients referred as percentage of total OPD volume per month at each of the Project Facility	Penalty
		Management Fee for the quarter in which the KPI is reviewed
<b>3</b>	More than 20%	Deduct 5% of the payable quarterly Management Fee for the quarter in which the KPI is reviewed  If the percentage of referral patient is more than 20% for two consecutive quarters in a year and unless such default is not on account of Authority default, the same shall be considered as Concessionaire Event of Default and Authority has the right to terminate the Concession Agreement as per the provisions under ARTICLE 15.

**(iv) Availability of Drugs and consumables:** Following standards should be maintained each quarter throughout the Concession Period for availability of drugs as mentioned under SCHEDULE 9:

Sl. No	Stock of consumables and drugs & medicines as mentioned under Schedule 9 (No of stock out instances) at each of the Project Facility	Penalty
<b>1</b>	10 Instances/ Month	NA
<b>2</b>	11-15 Instances/ Month	Deduct 2% of the payable for consumables and drugs & medicines quarterly for the quarter in which the KPI is reviewed.
<b>3</b>	Out of stock for more than 15 instances	Deduct 5% of the payable of Management Fee quarterly for the quarter in which the KPI is reviewed.  If stock out is for more than 15 instances for two consecutive quarters in a year and unless such default is not on account of Authority default, the same shall be considered as Concessionaire Event of Default and Authority has the right to terminate the Concession Agreement as per the provisions under ARTICLE 15.

**(v) Quality:**

Sl. No	Average number of outpatients per month should be minimum 1000 at each of the Project Facility	Penalty
1	More than 90%	No penalty
2	Less than 90% but more than 80%	1% of the quarterly Annual Management Fee payable for the quarter in which KPI is reviewed
3	Less than 80%	2% of the quarterly Annual Management Fee payable for the quarter in which KPI is reviewed

**(vi) Complaint/Patient Feedback:**

Sl. No	Number of complaints received from patients per month at each of the Project Facility	Penalty
1	5 complaints	No penalty
2	6 to 10 complaints	1% of the quarterly Annual Management Fee payable for the quarter in which KPI is reviewed
3	11 and more complaints	2% of the quarterly Annual Management Fee payable for the quarter in which KPI is reviewed

**(vii) Community participation or awareness programme:**

The Concessionaire shall need to conduct minimum 10 community participation awareness programme in a year

## **SCHEDULE 5: REPORTING REQUIREMENT**

### **Monthly O & M Report**

During the Concession Period within 7 days of the end of each calendar month or part thereof, the Concessionaire shall provide to the Authority a monthly report (Monthly O&M Report) which shall contain the following minimum information:

- a. Details report pertaining to number OPD volume per month, details of patients registration, diagnostics report
- b. Details of cost incurred towards drugs and medicines, consumables and status of stock of drugs and medicines and consumables
- c. Details of repair and maintenance of medical equipment, Project Facility (s) undertaken
- d. Details of compliance with respect to operational specifications and performance standards under SCHEDULE 3
- e. Number of patients referred outside per month
- f. Report on grievances/complaints/patient feedback received and action taken to redress the same
- g. Number of community participation awareness programme conducted
- h. Availability of manpower and their monthly attendance

### **KPI Compliance Report**

Within 7 days of the end of each quarter or part thereof, the Concessionaire shall provide to the Authority a compliance report with respect to each of the KPIs mentioned under SCHEDULE 4.

**SCHEDULE 6: ANNUAL MANAGEMENT FEE**

**Annual Management Fee Payable to the Concessionaire**

Annual Management Fee payable to the Concessionaire for the first year of operation:

SI No	Particulars	Amount (numbers)	Amount ( in Words)
1	Management Fee for GMDC-GVT Health Sector Project located in.....	Rs.....	Rupees..... Only
2	Management Fee for GMDC-GVT Health Sector Project located in.....	Rs.....	Rupees..... Only
<b>Total</b>	<b>Annual Management Fee</b>	Rs.....	Rupees..... Only

**Payment Mechanism**

- a. The amount mentioned above is exclusive of applicable taxes and the same shall be payable by the Authority at actual to the Concessionaire.
- b. The Concessionaire would be paid the Annual Management Fee in equal quarterly installments within 30 days from the expiry of each quarter. If the Annual Management Fee is not paid within 30 days from the end of quarter (the **“Due Date of Payment of Annual Management Fee”**), the Concessionaire shall give a notice to the Authority at the end of the 30<sup>th</sup> day to make the payments within 15 days from the end of the 30<sup>th</sup> day. If the Authority fails to pay the Annual Management Fee after the 15<sup>th</sup> day, an interest of 2% per month from Due Date of Payment of Annual Management Fee for each day of delay subject to a maximum period of 3 months from the Due Date of Payment of Annual Management Fee. In case the payment is not done within such extended period of 3 months, this will result in Authority Event of Default and the Concessionaire has the right to terminate the Agreement as per the provisions under ARTICLE 15.
- c. The Annual Management Fee shall be increased at the rate of 5% on yearly basis in accordance with terms and conditions of this Agreement.
- d. In case the Concessionaire does not achieve the KPI mentioned in Schedule 4 , then the Authority shall deduct the penalty amount as mentioned under the schedule 4 from the quarter during which KPIs need to be achieved.
- e. All payments to the Concessionaire shall be made by way of cheque/ demand draft or any other means adopted by the Authority
- f. The Annual Management Fee does not include the Salary Component, and Reimbursable Amount.

**SCHEDULE 7: BREAK UP OF SALARY COMPONENT**

**Salaried Component**

**GMDC-GVT Health Sector Project in Lakhpat**

Sl. No.	Position of required Manpower	Number of required Manpower	Monthly Salary (in Rs)
1.	Medical Officer- MBBS	2	
2.	Specialists (Part time)	5	
3.	Dental Surgeon	1	
4.	Pharmacist	1	
5.	Nurse-midwife (Staff-Nurse)	12	
6.	Laboratory Technician	2	
7.	Radiology Technician	2	
8.	Administrative Officer	1	
9.	Accountant	1	
10.	Cold chain Assistant	1	
11.	Dresser	1	
12.	Driver	2	
13.	Multi-skilled worker	1	
14.	Sanitary worker	1	
	Total	35	

**GMDC-GVT Health Sector Project in Kadipani**

Sl. No.	Position of required Manpower	Number of required Manpower	Monthly Salary (in Rs)
1.	Medical Officer- MBBS	2	
2.	Specialists (Part time)	5	
3.	Dental Surgeon	1	
4.			



	Pharmacist	1	
5.	Nurse-midwife (Staff-Nurse)	4	
6.	Laboratory Technician	2	
7.	Radiology Technician	1	
8.	Data Entry Operator	1	
9.	LDC	1	
10.	Cold chain Assistant	1	
11.	Dresser	1	
12.	Driver	2	
13.	Multi-skilled worker	1	
14.	Sanitary worker	1	
	Total	24	

### Payment Mechanism

#### Salary Component

- a. The Salary Component will be paid on quarterly basis to the Concessionaire by the Authority by submission of following documents:
  - i. Quarterly invoice mentioning the number of deployed manpower during the quarter, amount, date
  - ii. Monthly attendance sheet of each of the persons deployed at the GMDC-GVT Health Sector Projects
  - iii. Proof of monthly salary payment to the persons deployed at the GMDC-GVT Health Sector Projects
  - iv. Any other related documents that are required by the Authority
- b. The Concessionaire would be paid the Salary Component in equal quarterly installments within 30 days from the expiry of each quarter. If the Salary Component is not paid within 30 days from the end of quarter (the "Due Date of Payment of Salary Component"), the Concessionaire shall give a notice to the Authority at the end of the 30<sup>th</sup> day to make the payments within 15 days from the end of the 30<sup>th</sup> day. If the Authority fails to pay the Salary Component after the 15<sup>th</sup> day, an interest of 2% per month from Due Date of Payment of Salary Component for each day of delay subject to a maximum period of 3 months from the Due Date of Payment of Salary Component. In case the payment is not done within such extended period of 3 months, this will result in Authority Event of Default and the Concessionaire has the right to terminate the Agreement as per the provisions under ARTICLE 15.
- c. The Salary Component shall be increased at the rate of 5% on yearly basis in accordance with terms and conditions of this Agreement.

- d. In case the Concessionaire does not achieve the KPI mentioned in Schedule 4, then the Authority shall deduct the penalty amount as mentioned under the Schedule 4 from the quarter during which KPIs need to be achieved.
- e. All payments to the Concessionaire shall be made by way of Cheque/demand draft or any other means adopted by the Authority.

### **SCHEDULE 8: MANAGEMENT INFORMATION SYSTEM (MIS)**

The MIS should have functionalities to record and maintain the following information:

- (i) Patient registration ( outpatient, emergency care, date and time of registration of the patient, name , age, sex and address of the patient) with identification number
- (ii) Schedule of appointment and status for outpatient
- (iii) OPD statistics by specialty
- (iv) Outpatient record; records & details related to outpatient including line of treatment, diagnosis, prescription
- (v) Human resource management including clinical, paramedical and other staffs;
- (vi) Utilization of diagnostics
- (vii) No. of referral patients including reason of referral, date of referral, public health facility where the patient has been referred to etc.
- (viii) Drugs & Medicines and consumables inventory management data
- (ix) Number of community awareness programme conducted
- (x) Availability and attendance of manpower
- (xi) Number of complaint and feedback received from patients

**SCHEDULE 9: LIST OF DRUGS TO BE MAINTAINED BY THE CONCESSIONAIRE IN THE PROJECT FACILITY**

The required essential medicine and drugs (generic) shall be maintained by the Concessionaire as per the applicable laws

## SCHEDULE 10: FORMAT OF BANK GURANTEE FOR OPERATION PERFORMANCE SECURITY

To  
The CEO  
Gujarat Mineral Development Corporation-  
Gramya Vikas Trust, (GMDC-GVT)  
'Khanij Bhawan', 132 Ft. Ring Road,  
Near University Ground, Vastrapur,  
Ahmedabad – 380052

### WHEREAS:

- A. Gujarat Mineral Development Corporation- Gramya Vikas Trust, (GMDC-GVT), Gujarat (**the "Authority"**) and ..... (the **"Concessionaire"**) have entered into a Concession Agreement dated (the **"Agreement/Concession Agreement"**) whereby the Authority has agreed to the Concessionaire undertaking the project for refurbishment, operation, maintenance and management of Health Sector Projects of GMDC-GVT in Gujarat subject to and in accordance with the provisions of the Concession Agreement.
- B. The Agreement requires the Concessionaire to furnish an Operation Performance Security (the **"Performance Security/Security"**) to the Authority in a sum of INR..... (**"Security Amount"**) as security for due and faithful performance of its obligations, under and in accordance with the Concession Agreement, during the Concession Period (as defined in the Concession Agreement). The Operation Performance Security shall be valid for a period of 15 months from the date of issue (the **"Security Period"**).
- C. We, ..... through our Branch at ..... (**"Bank"**) have agreed to furnish this Bank Guarantee by way of Performance Security

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Security Period, under and in accordance with the Concession Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Security Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, to the Bank 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 Concession Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority

shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Security Period under the Concession Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Security, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Security.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Security.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Security, to vary at any time, the terms and conditions of the Concession 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 Concession 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 Concession 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 Security and the Bank hereby waives all of its rights under any such law.
6. This Security is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Concession Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Security is restricted to the Security Amount and this Security will remain in force until the compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Security, no later than 6 (six) months from the date of expiry of this Security, all rights of the Authority under this Security shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Operation Performance Security shall cease to be in force and effect upon the expiry of the Security Period. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required to satisfy the expiry of Security Period as defined in the Concession Agreement, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Security during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Security and the undersigned has full powers to do so on behalf of the Bank
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in 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 Security shall come into force with immediate effect and shall remain in force during the Security Period pursuant to the provisions of the Concession 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 11: INDICATIVE LIST OF MEDICAL EQUIPMENT, FURNITURE AND FIXTURE**

The list of minimum required equipment, furniture and fixtures shall be finalized based on the approved Project Plan.