



GOVERNMENT OF NCT OF DELHI

DEPARTMENT OF SOCIAL WELFARE

Invites



## REQUEST FOR PROPOSAL (RFP)

For

DEVELOPMENT OF A RESIDENTIAL CARE INSTITUTION FOR MENTALLY RETARDED AT  
DWARKA (SEC-9), DELHI

Under Public Private Partnership (PPP) Framework

Department of Social Welfare (DSW), Government of NCT of Delhi intends to develop a residential care institution for Mentally Retarded at Dwarka through Public Private Partnership on Design, Build, Operate & Transfer (DBOT) basis. DSW invites Request for Proposal from eligible Private Sector/Non-Government entities who intend to participate in the project for development, operation, management and maintenance of the envisaged facility at Dwarka (Sector-9).

### SCOPE OF WORK

Planning, designing, finance, construction, development, operation and maintenance of a residential care institution for mentally retarded for 30 years.

#### \*THE LAND WOULD BE GIVEN ON NOMINAL LEASE BASIS\*

Private player would be allowed to undertake commercial activities permissible as per Master Plan of Delhi – 2021

### SITE DETAILS

Location	Area
Sector 9, Dwarka, New Delhi	1.24 acres

Last date for Proposal Submission - **2<sup>nd</sup> August, 2010**

### SUBMISSION OF PROPOSAL

RFP document available on the website [www.socialwelfare.delhigovt.nic.in](http://www.socialwelfare.delhigovt.nic.in) provides information about the bidding process, qualification etc. Interested Applicants(s) may send in their Proposals to **Director, Department of Social Welfare, Govt. of NCT of Delhi, GNLS Complex, Delhi Gate, New Delhi- 110002**

### PRE-BID MEETING

Date - **13<sup>th</sup> July, 2010 at 16.00 hrs**  
Venue - **Office of Secretary – Social Welfare,  
Delhi Gate, New Delhi**

FOR FURTHER INFORMATION PLEASE CONTACT:

**Nisha Agrawal**, OSD (PPP),  
Department of Social Welfare, Govt. of NCT of Delhi  
Tel: 99900 79562

**Uma Nathany**, Deputy Manager, Feedback Ventures Pvt. Ltd.  
Email: [uman@feedbackventures.com](mailto:uman@feedbackventures.com);  
Tel: 0124 -464 7480; 9999627695

July 1, 2010

DEVELOPMENT OF RESIDENTIAL CARE  
INSTITUTION FOR  
MENTALLY RETARDED AT  
DWARKA, SECTOR - 9 ON  
PUBLIC PRIVATE PARTNERSHIP (PPP)

Department of Social Welfare,  
Government of National Capital Territory of Delhi  
GLNS Complex, Delhi Gate, Delhi-110002



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## **SECTION – I: INSTRUCTION TO BIDDERS**

## **GLOSSARY**

<b>Agreement</b>	As defined in Article 1.1.3
<b>Bank Guarantee</b>	As defined in Article 3.4.1
<b>Bid</b>	As defined in Article 3.6
<b>Bidder</b>	As defined in Article 1.1.4
<b>Bidding process</b>	As defined in Article 1.1.4
<b>Concessionaire</b>	As defined in Article 1.1.3
<b>Concessions Authority</b>	As defined in the Disclaimer
<b>Concession Agreement</b>	As defined in Article 1.1.3
<b>Consortium</b>	As defined in Article 3.2.3
<b>Construction Completion Date</b>	As defined in the Draft Concession Agreement
<b>DBOT</b>	As defined in Article 1.1.2
<b>Demand Draft</b>	As defined in Article 3.4.1
<b>Effective Date</b>	As defined in the Draft Concession Agreement
<b>Financial Bid</b>	As defined in Article 4.7.1 (c)
<b>GNCTD</b>	Government of National Capital Territory of Delhi
<b>Joint Bidding Agreement</b>	As defined in Article 3.3.2
<b>Lead Member</b>	As defined in Article 3.3.2
<b>LOI</b>	As defined in Article 4.12.1
<b>Minimum Eligibility Requirement</b>	As defined in Article 3.2
<b>Net Worth</b>	As defined in Article 3.2.4 (b)
<b>DSW</b>	Department of Social Welfare, GNCTD
<b>Project</b>	As defined in Article 2.1.1
<b>Proposal</b>	As defined in Article 3.6
<b>Proposal Due Date</b>	As defined in Article 4.4.1
<b>Proposal Security</b>	As defined in Article 3.4.1



<b>Proposal validity period</b>	As defined in Article 3.8.1
<b>PPP</b>	Public Private Partnership
<b>RBI</b>	Reserve Bank of India
<b>RFP or Request For Proposals</b>	As defined in the Disclaimer
<b>Rs. or INR or Rupee</b>	Indian Rupee
<b>Single Bidder</b>	As defined in Article 3.2.3
<b>Successful Bidder</b>	As defined in Article 4.10.2
<b>Technical Bid</b>	As defined in Article 4.7.1 (b)
<b>Technically Qualified</b>	As defined in Article 3.2.4

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

## DISCLAIMER

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

This RFP document is not an Agreement and is not an offer or invitation to any other party. The purpose of this RFP document is to provide the Bidders with information to assist the formulation of their proposal submission. This RFP document does not purport to contain all the information each Bidder may require. This RFP document may not be appropriate for all persons and it is not possible for DSW and their employees or advisors to consider the investment objectives, financial situation and particular needs of each Bidder. Certain Bidders may have a better knowledge of the proposed project than others. Each recipient must conduct its own analysis of the information contained in this RFP or to correct any inaccuracies therein that may appear in this RFP and is advised to carry out its own investigation into the proposed project, the legislative and regulatory regimes which applies thereto and by and all matters pertinent to the proposed project and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement relating to the proposed project.

DSW and their employees and advisors make no representation or warranty and shall incur no liability under the Law of Contract, Tort, the Principles of Restitution or unjust enrichment or otherwise for any loss, expense or damage, accuracy, reliability or completeness of the RFP document, which may arise from or be incurred or suffered in connection with anything contained in this RFP, any matter deemed to form part of this RFP, the award of the Project, the information and any other information supplied by or on behalf of DSW or their employees, any consultants or otherwise arising in any way from the selection process for the Project.

DSW may in its absolute discretion, but without being under any obligation to do so, can amend or supplement the information in this RFP document. The information that DSW is in a position to furnish is limited to this RFP document and the information available at the contact addresses given in Article 1.1.6, along with any amendments/ clarifications thereon.

This RFP document and the information contained herein are confidential and for use only by the person to whom it is issued. It may not be copied or distributed by the recipient to third parties (other than in confidence to the recipient's professional advisor). In the event that the recipient does not continue with the involvement in the project in accordance with the RFP document the information contained in the RFP document shall not be divulged to any other party. The information contained in the RFP document must be kept confidential.

Mere submission of a responsive Bid does not ensure selection of the Bidder as Concessionaire.

# 1. INVITATION FOR PROPOSAL

## 1.1. Introduction

- 1.1.1. The Department of Social Welfare (**DSW**) intends to develop a residential care institution for mentally retarded at Dwarka, Sector - 9, Delhi through Public Private Partnership.
- 1.1.2. This Request for Proposal (**RFP**) document is for the planning, designing, engineering, finance, construction, development, operation and maintenance of a residential care institution for mentally retarded at Dwarka, Sector - 9, Delhi through Public Private Partnership mode on Design, Build, Operate & Transfer (**DBOT**) basis for a concession period of 30 (thirty) years.
- 1.1.3. An agreement (the "**Concession Agreement**" or the "**Agreement**") will be drawn up between Department of Social Welfare (hereinafter referred as "**DSW**") and the Concessionaire [i.e. the SPV, as formed by the Consortium or single / individual bidder, whichever acknowledged as the Successful Bidder"] on PPP basis. The Successful Bidder shall be required to form an SPV in the form of a Society for undertaking the Project. Incomes from the Project will accrue to the SPV (the "**Concessionaire**") during the Concession Period.
- 1.1.4. A single stage two step process ("the **Bidding Process**") is planned to be followed for determining the Successful Bidder. All Bidders shall submit their Technical Proposal and Financial Proposal against this RFP in a single stage ("the **Bidder**"). In the first step, Technical Proposals of all Bidders shall be evaluated as to whether they meet the Minimum Eligibility Requirements as set forth in Article 3.2.4 of this Section-I of the RFP document; for undertaking the Project. The Financial Proposal of only those Bidders who meet the Minimum Eligibility Requirements would be opened and evaluated for the purpose of identifying the Successful Bidder.
- 1.1.5. The RFP document contains information about the Project, Bidding Process, Proposal submission, qualification criteria and Financial Proposal requirement.
- 1.1.6. Completed Proposals will be received not later than **1400 hrs** on the Proposal Due Date in the manner specified in the RFP document at the address given below; DSW shall not be responsible for any delay in receiving the Proposal (s) and reserves the right to reject any or all proposals without assigning any reason thereof.

*Director  
Department of Social Welfare  
GLNS Complex, Delhi Gate,  
Delhi-110002*

### 1.1.7. **Schedule of Bidding Process**

DSW would endeavour to adhere to the following schedule:

Events Description	Estimated Date
Date of issue of RFP	01.07.2010
Last date of receiving queries	12.07.2010
Pre-Bid Meeting	13.07.2010
Proposal Due Date (PDD)	02.08.2010
Opening of Technical Proposals	On Proposal Due Date
Opening of Financial Proposal	To be announced
Letter of Intent	Within 120 days from date of opening of Financial Proposals
Validity of Bids/ Proposals	180 days after Proposal Due Date
Signing of Concession Agreement	Within 45 days of issue of LOI

- 1.1.8. GOI has issued guidelines (see Format 5 (J) of RFP) for qualification of Bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply *mutatis mutandis* to this Bidding Process. DSW shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process. Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the format at 5 (A).

## **2. PROJECT BACKGROUND**

### **2.1. Introduction**

- 2.1.1. DSW is responsible for social protection activities and providing security to the vulnerable and socially disempowered sections of the society. It has been taking various initiatives for the welfare of mentally retarded belonging to poor sections of the society. Such endeavours include setting up of recreational centres and establishment of homes for mentally challenged in various parts of Delhi. As part of one of such initiatives, DSW intends to develop a Residential Care Institution for Mentally retarded at Dwarka, Sector-9, Delhi through Public Private Partnership mode on Design, Build, Operate & Transfer (DBOT) basis (the “**Project**”).
- 2.1.2. The Project Site, having an area of 1.24 acres, shall be leased to the Concessionaire for the purpose of development of the Project. The Concessionaire shall develop the Project and thereafter, operate and maintain it throughout the Concession Period. The act of granting permission to develop the Project at the Project Site shall not vest or create any proprietary interest in the Project Site in favour of the Concessionaire. The lease agreement for the Project Site shall be co-terminus with the Concession Agreement and shall be in accordance with the Concession Agreement and its Schedules.

### **2.2. Social Consideration**

- 2.2.1. The Concessionaire shall reserve a certain number of seats (the “**Reserved Seats**”) at the newly developed residential care institution on which mentally retarded candidates shall be nominated by DSW. The Concessionaire shall provide free-of-cost services to the candidates accommodated under such reserved seats.
- 2.2.2. The Bidders shall be required to quote the number of Reserved Seats, which shall in all cases have to be more than 22 (twenty two) seats. The Bidder quoting the highest number of Reserved Seats shall be selected as the Successful Bidder.

### **2.3. Statutory Clearances**

- 2.3.1. The envisaged development is permissible on the Project Site under reference, however the Concessionaire is required to adhere to the development control norms as per the prevailing development control regulations of Delhi and arrange approvals from all local authorities. The Concessionaire shall obtain clearances and sanctions from competent statutory authorities for building plans, utilities, fire fighting, electric connection/ sub-station etc. It is to be clearly understood that all such clearances are to be obtained by the Concessionaire and DSW can only provide assistance, wherever possible, on best effort basis without any binding obligation.

### **2.4. Insurance**

2.4.1. If during this period any loss of property and/or life takes place, the loss and account of the same shall be borne entirely by the Successful Bidder and DSW shall not be liable for any such claims. The Successful Bidder/ Concessionaire would be responsible for the payments arising out of any third party claims. The Successful Bidder/ Concessionaire is advised to procure insurance for meeting such liabilities at his own cost.

## **2.5. Taxes**

2.5.1. Concessioning Authority shall not make any payments to the Concessionaire for taxes. All taxes as applicable under the Project shall be borne by the Concessionaire.

## **3. GENERAL TERMS AND CONDITIONS FOR EVALUATION**

### **3.1. Evaluation of the Proposals/ Bids**

The bid evaluation shall be conducted in two stages:

- Stage 1 – Opening of Technical Bids / Proposals
- Stage 2 - Opening of Financial Bids / Proposals of technically qualified Bidders

The Bidding Process has been further explained in Article 4 of this RFP document- Section - I

3.1.1 The Successful Bidder shall be issued Letter of Intent (LOI). After issue of the LOI in writing and acceptance of the same by the Successful Bidder within 15 (fifteen) days, the Bidder shall form Concessionaire, which shall enter into a Concession Agreement (draft enclosed as Section-II of the RFP) with DSW within 30 (thirty) days of conveying his acceptance of LOI or the date as mutually agreed between the Parties to the Concession Agreement.

3.1.2 The Successful Bidder shall, inter alia form a Special Purpose Vehicle (the “SPV”) registered under the Societies Registration Act, 1860 in India for the implementation of the Project. SPV shall be formed after issuance and acceptance of Letter of Intent (the “LOI”) within 30 (thirty) days preceding Agreement signing. The SPV would enter into the Agreement and subsequently carry out all the responsibilities of the Successful Bidder and undertake the Project as stipulated in the Agreement. The proposed membership of the SPV must be in compliance with the criteria specified in the RFP. However, the membership structure of the Bidder shall not be changed by the Bidder without DSW’s prior written approval.

### **3.2. Minimum Eligibility Criteria:**

3.2.1. The Bidder (Single Bidder or Consortium Member) can be a Company, Society or a Trust registered in India.

- 3.2.2. The Bidder should not have any pending disputes and or enquiries in connection with offences like cheating, misappropriation of funds and exploitation of beneficiaries. It should also not have been black-listed by any govt. agency or instrumentality.
- 3.2.3. A Bidder, who may be a single entity (“the **Single Bidder**”) or a Consortium as per the Article 3.3 (“the **Consortium**”), has to meet the requirements specified under Article 3.2.4 so as to be considered eligible for undertaking the Project.
- 3.2.4. **Technical Qualification:** Bidders meeting both of the following criteria shall be considered as “Technically Qualified” and shall be eligible for undertaking the Project.

**a) Technical Capability**

For demonstrating the Technical Capability and experience (the “**Technical Capability**”), the Bidder should have

- i. Minimum 3 (three) years of continuous experience in Operation, Maintenance and Management of at least one residential care institution with at least 45 (forty five) residents within last 7 (seven) financial years.

For the purpose of this RFP, residential care institution shall include

- ❖ Home/hostel/education centers for disabled persons and / or
- ❖ Home/hostel for senior citizens/women/children

AND

- ii. Successfully developed / paid for development of at least 1 (one) real estate project (residential or educational) on a minimum land area of 1.25 acres with minimum project cost of Rs 7.5 crores (Rupees seven crores and fifty lakhs only) within last 7(seven) financial years

**b) Financial Capability**

For demonstrating financial capability (the “**Financial Capability**”) the Bidder should

- (i) have a minimum Net Worth equal to Rs 1.9 Crores (Rupees one crore ninety lakhs only) on 31<sup>st</sup> March 2009

For definition of Net Worth please refer to the Notes of the format 5(I). For conversion of other currencies to Indian Rupees, the rate of conversion shall be as per the Reserve Bank of India reference rate as on 1st January 2010. In case of currencies not indicated under the RBI reference rate, the same shall be converted to US\$ at the conversion rate as on 1st January 2010, and the amount so derived in US\$ shall be converted into Indian Rupees as per the US\$ RBI reference rate of 1st January 2010.

3.2.5. **High Networth Route (HNR)**

Prospective Bidders having Net-worth of Rs 19 crores (Rupees nineteen crores only) or above, as on 31st March 2009 (“the **High Net-worth Entity**”) shall be exempted from the above stated “**Technical Capability**” in Article 3.2.4. However, such Bidders shall have to demonstrate this net worth independently.

The Consortium / High Net-worth Entity shall furnish the undertaking that if selected to undertake the Project, it shall enter into an agreement for entrusting its operations & maintenance obligations to an entity having the experience as specified in Article 3.2.4(a)(i) for a period of at least 5 (five) years from the date of commencement of operations of the Project, and intimate DSW about such engagement failing which the Concession Agreement is liable to get terminated.

- 3.2.6. In computing the Technical Capability and Net Worth of the Bidder/ Consortium Members under Article 3.2.4, the Technical Capability and Net Worth of their respective Associates would also be eligible hereunder.

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

- 3.2.7. The Bidder must submit audited annual reports (balance sheet and profit & loss account/income & expenditure account with schedules) for the past three financial years. In case of a Consortium, the audited annual report of each member of the consortium shall be submitted.

### **3.3. Proposal Submitted by a Consortium**

- 3.3.1. A maximum of 3 (three) members are permitted in the Consortium.
- 3.3.2. Each consortium must specify the proposed membership structure in the SPV and nominate a Lead Member of the consortium (“the **Lead Member**”). This shall be enshrined in the Joint Bidding Agreement (the “**Joint Bidding Agreement**”) signed by all consortium members and submitted along with this bid/ proposal (as per the format 5(H)).
- 3.3.3. Any material changes in the membership of a Bidder will be rejected by DSW.
- 3.3.4. The Lead Member nominated at the time of submission of the Proposal shall have to abide by all the conditions set forth in the Concession Agreement for the Lead Member. Such Lead Member shall hold authorization in the form of Power of Attorney. The Proposal must designate one or more person(s) to represent the Bidder in its dealings with DSW. Unless specifically advised to the contrary, DSW will assume that the person (s) designated is authorized to perform all tasks, including, but not limited to, providing



information, responding to inquiries and entering into contractual commitments on behalf of the entity or the consortium as the case maybe. Any and all limitations on the authority of the designated person (s) should be detailed in the Proposal.

3.3.5. Each member of the Consortium shall submit a signed letter (on the organisation's letter head) with the Proposal, which states that, the said member:

(a) has reviewed the entire Proposal.

(b) is in accord with each element of the Proposal, including, but not limited to, its technical and price components, description of the member's responsibilities and commitments to the Project, and the designated person(s) who will represent the Consortium during the negotiation process. Any substantive exception or caveat should be addressed in the enclosed letter.

(c) has participated in only one Proposal for this Project.

(d) each of the Consortium members will be jointly and severally liable to DSW with respect to the Proposal and terms and conditions contained in this RFP.

All pertinent information that may affect the performance of the responsibilities of any Consortium member – such as ongoing litigation, financial distress, or any other such matter – must be disclosed in the letter.

### **3.4. Fee and Deposits to be paid by the Bidder**

#### **3.4.1. Proposal Security**

(i) The Bid shall be accompanied by an initial Proposal Security for a value of **Rs. 7,40,000** (Rupees seven lakhs forty thousand only) in any one of the following manners:

(a) A Bank Guarantee issued by a Scheduled Bank in favour of “*Director, Department of Social Welfare*” and in the format given in Article 5 (F); or

(b) Demand Draft in favour of ‘*Director, Department of Social Welfare*’ payable at Delhi.

(ii) The Proposal Security shall be valid for a minimum period of 180 days from the Proposal Due date. On request from DSW, the Bidders would be required to extend the validity of the Proposal Security on the same terms and conditions.

(iii) The Proposal Security of the Successful Bidder will be returned on receipt of Performance Security from the Successful Bidder.

(iv) Any Bid submitted without the Proposal Security in the form as specified in the RFP document shall be summarily rejected.

(v) The Proposal Security of Bidders whose Proposal is rejected on account of not meeting the Minimum Eligibility Criteria will be returned/refunded within a period of 60 (sixty) days from the date of intimating the rejection of the Proposal by DSW to the Bidder. The Proposal Security shall be forfeited by DSW, in the following cases:

- (a) If the Bidder withdraws his Bid after Technical Proposal opening and during the Bid validity period.
- (b) If the Successful Bidder fails within the specified time limit, to sign the Concession Agreement.
- (c) If the Successful Bidder fails within the specified time limit to furnish the required Performance Security or fails to start the work within stipulated period. .

**Note:** *Proposal Security of only H1 and H2 Bidders would be retained till the Concession Agreement is signed between the preferred Bidder and DSW. The 'Proposal Security' of the other Bidders would be returned within 60 (sixty) day of opening of Financial Bids. .*

*The Proposal Security of the Successful Bidder will be retained till the Concession Agreement is signed and shall be forfeited if he fails to deposit the requisite Performance Security within the stipulated time and/ or fails to start work within the stipulated period.*

### **3.5. One Bid per Bidder**

Each Bidder shall submit only one Bid for the Project. Violation of this covenant shall lead to disqualification of the Bidder.

### **3.6. Proposal Preparation and Cost**

All Bidders are required to submit a detailed proposal (herein-after referred to as the “**Proposal**” or “**Bid**”) in accordance with the guidelines set forth in this RFP. Bidders should provide information sought herein in the prescribed formats in order to accurately establish and interpret the information provided. The cost of preparation of Proposal and related expenses shall be borne by the Bidders themselves

### **3.7. Due Diligence, Inspection and Investigation**

The Bidders shall be deemed to have conducted a due diligence exercise with respect to all aspects of the Project, including a detailed survey of the site and information/ data provided by DSW in the RFP document, when they submit the Proposal. Interested Bidders are invited to visit and inspect the site at their own expense. Failure to investigate fully the site or subsurface conditions shall not be a valid ground to relieve the Bidder subsequently after its Proposal nor shall it relieve the Bidder from any responsibility for estimating the difficulty or costs of successfully completing the Project.

### **3.8. Validity of Proposal**

- 3.8.1. The Proposal shall remain valid for a period not less than 180 (one hundred and eighty) days from the due date of submission (Proposal Validity Period). DSW reserves the right to reject any Proposal that does not meet this requirement. Validity of Proposal shall be extended for a specified additional period at the request of DSW.
- 3.8.2. A Bidder agreeing to the request will not be allowed to modify his Proposal, but would be required to extend the validity of his Proposal Security for the period of extension.
- 3.8.3. The Proposal Validity Period of the Successful Bidder shall be extended till the date of execution of the Concession Agreement.

### **3.9. Right to Reject Proposals**

- 3.9.1. DSW reserves the right to reject any / all proposals including the highest proposal or withdraw the invitation of the proposal at any stage without citing any reason. Nothing contained herein shall confer any right upon a Bidder or create any obligation/ liability upon DSW of any type whatsoever.

### **3.10. Misrepresentation / Fraud / Breach of Terms and Conditions**

If it is discovered at any point of time that the Bidder has suppressed any fact or given a false statement or has done misrepresentation or fraud or has violated any of the terms of this Bid, the Bid will be cancelled by DSW. In such an event, the Bidder will not be entitled to any compensation whatsoever, or refund of any other amount paid by him.

## **4. TENDERING PROCEDURE AND SCHEDULE**

### **4.1. General**

- 4.1.1. Bidders may send their queries to DSW in writing as per the prescribed date mentioned in the Article 1.1.7 of the RFP. The queries received after the prescribed date will not be entertained by DSW.

### **4.2. Pre-Bid Conference**

- 4.2.1. Pre-Bid conference of the Project shall be convened on the date mentioned in Article 1.1.7 of Section-I of the RFP at **4 PM in Conference Room No.1, Secretariat, IP Estate, Delhi - 110002.**
- 4.2.2. During the course of Pre-Bid conference, the Bidders shall be free to seek clarifications and make suggestions for consideration of the Authority. The Authority shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

### **4.3. Amendment of RFP**

- 4.3.1. At any time prior to the Proposal Due Date, DSW may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP through the issuance of Addenda. The Addenda/modified RFP (if any) shall be uploaded on the DSW website (<http://socialwelfare.delhigovt.nic.in>). It will be the responsibility of the Bidders to visit the website on a regular basis to check for updates on this Project and the Bidding Process. DSW shall not entertain any complaint/grievance from any Bidder regarding the non-receipt of the Addenda/Modified RFP.
- 4.3.2. In order to give the Bidders reasonable time in which to take an Addendum into account, or for any other reason, DSW may, at its discretion, extend the Proposal Due Date.

### **4.4. Preparation and submission of Proposal**

- 4.4.1. Completed Proposals shall be accepted on or before **the Proposal due date by 1400 hrs** at DSW at the address given in the Article 1.1.6.
- 4.4.2. DSW, at its sole discretion, retains the right, but is not obliged, to extend the Proposal Due Date by issuing an addendum.
- 4.4.3. Bidders shall furnish the information strictly as per the formats provided with this document without any ambiguity. DSW shall not be held responsible if the failure of any Bidder to provide the information in the prescribed formats results in lack of clarity in interpretation and consequent disqualification.
- 4.4.4. In case of a Consortium, wherever required, the Proposal must contain such information individually for each member of the Consortium.

- 4.4.5. All Proposals/Bids/offers shall be signed by the duly 'Authorised Signatory' of the Bidder. In case of a Consortium, the proposal shall be signed by the duly authorised signatory of the Lead member. Bidders shall submit a supporting Power of Attorney authorizing the signatory of the Proposal to commit the Bidder and agreeing to ratify all acts, deeds and things lawfully done by the said attorney. In case of a Consortium, such Power of Attorney shall be signed by all members of the Consortium and shall be legally binding on all of them.
- 4.4.6. The authorised signatory shall initial the Proposal on each page. He/ she shall also initial all the alterations, omissions, additions, or any other amendments made to the Proposal.
- 4.4.7. All witnesses and sureties shall be the persons of status and probity and their full names and addresses shall be stated below their signature. All signatures in the Proposal documents shall be dated.
- 4.4.8. Bidders are required to submit one original set of the required documents under Envelope No. 2 of the Proposal, including the Original RFP issued to them and clearly marked as "ORIGINAL". In addition to this, the Bidder shall submit one copy of the envelope no. 2 in Envelope No. 4 of the Proposal and clearly marked as "COPY". In the event of discrepancy between them, original shall prevail.
- 4.4.9. Any firm which submits or participates in more than one Proposal for the said project shall be disqualified and shall also cause the disqualification of all the Consortia in which it is a member.

#### **4.5. Language, Currency and International Experience**

- 4.5.1. The Proposal and all related correspondence and documents shall be written in English language. If any supporting document attached to the Bid is in any other language, the same will be supported by an English translation and in case of any ambiguity the translation, as done by DSW shall prevail.
- 4.5.2. The currency for the purpose of the Proposal shall be Indian National Rupee (INR).
- 4.5.3. "If the Bidder is submitting any documents, created or originating from outside the Republic of India, such as work experience certificate(s), financial detail(s), Power Of Attorney(s), Undertaking(s), documentary evidence(s), qualifying document(s), etc. then the Bidder, before any such Foreign Document(s) are sent to India for the purpose of applying towards this Project, shall be required to get each and every page of such Foreign Document(s), duly authenticated/ embossed/ legalized from the Indian Embassy/Indian High Commission situated in the country from where such Foreign Document(s) were created or are originating from. Such authentication/ embossment/ legalization from the Indian Embassy/Indian High Commission shall also apply to all such document(s) that are in a language other than English, which shall be compulsorily be required to be translated (as the true translated copies of the original) by a duly certified/ authorized /qualified Translator, supported by the affidavit of the said Translator, certifying the correctness of the English translation.

4.5.4. However, in the case of Foreign Document(s) created or originating from countries that have signed, ratified and have made operational the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 5 October, 1961 “Hague Legalization for Convention, 1961”, the Bidders may affix an ‘Apostille’ sticker on each and every page of their Foreign Document(s) [including all commercial document(s) duly notarized]. Thereafter, the Bidder shall be compulsorily required to get all such “Apostilled” Foreign Document(s) approved, certified and attested from the Indian Embassy /Indian High Commission in that country where the ‘Foreign Document(s)’ were created or are originated from OR the Ministry of External Affairs, Government of India, New Delhi and the Bidder/s shall follow any other norms/guidelines laid by the Ministry of External Affairs, Government of India, New Delhi.”

#### **4.6. Bidder’s Responsibility**

4.6.1. It would be deemed that prior to the submission of Proposal, the Bidder has made a complete and careful examination of:

- a. The requirements and other information set forth in this RFP.
- b. The various aspects of the Project including, but not limited to the following:
  - The Project Site, existing facilities and structures, access roads and public utilities in the vicinity of the Project Site;
  - All other matters that might affect the Bidder’s performance under the terms of this RFP, including all risks, costs, liabilities and contingencies associated with the project.

#### **4.6.2. Site Visit**

- a. The Bidders prior to submitting their Bid for the project, are expected to visit and examine the project site and the site surroundings at his/her own expenses, the site being offered on an **“as is where is”** basis and ascertain on their own responsibility information, technical data, market study, etc. including actual condition of existing services which may or may not have to be shifted/removed/replaced etc.
- b. It shall be assumed that all these factors were accounted for by the Bidder while quoting his Bid. The Bidder shall be deemed to have full knowledge of the site whether he inspects it or not.

4.6.3. DSW shall not be liable for any mistake or error or neglect by the Bidder in respect of the above. Proposals that are not substantively responsive to the requirements of this RFP will be rejected.

#### **4.7. Sealing and Marking of Proposals**

4.7.1. The Proposals shall be sealed, marked and submitted as explained below:

- (a) Envelope No.1 containing the Proposal Security (As per Format F) shall be marked as “PROPOSAL SECURITY DEPOSIT”.
- (b) Envelope No. 2, duly marked as “TECHNICAL BID” and shall contain the following:
- ✓ Letter of Application and Interest (As per Format A)
  - ✓ General Information on the Bidder (As per Format B)
  - ✓ Power of Attorney for signing of application (as per Format E)
  - ✓ Affidavit (As per Format D)
  - ✓ Original RFP document duly signed (on each page) by the authorised representative as a token of acceptance.
  - ✓ Letter from consortium members as per Article 3.3.5.
  - ✓ Undertaking for tying up with technically eligible entity, as per Article 3.2.5, if applicable
  - ✓ Power of Attorney by each member of the consortium in favour of Lead Member (as per Format G)
  - ✓ Consortium Agreement (as per Format H)
  - ✓ Information on Financial Qualification as per Article 3.2.4.(b)(as per Format I)
  - ✓ Details of Experience as per Article 3.2.4(a) (as per Format K)
  - ✓ All required submissions, if the Bidder is applying through consortium and as stated in the RFP
  - ✓ Proposal Checklist as per Format L.
- (c) The Bidder shall seal the Financial Proposal (as per Format C) in a separate third envelope (Envelope No. 3), duly marked as “FINANCIAL BID”.
- (d) Envelope No. 4, duly marked as “COPY OF TECHNICAL BID” and shall contain a copy of the documents contained in Envelope No. 2.
- (e) All the above envelopes shall be enclosed in an outer cover/ envelope marked as **“Proposal to Develop a Residential Care Institution for Mentally retarded at Dwarka, Sector - 9 in Delhi”**.
- (f) The Outer envelope shall be addressed to:

*Director,  
Department of Social Welfare (DSW)  
GLNS Complex, Delhi Gate*

4.7.2. If the envelope is not sealed and marked, as instructed above, DSW assumes no responsibility for the misplacement or premature opening of the Proposal submitted. In that case, the prematurely opened proposals will be rejected.

4.7.3. Any Proposal received by DSW after 1400 hours on the Proposal Due Date will be liable for rejection.

#### **4.8. Modification and Withdrawal of Proposals**

4.8.1. No Proposal shall be modified or withdrawn by the Bidder after the Proposal Due Date.

4.8.2. Withdrawal of a Proposal during the interval between Proposal Due Date and expiration of the Proposal Validity Period would result in forfeiture of the Proposal Security.

#### **4.9. Opening of Bids**

4.9.1. The Technical Bids received shall be opened by the committee constituted by DSW in the presence of the Bidders at **1500 hours** on the Proposal Due Date unless intimated otherwise. The date for opening of Financial Bids shall be intimated in advance to the technically qualified Bidders.

4.9.2. DSW reserves the right to reject any Proposal and forfeit the Proposal Security, if

1. It is not signed, sealed and marked as stipulated in Article 4.7.
2. The information and documents have not been submitted as requested and in the formats specified in the RFP.
3. There are inconsistencies between the Proposal and the supporting documents.
4. It does not mention the validity period as set out in Article 3.8..
5. There are conditions proposed with the Technical and/or Financial Proposals.
6. It provides the information with material deviations.

4.9.3. A material deviation or reservation is one:

- (a) which affects in any substantial way, the scope, quality, or performance of the Project, or
- (b) which limits in any substantial way, inconsistent with the RFP document, DSW's rights or the Bidder's obligations, or
- (c) which would affect unfairly the competitive position of other Bidders' presenting substantially responsive Bids.

4.9.4. No request for modification or withdrawal shall be entertained by DSW in respect of such Proposals.



#### **4.10. Evaluation of Proposals**

The evaluation will be done in 2 stages as explained below:

- 4.10.1. In **Stage - I**, the Proposal Security in Envelope 1 shall be first checked. Proposals without the appropriate Proposal Security will be rejected. Then the submission(s) in Envelope 2 and Envelope 4 shall be checked. All Bidders passing Stage I of the evaluation will be considered Responsive enough to be considered for the next stages.
- 4.10.2. In **Stage - II** of evaluation, the Financial Bids in Envelope 3 of only those Bidders who have passed Stage I shall be opened by DSW in presence of the nominees of the Bidders, who choose to attend the same. Bidders shall be ranked H1, H2, H3 etc. in decreasing order of their financial offers. The selection will be made on the basis of the highest number of Free Seats (H1). The Bidder quoting the highest number of Free Seats will be invited to sign the agreement. (the "**Successful Bidder**").
- 4.10.3. DSW would have the right to review the Proposals and seek clarifications where necessary. The response from the Bidder(s) shall only be in writing but no change in the substance of the Proposal would be permitted. It is clarified that Bidders are free to make suggestions but are not allowed to submit any conditional Bid as specified earlier.
- 4.10.4. The Proposal (Financial and Technical) should be unconditional and any conditionality attached with the proposal may result in the rejection of the proposal.
- 4.10.5. Financial Proposals of Bidders who do not qualify the Stage-I of evaluation will not be opened and will be returned unopened.

#### **4.11. Confidentiality**

- 4.11.1. Information relating to the examination, clarification, evaluation and recommendation for the short-listed Bidders shall not be disclosed to any person not officially concerned with the process. DSW will treat all information submitted as part of all Proposals in confidence and will insist that all who have access to such material treat it in confidence. DSW will not divulge any such information unless it is ordered to do so by any Government authority that has the power under law to require its disclosure or due to statutory compliances.

#### **4.12. Acceptance of the Proposal**

- 4.12.1. DSW shall issue Letter of Intent (LOI) to the Selected Bidder for the Project.
- 4.12.2. The Selected Bidder is required to send his acceptance of the LOI within 15 (fifteen) days from the date of its receipt.
- 4.12.3. DSW shall retain the right to withdraw the LOI in the event of the Selected Bidder's failure to accept the LOI within the time limit specified in the above Article.
- 4.12.4. In this event, DSW shall forfeit the Proposal Security of the Selected Bidder.

#### **4.13. Execution of Concession Agreement**

4.13.1. The Successful Bidder is required to sign the Concession Agreement within 30 days of conveying his acceptance of the LOI to DSW in writing. But prior to signing of the Agreement, the Bidders must satisfy the following conditions. DSW shall not execute the Concession Agreement until these conditions have been satisfied.

- ✓ The Successful Bidder, has formed an SPV, registered under the Societies Registration Act 1860 as per the relevant provisions of the RFP. The SPV shall be formed after issuance and acceptance of Letter of Intent and within 30 (thirty) days preceding Agreement signing.
- ✓ The Successful Bidder has submitted the requisite Performance Security to DSW, in accordance with the Article 10 of the Concession Agreement. The Successful Bidder has delivered to the Concessions Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof
- ✓ The Successful Bidder has submitted to the Concessions Authority true copies of the certificate of incorporation and memorandum of association and rules and regulations of the SPV formed by the Successful Bidder for entering into this Agreement with the Concessions Authority.
- ✓ The Successful Bidder has provided an undertaking that all of the Representations and Warranties of the Concessionaire set forth in the Concession Agreement are true and correct as on the date of signing of the Concession Agreement.

DSW shall not execute the Concession Agreement until these conditions have been satisfied.

4.13.2. Failure to meet the above condition will result in a breach and DSW shall be entitled to cancel the award without being liable, in any manner whatsoever, to the Bidder and to appropriate the Proposal Security and any other amount deposited till that time as 'Damages'.

4.13.3. The cost of stamp duty for execution of Concession Agreement, registration charges and any other related Legal Documentation charges and other incidental charges will be borne by the Successful Bidder.

4.13.4. In case of failure to sign the Concession Agreement within the stipulated time, DSW shall retain the right to cancel the Award and forfeit the Bidder's Proposal Security and any other amount deposited till that time without being liable in any manner whatsoever to the Bidder.

#### **4.14. Bids of other Bidders**

4.14.1. DSW shall return the proposal security received from the Bidders who have not qualified in the evaluation, within 90 (Ninety) days of opening of the Technical Bid. The Proposal Security shall be returned without payment of any interest.

4.14.2. Proposal Security received from all the short listed Bidders after opening of Financial Bid (except H1 and H2) will be returned within 60 (Sixty) days from the date of opening of Financial Bid, and returned thereafter, without payment of any interest.

**5. PRESCRIBED FORMATS FOR SUBMISSION**

## A. Letter of Application & Interest

(To be submitted and signed by the Bidder's authorised signatory)

### Director

Department of Social Welfare  
GLNS Complex, Delhi Gate,  
Delhi - 110002

**Sub: RFP to Develop a Residential Care Institution for Mentally retarded at Dwarka, Sector - 9 in Delhi**

Sir,

1. Being duly authorized to represent and act for and on behalf of. ....(Herein the applicant), and having studied and fully understood all the information provided in the Bid document, the undersigned hereby apply as a Bidder for ***“Develop a Residential Care Institution for Mentally retarded at Dwarka, Sector - 9 in Delhi”*** according to the terms & conditions of the RFP Document issued by DSW.
2. Our Technical & Financial Bids are as per the requisite formats along with the supporting documents, duly filled and signed on each page are enclosed in separate sealed envelopes as specified.
3. The Proposal Security is enclosed in the Envelope 1 marked “Proposal Security Deposit”.
4. DSW and its authorised representatives are hereby authorized to conduct any inquiries / investigation to verify the statements, documents and information submitted in connection with the application and to seek clarification from our banker regarding any financial and technical aspects. This letter of application will also serve as authorization to any individual or authorized representative of any institution referred to the supporting information, to provide such information deemed necessary and requested by yourselves to verify statements and information provided in the application or with regard to the resources, experience and competence of the Bidder.
5. DSW and its authorized representatives may contact the following persons for any further information:

Name of the person (s): .....

Address: .....

Phone: ..... Fax: .....

6. This application is made with full understanding that:
  - (a) DSW reserve the right to reject or accept any Bid, cancel the Bidding Process, and / or reject all Bids.

- (b) DSW shall not be liable for any of the above actions and shall be under no obligation to inform the Bidder of the same.
7. We, the undersigned declare the statements made and the information provided in the duly completed application forms enclosed, as complete, true and correct in every detail.
  8. I/ We hereby confirm that we have satisfied ourselves to our eligibility for setting up the Home for Mentally Retarded as per the governing rules and statutory regulations.
  9. We hereby confirm that we have read, understood and accepted all the detailed terms and conditions of this RFP and Project related information as required for the Proposal. We have also visited the project site for the assessment and have made our own due diligence and assessment regarding the project.
  10. I/ We further certify that we are qualified to submit a Bid in accordance with the guidelines for qualification of bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment issued by the GOI vide Department of Disinvestment OM No. 6/4/2001-DD-II dated 13th July, 2001 which guidelines apply mutatis mutandis to the Bidding Process. A copy of the aforesaid guidelines form part of the RFQ at Format 5 (J) thereof.
  11. We agree to keep our proposal valid for one hundred eighty (180) days from the date of submission of Proposal thereof and not to make any modifications in its terms and conditions which are not acceptable to the DSW. Should this Proposal be accepted, we hereby agree to abide by and fulfill all the terms, conditions and provisions of the aforesaid documents.
  12. This application is made with the full understanding that the validity of proposal submitted by us will be subject to verification of all information, terms and conditions submitted at the time of bidding and its final acceptance by DSW. We agree that, without prejudice to any other right or remedy, DSW shall be at liberty to forfeit the said Proposal Security absolutely.
  13. We hereby declare that our Bid is unconditional.

Authorised signatory

Date :

Name and seal of Bidder

Place :

**Encl:**

1. The Proposal Security of Rs.\_\_\_\_(Rupees \_\_\_\_\_) in the form of Demand Draft/Bank Guarantee bearing No. \_\_\_drawn upon \_\_\_\_\_ (bank) dated \_\_\_\_\_.

2. Power of Attorney for Signing of Application /Board resolution authorising the signatory (Suggested Format at Annexure G)
3. Relevant Submissions as per the given Formats

## B. General Information on the Bidder

1.
  - (a) Name :
  - (b) Country of incorporation :
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India :
  
2. Details of individual(s) who will serve as the point of contact / communication for DSW within the organisation:
  - (a) Name :
  - (b) Designation :
  - (c) Organisation/Company :
  - (d) Address :
  - (e) Telephone Number :
  - (f) Fax Number :
  - (g) E-Mail Address :
  
3. In case of Consortium:
  - a. The information above (1 & 2) should be provided for all the members of the consortium.
  - b. Information regarding role of each member should be provided:

Sl. No.	Name of Member	Role*
1		
2		

- c. The following information shall also be provided for each Member of the Consortium:

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

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\* Specify whether Lead Member / Financial Member/Technical Member/ Other Member



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

Signed

(Name of the Authorised Signatory)

For and on behalf of

(Name of the Bidder)

Designation

Place:

Date

**To be enclosed:**

1. Documents certifying Bidder's legal status
2. Certificate of incorporation / registration
3. In case of a Consortium, Power of Attorney signed by each Consortium member, clearly indicating the lead member
4. Latest brochures/ organization profiles etc.

### C. Format for Financial Proposal

(To be submitted and signed by the Bidder's authorised signatory)

Director,  
Department of Social Welfare (DSW)  
GLNS Complex, Delhi Gate,  
Delhi - 110002

**Sub: RFP to Develop a Residential Care Institution for Mentally retarded at Dwarka,  
Sector - 9 in Delhi**

Sir,

We hereby submit our Financial Proposal for the captioned project. If the project is awarded to us, we agree to provide the residential care and other services to the residents of the Institution as per the terms given in the Request for Proposal (RFP) Document and offer \_\_\_ number of Reserved Seats\* as free seats to DSW.

We are making this proposal after taking into consideration all the terms and conditions stated in the RFP document, and after careful assessment of the site, all risks and contingencies and all other conditions that may affect the financial proposal.

We agree to keep our offer valid for 180 (One Hundred and Eighty) days from the due date of submission of this Proposal.

Authorised signatory

Date:

Name and seal of Bidder

Place:

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\* Reserved Seats that is offered by Concessionaire to DSW must not be less than 22 (twenty two) seats

## D. Affidavit

**(To be given separately by each consortium member in case of a consortium or otherwise by the Bidder on a Stamp Paper of Rs. 10)**

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I,..... S/o .....,resident of ....., the .....(insert designation) of the .....(insert name of the single Bidder/consortium member if a consortium), do solemnly affirm and state as under :

1. **That** I am the authorised signatory of .....(insert name of the entity /consortium member) (hereinafter referred to as "Bidder/Consortium Member") and I am duly authorised by the (Board of Directors/Executive Committee) of the Bidder/Consortium Member to swear and depose this Affidavit on behalf of the bidder/consortium member.
2. **That** I have submitted information with respect to our eligibility for the Design, Build, Operate and Transfer of home for mentally retarded in Dwarka, Sector - 9, Delhi (hereinafter referred to as "Project") and I further state that all the said information submitted by us is accurate, true and correct and is based on our records available with us.
3. **That** I hereby affirm to furnish any information, which may be requested by DSW to verify our credentials/information provided by us under this tender and as may be deemed necessary by DSW.
4. **That** if at any point of time including the Concession Period, in case DSW requests any further/additional information regarding our financial and/or technical capabilities, or any other relevant information, I shall promptly and immediately make available such information accurately and correctly to the satisfaction of DSW.
5. **That** I fully acknowledge and understand that furnishing of any false or misleading information by us in our RFP shall entitle us to be disqualified from the tendering process for the said project. The costs and risks for such disqualification shall be entirely borne by us.
6. I state that all the terms and conditions of the Request for Proposal (RFP) Document have been duly complied with.

**DEPONENT**

### **VERIFICATION:-**

I, the above named deponent, do verify that the contents of paragraphs 1 to 6 of this affidavit are true and correct to my knowledge. No part of it is false and nothing material has been concealed.

Verified at ....., on this ..... day of....., 2010.

**DEPONENT**

**E. Format for Power of Attorney for Signing of Application**

Know all men by these presents, we ..... (name and address of the registered office) do hereby constitute, appoint and authorize Mr./Ms.....(name and residential address) who is presently employed with us and holding the position of .....as our attorney, to do in our name and on our behalf, all such acts, deeds and things necessary in connection with or incidental to our bid for the project envisaging construction, operation and maintenance of the Project “**Develop a Residential Care Institution for Mentally retarded at Dwarka, Sector - 9 in Delhi**” in the country of India, including signing and submission of all documents and providing information/responses to DSW, representing us in all matters before DSW, and generally dealing with DSW in all matters in connection with our bid for the said project.

We hereby agree to ratify all acts, deeds and things lawfully done by our said attorney pursuant to this Power of Attorney and that all acts, deeds and things done by our aforesaid attorney shall always be deemed to have been done by us.

For.....

Accepted

..... (Signature)

(Name, Title and address) of the Attorney

Note:

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

**F. Format for Proposal Security (Bank Guarantee)**

**PROPOSAL SECURITY FORMAT**

**UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE**

**Bank Guarantee No.:**\_\_\_\_\_ **Dated:**\_\_\_\_\_

**Issuer of Bank Guarantee:**

\_\_\_\_\_ (Name of the Bank)

\_\_\_\_\_

\_\_\_\_\_

(hereinafter referred to as the "Bank")

**Beneficiary of Bank Guarantee:**

Department of Social Welfare (DSW)

**Nature of Bank Guarantee:**

Unconditional and irrevocable Bank Guarantee.

**Context of Bank Guarantee:**

In pursuance of Article \_\_\_ of Section 1 of the Request for Proposal Document dated\_\_\_ (hereinafter referred to as the "RFP" inclusive of Agreement between Department of Social Welfare ("hereinafter referred to as the "DSW") and\_\_\_\_\_ (hereinafter referred to as the "Bidder") for the **Develop a Residential Care Institution for Mentally retarded at Dwarka, Sector - 9 in Delhi** (hereinafter referred to as the "Project"), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

**Operative part of the Bank Guarantee:**

1. At the request of the DSW, we \_\_\_\_\_, \_\_\_\_\_ (name and address of the bank), (hereinafter referred to as the "Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the DSW i.e. the beneficiary on behalf of the Bidder, up to a total sum of **Rs. 7,40,000** (Rupees seven lakhs forty thousand only), such sum being payable by us to the DSW immediately upon receipt of first written demand from DSW.
2. We unconditionally and irrevocably undertake to pay to the DSW on an immediate basis, upon receipt of first written demand from the DSW and without any cavil or argument or delaying tactics or reference by us to Bidder and without any need for the DSW to convey to us any reasons for invocation of the Guarantee or to prove the failure on the part of the Bidder to repay the amount of Rs. 7,40,000 (Rupees seven lakhs forty thousand only), or to show grounds or reasons for the demand or the sum specified

therein, the entire sum or sums within the limits of Rs. 7,40,000 (Rupees seven lakhs forty thousand only).

3. We hereby waive the necessity of the DSW demanding the said amount from Bidder prior to serving the Demand Notice upon us.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the DSW that the DSW shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Concessionaire, which are recoverable by the DSW by invocation of this Guarantee.
5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Contractor. We undertake not to withdraw or revoke this Guarantee during its currency/ validity period, except with the previous written consent of the DSW.
6. We unconditionally and irrevocably undertake to pay to the DSW, any amount so demanded not exceeding Rs. 7,40,000 (Rupees seven lakhs forty thousand only), notwithstanding any dispute or disputes raised by bidder or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the DSW, shall be a valid discharge of our liability for payment under this Guarantee and the Bidder shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until \_\_\_\_\_ (180 days from the proposal due date).

Notwithstanding any contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. 7,40,000 (Rupees seven lakhs forty thousand only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. \_\_\_\_\_ (Date of Submission of Bid) to \_\_\_\_\_.

We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if Department of Social Welfare (DSW) serves upon us a written claim or demand on or before \_\_\_\_\_.

\_\_\_\_\_  
Authorized Signatory

For Bank

**G. Power of Attorney for Lead Member of the Consortium**

Whereas the Department of Social Welfare, GNCTD (“the Authority”) has invited Bids from interested parties for the Development, Operations and Management of Home for Mentally Retarded at Rohini, Sec-IV, Delhi on Public Private Partnership (PPP) Mode (the “Project”).

Whereas, ....., ....., ..... and ..... (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal (RFP) and other connected documents in respect of the Project, and Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s Bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

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

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

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

For .....  
(Signature)

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

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

.....  
(Name & Title)  
Witnesses:

- 1.
- 2.

.....  
(Executants)

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

*Notes:*

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



## H. Format of Joint Bidding Agreement

(To be submitted in case of Consortium)

(To be executed on non-judicial stamp Paper of Rs.100 and duly notarised)

This Joint Bidding Agreement (the "Joint Bidding Agreement") made at \_\_\_\_\_ on this \_\_ day of \_\_\_\_\_, 2010

### BY AND BETWEEN

\_\_\_\_\_ (*Lead Member*), having its registered office / a company incorporated / a Society / Trust registered under the Laws of \_\_\_\_\_ (*Name of the Country of Registration*) at \_\_\_\_\_ (herein after referred to as "\_\_\_\_\_"), which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the FIRST PART

AND

\_\_\_\_\_ (*Other Member*), having its registered office / a company incorporated / a Society / Trust registered under the Laws of \_\_\_\_\_ (*Name of the Country of Registration*) at \_\_\_\_\_ (herein after referred to as "\_\_\_\_\_"), which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the SECOND PART

[AND

\_\_\_\_\_ (*Other Member*), having its registered office / a company incorporated / a Society / Trust registered under the Laws of \_\_\_\_\_ (*Name of the Country of Registration*) at \_\_\_\_\_ (herein after referred to as "\_\_\_\_\_"), which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors in interest, subsidiaries and assigns) of the THIRD PART;]\*

### WHEREAS:

- A. Department of Social Welfare has invited bids for selection of a private partner either individually or through consortium for **Design, Build, Operate and Transfer the Home for Mentally Retarded at Rohini, Sec-IV in Delhi**, (hereinafter referred to as the "Project")
- B. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ have agreed to consolidate their resources and experience, and jointly submit the Request for Proposal ("RFP") issued by Department of Social Welfare for Development of Home for Mentally Retarded at Rohini, Sec-IV, Delhi through Public Private Partnership on Design, Build, Operate and Transfer basis (hereinafter referred to as "Bid");

---

\* Include as Applicable

- C. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ have therefore agreed to enter into an understanding in respect of the submission of the Bid on the terms set out below.

**NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL CONVENANTS HEREIN CONTAINED THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. The recital herein contained shall constitute and integral and operative part of this Joint Bidding Agreement
2. The parties hereto agree to consolidate their resources and hereby form a consortium to jointly prepare, submit and Bid with private financing and commercial benefits as detailed in the Request for Proposal (“RFP”) issued by Department of Social Welfare (“RFP document”) for Design, Build, Operate and Transfer the Home for Mentally Retarded at Rohini, Sec-IV in Delhi
3. The parties hereto agree that \_\_\_\_\_ shall be the Lead Member of the consortium as defined in the RFP documents (collectively referred to as “Consortium Members”).
4. The Parties shall mutually and jointly take all the decisions in respect of the Project on behalf of the Consortium. \_\_\_\_\_ (*Lead Member*) shall be authorized to act on behalf of the Consortium as their representative for bidding and implementation of the Project.
5. The Parties believe that they have the necessary qualification to fulfill technical capability criteria of development of project and the necessary financial capability criteria as detailed in the RFP documents.
6. For the purpose of execution on award of the Bid, the Parties will set up an SPV the membership pattern of which shall consist of \_\_members to be provided by \_\_\_\_\_, \_\_members to be provided by \_\_\_\_\_ and \_\_members to be provided by \_\_\_\_\_.  
  
\_\_\_\_\_ (*Lead Member*) shall maintain a minimum membership of at least 4/7<sup>th</sup>(four-seventh) of the total membership of the SPV till the Construction Completion Date or a period of 2 (two) years from the Effective Date, whichever is later, and 2/7<sup>th</sup>(two-seventh) thereafter till the end of the Concession Period. Other members of the Consortium shall hold a minimum membership of 1/7<sup>th</sup> (one-seventh) in the SPV at all times during the Concession Period. On successful award of the contract, the SPV shall enter into agreements with Department of Social Welfare, which shall specify the terms and conditions of the development of the Project (“Concession Agreement”) and shall carry out all the responsibilities in the terms of the Concession Agreement.
7. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall be jointly and severally liable for the execution of the project in accordance with the terms of the Concession Agreement.
8. The role and the responsibility of each Party till the completion of Project shall be as follows:

Name of Member	Type of Member	Role & Responsibility
_____	Lead Member	_____
_____	Other Member	_____
_____	Other Member	_____

9. Any terms and conditions to the extent not agreed upon by the Parties in this Joint Bidding Agreement shall be mutually agreed upon by the Parties and incorporated in the Rules and Regulations of the SPV.
10. All information, document, etc. exchanged between the Parties related to this agreement or the preparation of any bid or the performance of the project shall remain confidential and shall not be revealed to third parties for a certain time period to be agreed upon. Unless otherwise required by law, the parties undertake not to disclose to any third party or any else and / or use any Information [Information shall be deemed to mean and include any idea, data, plans, concepts, designs, technical information, inventions, specifications and operating experience and shall further include all the plans, tracings, drawings, designs, calculations, sketches, models, reports, specifications, computer assisted design documents, results of programs, computer discs, diskettes or taps, charts, photographs, other data compilations, report (whether in draft form or completed) and other documents and the contents of any of them used by or provided by the Parties in connection with the Bid] without prior consent of the other Party.
11. This Joint Bidding Agreement shall come into effect on the date of submission of the RFP. This Joint Bidding Agreement shall be valid for a minimum period of one hundred and eighty days and shall be extended further for such period as may be required by the Department of Social Welfare. This Agreement can be terminated only upon Consortium's bid for Bid being conclusively rejected by the Department of Social Welfare.
12. All out-of -pocket expenses of and incidental to this Joint Bidding Agreement including stamp duty and registration fees, if any shall be borne and paid by the Parties in proportion to their membership in the SPV. Each Party shall pay and bear their own advocate/solicitors fees in the preparation of this Joint Bidding Agreement.
13. This Joint Bidding Agreement shall in all respects be constructed and interpreted in accordance with laws of India.
14. Any disputes arising out of this Joint Bidding Agreement shall be resolved by arbitration in accordance with the Arbitration and Conciliation Act, 1996. This Article shall survive the termination of this Joint Bidding Agreement.

15. In the event of a dispute between the parties over the subject of this Joint Bidding Agreement, the prevailing party shall be entitled to reasonable advocates/solicitors' fees and costs incurred in the resolution of such dispute.

IN WITNESS WHEREOF the Parties hereto have caused this Joint Bidding Agreement to be executed by their duly authorized representatives the day and year first above written.

**SIGNED AND DELIVERED BY** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED AND DELIVERED BY** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SIGNED AND DELIVERED BY** \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness:

1. \_\_\_\_\_

2. \_\_\_\_\_

**NOTE :**

- ❖ *In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate, shall be provided.*

**I. Information for Financial Qualification Criteria as per Article 3.2.4(b)**

*(For Single Bidder / Each member of the Consortium)*

The aggregate Net Worth as per the latest audited annual report should be presented in the following tabular format, and certified by a statutory auditor. If a firm wants to demonstrate its networth as on date of Proposal submission (which is not reflected in the audited annual accounts of the last completed financial year), it shall submit an original certificate /notarised copy from statutory auditor of the company mentioning the Networth on that date. The Information shall be provided in the following format.

**Name of Single Bidder / each member of the Consortium:** .....

<b>S. No</b>	<b>Head</b>	<b>Indian Rupees</b>
1	Paid up Share Capital	
2	Reserves and Surplus	
3	Sub total (1+2)	
4	Revaluation reserve	
5	Goodwill	
6	Other intangible assets	
7	Miscellaneous expenditure to the extent not written off	
8	Sub total (4+5+6+7)	
9	Net worth ( 3 – 8 )	

TOTAL NET WORTH = Rs ..... Crore\* \_\_

**NOTE :**

- ❖ In case net worth is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate<sup>†</sup>, shall be provided.

\* Bidder should aggregate the net worth for the members and provide a single figure.

<sup>†</sup> Refer definition of Associate in the Article 3.2.6

- ❖ The copies of the audited annual reports for last year must be submitted along with the statutory auditor's certificate.
- ❖ Net Worth shall be calculated as per the following formula: [Paid Up Share Capital + Reserves & Surplus - (Revaluation Reserves, goodwill, miscellaneous expenses not written off and other intangible assets)]
- ❖ For conversion of other currencies to Indian Rupees, the rate of conversion shall be as per the Reserve Bank of India reference rate as on 1<sup>st</sup> March 2009. In case of currencies not indicated under the RBI reference rate, the same shall be converted to US\$ at the conversion rate as on 1<sup>st</sup> March 2009, and the amount so derived in US\$ shall be converted into Indian Rupees as per the US \$ RBI reference rate of 1<sup>st</sup> March 2009.

(Name & Signature of Authorised Signatory)\_\_\_\_\_

In the capacity of \_\_\_\_\_ (position) duly authorized to sign this application for and behalf of \_\_\_\_\_ (name of Single Bidder / Lead Member of the Consortium)

\_\_\_\_\_ (Address)

Signature of the Statutory Auditor  
 Name of the Statutory Auditor  
 Seal of the Statutory Auditor

## **J. Guidelines of the Department of Disinvestment**

No. 6/4/2001-DD-II

Government of India  
Department of Disinvestment  
Block 14, CGO Complex  
New Delhi.  
Dated: 13th July 2001

### **OFFICE MEMORANDUM**

Sub: Guidelines for qualification of Bidders seeking to acquire stakes in public sector enterprises through the process of disinvestment

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

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the Bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all Bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI).

The Bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-

(A.K. Tewari)

Under Secretary to the Government of India



### K. Details of Experience as per Article 3.2.4(b)

#### Experience as per Article 3.2.4 (a) (i)

S.No.	Name of the Institution	Particulars of the Institution	Location	Establishment Date	Number of Beneficiaries as on 31 <sup>st</sup> March 2010
1					
2					
n					

#### Experience as per Article 3.2.4 (a) (ii)

S.No.	Title of project	Entity developing the project	Entity for which project was developed *	Project Site Area (in acres)	Project Cost (in Rs Lakhs)	Date of Commencement of Construction	Date of Construction Completion	Whether Credit being taken for Eligible Experience of Associate (Yes / No)
1								
2								

#### **NOTE :**

- ❖ Provide documentary evidence for supporting the experience claimed in the above table.
- ❖ In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate<sup>†</sup>, shall be provided.

\* If Bidder owns the premises and has got it developed from a contractor, Entity for which project was developed shall be the Bidder

<sup>†</sup> Refer definition of Associate in the Article 3.2.6

### L. Proposal Checklist

Item	Checked by Bidder	Countercheck ed by Authority
<b>Envelope No.1</b> containing the Proposal Security (as per Format F) shall be marked as "PROPOSAL SECURITY DEPOSIT".		
<b>Envelope No. 2</b> , duly marked as "TECHNICAL BID" and shall contain the following :		
Letter of Application and Interest (As per Format A)		
General Information on the Bidder (As per Format B)		
Affidavit (As per Format D)		
Power of Attorney for signing of application (as per Format E)		
Original RFP document duly signed (on each page) by the authorised representative as a token of acceptance.		
Letter from consortium members as per Article 3.3.5		
Undertaking for tying up with technically eligible entity as per Article 3.2.5, if applicable		
Power of Attorney for Lead Member of the consortium (as per Format G)		
Consortium Agreement (as per Format H)		
Information on Financial Qualification as per Article 3.2.4(b) (as per Format I)		
Details of Experience as per Article 3.2.4(a) (as per Format K) [With relevant documents for proving the experience as mentioned]		
All required submissions, if the bidder is applying through consortium and as stated in the RFP document		
<b>Envelope No. 3</b> , duly marked as "FINANCIAL BID" as per Format C.		
<b>Envelope No. 4</b> , duly marked as "COPY OF TECHNICAL BID" containing a copy of contents of Envelope No. 2		

## **SECTION – II: DRAFT CONCESSION AGREEMENT**

## CONCESSION AGREEMENT

This AGREEMENT is entered into on this the [ ] day of [ ] (Month), 2010 at Delhi

BETWEEN

1. **The Governor** for and on behalf of the Government of the National Capital Territory of Delhi acting **through the** \_\_\_\_\_ Department of Social Welfare, Government of National Capital Territory of Delhi, having its registered office at GLNS Complex, Delhi Gate, Delhi-110002 (hereinafter referred to as "**Concessions Authority**" or "**Authority**" or "**DSW**" which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of One Part;

AND

2. \_\_\_\_\_, a Society registered under Indian Societies Act 1860 represented by its \_\_\_\_\_ and having its registered office at \_\_\_\_\_ (hereinafter referred to as the '**Concessionaire**' which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- A. In order to provide residential care services to the mentally retarded section of Delhi, the Concessions Authority has decided to develop an Home for Mentally Retarded at Rohini, Sector-IV through Public Private Participation on **Design, Build, Operate and Transfer (DBOT) basis ('the Project')**. The Project Site comprises of ~1.24 acres and is in the possession of the Concessions Authority.
- B. With an objective to seek private sector participation in the development of the aforesaid Project, the Concessions Authority undertook the process of selection of a suitable Concessionaire through competitive bidding process, after issuing a Request for Proposal document (RFP) dated \_\_\_\_ inviting Bids/ Proposals from prospective Bidders to implement the said Project.
- C. The Successful Bidder, selected through the transparent competitive bidding process, met the Eligibility Criteria {as laid down in Section-I (Instructions to Bidders) of the RFP document} and quoted the highest number of Free Seats. After evaluation of the Proposals so received, the Concessions Authority accepted the Proposal of the Successful Bidder and issued Letter of Intent (LOI) vide letter no \_\_\_\_\_ dated \_\_\_\_\_ to the Successful Bidder requiring, inter alia, the execution of this Concession Agreement.
- D. The Successful Bidder/ Concessionaire acknowledges and confirm that it has undertaken a due diligence and audit of all aspects of the Project Site and Project including technical and financial viability, legal due diligence and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

- E. Accordingly as per the terms and conditions of the RFP, the Successful Bidder had incorporated the present Concessionaire under the Indian Societies Act, 1860.
- F. Through letter dated\_\_\_\_, the Concessionaire, along-with the Successful Bidder, has requested the Concessioneing Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Successful Bidder including the obligation to enter into this Concession Agreement pursuant to the LOI. The Concessionaire has further represented to the effect that it has been promoted by the Successful Bidder for the purpose hereof.

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 THE CONCESSIONING AUTHORITY AND THE CONCESSIONAIRE (HEREINAFTER REFERRED TO AS “**PARTIES**” AND INDIVIDUALLY AS “**PARTY**”) HEREBY AGREE AND THIS AGREEMENT WITNESSTH AS FOLLOWS:

## **1. Definitions and Interpretation**

### **1.1. Definitions**

The words and expressions defined in this Agreement shall, unless repugnant to the context or meaning thereof, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

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

“**Affected Party**” shall have the meaning set forth in Article 13.1;

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

“**Agreement Date**” means the date of execution of this Agreement;

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

**“Applicable Permits”** means all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the Concessionaire under Applicable Laws during the subsistence of this Agreement;

**“Approvals”** means all approvals, permissions, authorisations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Department of Social Welfare and any other regulatory authority, as may be applicable.

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

**“Bank Guarantee”** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favour of Concessioneing Authority and furnished by the Concessionaire to Concessioneing Authority for guaranteeing the due performance of the obligations of the Concessionaire under this Agreement. Here Bank means any Indian Nationalized Bank or any Indian Scheduled Commercial Bank whose net worth is not less than Rs.3000 million as on 31st March 2009.

**“Bid/ Proposal”** means the documents in their entirety comprised in the Bid/ Proposal submitted by the Concessionaire in response to the RFP in accordance with the provisions thereof;

**“Business Day”** means a day on which banks are generally open for business in Delhi in India;

**“Care Committee”** shall mean a committee constituted by DSW to oversee the operations and maintenance, quality of services and compliance with specifications and standards by the Concessionaire;

**“Change in Membership”** means a change in the membership structure of the SPV, that causes the change in management structure of the Concessionaire according to the opinion of the Concessioneing Authority;

**“Clearance”** means, as on the date of execution of this Agreement, any consents, licences, approvals, permits, exemptions, registrations, filings or other authorisations of whatever nature, which is necessary for effective implementation of the Project.

**“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the GNCTD or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession.

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

**“Concession Period”** means the period starting on and from the Effective Date and ending on the Transfer Date.

**“Conditions Precedent”** shall have the meaning set forth in Article 5.1;

**["Consortium"]** means the group of entities that have jointly submitted the Proposal for the Project.]\*

**["Consortium Member"]** means each entity in the Consortium shall be referred to as a Consortium Member.]\*†

**"Construction Completion Certificate"** means the certificate to be issued by the Concessioneing Authority to the Concessionaire upon the completion of the construction of the Home for Mentally Retarded building, to the satisfaction of the Concessioneing Authority and as per the Design Specifications and Standards set forth in Schedule D of this Agreement.

**"Construction Completion Date"** shall have the meaning set forth in Article 12.1.3.

**"Construction Period"** means the period of 18 (eighteen) months, subject to a maximum of 24 (twenty four) months as per provisions of Article 12.1 and Article 10.2.2, from the Effective Date;

**"Damages"** shall have the meaning set forth in Sub-Article (t) of Article 1.2;

**"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Senior Lender under the Financing Documents: -

- a) The principal amount of the debt provided by the Senior Lender under the Financing Documents for financing the Project which is outstanding as on the Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Concessioneing Authority; and
- b) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the para (a) above upto the date preceding the Termination Date but excluding any interest or charges that had fallen due one year prior to the Termination Date, and penal interest or charges payable under the Financing Documents to any Senior Lender.

**"Developmental and Operations Standard(s)"** means the minimum parameters and standards to be achieved by the Concessionaire in the construction, development and operations of the Project in accordance with internationally sound engineering practices, National Building Code and Applicable Law and / or as determined by the relevant Governmental Authority;

**"Dispute"** shall have the meaning set forth in Article 17.1.1;

**"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in 17;

**"Drawings"** means all of the drawings, calculations and documents pertaining to the Home for Mentally Retarded and shall include 'as built' drawings of the Home for Mentally Retarded;

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\* Include only in case if Successful Bidder is a Consortium

† Include only in case if Successful Bidder is a Consortium

**“Effective Date”** means the date on which the Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Concession Period.

**“Encumbrances”** means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Facilities, where applicable herein.

**“Expert or Specialist”** means a person, body or organization of repute with recognized technical/professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

**“Facility” or “Project Facility” or “Home for Mentally Retarded”** means the Project building at the Project Site as described in Schedule A of the Agreement, , foundation, substructures, superstructures, movement and parking areas, all external and internal services, drainage facilities, sign boards, along with the electrical and mechanical installations and any other structure, whether civil, mechanical & electrical and equipments & machinery etc. existing, created or installed during the period from the Effective Date till the end of the Concession Period.

**“Financial Close”** means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Documents;

**“Financial Year”** shall mean the year commencing from the 1st April of any calendar year and ending on 31st March of the next calendar year.

**“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.

**“Financing Package” or “Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding the Project.

**“Force Majeure” or “Force Majeure Event”** shall have the meaning set forth in as per Article 13;

**“GNCTD”** means Government of National Capital Territory of Delhi;

**“GOI”** means the Government of India;

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of



its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Government Instrumentality”** means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of Delhi or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**“Immovable Assets”** means all assets other than Movable Assets that are located within the Project Site; Immovable Assets shall include but shall not be limited to:

- (a) buildings;
- (b) lifts;
- (c) escalators;
- (d) DG sets;
- (e) water pumps;
- (f) water purification systems;
- (g) air filtration systems;
- (h) air conditioning;
- (i) surveillance and alarm systems; and
- (j) billboards.

**“Independent Engineer”** shall have the meaning set forth in Article 19.3.

**“Lease Deed”** means the lease deed to be executed between the Concessioneing Authority and the Concessionaire, in the form set out in Schedule B, pursuant to which the Concessioneing Authority shall lease to the Concessionaire the land comprising the Project Site vesting the Concessionaire with Site Possession and all rights in relating thereto free from all Encumbrances for a period co-terminus with this Concession Agreement, including extension thereof.

**“Mentally Retarded”** shall mean the persons with Mental Retardation;

**“Mental Retardation”** shall mean a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence;

**“Monthly Progress Report”** shall have the meaning ascribed to it in Article 12.

**“Movable Assets”** shall mean all equipment that can be removed from the Project Site and the removal of which shall not require any repair or alternation in the Home for Mentally Retarded building;

[**“O&M Entity”** shall mean an entity (Society, Trust, Company etc.) with minimum 3 (three) years of continuous experience in operation, maintenance and management of at least one residential care institution with at least 45 (forty five) residents within 7 (seven) financial years before the date of signing of this agreement. For the purpose of definition of O&M Entity, Residential care institution shall include:

- ❖ Home/hostel/education centers for disabled persons and / or
- ❖ Home/hostel for senior citizens/women/children]\*

**“Operations Commencement Certificate”** shall have the meaning set forth in Article 12.2.2

**“Operations Commencement Date”** shall have the meaning set forth in Article 12.2.2

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

**“Performance Security”** shall have the meaning set forth in Article 10.1;

**“Project”** shall mean Design, Build, Operate and Transfer of the Home for Mentally retarded along with any/all support facilities on the Project Site earmarked for the purpose in accordance with the provisions of this Agreement.

**“Project Assets”** means all tangible and intangible assets relating to the Project Facilities including, but not limited to, (a) rights over the Project Site in the form of right-of-way or otherwise, (b) tangible assets such as foundation, all buildings, substructures and superstructures, movement and parking areas, all external and internal services, drainage facilities, sign boards, electrical works for lighting of and telephone and communication equipment at the Facility (c) financial assets, such as receivables, cash and investments and (d) insurance proceeds.

**“Project Requirements”** means the minimum requirements as to the construction, operation and maintenance of the Project and provision of Project Facility set out in Schedule D.

**“Residents”** means the mentally retarded candidates who shall reside and be provided services in the Home for Mentally Retarded by the Concessionaire as per the conditions of this Agreement;

**“Rs.” or “Rupees”** refers to the lawful currency of the Republic of India;

**“Security Interest”** means any existing or future mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.

**“Scheduled Construction Completion Date”** shall have the meaning set forth in Article 12.1.2.

**“Senior Lender”** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost.

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\* Included only if Successful Bidder has been selected through High Network Route as per the conditions of RFP

**“Site” or “Project Site”** means the lands, and rights in relation thereto, leased by the Concessioneing Authority to the Concessionaire on, under, in or through which the Facility (ies) or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the Works are to be executed, more particularly delineated in Schedule A and depicted in the map annexed to such Schedule.

**“Standards of Reasonable and Prudent Concessionaire”** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions including the conditions as contemplated by the RFP Documents.

**“State Government”** means the GNCTD.

**“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Senior Lenders for meeting the Total Project Cost but does not include any interest thereon.

**“Taxation” or “Tax”** means all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it;

**“Termination”** means the expiry of the Concession period or termination of this Agreement;

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

**“Termination Payment”** means the amount payable by the Concessioneing Authority to the Concessionaire upon the termination of this Concession Agreement and shall consist of payments relating to Debt Due and Subordinated Debt, as the case may be, and other such amounts as are expressly provided for under this Agreement. Provided, however, that for the purposes of determining Termination Payments to be made by the Concessioneing Authority under this Agreement, the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of the Concessioneing Authority to make such Termination Payments relating to Debt Due and Subordinated Debt shall be determined as if such capital cost was restricted to Total Project Cost.

**“Third Party Agreements”** means all Agreements entered into between the Concessionaire and third Persons, including, but not limited to other Agreements with Concessionaire and vendors of any goods or services to the Concessionaire.

**“Total Project Cost”** means the lowest of:

- (a) a sum of Rs 7.40 crores (Rupees seven crores forty lakhs only)
- (b) the capital cost of the Project as set forth in the Financial Package; and
- (c) the actual capital cost of the Project upon completion of the Home for Mentally Retarded as certified by the Statutory Auditors.

**“Transfer Date”** means the day immediately following the last day of the respective Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.

**“Works”** means the design, construction, upgradation, completion, testing and commissioning, operation and maintenance and rectifying or/and remedying of defects of the Buildings, services, Facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Concession Agreement.

## **1.2. Interpretation**

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

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

- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;
- (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) references to any date, period or Milestone shall mean and include such date, period or Milestone as may be extended pursuant to this Agreement;
- (k) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;
- (n) “lakh or lac” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);
- (o) references to the “winding-up”, “merger”, amalgamation”, “takeover”, “dissolution”, “insolvency”, or “reorganization” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation or society or trust is incorporated or any jurisdiction in which such company or corporation or society or trust carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection, change in management or relief of debtors;
- (p) any reference, at any time, to any Agreement, deed, instrument, license or document of any description shall be construed as reference to that Agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article shall not operate so as to increase liabilities or obligations of the Concessing Authority hereunder or pursuant hereto in any manner whatsoever;
- (q) any Agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (r) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (s) references to Recitals, Articles, Articles, Sub-Articles or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Articles, Sub-Articles and Schedules of or to this Agreement, and references to a

Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and

- (t) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “Damages”).
- (u) any reference to Build shall mean Construct and vice-versa unless the context otherwise requires
- (v) any reference to Operate/Operations shall mean Operate and Transfer/ Operations & Maintenance unless the context otherwise requires

1.2.2. Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Concessionaire to the Concessioneing Authority and/or the agency or person appointed by the Concessioneing Authority shall be provided free of cost and in two copies, and if the Concessioneing Authority and/or the person appointed by the Concessioneing Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.

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

1.2.4. Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

### **1.3. Measurements and Arithmetic Conventions**

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

### **1.4. Priority of Agreements and Errors/Discrepancies**

1.4.1. The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Concessioneing Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows:

- i) This signed Concession Agreement (including its Schedules), alongwith any Addendums issued to the RFP document dated \_\_\_\_;
- ii) Instructions to Bidders (ITB) {Section I of the RFP document dated \_\_\_\_\_}, enclosed/ attached with this signed Concession Agreement; and
- iii) All other documents enclosed/ attached with this signed Concession Agreement.

1.4.2. In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the Articles of this agreement and the Schedules, the Articles shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (d) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (e) between any value written in numerals and that in words, the latter shall prevail.

## **2. Scope of the Project**

### **2.1. Scope of the Project**

- 2.1.1. The Concessionaire shall Design, Build, Finance, Operate and Maintain an Home for Mentally Retarded on the Project Site earmarked for the purpose over the Concession Period of 30 (thirty) years, after which the Facility shall be transferred back to the Concessioneing Authority. The Site shall be provided to the Concessionaire on lease, as per the provisions of the Lease Deed and the Agreement. The Site, along with all the Project Assets shall be transferred to the Concessioneing Authority at the end of the Concession Period.
- 2.1.2. The maximum allowable FAR will be governed as per the prevailing Development Control Regulations for Rohini, Sector-IV, Delhi. The Concessionaire shall construct the Home for Mentally Retarded, install the requisite equipment (s) and get all the approvals for commercial operations within 18 (eighteen) months from the Effective Date.
- 2.1.3. While undertaking development of the Project, the Concessionaire shall adhere to Standards and Specifications set forth in Schedule D of this Agreement and also the latest amended National Building Code of India, other relevant IS Codes and practices, Development Control Rules, FAR Limits, statutory requirements, laws of land, the principles of good industry practice and any/ all other norms as applicable from time to time. The Concessionaire shall also take into account the guidelines issued by the Authority and obtain the necessary approvals.
- 2.1.4. The Concessionaire shall be responsible for all the clearances as may be required for the development and operations of the Project.
- 2.1.5. The Project Facility as well as Care Staff shall have to be registered with the Rehabilitation Council of India.
- 2.1.6. The Project Facility shall have to be compliant with the Juvenile Justice (Care and Protection) Act, India.



### **3. Concession**

#### **3.1. Grant of Concession**

- 3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessions Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 30 (thirty) years, commencing from the Effective Date, including the exclusive right, authority and authorisation during the subsistence of this Agreement, including extension thereof, to plan, design, finance, engineer, construct, develop, operate, maintain and manage the Project and enjoy its commercial benefits for the Concession Period.
- 3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Concessionaire, the exclusive right and authority to enjoy and undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:
- (a) To develop and implement the Project as per the Scope of Work of the Project as mentioned in Article 2 and as per good industry practice.
  - (b) To design, develop, finance, construct, operate, maintain and regulate the use by third Parties of the Project Facility;
  - (c) To enjoy complete and uninterrupted possession of and control over the Project Site for a period that shall be co-terminus with the Concession Agreement;
  - (d) To have access and liberty to plan, design, construct, finance, maintain and operate the proposed Home for Mentally Retarded with the associated facilities and services at the Project Site during the Concession Period in accordance with the provisions of this Agreement. After Termination of the Agreement due to any reason, any construction or development made by the Concessionaire on the specified area in respect of the Project Facility as well as the Project Site shall be deemed to be the property of the Concessions Authority and the Concessionaire relinquishes all his rights in such property in favour of Concessions Authority.
  - (e) Exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Facility;
  - (f) Determine, demand, levy, collect, enforce, retain and appropriate fee from the Residents except those under the Reserved Seats as per the terms and conditions set forth in this Agreement;
  - (g) To utilize and derive income from the commercial operation of the area as permitted under the development control guidelines under Master Plan for Delhi - 2021, as provided in Schedule I;
  - (h) Notwithstanding anything to the contrary contained herein, incomes accruing on account of installation of mobile/telecom tower(s) on the Project Site/Project Facilities shall be shared equally between the Concessionaire and the Concessions Authority.

Authority. However, it is being clarified here that any work regarding the installation of any such mobile/ telecom tower in the Project Site shall be carried out only after obtaining prior written approval of the Authority;

- (i) Manage, operate and execute rights over all or any part of the Project Assets without any limitation or restriction other than those expressly set out in this Concession Agreement;
- (j) To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
- (k) Arrange all the clearances from the Competent Authorities for the development of the Project. Responsibility of taking all necessary approvals of construction lies with the Concessionaire. Nevertheless, Concessioning Authority without any binding obligation may provide any assistance upon written request from the Concessionaire;
- (l) Shall arrange statutory clearance from the Concessioning Authority and concerned agencies for removal of existing trees, if any, from the site;
- (m) Exercise such other rights as the Concessioning Authority may determine as being necessary or desirable for the purposes incidental and necessary for developing, financing, implementing, upgrading, managing, operating, running & maintaining the Project; and
- (n) Bear and pay all expenses, costs and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement, including any payment to be made to DSW for obtaining necessary approvals and clearances.

## **4. Consideration of the Agreement**

### **4.1. The Social Consideration**

- 4.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, rules and regulations and the Applicable Permits, the Concessionaire shall reserve, for the Concessioning Authority, \_\_\_number of seats as Reserved Seats at the Home for Mentally Retarded (the “**Reserved Seats**”). The Concessionaire shall not charge any fee for providing services to the Mentally Retarded accommodated under the Reserved Seats.
- 4.1.2. Subject to and in accordance with the provisions of this Agreement, for the Consideration hereby given by Concessionaire, the Concessionaire shall be entitled to construct, operate and maintain the Project on the Site subject to:
- (a) performing and fulfilling all of the Concessionaire’s obligations under and in accordance with this Agreement;
  - (b) bearing and paying all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
  - (c) at the end of the Concession Period, all Immovable Assets and Movable Assets located within the Project Site shall get transferred, without any consideration, to the Concessioning Authority.
- 4.1.3. In consideration of the mutual covenants and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Social Consideration to be given and to perform/discharge all of its obligations in accordance with the provisions hereof.

## **5. Conditions Precedent to the Agreement**

### **5.1. Conditions Precedent**

- 5.1.1. The respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 5.1 (the “**Conditions Precedent**”).
- 5.1.2. The Concessionaire may, by notice require the Concessioneing Authority to satisfy the Conditions Precedent set forth in this Article 5.1.2 within a period of 60 (sixty) days from the Agreement Date, or such longer period not exceeding 90 (ninety) days as may be specified therein, and the obligations of the Concessioneing Authority hereunder shall be deemed to have been performed when the Concessioneing Authority shall have procured for the Concessionaire the peaceful possession of the Site as demarcated under Schedule A.
- 5.1.3. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Effective Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) executed and procured execution of the Substitution Agreement;
  - (b) procured all the Applicable Permits 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;
  - (c) executed the Financing Documents and delivered to Concessioneing Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
  - (d) delivered to Concessioneing Authority 3 (three) true copies of the Financial Package and the financial model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the financial model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- 5.1.4. Provided that upon request in writing by the Concessionaire, the Concessioneing Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 5.1.3

### **5.2. Compliance Certificate**

- 5.2.1. Each Party hereto shall make all reasonable endeavours at its cost and expense to procure the satisfaction in full of its Conditions Precedent set out above within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 5.2.2. Upon compliance with the Conditions Precedent, both Parties shall forthwith issue a Compliance Certificate (the “Certificate of Compliance”) pursuant to which the obligations of the Parties under this Agreement shall commence.

- 5.2.3. The obligations of the Parties under this Concession Agreement shall commence from Effective Date.
- 5.2.4. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

**5.3. Non-Fulfillment of the Conditions Precedent**

- 5.3.1. In the event of the Agreement not coming into effect on account of that (i) Concessions Authority does not fulfil any of the Conditions Precedents set forth in this Article 5.1.2 , and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Government shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.
- 5.3.2. In the event of the Agreement not coming into effect on account of that (i) Concessionaire does not fulfil any of the Conditions Precedent set forth in Article 5.1.3, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessions Authority or due to Force Majeure, , the Concessionaire shall pay to the Concessions Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

## **6. Obligations of the Concessionaire**

### **6.1. Obligations of the Concessionaire**

- 6.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense procure finance for and undertake the Project as per the Scope of Work mentioned in Article 2 and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Concessionaire shall comply with all Applicable Laws in the performance of its obligations under this Agreement.
- 6.1.3. Without prejudice to Articles 6.1.1 and 6.1.2 above, the Concessionaire shall discharge its obligations as per the local bye-laws, National Building Code, Development Control Rules, and the principles of good industry practice and as a reasonable and prudent person, statutory requirements, laws of the land and any/ all other norms, which are applicable from time to time.
- 6.1.4. The Concessionaire shall provide services to Mentally Retarded residing at the Facility in accordance with the Schedule-E of this Contract.
- 6.1.5. The Concessionaire shall provide monthly reports to the Authority as per the format provided in Schedule- G of this Contract.
- 6.1.6. The Concessionaire shall provide a security and watch and ward service at the Facility to maintain the safety and security of the life and property.
- 6.1.7. The Concessionaire shall make provision and arrangement for first aid and prompt medical attention in cases of accidents and emergencies.
- 6.1.8. The Concessionaire shall get prior approval of the Concessions Authority in case of there is any change in the facilities defined under the Project during the Concession Period.
- 6.1.9. Without prejudice to Articles 6.1.1 and 6.1.2 above the Concessionaire shall, at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of, its obligations elsewhere set out in this Agreement, the following:
  - (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be required for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into development and operations of the Project;
  - (c) not to damage any other infrastructure or any other utility developed by the Concessions Authority or any other utilities developed and maintained by any other authority or person and in case of any such damage to undertake the repair

and also to pay for any losses that is incurred by the Concessioneing Authority or any authority or any other person, as the case may be.

- (d) ensure and procure that the Concessionaire shall comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (e) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (f) not to create any third party rights on the Site, except as permitted under this Agreement, and also to ensure that GNCTD/Concessioneing Authority are not adversely affected in any way;
- (g) procure at its own costs, expenses and risk all services necessary for the construction and operations of the Project including without limitation electricity, water, materials and labour;
- (h) shall complete construction of the Project as set forth in Article 12.2 of this Agreement;
- (i) shall pay the property tax and all other applicable taxes throughout the Concession Period;
- (j) shall extend every possible assistance to Care Committee in discharging of their duties;
- (k) transfer the Project site, with all the Project Assest, on the date of termination of Concession to the Concessioneing Authority free of all Encumbrances;
- (l) [make an agreement with an O&M Entity for a period of atleast 5 (five) years starting from the Construction Completion Date.]\*

## **6.2. Obligations relating to Other Agreements**

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

6.2.2. The Concessionaire may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the scope of work as mentioned under Article 2.1.

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\* Included only if Successful Bidder has been selected through High Network Route as per the conditions in RFP

### **6.3. Obligations relating to Change in Membership of SPV**

- 6.3.1. The Concessionaire shall not undertake or permit any Change in Membership, except with the prior written approval of the Concessioneing Authority as per the provisions of this Article 6. No change in the membership of the Consortium Members/Successful Bidder in the Concessionaire shall be allowed till Construction Completion Date or a minimum of 18 (eighteen) months from Effective Date, whichever is later. Moreover, the [Lead Consortium Member/Single Bidder]\* shall continue to provide 4/7<sup>th</sup>(four-seventh) of the total membership of the SPV till Construction Completion Date or a minimum of 18 (eighteen) months from Effective Date, whichever is later. [The Lead Consortium Member shall be allowed to reduce its membership in the SPV after Construction Completion Date with the approval of the Concessioneing Authority such that the number of members of the Lead Member in the SPV shall not fall below 2/7<sup>th</sup>(two-seventh) at any time till the end of Concession Period.]<sup>†</sup>
- 6.3.2. [Each Consortium Member shall hold a minimum number of 1/7<sup>th</sup> (one-seventh) in the SPV at any time till the end of Concession Period. None of the Consortium Member shall be allowed to reduce its membership in the SPV till Construction Completion Date or a minimum of 18 (eighteen) months from Effective Date, whichever is later.]<sup>‡</sup>
- 6.3.3. In the SPV formed, [Consortium Members/Single Bidder]<sup>§</sup> shall have at least three-fifth (3/5<sup>th</sup>) of the total members at all times during the Concession Period.

### **6.4. Insurance Requirement**

The Concessionaire shall, at its cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- a) builder's all risk insurance;
- b) loss, damage or destruction of the Project Facilities at replacement value;
- c) comprehensive third party liability insurance including injury or death to the persons who may enter the Project Site ;
- d) workmen's compensation insurance; and
- e) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets and the Concessioneing Authority, its employees and agents engaged in or connected to the Project and the Project Site including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (d).

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\* Select as Applicable

<sup>†</sup> Applicable in case of a Consortium and shall stand deleted in case of a single bidder

<sup>‡</sup> Applicable in case of a Consortium and shall stand deleted in case of a single bidder

<sup>§</sup> Select as Applicable



## **7. Obligations of the Concessions Authority**

### **7.1. Obligations of the Concessions Authority**

- 7.1.1. The Concessions Authority shall, at its own cost and expense, undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 7.1.2. The Concessions Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
  - (c) extend the assistance of its good offices on a reasonable effort basis to assist the Concessionaire in the provision of electricity;
  - (d) procure that no barriers are erected or placed on the Project site or the way towards the Project site by the Concessions Authority, by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency or national security, law;
  - (e) not to do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
  - (f) support, cooperate with and facilitate the Concessionaire in the implementation of the Project.

## **8. Representations and Warranties**

### **8.1. Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to the Concessions Authority that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum of Association and Rules and Regulations or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) the existing Lead Consortium Member/Successful Bidder provides not less than 4/7<sup>th</sup>(four-seventh) of the total membership of the SPV and together with the existing consortium members hold not less than 100% of the total membership of the SPV as on the date of this Agreement [and the respective membership of each Consortium Member conforms to the representation made by the Consortium and accepted by the Concessioneing Authority as part of the Bid and that no member of the Consortium shall provide members less than 1/7<sup>th</sup> (one-seventh)of the total membership of SPV such as per the provisions of Article 6.3]\*;
- (l) no order has been made and no resolution has been passed for the winding up of the Concessionaire or for a provisional liquidator to be appointed in respect of the Concessionaire and no petition has been presented and no meeting has been convened for the purpose of winding up the Concessionaire. No receiver has been appointed in respect of the Concessionaire or all or any of its assets. The Concessionaire is not insolvent or unable to pay its debts as they fall due;
- (m)no representation or warranty by it contained herein or in any other document furnished by it to the Concessioneing Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (n) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the grant of land or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority in connection therewith; and
- (o) It shall not novate the Concession Agreement and any rights and obligation arising therefrom to any party without any written approval from the Concessioneing Authority

## **8.2. Representations and Warranties of the Concessioneing Authority**

The Concessioneing Authority represents and warrants to the Concessionaire that:

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

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\* Applicable for a Consortium and shall stand deleted for a single bidder

- (b) it has taken all necessary action under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Concessionaire's ability to perform its obligations under this Agreement;
- (g) it has complied with Applicable Laws in all material respects;
- (h) it has not entered into any other Agreement, contract, transaction, arrangement or understanding in relation to the same Project or part of the Project with any third party, or the sale, Concession assignment, or other disposition in whole or in part in respect of the said land other than the disclosed in this Agreement;
- (i) all information provided by it in the Tender Notice and invitation to bid in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;
- (j) it has good and valid right for construction of the Project, and has power and authority to give land on lease to the Concessionaire; and
- (k) upon the Concessionaire completing the Project as per this Agreement, and performing the covenants herein, it shall not at any time during the period of Concession, interfere with peaceful enjoyment of the land by the Concessionaire, except in accordance with the provisions of this Agreement.

### **8.3. Disclosure**

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

## **9. Disclaimer**

### **9.1. Disclaimer**

- 9.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Tender Notice, Scope of the services to be provided, Project site, Design Specifications and Standards set for providing quality of services, local conditions, possible demand and all information provided by the Concessioneing Authority, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Article 8.2, the Concessioneing Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessioneing Authority in this regard.
- 9.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 9.1.1 above and hereby acknowledges and agrees that the Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under this Agreement.

## **10. Performance Security**

### **10.1. Performance Security**

The Concessionaire has submitted to the Concessions Authority a Performance Security of Rs. 37,00,000 (Rupees thirty seven lakh Only) in the form of a Bank Guarantee in favor of Department of Social Welfare, payable at Delhi; the Bank Guarantee shall be prepared and submitted as per the format given in Schedule C of this Agreement.

The Performance Security shall be maintained by the Concessionaire till the commencement of operations of the Project (i.e till the achievement of Operations Commencement Date). All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Concessionaire.

### **10.2. Appropriation of Performance Security**

10.2.1 Upon occurrence of a Concessionaire Default during the subsistence of the Performance Security, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such invocation and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, the Performance Security to its original level, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Concessions Authority shall be entitled to terminate this Agreement in accordance with 14.

10.2.2. In the event that Construction Completion Date is not achieved by the Scheduled Construction Completion Date, unless the delay is on account of reasons solely attributable to the Concessions Authority or due to Force Majeure, the Concessions Authority shall encash 5% of the Performance Security amount per month, for a maximum period of 6 (six) months after which Concessions Authority shall be entitled to terminate this Agreement. The Performance Security shall be replenished by the Concessionaire as soon the Performance Security is encashed by the Concessions Authority.

10.2.3. In the event that Operations Commencement Date is not achieved within 30 (thirty) days from the Construction Completion Date, unless the delay is on account of reasons solely attributable to the Concessions Authority or due to Force Majeure, the Concessions Authority shall encash 5% of the Performance Security amount per month, for a maximum period of 6 (six) months after which Concessions Authority shall be entitled to terminate this Agreement. The Performance Security shall be replenished by the Concessionaire as soon the Performance Security is encashed by the Concessions Authority.

### **10.3.1 Release of Performance Security**

100% (hundred percent) of the Performance Security in the form of bank guarantee shall be released to the Concessionaire on the issuance of the Operations Commencement Certificate by the Concessions Authority provided that Operations Commencement Date is achieved within the stipulated time period as per Article 12.2.1. If Construction Completion Date falls after the Scheduled Construction Completion Date, the Performance Security shall be appropriated by the Concessions Authority as per the provisions of Article 10.2.2 of this Agreement. If Operations Commencement Date falls after the stipulated time period, the Performance Security shall be appropriated by the Concessions Authority as per the provisions of Article 10.2.3 of this Agreement. This shall be subject to the Concessions Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement.

If the Agreement is terminated prior to Construction Completion Date due to any event other than a Concessionaire Event of Default, the Performance Security shall, subject to the Concessions Authority's right to receive or recover amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

## **11. Access to Project Site**

### **11.1. Project Site**

The Project Site shall comprise of the land as described in Schedule A and which shall be given on lease by the Concessions Authority to the Concessionaire as per the terms and conditions set forth in this Agreement.

- 11.1.1. The Concessions Authority shall give on lease to the Concessionaire, the Project Site as per the terms and conditions set forth in this Agreement.
- 11.1.2. It is being expressly agreed and understood that the Concessions Authority shall have no liability whatsoever in respect of survey and investigations carried out or work undertaken by the Concessionaire pursuant hereto in the event of Termination or otherwise.
- 11.1.3. It is expressly agreed that the rights granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Concessions Authority to terminate the rights, upon the Termination of this Agreement for any reason whatsoever.
- 11.1.4. It is expressly agreed that mining rights do not form part of the rights granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals on or under the area where cable have been laid. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

## **11.2. Others**

### **11.2.1. Access to the Concessioneing Authority and any person appointed as the Engineers / consultants appointed by Concessioneing Authority**

The right of way granted for construction,operation and maintenance of the Project shall always be subject to the right of access of Care Committee and any other person (s) appointed by the Concessioneing Authority for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

### **11.2.2. Special/temporary right of way**

The Concessioneaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Project Site. The Concessioneaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Construction and the performance of its obligations under this Agreement.



## **12. Project Implementation**

### **12.1. Project Construction**

#### **12.1.1. Obligations prior to the commencement of any work**

Prior to commencement of any work, the Concessionaire shall:

- (a) submit to the Concessions Authority time schedule for completion;
- (b) appoint its representative duly authorised to deal with the Concessions Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of any work under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) Procure all such approvals/consents/permits as necessary as per applicable laws.

#### **12.1.2. Construction Completion Date**

On or after the Effective Date till the end of 18<sup>th</sup> month, the Concessionaire shall undertake the construction of the Project. The end of 18<sup>th</sup> month from the Effective Date shall be the Scheduled Construction Completion Date (the “**Scheduled Construction Completion Date**”) for completion of construction and the Concessionaire agrees and undertakes that an Home for Mentally Retarded in accordance with the specifications mentioned in Schedule D shall be ready on or before the Scheduled Construction Completion Date.

#### **12.1.3. Construction Completion Certificate**

The Concessionaire after completion of the construction of the Project as per Design Specifications and Standards defined in Schedule D of this Agreement shall inform in writing to the Concessions Authority and Independent Engineer that it has completed the construction as per Scope of the Project. The Independent Engineer shall inspect the Project Facility to review the construction and inform the Authority after satisfying itself that the construction is complete and as per the requirements of the Agreement. The Concessions Authority shall issue the Construction Completion Certificate after satisfying itself that the following work is complete:

- construction work is complete and the building conforms to accepted safety norms and the requirements set forth in this Agreement[, and
- Concessionaire has made an agreement with an O&M Entity for a period of at least 5 (five) years starting from the Construction Completion Date;]\*

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\*Included only if Successful Bidder has been selected through High Network Route as per conditions in RFP

The date on which the Concessions Authority shall issue the Construction Completion Certificate shall be deemed as the Construction Completion Date (the “**Construction Completion Date**”).

#### 12.1.4. **Monthly Progress Report**

The Concessionaire shall prepare and submit monthly report on the progress of construction (the “Monthly Progress Report”) to the Concessions Authority and Independent Engineer. The first report shall cover the period up to the end of the calendar month in which the Compliance Date occurred. Reports shall be submitted monthly thereafter, each within 7 (seven) days of the last day of the period to which it relates. Reporting shall continue until the Concessionaire has completed all the Works, services, facilities and the Construction Completion Certificate is issued. Each report shall include:-

- (i) An executive summary of activities completed and under progress;
- (ii) For the construction of each main item of the Project, the extent of progress as quantity and percent, the actual or expected dates of commencement, anticipated completion date of the activity;
- (iii) Furnishing and equipment of the Project Facility as ordered, as received, as installed, in the process of installation, testing and commissioning;

### 12.2. **Operations & Maintenance**

#### 12.2.1. **Operation Commencement Date**

The Concessionaire shall be required to start the operations of the Project within a period of 30 (thirty) days of the Construction Completion Date.

#### 12.2.2. **Operation Commencement Certificate**

The Concessionaire after commencement of operations of the Project as per the agreement requirements shall inform in writing to the Concessions Authority that it has commenced the operations as per Scope of the Project. The Concessions Authority shall issue the Operations Commencement Certificate (the “**Operations Commencement Certificate**”) after satisfying itself that the operations has commenced; and is as per the requirements set forth in this Agreement. The date on which the Concessions Authority shall issue the Operations Commencement Certificate shall be deemed as the Operations Commencement Date (the “**Operations Commencement Date**”).

#### 12.2.3. **Admission & Discharge of Residents under Reserved Seats**

The admission and discharge of residents under Reserved Seats shall be controlled by the Care Committee. Nomination of candidates for Reserved Seats shall be done by Care Committee. All expenses of Reserved Seats shall be borne by the Concessionaire and all services shall be provided free of cost to the Residents under Reserved Seats.

## **13. Force Majeure**

### **13.1. Force Majeure**

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event and Political Event, as defined in Article 13.2, 13.3, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### **13.2. Non Political Event**

A Force Majeure Event shall mean one or more of the following acts or events:

- (a) act of God, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, radioactive contamination;
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Home for Mentally Retarded for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting;
- (c) any failure of another service provider to the extent caused by another Non Political Event mentioned and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection
- (f) any event or circumstances of a nature analogous to any of the foregoing;

### **13.3. Political Event**

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy);

- (b) Enactment or commencement of any Indian Law, which has not entered into effect until the date of Bid, only if it impacts the ability of the Concessionaire to perform its obligations and/or exercise its rights as per the conditions of this Agreement. Such an event shall be considered a Political Force Majeure Event only if DSW accepts the event to be a Political Force Majeure Event;
- (c) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (d) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (e) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (f) any event or circumstance of a nature analogous to any of the foregoing

#### **13.4. Duty to Report Force Majeure Event**

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

- (a) the nature and extent of each Force Majeure Event 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.

13.4.2. The Affected Party shall not be entitled to any relief under the Agreement 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 24 (twenty four) hours 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.

### **13.5. Effect of Force Majeure Event**

Upon the occurrence of any Force Majeure Event the period set forth for the Construction Completion Date shall be extended by a period equal in length to the duration of the Force Majeure Event.

### **13.6. Allocation of Costs Arising out of Force Majeure**

13.6.1. Upon occurrence of any Force Majeure Event prior to Effective Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

13.6.2. Upon occurrence of a Force Majeure Event after the Effective Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Government to the Concessionaire.

13.6.3. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues, debt repayment obligations or O&M Expenses, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

13.6.4. Save and except as expressly provided in this Article 13.6, 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.

### **13.7. Termination for Force Majeure Event**

13.7.1. If a Force Majeure Event subsists for a period of 365 (three hundred and sixty five) days or more within a continuous period of 550 (five hundred and fifty) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 13, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days

period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

- (a) If Termination is prior to Operation Commencement Date and on account of a Non-Political Event, either Party shall not be liable for any payments from the other Party.
- (b) If Termination is after Operation Commencement Date on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to the sum of 90% of Debt Dues and 90% of Subordinated Debt less Insurance cover;
- (c) If Termination is on account of a Political Event, the Authority shall make Termination Payment to the Concessionaire in an amount equal that would be payable under Article 14.4.2 as if it were Authority Default.

### **13.8. 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 as mentioned in Article 17; 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.

## 14. Termination

### 14.1. Termination for Concessionaire Default

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 15 (fifteen) days, the Concessionaire shall be deemed to be in default of this Agreement (a “**Concessionaire Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Concessions Authority or due to Force Majeure event. The defaults referred to herein shall include the cases where:

- (a) the Performance Security has been partially or fully invoked and appropriated by the Concessions Authority as per the Concession Agreement and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) the Concessionaire does not complete the construction and installation before the Scheduled Construction Completion Date and continues to be in default for 180 (One Hundred and Eighty) days;
- (c) the Concessionaire does not construct and operate any of the items mentioned in the scope of work;
- (d) the Concessionaire abandons or manifests intention to abandon the Project without prior written consent of the Concessions Authority;
- (e) the Concessionaire has failed to make any payment towards damages to any Resident or any utility within the period specified in this Agreement;
- (f) the Concessionaire acts in contravention to Article 6.1.4 of this Agreement;
- (g) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (h) the membership structure of the Concessionaire has changed and such change according to the Concessions Authority may have Material Adverse Effect towards the completion of the Project.
- (i) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets at any time before the Scheduled Construction Completion Date;
- (j) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Concessions Authority, a Material Adverse Effect;
- (k) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside

within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court;

- (l) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement; or
- (m) the Concessionaire commits a material default in complying with any other provision of this Agreement.
- (n) The Concessionaire novates and /or assigns the agreement to any third party without any prior approval from the Concessions Authority
- (o) the Concession Period of 30 (thirty) years has ended.

In the event of the above mentioned events of default, DSW shall have the right to impose fines/penalties maximum extending up to the Termination of the Concession Agreement.

## **14.2. Termination for Authority Default**

Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessions Authority fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 15 (fifteen) days, the Concessions Authority shall be deemed to be in default of this Agreement (a “**Authority Default**”), unless the default has occurred solely as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure event. The defaults referred to herein shall include cases in which:

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire; or
- (b) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

## **14.3. Procedure to issue Termination Notice**

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

14.3.2. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement (Schedule J), be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform



the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

#### **14.4. Effect of Termination**

14.4.1. Upon Termination as per Article 14.1, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable by the Concessing Authority.

14.4.2. Upon Termination as per Article 14.2, Authority will make payments to Concessionaire as per the following rule:

$$\text{Payment made by DSW} = \frac{\text{Total Project Cost} \times N}{28.5}$$

Where,

N = Remaining number of years of concession from the date of Termination

14.4.3. In any event of Termination, the Concessionaire acknowledges that within 10 (ten) days of termination, the Concessionaire shall vacate the Project Site. The Concessionaire acknowledges that once the Agreement is terminated the land allocated shall be returned back to the Concessing Authority. In such case, the Lease Deed will stand cancelled ipso facto and land is returned back to the Concessing Authority automatically. The entire construction made by the Concessionaire till that date on the Project Site as part of the Scope of Work shall get transferred without any consideration to the Concessing Authority. No liability with respect to the land or assets shall devolve on Concessing Authority.

#### **14.5. Other Rights and Obligations of the Concessing Authority**

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

- (a) be deemed to have taken possession and control of the Project site and any construction made on such site till the date of termination;
- (b) take possession and control of all materials, stores, implements and construction on or about the Project;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Site or any part of the Project; and
- (d) Invoke the Performance Security as part Damages. In case termination is done by the Concessing Authority not because of the default of the Concessionaire, then in such condition the Concessing Authority Article

## **15. Divestment of Rights and Interest**

### **15.1. Divestment Requirements**

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of all the Project Assets and the Project Facilities, free and clear of all Encumbrances;
- (c) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Facilities absolutely unto the Authority or its nominee; and
- (d) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

### **15.2. Vesting Certificate**

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

### **15.3. Divestment costs etc.**

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

15.3.2. In the event of any dispute relating to matters covered by and under this Article 15, the Dispute Resolution Procedure shall apply.

15.3.3. In the event that any of the Divestment Requirements set forth in Article 15.1 are not fulfilled by the Concessionaire within 15 (fifteen) days from the end of the Concession Period, the Concessionaire shall be required to pay to the Concessioneing Authority, a

penalty equivalent to the multiple of the “Penal Interest Rate” and Govt. land rate applicable on the date of Termination for each day of delay in the fulfilment of the Divestment Requirements beyond the 15 (fifteen) days specified herein.

For the purpose of this Agreement, Penal Interest Rate shall mean the rate of interest that is two times the rate of interest on the 10-year Government of India Security as on the date of Termination.

## **16. Liability and Indemnity**

### **16.1. General indemnity**

The Concessionaire will indemnify, defend, save and hold harmless the Concessioneing Authority and its officers, employees, agents and consultants against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Concessioneing Authority indemnified persons.

### **16.2. Liability of Concessioneing Authority**

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

- (a) defect in title and/or the rights of the Concessioneing Authority in the land given on Concession to the Concessionaire; and/or
- (b) breach by the Concessioneing 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, employees or agents and the same shall be the liability of the Concessionaire.

Provided that the liability of the Concessioneing Authority in any case or in any manner whatsoever with respect to this Article 16.2 shall be limited to a sum of Rs 7,40,00,000 (Rupees seven crores and forty lakhs only).

### **16.3. Indemnity by the Concessionaire**

Without limiting the generality of Article 16.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority from and against any and all loss and/or damages arising out of or with respect to:

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

(d) Breach by the Concessionaire of any of the obligations under this Agreement.

**16.4. No consequential claims**

Notwithstanding anything to the contrary contained in this Article 16, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

**16.5. Survival on Termination**

The provisions of this Article 16 shall survive Termination.

## **17. Dispute Resolution**

### **17.1. Dispute resolution**

17.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 17.2.

17.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### **17.2. Conciliation**

17.2.1. In the event of any Dispute between the Parties, either Party may call upon the Secretary of the Concessioneing Authority to mediate and assist the Parties in arriving at an amicable settlement thereof. If the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 17.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 17.3.

### **17.3. Arbitration**

17.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Article 17.2, shall be decided by reference to Arbitral Tribunal appointed in accordance with Article 17.3.2. Arbitration shall be held in accordance with the provisions of Arbitration and Conciliation Act, 1996 .The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

17.3.2. The Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.

17.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 17 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessioneing Authority agree and undertake to carry out such Award without delay.

17.3.4. The Concessionaire and the Concessioneing Authority agree that an Award may be enforced against the Concessionaire and/or the Concessioneing Authority, as the case may be, and their respective assets wherever situated.

17.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

## **18. Assignment and Charges**

### **18.1. Restrictions on assignment and charges**

- 18.1.1. The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of DSW.
- 18.1.2. The Concessionaire shall not assign in favour of any person any right or benefit that has not been provided to the Concessionaire by the Authority. It is clarified that freehold rights to the Project Site is not being given to the Concessionaire and the same cannot be mortgaged to raise funds.
- 18.1.3. The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement and the Lease Deed. It is further clarified that the Project Site has to be handed over to DSW at the end of the Concession Period free of all encumbrances; therefore, any assignment or sub-lease on the Project Site and Project Facilities shall expire upon termination of this Agreement.
- 18.1.4. Restraint set forth in Article 18.1.1, and Article 18.1.3 above, shall not apply to:
- (a) Pledges / hypothecation of goods/ moveable assets, income and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project; or
  - (b) Assignment of Concessionaire's rights and benefits under this Agreement and other Project related agreements to or in favour of the Lenders, which shall include step in rights, as per Schedule J, as security for financial assistance provided by them.

Notwithstanding anything contained in Article 18 the rights of the Concessionaire shall not be contrary or in derogation to the provisions relating to Divestment Requirements contained in Article 15.1.

## **19. Miscellaneous**

### **19.1. Governing Law and Jurisdiction**

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

### **19.2. Care Committee**

19.2.1. The Concessioneing Authority shall appoint a care committee (the “**Care Committee**”) for overseeing the performance of the Concessionaire with respect to its obligations as set forth in this Agreement. The Care Committee or any other authorized representative of DSW shall have unlimited access to the Project Site and all documents and databases related to the Project, including but not limited to financing documents, residential records, electronic databases and accounts documents.

19.2.2. The Care Committee shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development running, operation and maintenance of the Project, including, (without limitation):

- (i) Review the Concessionaire’s periodic reports;
- (ii) Review the overall functioning of the Project Facility;
- (iii) Review and take actions on matters arising out of any complaints regarding quality of services, denial of services or any other matter relating to mismanagement, inadequacies or deficiencies in the Project Facility;
- (iv) Review the Performance Security requirements and in consultation with Concessioneing Authority decide upon the amount of compensation to be paid by the Concessionaire in the event of Concessionaire’s failure to perform the obligations;
- (v) Nominate candidates as Residents under the Reserved Seats in the Home for Mentally Retarded;
- (vi) Approve or disapprove discharge of a Resident under Reserved Seat on receiving of such request from Concessionaire or the Resident itself;
- (vii) On receiving written complaints about grievances of Residents under Reserved Seats in relation to the Project facilities, address the complaints by giving notice to Concessionaire to resolve the problem within 7 (seven) days of receiving such complaint.

19.2.3. The Concessionaire and the Concessioneing Authority shall extend full co-operation to the Care Committee, Independent Engineer and to any Expert appointed by the DSW for any investigation connected with running, operation, function and maintenance of the project. All the expenses of the Care Committee shall be borne by the DSW.



### **19.3. Expert**

19.3.1. DSW shall appoint an Expert during construction (the “**Independent Engineer**”) from the Effective Date till a period of 6 (six) months after the Construction Completion Date. The following shall be the roles and responsibilities of the Independent Engineer:

- a. Review the Monthly Progress Report of the Concessionaire and inform the Care Committee about the status and progress of the construction
- b. Inspect the construction progress as and when required for assessment of the quality and progress of the construction
- c. Report to the Care Committee in case if the Independent Engineer finds the construction has not been done as per the requirements under the Agreement and as per the safety norms and bye laws for development.
- d. After the construction completion, review the Project Facility and report to DSW / Care Committee if the construction is found complete and satisfactory.

19.3.2. All expenses of the Expert shall be borne by DSW.

19.3.3. DSW may appoint an Expert as per the need at any time during the Concession Period for any investigation connected with running, operation, function and maintenance of the Project.

### **19.4. Waiver of Immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or incomes in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or incomes now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

### **19.5. Delayed Payments**

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay penalty for the period of delay calculated at a rate equal to 12% (twelve percent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

## **19.6. Taxes**

The Concessionaire shall be required to pay all taxes, levies and charges as applicable that would be payable towards the fulfilment of the Concessionaire's Scope of Work and obligations as set forth in this Agreement

## **19.7. Waiver**

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

## **19.8. Liability for Inspection of Documents**

Except to the extent expressly provided in this Agreement:

(a) no review, comment or inspection by the Concessions Authority of any document submitted by the Concessionaire nor any observation or inspection of any document or operations conducted at the Project Site hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) the Concessions Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub Article (a) above.

## **19.9. Exclusion of Implied Warranties etc.**

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

## **19.10. Survival**

19.10.1. Termination shall:

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

19.10.2. All obligations surviving Termination shall only survive for a period of 5 (five) years following the date of such Termination.

### **19.11. Entire Agreement**

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

### **19.12. Severability**

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

### **19.13. No partnership**

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

### **19.14. Third Parties**

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

### **19.15. Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of the Parties and their lawful successors, as per the provisions of this Agreement.

### **19.16. Notices**

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, by personal delivery or by sending the same by prepaid registered mail addressed to the Party concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the purposes of this Article 19.16 and shall be deemed to be effective (in the case of registered mail) 10 calendar days after posting, (in the case of facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery.

If to Concessioning Authority:

Address :

Tel: No.

Fax No.

Attention :

If to the Concessionaire:

Address :

Telephone :

Fax :

Attention :

### **19.17. Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in the English language.

### **19.18. Counterparts**

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

### **19.19. Validity**

This Agreement shall be valid for the entire concession period

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED

THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE

**SECTION - III: SCHEDULES TO THE CONCESSION AGREEMENT**

**SCHEDULE A**  
**DETAILS OF THE SITE**

(The Concessionaire should also ascertain and satisfy itself/themselves about the details and the data furnished by the Authority. If any error or deficiency in the information supplied surfaces at any time during the currency of the Concession Period, no claim on this account will be entertained by the Authority.)

Site of the Project at Dwarka (Sec-9) shall include the land and structures as described in this Schedule. The Concessionaire should also ascertain and satisfy itself/themselves about the details and the data furnished by the Authority. If any error or deficiency in the information supplied surfaces at any time during the currency of the Concession Period, no claim on this account will be entertained by the Authority.

1) Location:

The site is located in the South-Western part of Delhi. The Site is located at Sector-9, Dwarka. The site has access from approximately 12.0 m wide local Road. The location map appended below, provides a clear pictorial appreciation of the site location.

2) Connectivity and Accessibility:

The site is easily accessible from road and MRTS line. The closest MRTS station is Dwarka Sector-9 Metro Station. It is accessible from Road No. 201 (Dwarka Road).

3) Plot Size:

The land area of the plot is approximately 5000 sqm which translates to 1.24 acre or 53,821sq.ft.

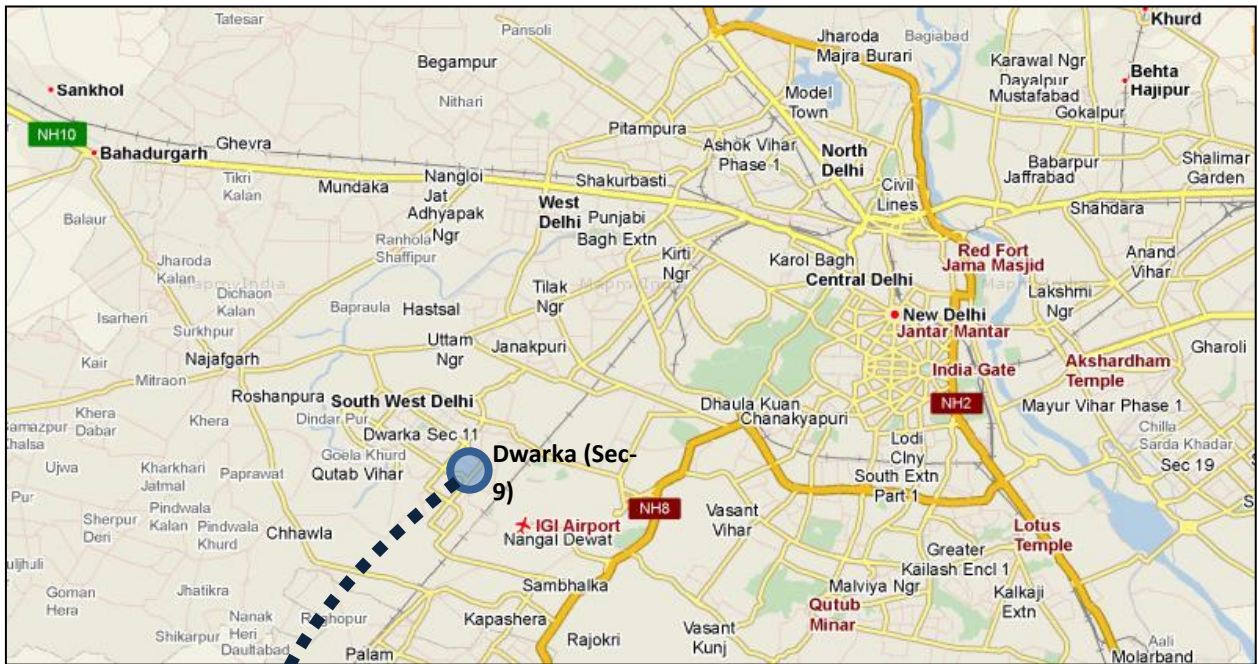
4) Land Form and Vegetation

Land parcel is rectangular shaped with no vegetation and the land form is suitable for construction.

5) Physical Infrastructure

Physical infrastructure like Water, Sewerage, Drainage, Solid Waste Management and Power are available at the site.

## Project Site and Location





**SCHEDULE B**  
**LEASE DEED FOR THE SITE**

**THIS LEASE DEED** made on the \_\_\_\_ day of \_\_\_\_\_ 2010 by and between

\_\_\_\_\_ (hereinafter referred to as the “the Lessor”, which expression shall, unless the context otherwise requires, include its successors); and\*

**M/s** \_\_\_\_\_, having its registered office at \_\_\_\_ (hereinafter “Lessee” which expression shall, unless the context otherwise requires, include its subsidiaries, successors and permitted assigns).†

**WHEREAS**

- A. \_\_\_\_\_(the “Owner” or the “Lessor” herein) has vide the Concession Agreement dated \_\_\_\_\_ (hereinafter “Concession Agreement”) granted right to \_\_\_\_\_ (the “Lessee” herein) to construct, operate, maintain and manage the Home for Mentally Retarded on Public-Private-Partnership (PPP) basis and to determine, levy, demand, collect, retain and appropriate Resident charges from the Residents of the Facility (hereinafter “Project”);
- B. The vesting of the Facility and all rights relating thereto with the Concessionaire by the Owner, under a valid and binding Lease Deed in a form satisfactory to the Concessionaire, is specified in the Concession Agreement as a Condition Precedent (under Article 2.1) to the Concessionaire undertaking its obligations under the Concession Agreement. This Lease Deed is part and parcel of the Concession Agreement dated \_\_\_\_\_ signed between the Owner and the Concessionaire and is in lieu of commercial and contractual considerations in favour of the Owner. Therefore, this Lease Deed is not to be referred in isolation;
- C. In order to satisfy this Condition Precedent of the Concession Agreement, the Lessor hereby vests with the Lessee, the Facility/ land owned on the terms and conditions and subject to the covenants and stipulations hereinafter contained.

**NOW THIS INDENTURE OF LEASE WITNESSETH AS FOLLOWS:**

- 1. The capitalised terms contained herein shall, unless the context otherwise requires, have the same meaning as ascribed to them in the Concession Agreement.
- 2. The following terms shall have the meaning as hereunder:

\_\_\_\_\_

- (a) **Deed** means this Lease Deed, executed in lieu of commercial and contractual considerations in favour of the Owner;
  - (b) **Appendix** means any of the appendices, supplements and documents annexed to this Deed;
  - (c) **Concession Agreement** shall mean the Concession Agreement dated \_\_\_\_\_ entered into between \_\_\_\_\_ and \_\_\_\_\_, in consideration for which this Lease Deed is executed;
  - (d) **Demised Premises** means the land as shown in Appendix "A";
  - (e) **Parties** shall mean 'Lessor' and 'Lessee' herein;
  - (f) **Lessor** means the Owner;
  - (g) **Lessee** means the Concessionaire.
3. The Lessor hereby demises the Demised Premises unto the Lessee under the terms of this Deed from the \_\_\_ day of \_\_\_\_ 2010 for a period, which shall be strictly co-terminus with the terms of the Concession Agreement and shall be extended or terminated at a prior date to coincide with the Concession Period, as per the Concession Agreement dated \_\_\_\_\_. The Lessor hereby undertakes that it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement.
  4. The Lessor hereby demises the Demised Premises for a time period which shall be strictly co-terminus with the Concession Period, as defined in the Concession Agreement dated \_\_\_\_\_.
  5. In consideration of the Concession Agreement dated \_\_\_\_\_ between the Lessor and the Lessee and in consideration of the premium herein reserved and the covenants on the part of the Lessee to the Lessor under the said Concession Agreement, the Lessor hereby demises unto the Lessee the Demised Premises without interruption or interference, free from Encumbrances and together with the full and free right and liberty of way and passage and other rights in relation thereto, to implement the Project with delivery of Site Possession thereof.
  6. The Lessee shall pay unto the Lessor an annual rent of Re 1/- as Lease rental, which shall be paid on or prior to the date upon which this Deed is executed.
  7. The Lessor hereby vests the Demised Premises with the Lessee along with all Easementary Rights, free from any Encumbrance; as provided in the Concession Agreement.
  8. The Lessor hereby vests the Demised Premises with the Lessee under this Deed for the purpose of implementing the Project, including for the purposes of operation, maintenance & management of the Facility and whatsoever as may be authorised under

the rights granted to the Lessee in accordance with the terms of the Concession Agreement dated \_\_\_\_\_ or otherwise approved by the Lessor;

9. The Parties hereby agree that the Lessee shall not mortgage, transfer or otherwise encumber the Demised Premises and/or any or all of its rights and interest in relation thereto in the form of Lease, right-of-way or otherwise create a security interest thereon in favour of the Lenders for the purpose of enabling Financing of the Project and for securing finances for permitted activities or purposes under the Concession Agreement dated \_\_\_\_\_. In addition to this, the Concessionaire shall have no right to sub-lease the Demised Premises to the Third Party;
10. In the event of termination of the Concession Agreement dated \_\_\_\_\_ by efflux of time or otherwise, this Lease Deed and Leases determined shall be terminated, the Concessionaire shall hand over the possession of the Project and other Facilities to the Owner or its nominated agency and the Concessionaire, its contractors, sub-contractors, agents, employees shall vacate the Facility.
11. The Lessor hereby covenants with the Lessee as under:
  - (a) That it shall not increase the Lease rental due and payable by the Lessee under Article 6 hereof;
  - (b) That it shall not interfere with or impede in any manner or otherwise limit, restrict or impose any conditions or restrictions on the complete, free and full enjoyment and use of the Demised Premises and all rights in relation thereto by the Lessee,
  - (c) It shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to: (i) to operation, maintenance & management of the Facility; (ii) the implementation of the Project by the Lessee; and (iii) the possession, control and use by the Lessee of the Demised Premises, the Facility constructed thereon and any other facilities developed in the course of implementation of the Concession Agreement or otherwise with the approval of the Lessor;
  - (d) It shall enter into appropriate further documentation or additional writings as the Lessee or the Lenders may reasonably require to give effect to the provisions of this Deed and the Financing Documents;
  - (e) That apart from the Lease rental specified in Section 6 hereof, any other fee, rental, tax or any other charge for the Lease of the Demised Premises shall be paid by the Lessee;
  - (f) That it has clear and marketable title to and is in lawful possession of the Demised Premises and that there is no litigation, claim, demand or any proceedings pending before any Competent Authority in respect of the acquisition of or the Lessor's title to or possession of the Demised Premises and the Lessee shall have complete, lawful and uninterrupted Site Possession, control and use of the Demised Premises; and
  - (g) That it shall not terminate this Deed, except upon the due and valid termination of the Concession Agreement dated \_\_\_\_\_ in accordance with the terms thereof.
13. The Lessee hereby covenants with the Lessor as follows:

- (a) That it shall operate and maintain the Facility or cause it to be operated and maintained in accordance with the Concession Agreement dated \_\_\_\_\_;
- (b) That it shall observe and perform all terms, covenants, conditions and stipulations of this Deed; and
- (c) That it shall inform the Lessor about encroachments on the Demised Premises that are affecting the performance of its rights under the Concession Agreement dated \_\_\_\_\_. The Lessee shall assist the Lessor in removing these encroachments.

14. Each Party hereto represents and warrants that:

- (a) It has full power and authority to execute, deliver and perform its obligations under this Deed and to carry out the transactions contemplated hereby;
- (b) It has taken all necessary actions to authorise the execution, delivery and performance of this Deed; and
- (c) This Deed constitutes its legal, valid and binding obligations that shall be enforceable against it in accordance with the terms hereof.

15. The Parties hereby acknowledge and specify that this Deed is being executed for the benefit of the Lessee, and the Lessee shall have the right to enforce this Deed through specific performance. The Parties further agree that

- (a) The failure by a Party to perform its obligations under this Deed and any breach of covenants or undertakings given and provided for in this Deed by the Party shall amount to an Event of Default under the Concession Agreement dated \_\_\_\_\_("Event of Default").
- (b) Any dispute, controversy or claim arising out of or in relation to this Deed or the interpretation of any of its provisions shall be settled in accordance with the provisions of Article 17 of the Concession Agreement dated \_\_\_\_\_, of which this Lease Deed is a part.
- (c) The stamp duty and registration charges for the execution and registration of this Deed shall be borne by the Concessionaire.
- (d) All notices under the terms of this Deed shall be sent either by hand, facsimile or courier to the following addresses:

Lessor :

Lessee :

**IN WITNESS WHEREOF** the Parties hereto have affixed their respective signatures to this Lease Deed, the day and year first herein above written:

SIGNED IN THE NAME AND ON BEHALF OF _____ THROUGH	SIGNED IN THE NAME AND ON BEHALF OF _____ THROUGH :
--	--

--	--

*In the presence of*

1.

2.

Place:

Date:

Appendix A: The detailed Site Plan depicting area of the Demised Premises.

Appendix B: Signed Concession Agreement

## SCHEDULE C

### FORMAT FOR BANK GUARANTEE (Performance Security)

The Secretary,  
Department of Social Welfare,  
Government of National Capital Territory of Delhi

#### **WHEREAS:**

- (A) \*\*\*\* (the “**Concessionaire**”) and the Secretary, Department of Social Welfare (the “**Authority**”) have entered into a Concession Agreement dated \_\_\_\_\_ (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking Development of a Home for Mentally Retarded at Rohini, Sec-IV, Delhi on DBOT basis (hereinafter referred to as the “**Project**”), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. 37 lakh (Rupees thirty seven lakh) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, \*\*\*\*\* through our Branch at \*\*\*\*\* (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an Officer not below the rank of Director in the Department of Social Welfare that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect 730 (Seven hundred and thirty) days from the date of the Agreement or an earlier date subject to the Concessionaire having obtained the Construction Completion Certificate from the Authority as per the provisions of the Agreement, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Address)



## **SCHEDULE D**

### **DESIGN SPECIFICATIONS AND STANDARDS**

The use of standards and specifications for use of material, construction technology and operations shall adhere to the national and international set of specifications and the best practices in the industry. The work will follow the latest standards, codes and recommendations of the Indian Bureau of Standards. If any IS number indicated is superseded by another IS, the later will be applicable. In case of absence of suitable IS specifications and code of practices, other recognized international standards and codes such as International Standards' Organization (ISO), Euro Norm (EN), British Standards Institution (BSI), Deutsche Industries Norm (DIN) be used.

#### **CIVIL AND STRUCTURAL WORKS**

- The building shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces
- RCC Structures shall be designed as per IS 456 :2000
- Steel Structures shall be designed in accordance with the provision of IS 800-1984. Structural steel shall conform to IS 2062. Tubular section shall conform to IS 4923
- Architectural design norms as per NBC (National Building Code – 2005)
- Structural Design norms as per NBC and BIS (Bureau of Indian Standards)

#### **EQUIPMENT**

The equipment and component parts shall conform to the relevant standards by Bureau of Indian Standards wherever available.

#### **DESIGN**

The Concessionaire should keep in mind the considerations, mentioned in the Annexure to this Schedule, for design of the Home for Mentally Retarded.

**ANNEX-I**

**(Schedule- D)**

**DESIGN CONSIDERATIONS FOR HOME FOR MENTALLY RETARDED**

S.No.	FACILITY	CONSIDERATIONS
1	<b>Bedrooms</b>	<ul style="list-style-type: none"> <li>• The bedroom <b>should not</b> be next to Common Room or Office area.</li> <li>• There should be enough of natural light coming into the rooms. Provision should be made for sufficient artificial lighting as well.</li> <li>• There should be some kind of connectivity of individual cottages so that in case of emergency the Residents can approach each other.</li> <li>• Each bed should have an independent cupboard or inbuilt storage space where the Resident can keep his/ her personal belongings.</li> <li>• The storage space should be within reach.</li> <li>• A few extra hooks on the walls may be provided so that the older people can hang their walking sticks, caps, etc.</li> <li>• <b>“Warden Call Alarm System”</b> - Each bed should have an emergency call bell switch. The main board should be in the Warden’s room.</li> <li>• Night-light should be provided in the bedroom.</li> <li>• The light switches and sockets should be conveniently placed.</li> <li>• Each bed should have a bed light and a switch.</li> <li>• The bedrooms should be properly numbered.</li> </ul> <p><b><i>For wheelchair bound/ walker users:</i></b></p> <ul style="list-style-type: none"> <li>• At least 1500 mm turning in space for wheelchair should be kept near all entry points to the bedrooms.</li> <li>• Bedroom for the wheelchair/walker user needs more floor area to provide for wheelchair circulation. The bedroom layout should be such that the bed should not be in a corner of a wall. At least 900 mm should be provided for wheelchair from the side of the wall for access and should be large enough for transfer by a wheelchair user, or for a helper to assist in the transfer.</li> <li>• The bed should be at a height from the ground that permits wheelchair turning under the bed. A minimum 900 mm width should be kept in front of bedroom closet and any other furniture.</li> </ul>
2	<b>Common Room</b>	<ul style="list-style-type: none"> <li>• It should be a multipurpose room that could be used for organizing get-togethers, Yoga classes, recreational activities,</li> </ul>

		<p>spiritual discourses, etc. The Common room should be close to preferably separate the entrance of the Home so that the visitors can also join the Residents in the activities. A minimum floor space of 1 Sq.m. per person is required for occasional use by the Residents. Where the Common room is the focus of more regular activity or where the common room provides for a Day Centre, a space standard of 2 Sq. m. per Resident is more appropriate.</p> <ul style="list-style-type: none"> <li>• It should have facilities for indoor games, T.V., a library, musical instruments, etc.</li> <li>• The furniture for the Common room should be light and functional.</li> <li>• A notice board and a clock should be provided in the Common room. There should also be a newspaper stand.</li> <li>• An attached Store room may be kept next to the Common Room where all material such as durries, extra chairs, tables and other items of use may be stored.</li> <li>• A small lounge may be provided in front of the Common room. The office, Common room, bedrooms should be identifiable from the lounge.</li> </ul>
<b>3</b>	<b>Dining Room</b>	<ul style="list-style-type: none"> <li>• The tables may be provided with small drawers, which can be locked. The older people can keep their personal items such as napkin, salt, sugar, jam, pickles, etc. in the drawers.</li> <li>• The table height should be such as to allow arms of the wheelchair to go under the table. The service counter should also allow for a wheelchair user to get as close as possible to the counter.</li> <li>• A display board may be put up in the dining area where the daily menu could be displayed.</li> </ul>
<b>4</b>	<b>Kitchen</b>	<ul style="list-style-type: none"> <li>• The Kitchen should be well ventilated and well illuminated with natural light.</li> <li>• It should have a running supply of potable water.</li> <li>• The Kitchen should be close to dining area but not very close to bed rooms. The smoke, pungent cooking smell and noise from the kitchen may cause nuisance to the Residents.</li> <li>• The Kitchen should be big enough to carry out mass cooking activity.</li> <li>• Preference should be given to installation of steam cooking system.</li> <li>• There should be enough shelves and cabinets for storage. The height of storage space should be suitable for the staff and the Residents - some of the Residents also may like to assist in cooking.</li> <li>• The fittings and equipment should follow the sequential arrangement of storage, preparation and cooking.</li> <li>• The surface finish of the work-tables should be able to withstand</li> </ul>

		<p>hot pans and dishes.</p> <ul style="list-style-type: none"> <li>• If possible provide for a Store room next to the Kitchen.</li> <li>• A sufficiently large Kitchen garden should be also planned.</li> </ul>
5	<b>Toilets and Bathrooms</b>	<ul style="list-style-type: none"> <li>• There should be a minimum of one toilet for every four Residents and one bathroom for every eight Residents.</li> <li>• There should be a minimum of one urinal for every ten male Residents of the Home for Mentally Retarded.</li> <li>• There should be separate bathrooms and toilets for ladies and gents.</li> <li>• The toilets should be planned to be slightly away from the <u>bedrooms, except in the case when bathroom is attached to the bedroom.</u></li> <li>• Bathrooms and Toilets should guarantee full privacy and safety to older persons</li> </ul> <ul style="list-style-type: none"> <li>• <b>Doors and Locks</b> <ul style="list-style-type: none"> <li>- All bathrooms must be fitted with outward opening doors whose locks can be opened from outside in an emergency.</li> <li>- The door handles should be of contrasting colours so as to ease identification.</li> <li>- Swing doors may be provided which opens in the direction of egress.</li> <li>- Large, easy to grasp doorknobs or lever-type handles should be used.</li> </ul> </li> <li>• <b>Inside Placement</b> <ul style="list-style-type: none"> <li>- The approach to bathroom, wash basin, W.C. and shower must be obstacle free. It should have enough space for the wheelchair users to enter and exit.</li> <li>- There should be enough space to accommodate a Helper(s).</li> <li>- The underside of wash basin should be high enough to clear thighs.</li> <li>- The wash basin should be conveniently accessible by wheelchair user.</li> <li>- The shelves should be within comfortable reach of the older person and the wheelchair users.</li> <li>- The mirror should be so installed as to permit its use by wheelchair users.</li> <li>- The hand basin should be secure enough to withstand the weight of the older person.</li> <li>- The taps for bath and washbasins must be easy to operate.</li> <li>- Washbasin should be positioned a minimum of 400mm(16") and a maximum of 450mm(18") away from the side wall to leave room for a wall grab rail and lavatory roll holder.</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>- Shower cubicles should have seats whose width and height facilitate easy gripping by wheelchair users.</li> <li>• <b>Grab Rails</b> <ul style="list-style-type: none"> <li>- Grab rails will generally be required besides the W.C., washbasin and the bath.</li> <li>- The grab rails should be able to withstand a pulling and hanging load of 300 pounds.</li> <li>- Upward-folding support bars are recommended to allow lateral transfer from a wheelchair.</li> </ul> </li> <li>• <b>Other considerations</b> <ul style="list-style-type: none"> <li>- The floors of bathrooms and toilets must be non-slip.</li> <li>- There should be night-light in the toilets.</li> <li>- Proper ventilation should be ensured to prevent any suffocation on part of the Residents.</li> <li>- In the absence of running water supply, big water tanks should be provided.</li> </ul> </li> </ul>
6	<b>Store Room</b>	<ul style="list-style-type: none"> <li>• It is advisable to provide a separate Store Room with lockers which shall accommodate the items precious to Mentally Retarded. The Store Room should have individual lockers for the Residents.</li> </ul>
7	<b>Laundry</b>	<ul style="list-style-type: none"> <li>• A laundry should always be separate from the bathrooms and should have enough space to enable the older people to do their own personal washing.</li> <li>• It should be ensured that the Laundry has the following areas: <ul style="list-style-type: none"> <li>- A sink.</li> <li>- Space for washing clothes.</li> <li>- Space for rinsing and drying clothes.</li> <li>- A table or bench for folding clothes.</li> <li>- Space for ironing clothes.</li> </ul> </li> <li>• There should be proper water supply and drainage system.</li> <li>• The Laundry floor should be non-slip.</li> </ul>
8	<b>Lift</b>	<ul style="list-style-type: none"> <li>• Elevator should be provided and functional at all times in the Home for Mentally Retarded building</li> </ul>

## SCHEDULE – E

### SERVICES TO BE RENDERED BY THE CONCESSIONAIRE

The Concessionaire shall engage qualified staff to provide the following services to the Mentally Retarded who are accommodated under reserved seats:

- a) Lodging:** Concessionaire shall provide accommodation to the Residents and would include the arrangements for sleep, rest, clothing, safety and shelter from weather. Concessionaire shall accommodate not more than 3 persons in one room. The equipment to be provided in a typical room has been attached as Annexure I to this Schedule. The minimum room area required in rooms for lodging purpose for Mentally Retarded under Reserved seats is 150 sqft per Resident. This shall include the area for attached bathrooms, if any.
- b) Nutrition and Dietary Service:** The Concessionaire shall provide Residents with nutritionally sound meals and provide dietary services as per Annexure II to this Schedule.
- c) Clothing:** The Concessionaire shall procure 5 sets of attire for each Resident and arrange new attire every 6(six) months.
- d) Medical & Health Facilities:** The Concessionaire shall
  - Provide medical facilities to cater to the needs of the Residents which includes a doctor, dentist and an Ambulance on-call on 24X7 basis, basic nursing facilities for those in need of nursing, arrangements for regular immunization, physiotherapy. and psychological counseling services.
  - Make provisions for accommodating one or two patients and an attendant in the form of a sick room which would extend nursing care to Residents who fall sick due to fever or minor ailments. The essential items to be maintained in the Sick room have been provided as Annex - III to this Schedule.
  - Provide transportation arrangements at the Facility to transfer Residents requiring emergency hospitalization.
  - Take the necessary control measures for controlling the spread of infection from staff to Residents, visitors to Residents and Residents to other Residents. Isolation techniques to be observed according to source of infection and the method of spread.
  - Make provisions for proper sterilization of supplies, utensils, instruments and other materials as needed for the Residents.
  - Scheduling of regular health education sessions for Residents and staff as per their needs.
- e) Recreational Facilities:** The Concessionaire shall provide recreational facilities for maintaining good physical and mental health of the elderly. It would include provision of books, television, CD players and indoor games like carom, chess, cards etc.

- f) Prayer Facilities:** The Concessionaire shall provide facilities for prayer, yoga and meditation etc.
- g) Safety and Security:** The Concessionaire shall make arrangements for providing a safe and secure environment for Residents of the Institution and shall refer to Annexure IV to this Schedule to ensure the safety of the Residents.
- h) Environmental Sanitation and Housekeeping:** The Concessionaire shall refer to Annexure V to this Schedule for ensuring proper sanitation on the premises.

## **ANNEX - I**

### ***(Schedule - E)***

#### **EQUIPMENTS FOR THE INSTITUTION**

- ❖ Each Room should be equipped with a fan, tube-light, coolers (during summers) and heaters (during winters).
- ❖ Resident beds shall be single, at least thirty-six (36) inches wide, with firm even springs covered by a mattress not less than four inches thick.
- ❖ In case the Resident requires to be accommodated on a floor bed due to medical reasons (i.e. epileptic patients), before placing the mattress on the floor, adequate insulation material will be provided for protection from the cold.
- ❖ The home shall provide all linens and blankets/ quilts essential to the treatment and comfort of Residents.
- ❖ The home shall be equipped with 1 (one) Wheelchair/walker for every 10 Residents at the Institution.
- ❖ Each Resident shall have necessary furniture which shall include a bedside table, a chair, drawer space for clothes, and enclosed space for hanging clothing, individual towel rack, soap dish, drinking glass, and access to a mirror. Each Resident shall have a suitable signaling device.
- ❖ Each Resident shall be provided adequate supplies and equipment for proper oral hygiene including a toothbrush, toothpaste etc. Bedrails shall be available for use as required by the resident's condition.
- ❖ Miscellaneous equipment viz. DG set, Television, Refrigerators etc
- ❖ Disposable equipment and supplies shall be used only once and disposed of in an approved manner.



## ANNEX - II

### (Schedule - E)

#### NUTRITION AND DIETARY SERVICE

- ❖ A nutritionally balanced diet shall be provided all Residents and adjusted to resident's age, sex, activity, and physical condition.
- ❖ Meals, adequate as to quantity and quality, shall be served in sufficient numbers with a maximum of five (5) hours apart with no longer than fourteen (14) hours between the evening meal and breakfast. Between meal and bedtime snacks shall be offered to each resident.
- ❖ Menus shall be planned and dated. Used menus shall be kept on file for a period of thirty days for reference by the resident's physician and staff at the home.
- ❖ Sufficient perishable foods for a twenty-four hour period and nonperishable foods for a three-day period shall be on the premises for use in an emergency.

An illustrative meal plan for an individual has been shown below:

Breakfast	<ul style="list-style-type: none"><li>• High fibre cereal (like wheat, barley, pastas, porridge, etc)</li><li>• Egg</li><li>• skimmed milk/fruit juice</li><li>• Mug tea/coffee</li></ul>
Mid-morning	<ul style="list-style-type: none"><li>• Fruit</li></ul>
Lunch	<ul style="list-style-type: none"><li>• Chapatti</li><li>• Vegetable</li><li>• Pulses</li><li>• Mixed salad</li><li>• Low fat / low sugar yoghurt</li></ul>
Mid-afternoon	<ul style="list-style-type: none"><li>• Light Snacks</li><li>• Mug tea/coffee</li></ul>
Evening Meal	<ul style="list-style-type: none"><li>• Rice</li><li>• Chapatti</li><li>• Boiled potatoes / mashed potato/ Dry vegetable</li><li>• Mixed salad</li><li>• Soya/ Vegetables with Gravy</li></ul>

If any Resident is in need of medically prescribed special diets, the Concessionaire shall arrange for the same, in consultation with a dietician/ Resident doctor.

**ANNEX - III**

**(Schedule - E)**

**ESSENTIAL ITEMS FOR THE SICK ROOM**

<b>S.No.</b>	<b>ITEM</b>
1	First Aid Kit
2	Hospital Beds
3	Bed for the Attendant
4	Food serving table
5	Storage space for linen and medicines
6	Oxygen Cylinder
7	Nebulizer
8	Weighing Machine
9	B.P.Instrument
10	Thermometer
11	Bed pans for stools, urine and sputum
12	Wheel Chair
13	Tissues
14	Cooler/Pitcher with ice and drinks
15	Facemasks
16	Humidifier

## **ANNEX - IV**

### ***(Schedule - E)***

#### **SAFETY AND SECURITY OF RESIDENTS**

- ❖ The building and equipment shall be maintained in such condition that no there are no hazards to the life and safety of the Residents.
- ❖ Handrails shall be provided on all stairways and ramps. Stairtreads shall be made of or covered with safe nonslip material. Doors opening onto stairways shall not open directly onto risers, but shall open onto a landing not less than the width of the door.
- ❖ Safety barriers at the head of stairways, and handrails in hallways shall be provided.
- ❖ Doors to rooms used by Residents shall be equipped with locks or other devices which will not allow the room to be locked from the inside.
- ❖ Floor surfaces shall be smooth and level; scatter rugs and highly polished floors in Resident areas are prohibited.
- ❖ Showers, tubs, and toilets shall have grab bars firmly installed convenient to Resident use; the floor in bathing areas shall be provided with a nonslip surface.
- ❖ Warning signs shall be posted prohibiting smoking or open flames of any kind in areas where oxygen is in use or stored.
- ❖ Care will be taken to ensure that all furniture / equipment provided will be safe for use i.e. no sharp edges, non-toxic material etc.
- ❖ Safety guidelines for managing participation in Kitchen, storage of hazardous material, electricity, water storage and heating, play material etc. should be available with the management/ staff and they should be traned and conversant with them
- ❖ There should be a monitoring process for ensuring sustained safety on the premises – it should be included in the administration/ management procedures of the institution
- ❖ A procedure for reporting of abuse, maltreatment and neglect should be put in place
- ❖ Management, staff and Residents should be instructed in universal precautions for managing open wounds, blood products and body fluids.

## **ANNEX - V**

### ***(Schedule - E)***

#### **ENVIRONMENTAL SANITATION AND HOUSEKEEPING**

- ❖ Equipment and supplies for proper sanitation will be maintained on the premises.
- ❖ Laundry shall be handled, stored and processed so that spread of infection will be minimized. A sufficient clean linen supply shall be insured at all times. Soiled linen shall not be permitted to accumulate.
- ❖ The premises and all areas within the home shall be kept clean and free from debris.
- ❖ Ventilation openings, such as ports for exhaust fans, shall be equipped with covers that close automatically when the fan is not in operation.
- ❖ Doors and other openings shall be equipped and maintained to minimize the ingress of flies, insects and rodents.
- ❖ Provision shall be made to maintain clean containers and store garbage in areas that are separate from food handling, food preparation and food storage area.
- ❖ Sanitary containers, sputum cups, and other satisfactory individual containers must be provided when needed.
- ❖ The home shall have an infection control program which provides for policies, procedures and training programs. Great care should be exercised to prevent spread of infection by mites or by infected person to person.

## ANNEX - VI

### (Schedule - E)

#### EDUCATION AND VOCATIONAL TRAINING

The education and skills to be imparted to the residents include:

S.No.	Education	Vocational trades
1.	Self Dependency	Candle making
2.	Self Care	Screen Printing
3.	Health & Safety	Envelope Making
4.	Brushing Teeth	Printing
5.	Communication	Handloom weaving
6.	Conversation	Sewing and Embroidery
7.	Home Living/ Life Skills	Making of File Covers
8.	Social Skills	Caning of Chairs
9.	Toileting	Tailoring
10.	Bathing	Making of Toys and Dolls
11.	Reading	Knitting
12.	Speaking	Making of Chalks and Crayons
13.	Writing	Cooking
14.	Eating	Gardening
15.	Motor skills	Making of Letter & Wrapping Paper
16.	-	Painting
17.	-	Sticking
18.	-	Colouring
19.	-	Making of leaf Plates
20.	-	Book Binding
21.		Making of low-cost female hygiene products
22.		Making of gift boxes/ containers

**Note:** The above list is just an illustrative list and the Concessionaire is free to teach any other trade/skill to the residents which could assist them in leading their life in a better way.

In addition to this, the Concessionaire should provide a Bridge School for children, who can then be placed in mainstream schools. There should also be a service for placement of children in schools/ educational or skill/ vocational training institutions in the mainstream.

**ANNEX - VII**

**(Schedule - E)**

**CARE STAFF**

<b>S.No.</b>	<b>Staff</b>
1.	Warden/Managers
2.	Teachers / Instructors
3.	Occupational Therapist
4.	Speech therapist
5.	Nurses
6.	Aayas/House Aunties
7.	Accountants
8.	Assistants
9.	Cook
10.	Peons
11.	Cleaners
12.	Security Guards

The Concessionaire will have to provide the opportunity to all staff to enhance their skills at care-giving through an appropriate and targeted capacity building programme. This may precede by a Training Needs Assessment exercise conducted for the staff.

Since this kind of work needs a very high level of motivation, the Concessionaire will necessarily have to draw up a system of rewards and incentives, which can then be applicable on an annual basis, based on performance.

## **SCHEDULE F**

### **MAINTENANCE REQUIREMENTS**

#### **1. Maintenance Requirements**

1.1 The Concessionaire shall, at all times, operate and maintain the Facility in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule (the "Maintenance Requirements").

1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Article 14 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### **2. Repair/rectification of defects and deficiencies**

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule within the time limit set forth therein.

#### **3. Other defects and deficiencies**

3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule, the Care Committee may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Care Committee.

#### **4. Extension of time limit**

Notwithstanding anything to the contrary specified in this Schedule, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Care Committee and conveyed to the Concessionaire and the Authority with reasons thereof.

#### **5. Emergency repairs/restoration**

Notwithstanding anything to the contrary contained in this Schedule, if any defect, deficiency or deterioration in the Facility poses danger to the life or property of the Residents thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

#### **6. Divestment Requirements**

All defects and deficiencies specified in this Schedule shall be repaired and rectified by the Concessionaire so that the Facility conforms to the Maintenance Requirements on the Transfer Date.

**7. Display of Schedule - F**

The Concessionaire shall display a copy of this Schedule at the office of the Facility.



**ANNEX - I**

**(Schedule - F)**

**MAINTENANCE STANDARDS**

The Concessionaire shall maintain, repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-F within the time limit set forth herein.

<b>S.No.</b>	<b>Serviceability Indicator</b>	<b>Required Maintenance Level</b>	<b>Permissible Time Limit for repairs/rectifications</b>
<b>CIVIL WORKS</b>			
1.	Cracks in building, roofs, terraces, walls and water tanks		Cracks shall be repaired within 7 days after their detection
2.	Worn out areas, holes in floors, damaged edges and joints of concrete/ cement works		Shall be repaired within 15 days after their detection
3.	Boundary Walls		Any damage/ breach to the boundary wall of the project facility shall be rectified within three (3) days after their detection.
4.	Walls shall be clean without any paint wearing.	No stains, splits, weathered paint to be left exposed	Any stains, splits, weathered paint on the walls of the project facility shall be cleaned within 2 days
5.	Flooring, skirting, dado finishes should be intact	Maximum 5% per 1000 sqm area	Any damaged, missing, crack tiles in Flooring, Skirting, Dado finishes shall be repaired, replaced within seven days of detection
6.	Staircases shall be clean and functional	Nil	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within seven days after detection.
7.	Cracks, spalling / scaling, blistering of plaster and damages to walls or façade	Maximum 5% per 1000 sqm area	Shall be rectified within 15 days.
8.	Damages to painting and finishes	Maximum 5% per 1000 sqm area	Timely intervention as and when necessary to maintain façade beauty.
<b>WATER SUPPLY AND SANITATION</b>			
1.	All drinking water chambers shall be cleaned and functional	A minimum of 95% drinking water chambers	These shall be cleaned daily. Water supply shall be maintained for 24 hours. Drinking water quality in all the

		shall be functional	seasons shall be as per WHO standards. These chambers shall be cleaned after every six hours. Any damaged fixtures or tiles in the water chambers shall be replaced, repaired within seven days of detection.
2.	Water supply pumps, pressure vessels and related components.		Maintained as per manuals furnished by manufacturers/ original installation contractors.
3.	Water valves and conveyance network (pipes).		Do away with leakages within 3 days and blockages within 24 hours. Check the water pressure regularly.
4	Water quality testing		Water should be tested on all prescribed parameters – bacteriological and chemical – once in 3 months
5	Clean and disinfect underground and overhead tanks.	Ensure that there is no deposition of sediments, organic/ pathogenic growth.	Cleaning of water tanks should be done every month.
6.	Sanitary fittings	A minimum of 95% toilets and urinals shall be functional	Ensure that all sanitary fittings are intact and in running condition. All leakages from the taps, flush cistern or pipes should be stopped within 24 hours. Ensure that washbasin and sanitary fittings should not get choked at any point of time. Damaged toilets and urinal pots, washbasins, cisterns, mirrors, taps shall be replaced with the new one of the same specification within seven days of detection.
7	External Drainage System shall be functional free from clogging	Nil	Obstructions must be cleared within two days after detection. Damages must be repaired within seven days after detection by reconstructing to the adequate shape and size. De-silting operations should be done once in a six months time with minor repairs if needed. During Monsoon, any blocked vent ways shall be cleaned immediately. All filth or any other offensive matter met during the cleaning shall be

			disposed off properly but in no case allowed to collect/ accumulate in the campus. All gratings and covers should be in place at all times and during regular maintenance operation should be kept out of bound from Residents.
8	Heated water supply		Heated water supply should be ensured during the winter months
<b>ELECTRICAL</b>			
1	Power Supply	Nil	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours. In no case power supply shall be stopped for more than 2 minutes during nighttime and 5 minutes during daytime.
2	Electrical rooms and electrical equipments		Inspect daily to ensure that these areas are locked at all times and limited access is provided to authorized person only.
3.	Cables and wires		Inspect every week to see cable and wire connections are insulated, clean and firm/intact.
4.	Electric Meter		Check all meters once in a month time to ensure that they are functioning and are showing correct readings.
5.	Light fittings, includes fluorescent, incandescent, high and or low-pressure sodium, mercury vapour and normal bulbs.	A minimum of 95% light fittings and fixtures shall be functional	Temporary measures within 4 hours. Permanent restoration within 3 days. Replacement of lamps and allied fixtures should be carried out promptly.
6.	Switchgear, motor control centers and circuit breaker panels		Ensure that all switchgears, motor control centers and circuit breaker panels are in a good condition. Timely intervention with temporary measures within 4 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Care Committee and any faulty equipment should be replaced with the same specification equipment.

7.	Other electrical equipments like switches, receptacles, wiring, conduit, junction boxes, lighting protection equipment etc	A minimum of 95% of fittings and fixtures shall be functional	Replace faulty electrical equipments, if required, with the same specification within 24 hours after detection.
8.	All Information Signages and Display Boards shall be visible, legible and functional	Maximum 2% of number of damaged signages and boards	These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of their detection
9.	Public Address System	Minimum of 95% of the public address system components should be functional.	Regular inspection and maintenance of public address system to ensure its functionality at all times. In case of any fault, temporary measures should be taken within 4 hours and permanent restoration within 7 days
10.	Earthing System		Regular maintenance of earthing system to ensure earth continuity at all points in the electrical system upto the main distribution board in each module.
11.	Pumps		The Concessionaire shall ensure that there shouldn't be any leaking at mechanical seal. Also check the coupling for alignment and make sure that mounting bolts are secure. Check gauges for proper operation. Also check bearing temperature/s, whether any undue noise or vibration is observed and readings of pressure, voltage and current. Any defects in pumps should be given priority and temporary restoration should take place within six hours and permanent restoration within three days.
<b>VENTILATION AND LIGHTING</b>			
1.	Lighting shall be functional		The ventilators, sky-lits etc. serving as source of natural ventilation and other lighting shall be cleaned once in seven days
<b>CARPENTARY AND RELATED SERVICES</b>			
1.	Wooden furniture like almirah, office tables, chairs, shelf etc		Any damaged wooden furniture shall be repaired, replaced within seven days of detection.

			All furniture will be of an adequate standard with regard to safety of the Residents.
2.	Antitermite treatment		Take proactive action in order to save the wooden furniture and structure from termite attack. Antitermite treatment should take place at regular interval (once in a month time)
3.	Maintenance of Doors and Windows		Any loose hinges of the doors and windows should be taken care off immediately after their detection. If window glass are making sound or vibrating in the windy atmosphere then make sure that there should be no gap between the beading and glass. Any broken glass should be replaced within 3 days.
4.	Holes and depression in the wooden structure		Any holes and depression in the wooden structure should be immediately filled with epoxy putty after their detection.
<b>MISCELLANEOUS</b>			
1.	Defects in all other utilities like water supply/tap/tap connections/pipe/sewer and drainage pipes/tanks & overflow/glasses/window panes/all other building furniture	Nil	Timely intervention with temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required.
2.	Complaint Register shall be functional	Nil	Shall be available in the office at all the times. The Complaint register shall be produced before the Care Committee as and when asked for.
3.	Security		Provide security system and adequate security staff, as defined in schedules of the Management Contract, so as to ensure safety of project facility and masses.
4.	Rodents/ Pest Control		Routine disinfections, once in 15 days time, by usage of chemicals of all common areas to maintain hygiene and prevent any air or water borne diseases. Special care should be taken during rainy/monsoon or any other

			season when the incidence of epidemics are more.
5.	Fire Detection, Fire Alarm and Fire Fighting System		<p>Shall be functional at all times.</p> <p>Defective detectors shall be replaced within 24 hours.</p> <p>Designed water pressure shall be maintained in the fire fighting system at all times and any leakage shall be checked within 24 hours.</p>

## ANNEX - II

### *(Schedule-F)*

#### ROUTINE CLEANING TIMETABLE

The Concessionaire shall follow the following timetable for routine cleaning of the facility:

- **Daily Tasks:** Clean lavatories, sweep and wash floors, dust, clean (open) drains, scrub kitchen tables.
- **Weekly Tasks:** Clear cobwebs, clean doors and windows, bedside lockers, kitchen and bathroom walls, clean water filters, change linen.
- **Monthly Tasks:** Repairs, fumigation, wash curtains, cushion covers, water tanks.
- **Annual Tasks:** Whitewash, pest eradication, contract renewals.

**SCHEDULE -G**  
**MONTHLY REPORT**

	<b><u>Person Related</u></b>	
<b>1.</b>	Number of Beneficiaries for the Month - Starting number - Additions during the month - Ending number	
<b>2.</b>	Food Menu for seven days of the week	
<b>3.</b>	Personal Care routine followed for Beneficiaries	
<b>4.</b>	Cases of injury/ illness/other ailment (reported/action taken/medical treatment provided)	
<b>5.</b>	Education and Recreational Activities undertaken at the Facility	
	<b><u>Facility Related</u></b>	
<b>6.</b>	Defects noticed in the building (reported/action taken)	
<b>7.</b>	Major repair works anticipated/undertaken at the Facility	
	<b><u>General</u></b>	
<b>8.</b>	Profile of Visitors to the Facility	
<b>9.</b>	Community Support Programme undertaken (if any)	



## SCHEDULE - H

### PENALTY/FINE FOR VIOLATION OF SERVICE STANDARDS

Type of Deficiency	Penalty Amount(one time)
Lack of cleanliness at the Facility	Upto Rs 10,000
Deficiency in the provision of personal care to inmates	Upto Rs 20,000
Unhygienic/poor quality food	Upto Rs 20,000
Inadequate arrangements for water, power and other utilities	Upto Rs 20,000
Non-availability/shortage of doctor, nurse and other staff	Upto Rs 20,000
Defect in the building/equipment	2 times the cost of repairing the defect/equipment

**Note :** The penalty imposed shall be one time, till the deficiency is rectified.

## SCHEDULE I

### EXTRACT OF DELHI MASTER PLAN-2021

#### **Development Control for Community Facilities**

Category	Maximum			Other Controls
	Ground Coverage	FAR	Height	
Old Age Home/Care Centre for Physically/ Mentally challenged/ Working women/ men hostel/Adult Education Centre/ Orphanage/Children's Centre/ Night Shelter.	30%	120	26m.	1. Parking standard @ 1.8 ECS / 100 sqm of floor area. 2. Other controls related to basements etc. are given in the Development Code chapter.

**Note:** If some additional regulations are to be followed in addition to the above norms, Concessionaire shall comply with the same.

#### **Optimum Utilisation of Government Land**

##### 8.2 OPTIMUM UTILIZATION OF GOVERNMENT LAND

Government of India, Govt. of NCTD and local bodies are occupying prime land in Delhi for their offices. Most of the offices have been setup immediately after Independence. Large areas are underutilized and have completed their economic life. Due to downsizing of government employment and need for generation of resources by the ministries, optimum utilization of existing government offices/ land could be achieved by the following measures:

- i. Intensive utilization of existing government offices/land.
- ii. Utilization of Surplus land by the government for residential development.
- ✓ iii. Utilization of 10% of total FAR for commercial uses to make the restructuring process financially feasible. This shall be subject to approval of land owning agency and concerned local body.

## SCHEDULE-J

### SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the \*\*\*day of \*\*\*20\*\*.

#### AMONGST

1. Department of Social Welfare, Government of National Capital Territory of Delhi (hereinafter referred to as the "Concessing Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
2. [\*\*\*\*\*Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \*\*\*\*, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
3. \*\*\*\*[NAME AND PARTICULARS OF Lenders' Representative] and having its registered office at \*\*\*\*, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

#### WHEREAS:

- (A) The Concessing Authority has entered into a Concession Agreement dated \*\*\*with the Concessionaire (the "Concession Agreement") on design, build, operate and transfer basis (DBOT) (Called Project), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (C) Senior Lenders have requested the Concessing Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Concessing Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

#### **1 DEFINITIONS AND INTERPRETATION**

##### **1.1 Definitions**

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

**“Agreement”** means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessions Authority for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

## **1.2 Interpretation**

- 1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the

provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Documents.

### **3 SUBSTITUTION OF THE CONCESSIONAIRE**

#### **3.1 Rights of substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Concessioneing Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

#### **3.2 Substitution upon occurrence of Financial Default**

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessioneing Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Concessioneing Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.3 Substitution upon occurrence of Concessionaire Default**

- 3.3.1 Upon occurrence of a Concessionaire Default, the Concessioneing Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Concessioneing Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessioneing Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.4 Procedure for substitution**

- 3.4.1 The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessioneing Authority under the Concession Agreement and towards the Senior Lenders under the Financing Documents.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Concessioneing Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Concessioneing Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioneing Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessioneing Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Nominated Company shall be deemed to have been accepted. The Concessioneing Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Concessioneing Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessioneing Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioneing Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioneing Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **5 TERMINATION OF CONCESSION AGREEMENT**

## **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessions Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessions Authority shall - undertake Termination under and in accordance with the provisions of the Concession Agreement.

## **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Concessions Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Concessions Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

## **5.3 Realisation of Debt Due**

The Concessions Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

# **6 DURATION OF THE AGREEMENT**

## **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Documents.

# **7 INDEMNITY**

## **7.1 General indemnity**

- 7.1.1 The Concessionaire will indemnify, defend and hold the Concessions Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.



- 7.1.2 The Concessioneing Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Concessioneing Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Chandigarh] and the language of arbitration shall be English.

## **9 MISCELLANEOUS PROVISIONS**

## **9.1 Governing law and jurisdiction**

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

## **9.2 Waiver of sovereign immunity**

The Concessing Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessing Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

## **9.3 Priority of agreements**

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

## **9.4 Alteration of terms**

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

## **9.5 Waiver**

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

## **9.6 No third party beneficiaries**

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

## **9.7 Survival**

9.7.1 Termination of this Agreement:

- (d) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (e) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

## **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

## **9.9 Successors and assigns**

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

**9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.11 Language**

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

**9.12 Authorised representatives**

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

**9.13 Original Document**

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

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

SIGNED, SEALED AND  
DELIVERED

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
CONCESSIONAIRE by:

For and on behalf of  
CONCESSIONING AUTHORITY OF [\*\*\*] by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

1

2.

## SCHEDULE-J

### SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the \*\*\*day of \*\*\*20\*\*.

#### AMONGST

4. Department of Social Welfare, Government of National Capital Territory of Delhi (hereinafter referred to as the "Concessing Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
5. [\*\*\*\*\*Limited], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at \*\*\*\*, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
6. \*\*\*\*[NAME AND PARTICULARS OF Lenders' Representative] and having its registered office at \*\*\*\*, acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or relation to this Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

#### WHEREAS:

- (E) The Concessing Authority has entered into a Concession Agreement dated \*\*\*with the Concessionaire (the "Concession Agreement") for development of a residential care institution for Mentally Retarded on design, build, operate and transfer basis (DBOT) (called "Project"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (F) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Documents.
- (G) Senior Lenders have requested the Concessing Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (H) In order to enable implementation of the Project including its planning, designing, engineering financing, construction, operation and maintenance, the Concessing Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

#### **1 DEFINITIONS AND INTERPRETATION**

##### **1.1 Definitions**

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

**“Agreement”** means this Substitution agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

**“Financial Default”** means occurrence of a material breach of the terms and conditions of the Financing Documents or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

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

**“Nominated Company”** means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Concessions Authority for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

## **1.2 Interpretation**

- 1.2.5 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.
- 1.2.6 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.7 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.8 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2 ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the

provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Documents.

### **3 SUBSTITUTION OF THE CONCESSIONAIRE**

#### **3.1 Rights of substitution**

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Concessioneing Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively).

#### **3.2 Substitution upon occurrence of Financial Default**

3.2.4 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Concessioneing Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.5 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.6 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessioneing Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Concessioneing Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Concessioneing Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.3 Substitution upon occurrence of Concessionaire Default**



- 3.3.1 Upon occurrence of a Concessionaire Default, the Concessioneing Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Concessioneing Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Concessioneing Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Concessioneing Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

#### **3.4 Procedure for substitution**

- 3.4.4 The Concessioneing Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessioneing Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Concessioneing Authority under the Concession Agreement and towards the Senior Lenders under the Financing Documents.
- 3.4.5 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfill the eligibility criteria that were laid down by the Concessioneing Authority for short listing the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Concessioneing Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessioneing Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.6 Upon selection of a Nominated Company, the Lenders' Representative shall request the Concessioneing Authority to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - (d) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

- (e) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Nominated Company shall be deemed to have been accepted. The Concessioneing Authority thereupon shall transfer and endorse the Concession within 7 (seven) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Concessioneing Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Concessioneing Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Concessioneing Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Concessioneing Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4 PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

## **5 TERMINATION OF CONCESSION AGREEMENT**

## **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing Authority shall - undertake Termination under and in accordance with the provisions of the Concession Agreement.

## **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Concessioneing Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

## **5.3 Realisation of Debt Due**

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

# **6 DURATION OF THE AGREEMENT**

## **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (c) Termination of the Agreement; or
- (d) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Documents.

# **7 INDEMNITY**

## **7.1 General indemnity**

7.1.4 The Concessionaire will indemnify, defend and hold the Concessioneing Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 7.1.5 The Concessioneing Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessioneing Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Concessioneing Authority, its officers, servants and agents.
- 7.1.6 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8 DISPUTE RESOLUTION**

### **8.1 Dispute resolution**

- 8.1.3 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Concessioneing Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
- 8.1.4 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [Chandigarh] and the language of arbitration shall be English.

## **9 MISCELLANEOUS PROVISIONS**

## **9.1 Governing law and jurisdiction**

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

## **9.2 Waiver of sovereign immunity**

The Concessing Authority unconditionally and irrevocably:

- (e) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (f) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessing Authority with respect to its assets;
- (g) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (h) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

## **9.3 Priority of agreements**

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

## **9.4 Alteration of terms**

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

## **9.5 Waiver**

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

- (f) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (g) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (h) shall not affect the validity or enforceability of this Agreement in any manner.

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

## **9.6 No third party beneficiaries**

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

## **9.7 Survival**

9.7.1 Termination of this Agreement:

- (i) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (j) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

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

## **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

## **9.9 Successors and assigns**

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

**9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.11 Language**

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

**9.12 Authorised representatives**

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

**9.13 Original Document**

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

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

SIGNED, SEALED AND  
DELIVERED

SIGNED, SEALED AND  
DELIVERED

For and on behalf of  
CONCESSIONAIRE by:

For and on behalf of  
CONCESSIONING AUTHORITY OF [\*\*\*] by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

1

2.