



**CONCESSION AGREEMENT
FOR
UPGRADATION, DEVELOPMENT, OPERATION AND MAINTENANCE
OF
LAUTOKA AND BA HOSPITALS**

17 JANUARY 2019

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CONCESSION AGREEMENT

This Concession Agreement (**Agreement**) is executed on this 17th day of January 2019 at Suva, Fiji:

BETWEEN

- (1) **THE GOVERNMENT OF THE REPUBLIC OF FIJI**, represented by the Ministry of Economy, with its principal office at Level 10, Ro Lalabalavu House, Victoria Parade, Suva, Fiji (hereinafter referred to as the **Government**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (2) **HEALTH CARE (FIJI) PTE LIMITED**, a company organised, incorporated, registered and existing under the Companies Act with its registered office at Level 4, Plaza 2, Provident Plaza, 33 Ellery Street, Suva (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns).

The Government and the Concessionaire shall collectively be referred to as the **Parties** and individually as a **Party**.

RECITALS

- (A) The Government is keen to augment the healthcare infrastructure at the Project Hospitals through private sector participation.
- (B) For this purpose, the Government commenced an international competitive bid process by issuing an invitation for expressions of interest on 17 March 2018, followed by a request for tender on 25 June 2018 (as amended from time to time and including the revised request for tender issued by the Government on 25 October 2018) (**RFT**), inviting interested parties to submit their bids.
- (C) Pursuant to the terms of the RFT, the Government received tenders from various bidders, including the Bid submitted by the Selected Bidder.
- (D) Following a process of evaluation of the bids submitted by the bidders (including the Selected Bidder), the Government accepted the Selected Bidder's Bid and issued the letter of award dated 12 November 2018 to the Selected Bidder (**LOA**). The Selected Bidder accepted the LOA, on 12 November 2018, in accordance with the requirements of the RFT.
- (E) In terms of the RFT, the Fiji National Provident Fund Board (**FNPF**) has incorporated Health Care (Fiji) Pte Limited on 2 November 2018 to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into this Agreement.
- (F) On 16 January 2019, Health Care (Fiji) Pte Limited, FNPF and the Selected Bidder have executed the SPSHA which, among other aspects, sets out the terms on which FNPF has subscribed to and the Selected Bidder has purchased Securities of Health Care (Fiji) Pte Limited.
- (G) In accordance with the terms of the RFT, the Government has agreed to enter into this Agreement with the Concessionaire.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

365 days	means each and every day of the calendar year including a leap year irrespective of the actual number of days in the year.
Accreditation Standards	means: <ul style="list-style-type: none">(a) the accreditation standards prescribed by JCI; and(b) the standards prescribed by the International Organization for Standardization, as set out in the Specifications and Standards applicable to the relevant Project Hospital.
Adjoining Property	means any land and/or property adjoining or adjacent to any part of the Sites, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.
Admitted Acute Care	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Affected Party	means the Party affected by a Force Majeure Event.
Affected Project Hospital	has the meaning ascribed to it in Clause 26.1.
Affiliate	means, in relation to any Person, a Person who Controls, or is Controlled by, or is under the common Control of the same Person who controls such Person.
Agreement	means this concession agreement, including all its Schedules, as amended from time to time.
Annuity Payment Invoice	means an invoice for payment of the Annuity Payments, prepared and submitted by the Concessionaire to the Government (with a copy to the Independent Monitor) in accordance with Clause 17.
Annuity Payment Period	means the period commencing on and from the Lautoka Hospital CCD until the end of the Concession Period.
Annuity Payments	means the Lautoka Hospital Annuity Payments and/or Ba Hospital Annuity Payments, as the context may require.
Annuity Payments Cycle	means, with respect to the Ba Hospital only, each successive 10 (ten) year period (other than the last Annuity Payments Cycle)

commencing on and from the date on which both the Project Hospitals have achieved CCD and up to the end of the Annuity Payment Period.

For the avoidance of doubt, it is clarified that: (a) the first Annuity Payments Cycle for the Ba Hospital shall commence on and from the date on which both the Project Hospitals have achieved CCD and end on the day immediately before the 10th (tenth) anniversary from the date on which both the Project Hospitals have achieved CCD; and (b) each subsequent Annuity Payments Cycle for the Ba Hospital shall commence immediately upon the end of the previous Annuity Payments Cycle and end on the day falling immediately before the 10th (tenth) anniversary thereof, other than the last Annuity Payments Cycle which shall end on the Expiry Date, which for the avoidance of doubt, may be less than 10 (ten) years.

Applicable Laws

means the Constitution of the Republic of Fiji and all and any laws, enacted or brought into force and effect by the Government of the Republic of Fiji or any other Government Authority having jurisdiction over the Parties or the Project, including rules, regulations, guidelines (whether having the force of law or not) and notifications made thereunder, 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 any permissions, clearances, concessions, authorisations, consents, licences, permits, rulings, exemptions, no objection certificates, resolutions, filings, orders, notarisations, registrations or approvals of whatsoever nature that are required to be obtained from time to time in connection with the Project, and for generally performing the obligations contemplated by this Agreement in accordance with the Applicable Laws.

Arbitration Act

means the Arbitration Act 1965.

Artefacts

means all artefacts, fossils, bones, coins, articles of value or antiquity, structures and other remains or things of scientific, geological, sociological, cultural, historical or archaeological interest, or otherwise monetary value.

Ba Hospital

means the Ba Hospital, located at the Ba Hospital Site, with at least 70 (seventy) Beds and includes, (a) the Ba Hospital Assets; and (b) the Ba Hospital Site, as the same is to be constructed, improved, upgraded, equipped, operated and maintained by the Concessionaire in accordance with this Agreement.

Ba Hospital Annuity Payments	means the amounts, as set out in Schedule 10 (<i>Annuity Payments</i>), to be paid by the Government to the Concessionaire for the Ba Hospital during the Annuity Payment Period.
Ba Hospital Asset Register	means a register setting out, in sufficient detail, all items of the Ba Hospital Assets, to be prepared, maintained and updated by the Concessionaire in accordance with the terms of this Agreement.
Ba Hospital Assets	means, as on any relevant date, all physical and other assets, including equipment, fittings, fixtures and furniture, relating to and forming part of the Ba Hospital.
Ba Hospital Commercial Completion Date or Ba Hospital CCD	means the date on which all Ba Hospital Completion Conditions have been satisfied, as certified in the Completion Certificate issued by the Government for the Ba Hospital.
Ba Hospital Completion Conditions	<p>means, with respect to the Ba Hospital, each of the following conditions to be satisfied by the Concessionaire:</p> <ul style="list-style-type: none"> (a) completion of all Construction Works for the Ba Hospital in accordance with the requirements of this Agreement; (b) obtain EDGE Certification for the Ba Hospital; (c) all Concessionaire Applicable Permits necessary for Operating and Maintaining the Ba Hospital, including providing the Services, during the Ba Hospital Transition Phase, in accordance with the requirements of this Agreement have been obtained and are subsisting; (d) it has undertaken all Ba Hospital L&FS Corrective Actions and obtained a certificate issued by the L&FS Engineer certifying that Construction Works in relation to the Ba Hospital have been undertaken in accordance with the Applicable Laws (specifically the applicable building codes and fire safety regulations), L&FS Standards and GIIP; and (e) all insurances required for, or in connection with the Ba Hospital, in accordance with Clause 19.2 have been obtained and are subsisting, <p>in each case, to the satisfaction of the Independent Monitor.</p>
Ba Hospital Completion Long-stop Date	has the meaning ascribed to it in Clause 8.8(a).
Ba Hospital Construction Period	means the period commencing on and from the Handover Date and ending on the date falling 6 (six) months thereafter, unless extended in accordance with the terms of this Agreement.

Ba Hospital Delay Liquidated Damages	has the meaning ascribed to it in Clause 8.8(a).
Ba Hospital Deputed Staff	means the staff and personnel listed out in Schedule 4 (<i>Project Hospital Deputed Staff</i>) (but subject to Clause 9.3) to be deputed by the Government to the Concessionaire for deployment and use by the Concessionaire at the Ba Hospital during the Ba Hospital Transition Phase (and the Extended Transition Phase, if any), in accordance with the provisions of this Agreement.
Ba Hospital EHS Report and Action Plan	means, in relation to the Ba Hospital, a report prepared by the Concessionaire setting out findings of the Ba Hospital EHS Review and an action plan providing mitigation measures (and related timeline for implementation of such mitigation measures) to manage and mitigate the environment, health and safety risks identified as part of the Ba Hospital EHS Review, in accordance with Applicable Laws, E&S Standards, Specifications and Standards and GIIP.
Ba Hospital EHS Review	means, in relation to the Ba Hospital, an environment, health and safety review of the ‘as built’ Ba Hospital to identify any risks relating to environment and health and safety with respect to the design and/or construction of the Ba Hospital.
Ba Hospital EIA and EMP	means, in relation to the Ba Hospital, an environmental impact assessment undertaken and an environment management plan prepared, in August 2014, by the Ministry of Health and Medical Services, Government of the Republic of Fiji.
Ba Hospital Environmental Study	means: <ul style="list-style-type: none"> (a) Ba Hospital L&FS Audit; and (b) Ba Hospital EHS Review.
Ba Hospital Environmental Study Reports	means: <ul style="list-style-type: none"> (a) Ba Hospital EHS Report and Action Plan; (b) Ba Hospital ESMS; and (c) Ba Hospital OESMP.
Ba Hospital ESMS	means, in relation to Ba Hospital, an environmental and social management system to be prepared and maintained by the Concessionaire for the Ba Hospital in accordance with the Specifications and Standards, E&S Standards, Applicable Laws and GIIP.

Ba Hospital Existing Construction Contract	means the contract dated 4 June 2015 entered into between the Ministry of Health & Medical Services, Government of the Republic of Fiji and Yanjian, as amended from time to time.
Ba Hospital Full O&M Phase	means the period commencing on and from the end of the Ba Hospital Transition Phase (and the Extended Transition Phase, if any), and ending on the earlier of: (a) the Expiry Date; and (b) the Termination Date.
Ba Hospital Guaranteed O&M Charges	means an amount equivalent to FJD Base Rate x 4,000 per year.
Ba Hospital L&FS Audit	means an L&FS audit and risk-based analysis of the Ba Hospital.
Ba Hospital L&FS Audit Report	means, in relation to the Ba Hospital, a report prepared by the Concessionaire setting out: <ul style="list-style-type: none"> (a) findings of the Ba Hospital L&FS Audit; and (b) Ba Hospital L&FS Corrective Actions.
Ba Hospital L&FS Corrective Actions	means corrective actions, as identified by the L&FS Engineer in the Ba Hospital L&FS Audit Report, to be undertaken by the Concessionaire with respect to the Ba Hospital prior to the Ba Hospital CCD, to ensure that the Ba Hospital is in compliance with Applicable Laws relating to life and fire safety (including relevant building codes and fire safety regulations), L&FS Standards and GIIP.
Ba Hospital Lease Deed	means the lease deed (in the form set out at Schedule 16 (<i>Lease Deed</i>)) entered into or to be entered into between the Government (acting through the Director of Lands) and the Concessionaire for lease of the Ba Hospital Site to the Concessionaire.
Ba Hospital O&M Period	means the period commencing on and from the Ba Hospital CCD and ending on the earlier of: (a) Expiry Date; and (b) the Termination Date and includes, for the avoidance of doubt, the Ba Hospital Transition Phase (and the Extended Transition Phase, if any) and the Ba Hospital Full O&M Phase.
Ba Hospital OESMP	means, in relation to the Ba Hospital, an operation, environmental and social management plan developed and maintained by the Concessionaire, which, amongst other aspects, sets out measures and actions necessary to address the issues raised in Ba Hospital EIA and EMP and are required to meet Specifications and Standards, the E&S Standards, Applicable Laws and GIIP.
Ba Hospital Scheduled Commercial Completion	means the date which is 6 (six) months after the Handover Date as the same may be extended in accordance with the terms of this Agreement or with the mutual consent of both Parties.

**Date of Ba Hospital
SCCD**

Ba Hospital Site

means land admeasuring approximately 44,662 (forty-four thousand six hundred sixty-two) square metres, upon which the Ba Hospital is located, as more particularly described in Schedule 1 (*Site*).

**Ba Hospital Transferred
Assets**

means such physical and other assets, including equipment, fittings, fixtures and furniture, relating to and forming part of the Ba Hospital, which are handed over to the Concessionaire on the Handover Date and as recorded in the Ba Hospital Asset Register, as on the Handover Date, in accordance with the terms of this Agreement.

**Ba Hospital Transition
Phase**

means the period commencing on and from the Ba Hospital CCD and ending on the date falling 3 (three) months thereafter, as the same may be extended or altered in accordance with the provisions of this Agreement or otherwise with the mutual agreement of the Parties.

**Ba Hospital Transition
Plan**

means the transition plan for the Ba Hospital prepared by the Concessionaire, and approved by the Independent Monitor, in accordance with Clause 8.4(c).

Ba Mission Hospital

means the Ba Mission Hospital located at Namosau Road, Ba, Fiji.

Base Line Study

has the meaning ascribed to it in Schedule 19 (*Independent Monitor Terms of Reference*).

Base Rate

FJD (Fijian Dollar Three Thousand Two Hundred).

Beds

means the beds used for admitted Patients and includes ward beds and intensive care unit beds but does not include emergency beds or day care beds.

**Best Construction
Practices**

means works and practices which are carried out:

- (a) in a sound and workmanlike manner, with due care and skill applying internationally accepted best practice in engineering, procurement, construction and management procedures for hospital projects and similar projects;
- (b) without limiting paragraph (a), in accordance with GIIP;
- (c) with due expedition and without unreasonable or unnecessary delay;
- (d) in a manner which facilitates Best Operational Practices;

- (e) in accordance with all Applicable Laws, Applicable Permits, Designs and Drawings, Specifications and Standards, E&S Standards and the Project Hospital Transition Plan;
- (f) in a manner safe to Patients, workers, general public, Concessionaire, Concessionaire Related Parties, Government, Government Related Parties and the environment; and
- (g) with good workmanship and the use of new high and proven quality equipment, fixtures, fittings, finishes and materials of merchantable quality and free from defects.

Best Operational Practices

means the GIIP in operating, maintaining, repairing and managing a hospital similar to the Project Hospitals, and by providing services similar to the Services:

- (a) with due care and skill and applying internationally accepted practices and procedures;
- (b) with due expedition and without unnecessary or unreasonable delay;
- (c) in a manner which facilitates good technical practice and efficient operation of the Project Hospitals and does not impede or otherwise adversely affect the provision of the Services;
- (d) in accordance with all Applicable Laws, Applicable Permits, Designs and Drawings, Specifications and Standards, Service Level Standards, E&S Standards, Safety Requirements, Maintenance Requirements and the Maintenance Manual;
- (e) in a manner safe to Patients, workers, general public, Concessionaire, Concessionaire Related Parties, Government, Government Related Parties and the environment;
- (f) by the employment from time to time of adequate numbers of personnel who are appropriately experienced and properly trained to operate, maintain, repair and manage the Project Hospitals and provide the Services;
- (g) by ensuring sufficient resources, plant and equipment, consumables and supplies are available to operate, maintain, repair and manage the Project Hospitals and to provide the Services; and

- (h) by ensuring regular and proper maintenance (including routine, non-routine and life cycle maintenance and replacement) and prompt repairs of the Project Hospitals by suitably experienced and trained personnel and in accordance with the manufacturers', and/or, as the case may be, the suppliers', warranty requirements and GIIP.

Bid means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the RFT in accordance with the provisions thereof.

Bid Due Date means the last date of submission of the Bids as set out in the RFT.

Bid Process means the two-stage bidding process, undertaken by the Government to award the Project to the Selected Bidder on the terms and conditions set out in the RFT.

Bid Security means the 'Bid Security' furnished by the Selected Bidder in accordance with the terms of the RFT.

Book Value means, with respect to a Project Hospital, the aggregate written down value of the Project Hospital Assets (including capital works in progress and any completed refurbishment works) forming part of such Project Hospital as certified by the Concessionaire's statutory auditor in accordance with and using depreciation rates set forth in the IFRS, as are applicable from time to time.

For the avoidance of doubt, it is hereby clarified that for the purposes of determining the Book Value of any Project Hospital pursuant to Clause 25, the value of the Project Hospital Transferred Assets forming part of such Project Hospital shall be deemed to be FJD 1 (Fijian Dollar One).

Business Day means any day which is not a Saturday, Sunday or a public holiday in the Republic of Fiji.

Capital means any and all capital infused by the Shareholders in the Concessionaire by way of Equity Shares, preference shares or any other Securities of the Concessionaire (on a Fully Diluted Basis) or Shareholders Loans, but excluding any Financial Assistance provided by FNPF in its capacity as the Senior Lender.

Change in Law means the occurrence of any of the following events after the date falling 5 (five) Business Days prior to the Bid Due Date:

- (a) the modification, amendment, variation, alteration or repeal of any existing Applicable Law;

- (b) the enactment of any new Applicable Law or the imposition, adoption or issuance of any new Applicable Law by any Government Authority;
- (c) changes in the interpretation, application or enforcement of any Applicable Law or judgment by any court/Government Authority which has become final, conclusive and binding, as compared to such interpretation or application prior to the aforementioned date;
- (d) the introduction of a requirement for the Concessionaire to obtain any new Applicable Permit or the unlawful revocation of an Applicable Permit; or
- (e) the introduction of any new Tax or a change in the rate of an existing Tax (including any change in laws governing the taxation of the Concessionaire's income), provided that Change in Law shall exclude any tax exemptions or benefits granted (now or in the future) to the Concessionaire, but shall include the revocation or withdrawal (other than in accordance with its terms) of any tax exemption or benefit granted to the Concessionaire.

Change in Ownership

means:

- (a) any sale, transfer or disposal of any legal, beneficial or equitable interest in any or all of the Capital of the Concessionaire; and/or
- (b) any other arrangements that have or may have or which result in the same effect as paragraph (a).

Clause

means a clause of this Agreement.

Clinical Services

has the meaning ascribed to it in Schedule 6 (*Services*).

Commercial Completion Date or CCD

has the meaning ascribed to it in Clause 8.6(g).

Companies Act

means the Companies Act 2015.

Competing Facility

has the meaning ascribed to it in Clause 16.1(a)(ii).

Complainant

has the meaning ascribed to it in Clause 9.17(a)(i).

Complaint Register

has the meaning ascribed to it in Clause 9.17(a)(i).

Completion Certificate

has the meaning ascribed to it in Clause 8.6(f).

Completion Conditions	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Completion Conditions; and/or (b) the Ba Hospital, the Ba Hospital Completion Conditions, as the context may require.
Concession	has the meaning ascribed to it in Clause 2.2(a).
Concession Period	means the period commencing on and from the Handover Date and ending on the earlier of (a) the Expiry Date; and (b) the Termination Date.
Concessionaire	has the meaning ascribed to it in the array of Parties.
Concessionaire Applicable Permits	means all Applicable Permits (other than the Government Applicable Permits and Authorisations) which are required to be obtained and maintained by the Concessionaire in connection with the Project.
Concessionaire Event of Default	has the meaning ascribed to it in Clause 24.1.
Concessionaire Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) the Selected Bidder, Affiliates of the Selected Bidder, shareholders of the Concessionaire; (b) an officer, adviser, consultant, wage earner, employee or agent of the Concessionaire acting in that capacity; (c) any Subcontractor engaged by the Concessionaire and their directors, officers, wage earner, employees or agents acting in that capacity; or (d) any Person acting on behalf of the Concessionaire. <p>For the avoidance of doubt, it is clarified that the Project Hospital Deputed Staff will be deemed to be Concessionaire Related Parties for the duration of their deputation by the Government to the Concessionaire under this Agreement.</p>
Concessionaire's Patients Receivables	<p>means the aggregate of:</p> <ul style="list-style-type: none"> (a) the O&M Charges paid by the Government to the Concessionaire in the relevant Financial Year; and (b) the aggregate of all Foreign Patient Tariff charged by the Concessionaire in accordance with Clause 9.20(a) in the relevant Financial Year.
Concessionaire's Representative	has the meaning ascribed to it in Clause 4.1(a)(ii).

Conditions Precedent	has the meaning ascribed to it in Clause 3.2.
Confidential Information	means any part of this Agreement or the RFT, or any information contained herein or therein or any informational material provided to any Party pursuant to this Agreement or the RFT, all of which information shall be deemed to be confidential, except to the extent provided otherwise in this Agreement or the RFT.
Construction Period	means (a) with respect to the Lautoka Hospital, the Lautoka Hospital Construction Period; and (b) with respect to the Ba Hospital, the Ba Hospital Construction Period, as the context may require.
Construction Works	means, with respect to a Project Hospital, all works, activities and things required to be undertaken by the Concessionaire during the Construction Period for the design, procurement, construction, installation, improvement, upgradation, fitting out and completion of the Project Hospital, including procuring and installing all equipment required for, or in connection with, the Project Hospital, in each case, in accordance with the requirements of this Agreement.
Control	<p>means, with respect to a Person:</p> <ul style="list-style-type: none"> (a) the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such Person; or (b) the power, directly or indirectly, to direct or influence the management and policies of such Person by operation of law, contract or otherwise, <p>and the term ‘Controlled’ shall be construed accordingly.</p>
Cost	means all documented direct expenditure reasonably incurred by the Concessionaire in relation to the Project, as certified by the Concessionaire’s statutory auditor, whether on or off the Sites, including overhead and similar charges, but does not include profit.
CP Completion Certificate	has the meaning ascribed to it in Clause 3.5(d).
CP Completion Date	means the date falling 120 (one hundred and twenty) Business Days from the Execution Date, as the same may be extended in accordance with the terms of this Agreement or otherwise with the mutual consent of both Parties.
CP Liquidated Damages	has the meaning ascribed to it in Clause 3.6(b).
CP Long-stop Date	means the date which is 180 (one hundred and eighty) Business Days after the Execution Date, as the same may be extended in accordance with the terms of this Agreement or otherwise with the

mutual consent of both Parties.

CPI

means the Consumer Price Index published by the Fiji Bureau of Statistics, Government of the Republic of Fiji and shall include any index which substitutes the CPI, and any reference to CPI shall, unless the context otherwise requires, be construed as a reference to the CPI published on the last date of the preceding quarter.

Debt Due

means the aggregate of the following sums expressed in FJD outstanding on the Termination Date:

- (a) the principal amount of the debt provided by the Lenders for financing the Total Project Cost, including any Financial Assistance provided by FNPF in its capacity as the Senior Lender (**Principal**) (as certified by the statutory auditor of the Concessionaire), but excluding:
 - (i) working capital loans;
 - (ii) Shareholder Loans; and
 - (ii) any part of the Principal that had fallen due for repayment 2 (two) years prior to the Termination Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in sub-clause (a) until the Termination Date (and as set out in the Financial Model) but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Documents to any Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to a Government Event of Default; and
- (c) any subordinated debt (other than Shareholder Loans) which is included in the Financial Model and disbursed by the Lenders for financing the Total Project Cost,

which, taken together, shall be no more than 80% (eighty per cent) of the Total Project Cost then applicable.

For the avoidance of doubt, it is clarified that: (a) if the amount of Debt Due is more than 80% (eighty per cent) of the Total Project Cost, then for the purposes of this Agreement, the Debt Due shall be deemed to be 80% (eighty per cent) of the Total Project Cost then applicable; (b) if all or any part of the Debt Due is convertible into Equity Shares at the option of the Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal

	thereof shall be dealt with as if such conversion had not been undertaken; and any debt denominated in any currency other than FJD shall be converted into FJD using the Reference Rate for the purposes of calculating the Debt Due.
Delay Event	has the meaning ascribed to it in Clause 8.7(a).
Delay Event Notice	has the meaning ascribed to it in Clause 8.7(b).
Delay Liquidated Damages	has the meaning ascribed to it in Clause 8.8(a).
Deputed Staff Support Cost	means the amount payable by the Concessionaire to the Government for deputation by the Government of the Project Hospital Deputed Staff, calculated in accordance with Schedule 4 (<i>Project Hospital Deputed Staff</i>).
Designs and Drawings	means the designs and drawings, set out in Schedule 3 (<i>Designs and Drawings</i>), to be prepared and submitted by the Concessionaire and approved by the Independent Monitor, in accordance with Clause 8.3.
Direct Political Force Majeure Events	has the meaning ascribed to it in Clause 22.1(b)(iii).
Director of Lands	means the person appointed as the Director of Lands of Fiji.
Dispute	has the meaning ascribed to it in Clause 29.1.
Dispute Meeting	has the meaning ascribed to it in Clause 29.1.
Dispute Notice	has the meaning ascribed to it in Clause 29.1.
E&S Standards	means the current version (available at http://www.ifc.org/ehsguidelines) of the applicable IFC Performance Standards on Environmental and Social Sustainability, including “EHS Guidelines”, being the World Bank Group Environmental, Health, and Safety: (a) General Guidelines (2007); and (b) EHS Guidelines for Healthcare Facilities, as may be modified, amended, and updated from time to time.
EDGE Certification	means Excellence in Design for Greater Efficiencies, a green building standard and a certification system developed by the International Finance Corporation.
Effective Date	means the date on which all the Conditions Precedent have been satisfied by the Government and the Concessionaire in accordance with this Agreement, and as evidenced by the CP Completion Certificate.

Emergency Action	has the meaning ascribed to it in Clause 23.1(a).
Emergency Department	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Emergency Event	has the meaning ascribed to it in Clause 23.1.
Emergency Event Notice	has the meaning ascribed to it in Clause 23.1.
Emergency Step-in	has the meaning ascribed to it in Clause 23.2.
Emergency Step-in Right	has the meaning ascribed to it in Clause 23.2.
Encumbrance	means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.
Equity Shares	has the meaning ascribed to it in the SPSHA.
Escrow Account	means the interest-bearing account denominated in FJD opened or to be opened by the Government with the Escrow Bank in accordance with the Escrow Agreement.
Escrow Agreement	means the agreement, in the form set out at Schedule 17 (<i>Escrow Agreement</i>), to be executed among the Government, the Concessionaire and the Escrow Bank in relation to the opening and operations of the Escrow Account.
Escrow Bank	means the bank with which the Government opens the Escrow Account, pursuant to the Escrow Agreement.
ESIA ToR	means the terms of reference for undertaking the Lautoka Hospital ESIA, as set out in Schedule 18 (<i>ESIA ToR</i>).
Essential Areas	mean the key, life-critical areas of the Project Hospitals that must remain fully operational at all times during natural disasters, in order to protect the lives of Patients and workers and to accommodate victims of the disaster requiring urgent treatment.
Event of Default	means a Government Event of Default or a Concessionaire Event of Default, as the context may require.
Excess Foreign Patient Amount	has the meaning ascribed to it in Clause 9.20(e).
Excess Foreign Patients	has the meaning ascribed to it in Clause 9.20(e).
Execution Date	means the date of signing of this Agreement by both Parties.

Existing Construction Contracts	means: <ul style="list-style-type: none"> (a) in the case of the Lautoka Hospital, the Lautoka Hospital Existing Construction Contracts; and (b) in the case of the Ba Hospital, the Ba Hospital Existing Construction Contract.
Expiry Date	means the Initial Expiry Date or, if extended in accordance with the terms of this Agreement, the Extended Expiry Date.
Extended Expiry Date	means the date falling on the 40 th (fortieth) anniversary of the date on which both the Project Hospitals have achieved CCD unless extended in accordance with the terms of this Agreement.
Extended Transition Phase	has the meaning ascribed to it in Clause 9.6(a).
Facilitation Officer	has the meaning ascribed to it in Clause 4.1(a)(i)(C).
Financial Assistance	means all funded and non-funded financial assistance, including loans, advances and guarantees or any re-financing that the Concessionaire may avail of for the Project from the Lenders.
Financial Capacity	means the financial capacity and strength of the Selected Bidder determined in accordance with the RFT.
Financial Close	means, the date on which the Financing Documents become effective, the conditions precedent under the Financing Documents for disbursements are fulfilled (other than any condition precedent requiring Handover of the Project Hospitals to be completed) and the Concessionaire has access to the Financial Assistance (but for satisfaction of the aforementioned condition precedent).
Financial Default	has the meaning ascribed to it in Schedule 20 (<i>Substitution Agreement</i>).
Financial Model	means the financial model adopted by the Lenders in a form satisfactory to the Government, specifically setting forth the capital and operating costs of the Project Hospitals, recapitalisation for replacement of medical equipment, maintenance costs for the Project Hospitals and revenues therefrom on the basis on which the financial viability of the Project has been determined by the Lenders, and includes a description of the demand and cost assumptions and parameters used for making calculations and projections therein, as the same may be amended from time to time in accordance with this Agreement.
Financial Proposal	means the financial proposal submitted by the Selected Bidder in accordance with the RFT.

Financial Year	means each 12-month period commencing on 1 August of one calendar year and ending on 31 July of the next calendar year.
Financing Documents	means, collectively, the documents entered into or to be entered into by the Concessionaire with the Lenders, in respect of any Financial Assistance and includes any document creating a Security in favour of the Lenders.
Fit for the Intended Purposes	<p>means that a Project Hospital (or any part, including any equipment forming part, thereof):</p> <p>(a) as on the Project Hospital CCD and during the O&M Period for such Project Hospital or part thereof, meets each of the purposes and functions of the Project Hospital (or any part thereof) set out in or which can be reasonably inferred from the Specifications and Standards, Designs and Drawings, Applicable Laws, Applicable Permits and all other requirements of this Agreement, in each case, with respect to such Project Hospital; and</p> <p>(b) during the O&M Period, are capable of enabling the Concessionaire to provide the Services so as to meet the Service Level Standards applicable to such Project Hospital,</p> <p>and ‘Fitness for the Intended Purpose’ shall be construed accordingly.</p>
Fixed Tariff	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
FJD	means Fijian dollar, being the lawful currency of the Republic of Fiji.
FM Notice	has the meaning ascribed to it in Clause 22.2(a).
FNPF	has the meaning ascribed to it in Recital E.
Force Majeure Event	has the meaning ascribed to it in Clause 22.1(a).
Foreign Patient	<p>means a person who is not a Fijian citizen and who, (a) in the case of Lautoka Hospital, avails or seeks to avail any Clinical Services at Lautoka Hospital after the Handover Date; (b) in the case of Ba Hospital, avails or seeks to avail any Clinical Services at Ba Hospital after the Ba Hospital CCD, and excludes any non-Fijian citizen: (A) who has been presented at the Emergency Department; or (B) who is nominated by the Government to avail Clinical Services at the Project Hospital, in accordance with the provisions of this Agreement and the Applicable Laws.</p>

For the avoidance of doubt, it is clarified that a person who is not a Fijian citizen and has been nominated by the Government to avail

	Clinical Services at a Project Hospital shall be deemed to be treated as a Fijian citizen for the purposes of this Agreement.
Foreign Patient Tariff	means the tariff charged by the Concessionaire from the Foreign Patient for rendering Services to the Foreign Patient at the Project Hospitals.
Foreign Patient Tariff Differential Amount	has the meaning ascribed to it in Clause 9.20(b).
Full O&M Phase	means, with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Full O&M Phase; and (b) the Ba Hospital, the Ba Hospital Full O&M Phase.
Full O&M Phase SLS	means, for each Project Hospital, the minimum standards of Services to be provided by the Concessionaire at such Project Hospital during the Full O&M Phase, as set out in Schedule 7 (<i>Service Level Standards and Performance Liquidated Damages</i>).
Fully Diluted Basis	means the aggregate issued and outstanding share capital of the Concessionaire, calculated as if: (a) all Securities which are convertible into, exercisable or exchangeable for Equity Shares of the Concessionaire had been converted, exercised or exchanged to the fullest extent of their terms; (b) all Securities issuable pursuant to contractual or other obligations of the Concessionaire had been issued; and (c) all Securities of the Concessionaire reserved for issuance to the employees of the Concessionaire, consultants or directors of the Concessionaire (if any) had been exercised or issued in full.
Fundamental Change in Law	means any Change in Law that: <ul style="list-style-type: none"> (a) renders unenforceable, illegal, invalid or void any material right or material obligation of the Concessionaire under this Agreement; or (b) renders a material part of this Agreement invalid, illegal or unenforceable; or (c) results in the Concessionaire being deprived of the whole or a substantial part of the benefit of this Agreement.
Good International Industry Practice or GIIP	means exercise of that degree of skill, care, diligence, efficiency, prudence and foresight which would be expected from a skilled and experienced person when working with a hospital of a commensurate type, size and value to the Project Hospitals, and the outcome of such exercise should be that the Concessionaire employs, amongst others, the most appropriate technologies in the Project-specific circumstances.

GOPD	means the general outpatient department at the relevant Project Hospital.
Government	has the meaning ascribed to it in the array of Parties.
Government Applicable Permits and Authorisations	means all Applicable Permits (other than the Concessionaire Applicable Permits) which are required to be obtained and maintained by the Government in connection with the Project.
Government Authority	means the Government of the Republic of Fiji, any provincial or local government or any other ministry, governmental department, commission, board, body, bureau, agency, authority, instrumentality, inspectorate, statutory corporation or body corporate (other than a company) over which the Government of the Republic of Fiji or any provincial or local government exercises control, company wholly-owned by the Government of the Republic of Fiji or any provincial or local government, court, tribunal or other judicial or administrative body or official or person, having jurisdiction over the Concessionaire, the Sites, the Project and the performance of obligations and exercise of the rights of the Parties in accordance with this Agreement.
Government Event of Default	has the meaning ascribed to it in Clause 24.3.
Government Provided Services	means the services to be provided or procured by the Government at or with respect to the Project Hospitals during the O&M Period, for each Project Hospital, in accordance with the terms of this Agreement and as set out in Schedule 9 (<i>Government Provided Services</i>).
Government Related Parties	<p>means any of the following:</p> <ul style="list-style-type: none"> (a) an officer, servant, employee or agent of the Government, acting in that capacity; (b) any contractor or subcontractor of the Government and their directors, officers, servants, employees or agents, acting in that capacity; or (c) any Person acting on behalf of the Government, <p>in each case only if connected directly or indirectly to the Project.</p> <p>For the avoidance of doubt, it is clarified that ‘Government Related Parties’ does not include the Concessionaire, the Selected Bidder or FNPF.</p>
Government Step-out	has the meaning ascribed to it in Clause 23.3.

Government Taken-over Hospital	has the meaning ascribed to it in Clause 23.5(c).
Government's Representative	means the person appointed by the Government as its representative.
Guaranteed O&M Charges	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Guaranteed O&M Charges; and/or (b) the Ba Hospital, the Ba Hospital Guaranteed O&M Charges, as the context may require.
Hand-back Conditions	mean the conditions, described in greater detail in Schedule 12 (<i>Hand-back Conditions</i>), in which the Project Hospitals shall be handed back by the Concessionaire to the Government or any entity nominated by the Government on expiry or early termination of this Agreement.
Hand-back Requirements	means the obligations of the Concessionaire in relation to transfer of the Project Hospitals back to the Government upon the expiry or early termination of this Agreement, as set out in Clause 26.3.
Handover	means the handover of the Project Hospitals by the Government to the Concessionaire and completion of all other activities required to be completed on the Handover Date in accordance with Clause 5.
Handover Date	has the meaning ascribed to it in Clause 5.1.
Handover Notice	has the meaning ascribed to it in Clause 5.1.
HLKJB	means Houn Lee-Kaba Jacob Limited.
Hospital Information System	means the hospital information system to be installed by the Concessionaire in each of the Project Hospitals in accordance with the terms of this Agreement.
IFRS	means the International Financial Reporting Standards.
IM Completion Certificate	has the meaning ascribed to it in Clause 8.6(e).
Independent Monitor	has the meaning ascribed to it in Clause 11.1.
Independent Monitor Terms of Reference	means the terms of reference for the appointment of and the duties of the Independent Monitor that are set out in Schedule 19 (<i>Independent Monitor Terms of Reference</i>).
Indirect Political Force Majeure Events	has the meaning ascribed to it in Clause 22.1(b)(ii).
Initial EHS Corrective Actions	means corrective actions to be undertaken by the Concessionaire with respect to the Lautoka Hospital prior to the end of the Lautoka Hospital Transition Phase to ensure that the Lautoka Hospital, as on

	the completion of the Lautoka Hospital Transition Phase, is in compliance with Applicable Laws relating to environment and health and safety risks, as identified in the Lautoka Hospital EHS Report and Action Plan (and approved by the Independent Monitor in accordance with Clause 4.2(g)).
Initial Expiry Date	means the date falling on the 20 th (twentieth) anniversary of the date on which both the Project Hospitals have achieved CCD.
Inspection Report	has the meaning ascribed to it in Clause 8.5(b)(i).
Interim Phase SLS	means the minimum standards of Services to be provided by the Concessionaire at the Lautoka Hospital during the Lautoka Hospital Interim Phase, as set out in Schedule 7 (<i>Service Level Standards and Performance Liquidated Damages</i>).
Invoice	means the Annuity Payment Invoice and/or the O&M Charges Invoice, as the context may require.
Invoiced Month	has the meaning ascribed to in Clause 17.7(b).
JCI	means Joint Commission International.
L&FS	means life and fire safety.
L&FS Engineer	means an accredited and qualified engineer appointed by the Concessionaire to undertake the Ba Hospital L&FS Audit and the Lautoka Hospital L&FS Audit and perform other functions required under this Agreement, in accordance with the Applicable Laws, L&FS Standards and GIIP.
L&FS Standards	means the standards prescribed under any internationally accepted life and fire safety standards such as the US Life Safety Code (NFPA).
Lautoka Hospital	<p>means, Lautoka Hospital, located at the Lautoka Hospital Site, with at least 305 (three hundred and five) Beds and includes:</p> <ul style="list-style-type: none"> (a) the Lautoka Hospital Assets; and (b) the Lautoka Hospital Site, <p>to be constructed, equipped, operated and maintained by the Concessionaire in accordance with this Agreement, and includes the Student Hostel Building to be constructed and equipped by the Concessionaire and transferred to the Government in accordance with Clause 8.10.</p> <p>Provided that, on and from the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate, the Student</p>

Hostel Building shall, for the purposes of this Agreement, cease to be a part of the Lautoka Hospital.

Lautoka Hospital Annuity Payments	means amounts, as set out in Schedule 10 (<i>Annuity Payments</i>), to be paid by the Government to the Concessionaire for the Lautoka Hospital during the Annuity Payment Period.
Lautoka Hospital Asset Register	means a register setting out, in sufficient detail, all items of the Lautoka Hospital Assets, to be prepared, maintained and updated by the Concessionaire in accordance with the terms of this Agreement.
Lautoka Hospital Assets	means, as on any relevant date, all physical and other assets, including equipment, fittings, fixtures and furniture, relating to and forming part of the Lautoka Hospital.
Lautoka Hospital Augmented Capacity	means the additional capacity developed for the Lautoka Hospital, in accordance with Clause 14.
Lautoka Hospital Capacity Expansion	has the meaning ascribed to it in Clause 14.1.
Lautoka Hospital Commercial Completion Date or Lautoka Hospital CCD	means the date on which all Lautoka Hospital Completion Conditions have been satisfied, as certified in the Completion Certificate issued by the Government for the Lautoka Hospital.
Lautoka Hospital Completion Conditions	<p>means, with respect to the Lautoka Hospital, each of the following conditions to be satisfied by the Concessionaire:</p> <ul style="list-style-type: none">(a) completion of all Construction Works for the Lautoka Hospital in accordance with the requirements of this Agreement;(b) obtain EDGE Certification for the Lautoka Hospital;(c) submission of 4 (four) hard copies and 1 (one) soft copy on a compact disc of complete sets of the “as-built” drawings of the Lautoka Hospital;(d) deployment of sufficient staff at the Lautoka Hospital for carrying out the Operations and Maintenance of the Lautoka Hospital, including being able to demonstrate the ability of the Concessionaire to deliver the Services in accordance with the terms of this Agreement during the Lautoka Hospital Full O&M Phase;(e) all Concessionaire Applicable Permits necessary for Operating and Maintaining the Lautoka Hospital, including providing the Services during the Lautoka Hospital Full

O&M Phase in accordance with the requirements of this Agreement have been obtained and are subsisting;

- (f) fulfilling Student Hostel Building Completion Conditions and issuance (or deemed issuance) of the Student Hostel Building Vesting Certificate;
- (g) obtain a certificate issued by the L&FS Engineer certifying that Construction Works in relation to the Lautoka Hospital have been undertaken and implemented in accordance with the Applicable Laws (specifically the applicable building codes and fire safety regulations), L&FS Standards and GIIP; and
- (h) all insurances required for, or in connection with, the Lautoka Hospital in accordance with Clause 19.2 have been obtained and are subsisting,

in each case, to the satisfaction of the Independent Monitor.

**Lautoka Hospital
Completion Long-stop
Date**

has the meaning ascribed to it in Clause 8.8(a).

**Lautoka Hospital
Construction Period**

means the period commencing on and from the Handover Date and ending on the date falling 36 (thirty-six) months thereafter, unless extended in accordance with the terms of this Agreement.

**Lautoka Hospital Delay
Liquidated Damages**

has the meaning ascribed to it in Clause 8.8(a).

**Lautoka Hospital
Deputed Staff**

means the staff and personnel listed out in Schedule 4 (*Project Hospital Deputed Staff*) (but subject to Clause 9.3) to be deputed by the Government to the Concessionaire for deployment and use by the Concessionaire at the Lautoka Hospital during the Lautoka Hospital Transition Phase (and the Extended Transition Phase, if any), in accordance with the provisions of this Agreement.

**Lautoka Hospital EHS
Report and Action Plan**

means, in relation to the Lautoka Hospital, a report prepared by the Concessionaire setting out findings of the Lautoka Hospital EHS Review and an action plan providing mitigation measures (and related timeline for implementation of such mitigation measures) to manage and mitigate the environment, health and safety risks identified as part of the Lautoka Hospital EHS Review, in accordance with Applicable Laws, E&S Standards, Specifications and Standards and GIIP.

**Lautoka Hospital EHS
Review**

means, in relation to the Lautoka Hospital, an environment, health and safety review of the Lautoka Hospital to identify any risks that

	pose significant or imminent hazard to the Lautoka Hospital and staff, Patients and/or general public.
Lautoka Hospital Environmental Study	means: <ul style="list-style-type: none"> (a) Lautoka Hospital EHS Review; (b) Lautoka Hospital ESIA; (c) Lautoka Hospital L&FS Audit; and (d) Lautoka Hospital Land Contamination Assessment.
Lautoka Hospital Environmental Study Reports	means: <ul style="list-style-type: none"> (a) Lautoka Hospital EHS Report and Action Plan; (b) Lautoka Hospital ESIA Report; (c) Lautoka Hospital ESMP; (d) Lautoka Hospital ESMS; and (e) Lautoka Hospital Land Contamination Remediation Plan.
Lautoka Hospital ESIA	means, in relation to the Lautoka Hospital, an environmental and social impact assessment to be conducted by the Concessionaire in accordance with the Specifications and Standards, E&S Standards, ESIA ToR and the Applicable Laws.
Lautoka Hospital ESIA Report	means, in relation to the Lautoka Hospital, a report prepared by the Concessionaire setting out findings of the Lautoka Hospital ESIA.
Lautoka Hospital ESMP	means, in relation to the Lautoka Hospital, an environmental and social management plan developed and maintained by the Concessionaire for undertaking Construction Works and Operation and Maintenance of the Lautoka Hospital, which, amongst other aspects, sets out measures and actions necessary to address the issues raised in the Lautoka Hospital ESIA Report and are required to meet the requirements of the Specifications and Standards, E&S Standards and the Applicable Laws.
Lautoka Hospital ESMS	means, in relation to the Lautoka Hospital, an environmental and social management system to be prepared and maintained by the Concessionaire for the Lautoka Hospital in accordance with the Specifications and Standards, E&S Standards, the Applicable Laws and GIIP.
Lautoka Hospital Existing Construction Contract Counterparties	means HLKJB and PBSL, and the term Lautoka Hospital Existing Construction Contract Counterparty shall mean any one of them, as the context may require.

Lautoka Hospital Existing Construction Contracts	means: <ul style="list-style-type: none"> (a) the agreement dated 30 June 2014 entered into between the Ministry of Health and PBSL, as amended from time to time; and (b) the agreement dated 4 April 2018 entered into between the Ministry of Health and Medical Services, the Government of the Republic of Fiji and HLKJB, as amended from time to time.
Lautoka Hospital Existing Construction Contracts Novation Date	has the meaning ascribed to it in Clause 9.2(c).
Lautoka Hospital Full O&M Phase	means the period commencing on and from the Lautoka Hospital CCD and ending on earlier of: (a) the Expiry Date; and (b) the Termination Date.
Lautoka Hospital Functional Areas	means functional areas of Lautoka Hospital set out in Schedule 2 (<i>Specifications and Standards</i>).
Lautoka Hospital Guaranteed O&M Charges	means, <ul style="list-style-type: none"> (a) during the Lautoka Hospital Transition Phase (and the Extended Transition Phase, if any), an amount equivalent to FJD Base Rate x 8,000 per year; (b) during the Lautoka Hospital Interim Phase, an amount equivalent to FJD Base Rate x 12,000 per year; and (c) during the Lautoka Hospital Full O&M Phase, an amount equivalent to FJD Base Rate x 14,000 per year.
Lautoka Hospital Initial Equipment List	means the list of equipment, set out in Schedule 2 (<i>Specifications and Standards</i>), which are required to be procured and installed at the Lautoka Hospital by the Concessionaire prior to the end of the Lautoka Hospital Transition Phase, in accordance with Clause 9.4(a)(ii).
Lautoka Hospital Initial L&FS Corrective Actions	means the corrective actions to be undertaken by the Concessionaire with respect to the Lautoka Hospital prior to the end of the Lautoka Hospital Transition Phase to ensure that the Lautoka Hospital, as on the completion of the Lautoka Hospital Transition Phase, is in compliance with Applicable Laws relating to life and fire safety (including relevant building codes and fire safety regulations) and GIIP, as identified by the L&FS Engineer in the Lautoka Hospital L&FS Audit Report (and approved by the Independent Monitor in accordance with Clause 4.2(g)).

Lautoka Hospital Interim Phase	means, with respect to the Lautoka Hospital only, the period commencing on and from the end of the Lautoka Hospital Transition Phase or the Extended Transition Phase, as the case may be, and ending on the Lautoka Hospital CCD.
Lautoka Hospital L&FS Audit	means an L&FS audit and risk based analysis of the Lautoka Hospital.
Lautoka Hospital L&FS Audit Report	means, in relation to the Lautoka Hospital, a report prepared by the Concessionaire setting out: <ul style="list-style-type: none"> (a) findings of the Lautoka Hospital L&FS Audit; and (b) the Lautoka Hospital Initial L&FS Corrective Actions.
Lautoka Hospital Land Contamination Assessment	means, in relation to the Lautoka Hospital, a land contamination assessment to be conducted by the Concessionaire in accordance with the Specifications and Standards, E&S Standards, ESIA ToR and the Applicable Laws.
Lautoka Hospital Land Contamination Remediation Plan	means, in relation to the Lautoka Hospital, a land contamination remediation plan developed by the Concessionaire in accordance with the E&S Standards, GIIP and the Applicable Laws.
Lautoka Hospital Lease Commencement Date	means the date on which the Lautoka Hospital Lease Deed has been executed and leasehold rights over the Lautoka Hospital Site become effective in accordance with the Lautoka Hospital Lease Deed.
Lautoka Hospital Lease Deed	means the lease deed (in the form set out at Schedule 16 (<i>Lease Deed</i>)) entered into or to be entered into between the Government (acting through the Director of Lands) and the Concessionaire for lease of the Lautoka Hospital Site to the Concessionaire.
Lautoka Hospital Licence Deed	means the licence deed (in the form set out at Schedule 23 (<i>Licence Deed</i>)) entered into or to be entered into between the Government (acting through the Director of Lands) and the Concessionaire for an exclusive licence of the Lautoka Hospital Site to the Concessionaire.
Lautoka Hospital O&M Period	means the period commencing on and from the Handover Date and ending on the earlier of: (a) the Expiry Date; and (b) the Termination Date and includes, for the avoidance of doubt, the Lautoka Hospital Transition Phase (and the Extended Transition Phase, if any), the Lautoka Hospital Interim Phase and the Lautoka Hospital Full O&M Phase.
Lautoka Hospital Pre CCD Non-Political FM Risk	has the meaning ascribed to it in Clause 19.2(k)(i).

**Lautoka Hospital
Scheduled Commercial
Completion Date or
Lautoka Hospital SCCD**

means the date which is 36 (thirty-six) months after the Handover Date.

Lautoka Hospital Site

means,

- (a) for the period from the Execution Date until the Lautoka Hospital Lease Commencement Date, land admeasuring approximately 117,739 (one hundred seventeen thousand seven hundred thirty-nine) square metres, upon which the Lautoka Hospital is located, as more particularly described in Schedule 1 (*Site*);
- (b) on and from the Lautoka Hospital Lease Commencement Date until the end of the Concession Period, such part of the land mentioned in paragraph (a), as is identified, earmarked and specified in the Designs and Drawings (as approved by the Independent Monitor in accordance with Clause 8.3) as required by the Concessionaire for the Lautoka Hospital under this Agreement (other than land required for the Student Hostel Building); and
- (c) on and from the Lautoka Hospital Lease Commencement Date and until the earlier of: (i) the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate; and (ii) the end of the Concession Period, the Student Hostel Building Site,

as the context may require.

**Lautoka Hospital
Transferred Assets**

means such physical and other assets, including equipment, fittings, fixtures and furniture, relating to and forming part of the Lautoka Hospital, which are handed over to the Concessionaire on the Handover Date and as recorded in the Lautoka Hospital Asset Register, as on the Handover Date, in accordance with the terms of this Agreement.

**Lautoka Hospital
Transition Phase**

means the period commencing on and from the Handover Date of the Lautoka Hospital and ending on the date falling 9 (nine) months thereafter, as the same may be extended or altered in accordance with the provisions of this Agreement or otherwise with the mutual agreement of the Parties.

**Lautoka Hospital
Transition Plan**

means the transition plan for the Lautoka Hospital prepared by the Concessionaire and approved by the Independent Monitor in accordance with Clause 8.4(c).

Lease Deed	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Lease Deed; and/or (b) the Ba Hospital, the Ba Hospital Lease Deed, as the context may require.
Lenders	includes banks, financial institutions, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide Financial Assistance to the Concessionaire under the Financing Documents, but does not include the Selected Bidder or any Affiliates of the Selected Bidder who have provided any loans, debt or financial assistance to the Concessionaire.
Lenders' Agent	means an agent appointed by the Senior Lenders to act on their behalf under the terms of the Financing Documents.
Licence Deed	means with respect to: (a) the Lautoka Hospital Site, the Lautoka Hospital Licence Deed; and/or (b) the Student Hostel Building Site, the Student Hostel Building Licence Deed, as the context may require.
Liquidated Damages	means the CP Liquidated Damages, Transition Phase Liquidated Damages, Delay Liquidated Damages, Project Hospital Accreditation Liquidated Damages and/or the Performance Liquidated Damages, as the context may require.
LOA	has the meaning ascribed to it in Recital D.
Maintenance Manual	has the meaning ascribed to it in Clause 9.11(a).
Maintenance Requirements	has the meaning ascribed to it in Clause 9.10.
Make Whole Share Capital	<p>means an amount equivalent to the Net Present Value (as on the Effective Date) of the series of net cash flows calculated as:</p> <p>(a) all distributions and payments made to Shareholders in respect of such capital contributions (in the form of distributions, dividends, principal and interest repayment of any Shareholder Loan), from time to time,</p> <p>minus</p> <p>(b) all capital contributed by Shareholders to acquire Securities and the principal amount of any Shareholder Loan, from time to time to fund the Total Project Cost,</p> <p>in each case, up to the Termination Date, and discounted at the rate of 15% (fifteen per cent) per annum to the Effective Date.</p>

	If the Net Present Value is either zero or a positive figure, then the Make Whole Share Capital will be deemed to be zero.
Material Adverse Effect	means the effect of any act or event, which materially and adversely affects the ability of any Party to exercise its rights or perform any of its obligations under and in accordance with this Agreement and/or causes a material financial burden or loss to any Party.
Material Subcontract	means a Subcontract: <ul style="list-style-type: none"> (a) for procurement of goods, materials, labour or services of value exceeding FJD 1,000,000 (Fijian Dollar One Million); or (b) for providing any Clinical Services (other than any Restricted Clinical Services).
Maximum Permitted Foreign Patients	has the meaning ascribed to it in Clause 9.20(d).
Maximum Permitted Foreign Patients Retention Amount	has the meaning ascribed to it in Clause 9.20(e).
Medical Students	means students from Partner Universities nominated by the Government for on-site training at the Project Hospitals and other purposes set out in this Agreement, in accordance with Clause 9.8.
Minimum Escrow Balance	has the meaning ascribed to it in Clause 17.8(b).
Net Present Value	means, as of the date of determination, an amount calculated to bring forward to an earlier date the value of future payments, taking into account the timing of such future payments and the applicable discount rate set forth in the applicable provision of this Agreement, using the “XNPV” function in Microsoft Office Excel version 10 or the same function in any subsequent version of Microsoft Office Excel.
Non-admitted Care	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Non-Clinical Services	has the meaning ascribed to it in Schedule 6 (<i>Services</i>).
Non-Political Force Majeure Events	has the meaning ascribed to it in Clause 22.1(b)(i).
Notice of Arbitration	has the meaning ascribed to it in Clause 29.2(a).
Notice of Intent to Terminate	means a notice of intent to terminate issued by the Government in the case of a Concessionaire Event of Default (in accordance with Clause 24.2) or a notice of intent to terminate issued by the

Concessionaire in the case of a Government Event of Default (in accordance with Clause 24.4), stating, in each case, an intention to terminate this Agreement.

O&M Charges

means the charges payable by the Government to the Concessionaire for Services rendered by the Concessionaire to Patients at the Project Hospitals during the O&M Period, but excludes Services rendered by the Concessionaire to a Foreign Patient at a Project Hospital during the O&M Period.

O&M Charges Invoice

means an invoice for payment of the O&M Charges, submitted by the Concessionaire to the Government (with a copy to the Independent Monitor) in accordance with Clause 17.7.

O&M Inspection Report

has the meaning ascribed to it in Clause 9.13(c).

O&M Period

means, with respect to: (a) the Lautoka Hospital, the Lautoka Hospital O&M Period; and (b) the Ba Hospital, the Ba Hospital O&M Period.

Observation Activities

means:

- (a) observing and familiarising with the functioning of the Lautoka Hospital and the Ba Mission Hospital;
- (b) conducting a survey of the Project Hospitals (including the Sites, all physical and other assets, including equipment, fittings, fixtures and furniture, relating to and forming part of the Project Hospitals) and of the Ba Mission Hospital;
- (c) interviewing staff present at the Lautoka Hospital and Ba Mission Hospital;
- (d) undertaking Project Hospital Environmental Studies; and
- (e) preparation of the Project Hospital Asset Registers.

Observation Period

means:

- (a) in the case of the Lautoka Hospital, the period starting on and from the date on which the Government fulfils its obligations set out in Clause 4.1(a)(i), and ending on the earlier of: (i) the Handover Date; and (ii) the Termination Date; and
- (b) in the case of the Ba Mission Hospital, the period starting from the date on which the Government fulfils its obligations set out in Clause 4.1(a)(i), and ending on the earlier of: (i) the Ba Hospital CCD; and (ii) the Termination Date.

OHS	means occupational health and safety.
OPD	means the outpatient department at the relevant Project Hospital.
Operate and Maintain or O&M	means the operation, maintenance and management of the Project Hospitals and includes provision of the Services, and all modifications, Rectifications and Repairs, upgradations and improvements to or of the Project Hospitals and all matters connected with or ancillary or incidental thereto, in each case, in accordance with the terms of this Agreement, and ‘ Operation and Maintenance ’ and ‘ Operating and Maintaining ’ shall be construed accordingly.
Operational Guidelines	means the guidelines set out at Schedule 8 (<i>Operational Guidelines</i>).
Parties	means collectively the Government and the Concessionaire, and individually referred to as a Party .
Partner Universities	means collectively: <ul style="list-style-type: none"> (a) Fiji National University; (b) The University of Fiji; and (c) any other university/medical school or college approved and notified by the Government to the Concessionaire under this Agreement, and individually referred to as Partner University .
Patient	means a person who avails or seeks to avail any Clinical Services at a Project Hospital, in accordance with the provisions of this Agreement and the Applicable Laws and includes the Foreign Patients.
Patient Charter	has the meaning ascribed to it in Clause 9.19.
Patient Episode	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Payment Certificate	has the meaning ascribed to it in Clause 17.7(g).
Payment Dispute Notice	has the meaning ascribed to it in Clause 17.7(i).
PBSL	means Pacific Building Solutions Ltd.
Performance Liquidated Damages	has the meaning ascribed to it in Clause 9.15(a).
Performance Security	has the meaning ascribed to it in Clause 10.1.

Permitted Ancillary Activities	means activities set out under the heading ‘Permitted Ancillary Activities’ in Schedule 6 (<i>Services</i>).
Person	means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organisation or any other legal entity.
Price Weight	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Principal	has the meaning ascribed to it in Clause 1.1 (<i>Debt Due</i>).
Procurement Value	means with respect to any Project Hospital, the invoice value of all Project Hospital Assets (including equipment procured, capital works in progress and any completed refurbishment works) forming part of the Project Hospitals (other than all Project Hospital Transferred Assets, which shall be deemed to have a value of FJD 1 (Fijian Dollar One)) as certified by the Concessionaire’s statutory auditor in accordance with IFRS calculated on the basis of invoices paid by the Concessionaire for such Project Hospital Assets as certified by the Concessionaire’s statutory auditor.
Project	means the take-over, design, finance, procurement, construction, improvement, upgradation, equipping, fit out, completion, operation, maintenance and hand-back of the Project Hospitals in accordance with the provisions of this Agreement, and includes completing all Construction Works and carrying out all O&M (including providing the Services), as required for, or relating to the Scope of the Project as set out in this Agreement.
Project Documents	means this Agreement, the SPSHA, the Lease Deeds, the Licence Deeds, the Escrow Agreement, the Substitution Agreement and any other document designated as such by the Parties.
Project Hospital Asset Register	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Asset Register; and/or (b), the Ba Hospital, the Ba Hospital Asset Register, as the context may require.
Project Hospital Assets	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Assets; and (b) the Ba Hospital, the Ba Hospital Assets, as the context may require.
Project Hospital CCD	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital CCD; and/or (b) the Ba Hospital, the Ba Hospital CCD, as the context may require.
Project Hospital Deputed Staff	means: (a) for the Lautoka Hospital, the Lautoka Hospital Deputed Staff; and (b) for the Ba Hospital, the Ba Hospital Deputed Staff.

Project Hospital Disposed Asset Transfer Notice	has the meaning ascribed to it in Clause 9.7(d).
Project Hospital Disposed Assets	has the meaning ascribed to it in Clause 9.7(c).
Project Hospital Environmental Studies	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Environmental Study; and/or (b) the Ba Hospital, the Ba Hospital Environmental Study, as the context may require.
Project Hospital Environmental Study Reports	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Environmental Study Reports; and/or (b) the Ba Hospital, the Ba Hospital Environmental Study Reports, as the context may require.
Project Hospital ESMS	means collectively the Lautoka Hospital ESMS and the Ba Hospital ESMS.
Project Hospital Records	<p>means,</p> <ul style="list-style-type: none"> (a) in relation to the Lautoka Hospital, physical and/or electronic copies of Patient records of Patients admitted at the Lautoka Hospital and operation and maintenance records of the Lautoka Hospital; and/or (b) in relation to the Ba Hospital, <ul style="list-style-type: none"> (i) until the Ba Hospital CCD, physical and/or electronic copies of patient records of patients admitted at the Ba Mission Hospital and operation and maintenance records of the Ba Mission Hospital; and (ii) on and from the Ba Hospital CCD and until the end of the Concession Period, physical and/or electronic copies of Patient records of Patients admitted at the Ba Hospital and operation and maintenance records of the Ba Hospital, <p>as the context may require.</p>
Project Hospital Scheduled Commercial Completion Date or Project Hospital SCCD	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital SCCD; and/or (b) the Ba Hospital, the Ba Hospital SCCD, as the context may require.
Project Hospital Transferred Assets	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Transferred Assets; and/or (b) the Ba Hospital, the Ba Hospital Transferred Assets, as the context may require.

Project Hospital Transition Plan	means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Transition Plan; and/or (b) the Ba Hospital, the Ba Hospital Transition Plan, as the context may require.
Project Hospitals	means the Lautoka Hospital and the Ba Hospital and the term Project Hospital shall mean any one of them, as the context requires.
Project Hospitals Accreditation	means the accreditation of the Project Hospitals in accordance with the Accreditation Standards.
Project Hospital Accreditation Liquidated Damages	means liquidated damages payable by the Concessionaire to the Government in accordance with Clause 9.14(f).
Project Hospitals Accreditation Long-stop Date	has the meaning ascribed to it in Clause 9.14(e).
Qualifying Change in Law	means any Change in Law, which: <ul style="list-style-type: none"> (a) is directly applicable to the Project; and (b) impacts the Cost or time for undertaking the Project.
Rectify and Repair	<p>means the Concessionaire doing all that is required of it in accordance with the Specifications and Standards and the other provisions of this Agreement to rectify and/or repair any defect or deficiency in the Project Hospital (or any part thereof, including any equipment forming part thereof) or reported Service failure, including affecting a Project Hospital (or any part thereof, including any equipment failure) or Service in order to ensure that the Project Hospitals (or any part thereof including any equipment failure) are Fit for the Intended Purposes and the Concessionaire otherwise meets or exceeds the Service Level Standards.</p> <p>The terms ‘Rectified and Repaired’, ‘Rectifying and Repairing’ or ‘Rectification and Repair’ shall be construed accordingly.</p>
Reference Rate	<p>means, for the purposes of calculating the Debt Due, the exchange rate which is the lower of the exchange rate prevailing on:</p> <ul style="list-style-type: none"> (a) the date of each drawdown of the debt; and (b) the date of the Notice of Intent to Terminate, <p>and in each case the prevailing exchange rate shall be the exchange rate of the relevant currency to FJD, as published at https://www.oanda.com.</p>

Relinquished Land	has the meaning ascribed to it in Clause 7.1(a)(iv).
Required Operating Hours	means 24 (twenty-four) hours a day, 365 days a year.
Resident Doctor	means doctors employed on a temporary (including contractual) or permanent basis by the Concessionaire at a Project Hospital.
Restricted Clinical Services	means services that a hospital provides, under the direction of a qualified physician or dentist, to patients who undergo a formal admission process in the hospital, where the clinical intent or treatment goal is the provision of acute care.
RFT	has the meaning ascribed to it in Recital B.
Safety Requirements	has the meaning ascribed to it in Clause 9.12(a).
Schedule	means a schedule of this Agreement.
Scope of the Project	has the meaning ascribed to it in Clause 2.1.
Securities	means Equity Shares, preference shares, rights, options or other similar instruments or securities which are convertible into or exercisable or exchangeable for, or which carry a right to subscribe for or purchase Equity Shares or preference shares of the Concessionaire or any instrument or certificate representing a beneficial ownership interest in the Equity Shares or preference shares of the Concessionaire, including global depository receipts and American depository receipts and any other security issued by the Concessionaire, even if not convertible into Equity Shares or preference shares, that derives its value and/or return based on the financial performance of the Concessionaire or its Equity Shares or preference shares, as the case may be.
Security	means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.
Selected Bidder	means the bidder selected by the Government for award of the Project.
Selected Bidder Full Lock-in Capital	has the meaning ascribed to it in Clause 20.2(a)(ii).
Selected Bidder Full Lock-in Period	has the meaning ascribed to it in Clause 20.2(a)(ii).
Selected Bidder Initial Lock-in Capital	has the meaning ascribed to it in Clause 20.2(a)(i).
Selected Bidder Initial	has the meaning ascribed to it in Clause 20.2(a)(i).

Lock-in Period**Senior Lenders**

means the Lenders who hold *pari passu* first charge on the assets, rights, title and interests of the Concessionaire, including FNPF to the extent it provides Financial Assistance and holds *pari passu* first charge on the assets, rights, title and interests of the Concessionaire.

Service Level Standards

means with respect to: (a) each Project Hospital during the Transition Phase and the Extended Transition Phase (if applicable), the relevant Transition Phase SLS; (b) with respect to the Lautoka Hospital during the Lautoka Hospital Interim Phase, the Interim Phase SLS; and (c) with respect to each Project Hospital during the Full O&M Phase, the relevant Full O&M Phase SLS, as the context may require.

Services

means the Clinical Services and Non-Clinical Services, and such other services as set out in Schedule 6 (*Services*), and provided in accordance with the terms of this Agreement, but excludes the Government Provided Services.

Shareholder

means any Person whose name appears in the register of members of the Concessionaire.

Shareholder Loans

means any and all unsecured and subordinated loans provided to the Concessionaire by any Shareholder and/or its Affiliates.

Site

means with respect to: (a) the Lautoka Hospital, the Lautoka Hospital Site; (b) the Ba Hospital, the Ba Hospital Site; and/or (c) Student Hostel Building Site, as the context may require.

Site Visit Date

means 12 September 2018, on which the Government conducted the site visit for the bidders in accordance with the terms of the RFT.

Specialist Outpatient Service

has the meaning ascribed to it in Schedule 11 (*O&M Charges*).

Specifications and Standards

means the specifications and standards for undertaking Construction Works and Operation and Maintenance of the Project Hospitals, as set out in Schedule 2 (*Specifications and Standards*).

SPSHA

means the agreement executed between the Concessionaire, FNPF and the Selected Bidder on 16 January 2019, which, among other aspects, sets out the terms on which the FNPF has subscribed to and the Selected Bidder has purchased Securities of Health Care (Fiji) Pte Limited.

SPSHA Closing

means achieving Closing (*as defined under the SPSHA*) under the SPSHA.

Student Hostel Building

has the meaning ascribed to it in Clause 8.10(a).

Student Hostel Building Completion Certificate	has the meaning ascribed to it in Clause 8.10(b)(v).
Student Hostel Building Completion Conditions	<p>means, with respect to the Student Hostel Building, each of the following conditions to be satisfied by the Concessionaire:</p> <ul style="list-style-type: none"> (a) completion of all Construction Works for the Student Hostel Building in accordance with the requirements of this Agreement; (b) submission of 4 (four) hard copies and 1 (one) soft copy on a compact disc of complete sets of the “as-built” drawings of the Student Hostel Building; (c) obtain a certificate issued by the L&FS Engineer certifying that Construction Works in relation to the Student Hostel Building have been undertaken and implemented in accordance with the Applicable Laws (specifically the applicable building codes and fire safety regulations), L&FS Standards and GIIP; and (d) all insurances required for, or in connection with the Student Hostel Building in accordance with Clause 19.2 have been obtained and are subsisting, <p>in each case, to the satisfaction of the Independent Monitor.</p>
Student Hostel Building Licence Deed	means the licence deed (in the form set out at Schedule 23 (<i>Licence Deed</i>)) entered into or to be entered into between the Government (acting through the Director of Lands) and the Concessionaire for an exclusive licence of the Student Hostel Building Site to the Concessionaire.
Student Hostel Building Site	means the site for Student Hostel Building, as is identified, earmarked and specified in the Designs and Drawings (as approved by the Independent Monitor in accordance with Clause 8.3) as required by the Concessionaire for the purpose of constructing the Student Hostel Building in accordance with the terms of this Agreement.
Student Hostel Building Vesting Certificate	has the meaning ascribed to it in Clause 8.10(d).
Subcontract	means a contract entered into by the Concessionaire to procure any goods, materials, labour or services for or in connection with the Project or otherwise in connection with the performance of its obligations in relation to the Project.
Subcontractor	means the Concessionaire’s counterparty under any Subcontract.

Subsequent Transferee	has the meaning ascribed to it in Clause 20.2(c).
Substitution Agreement	means the substitution agreement to be executed amongst the Government, the Concessionaire and the Lenders' Agent, in the form set out in Schedule 20 (<i>Substitution Agreement</i>).
Tariff	has the meaning ascribed to it in Schedule 11 (<i>O&M Charges</i>).
Taxes	means all taxes, levies, imposts, duties and other forms of taxation, including income tax, sales tax, goods and service tax, value added tax, service tax, entry tax, corporation profits tax, advance corporation tax, capital gains tax, residential and property tax, customs and other import and export duties, excise duties, stamp duty or capital duty, and any interest, surcharge, penalty or fine in connection therewith which may be payable by the Concessionaire or the Subcontractors and the term Tax shall be construed accordingly.
Technical Capacity	means the technical capacity and experience of the Selected Bidder determined in accordance with the RFT.
Term	has the meaning ascribed to it in Clause 3.1(c).
Termination Compensation	shall mean the termination compensation payment made in accordance with Clause 25.
Termination Date	means the date on which this Agreement is terminated (in accordance with its terms).
Termination Notice	has the meaning ascribed to it in Clause 24.2(c).
Threshold Limit	has the meaning ascribed to it in Clause 21.2(e)(i).
Total Loss	means, with respect to any Project Hospital, any physical damage (including by fire) to such Project Hospital (or part thereof), to the extent that the total Cost (as estimated by the Concessionaire and verified by the Independent Monitor to its satisfaction) of Rectifying and Repairing, replacing and/or restoring the damaged portion of such Project Hospital to the same condition as existed previously would be more than 25% (twenty-five per cent) of the then total replacement Cost of such Project Hospital (as estimated by the Concessionaire and verified by the Independent Monitor to its satisfaction).
Total Project Cost	means the capital Cost incurred in constructing and financing of the Project, as set forth in the Financial Model.
Transition Phase	means, with respect to (a) the Lautoka Hospital, the Lautoka Hospital Transition Phase; and (b) the Ba Hospital, the Ba Hospital

Transition Phase and, in each case, if extended in accordance with the terms of this Agreement, then the Extended Transition Phase.

**Transition Phase
Completion Certificate**

has the meaning ascribed to it in Clause 9.5(b).

**Transition Phase
Completion Conditions**

means:

- (a) in the case of the Lautoka Hospital:
 - (i) it has engaged (whether on a permanent or temporary employment or contractual basis) sufficient number of staff for providing the Services, so as to be capable of performing, during the Lautoka Hospital Interim Phase, the relevant Services in accordance with the Interim Phase SLS;
 - (ii) all Concessionaire Applicable Permits necessary for Operating and Maintaining the Lautoka Hospital, (including providing the Services during the Lautoka Hospital Interim Phase, in accordance with the requirements of this Agreement) have been obtained and are subsisting;
 - (iii) it has undertaken all the Lautoka Hospital Initial L&FS Corrective Actions and obtained a certificate issued by the L&FS Engineer certifying that the Lautoka Hospital Initial L&FS Corrective Actions have been implemented in accordance with the Applicable Laws (specifically the applicable building codes and fire safety regulations) and GIIP;
 - (iv) issuance of the Transition Phase Construction Obligations Completion Certificate by the Independent Monitor to the Concessionaire, in accordance with Clause 9.4(b),
- (b) in the case of the Ba Hospital,
 - (i) it has engaged (whether on a permanent or temporary basis employment or on contractual basis) sufficient number of staff for providing the Services, so as to be capable of performing, during the Ba Hospital Full O&M Phase, the relevant Services in accordance with the Full O&M Phase SLS;
 - (ii) all Concessionaire Applicable Permits necessary for Operating and Maintaining the Ba Hospital,

(including providing the Services during the Ba Hospital Full O&M Phase, in accordance with the requirements of this Agreement) have been obtained and are subsisting.

Transition Phase Construction Obligation Completion Payment	means an amount of FJD 14,400,000 (Fijian Dollars Fourteen Million and Four Hundred Thousand), to be paid by the Government to the Concessionaire (in accordance with Clause 17.4), upon completion of the Transition Phase Completion Conditions in relation to the Lautoka Hospital.
Transition Phase Construction Obligations	has the meaning ascribed to it in Clause 9.4(a).
Transition Phase Construction Obligations Completion Certificate	has the meaning ascribed to it in Clause 9.4(b)(v).
Transition Phase Liquidated Damages	means liquidated damages payable by the Concessionaire to the Government in accordance with Clause 9.6(c).
Transition Phase SLS	means, for each Project Hospital, the minimum standards of Services to be provided by the Concessionaire at such Project Hospital during the Transition Phase, as set out in Schedule 7 (<i>Service Level Standards and Performance Liquidated Damages</i>).
Transition Process Guidelines	means the guidelines set out at Schedule 5 (<i>Transition Process Guidelines</i>).
Tribunal	has the meaning ascribed to it in Clause 29.2(b).
Uninsurable	means, in relation to a risk, insurance required is not available in the recognised domestic and/or Oceania insurance market in respect of that risk, provided that the uninsurability is not caused by a breach of this Agreement or Applicable Laws by, or any acts or omissions of the Concessionaire or any Concessionaire Related Parties under the relevant insurance policy.
Utility Interruption	means any one or more utilities not being available (either at all or in the necessary quantity) for use for any reason other than because of: <ul style="list-style-type: none"> (a) an act, omission or lack of diligence of the Concessionaire or any Concessionaire Related Party; or (b) a Dispute between the Concessionaire and the relevant utilities provider regardless of how or why that Dispute is initiated or by whom.
Variation	means any alteration in the Scope of the Project, Specifications and Standards or the Designs and Drawings, as instructed by the

	Government or proposed by the Concessionaire, in accordance with Clause 28.
Variation Order	means an order issued by the Government certifying its approval of a proposed Variation and recording the terms and conditions on which the proposed Variation is required to be implemented.
Variation Proposal	has the meaning ascribed to it in Clause 28.1(b).
Vesting Certificate	has the meaning ascribed to it in Clause 26.5.
Visiting Doctors	means doctors from the Partner Universities nominated by the Government, in accordance with Clause 9.8(c).
Wilful Misconduct	means an intentional or reckless breach or disregard by a Party of any of its obligations under this Agreement.
Yanjian	means Yanjian Group (Fiji) Company Limited.

1.2 Interpretation and Construction

In this Agreement, unless otherwise provided or the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Agreement are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Fijian Standard Time (taking into account Fijian Daylight Saving Time, when applicable); any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) Any default interest to be calculated and payable under this Agreement shall accrue pro rata on a monthly basis and from the respective due dates as provided for in this Agreement.
- (h) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the next Business Day.
- (i) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and

the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on its behalf only by an authorised person and shall be given on a Business Day.

- (j) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (k) The terms of the RFT 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. In the event of any discrepancy between this Agreement and the RFT, the provisions set out in this Agreement shall prevail.
- (l) The provisions of the Clauses and the Schedules of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses and the Schedules.

Provided that if there are any ambiguities, discrepancies or inconsistencies within this Agreement, the following shall apply:

- (i) between two Clauses of this Agreement, the provisions of the Clause more specific to the issue under consideration shall prevail over those in other Clauses;
 - (ii) between the requirements of two or more Schedules of this Agreement, the provisions of the Schedule more specific to the issue under consideration shall prevail over the more general;
 - (iii) between the Clauses and the Schedules, unless specified otherwise, the Clauses shall prevail over the Schedules; and
 - (iv) if there is any ambiguity, discrepancy or inconsistency regarding the requirements of quality or any standard of performance between: (A) two or more Clauses; (B) two or more Schedules; (C) the Clauses and the Schedules; and/or (D) the Applicable Laws, then, notwithstanding anything contained in this Agreement, the highest quality or standard must be applied.
- (m) In the event of any discrepancy between various documents issued by the Government as a part of the Bid Process, the following order of priority shall apply:
 - (i) this Agreement;
 - (ii) the Schedules to this Agreement; and
 - (iii) the RFT and written clarifications, if any, issued to the bidders.
- (n) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Government, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.

- (o) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (p) The Parties acknowledge that damages for specific defaults prescribed under this Agreement (including the Liquidated Damages) are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the non-defaulting Party due to failure of the defaulting Party to perform its obligations in accordance with this Agreement, and are not in the nature of a penalty.
- (q) Unless otherwise specified, damages for specific defaults prescribed under this Agreement (including the Liquidated Damages) are a debt due and payable by the defaulting Party to the non-defaulting Party and must be paid within 15 (fifteen) Business Days after the non-defaulting Party's request.
- (r) All measurements and calculations shall be in the metric system and calculations done to 4 decimal places, with the 5th (fifth) digit of 5 (five) or above being rounded up and below being rounded down.

2 SCOPE OF THE PROJECT AND GRANT OF CONCESSION

2.1 Scope of the Project

The **Scope of the Project** shall mean and include, during the Concession Period, the following:

- (a) take-over, design, finance, procure, construct, improve, upgrade, equip, fit out and complete the Project Hospitals;
- (b) Operate and Maintain the Project Hospitals;
- (c) hand-back the Project Hospitals upon end of the Concession Period;
- (d) take-over, design, finance, procure, construct, improve, upgrade, equip, fit out and transfer-back the Student Hostel Building;

in each case in accordance with the terms of this Agreement; and

- (e) perform and fulfil all other obligations of the Concessionaire under this Agreement and the matters incidental or ancillary thereto.

2.2 Grant of Concession

- (a) The Government grants to the Concessionaire, and the Concessionaire unconditionally accepts, during the Concession Period, the right, obligation and authority to take-over, design, finance, procure, construct, improve, upgrade, equip, fit out, complete, Operate and Maintain the Project Hospitals, in each case, in accordance with the terms of this Agreement (**Concession**).
- (b) Without in any way limiting the terms of this Agreement, the grant of the Concession shall oblige or entitle the Concessionaire, as the case may be, to the following:

- (i) other than to the extent expressly set out otherwise in this Agreement or as may be required under Applicable Law, access to and control over the Project Hospitals during the Concession Period, for the sole purpose of implementing the Project;
- (ii) raise funds (through both debt and equity financing) to finance the Project and create any Security in favour of the Lenders;
- (iii) complete the Transition Phase Construction Obligations on or before the end of the Lautoka Hospital Transition Phase;
- (iv) achieve Student Hostel Building Completion Conditions and transfer the Student Hostel Building to the Government on or before the Lautoka Hospital CCD;
- (v) achieve the Lautoka Hospital CCD on or before the Lautoka Hospital SCCD;
- (vi) achieve the Ba Hospital CCD on or before the Ba Hospital SCCD;
- (vii) Operate and Maintain the Project Hospitals during the O&M Period;
- (viii) undertake Permitted Ancillary Activities and at such rates as the Concessionaire deems fit;
- (ix) receive the Lautoka Hospital Annuity Payments and Ba Hospital Annuity Payments from the Government;
- (x) receive O&M Charges from the Government for Services rendered by the Concessionaire to Patients (excluding the Foreign Patients) at the Project Hospitals;
- (xi) demand and collect Foreign Patient Tariff from Foreign Patients and/or the insurance companies as the case may be, for Services rendered by the Concessionaire at the Project Hospitals;
- (xii) deputation of the Project Hospital Deputed Staff at the Project Hospitals during the Transition Phase;
- (xiii) appoint Subcontractors, agents, advisers and consultants for or in connection with the implementation of the Project;
- (xiv) bear and pay all costs, expenses and charges in connection with or incidental or ancillary to the performance of the obligations of the Concessionaire under this Agreement including all salaries and other benefits to the staff engaged by the Concessionaire; and
- (xv) hand-back each Project Hospital to the Government in accordance with the Hand-back Conditions and Hand-back Requirements upon the end of the Concession Period,

in each case, in accordance with the terms of this Agreement.

3 EFFECTIVENESS, TERM AND CONDITIONS PRECEDENT

3.1 Effectiveness and Term

- (a) This Clause 3, Clause 2, Clause 4, Clause 10, Clause 11, Clause 18, Clause 19.1, Clause 20, Clause 21, Clause 22, Clause 27, Clause 29 and Clause 30 and the related Schedules, shall come into full force and effect and be binding on the Parties on and from the Execution Date and shall continue in full force and effect until the end of the Concession Period.
- (b) The other provisions of this Agreement (other than those effective on and from the Execution Date as set out in Clause 3.1(a)) shall come into full force and effect and be binding on the Parties on and from the Effective Date and shall continue in full force and effect until the end of the Concession Period.
- (c) ***Term***

Subject to Clause 3.1(a) and 3.1(b), the term of this Agreement shall be until the Expiry Date, unless terminated earlier in accordance with the terms of this Agreement, provided that if immediately prior to the Initial Expiry Date, no Concessionaire Event of Default exists, then the term of this Agreement shall automatically be extended up to the Extended Expiry Date, unless terminated earlier in accordance with the terms of this Agreement (**Term**).

The Term may be further extended beyond the Extended Expiry Date upon mutual agreement of the Parties.

3.2 Conditions Precedent to be satisfied by the Concessionaire

The Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on or prior to the Execution Date):

- (a) SPSHA Closing having occurred in accordance with the terms of the SPSHA;
- (b) provide the Performance Security to the Government in accordance with Clause 10;
- (c) submit to the Government certified true copies of the articles of association of the Concessionaire;
- (d) obtain all Concessionaire Applicable Permits that are required for:
 - (i) achieving Financial Close;
 - (ii) take-over of physical possession of the Project Hospitals;
 - (iii) undertaking Operation and Maintenance of the Lautoka Hospital on and from the Handover Date,

and if such Concessionaire Applicable Permits are subject to any conditions, then, to the extent relevant, comply with all such conditions, such that the Concessionaire Applicable Permits are and shall be kept in full force and effect;

- (e) achieve Financial Close;
- (f) submit a copy of the executed Financing Documents and the Financial Model to the Government, duly certified by a director of the Concessionaire;
- (g) submit to the Government certified true copies of all resolutions adopted by the Shareholders and/or board of directors of the Concessionaire, as the case may be, authorising execution, delivery and performance of each of the Project Documents by the Concessionaire;
- (h) submit to the Government a legal opinion stating that: (i) this Agreement, the SPSHA, the Substitution Agreement, the Escrow Agreement, the Lautoka Hospital Licence Deed and the Ba Hospital Lease Deed have been duly executed and are legally valid, binding and enforceable in accordance with their terms against the Concessionaire; and (ii) all actions, conditions and things required by Applicable Laws to be taken, fulfilled and done (including the obtaining of any necessary Concessionaire Applicable Permits and resolutions of the board of directors) in order for the Concessionaire to enter into this Agreement, the SPSHA, the Substitution Agreement, the Escrow Agreement, the Lautoka Hospital Licence Deed and the Ba Hospital Lease Deed have been taken, fulfilled or done;
- (i) if a Selected Bidder has submitted provisional annual accounts along with the Bid, the Concessionaire shall submit to the Government: (i) a certified copy of such Selected Bidder's duly audited balance sheet, annual report, profit and loss account and cash flow statements for the latest Financial Year occurring prior to the Bid Due Date; and (ii) certificate(s) issued by the statutory auditor(s) stating that the Selected Bidder continues to meet the Financial Capacity specified in the RFT;

It is clarified that if the Selected Bidder has submitted provisional unaudited annual accounts with its Bid and upon submission of the audited annual accounts of such Selected Bidder pursuant to this Clause 3.2(i), such Selected Bidder does not continue to demonstrate the minimum Financial Capacity as prescribed in the RFT, then the Government may treat such variation as the Concessionaire's failure to satisfy the Condition Precedent set out in this Clause 3.2(i);

- (j) submit to the Government a certificate, duly attested by a director of the Concessionaire, certifying the shareholding pattern of the Concessionaire immediately before the Effective Date;
- (k) submit the Project Hospital Asset Registers to and obtain Government's approval of the Project Hospital Asset Registers in accordance with Clause 4.2(f);
- (l) within 3 (three) Business Days of appointment of the Independent Monitor, in accordance with Clause 3.4(d), submit to and obtain the Independent Monitor's approval with respect to qualification criteria for selection of an L&FS Engineer;
- (m) within 10 (ten) Business Days of approval by the Independent Monitor of the qualification criteria for selection of an L&FS Engineer, in accordance with Clause 3.2(l), appoint an appropriately qualified Person as the L&FS Engineer; and
- (n) undertake Project Hospital Environmental Studies and submit copies of each Project Hospital Environmental Study Reports duly approved by the Independent Monitor, in

accordance with Clause 4.2(g).

3.3 Conditions Precedent to be satisfied by the Government

The Government shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- (a) subject to the Escrow Agreement having been executed in accordance with Clause 3.4(b), open the Escrow Account with the Escrow Bank and fund the Escrow Account with an amount equivalent to the Minimum Escrow Balance (if any);
- (b) obtain the Government Applicable Permits and Authorisations and all approvals and consents required for the Government to: (i) enter into this Agreement and grant the Concession; and (ii) provide the Government Provided Services at the Lautoka Hospital on and from the Handover Date; and
- (c) subject to Clause 3.4(d), procure that the Independent Monitor completes the Base Line Study and submits a report to this effect to the Government and the Concessionaire.

3.4 Conditions Precedent to be satisfied jointly by Parties

The Government and Concessionaire shall satisfy the following Conditions Precedent (if not already fulfilled on the Execution Date):

- (a) execute the Substitution Agreement with the Senior Lenders;
- (b) execute the Escrow Agreement with the Escrow Bank;
- (c) execute the Ba Hospital Lease Deed;
- (d) execute the Lautoka Hospital Licence Deed; and
- (e) within 60 (sixty) Business Days from the Execution Date, appoint an appropriately qualified Person as the Independent Monitor in accordance with the requirements of Clause 11 and Schedule 19 (*Independent Monitor Terms of Reference*).

3.5 Satisfaction of Conditions Precedent

- (a) Unless otherwise specified, each Party shall satisfy or procure the satisfaction of the Conditions Precedent that it is responsible for, on or before the CP Completion Date.
- (b) Each Party shall notify the other along with relevant supporting documentation, of the satisfaction of each Condition Precedent for which it is responsible, promptly and, in any event, by no later than the CP Completion Date.
- (c) Unless otherwise specified in this Agreement, where a certified copy of a document is to be delivered under Clauses 3.2, 3.3 and 3.4, that copy must be certified as being a true and complete copy of the original by an officer of the relevant Party who is legally authorised to do so.
- (d) Upon satisfaction of the last of the Conditions Precedent set out in Clause 3.2, 3.3 or 3.4

by the Party who is responsible to satisfy such Condition Precedent, in accordance with this Clause 3, the Government shall promptly but no later than 5 (five) Business Days after the satisfaction of such Condition Precedent issue a certificate to the Concessionaire confirming that all the Conditions Precedent set out in Clauses 3.2, 3.3 and 3.4 have been fulfilled by the relevant Party (**CP Completion Certificate**).

- (e) Each Party shall cooperate and use all reasonable efforts to assist the other Party in satisfying the Conditions Precedent.

3.6 Consequences of failure to satisfy Conditions Precedent

- (a) If any Party fails to satisfy any Condition Precedent that it is required to fulfil by the CP Completion Date due to:
 - (i) a Force Majeure Event;
 - (ii) a Qualifying Change in Law; or
 - (iii) delay by the other Party in fulfilling any Condition Precedent required to be satisfied by it or in performing any other obligation under this Agreement, which impacts its ability to satisfy its Conditions Precedent (but does not include delays by the other Party that do not affect its ability to satisfy its Conditions Precedent),

then the CP Completion Date shall be extended on a day-for-day basis for the period of such delay, provided that the CP Completion Date, unless the Parties agree otherwise, shall not be extended beyond the CP Long-stop Date.

- (b) If the Concessionaire fails to satisfy any of the Conditions Precedent that it is required to fulfil by the CP Completion Date, due to reasons other than those set out in Clause 3.6(a), then the Concessionaire shall be liable to pay to the Government liquidated damages for each day of delay beyond the CP Completion Date, at the rate of 0.1% (zero-point one per cent) of the relevant Performance Security for each day of delay up to the CP Long-stop Date (**CP Liquidated Damages**).
- (c) For the avoidance of doubt, it is clarified that if the Concessionaire fails to satisfy the Conditions Precedent that it is required to fulfil by the CP Completion Date due to reasons set out in Clause 3.6(a), then the Concessionaire shall not be liable to pay any damages to the Government for such delay.
- (d) If any of the Conditions Precedent have not been satisfied or waived (by both Parties in accordance with the provisions of this Clause 3.6, including for reasons not set out in Clause 3.6 (a)) by the CP Long-stop Date, then this Agreement shall be deemed to be terminated automatically on the CP Long-stop Date.

Provided however that if the Concessionaire has failed to fulfil the Condition Precedent set out in Clause 3.2(a) on or before 20 (twenty) Business Days from the Effective Date, then the Government shall have the right to terminate this Agreement and, in such circumstances, invoke the Bid Security and no other liquidated damages shall apply on the Concessionaire.

No Condition Precedent may be waived unless both Parties agree (in writing) to such waiver. Provided, however, that the Condition Precedent set out at Clause 3.3(c) may be waived solely by the Government by issuing a notice to the Concessionaire in writing to that effect.

- (e) If this Agreement is terminated in accordance with this Clause 3, then:
 - (i) the Government shall return the Performance Security submitted by the Concessionaire after deducting CP Liquidated Damages (if any) payable by the Concessionaire which remain unpaid;
 - (ii) other than CP Liquidated Damages payable under this Clause 3.6, neither Party shall be entitled to receive any other payment or compensation from the other Party for the costs and expenses incurred by such Party in performing any of its obligations under this Agreement prior to the termination of this Agreement and no Party shall have any liability to the other Party in connection with this Agreement and the Concessionaire shall not be entitled to receive any termination compensation from the Government;
 - (iii) the Concessionaire shall hand over to the Government all documents, designs and drawings, plans, data and any Confidential Information provided by the Government to the Concessionaire prior to termination of this Agreement; and
 - (iv) the Government shall hand over to the Concessionaire all documents and Confidential Information submitted by the Concessionaire to the Government prior to termination of this Agreement.
- (f) If access to any of the Sites has been granted to the Concessionaire prior to termination of this Agreement, then upon termination of this Agreement, the Concessionaire shall clear and vacate the Sites forthwith.

4 OBSERVATION PERIOD

4.1 Appointment of Facilitation Officer and Concessionaire Representatives

- (a) Within 20 (twenty) Business Days after the Execution Date:
 - (i) the Government shall:
 - (A) provide to the Concessionaire appropriate office space within each Project Hospital premises and at the Ba Mission Hospital premises, admeasuring at least:

Name of the Hospital	Minimum Office Space Area (in square metres)
Lautoka Hospital	20
Ba Hospital	20

Ba Mission Hospital	10
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- (B) ensure that the Concessionaire is provided full access to all staff members at the Ba Mission Hospital and Lautoka Hospital, Patient data, equipment manuals and hospital designs for the purpose of carrying on the Observation Activities during the Observation Period; and
- (C) appoint a natural person to act as the **Facilitation Officer**; and
- (ii) the Concessionaire shall appoint a natural person with sufficient skill and expertise to act as the **Concessionaire's Representative**.

The Concessionaire's Representative shall monitor, coordinate and supervise the Observation Activities to be carried out by the Concessionaire, and liaise with the Facilitation Officer and the Independent Monitor during the Observation Period.

- (b) The Facilitation Officer shall liaise with the Concessionaire's Representative and the Independent Monitor during the Observation Period and to the extent reasonably practicable to do so, facilitate the Concessionaire to undertake the Observation Activities.

For the avoidance of doubt, it is clarified that the Government or the Government Related Parties (including the Facilitation Officer) shall in no way be liable for the Concessionaire or Concessionaire Related Parties' actions or inactions at the Project Hospitals during the Observation Period.

4.2 Concessionaire's Observation Rights

- (a) During the Observation Period,
 - (i) the Government shall be deemed to have provided a non-exclusive licence to the Concessionaire and the Concessionaire Related Parties to access and be upon the Project Hospitals and the Ba Mission Hospital for the purpose of carrying on the Observation Activities during the Observation Period. For the avoidance of doubt, it is clarified that in the case of the Ba Hospital, the non-exclusive licence shall remain valid until the grant of the leasehold right to the Concessionaire over the Ba Hospital Site in accordance with this Agreement and the Ba Hospital Lease Deed; and
 - (ii) the Concessionaire shall have the right to access the Project Hospitals and Ba Mission Hospital for the purposes of undertaking the Observation Activities, provided that the Concessionaire shall ensure that any Observation Activities undertaken by the Concessionaire do not hinder or obstruct the proper functioning of the Lautoka Hospital and the Ba Mission Hospital.

- (b) Unless otherwise permitted by the Government, the Concessionaire shall be permitted to depute its personnel and representatives at the Project Hospitals and the Ba Mission Hospital in order to carry out the Observation Activities, provided the maximum number of such personnel at each Project Hospital and the Ba Mission Hospital (at any given point during the Observation Period) do not, unless agreed to otherwise by the Government exceed the following limits:

Name of the Hospital	Maximum Number of Representatives
Lautoka Hospital	15
Ba Mission Hospital	5
Ba Hospital	No limit

For the avoidance of doubt, it is clarified that there is no restriction on the number of representatives that can be deputed by the Concessionaire at the Ba Hospital.

The Concessionaire may replace any representatives deputed to the Project Hospitals or the Ba Mission Hospital by giving prior written notice in accordance with Clause 4.2(c).

It is further clarified that during the Observation Period, the Concessionaire shall be permitted to bring its architects, engineers, consultants, advisers and any other Concessionaire Related Parties as may be reasonably required for the Concessionaire to undertake the Observation Activities, and such personnel shall not be counted towards the maximum number of the Concessionaire's representatives that are permitted to be deputed at the Project Hospitals and the Ba Mission Hospital, in accordance with this Clause 4.2(b).

- (c) At least 3 (three) Business Days prior to deputing any authorised representatives at the Project Hospitals or at the Ba Mission Hospital or any replacement thereof, the Concessionaire shall provide the names and other relevant details of the authorised representative to the Government's Representative, along with such other details as the Government's Representative may reasonably request.

The Parties acknowledge and agree that, during the Observation Period, the Government shall be solely responsible for operating and maintaining the Project Hospitals and the Ba Mission Hospital, and the Concessionaire shall have no right or obligation to carry out any activity (other than the right to undertake the Observation Activities) at the Project Hospitals and the Ba Mission Hospital.

- (d) The Concessionaire shall, on demand, hold harmless and indemnify the Government, the Government Related Parties from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability which may arise out of, or as a consequence of the Concessionaire or the Concessionaire Related Parties' presence at the Project Hospitals or the Ba Mission Hospital or the performance or non-performance of the Concessionaire's rights or obligations set out in this Clause 4 including, as a result of the Concessionaire (or any Concessionaire Related Party) carrying out any Observation Activity at the Project Hospitals or the Ba Mission Hospital, as the case may be.

- (e) The Government and the Government Related Parties make no representation or warranty and will have no liability to the Concessionaire or any Concessionaire Related Parties, for any loss, damage, cost or expense which may arise from or that may be incurred or suffered on account of accuracy, adequacy, correctness, completeness or reliability of the information and documents provided by the Government during the Observation Period.

Provided however, that the Concessionaire shall not be liable for any liability under this Clause 4 attributable to the Concessionaire which is on account of the Government or Government Related Parties' gross negligence and/or Wilful Misconduct.

(f) ***Project Hospital Asset Register***

- (i) At least 20 (twenty) Business Days prior to the end of the Observation Period, the Concessionaire shall submit to the Government and the Independent Monitor the Project Hospital Asset Registers, setting out in sufficient detail, a list of all assets, including civil works, equipment, fittings, fixtures and furniture, relating to, forming part of and existing at each Project Hospital, as on the date of submission of the relevant Project Hospital Asset Registers.
- (ii) Within 10 (ten) Business Days of the Concessionaire submitting the Project Hospital Asset Registers, the Independent Monitor shall notify to the Concessionaire (with a copy to the Government): (i) any inaccuracies in the relevant Project Hospital Asset Register; or (ii) its acceptance of the contents of the Project Hospital Asset Register.
- (iii) If the Independent Monitor identifies any inaccuracies in the Project Hospital Asset Registers with which the Concessionaire does not agree, then the Concessionaire and the Government (along with the Independent Monitor) shall hold consultation in good faith with the purpose of resolving such inaccuracies and agreeing upon the contents of the Project Hospital Asset Register. If the Parties fail to agree upon the contents of the Project Hospital Asset Register within 10 (ten) Business Days from the date of the Independent Monitor notifying the Parties of the inaccuracies in the Project Hospital Asset Registers, then such dispute shall be settled in accordance with the provisions of Clause 29.

(g) ***Environmental Studies and Environmental Reports***

- (i) Within 80 (eighty) Business Days after the Execution Date, the Concessionaire shall undertake and complete the Project Hospital Environmental Studies and prepare and submit the Project Hospital Environmental Study Reports to the Independent Monitor (with a copy to the Government) for review and approval.
- (ii) The Concessionaire shall undertake the Project Hospital Environmental Studies and prepare the Project Hospital Environmental Study Reports in accordance with the E&S Standards, Specifications and Standards, the Applicable Laws, Applicable Permits, GIIP and the other relevant provisions of this Agreement.
- (iii) The Independent Monitor shall, within 10 (ten) Business Days from the date of receipt of the Project Hospital Environmental Study Reports, review and (A) identify any shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance in the Project Hospital Environmental Study Reports submitted by the

Concessionaire from the provisions of this Agreement, including the requirements listed out in Clause 4.2(g)(ii); or (B) grant its approval to the Project Hospital Environmental Study Reports submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the Project Hospital Environmental Study Reports submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor.

- (iv) If the Independent Monitor identifies any such shortcoming, inaccuracy, deficiency, non-conformity or non-compliance in the Project Hospital Environmental Study Reports submitted by the Concessionaire, then the Independent Monitor may require the Concessionaire to amend or modify the Project Hospital Environmental Study Reports submitted by the Concessionaire. If the Concessionaire receives any comments, suggestions or instructions from the Independent Monitor to modify the Project Hospital Environmental Study Reports submitted by the Concessionaire, then the Concessionaire shall modify the Project Hospital Environmental Study Reports to correct any such shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance and/or address, in writing, the Independent Monitor's comments on the Project Hospital Environmental Study Reports and submit the revised Project Hospital Environmental Study Reports to the Independent Monitor (with a copy to the Government) for its approval within 10 (ten) Business Days of receipt of comments. The Independent Monitor shall, within 10 (ten) Business Days of the date of receipt of the revised Project Hospital Environmental Study Reports: (A) identify any shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance in the Project Hospital Environmental Study Reports submitted by the Concessionaire from the requirements stipulated in this Agreement, including with respect to the E&S Standards; or (B) grant its approval of the Project Hospital Environmental Study Reports submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the revised Project Hospital Environmental Study Reports submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor. The process set out in this Clause 4.2(g)(iv) shall continue until the Project Hospital Environmental Study Reports are approved or deemed to be approved by the Independent Monitor in accordance with this Clause 4.2(g)(iv).
- (v) Notwithstanding anything to the contrary, no review or observation of the Independent Monitor, or approval (including deemed approval) by the Independent Monitor of, any Project Hospital Environmental Study Reports shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Monitor or the Government be liable for the same in any manner.
- (vi) The Concessionaire shall not be entitled to any extension of time and/or costs incurred in undertaking the Project Hospital Environmental Studies or preparation and submission (including resubmission) of the Project Hospital Environmental Study Reports and complying with the requirements of this Clause 4.2(g).

5 HANDOVER

- 5.1 Within 3 (three) Business Days of the Effective Date, the Government shall notify (such notice, the **Handover Notice**) to the Concessionaire the date (such date, the **Handover Date**) on which the Government shall handover the possession and control of each Project Hospital (including the Site) to the Concessionaire. Unless the Parties agree otherwise, the Government shall ensure that the Handover Date for both the Project Hospitals shall be no later than 10 (ten) Business Days after the Effective Date and no earlier than 2 (two) Business Days after the date of the Handover Notice.
- 5.2 The Concessionaire shall be required to be present at the Site on the Handover Date specified in the Handover Notice to take-over the possession and control of each Project Hospital and the Site.
- 5.3 On the Handover Date the Government shall handover to the Concessionaire, and the Concessionaire unconditionally accepts:
- (a) the physical possession and control of and risk in the Lautoka Hospital on an “as-is-where-is” basis and free of any Encumbrances;
 - (b) the physical possession and control of and risk in the Ba Hospital on an “as-is-where-is” basis and free of any Encumbrances,

provided that the Government shall ensure that on the Handover Date, subject to normal wear and tear, the condition of both the Project Hospitals is substantially similar to the condition of the relevant Project Hospital as it was on date of the Site Visit Date;

- (c) use of and supervision and control over the Lautoka Hospital Deputed Staff, for the purposes of Operating and Maintaining the Lautoka Hospital; and
 - (d) possession and control of all Project Hospital Records in relation to the Lautoka Hospital,
- in each case, in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and GIIP.
- 5.4 The Concessionaire further undertakes to Operate and Maintain the Lautoka Hospital on and from the Handover Date in accordance with the provisions of this Agreement.
- 5.5 Unless otherwise provided, the Government provides no warranty with respect to the Project Hospital (including the Project Hospital Assets) handed-over by the Government to the Concessionaire including with respect to the Fitness for the Intended Purpose of the Project Hospitals or any Project Hospital Asset, and disclaims all liability with respect to the same, and the Concessionaire shall be deemed to have carried out its own independent analysis of the Project Hospitals (including the Project Hospital Assets).

Notwithstanding anything to the contrary, the Concessionaire shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project.

6 DISCLAIMER

- 6.1 The Concessionaire acknowledges that prior to the Execution Date, the Concessionaire has, after complete and careful diligence and examination, made an independent evaluation of the RFT,

Scope of the Project, Project Hospitals (including all Project Hospital Assets) Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Patients and all information provided by the Government or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Government makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Government in this regard.

- 6.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 6.1 and hereby acknowledges and agrees that the Government shall not be liable for the same in any manner whatsoever to the Concessionaire, Concessionaire Related Parties or any person claiming through or under any of them.
- 6.3 The Parties agree that any mistake or error in or relating to the RFT, Scope of the Project, Project Hospitals (including all Project Hospital Assets), Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of Patients and all information provided by the Government or obtained procured or gathered otherwise, 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 shall not vitiate this Agreement, nor render it void or voidable.
- 6.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 6.1, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on the part of the Government to give any notice pursuant to this Clause 6.4 shall not prejudice the disclaimer of the Government contained in Clause 6.1 and shall not in any manner shift to the Government any risks assumed by the Concessionaire pursuant to this Agreement.
- 6.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Government shall not be liable in any manner for such risks or the consequences thereof.

7 SITE

7.1 Grant of Lease and Rights over the Site

(a) *Lautoka Hospital*

- (i) Commencing on and from the Handover Date and until the Lautoka Hospital Lease Commencement Date, the Government shall grant to the Concessionaire an exclusive licence over the Lautoka Hospital Site and the Lautoka Hospital, along with all necessary rights of way, to enter upon, access, occupy and use the Lautoka Hospital Site and the Lautoka Hospital, free of all Encumbrances, in accordance with the terms of this Agreement, the Lautoka Hospital Licence Deed, Applicable Laws, and Applicable Permits and the Concessionaire accepts such licence.
- (ii) Within 10 (ten) Business Days of the approval of the Designs and Drawings for the Lautoka Hospital, in accordance with Clause 8.3, the Government and the

Concessionaire shall execute the Lautoka Hospital Lease Deed for such parts of the Lautoka Hospital Site (but excluding the Student Hostel Building Site) as identified in the Designs and Drawings for the Lautoka Hospital, approved by the Independent Monitor in accordance with Clause 8.3.

- (iii) Commencing on and from the Lautoka Hospital Lease Commencement Date and until the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate, the Government shall grant an exclusive licence to the Concessionaire over the Student Hostel Building Site, as identified in the Designs and Drawings for the construction of the Student Hostel Building (and approved by the Independent Monitor in accordance with Clause 8.3) along with all necessary rights of way, to enter upon, access, occupy and use the Student Hostel Building Site free of all Encumbrances, in accordance with the terms of this Agreement, the Student Hostel Building Licence Deed, Applicable Laws, and Applicable Permits and the Concessionaire accepts such licence. Simultaneously with the execution of the Lautoka Hospital Lease Deed, the Government and the Concessionaire shall execute the Student Hostel Building Licence Deed for the Student Hostel Building Site (as identified in the Designs and Drawings for the construction of the Student Hostel Building and approved by the Independent Monitor in accordance with Clause 8.3).
- (iv) It is clarified that on the Lautoka Hospital Lease Commencement Date, all rights of the Concessionaire (granted under this Agreement) over land which is not included in the Lautoka Hospital Lease Deed, except the Student Hostel Building Site (such land, the **Relinquished Land**) shall cease to exist.

It is clarified that, at any point after the execution of the Lautoka Hospital Lease Deed, the Concessionaire will not be permitted to alter the extent of land leased at the Lautoka Hospital Site or licenced at the Student Hostel Building Site, except with the consent of the Government, and the Relinquished Land shall revert to the Government on the Lautoka Hospital Lease Commencement Date. It is further clarified that the Government shall have no obligation to provide any licence or leasehold rights over the Relinquished Land to the Concessionaire after the execution of the Lautoka Hospital Lease Deed.

(b) ***Ba Hospital***

Commencing on and from the Handover Date and until the end of the Concession Period, the Government shall grant to the Concessionaire leasehold rights over the Ba Hospital Site and the Ba Hospital, along with all necessary rights of way, to enter upon, access, occupy and use the Ba Hospital Site and the Ba Hospital, free of all Encumbrances, in accordance with the terms of this Agreement, the Ba Hospital Lease Deed, Applicable Laws, and Applicable Permits.

- (c) The Concessionaire shall not, without the prior written consent or approval of the Government, use the Sites including the Project Hospitals for any purpose other than to implement the Project and purposes ancillary or incidental thereto, in accordance with the terms of this Agreement and the Lease Deed.
- (d) The Government warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement and the Lease Deed, occupy the Site (including the Project Hospitals) from such time that access is granted to the Concessionaire and the

Concessionaire shall have the right to enter upon the Site, access and operate the Project Hospitals during the Concession Period, to exercise its rights and fulfil its obligations under this Agreement. If the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Hospitals or Sites or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have a charge on the Site or any part thereof, the Government shall, if called upon by the Concessionaire, defend such claims and proceedings.

7.2 Right, Title and Interest in the Project Hospitals

- (a) Other than to the extent set out otherwise, ownership and title to the Project Hospitals designed, financed, constructed, improved, upgraded, fit out and equipped by the Concessionaire pursuant to this Agreement shall vest with the Concessionaire during the Concession Period.

Provided however that the ownership of the Sites shall at all times vest with the Government and the Concessionaire shall be granted a licence or leasehold rights over the Sites, in accordance with the terms of this Agreement, the relevant Licence Deed and the relevant Lease Deed.

- (b) Except as otherwise provided in this Agreement, the Licence Deed and the Lease Deed, the Concessionaire shall not:
 - (i) sell or otherwise dispose or create any Security over the Site, or any other immovable property forming part of the Project Hospitals or, in each case, any part thereof;
 - (ii) dispose of any Project Hospital Assets, unless redundant or other than for the purposes of replacement due to normal wear and tear; or
 - (iii) transfer, assign or novate any of its rights and obligations under this Agreement,without the prior written consent of the Government (such consent not being unreasonably withheld or delayed).

7.3 Site Data and Verification

- (a) The Government has made available to the Concessionaire, the layout plans and all other relevant data, studies and reports in the Government's possession in connection with the Site and the Project Hospitals. The Government however provides no warranty with respect to the information provided, and the Concessionaire shall be deemed to have carried out its own independent analysis of the same.
- (b) The Concessionaire shall further be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Site.
- (c) The Concessionaire shall also be deemed to have inspected and examined the Project Hospitals (including the Site) and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by the Government and any other

information available with respect to the Project Hospitals or the Site and to have satisfied itself as to all the relevant matters including:

- (i) the nature of the Site, including the subsurface, hydrological, climatic and general physical conditions of the Site and all buildings and structures;
 - (ii) the suitability of the Site for undertaking the Construction Works and Operation and Maintenance of the Project Hospitals, including providing the Services in each case, as required under this Agreement;
 - (iii) undertaking the Lautoka Hospital Land Contamination Assessment;
 - (iv) the condition of the utilities and infrastructure available outside and within the battery limits of the Site;
 - (v) the extent, nature and availability of labour, material, transport, accommodation, storage facilities and other facilities and resources necessary to undertake the Project;
 - (vi) the nature of design, construction work and O&M services necessary for the performance of its obligations under this Agreement;
 - (vii) Applicable Laws and Applicable Permits required to be obtained and maintained to undertake the Project;
 - (viii) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
 - (ix) the suitability and adequacy of any access roads to the Site and other utilities and facilities to be provided by the relevant Government Authority; and
 - (x) all other matters that may affect the performance of its obligations under this Agreement.
- (d) The Concessionaire acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Government, then, such error or discrepancy shall not entitle the Concessionaire to any extension of the relevant Project Hospital SCCD or compensation for additional Costs incurred by the Concessionaire. Further, any misinterpretation of the data, studies and reports provided by the Government shall not relieve the Concessionaire from the performance of its obligations under this Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 7.3(c) (i) to (x), which affect or may affect the Project or the performance of any of its obligations under this Agreement.

7.4 Unforeseen Site Conditions

Without prejudice to Clause 7.3, if during the execution of the Project, the Concessionaire encounters any adverse physical conditions, which could not have been reasonably foreseen by acting in accordance with Best Construction Practices or Best Operational Practices, as the case may be, the Concessionaire may seek a Variation in accordance with Clause 28. Upon receipt of a request for a Variation due to unforeseen conditions relating to one or both of the Sites, if, in the

opinion and sole discretion of the Independent Monitor, such conditions could not have been reasonably foreseen by a prudent developer acting in accordance with Best Construction Practices or Best Operational Practices, as the case may be, then upon the Independent Monitor's determination, the Government shall issue a Variation Order in accordance with Clause 28. Any decision of the Independent Monitor regarding the existence of any unforeseen conditions relating to such Site shall be final and binding.

7.5 Site Related Covenants

- (a) The Concessionaire agrees and undertakes that:
 - (i) the Concessionaire shall not transfer, alienate, assign, dispose of, sub-license, sub-lease or create any Security over any part of the Sites or Project Hospitals or its rights and interest in the Sites or Project Hospitals or this Agreement, other than as specifically permitted under this Agreement, the Licence Deed or the Lease Deed;
 - (ii) the Concessionaire shall not allow any encroachment on, or unauthorised occupation of any part of the Site and in the event of any encroachment or unauthorised occupation, the Concessionaire shall immediately cause such encroachment or any unauthorised occupants to be removed from the Site. The Concessionaire shall not be entitled to any extension of time or costs incurred in removal of any encroachment or any unauthorised occupants from the Site;
 - (iii) in relation to the Lautoka Hospital, the Concessionaire shall not commence any material Construction Works before completion of the remedial measures required under the Lautoka Hospital Land Contamination Remediation Plan;
 - (iv) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Concessionaire's obligations under this Agreement;
 - (v) the Concessionaire shall be wholly responsible for safety at and security of the Sites and the Project Hospitals;
 - (vi) the Concessionaire shall take all necessary measures to confine its operations, personnel and Project Hospital Assets to the Site and not encroach on any Adjoining Property or the Relinquished Land;
 - (vii) all Artefacts discovered at, on or under the Sites shall be dealt with in accordance with Applicable Laws and the Concessionaire shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such Artefact. Further, immediately upon the discovery of any such Artefact, the Concessionaire shall inform the Government of such discovery and carry out the instructions of the Government in this regard, at the Government's cost and expense;
 - (viii) the Concessionaire shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Concessionaire or the Concessionaire Related Parties;
 - (ix) the Concessionaire shall use all reasonable endeavours not to do or permit to be

done anything which might:

- (A) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Site;
- (B) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
- (C) cause any contamination or damage to any Adjoining Property,

and the Concessionaire shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused; and

- (x) if the Construction Works cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Concessionaire shall promptly and at its own cost obtain all necessary third-party consents and/or the approval of any Government Authority to undertake such Construction Works. The Government shall provide all reasonable assistance to the Concessionaire for procuring such approvals.
- (b) The Government agrees and acknowledges that the Site and, subject to the terms of this Agreement, any additional land provided by the Government to the Concessionaire in relation to the Project has been and shall be acquired, transferred and handed over to the Concessionaire in accordance with the Applicable Laws, E&S Standards and GIIP, specifically including the Applicable Laws, E&S Standards and GIIP applicable in relation to any involuntary resettlement (physical and/or economic displacement).

7.6 Access to the Government Related Parties

Notwithstanding anything to the contrary, the Concessionaire shall ensure that the Government Related Parties have access to the Site and Project Hospitals and the licence (in accordance with the Licence Deed) and the lease (in accordance with the Lease Deed) granted to the Concessionaire over the Site shall always be subject to:

- (a) the rights of the Government, the Government's Representative, the Independent Monitor, and other Government Related Parties to enter upon and access the Sites and Project Hospitals to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Agreement, provided that the Government shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct, in any material manner, undertaking of the Construction Works and/or Operation and Maintenance of the Project Hospital in any manner whatsoever;
- (b) the rights of the Government or utility providers to enter upon and access the Sites for laying or installing telegraph lines, electric lines or for any other public purpose; and
- (c) the Applicable Laws.

If any physical damage is caused to the Sites or the Project Hospitals for reasons solely and directly attributable to such access and use of the Sites by the Government, the Independent Monitor or the Government Related Parties, then the Government shall bear the costs of remedying such damage and restoring the Sites and the Project Hospitals.

8 CONSTRUCTION PHASE

8.1 Construction Related Obligations

- (a) The Concessionaire shall, at its own cost and expense, carry out and complete the Construction Works at the Project Hospitals and achieve:
 - (i) the Lautoka Hospital CCD on or before the Lautoka Hospital SCCD; and
 - (ii) the Ba Hospital CCD on or before the Ba Hospital SCCD,

in each case, in accordance with Applicable Laws, Applicable Permits, E&S Standards, the Specifications and Standards, the Designs and Drawings and Best Construction Practices, Project Hospital Transition Plan and the other provisions of this Agreement.
- (b) Without prejudice to the generality of Clause 8.1(a), the Concessionaire shall at its own cost and expense:
 - (i) ensure that the Project Hospitals are free from all defects in design, materials, and workmanship;
 - (ii) ensure that the Project Hospitals are safe, reliable and Fit for the Intended Purpose;
 - (iii) ensure that the Project Hospitals are, at all times during the O&M Period, capable of delivering the Services in accordance with the requirements of this Agreement;
 - (iv) obtain, maintain and comply with the conditions of all Applicable Permits and Applicable Laws in undertaking the Construction Works;
 - (v) provide all necessary assistance to the Independent Monitor, the Government and any Government Related Parties in undertaking inspection of the Project Hospitals, and exercising their rights, and performing their other obligations and duties, under this Agreement;
 - (vi) reasonably consider and act upon the comments/suggestions made by the Independent Monitor and/or the Government during any meetings with the Concessionaire;
 - (vii) Rectify and Repair all defects and/or deficiencies in the Project Hospitals, including any defects and/or deficiencies identified by the Independent Monitor or the Government;
 - (viii) take all necessary measures to maintain safety and security of the Site, the Project Hospital and all personnel, Patients, material and property located on or at the Site of the Project Hospitals, in accordance with the E&S Standards and all Applicable Laws;
 - (ix) ensure that all excavated materials, earthworks, waste materials and hazardous substances are disposed in accordance with the E&S Standards, Applicable Laws and Applicable Permits;
 - (x) ensure that an adequate number of suitably skilled and experienced contractors,

architects, workmen and other personnel are engaged to undertake the Project, including the Construction Works. The Concessionaire shall be solely responsible for the work performed by any of its Subcontractors, staff and labour (including any staff and labour engaged by its Subcontractors) to execute the Project (including any Construction Works) and for payment of all applicable labour charges, fees payable under Applicable Laws in connection with the skilled and unskilled manpower deployed (whether on employment or contract basis) for the Project. The Concessionaire shall ensure that its Subcontractors provide all necessary amenities and welfare facilities for the staff and labour engaged by them at the Sites and comply with all Applicable Laws. The Concessionaire shall indemnify and hold harmless the Government and the Independent Monitor from and against all claims, liabilities, expenses, costs and losses suffered or incurred by the Government or the Independent Monitor due to the Concessionaire's or any Subcontractor's failure to comply with any Applicable Laws (including labour welfare legislation);

- (xi) arrange for all equipment, machinery, tools and other resources required to undertake the Project, including the Construction Works, and be solely responsible for such equipment, machinery, tools and resources;
- (xii) maintain accurate and systematic accounts and records of goods and material utilised and other costs and expenses incurred in connection with the Construction Works for the Project Hospitals, including all invoices, receipts, vouchers, quotations and other records and documents with respect to the Project Hospitals in accordance with Applicable Laws;
- (xiii) obtain and maintain adequate insurances, in accordance with Clause 19.2; and
- (xiv) prepare and keep up-to-date, "as-built" records of the execution of the Construction Works for the Project Hospitals, showing the exact as-built locations, sizes and details of the works executed. A copy of the "as-built" records shall be kept at the Lautoka Hospital Site and the Ba Hospital Site, respectively, and be made available to the Independent Monitor and the Government for review.

8.2 Government's Rights and Obligations

During the Construction Period, the Government shall, at its own cost and expense:

- (a) comply with all its obligations under Applicable Laws and Applicable Permits;
- (b) provide reasonable assistance to the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per Applicable Laws for applying for such Applicable Permits;
- (c) ensure that the Concessionaire enjoys peaceful access to the Sites and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Sites or create any Encumbrance over any part of the Sites, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement;
- (d) cause the Independent Monitor to perform its other obligations and duties under this

Agreement; and

- (e) ensure that the Escrow Account is funded with the Minimum Escrow Balance in accordance with the requirements of the Escrow Agreement.

8.3 Designs and Drawings

- (a) Within 20 (twenty) Business Days after the Effective Date, the Concessionaire shall submit drafts of the Designs and Drawings to the Independent Monitor (with a copy to the Government) for review.
- (b) The Concessionaire shall prepare the Designs and Drawings in accordance with the E&S Standards, findings and recommendations set out in the Project Hospital Environmental Study Reports (as approved by the Independent Monitor, in accordance with Clause 4.2(g)), Specifications and Standards, the Applicable Laws, Applicable Permits, Best Construction Practices and the other provisions of this Agreement relevant to the design of the Project Hospitals, including, for the avoidance of doubt, the Student Hostel Building.

The Concessionaire shall, along with the Designs and Drawings, also submit to the Independent Monitor (with a copy to the Government) a certificate issued by the L&FS Engineer certifying that Designs and Drawings being submitted to the Independent Monitor and Government are in compliance with Applicable Laws, Applicable Permits, L&FS Standards, GIIP and other provisions of this Agreement.

- (c) The Concessionaire shall, in the Designs and Drawings for the Lautoka Hospital, identify, earmark and specify a contiguous parcel of land admeasuring no more than 50,000 (fifty thousand) square metres in aggregate to be used for undertaking the Scope of the Project in relation to the Lautoka Hospital (other than the Student Hostel Building) and potential Lautoka Hospital Capacity Expansion in accordance with the requirements of this Agreement, while ensuring the most economical and efficient use of land as may be practicable in the circumstances.
- (d) The Concessionaire shall, in the Designs and Drawings for the Lautoka Hospital, identify, earmark and specify a contiguous parcel of land to be used for undertaking the Scope of the Project in relation to the Student Hostel Building in accordance with the requirements of this Agreement, while ensuring the most economical and efficient use of land as may be practicable in the circumstances.
- (e) The Independent Monitor shall, within 20 (twenty) Business Days from the date of receipt of the Designs and Drawings, review and: (i) identify any shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance in the Designs and Drawings submitted by the Concessionaire from the provisions of this Agreement (including with respect to the extent of land required to undertake the Construction Works and Operation and Maintenance in relation to the Lautoka Hospital), including the requirements listed out in Clause 8.3(b) and the E&S Standards; or (ii) grant its approval to the Designs and Drawings submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the Designs and Drawings submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor.
- (f) If the Independent Monitor identifies any such shortcoming, inaccuracy, deficiency, non-conformity or non-compliance in the Designs and Drawings submitted by the

Concessionaire (including with respect to the extent of land required to undertake the Project), then the Independent Monitor may require the Concessionaire to amend or modify the Designs and Drawings submitted by the Concessionaire. If the Concessionaire receives any comments, suggestions or instructions from the Independent Monitor to modify the Designs and Drawings submitted by the Concessionaire, then the Concessionaire shall modify the Designs and Drawings to correct any such shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance and/or address, in writing, the Independent Monitor's comments on the Designs and Drawings and submit the revised Designs and Drawings to the Independent Monitor (with a copy to the Government) for its approval within 10 (ten) Business Days of receipt of comments. The Independent Monitor shall, within 10 (ten) Business Days of the date of receipt of the revised Designs and Drawings: (i) identify any shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance in the Designs and Drawings submitted by the Concessionaire from the requirements stipulated in this Agreement, including with respect to the extent of land required to undertake the Project and the E&S Standards; or (ii) grant its approval of the Designs and Drawings submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the revised Designs and Drawings submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor. The process set out in this Clause 8.3(f) shall continue until the Designs and Drawings are approved or deemed to be approved by the Independent Monitor in accordance with this Clause 8.3(f).

- (g) By submitting the Designs and Drawings for review by the Independent Monitor (including any revisions thereof pursuant to Clause 8.3(f)), the Concessionaire shall be deemed to have represented and warranted to the Government that it has determined and verified that the Designs and Drawings are in conformity with the requirements of this Agreement.
- (h) Notwithstanding anything to the contrary, no review or observation of the Independent Monitor, or approval (including deemed approval) of, any Designs and Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Monitor or the Government be liable for the same in any manner.
- (i) The Concessionaire shall not deviate from, or make any subsequent material modification or amendment to, the approved Designs and Drawings without the prior written approval of the Independent Monitor.
- (j) If the Concessionaire undertakes any Construction Works for the Project Hospitals prior to the approval of the Designs and Drawings, it shall do so at its own risk and the Independent Monitor shall have the right to reject any such Construction Works that do not comply with the approved Designs and Drawings.
- (k) The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Designs and Drawings and complying with the requirements of this Clause 8.3.

8.4 Project Hospital Transition Plans

- (a) ***Lautoka Hospital Transition Plan***

Within 10 (ten) Business Days after the Effective Date, the Concessionaire shall submit a

draft of the Lautoka Hospital Transition Plan to the Independent Monitor (with a copy to the Government) for review. The Lautoka Hospital Transition Plan shall include, amongst other aspects:

- (i) a detailed process plan to be followed by the Concessionaire for undertaking and completing the Construction Works with respect to the Lautoka Hospital and achieving the Lautoka Hospital CCD on or before the Lautoka Hospital SCCD;
- (ii) a detailed methodology and process plan to be followed by the Concessionaire during the Lautoka Hospital Construction Period, in relation to: (A) Operating and Maintaining the Lautoka Hospital, including providing the Services at the Lautoka Hospital; and (B) managing and transitioning Patients, staff and equipment,

in each case, in accordance with the requirements of this Agreement and specifically in compliance with the Transition Process Guidelines.

(b) ***Ba Hospital Transition Plan***

At least 30 (thirty) Business Days prior to the Ba Hospital SCCD, the Concessionaire shall submit a draft of the Ba Hospital Transition Plan to the Independent Monitor (with a copy to the Government) for review. The Ba Hospital Transition Plan shall include, amongst other aspects, a detailed methodology and process plan to be followed by the Concessionaire for managing and transitioning Patients and staff from the Ba Mission Hospital to the Ba Hospital, at or upon the Ba Hospital CCD. The Concessionaire shall prepare the Ba Hospital Transition Plan in accordance with the requirements of this Agreement and specifically in compliance with the Transition Process Guidelines.

- (c) The Independent Monitor shall, within 20 (twenty) Business Days from the date of receipt of a Project Hospital Transition Plan, review and: (i) identify any shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance in the Project Hospital Transition Plan submitted by the Concessionaire from the provisions of this Agreement, including with respect to: (A) the Lautoka Hospital, the requirements listed out in Clause 8.4(a); and (B) the Ba Hospital, the requirements listed out in Clause 8.4(b), as the case may be; or (ii) grant its approval of the Project Hospital Transition Plan submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the Project Hospital Transition Plan submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor.
- (d) If the Independent Monitor identifies any such shortcoming, inaccuracy, deficiency, non-conformity or non-compliance in a Project Hospital Transition Plan submitted by the Concessionaire, then the Independent Monitor may require the Concessionaire to amend or modify the Project Hospital Transition Plan submitted by the Concessionaire. If the Concessionaire receives any comments, suggestions or instructions from the Independent Monitor to modify any Project Hospital Transition Plan submitted by the Concessionaire, then the Concessionaire shall modify the Project Hospital Transition Plan to correct any such shortcomings, inaccuracies, deficiencies, non-conformity or non-compliance and/or address, in writing, the Independent Monitor's comments on the Project Hospital Transition Plan and submit the revised Project Hospital Transition Plan to the Independent Monitor for its approval within 10 (ten) Business Days of receipt of comments. The Independent Monitor shall, within 10 (ten) Business Days of the date of receipt of the revised Project Hospital Transition Plan: (i) identify any shortcomings, inaccuracies,

deficiencies, non-conformity or non-compliance in the revised Project Hospital Transition Plan submitted by the Concessionaire from the requirements stipulated in this Agreement, including with respect to: (A) the Lautoka Hospital, those listed out in Clause 8.4(a); and (B) the Ba Hospital, those listed out in Clause 8.4(b), as the case may be; or (ii) grant its approval of the Project Hospital Transition Plan submitted by the Concessionaire. If the Independent Monitor fails to provide any response prior to expiry of the aforesaid period, then the revised Project Hospital Transition Plan submitted by the Concessionaire shall be deemed to have been approved by the Independent Monitor. The process set out in this Clause 8.4(d) shall continue until the Project Hospital Transition Plan is approved or deemed to be approved by the Independent Monitor in accordance with this Clause 8.4(d).

- (e) By submitting a Project Hospital Transition Plan for review by the Independent Monitor (including any revisions thereof pursuant to Clause 8.4(d)), the Concessionaire shall be deemed to have represented and warranted that it has determined and verified that the Project Hospital Transition Plan submitted by the Concessionaire is in conformity with the requirements of this Agreement, including the Transition Process Guidelines, save as may otherwise be agreed (in writing) with the Government and/or the Independent Monitor.
- (f) Notwithstanding anything to the contrary, no review or observation of the Independent Monitor, or approval (including deemed approval) of any Project Hospital Transition Plan shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Monitor or the Government be liable for the same in any manner.
- (g) The Concessionaire shall not deviate from or make any subsequent material modification or amendment to the approved Project Hospital Transition Plan without the prior written approval of the Independent Monitor.
- (h) The Concessionaire shall not be entitled to any extension of time and/or costs incurred in the preparation of the Project Hospital Transition Plans and in complying with the requirements of this Clause 8.4.

8.5 Monitoring during Construction Period

(a) *Progress reports*

On and from the Handover Date and until the end of the Construction Period, the Concessionaire shall, once every 2 (two) months, submit to the Government and the Independent Monitor a report on progress of the Construction Works and shall promptly give such other relevant information as may be reasonably required by the Government and/or Independent Monitor, and specifically set out the following:

- (i) extent of progress of procurement, construction, improvement, upgradation, fitting out and equipment installation activities performed by the Concessionaire for the Project Hospitals;
- (ii) comparison of actual progress against the planned progress of works relating to procurement, construction, improvement, upgradation, fitting out and equipment installation, as the case may be, reasons for delay, if any and steps taken by the Concessionaire to mitigate the delay;

- (iii) details of any accident or hazardous incident at the Project Hospitals and the steps taken by the Concessionaire to mitigate the consequences of such accident or hazardous incident; and
- (iv) status of Rectification and Repair of defects and/or deficiencies discovered by the Independent Monitor or the Government.

(b) ***Inspection***

During the Construction Period, the Independent Monitor shall inspect:

- (i) the Project Hospitals, at least once a quarter and make a report of such inspection (**Inspection Report**) stating in reasonable detail the defects or deficiencies, if any, in the Construction Works from the requirements set out in this Agreement and with particular reference to the Specifications and Standards. It shall send a copy of the Inspection Report to the Government and the Concessionaire within 5 (five) Business Days of such inspection and upon receipt thereof, the Concessionaire shall Rectify and Repair the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of the Inspection Report by the Independent Monitor shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever; and
- (ii) the Lautoka Hospital, at least once a quarter, to verify that the Construction Works are being undertaken in accordance with the requirements of this Agreement including in accordance with E&S Standards, Lautoka Hospital ESIA, Lautoka Hospital ESMP, other environmental and social related obligations of the Concessionaire set out in this Agreement, and verify that the standard operating procedures and good management practices are being followed by the Concessionaire (in particular, but not limited to, OHS procedures and labour and working conditions).

8.6 Completion of Works

- (a) If, in the opinion of the Concessionaire, all Completion Conditions for a Project Hospital have been satisfied, it shall issue a notice to the Independent Monitor (with a copy to the Government), informing it of the satisfaction of the Completion Conditions and requiring the Independent Monitor to be present at the relevant Project Hospital on the date specified in such notice to undertake a final inspection of the Project Hospital and conduct any tests required in accordance with GIIP and to ensure that the Project Hospital complies with the requirements of this Agreement.
- (b) Within 5 (five) Business Days from the date of receipt of a notice under Clause 8.6(a), the Independent Monitor may request the Concessionaire to change the proposed date of the final inspection and tests and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 5 (five) Business Days from the date specified in the notice received from the Concessionaire under Clause 8.6(a).
- (c) The Concessionaire shall, on the date specified in the notice issued under Clause 8.6(a) or such other date as may be determined in accordance with Clause 8.6(b), undertake an inspection of the Project Hospital and carry out the tests in accordance with the instructions and under the supervision of the Independent Monitor.

- (d) If the Independent Monitor is of the opinion that any of the Completion Conditions have not been satisfied or if the Independent Monitor is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any such defects or deficiencies in the Project Hospital as identified by the Independent Monitor or revealed through the tests and/or satisfy the relevant Completion Conditions identified by the Independent Monitor and the Project Hospital shall be re-inspected and re-tested upon Rectification and Repair of such defects or deficiencies and/or satisfaction of the relevant Completion Condition. This process shall be repeated until such time that the Independent Monitor is satisfied: (i) that all Completion Conditions have been achieved; and (ii) with the results of the tests and inspection of the Project Hospitals, in accordance with the requirements of this Agreement.

For the avoidance of doubt, it is clarified that the Concessionaire shall:

- (i) bear all costs and expenses of remedying the defects and deficiencies and re-inspecting and re-testing the Project Hospital; and
 - (ii) not be entitled to any extension of time for, or on account of, remedying such defects or deficiencies or for re-inspecting or re-testing the Project Hospital.
- (e) If the Independent Monitor is satisfied: (i) that all Completion Conditions have been achieved; and (ii) with the results of the tests and inspection of the Project Hospitals, then within 5 (five) Business Days from the date of inspection and testing of the relevant Project Hospital, the Independent Monitor shall issue a certificate to the Government, with a copy to the Concessionaire, confirming satisfaction of all Completion Conditions for the relevant Project Hospital (**IM Completion Certificate**).
- (f) Within 5 (five) Business Days of receipt of the IM Completion Certificate, the Government will issue a certificate to the Concessionaire, with a copy to the Independent Monitor, confirming satisfaction of all Completion Conditions for the relevant Project Hospital (**Completion Certificate**). If the Government fails to issue the Completion Certificate within the specified time period, then the Completion Certificate shall be deemed to have been issued by the Government.
- (g) The issuance or deemed issuance of the Completion Certificate shall certify that the relevant Project Hospital has fulfilled the Completion Conditions (applicable to that Project Hospital) in accordance with the terms of this Agreement (**Commercial Completion Date** or **CCD**).
- (h) If the Independent Monitor fails to:
- (i) inspect or witness the testing of the relevant Project Hospital on the date specified in the notice issued under Clause 8.6(a) or such other date as may be agreed with the Concessionaire;
 - (ii) notify the Concessionaire of any defects or deficiencies in the relevant Project Hospital within 5 (five) Business Days from the date of inspection and testing of the relevant Project Hospital; or
 - (iii) issue the IM Completion Certificate within the relevant time period specified in this Clause 8.6,

then, such delay shall be treated as a Delay Event, which will entitle the Concessionaire to a day-for-day extension in the relevant Project Hospital SCCD.

8.7 Extension for Delay Events

- (a) Subject to the Concessionaire complying with the requirements of Clauses 8.7(b) and 8.7(d), the Concessionaire shall be entitled to a day-for-day extension of the relevant Project Hospital SCCD if there is any delay in achieving any of the Completion Conditions which is solely and directly attributable to any of the following reasons (each such event, a **Delay Event**):
 - (i) breach by the Government or the Independent Monitor of any of its/their obligations under this Agreement;
 - (ii) occurrence of a Force Majeure Event, provided that the requirements of Clause 22 have been complied with;
 - (iii) a Qualifying Change in Law;
 - (iv) any delay attributable to unforeseen site conditions in accordance with Clause 7.4;
 - (v) undue delay by the relevant Government Authority in providing any utility connection, despite the Concessionaire having applied for such utility connection expeditiously and having complied with the requirements of Applicable Laws in making such application;
 - (vi) delay caused in complying with any instructions of the Government or the Independent Monitor, which instructions are not attributable to any default of the Concessionaire.
- (b) The Concessionaire shall promptly, but in no event later than 10 (ten) Business Days after becoming aware of the occurrence of a Delay Event, provide the Government (with a copy to the Independent Monitor) with a notice (**Delay Event Notice**) of the occurrence of the Delay Event. The Delay Event Notice shall specify in sufficient detail the nature of the Delay Event, the extent of delay suffered or likely to be suffered by the Concessionaire as a direct consequence of the Delay Event and mitigation measures being taken (or proposed to be taken) by the Concessionaire.
- (c) The issuance of the Delay Event Notice in accordance with the requirements of Clause 8.7(b) shall be a condition precedent to the Concessionaire's entitlement to an extension under Clause 8.7(a).
- (d) Without prejudice to the Concessionaire's obligations to notify the Government regarding the occurrence of a Delay Event, the Concessionaire shall: (i) keep and maintain such records as reasonably required to substantiate and establish claims for extensions under Clause 8.7(a); and (ii) give the Government and the Independent Monitor access to all such records and documents or provide the Government and the Independent Monitor with copies, if so requested.
- (e) If the Concessionaire claims an extension of time in accordance with Clause 8.7(a) and the Government is of the opinion that such delay was caused or materially contributed to by

any concurrent cause or causes of delay not listed in Clause 8.7(a), then the Concessionaire shall not be entitled to any extension of time for the concurrent period of delay.

- (f) For the avoidance of doubt, it is clarified that if two or more of the Delay Events listed in Clause 8.7(a) occur concurrently, then such concurrent period shall not be counted twice in determining an extension under Clause 8.7(a).
- (g) Except as provided in Clause 8.7(a), the Concessionaire shall not be entitled to any extension of time under this Agreement for any reason whatsoever, including due to:
 - (i) delay caused in complying with any instructions of the Government or the Independent Monitor, which are attributable to any act or omission of the Concessionaire;
 - (ii) failure of any Subcontractor to commence or carry out any work within the prescribed timelines; or
 - (iii) unavailability or shortage of equipment, materials, or any other resources.
- (h) Any Dispute between the Parties with respect to the occurrence, length of subsistence or consequence of any Delay Event shall be settled in a final and binding manner in accordance with Clause 29.

8.8 Delay Liquidated Damages

- (a) Subject to Clause 8.8(b), if the Concessionaire fails to achieve (i) the Lautoka Hospital CCD by the Lautoka Hospital SCCD; or (ii) the Ba Hospital CCD by the Ba Hospital SCCD, then, for each day of delay in achieving: (A) the Lautoka Hospital CCD beyond the Lautoka Hospital SCCD, the Concessionaire shall pay to the Government liquidated damages at the rate of 0.2% (zero point two per cent) of the Performance Security for each day of delay up to 6 (six) months after the Lautoka Hospital SCCD (such date, the **Lautoka Hospital Completion Long-stop Date**, and the liquidated damages, the **Lautoka Hospital Delay Liquidated Damages**); or (B) the Ba Hospital CCD beyond the Ba Hospital SCCD, the Concessionaire shall pay to the Government liquidated damages at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay up to 6 (six) months from the Ba Hospital SCCD (such date, the **Ba Hospital Completion Long-stop Date**, and the liquidated damages, the **Ba Hospital Delay Liquidated Damages**, which together with the **Lautoka Hospital Delay Liquidated Damages**, the **Delay Liquidated Damages**).
- (b) The Parties acknowledge that the Delay Liquidated Damages are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the Government as a result of the delay in achieving the relevant Project Hospital CCD, and are not in the nature of a penalty. If, for any reason, the payment of Delay Liquidated Damages are held to be void, invalid or otherwise inoperative so as to disentitle the Government from claiming any Delay Liquidated Damages, then the Government will be entitled to claim against the Concessionaire for general damages for the delay (to the full extent possible) in achieving the relevant Project Hospital CCD by the relevant Project Hospital SCCD.
- (c) The payment or deduction of Delay Liquidated Damages shall not relieve the

Concessionaire from its obligations to undertake and complete the Construction Works with respect to the Project Hospitals, or from any of its other duties, obligations or responsibilities under this Agreement. The Concessionaire shall use and continue to use all reasonable endeavours to avoid or reduce further delay in completing the Project Hospitals.

- (d) If the Concessionaire fails to (i) achieve: (A) the Lautoka Hospital CCD by the Lautoka Hospital Completion Long-stop Date; or (B) the Ba Hospital CCD by the Ba Hospital Completion Long-stop Date, then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 24.1.

8.9 Provisional Completion of the Lautoka Hospital

Without prejudice to the obligations of the Concessionaire contained in this Clause 8, the Parties agree that if, in the opinion of the Concessionaire, the Construction Works for a new wing or building forming part of the Lautoka Hospital have been completed in accordance with the requirements of this Agreement (including such new wing or building being Fit for the Intended Purposes), then, subject to the Independent Monitor issuing a no-objection certificate for use of such new wing or building, and the Concessionaire having obtained all Applicable Permits required for the use of such new wing or building (including procuring any occupancy certificate (or other equivalent) required under Applicable Laws), the Concessionaire shall be permitted to use such new building or wing as part of the Lautoka Hospital for the provision of Services prior to the Lautoka Hospital CCD. Nothing in this Clause 8 shall in any manner impede the Concessionaire's ability to use any existing facility (including any civil structure) forming part of the Lautoka Hospital on the Handover Date, including as such facility may be refurbished by the Concessionaire pursuant to this Agreement. For the avoidance of doubt, it is clarified that the Concessionaire shall not be required to obtain any no-objection certificate from the Independent Monitor for the use of any existing facility (including any civil structure) forming part of the Lautoka Hospital on the Handover Date, including following any refurbishment of such facility carried out by the Concessionaire pursuant to this Agreement.

8.10 Student Hostel Building

- (a) The Concessionaire shall, on or before the Lautoka Hospital CCD, at its own cost and expense, carry out all works, activities and things required to be undertaken by the Concessionaire during the Construction Period for the design, procurement, construction, installation, improvement, upgradation, fitting out completion and transfer to the Government of a building to be used as hostel accommodation for university students, in accordance with the Designs and Drawings, Specifications and Standards, E&S Standards, Best Construction Practices, Applicable Laws, Applicable Permits and other requirements set out in this Agreement (**Student Hostel Building**).

- (b) ***Student Hostel Building Completion***

- (i) If, in the opinion of the Concessionaire, it has fulfilled all Student Hostel Building Completion Conditions, then it shall issue a notice to the Independent Monitor (with a copy to the Government), requiring the Independent Monitor to be present at the Student Hostel Building on the date specified in such notice to undertake an inspection of the Student Hostel Building and conduct any tests required in accordance with GIIP and to ensure that the Student Hostel Building complies with the requirements of this Agreement.

- (ii) Within 5 (five) Business Days from the date of receipt of a notice under Clause 8.10(b)(i), the Independent Monitor may request the Concessionaire to change the proposed date of the inspection and tests, and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 5 (five) Business Days from the date specified in the notice received from the Concessionaire under Clause 8.10(b)(i).
- (iii) The Concessionaire shall, on the date specified in the notice issued under Clause 8.10(b)(i) or such other date as may be determined in accordance with Clause 8.10(b)(ii), undertake an inspection of the Student Hostel Building and carry out the tests in accordance with the instructions and under the supervision of the Independent Monitor.
- (iv) If the Independent Monitor is of the opinion that any of the Student Hostel Building Completion Conditions has not been satisfied or if the Independent Monitor is not satisfied with the results of the tests or inspection, then the Concessionaire shall remedy any such defects or deficiencies in the Student Hostel Building Completion Conditions as identified by the Independent Monitor or revealed through the tests and/or satisfy the relevant Student Hostel Building Completion Conditions identified by the Independent Monitor and the Student Hostel Building shall be re-inspected and re-tested upon remedying of such defects or deficiencies and/or satisfaction of the relevant Student Hostel Building Completion Conditions. This process shall be repeated until such time that the Independent Monitor is satisfied: (i) that all Student Hostel Building Completion Conditions have been achieved; and (ii) with the results of the tests and inspection of the Student Hostel Building, in accordance with the requirements of this Agreement.

For the avoidance of doubt, it is clarified that the Concessionaire shall:

- (A) bear all costs and expenses of remedying the defects and deficiencies and re-inspecting and re-testing the Student Hostel Building; and
- (B) not be entitled to any extension of time for, or on account of, remedying such defects or deficiencies or for re-inspecting or re-testing the Student Hostel Building.
- (v) If the Independent Monitor is satisfied: (i) that all Student Hostel Building Completion Conditions have been achieved; and (ii) with the results of the tests and inspection of the Student Hostel Building, then within 5 (five) Business Days from the date of inspection and testing of the Student Hostel Building, the Independent Monitor shall issue a certificate to the Concessionaire, with a copy to the Government, confirming satisfaction of all Student Hostel Building Completion Conditions (**Student Hostel Building Completion Certificate**). If the Independent Monitor fails to issue the Student Hostel Building Completion Certificate within the specified time period, then the Student Hostel Building Completion Certificate shall be deemed to have been issued by the Independent Monitor.
- (c) Within 5 (five) Business Days of issuance or deemed issuance of the Student Hostel Building Completion Certificate, the Concessionaire shall notify to the Government the date on which the Concessionaire shall, at its own cost and expense, transfer to the

Government the title, ownership, possession and control of the Student Hostel Building (including the Student Hostel Building Site). Unless the Parties agree otherwise, the Government shall assume the title, ownership, possession and control of the Student Hostel Building on the date specified in the notice issued by the Concessionaire under this Clause 8.10(c).

- (d) Within 5 (five) Business Days of the Government assuming the title, ownership, possession and control of the Student Hostel Building, the Government shall issue a certificate to the Concessionaire (**Student Hostel Building 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 Student Hostel Building, and their vesting in the Government pursuant to this Agreement.

If the Government fails to assume title, ownership, possession and control over the Student Hostel Building or issue the Student Hostel Building Vesting Certificate within 10 (ten) Business Days of receipt of notice under Clause 8.10(c), then the Student Hostel Building Vesting Certificate shall be deemed to have been issued by the Government. From the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate, the Student Hostel Building shall, for the purposes of this Agreement, shall cease to be a part of the Lautoka Hospital and shall be deemed to be deleted from the Lautoka Hospital Asset Register.

- (e) Subject to Clause 8.10(f), from the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate, the Concessionaire shall have no obligation in relation to the Student Hostel Building.
- (f) Subject to normal wear and tear, the Concessionaire shall be liable, for 5 (five) years from the date of issuance or deemed issuance of the Student Hostel Building Vesting Certificate, to remedy any defect in the Student Hostel Building, whether latent or patent in design, engineering or workmanship in relation to the Student Hostel Building.

9 OPERATIONS AND MAINTENANCE AND PROVISION OF SERVICES

9.1 Concessionaire's Obligations

- (a) The Concessionaire shall, during the O&M Period, undertake, at its own cost and expense, the Operations and Maintenance of each of the Project Hospitals in accordance with the E&S Standards, findings and recommendations set out in the Project Hospital Environmental Study Reports (as approved by the Independent Monitor, in accordance with Clause 4.2(g)), Specifications and Standards (to the extent applicable at that time), the Designs and Drawings (to the extent applicable at that time), the Project Hospital Transition Plan, the Service Level Standards, the Applicable Laws, the Applicable Permits, the Best Operational Practices and the other requirements of this Agreement.
- (b) Without in any way affecting the generality of the foregoing, the Concessionaire's Operations and Maintenance obligations shall include:
 - (i) providing the Services during the O&M Period, such that they meet the applicable Service Level Standards;

- (ii) ensuring safe, smooth and uninterrupted treatment and care of Patients at each Project Hospital;
- (iii) making the Project Hospital available for use for the Required Operating Hours during the O&M Period;
- (iv) minimising disruption to Patient care in the event of accidents or other incidents affecting the safety and use of the Project Hospitals by providing a rapid and effective response;
- (v) undertaking routine and major maintenance including prompt Rectification and Repair of the Project Hospitals, including replacement of equipment, repairs to structures and communication systems;
- (vi) preventing, with the assistance of the relevant Government Authority, any encroachments on the Project Hospitals;
- (vii) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Hospitals;
- (viii) complying with Safety Requirements;
- (ix) Operation and Maintenance of all Project Hospital Assets reliably, diligently, punctually and efficiently;
- (x) maintaining, at all times, a high standard of cleanliness and hygiene in the Project Hospitals;
- (xi) adhering to the Specifications and Standards, including the Operational Guidelines;
- (xii) adhering to the requirements under the E&S Standards;
- (xiii) appointing and retaining an appropriate number of staff;
- (xiv) ensuring that immediate medical aid is provided to all Patients;
- (xv) removing promptly from the Project Hospitals all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other waste (including medical waste disposal) and keeping the Project Hospitals in a clean, tidy and orderly condition; and
- (xvi) provide reasonable assistance to the Government and the Government Related Parties in providing Government Provided Services,

and in each case, in accordance with the E&S Standards, Specifications and Standards, Service Level Standards, Applicable Permits, Applicable Laws, Best Operational Practices and other terms of this Agreement.

- (c) For the avoidance of doubt, it is clarified that the applicable Service Level Standards during:
 - (i) the Transition Phase shall be the Transition Phase SLS;
 - (ii) the Lautoka Hospital Interim Phase shall be the Interim Phase SLS; and
 - (iii) the Full O&M Phase shall be the Full O&M Phase SLS.
- (d) ***Permitted Ancillary Activities***
 - (i) The Concessionaire shall have the right to undertake, during the O&M Period, Permitted Ancillary Activities within the Project Hospitals provided that the Permitted Ancillary Activities are carried out in accordance with Designs and Drawings, Applicable Laws, Applicable Permits and Best Operational Practices.

For the avoidance of doubt, it is clarified that the Concessionaire shall prioritise the provision of Clinical Services and Non-Clinical Services over the Permitted Ancillary Activities.
 - (ii) Subject to Applicable Laws, the Concessionaire shall be permitted to charge such fees or prices for the Permitted Ancillary Activities as it deems fit.
- (e) During the O&M Period, the Government shall, at its own cost and expense:
 - (i) provide the Government Provided Services in accordance with the Applicable Laws, Applicable Permits and requirements of this Agreement;
 - (ii) comply with all its obligations under the Applicable Laws and Applicable Permits (to the extent applicable to the Government);
 - (iii) provide reasonable assistance to the Concessionaire in obtaining the Applicable Permits from the relevant Government Authorities, provided that the Concessionaire has complied with all the requirements as per the Applicable Laws for applying for such Applicable Permits;
 - (iv) ensure that the Concessionaire enjoys peaceful access to the Sites and shall not assign, transfer, or otherwise dispose its rights, title, and interest in the Sites or create any Encumbrance over any part of the Sites, which may adversely impact the exercise of the Concessionaire's rights and duties under this Agreement;
 - (v) cause the Independent Monitor to perform its obligations and duties under this Agreement;
 - (vi) maintain a public relations unit to interface with and attend to suggestions from the Patients visitors, staff, government agencies, media and other agencies; and
 - (vii) ensure that the Escrow Account is funded with the Minimum Escrow Balance in accordance with the requirements of the Escrow Agreement.

9.2 Existing Construction Contracts

(a) *General*

The Government represents that no contracts entered into by the Government or any Government Related Parties for or in connection with the Project Hospitals are being transferred to the Concessionaire, other than the Existing Construction Contracts, as set out in Clauses 9.2(b) and (c).

The Government shall hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties against any loss, liability, cost or expense incurred or suffered by the Concessionaire or any Concessionaire Related Party under or in connection with any existing contracts relating to the Project Hospitals (except the Existing Construction Contracts), including specifically, for any payments due to such contractors or to any other entities pursuant to such contracts.

(b) *Ba Hospital Existing Construction Contract*

The Parties shall use best efforts to ensure that the Ba Hospital Existing Construction Contract is as soon as practicable on and from the Handover Date novated to the Concessionaire on the same terms and conditions (unless the Concessionaire and Yanjian agree otherwise), but on the principle, that such novation would release the Government and the Government Related Parties of all liabilities and obligations under the Ba Hospital Existing Construction Contract as arising from and after the Handover Date (except those liabilities and obligations that are solely and directly attributable to actions or inactions of the Government or Government Related Parties, during the period prior to the date on which the Ba Hospital Existing Construction Contract is novated). The Parties, along with Yanjian shall execute necessary documentation or put in place necessary arrangements for the aforesaid novation.

Provided however, it is clarified that if the Ba Hospital Existing Construction Contract cannot be novated to the Concessionaire for any reason whatsoever, then the Ba Hospital Existing Construction Contract shall be performed and rights exercised by the Concessionaire (at its own risk and cost) for and on behalf of the Government or the Government Related Parties (as if the Concessionaire was an original party to the said contracts, in place of the Government or the Government Related Parties). The Government shall undertake all reasonable actions and provide assistance to the Concessionaire (including executing any necessary documents) to enable the Concessionaire to discharge all obligations and exercise all such rights available to the Government under the Ba Hospital Existing Construction Contract.

If the Ba Hospital Existing Construction Contract cannot be novated to the Concessionaire for any reason whatsoever, the Government shall hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties against any loss, liability, cost or expense incurred or suffered by the Concessionaire or any Concessionaire Related Party under or in connection with the Ba Hospital Existing Construction Contract, including specifically, for any payments due to Yanjian or to any other entities pursuant to the Ba Hospital Existing Construction Contract.

(c) *Lautoka Hospital Existing Construction Contracts*

The Parties shall execute, and the Government shall procure that the Lautoka Hospital Existing Construction Contract Counterparties execute, necessary documentation required to transfer/novate the Lautoka Hospital Existing Construction Contracts to the Concessionaire within 15 (fifteen) Business Days of the Handover Date (such date, the **Lautoka Hospital Existing Construction Contracts Novation Date**). Unless otherwise agreed by the Parties, the transfer/novation of the Lautoka Hospital Existing Construction Contracts to the Concessionaire shall be on the same terms and conditions, but on the principle, that such transfer/novation would release the Government and the Government Related Parties of all liabilities and obligations under the Lautoka Hospital Existing Construction Contracts as arising after the Lautoka Hospital Existing Construction Contracts Novation Date (except those liabilities and obligations that are solely and directly attributable to actions or inactions of the Government or Government Related Parties, during the period prior to the Lautoka Hospital Existing Construction Contracts Novation Date).

9.3 Project Hospital Deputed Staff

- (a) Subject to the Concessionaire paying the Deputed Staff Support Cost in accordance with the requirements of this Clause 9.3, the Government shall procure that the Project Hospital Deputed Staff shall be deputed to the Concessionaire at the respective Project Hospitals on and from the Handover Date and for the duration of the Transition Phase. The Government shall procure that the Project Hospital Deputed Staff perform such functions and undertake such duties, and in such capacities, as may be required by the Concessionaire, subject to compliance with Applicable Law, E&S Standards and the existing terms of employment of such Project Hospital Deputed Staff.

Provided however, that the Concessionaire shall not require the Project Hospital Deputed Staff to perform functions that are outside the terms of their employment with the Government.

- (b) At any time during the Transition Phase, the Concessionaire may, by issuing a notice to the Government, require the Government to remove (or cause to be removed) from the Project Hospital any Project Hospital Deputed Staff, and the Government shall, upon receipt of such request remove such Project Hospital Deputed Staff from the Project Hospital.

Provided that the Parties agree that notwithstanding the actual date of removal of any Project Hospital Deputed Staff in accordance with the foregoing provisions, for the purposes of computing the Deputed Staff Support Cost payable by the Concessionaire to the Government, the date of removal of any such Project Hospital Deputed Staff shall be deemed to be the last day of the month in which such Project Hospital Deputed Staff was actually removed in accordance with the foregoing provisions.

- (c) During the Transition Phase, the Concessionaire shall be liable to pay to the Government the Deputed Staff Support Cost in relation to the Project Hospital Deputed Staff, in accordance with Clause 17.9(a).

For the purposes of payment of the Deputed Staff Support Cost, irrespective of the actual date of occurrence of the events resulting in reduction in the number of the Project Hospital Deputed Staff, it will be assumed that such event has occurred on the last day of such month.

- (d) In the case of the Lautoka Hospital, at least 4 (four) months prior to the expiry of the Lautoka Hospital Transition Phase and in the case of the Ba Hospital, at least 2 (two) months prior to the expiry of the Ba Hospital Transition Phase, the Concessionaire may make offers of employment to any of the Project Hospital Deputed Staff on a permanent or temporary (including contractual) basis. Any offer of employment made by the Concessionaire to a Project Hospital Deputed Staff should be at such terms and conditions, and with levels of compensation and associated benefits, as the Concessionaire shall deem fit but in no circumstances, shall this be less favourable than those enjoyed by such Project Hospital Deputed Staff prior to the date the offer is made. No later than 3 (three) months prior to the expiry of the Lautoka Hospital Transition Phase and in the case of the Ba Hospital, no later than 1 (one) month prior to the expiry of the Ba Hospital Transition Phase, the Concessionaire shall execute employment agreements with each of the Project Hospital Deputed Staff who accepts the offer of employment from the Concessionaire. Any Project Hospital Deputed Staff who accept such offer from the Concessionaire shall cease to be the Government's employees from the date of acceptance of the offer or completion of the Transition Phase, as applicable.
- (e) The Government shall at all times, during the period of deputation of the Project Hospital Deputed Staff to the Concessionaire, remain responsible and liable for:
- (i) paying to the Project Hospital Deputed Staff salaries, emoluments or any other contractual payments; and
 - (ii) maintaining professional indemnity insurance for the Project Hospital Deputed Staff, on the same terms and conditions as prevailing on the Handover Date, the cost of which shall be borne by the Government,

and the Concessionaire shall have no liability in this regard.

Upon the Concessionaire paying the Deputed Staff Support Cost to the Government, it shall not be held responsible for non-payment of emoluments by the Government to the relevant Project Hospital Deputed Staff.

The Government acknowledges that subject to compliance with Applicable Laws, the Concessionaire shall be entitled to directly make any additional incentive payments and/or provide any other non-monetary incentives to the Project Hospital Deputed Staff as it may decide in its sole discretion.

The Government shall hold harmless and indemnify the Concessionaire and the Concessionaire Related Parties from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability suffered or incurred by the Concessionaire as a consequence of non-performance of the Government's obligations set out in this Clause 9.3(e).

- (f) It is expressly agreed by the Parties that during the Transition Phase, the Government shall not be liable for any losses, costs, charges, expenses and damages caused to the Concessionaire or any third Person as a result of:
- (i) any action or omission of any Project Hospital Deputed Staff or as a result of failure or negligence on the part of any Project Hospital Deputed Staff to perform

any of its obligations, or committing a breach of any of the terms and conditions of its employment contract;

- (ii) the failure of the Project Hospital Deputed Staff to perform any of its statutory duties or failure or negligence on the part of the Project Hospital Deputed Staff to comply with any statutory provisions.

For the avoidance of doubt, it is clarified that, at all times during the Transition Phase, the Concessionaire shall be solely responsible for all actions of the Project Hospital Deputed Staff.

Provided however that nothing contained herein shall apply in the case of losses, costs, charges, expenses or damages caused as a result of a direct instruction or instigation by the Government to any Project Hospital Deputed Staff.

- (g) Without prejudice to the Government's obligation as set out in Clause 9.3(e)(ii), the Concessionaire shall have the right to obtain any additional insurance cover in relation to the Project Hospitals and the Project Hospital Deputed Staff.

9.4 Transition Phase Construction Obligations

- (a) Prior to the end of the Lautoka Hospital Transition Phase, the Concessionaire shall undertake and complete the following obligations:
 - (i) implement the Lautoka Hospital Initial L&FS Corrective Actions and the Initial EHS Corrective Actions;
 - (ii) procure and install at the Lautoka Hospital, equipment set out in the Lautoka Hospital Initial Equipment List;
 - (iii) install a Hospital Information System in accordance with the Specifications and Standards;
 - (iv) undertake relevant Rectification and Repair to ensure that all Lautoka Hospital Functional Areas are available to deliver Services in accordance with the requirements set out in this Agreement; and
 - (v) undertake all such other repair/refurbishment works to improve aesthetics and cleanliness of the Lautoka Hospital, in accordance with GIIP and remedy any non-compliance with any Applicable Law.

The obligations set out in Clause 9.4(a)(i) to (v) are collectively referred to as the **Transition Phase Construction Obligations**.

(b) *Completion of Transition Phase Construction Obligations*

- (i) If, in the opinion of the Concessionaire, all Transition Phase Construction Obligations have been satisfied, it shall issue a notice to the Independent Monitor and the Government, informing them of the satisfaction of the Transition Phase Construction Obligations and requiring the Independent Monitor to be present at the Lautoka Hospital on the date specified in such notice to undertake a final

inspection of the Lautoka Hospital to ensure that the Concessionaire has undertaken the Transition Phase Construction Obligations and complied with the requirements of this Agreement.

- (ii) Within 5 (five) Business Days from the date of receipt of a notice under Clause 9.4(b)(i), the Independent Monitor may request the Concessionaire to change the proposed date of the inspection and the Concessionaire shall accommodate such request, provided that, such date shall be no later than 5 (five) Business Days from the date specified in the notice received from the Concessionaire under Clause 9.4(b)(i).
- (iii) The Independent Monitor shall, on the date specified in the notice issued under Clause 9.4(b)(i) or such other date as may be determined in accordance with Clause 9.4(b)(ii), undertake an inspection of the Lautoka Hospital.
- (iv) If the Independent Monitor is of the opinion that any of the Transition Phase Construction Obligations has not been satisfied or if the Independent Monitor is not satisfied with the results of the inspection, then the Concessionaire shall remedy any such defects or deficiencies in the Lautoka Hospital as identified by the Independent Monitor and/or satisfy the relevant Transition Phase Construction Obligations identified by the Independent Monitor and the Lautoka Hospital shall be re-inspected and re-tested upon the Concessionaire remedying such defects or deficiencies and/or satisfaction of the relevant Transition Phase Construction Obligations. This process shall be repeated until such time that the Independent Monitor is satisfied: (A) that all Transition Phase Construction Obligations have been achieved; and (B) with the results of the inspection of the Lautoka Hospital, in accordance with the requirements of this Agreement.

For the avoidance of doubt, it is clarified that the Concessionaire shall:

- (A) bear all costs and expenses of remedying the defects and deficiencies and re-inspecting and re-testing the Lautoka Hospital; and
 - (B) not be entitled to any extension of time for, or on account of, remedying such defects or deficiencies or for re-inspecting or re-testing the Lautoka Hospital.
- (v) If the Independent Monitor is satisfied: (A) that all Transition Phase Construction Obligations have been achieved; and (B) with the results of the inspection of the Lautoka Hospital, then within 5 (five) Business Days from the date of inspection of the Lautoka Hospital, the Independent Monitor shall issue a certificate to the Concessionaire, with a copy to the Government, confirming satisfaction of all Transition Phase Construction Obligations (**Transition Phase Construction Obligations Completion Certificate**). If the Independent Monitor fails to issue the Transition Phase Construction Obligations Completion Certificate within the specified time period, then the Transition Phase Construction Obligations Completion Certificate shall be deemed to have been issued by the Independent Monitor.

9.5 Completion of the Transition Phase

- (a) No earlier than 20 (twenty) Business Days prior to end of the Transition Phase, the Concessionaire shall demonstrate to the reasonable satisfaction of the Independent Monitor that all Transition Phase Completion Conditions have been fulfilled. If the Concessionaire is of the view that the Transition Phase Completion Conditions have been fulfilled, it shall issue a notice to the Independent Monitor (with a copy to the Government) along with all relevant supporting documents evidencing that the Concessionaire has fulfilled the Transition Phase Completion Conditions.
- (b) If the Independent Monitor is satisfied that all the Transition Phase Completion Conditions have been achieved, then within 5 (five) Business Days from the date of the notice issued by the Concessionaire under Clause 9.5(a), the Independent Monitor shall issue a certificate to the Government, with a copy to the Concessionaire, confirming satisfaction of all Transition Phase Completion Conditions for the relevant Project Hospital (**Transition Phase Completion Certificate**). The issue of the Transition Phase Completion Certificate shall evidence completion of the Transition Phase in respect of the relevant Project Hospital and: (i) in the case of the Lautoka Hospital, commencement of the Lautoka Hospital Interim Phase; and (ii) in the case of the Ba Hospital, commencement of the Ba Hospital Full O&M Phase.

Provided however that notwithstanding the actual date of completion of the Transition Phase (as evidenced by the issuance of the Transition Phase Completion Certificate) for the purposes of computing the Deputed Staff Support Cost payable by the Concessionaire to the Government, the date of completion of the Transition Phase shall be deemed to be the last day of the month in which the Transition Phase Completion Certificate was issued.

Notwithstanding anything to the contrary, the Government shall ensure that all Project Hospital Deputed Staff who have not been employed by the Concessionaire (whether on a permanent or temporary employment or contractual basis) shall promptly at the end of the Transition Phase vacate the relevant Project Hospital and return to the Government.

9.6 Extended Transition Phase

- (a) In the event the Concessionaire is unable to demonstrate to the Independent Monitor's satisfaction that it has achieved all the Transition Phase Completion Conditions, then the Transition Phase shall automatically be extended by an additional period of 3 (three) months or such other period as mutually agreed by the Parties (**Extended Transition Phase**).
- (b) During the Extended Transition Phase, the Concessionaire shall continue to depute to the Concessionaire the Project Hospital Deputed Staff at the Project Hospital and pay to the Government the Deputed Staff Support Cost, in accordance with Clause 9.3(c).
- (c) Subject to Clause 9.6(d), if the Concessionaire fails to fulfil the Transition Phase Construction Obligations by the end of the Lautoka Hospital Transition Phase, then, for each day of delay in fulfilling the Transition Phase Construction Obligations the Concessionaire shall pay to the Government Liquidated Damages at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay up to the end of the Extended Transition Phase for the Lautoka Hospital (**Transition Phase Liquidated Damages**).

- (d) The Parties acknowledge that the Transition Phase Liquidated Damages are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the Government as a result of the delay in fulfilling the Transition Phase Construction Obligations, and not in the nature of a penalty. If, for any reason, the payment of the Transition Phase Liquidated Damages are held to be void, invalid or otherwise inoperative so as to disentitle the Government from claiming any Transition Phase Liquidated Damages, then the Government will be entitled to claim against the Concessionaire for general damages for the delay (to the full extent possible) in fulfilling the Transition Phase Construction Obligations by the end of the Lautoka Hospital Transition Phase.
- (e) The payment or deduction of the Transition Phase Liquidated Damages shall not relieve the Concessionaire from its obligations to fulfil the Transition Phase Construction Obligations, or from any of its other duties, obligations or responsibilities under this Agreement. The Concessionaire shall use and continue to use all its reasonable endeavours to avoid or reduce further delay in fulfilling the Transition Phase Construction Obligations.
- (f) At the end of the Extended Transition Phase, if the Concessionaire is unable to demonstrate to the Independent Monitor's satisfaction, that it has satisfied the Transition Phase Completion Conditions (including the Transition Phase Construction Obligations), then such failure shall be deemed to be a Concessionaire Event of Default in accordance with Clause 24.1.

9.7 Project Hospital Assets and Asset Registers

- (a) During the Concession Period, the Concessionaire shall:
 - (i) maintain the relevant Project Hospital Asset Register at the respective Project Hospital; and
 - (ii) keep the Project Hospital Asset Register updated at all times and record therein all material addition, alteration or removal of the Project Hospital Assets, along with true copies of all related invoices and documentation.
- (b) At any time during the Concession Period, the Independent Monitor and the Government shall have the right to access, review and/or audit the Project Hospital Asset Register, which right shall not be unreasonably exercised by the Independent Monitor and the Government.
- (c) If the Concessionaire intends to dispose of any Project Hospital Transferred Assets at any time during the Concession Period (**Project Hospital Disposed Assets**), then it must provide the Government (with a copy to the Independent Monitor) with 10 (ten) Business Days' notice of its intention to do so along with its reasons for the proposed disposal.
- (d) The Government shall have the right at no additional cost, to require the Concessionaire to transfer back to the Government such Project Hospital Disposed Assets by issuing a notice to the Concessionaire in writing within 10 (ten) Business Days of receipt of the Concessionaire's notice in Clause 9.7(c) (such notice, the **Project Hospital Disposed Asset Transfer Notice**) and upon receipt of such Project Hospital Disposed Asset Transfer Notice, the Concessionaire shall promptly transfer the title to and possession of such Project Hospital Disposed Asset to the Government. In the event that the Government

proposes to transfer any Project Hospital Disposed Asset to another location then the Government will bear all costs for such transfer.

In the event that the Government does not issue the Project Hospital Disposed Asset Transfer Notice within the prescribed period then, upon expiry of such period, the Concessionaire shall have the right to dispose or remove the Project Hospital Disposed Asset in any manner that it deems fit, subject to compliance with Applicable Laws and Best Operational Practices.

- (e) Upon removal of the relevant Project Hospital Disposed Asset from the Project Hospital, the Concessionaire shall promptly update the relevant Project Hospital Asset Register.
- (f) Notwithstanding anything contained in this Agreement, the Concessionaire shall not undertake any revaluation of any Project Hospital Transferred Assets.

9.8 Medical Students and Visiting Doctors

- (a) The Parties agree that the Government shall have the right, at any time, and from time to time, during the O&M Period, to nominate, for on-site training and other purposes as permitted under this Agreement, in aggregate up to:

Name of the Project Hospital	Medical Students	Visiting Doctors
Lautoka Hospital	100 (one hundred)	10 (ten)
Ba Hospital	25 (twenty-five)	-

The Concessionaire hereby agrees to allow at the Project Hospitals such number of Medical Students and Visiting Doctors as the Government nominates (not exceeding the number of Medical Students and Visiting Doctors for each Project Hospital, as set out in this Clause 9.8(a)) at no additional charge, fee or cost to the Government (other than the O&M Charges pursuant to Clause 17), Partner Universities, any Medical Student or Visiting Doctor.

(b) *Medical Students*

- (i) The Concessionaire may require any Medical Student to provide or assist in providing such Services as are commensurate with the capability of the Medical Student and the Concessionaire shall be entitled to recover O&M Charges from the Government for any Services rendered by the Medical Students, provided that it is clarified that the use of Medical Students by the Concessionaire for providing any Services shall not in any manner, way or form, excuse the Concessionaire from its obligation to achieve the applicable Service Level Standards.
- (ii) The Concessionaire shall, at its sole cost, provide all consumables, apparatus and facilities necessary for any Medical Student to effectively discharge the Services required by the Concessionaire (or the Concessionaire Related Parties) from such Medical Student. For the avoidance of doubt, it is clarified that the Concessionaire shall not be responsible for any other cost in relation to Medical Students other than the cost mentioned in this Clause 9.8(b)(ii).

- (iii) The Concessionaire may, at any time and for reasonable cause (to be recorded in writing), request the Government to remove from the Project Hospital any Medical Student, and upon receipt of such request, the Government shall cause such Medical Student to be removed from the Project Hospital.
- (c) ***Visiting Doctors***
 - (i) The Concessionaire shall provide, at no additional cost or expenditure to Visiting Doctors, the Partner University and/or the Government, substantially similar facilities (including office space, consumables, apparatus and support staff) and medical staff as that provided to Resident Doctors.
 - (ii) The Concessionaire shall allocate Patients to Visiting Doctors on a non-discriminatory basis after taking into account the qualification, expertise and seniority of the Visiting Doctor and Patient preferences in this regard (if any).
 - (iii) The Concessionaire shall have the right to recover O&M Charges from the Government for any Services rendered by Visiting Doctors to Patients (excluding Foreign Patients). For the avoidance of doubt, it is clarified that provision of Services by Visiting Doctors shall not be subject to the then applicable Service Level Standards.
 - (iv) The Concessionaire may, at any time and for reasonable cause (to be recorded in writing), request the Government to remove from the Lautoka Hospital any Visiting Doctor, and upon receipt of such request, the Government shall cause such Visiting Doctor to be removed from the Lautoka Hospital.
- (d) The Concessionaire shall, at its own cost and expense, make best endeavours to depute at least 20 (twenty) Resident Doctors for providing training or teaching services at the Lautoka Hospital for at least 2 (two) hours each week. This study or training session must involve at least one Patient case study of the Resident Doctor's choice.

9.9 Restoration of loss or damage to the Project Hospitals

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

9.10 Maintenance Requirements

The Concessionaire shall procure that at all times during the O&M Period, the Project Hospitals are maintained in accordance with the provisions of this Agreement, Applicable Laws, Applicable Permits and GIIP (**Maintenance Requirements**).

9.11 Maintenance Manual

- (a) No later than 45 (forty-five) Business Days prior to the relevant Project Hospital CCD, the Concessionaire shall prepare a Rectification and Repair, operation and maintenance manual (**Maintenance Manual**) for the regular and preventive maintenance of the Project Hospitals, including the Project Hospital Assets, in accordance with the E&S Standards,

Specifications and Standards, Best Operational Practices, Applicable Permits and Applicable Laws, Maintenance Requirements, Safety Requirements, and shall provide 5 (five) copies thereof to the Government and 2 (two) copies to the Independent Monitor. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 9.11(a) shall apply, mutatis mutandis, to such revision.

- (b) Without prejudice to the provision of Clause 9.11(a), the Maintenance Manual shall, in particular, include provisions for maintenance of the Project Hospital Assets, and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance, Rectification and Repair of the Project Hospital Assets, including replacement thereof, such that their overall condition conforms to Best Operational Practices.

9.12 Safety Requirements

- (a) The Concessionaire shall be responsible for safety and security of Patients, visitors, staff and the Project Hospitals (including the Project Hospital Assets) in accordance with the Specifications and Standards, Applicable Permits and Applicable Laws, E&S Standards, L&FS Standards, Best Operational Practices and other provisions of this Agreement, (**Safety Requirements**). In particular, the Concessionaire shall develop, implement and administer a security and safety programme for providing a safe environment on or about the Project Hospitals and shall comply with the Safety Requirements.
- (b) In the event of unsafe conditions, structural damage, equipment breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures and undertake safe removal of obstruction, debris and dangerous spills and leakages without delay.
- (c) Unless otherwise expressly provided in this Agreement, all costs and expenses arising out of or relating to the Safety Requirements shall be borne by the Concessionaire.

9.13 Monitoring of Operation and Maintenance

(a) *Status reports*

During the O&M Period, the Concessionaire shall furnish reports to the Government and the Independent Monitor, in accordance with the Specifications and Standards.

(b) *Reports of unusual occurrence*

Promptly, but not later than 2 (two) Business Days, after the occurrence of any event set out in sub-clauses (i) to (x), the Concessionaire shall, send to the Government and the Independent Monitor, by facsimile or e-mail, a report stating all accidents and unusual occurrences in the Project Hospitals relating to the safety and security of Patients, visitors and staff and the Project Hospitals in the preceding week. A summary of such reports shall also be sent within 3 (three) Business Days of occurrence of the relevant event. For the purposes of this Clause 9.13(b), accidents and unusual occurrences in the Project Hospitals shall include:

- (i) death of or injury to any person (other than a Patient);
- (ii) episode of sexual assault or rape;

- (iii) suicide by any person (including a Patient);
- (iv) unanticipated death of a full-term infant;
- (v) infant abduction or discharge to the wrong family;
- (vi) haemolytic transfusion reaction involving administration of blood or blood products having major blood group incompatibilities;
- (vii) surgery on the wrong Patient or wrong body part;
- (viii) smoke or fire;
- (ix) unintended retention of a foreign object in the body of any Patient after surgery or other procedure; and
- (x) such other relevant information as may be reasonably required by the Government or the Independent Monitor.

(c) ***Inspection***

The Independent Monitor shall inspect each of the Project Hospitals at least once a quarter. It shall make a report of such inspection (**O&M Inspection Report**) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the relevant Service Level Standards, and send a copy thereof to the Government and the Concessionaire within 5 (five) Business Days of such inspection.

(d) ***Remedial measures***

The Concessionaire shall Rectify and Repair the defects or deficiencies, if any, set forth in the O&M Inspection Report and furnish a report in respect thereof to the Independent Monitor and the Government within 10 (ten) Business Days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 10 (ten) Business Days, the Concessionaire shall submit progress reports of the Rectification and Repair works once every week until such works are completed in conformity with this Agreement.

9.14 Accreditation for Project Hospitals

- (a) The Concessionaire shall ensure that, within 3 (three) years from their respective CCD, each Project Hospital obtains the relevant Project Hospital Accreditation and thereafter maintains, at all times, such Project Hospital Accreditation throughout the remainder of the Concession Period.
- (b) Within 5 (five) Business Days of obtaining the relevant Project Hospital Accreditation, the Concessionaire shall provide to the Government and the Independent Monitor all such relevant documents evidencing such Project Hospital Accreditation.
- (c) The Concessionaire shall ensure that, for each Project Hospital, all clinical and non-clinical specifications are included in all submissions made in relation to quality management systems documentation, for procuring ISO:9001 certification.

- (d) If the Concessionaire fails to obtain and maintain the relevant Project Hospital Accreditation in accordance with the Accreditation Standards and this Clause 9.14, the Concessionaire shall, promptly submit to the Government and the Independent Monitor an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining or maintaining such Project Hospital Accreditation.
- (e) If the Concessionaire fails to obtain the relevant Project Hospital Accreditation within 3 (three) months from the expiry of the 3rd (third) anniversary of the relevant Project Hospital CCD (**Project Hospital Accreditation Long-stop Date**), then the Concessionaire shall be liable to pay to the Government liquidated damages for each day of delay beyond the Project Hospital Accreditation Long-stop Date, at the rate of 0.1% (zero-point one per cent) of the relevant Performance Security for each day of delay.
- (f) From the date of a Project Hospital Accreditation until the end of the Concession Period, if the Concessionaire fails to maintain the relevant Project Hospital Accreditation for a consecutive period of 40 (forty) Business Days, then the Concessionaire shall be liable to pay to the Government liquidated damages for each day during which the Concessionaire has failed to maintain the relevant Project Hospital Accreditation, beyond the 40 (forty) consecutive Business Day time period:
 - (i) 0.1% (zero point one per cent) of the Performance Security for each day of non-availability of the Project Hospital Accreditation required in accordance with Accreditation Standards prescribed by JCI as applicable for the Lautoka Hospital;
 - (ii) 0.02% (zero point zero two per cent) of the Performance Security for each day of non-availability of the Project Hospital Accreditation required in accordance with Accreditation Standards prescribed by JCI as applicable for the Ba Hospital;
 - (iii) 0.1% (zero point one per cent) of the Performance Security for each day of non-availability of the Project Hospital Accreditation required in accordance with Accreditation Standards prescribed by the International Organization for Standardization, as set out in the Specifications and Standards applicable to the Lautoka Hospital;
 - (iv) 0.02% (zero point zero two per cent) of the Performance Security for each day of non-availability of the Project Hospital Accreditation required in accordance with Accreditation Standards prescribed by the International Organization for Standardization, as set out in the Specifications and Standards applicable to the Ba Hospital;
 - (v) 7% (seven per cent) of the Performance Security for each submission of the quality management system, in relation to the Lautoka Hospital, which is not in compliance with Clause 9.14(c);
 - (vi) 7% (seven per cent) of the Performance Security for each submission of the quality management system, in relation to the Ba Hospital, which is not in compliance with Clause 9.14(c);

For the avoidance of doubt, it is clarified that in case of failure of the Concessionaire in undertaking its obligations resulting in levy of the Project Hospital Accreditation

Liquidated Damages for both the Project Hospitals, then the applicable Project Hospital Accreditation Liquidated Damages shall be levied for each Project Hospital.

9.15 Performance Liquidated Damages

- (a) Subject to Clause 9.15(b), if the Concessionaire fails to perform any of its obligations set out in this Clause 9 and/or fails to adhere to the Service Level Standards, for any reason other than the reasons set out in Clause 9.16, then the Concessionaire shall pay to the Government liquidated damages as set out in Schedule 7 (*Service Level Standards and Performance Liquidated Damages*) (**Performance Liquidated Damages**).
- (b) The Parties acknowledge that the Performance Liquidated Damages are a genuine pre-estimate of and reasonable compensation for the loss and damage that shall be suffered by the Government as a result of the Concessionaire's failure to perform its obligations set out in this Clause 9 and/or failure to adhere to the Service Level Standards, as the case may be, and not in the nature of a penalty. If, for any reason, the payment of Performance Liquidated Damages is held to be void, invalid or otherwise inoperative so as to disentitle the Government from claiming any Performance Liquidated Damages, then the Government will be entitled to claim against the Concessionaire for general damages for the Concessionaire's failure to perform its obligations set out in this Clause 9 and/or failure to adhere to the Service Level Standards, as the case may be.
- (c) The payment or deduction of Performance Liquidated Damages shall not relieve the Concessionaire from its obligations to fulfil its obligations set out in this Clause 9, or from any of its other duties, obligations or responsibilities under this Agreement.

9.16 Excuse from Performance of Obligations

The Concessionaire, to the extent rendered unable to perform any of its obligations applicable during the O&M Period, including providing the Services, for any reason solely and directly attributable to:

- (a) a Force Majeure Event;
- (b) measures taken to ensure the safe use of the Project Hospital, except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement;
- (c) failure of the Government to provide the Government Provided Services and such failure of the Government could not have been avoided by the Concessionaire acting in accordance with the Best Operational Practices;
- (d) compliance with a request from the Government or the directions of any Government Authority, the effect of which is to close all or any part of the Project Hospital; or
- (e) a Government Event of Default,

in each case only to the extent such event directly affects the Concessionaire's ability to perform its obligations or provide the relevant Services, shall be excused from performance of the affected Service(s). For the avoidance of doubt, it is clarified that, notwithstanding the above, the Concessionaire shall provide all such Services to Patients that can be provided safely.

9.17 Redressal of Public Grievances

(a) *Complaint Register*

- (i) The Concessionaire shall maintain a public relations office at the Project Hospitals where it shall keep a register (**Complaint Register**) for recording of complaints by any person (**Complainant**).
- (ii) The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, along with the substance of the complaint.
- (iii) Without prejudice to the provisions of Clause 9.17(a)(i) and Clause 9.17(a)(ii), the Government may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

(b) *Redressal of complaints*

The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint.

9.18 Patient Satisfaction Survey

- (a) On and from: (i) in the case of the Lautoka Hospital, the Lautoka Hospital Interim Phase; and (ii) in the case of the Ba Hospital, the Ba Hospital CCD, the Concessionaire shall conduct a quarterly Patient satisfaction survey at each Project Hospital. Such survey shall be conducted by handing out a survey form (substantially in the format set out at Schedule 21 (*Patient Satisfaction Survey*)), to randomly chosen Patients who are receiving Services at the Project Hospitals. The Concessionaire shall submit a report of the findings of such survey to the Government and the Independent Monitor within 15 (fifteen) Business Days of completion of such survey.
- (b) The Concessionaire shall ensure that each Project Hospital achieves and maintains, in such survey, an overall score of at least:
 - (i) 3 (three) points out of a total of 5 (five) points, during the Lautoka Hospital Interim Phase and the Ba Hospital Transition Phase (including the Extended Transition Phase, if any); and
 - (ii) 3.5 (three point five) points out of a total of 5 (five) points, during the Full O&M Phase.

The survey shall include responses from at least: (i) in the case of the Lautoka Hospital, 1,000 (one thousand) Patients; and (ii) in the case of the Ba Hospital, 250 (two hundred and fifty) Patients, who are receiving Services at the relevant Project Hospital. Each survey result shall be based on responses from 75% (seventy-five per cent) of respondents.

9.19 Patient Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Patients (**Patient Charter**) substantially in accordance with the Applicable Laws, Applicable Permits and Best Operational Practice and shall display the Patient Charter in the main reception area, outpatient department and the Emergency Department. The Concessionaire shall at all times be accountable and liable to Patients in accordance with the provisions of the Patient Charter and Applicable Laws.

9.20 Foreign Patients

- (a) During the O&M Period, the Concessionaire shall have the right to admit and render Services to Foreign Patients at the Project Hospitals and demand and collect Foreign Patient Tariff from Foreign Patients and/or the insurance companies as the case may be, for Services rendered by the Concessionaire to Foreign Patients at the Project Hospitals.
- (b) If the Foreign Patient Tariff charged by the Concessionaire for any Clinical Service(s) rendered to a Foreign Patient at a Project Hospital is higher than the Tariff which would have been charged in respect of a Fijian citizen Patient for the same Clinical Service(s), then the Concessionaire shall be liable to pay to the Government 50% (fifty per cent) of the difference between the Foreign Patient Tariff and the Tariff for the same Clinical Service(s) that would have been charged by the Concessionaire from a Fijian citizen Patient, in accordance with this Agreement (**Foreign Patient Tariff Differential Amount**).
- (c) The Foreign Patient Tariff Differential Amount shall be calculated on a quarterly basis and shall be deducted from the O&M Charges payable by the Government to the Concessionaire for the last Invoiced Month of such quarter, in accordance with Clause 17.7(b).
- (d) In each quarter during the O&M Period, the Concessionaire shall ensure that in respect of each of the Project Hospitals, the Foreign Patients admitted at a Project Hospital are not more than 20% (twenty per cent) of the total Patients admitted at such Project Hospital (**Maximum Permitted Foreign Patients**).
- (e) If, in any quarter during the O&M Period, the total number of Foreign Patients admitted at a Project Hospital are more than the Maximum Permitted Foreign Patients (such additional Foreign Patients, the **Excess Foreign Patients**), then in respect of such Excess Foreign Patients, the Concessionaire shall be entitled to retain only 90% (ninety per cent) of the Tariff that would have been charged by the Concessionaire from the Government for rendering to a Fijian citizen Patient the same Services as rendered to such Excess Foreign Patient (**Maximum Permitted Foreign Patients Retention Amount**). In respect of each Excess Foreign Patient, if the Foreign Patient Tariff is higher than the Maximum Permitted Foreign Patients Retention Amount, then the Concessionaire shall be liable to pay to the Government the difference between: (i) the Foreign Patient Tariff charged by the Concessionaire from the Excess Foreign Patient; and (ii) the Maximum Permitted Foreign Patients Retention Amount (**Excess Foreign Patient Amount**).

For the purposes of calculating the Maximum Permitted Foreign Patients Retention Amount, the determination of the total number of Excess Foreign Patients shall be undertaken in a chronological order in which the Foreign Patients were admitted in a

Project Hospital.

- (f) The Excess Foreign Patient Amount shall be calculated on a quarterly basis and shall be deducted from the O&M Charges payable by the Government to the Concessionaire for the last Invoiced Month of such quarter, in accordance with Clause 17.7(b).

10 PERFORMANCE SECURITY

- 10.1. Until the later of the Expiry Date and the Termination Date, the Concessionaire shall provide and maintain an unconditional, irrevocable, on-demand and FJD denominated bank guarantee (in the format set out in Schedule 13 (*Performance Security*)), issued by a bank in the Republic of Fiji (payable in Suva) in favour of “**Government of the Republic of Fiji**” (**Performance Security**), for a sum equal to FJD 5,000,000 (Fijian Dollars Five Million), which amount shall then be adjusted, at the end of each Financial Year commencing from the Lautoka Hospital CCD, to reflect the variation in the CPI.

If the amount of the Performance Security is required to be increased after taking into account adjustment for variation in the CPI, then within 20 (twenty) Business Days from the expiry of such Financial Year, the Concessionaire shall arrange for and submit an additional Performance Security or replace the existing Performance Security.

- 10.2. If the Performance Security is scheduled to expire prior to the Expiry Date, then at least 20 (twenty) Business Days prior to the scheduled expiry of the Performance Security, the Concessionaire shall arrange for an extension or replacement of the Performance Security. If the Concessionaire fails to extend or replace the Performance Security in the manner set out in the preceding sentence or Clause 10.1, the Government shall have the absolute and unequivocal right to invoke the Performance Security in full. The amount so received shall be treated as a cash-retention, and to the extent that there are no outstanding claims thereto, shall be released to the Concessionaire, without any interest on such amount, upon the Concessionaire submitting a new Performance Security.
- 10.3. The Government shall have the right to draw on the Performance Security and claim up to the amount guaranteed upon the Concessionaire’s failure to satisfy any Condition Precedent or honour any of its obligations, responsibilities or commitments during the Term, or any amount due and payable by the Concessionaire to the Government (including any Liquidated Damages payable under this Agreement, Termination Compensation or any other unpaid amounts from the Concessionaire that may have accrued on or prior to such termination in accordance with this Agreement).
- 10.4. If the Government draws on the Performance Security, in part or in full, the Concessionaire shall immediately, within 10 (ten) Business Days of such drawing, restore the value of the Performance Security to the amount stated in Clause 10.1, as adjusted in accordance with Clause 10.1.
- 10.5. If this Agreement is terminated prior to the Expiry Date on account of a Government Event of Default or a Force Majeure Event, the Performance Security shall be released and returned to the Concessionaire within 20 (twenty) Business Days of such termination, subject to the Government’s right to claim under the Performance Security for any unpaid amounts from the Concessionaire that may have accrued on or prior to such termination.

11 INDEPENDENT MONITOR

- 11.1. The Government shall appoint/replace a consulting monitoring agency from a panel of 3 (three) firms or body corporate, mutually agreed upon by the Government and the Concessionaire, or conduct a transparent and open competitive bidding process (at the Government's sole cost and expense) to select a qualified entity to undertake and perform the duties and functions set out in this Clause 11 and Schedule 19 (*Independent Monitor Terms of Reference*) (**Independent Monitor**). The Concessionaire shall cooperate with and assist the Government in the appointment/replacement of the Independent Monitor.
- 11.2. Notwithstanding anything to the contrary, the Government shall not appoint a Concessionaire Related Party or Government Related Party, or any of their Affiliates as the Independent Monitor.
- 11.3. The Government may, in its sole discretion, replace the Independent Monitor at any time, in accordance with Clause 11.1.
- 11.4. If the Concessionaire has reason to believe that the Independent Monitor is not discharging its duties and functions in a fair, efficient and diligent manner and in accordance with the terms of this Agreement or the Independent Monitor Terms of Reference, it may make a written representation to the Government and seek a replacement of the Independent Monitor. Upon receipt of such representation, the Government shall hold a tripartite meeting with the Concessionaire and the Independent Monitor for an amicable resolution of such dispute, and if any difference or disagreement between the Government and the Concessionaire remains unresolved, the dispute shall be settled in accordance with the dispute resolution procedure set out in the Independent Monitor Terms of Reference (as the same may be incorporated in any contract or agreement with the Independent Monitor).
- 11.5. If the Government (in its sole discretion) agrees with the request of the Concessionaire, it shall appoint a replacement Independent Monitor in accordance with Clause 11.1.
- 11.6. The remuneration, cost and expenses of the Independent Monitor shall be solely borne and paid by the Government.
- 11.7. The Independent Monitor shall discharge the duties and functions required under this Agreement and in the Independent Monitor Terms of Reference:
- (a) in accordance with GIIP and Applicable Laws; and
 - (b) in an independent, reasonable, fair and expeditious manner.
- 11.8. Except as specifically provided in this Agreement, the Independent Monitor shall have no authority, whether express or implied, to amend, vary or curtail any of the rights or obligations of the Parties.
- 11.9. The Independent Monitor shall at all times during the Term have the right to enter upon, access, inspect and monitor the Sites and the Project Hospitals (or any part thereof, including the Project Hospital Assets), provided that the Independent Monitor shall ensure that the exercise of the access, inspection or monitoring rights do not significantly impede or obstruct Construction Works with respect to the Project Hospitals or Operation and Maintenance of the Project Hospitals. The Concessionaire shall have the right to accompany the Independent Monitor during its inspection of the Project Hospitals.

- 11.10. The Concessionaire agrees that notwithstanding any review, observation, comment or approval by the Independent Monitor of any aspect of the Project Hospitals, the Concessionaire shall bear all risk, responsibility and liability for the quality, adequacy and suitability of the Project Hospitals, as required under this Agreement. Further, neither the Government nor the Independent Monitor shall be liable to the Concessionaire in any manner for any review, observation, comment or approval made or given by them in respect of any aspect of the Project Hospitals.

12 UTILITIES

- 12.1 The Concessionaire shall arrange for and procure, at its own cost and risk, all infrastructure facilities and utilities for undertaking the Project, including the Construction Works and Operation and Maintenance of the Project Hospital, including procuring connection for and supply of electricity, water etc. The Concessionaire shall obtain all Applicable Permits and comply with the conditions thereunder for the procurement and use of such infrastructure facilities and utilities. The Government shall provide all reasonable support and assistance to the Concessionaire in availing the utilities required.
- 12.2 The Concessionaire may use the utilities available at the Sites to undertake the Construction Works and Operation and Maintenance of the Project Hospitals, including existing power and water connections, lighting facilities, telephone connections etc. To the extent the Concessionaire requires any additional utilities to undertake the Project, including any internet connection, power back-up arrangements etc., then the Concessionaire shall obtain and maintain such additional utilities at its own cost.
- 12.3 The Concessionaire shall, at its own cost and expense, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Government, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site, if and only if such utility causes or shall cause a Material Adverse Effect on the Construction Works or Operation and Maintenance.
- 12.4 The Concessionaire shall be entitled to reasonable extension of time to comply with its obligations in Clauses 12.1, 12.2 and 12.3 if the delay is due to reasons not attributable to the Concessionaire.

13 SUBCONTRACTING

- 13.1. The Concessionaire shall be entitled to appoint Subcontractors to perform any part of its Scope of the Project during the Term.

Provided, however, that the Concessionaire shall not be permitted to subcontract the provision of any Restricted Clinical Services, unless a prior written consent of the Government has been obtained (which may be given or withheld at its sole discretion).

- 13.2. Appointment of any Subcontractor and the corresponding Subcontract shall be subject to the following conditions:
- (a) the Subcontractor appointed by the Concessionaire possesses the requisite skill, expertise and capability to perform the relevant obligations of the Concessionaire during the Term;
 - (b) the Subcontract is on terms consistent with this Agreement;

- (c) the Subcontract contains provisions that provide, at the Government's option, for the Subcontract to be novated or assigned to the Government or its nominee without any further consent or the approval from the Concessionaire or the Subcontractor; or entitle the Government or its nominee to step into such Subcontract, in substitution of the Concessionaire, if this Agreement is terminated due to a Concessionaire Event of Default or at least 6 (six) months prior to the Expiry Date, whichever is earlier. However, the step-in rights of the Government shall always be subject to the substitution rights of the Senior Lenders under this Agreement or the Substitution Agreement; and
 - (d) the Concessionaire shall be responsible for the supervision and monitoring of the performance of any works or Services by the Subcontractor.
- 13.3. The Concessionaire shall provide a copy of each Material Subcontract (along with details of the relevant Subcontractor and such other information as the Government may request) to the Government, which should set out the precise scope of work, price and payment terms subcontracted to such Subcontractor.
- 13.4. Within 5 (five) Business Days of an amendment, novation or replacement to/of any Material Subcontract, the Concessionaire shall submit a copy of such deed of amendment/novation/replacement to the Government for its records.
- 13.5. Notwithstanding appointment of any Subcontractor, the Concessionaire shall be and remains liable under this Agreement for the entire Scope of the Project (including all Construction Works and Services) subcontracted under this Agreement and for all acts, omissions or defaults of any Subcontractor. No default under any Subcontract shall excuse the Concessionaire from its obligations or liabilities under this Agreement. All references in this Agreement to any act, default, omission, breach or negligence of the Concessionaire shall be construed to include any such act, default, omission, breach or negligence of the Subcontractors.

14 LAUTOKA HOSPITAL CAPACITY EXPANSION

- 14.1 If, at any time after the Lautoka Hospital CCD until 36 (thirty-six) months prior to the Expiry Date:
- (a) the average Bed occupancy for 6 (six) months at the Lautoka Hospital remains more than 90% (ninety per cent); or
 - (b) waiting time for elective surgeries for at least 500 (five hundred) cases at the Lautoka Hospital remains more than 3 (three) months,
- in each case, for a consecutive period of at least 24 (twenty-four) months (as evidenced by the status reports submitted by the Concessionaire), then the Government shall have the right to undertake the capacity expansion of the Lautoka Hospital up to a maximum of 100 (one hundred) Beds, in accordance with the provisions of this Clause 14 (**Lautoka Hospital Capacity Expansion**).
- 14.2 The Concessionaire shall have the right to submit either on its own initiative or within 45 (forty-five) Business Days of the Government's request for the same, a Variation Proposal, in accordance with Clause 28.

If the Government accepts the Variation Proposal submitted by the Concessionaire to undertake the Lautoka Hospital Capacity Expansion, then the Government shall issue a Variation Order, in

accordance with Clause 28 and the Concessionaire shall proceed with the Lautoka Hospital Capacity Expansion in accordance with the Variation Order, Best Construction Practice, Applicable Laws and Applicable Permits. Upon completion of the Lautoka Hospital Capacity Expansion by the Concessionaire, the Lautoka Hospital Augmented Capacity shall be deemed to be part of the Lautoka Hospital and the Concessionaire shall be required to carry out the Operation and Maintenance of the Lautoka Hospital Augmented Capacity for the remainder of the Term on the same terms and conditions as applicable to the Lautoka Hospital under this Agreement.

- 14.3 If the Government rejects the Variation Proposal or if the Parties are unable to agree on such Variation in accordance with Clause 28, then the restrictions on the Government as contained in Clause 16 (if then applicable) shall be deemed to be removed and the Government shall be free to develop any other Public Hospital (as defined under the Public Hospitals and Dispensaries Act 1955), including anywhere within a 10 (ten) kilometre radius to the Lautoka Hospital.

15 TECHNOLOGY WATCH

- 15.1. The Concessionaire shall implement at its own cost and expense, a technology watch throughout the Term, so as to allow the Project to benefit from technical advancement and/or technology upgrades in connection with the Project Hospital Assets and Services. The technology watch shall include information about any offers to buy back and replace or upgrade the Project Hospital Assets that the Concessionaire may receive from any third party and that would apply from the Handover Date until 2 (two) years prior to the Expiry Date. The Concessionaire shall present the findings of the technology watch to the Government in the form of a written report for review at least once every 3 (three) years.
- 15.2. In the event that any Party believes that the replacement and/or upgrade of any Project Hospital Assets is likely to have a positive impact on the quality of the Services or the cost of performing the Services, the Concessionaire shall submit either on its own initiative or within 20 (twenty) Business Days of the Government's request for the same, a written proposal equivalent to that referred to in Clause 28 and the resulting process shall comply with the provisions of Clause 28.

16 COMPETING FACILITY

16.1 Restrictions on construction of Competing Facility

- (a) Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 14.3, the Government shall:
- (i) upon commencement, and for the duration of the Ba Hospital O&M Period, procure that the Ba Mission Hospital is closed down for operations; and
 - (ii) not construct or cause to be constructed, any new Public Hospital (as defined under the Public Hospitals and Dispensaries Act 1955) or any hospital, under a public private partnership or similar scheme, within a radius of 10 (ten) kilometres from each of the Project Hospitals (**Competing Facility**) at any time prior to the 10th (tenth) anniversary of the commencement of the Full O&M Phase for the relevant Project Hospital.
- (b) If the Government is in breach of its obligation set out in this Clause 16, then such breach shall be deemed to be a Government Event of Default.

17 PAYMENT AND PAYMENT SECURITY

- 17.1 In consideration of the Concessionaire undertaking and implementing the Project in accordance with this Agreement, the Concessionaire shall be entitled to receive from the Government, the Transition Phase Construction Obligation Completion Payment, the Annuity Payments and the O&M Charges in accordance with this Clause 17.
- 17.2 All Costs in connection with the taking over, construction, rehabilitation, upgradation, equipment installation and replacement, development and implementation of the Project, including undertaking and completion of the Construction Works, replacement of any Project Hospital Assets (including the Project Hospital Transferred Assets), satisfying Transition Phase Construction Obligations and carrying out Operations and Maintenance (including the provision of the Services) shall be borne by the Concessionaire.
- 17.3 The Concessionaire shall be deemed to have satisfied itself regarding the adequacy, accuracy and sufficiency of the Transition Phase Construction Obligation Completion Payment, the Annuity Payments and the O&M Charges. Except for any adjustment in accordance with Clause 21, or any permitted Variation in accordance with Clause 28, the Transition Phase Construction Obligation Completion Payment, the Annuity Payments and the O&M Charges are the total consideration payable to the Concessionaire for undertaking the Project and all other obligations set out in this Agreement.

17.4 Transition Phase Construction Obligation Completion Payment

- (a) Subject to the Concessionaire achieving Transition Phase Completion Conditions applicable to the Lautoka Hospital, in accordance with Clause 9.5(b), the Government shall pay to the Concessionaire the Transition Phase Construction Obligation Completion Payment.
- (b) Within 5 (five) Business Days of fulfilling the Transition Phase Completion Conditions applicable to the Lautoka Hospital, the Concessionaire shall submit an invoice to the Government (with a copy to the Escrow Bank) setting out the amount of the Transition Phase Construction Obligation Completion Payment due to the Concessionaire.
- (c) The Escrow Bank shall release the amount of the Transition Phase Construction Obligation Completion Payment within 5 (five) Business Days from the receipt of the invoice from the Concessionaire under Clause 17.4(b).

17.5 Annuity Payments

Subject to completion of both Project Hospitals (as evidenced by issuance of the Completion Certificate by the Government for each Project Hospital in accordance with Clause 8.6(f)), the Government shall pay to the Concessionaire the Annuity Payments in accordance with Schedule 10 (*Annuity Payments*).

Provided that it is clarified that no Annuity Payments (including any Ba Hospital Annuity Payments) shall be payable by the Government to the Concessionaire prior to the Lautoka Hospital CCD (notwithstanding whether the Ba Hospital CCD has occurred). It is further clarified that if the Lautoka Hospital CCD has occurred but, for whatever reason, Ba Hospital CCD has not then occurred, then only Lautoka Hospital Annuity Payments will be payable by the Government to the

Concessionaire and no Ba Hospital Annuity Payments will be payable to the Concessionaire until such time as the Ba Hospital CCD has been achieved.

The Escrow Bank shall release the amount specified in Schedule 10 (*Annuity Payments*) for the relevant quarter by the 5th (fifth) Business Day of such quarter.

17.6 O&M Charges

- (a) The Government shall pay to the Concessionaire the O&M Charges for Services provided to the Patients (excluding Foreign Patients) at the Project Hospitals on the basis of the Base Rate quoted by the Selected Bidder in its Financial Proposal and in accordance with Schedule 11 (*O&M Charges*).
- (b) If the Concessionaire's Patients Receivables are less than the relevant Guaranteed O&M Charges for reasons not attributable to the Concessionaire, then the Government shall pay to the Concessionaire an amount equivalent to the difference in: (i) the relevant Guaranteed O&M Charges; and (ii) the Concessionaire's Patients Receivables.

For the purposes of determining aggregate O&M Charges paid by the Government to the Concessionaire in a Financial Year, any amount deducted by the Government from O&M Charges otherwise payable by the Government (in accordance with Clause 17.7(k) and Clause 17.12) shall be deemed to be O&M Charges paid by the Government to the Concessionaire.

- (c) Any amount payable by the Government to the Concessionaire pursuant to Clause 17.6(b) shall be paid by the Government along with the O&M Charges for the first month of the immediately succeeding Financial Year.
- (d) Notwithstanding anything contained in this Agreement, the Government shall not be liable to pay any O&M Charges to the Concessionaire for the Concessionaire rendering Services to Foreign Patients at any of the Project Hospitals.

17.7 Invoicing

- (a) The Annuity Payments shall be paid by the Government to the Concessionaire on a quarterly basis. The Concessionaire shall, for each Project Hospital, submit the Annuity Payment Invoice to the Government (with a copy to the Independent Monitor and the Escrow Bank) for each quarter on or before the 2nd (second) Business Day of the beginning of such quarter, which shall set out the Annuity Payments due to the Concessionaire in such quarter, for the relevant Project Hospital. Any Annuity Payment Invoice raised by the Concessionaire shall be in the format set out in Schedule 14 (*Annuity Payment Invoice Format*).
- (b) The O&M Charges shall be paid by the Government to the Concessionaire on a monthly basis in arrears. The Concessionaire shall, for each Project Hospital, submit the O&M Charges Invoice to the Government (with a copy to the Independent Monitor and the Escrow Bank) for each month (**Invoiced Month**) on or before the 2nd (second) Business Day of the immediately succeeding month, setting out the O&M Charges due to the Concessionaire for the Invoiced Month for the relevant Project Hospital.

For the last Invoiced Month for every quarter in which the calculation in respect of the Foreign Patient Tariff Differential Amount is undertaken in accordance with Clause

9.20(c), the Concessionaire shall deduct the Foreign Patient Tariff Differential Amount (if any) from the O&M Charges payable by the Government from such Invoiced Month.

For the last Invoiced Month for every quarter in which the calculation in respect of the Maximum Permitted Foreign Patients Retention Amount is undertaken in accordance with Clause 9.20(e), the Concessionaire shall deduct the Excess Foreign Patient Amount (if any) from the O&M Charges payable by the Government from such Invoiced Month.

Any O&M Charges Invoice raised by the Concessionaire shall be in the format set out in Schedule 15 (*O&M Charges Invoice Format*).

- (c) Within 5 (five) Business Days of receipt of the Annuity Payment Invoice and the O&M Charges Invoice from the Concessionaire, the Escrow Bank shall release to the Concessionaire:
 - (i) 80% (eighty per cent) of the amount mentioned in the O&M Charges Invoice; and
 - (ii) 100% (one hundred per cent) of the amount mentioned in the Annuity Payment Invoice.
- (d) Within 10 (ten) Business Days of receipt of the O&M Charges Invoice from the Concessionaire, the Independent Monitor shall verify and certify the amounts due and payable by the Government to the Concessionaire under such O&M Charges Invoice, and either:
 - (i) approve the O&M Charges Invoice and issue a certificate to the Government (with a copy to the Concessionaire and the Escrow Bank), conveying its approval for the payment of the amount specified in the O&M Charges Invoice, less any necessary deductions or adjustments in accordance with this Agreement, including the amount paid to the Concessionaire pursuant to Clause 17.7(c)(i); or
 - (ii) issue a notice to the Concessionaire (with a copy to the Government and the Escrow Bank) directing the Concessionaire to issue a revised O&M Charges Invoice, after rectifying the errors or discrepancies identified by the Independent Monitor.
- (e) The Concessionaire shall submit a revised O&M Charges Invoice to the Independent Monitor (with a copy to the Government and the Escrow Bank) after rectifying the errors or discrepancies identified by the Independent Monitor. Upon submission of the revised O&M Charges Invoice by the Concessionaire, the Independent Monitor shall, to the extent it is satisfied with the rectifications made by the Concessionaire, issue a certificate to the Government (with a copy to the Concessionaire and Escrow Bank), conveying its approval for payment of the amount specified in the O&M Charges Invoice or any other amount that the Independent Monitor determines to be the amount payable by the Government to the Concessionaire, less any necessary deductions or adjustments in accordance with this Agreement, including the amount paid to the Concessionaire pursuant to Clause 17.7(c)(i).
- (f) If in the Independent Monitor's determination, the amount payable to the Concessionaire is different from the amount stated in the O&M Charges Invoice or the revised O&M Charges Invoice, then the Independent Monitor shall provide a statement of reasons (along with requisite computation) to the Government (with a copy to the Concessionaire and the

Escrow Bank) explaining the amount determined by the Independent Monitor. Any dispute between the Parties on the quantum of the amount specified in the Payment Certificate will be resolved in accordance with Clause 29.

- (g) A certificate issued by the Independent Monitor to the Government in accordance with Clause 17.7(d)(i) or Clause 17.7(e), as the case may be, shall be referred to as a **Payment Certificate**. The Independent Monitor shall issue the Payment Certificate to the Government, with a copy to the Concessionaire and to the Escrow Bank. If the Independent Monitor does not, within 10 (ten) Business Days of receipt of an O&M Charges Invoice from the Concessionaire, issue the Payment Certificate then such O&M Charges Invoice shall be deemed to have been accepted by the Independent Monitor and the Payment Certificate shall be deemed to have been issued to the Concessionaire.
- (h) Immediately upon receipt of a Payment Certificate or expiry of 10 (ten) Business Days from the receipt of the O&M Charges Invoice from the Concessionaire, whichever is earlier, the Escrow Bank shall release the amount which is the lower of:
 - (i) 20% (twenty per cent) of the amount specified in the O&M Charges Invoice; and
 - (ii) the amount specified in the Payment Certificate,

in accordance with the Escrow Agreement.

In the event that the amount mentioned in the Payment Certificate is lower than the amount paid to the Concessionaire in accordance with Clause 17.7(c)(i), then the Government, without prejudice to its rights set out in Clause 10.4 and Clause 17.12, shall have the right to deduct, from the O&M Charges payable for the succeeding month, an amount equivalent to the aggregate of:

- (i) the difference in the amount paid in accordance with Clause 17.7(c)(i) and the amount mentioned in the Payment Certificate; and
 - (ii) interest on the amount mentioned in sub-clause (i) calculated at the rate of 2% (two per cent) per annum over and above the monthly weighted average new lending rate published by the Reserve Bank of Fiji.
- (i) Notwithstanding anything contained in this Agreement, any time during the Concession Period, the Government may issue a notice to the Concessionaire (with a copy to the Independent Monitor and the Escrow Bank) pursuant to which the Government can dispute the O&M Charges Invoice (or a part thereof) (**Payment Dispute Notice**).

Any dispute between the Parties in relation to a disputed Annuity Payment and/or O&M Charges will be settled in accordance with Clause 29.

For the avoidance of doubt, it is clarified that, notwithstanding subsistence of any dispute raised by a Party under Clause 17.7(f) or a dispute raised by the Government pursuant to a Payment Dispute Notice, the Escrow Bank shall release the amount specified in the O&M Charges Invoice or the Payment Certificate, as the case may be, in accordance with the terms of this Agreement and the Escrow Agreement.

- (j) Notwithstanding anything to the contrary in this Agreement, if there is a subsisting Notice of Intent to Terminate, then:
 - (i) the Independent Monitor shall have no obligation to issue a Payment Certificate; and
 - (ii) the Government shall have no obligation to make payments towards O&M Charges and/or Annuity Payments.
- (k) Any Annuity Payments and/or O&M Charges that would have been payable by the Government to the Concessionaire but for the subsistence of a Notice of Intent to Terminate by the Government, shall, upon revocation (deemed or otherwise) of such Notice of Intent to Terminate be paid by the Government without any interest within 15 (fifteen) Business Days of revocation (deemed or otherwise) of the Notice of Intent to Terminate.

17.8 Escrow Account

- (a) Prior to the Effective Date, the Concessionaire, the Government and the Escrow Bank shall enter into the Escrow Agreement and the Government shall open the Escrow Account. The Escrow Agreement shall set out the terms of appointment of the Escrow Bank, the Government's obligation to deposit and maintain the Minimum Escrow Balance in accordance with this Agreement and terms of withdrawal of amounts from the Escrow Account.

- (b) Minimum Escrow Balance

On or before the Effective Date, the Government shall deposit in the Escrow Account an amount equivalent to:

- (i) 2 (two) quarters' Annuity Payments;
- (ii) 6 (six) months' Guaranteed O&M Charges; and
- (iii) the Transition Phase Construction Obligation Completion Payment,

(Minimum Escrow Balance).

If at any time during the Term, the balance in the Escrow Account falls below the Minimum Escrow Balance, the Government shall promptly, and in any event, no later than 90 (ninety) Business Days, fund the Escrow Account such that the Minimum Escrow Balance is maintained. A failure to maintain the Minimum Escrow Balance for 90 (ninety) consecutive Business Days would be treated as a Government Event of Default.

It is clarified that all interest earned on the amounts lying in the Escrow Account shall be considered as comprising part of the Minimum Escrow Balance.

17.9 Other Payments

(a) *Deputed Staff Support Cost*

The Government shall, for each Project Hospital, submit an invoice for the Deputed Staff Support Cost to the Concessionaire (with a copy to the Independent Monitor and the Escrow Bank) for each month on or before the 5th (fifth) Business Day of the immediately succeeding month, setting out the Deputed Staff Support Cost due to the Government for such month for the relevant Project Hospital. Within 5 (five) Business Days of receipt of the invoice from the Government, the Concessionaire shall either accept or dispute the invoice amount, and in each case, send a notice to the Government (with a copy to the Independent Monitor and the Escrow Bank). If the Concessionaire, within 5 (five) Business Days of the receipt of the relevant invoice:

- (i) accepts the invoiced amount;
- (ii) does not submit an acceptance of the invoiced amount; or
- (iii) does not issue a Dispute Notice to the Government in relation to the invoiced amount,

then the Escrow Bank shall deduct the undisputed invoiced amount from the next payment due to the Concessionaire towards the O&M Charges.

Any dispute on the quantum of the amount specified in the Deputed Staff Support Cost shall be resolved in accordance with Clause 29.

(b) *Other Amounts Due from the Concessionaire to the Government*

All other amounts due from the Concessionaire to the Government under this Agreement shall be invoiced and paid in the same manner as set out in Clause 17.9(a).

17.10 Taxes

- (a) The Annuity Payments and the O&M Charges are inclusive of all Taxes, other than any value added tax, which, to the extent applicable, shall be borne by the Government to the Concessionaire.
- (b) The Government may deduct from the Annuity Payments, the O&M Charges and any other amounts due to the Concessionaire, any income tax, withholding tax or any other Tax that is required to be deducted at source in accordance with the Applicable Law.
- (c) Subject to Clause 17.10(a), the Concessionaire shall be responsible for payment of all applicable Taxes, including all procedural compliances related to the payment of Taxes pursuant to this Agreement, and shall be solely responsible for any proceedings initiated by any Government Authority, in respect of any non-payment or short-payment of Taxes.
- (d) Upon a request from the Concessionaire, the Government will provide all relevant certificates and information to enable the Concessionaire to obtain any Tax exemptions available in relation to the Project. It is clarified that the Government shall not be responsible in any manner for ensuring that any applicable Tax exemptions are available

to the Concessionaire.

- (e) Subject to Clause 17.10(a), the Concessionaire shall indemnify the Government from and against any cost or liability that may arise due to the Concessionaire's failure to pay all applicable Taxes, in connection with the Project.

17.11 Default Interest

Upon any Party's failure to make a payment due and payable by it on the due date for such payment, the defaulting Party shall be liable to pay default interest on all such outstanding amounts calculated at the rate of 2% (two per cent) per annum over and above the monthly weighted average new lending rate published by the Reserve Bank of Fiji. This is without prejudice to any Party's right to terminate this Agreement in accordance with Clause 24 or any other right or remedy available to it under this Agreement or Applicable Laws.

17.12 Right of Set-off

The Concessionaire shall not be entitled to retain or set-off any amount due to the Government by it, but, notwithstanding anything contained in this Agreement, the Government may retain or set-off any amount owed to it by the Concessionaire (including any Liquidated Damages) under this Agreement, which has fallen due and payable against any amount due to the Concessionaire under this Agreement. The Government shall notify the Concessionaire (with a copy to the Independent Monitor) at the time it exercises its right to set-off and shall provide the Concessionaire and the Independent Monitor its reasons for exercising such right to set-off.

18 FINANCING ARRANGEMENTS AND SECURITY

18.1 Financing and Bankability Support

- (a) The Parties acknowledge that for the purposes of implementing the Project, the Concessionaire may require Financial Assistance from the Lenders. To this end, the Government shall cooperate with the Concessionaire to achieve Financial Close, including by signing any relevant documents and providing such consents and waivers as may be reasonably required by the Lenders, provided that the provision of such cooperation (including signing of any documents or issuing any consent or waiver) will not result in any financial liability to the Government.
- (b) In the case of a Concessionaire Event of Default, the Government acknowledges that the Senior Lenders will have a right to substitute the Concessionaire in accordance with the Substitution Agreement. Notwithstanding anything to the contrary, the Government will suspend its right to terminate this Agreement until the expiry of the period available to the Senior Lenders to exercise their substitution rights under the terms of this Agreement and the Substitution Agreement.

18.2 Security Creation

- (a) The Concessionaire shall be entitled to create any Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project over:
 - (i) all or any part of its rights, title and interests in and to this Agreement and the other Project Documents by assignment; and/or

- (ii) all Project Hospital Assets and the Sites (to the extent of the Concessionaire's rights on the Site pursuant to this Agreement, the Licence Deed and the Lease Deed), both present and future,

provided that the creation of such Security will not result in any financial liability to the Government.

- (b) The Concessionaire shall be entitled to include the Lenders as co-insured and/or additional loss payees in any of the insurances taken by the Concessionaire in accordance with Clause 19.2 and/or grant Security over the proceeds of such insurance.
- (c) Except for any Security created by operation of law and any Security created pursuant to this Clause 18.2, the Concessionaire shall not be entitled to create any other Security over this Agreement or any other Project Document or insurance policies taken by it in favour of any third Persons, without the prior written consent of the Government, which consent the Government may deny in its sole discretion.

18.3 Revised Financial Model

Upon any replacement or amendment of the Financing Documents or increase in: (a) the Total Project Cost; or (b) debt financing from any Lender to fund the Total Project Cost, the Concessionaire shall promptly submit the updated Financial Model (as certified by the Lenders to be true and correct) to the Government.

19 INSURANCE AND INDEMNITIES

19.1 Indemnity

- (a) Subject to Clause 19.1(b), the Concessionaire shall hold harmless and indemnify the Government and the Government Related Parties on demand from and against, all suits, actions, claims, demands, losses, damages, fines, penalties, costs or expenses (including costs of legal fees) or liability for:
 - (i) death or personal injury of any person (other than death or personal injury of a Patient for reasons not attributable to the negligence of the Concessionaire (or any of its staff or Concessionaire Related Parties) or default by the Concessionaire of any of its obligations set out in this Agreement or Applicable Laws);
 - (ii) loss of or damage to property;
 - (iii) non-compliance with Applicable Laws or Applicable Permits (including specifically, environmental laws and environmental consents);
 - (iv) any damage caused to the environment by the Concessionaire; and
 - (v) any third-party losses or claims,

which may arise out of, or in consequence of the performance or non-performance of the Concessionaire's rights or obligations under this Agreement.

- (b) Notwithstanding anything to the contrary contained in Clause 19.1(a), the Concessionaire

shall not be responsible or be obliged to indemnify the Government for any injury, loss, damage, cost and expense caused by the negligence or Wilful Misconduct of the Government or the Government Related Parties or by a breach by the Government of its obligations under this Agreement.

- (c) The Government shall have the right, but not the obligation, to contest, defend, and litigate any claim, action, suit or proceeding by any third party alleged or asserted against it or any Government Related Party in respect of, resulting from, related to or arising out of any matter for which they are entitled to be indemnified under this Agreement, and the reasonable costs and expenses (including legal fees) thereof, shall be subject to the indemnification obligations of, and be borne by, the Concessionaire.
- (d) If, however, the Concessionaire acknowledges in writing its obligation to indemnify the Government in respect of loss to the full extent provided under this Agreement, the Concessionaire shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding at its expense and through a counsel of its choice if it gives prompt notice of its intention to do so to the Government and reimburses the Government for the costs and expenses incurred by the Government prior to the assumption by the Concessionaire of such defence. A Party shall not settle or compromise any such claim, action, suit or proceeding without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Government shall have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel, as and when incurred, shall be at the expense of the Government.
- (e) The provisions of this Clause 19.1 shall survive the termination of this Agreement.

19.2 Insurance

- (a) The Concessionaire shall, on and from the Handover Date, obtain and maintain, for each Project Hospital separately, the policies of insurance set out below in the minimum coverage amounts and during the specified periods. In addition, the Concessionaire shall obtain any additional coverage required under Applicable Laws and/or deemed necessary by the Concessionaire, the Lenders or the Government.

- (i) *Insurances during the Construction Period*

During the Construction Period, the Concessionaire shall obtain and maintain, for each Project Hospital, such insurances for such maximum sums as may be required under the Financing Documents or Applicable Laws, and such other insurance as may be necessary or prudent in accordance with Best Construction Practices for the Project Hospitals, including insurance to cover any loss, damage or destruction of the Project Hospitals (including the Project Hospital Assets), on a full replacement value basis.

- (ii) *Insurances during the O&M Period*

During the O&M Period, the Concessionaire shall obtain and maintain, for each Project Hospital, such insurance policies for such maximum sums as may be required under the Financing Documents or Applicable Laws, and such other insurance as may be necessary or prudent in accordance with Best Operational

Practices for the Project Hospitals, including but not limited to the following:

- (A) loss, damage or destruction of the Project Hospitals (including the Project Hospital Assets), on a full replacement value basis;
 - (B) comprehensive third-party liability insurance including injury to or death of any Person including any personnel of the Government or any Government Related Party or others caused at the Project;
 - (C) the Concessionaire's general liability arising out of the Project;
 - (D) liability to third parties for goods or property damage;
 - (E) professional indemnity insurance covering all the medical health professionals, other staff and the Concessionaire;
 - (F) workmen's compensation insurance; and
 - (G) any other insurance that may be necessary or desirable to protect the Project Hospitals, the Concessionaire or its employees and other staff including for all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in paragraphs (A) to (F).
- (b) If, for any reason, including repayment of the Financial Assistance due to the Lenders, the Financing Documents cease to apply, as a result of which the insurance requirements stipulated under the Financing Documents no longer apply on the Concessionaire, then, for the purposes of this Agreement, the Concessionaire shall still maintain such level of insurance under this Agreement as if the insurance requirements under the Financing Documents were applicable to the full extent as required under the Financing Documents immediately prior to the Financing Documents ceasing to apply.
- (c) The Concessionaire shall purchase insurance from reputable entity(ies) that are permitted to provide such insurance cover(s) under the Applicable Law, at competitive terms, and shall maintain the insurances on terms consistent with the Applicable Laws and GIIP. Within 10 (ten) Business Days of obtaining any insurance cover, the Concessionaire shall furnish to the Government, a true copy of the certificate(s) of insurance which is certified by a Commissioner for Oaths, Justice of Peace or Notary Public, and copies of the insurance policies and premia payment receipts in respect of such insurance.
- (d) Each insurance policy shall contain the following endorsements:
- (i) the Government shall be an additional insured under all policies maintained by the Concessionaire;
 - (ii) the insurers shall waive all rights of subrogation against the Government;
 - (iii) the insurance policy may not be cancelled or materially changed by the insurer without giving at least 30 (thirty) Business Days' prior written notice to the Government, except in the case of non-payment of insurance premia, in which case the insurer shall be required to give at least 10 (ten) Business Days' prior written notice to the Government prior to terminating any insurance; and

- (iv) the Government shall not be responsible for payment of any insurance premium.

The Concessionaire may prescribe such other endorsements to any insurance policy as the Lenders require, provided no such endorsement is in any way contrary to the endorsements mentioned above. In the event of any contradiction, the endorsements mentioned above (and made for the benefit of the Government) shall prevail.

- (e) Without prejudice to the foregoing, the Concessionaire must ensure payment when due of all premiums, commissions, stamp duties, charges, Taxes and other expenses necessary to procure and maintain in full force and effect each insurance policy that the Concessionaire is responsible to procure and maintain under this Agreement.
- (f) Any changes in the insurances which impact the Project will need the prior written consent of the Government, which consent shall not be unreasonably withheld or delayed.
- (g) Unless agreed otherwise by the Parties, the Concessionaire shall apply proceeds from all insurance claims, except any proceeds relating to any third-party liability insurance, for any necessary Rectification and Repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Hospitals.
- (h) If the Concessionaire fails to procure or maintain any insurance required pursuant to this Clause 19.2, the Government shall have the right, but not the obligation, to procure or maintain such insurance and charge the full cost thereof to the Concessionaire.

(i) **No prejudicial action**

The Concessionaire must:

- (i) not do anything and must ensure that the Concessionaire Related Parties do not do anything which may prejudice any insurance policy or omit to do anything where such omission may prejudice any insurance policy;
- (ii) notify the Government of any fact or circumstance or change in circumstances which may prejudice any insurance policy;
- (iii) provide any information requested by the insurer in relation to any insurance policy issued by that insurer;
- (iv) notify the relevant insurer of any modification which increases the value of the underlying insured property or the risk cover; and
- (v) comply at all times and ensure that all Concessionaire Related Parties who are insured under an insurance policy comply at all times with the terms and conditions of each insurance policy including the provisions relating to disclosure, notification and claims co-operation.

(j) **Cancellation and change**

- (i) Without prejudice to the requirements of this Clause 19.2, the Concessionaire must not cause and must ensure that the Concessionaire Related Parties do not cause or

take any steps to bring about the lapse, cancellation, material change or reduction of any insurance policy.

- (ii) Without limiting its obligations under this Clause 19.2, the Concessionaire must immediately notify the Government of any lapse, cancellation, material change or reduction of any insurance policy and must provide to the Government promptly upon receipt a copy of all notices it or the Concessionaire Related Parties receive from any insurer relating to any proposed lapse, cancellation, material change or reduction of any insurance policy.
- (iii) The Concessionaire must immediately notify the Government in the event that a risk covered by any of the insurance policies becomes an Uninsurable risk.

(k) **Uninsurable risks in the case of the Lautoka Hospital after the Handover Date but prior to the Lautoka Hospital CCD**

- (i) Nothing in this Clause 19.2 obliges the Concessionaire to procure or maintain insurance in respect of a risk of Non-Political Force Majeure Event with respect to the Lautoka Hospital occurring after the Handover Date but prior to the Lautoka Hospital CCD (such risk, **Lautoka Hospital Pre CCD Non-Political FM Risk**) which is otherwise agreed or determined under Clause 19.2(k)(ii) to be Uninsurable, for so long as it remains Uninsurable.
- (ii) If such Lautoka Hospital Pre CCD Non-Political FM Risk is required to be insured against pursuant to this Clause 19.2 is or becomes or is likely to become Uninsurable then:
 - (A) the Concessionaire must notify the Government within 5 (five) Business Days of becoming aware that the Lautoka Hospital Pre CCD Non-Political FM Risk has or is likely to become Uninsurable and the Government agrees to meet with the Concessionaire within 5 (five) Business Days after receipt of the Concessionaire's notice to discuss the issue, including whether the Lautoka Hospital Pre CCD Non-Political FM Risk is in fact Uninsurable; and
 - (B) if both Parties agree (or if not, it is determined pursuant to Clause 29) that the Lautoka Hospital Pre CCD Non-Political FM Risk is Uninsurable, the Parties must meet further to discuss the means by which the Lautoka Hospital Pre CCD Non-Political FM Risk should be managed, including:
 - (I) consideration of the issue of self-insurance by either Party; or
 - (II) assigning some other allocation of responsibility to the Lautoka Hospital Pre CCD Non-Political FM Risk.
- (iii) If a Lautoka Hospital Pre CCD Non-Political FM Risk is agreed or determined under Clause 19.2(k)(ii) to be Uninsurable, but the Parties cannot agree as to how to manage the Lautoka Hospital Pre CCD Non-Political FM Risk, then this Agreement will continue and such Lautoka Hospital Pre CCD Non-Political FM Risk (which is Uninsurable) will be deemed to be assumed by the Government,

and in such circumstance, upon the occurrence of such Lautoka Hospital Pre CCD Non-Political FM Risk, the Government must (at the Government's option) either:

- (A) indemnify the Concessionaire for the loss or damage suffered or incurred by the Concessionaire to the extent such loss or damage arose from the occurrence of the Lautoka Hospital Pre CCD Non-Political FM Risk, up to an amount equal to the insurance proceeds that would have been payable, and at times consistent with the times at which the Concessionaire would have been paid, had the relevant insurance continued to be available to the Concessionaire on the terms previously obtained by it, or, if the insurance had never been available the amount agreed by the Parties to cover that loss or damage or if no agreement, determined under Clause 29, and this Agreement will continue;
- (B) propose a Variation, which shall be governed by Clause 28.1; or
- (C) terminate this Agreement, in accordance with Clause 22.9(a)(ii), and pay Concessionaire Termination Compensation in accordance with Clause 25.1,

and must advise the Concessionaire of its election within 20 (twenty) Business Days from the occurrence of such Uninsurable risk.

- (iv) The Concessionaire must be vigilant in reviewing the insurance market generally, to ascertain whether an Uninsurable risk has become insurable, and in any event, must require its insurance brokers to test the market and determine whether, and if so what, insurance terms as to coverage are available in respect of the Lautoka Hospital Pre CCD Non-Political FM Risk, from insurers set out in Clause 19.2(c), at intervals of not more than 12 (twelve) months. If upon such review the Concessionaire finds that the relevant Lautoka Hospital Pre CCD Non-Political FM Risk is no longer Uninsurable, then the Concessionaire must notify the Government and the Concessionaire must promptly procure the insurance in respect of the Lautoka Hospital Pre CCD Non-Political FM Risk in accordance with the other provisions of this Clause 19.2.

20 CHANGE IN OWNERSHIP

20.1 Ownership Information

The Concessionaire represents and warrants that, as on the Execution Date, the shareholding pattern of the Shareholders in the Concessionaire is as follows:

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity]	Value of the shares held [in FJD]	Shareholding [in %]
1.	FNPF	8,000	Class A Equity Shares	8,000	80 %

S. No.	Name of the shareholder	No. of shares held	Nature of the shares [Equity]	Value of the shares held [in FJD]	Shareholding [in %]
2.	Selected Bidder	2,000	Class B Equity Shares	2,000	20 %
TOTAL					100 %

The Concessionaire represents and warrants to the Government that no arrangements are in place that have resulted or may result in a breach of the Change in Ownership restrictions set out in Clause 20.2.

20.2 Restricted Transfers

- (a) The Concessionaire shall ensure that the Selected Bidder shall hold at least:
 - (i) 20% (twenty per cent) of the Capital (**Selected Bidder Initial Lock-in Capital**) from the Execution Date until the 5th (fifth) anniversary of the later of the Lautoka Hospital CCD and the Ba Hospital CCD (**Selected Bidder Initial Lock-in Period**); and
 - (ii) 5% (five per cent) of the Capital (**Selected Bidder Full Lock-in Capital**) from the 5th (fifth) anniversary of the later of the Lautoka Hospital CCD and the Ba Hospital CCD until the 10th (tenth) anniversary of the later of the Lautoka Hospital CCD and the Ba Hospital CCD (**Selected Bidder Full Lock-in Period**).
- (b) Following the end of the Selected Bidder Initial Lock-in Period, the Selected Bidder can undertake a Change in Ownership up to the Selected Bidder Initial Lock-in Capital, provided that the Selected Bidder continues to hold the Selected Bidder Full Lock-in Capital until the end of Selected Bidder Full Lock-in Period.
- (c) Following the expiry of the Selected Bidder Full Lock-in Period, the Selected Bidder may undertake a Change in Ownership in relation to the entire Capital held by the Selected Bidder to any Person (**Subsequent Transferee**). Provided that no such transfer shall be permitted, unless at the time of such transfer or as a result of such transfer at least 5% (five per cent) of the Capital is held by a Person (or in case such Person is the Subsequent Transferee, would following the transfer to the Subsequent Transferee, be held by the Subsequent Transferee) and such Person (including any Subsequent Transferee) meets the Technical Capacity and Financial Capacity requirements prescribed in the RFT, as confirmed by the Government.
- (d) If, at any time after the expiry of the Selected Bidder Full Lock-in Period, the Selected Bidder is proposed to be replaced by an entity that meets the Technical Capacity and Financial Capacity as prescribed in the RFT, then the Concessionaire shall submit a proposal to the Government with details of the proposed shareholder for its approval. The proposal should demonstrate to the satisfaction of the Government that the proposed shareholder meets the Technical Capacity and Financial Capacity as prescribed in the RFT.

Within 15 (fifteen) Business Days of receipt of a proposal from the Concessionaire, the Government shall notify the Concessionaire of its approval or rejection (along with reasons) of the proposed shareholder.

The approval of the proposed shareholder shall be at the Government's sole discretion.

If the Government does not notify its approval or rejection of the proposed shareholder within 45 (forty-five) Business Days of the receipt of the proposal from the Concessionaire, then such proposed shareholder will be deemed to be approved by the Government.

- (e) The Concessionaire shall ensure that the Change in Ownership restrictions set out in this Clause 20.2 are incorporated in the articles of association of the Concessionaire.

21 CHANGE IN LAW

21.1 Change in Law

The Concessionaire may claim relief for, and shall pass on the benefit of, a Change in Law event subject to and in accordance with this Clause 21.

21.2 Consequences of Change in Law

- (a) The Concessionaire shall not be allowed any relief and/or compensation for any Change in Law which is not a: (i) Qualifying Change in Law; or (ii) Fundamental Change in Law.
- (b) If a Qualifying Change in Law occurs, then the affected Party shall promptly notify the other Party of such Qualifying Change in Law along with details of:
 - (i) any necessary change in the Specifications and Standards, Designs and Drawings, the Project Hospital Transition Plan, the E&S Standards, the Service Level Standards, the Maintenance Requirement, the Maintenance Manual or any other aspect on the basis of which Construction Works and Operation and Maintenance are required to be undertaken for the Project Hospitals;
 - (ii) any changes that are required to the terms of this Agreement to deal with such Qualifying Change in Law;
 - (iii) any extension of the Project Hospital SCCD, to account for any expected delay, if any, resulting from the Qualifying Change in Law; and/or
 - (iv) any increase or reduction in Costs that will result from the Qualifying Change in Law.
- (c) As soon as practicable and in any event, within 20 (twenty) Business Days from the receipt of any notice from the affected Party under Clause 21.2(b), the Parties shall agree on the consequences of the Qualifying Change in Law, as specified in the notice, and any way in which the Concessionaire can: (i) in case of increase in Costs, mitigate; and (ii) in case of reduction in Costs, maximise, the effect of the Qualifying Change in Law, including:
 - (i) providing evidence that the Concessionaire has used all reasonable endeavours (including, where practicable, the use of competitive quotes) to: (A) in the case of

increase in Costs, minimise any increase in Costs or oblige the Subcontractors to minimise any increase in Costs; and (B) in the case of reduction in Costs, maximise any reduction in Costs or oblige the Subcontractors to maximise any reduction in Costs;

- (ii) providing evidence as to how the Qualifying Change in Law has affected prices of materials used for Construction Works or undertaking Operation and Maintenance at the Project Hospitals; and
 - (iii) demonstrating to the Government that the Qualifying Change in Law is the direct cause of the increase in Costs or delay and the estimated increase in Costs, or extension of time could not reasonably be expected to be mitigated or recovered by the Concessionaire.
- (d) If the Parties fail to agree on the consequences of the Qualifying Change in Law within 20 (twenty) Business Days from the receipt of any notice from the affected Party under Clause 21.2(b), the dispute will be finally settled in accordance with the dispute resolution procedure set out in Clause 29.

Increase in Costs

- (e) If the Concessionaire has complied with Clause 21.2(c) and the Parties mutually agree or it is determined in accordance with Clause 29 that the Concessionaire is required to incur additional Costs due to a Qualifying Change in Law, then:
- (i) the Concessionaire shall be required to bear all Costs resulting from any one or more Qualifying Change in Law events, up to 3% (three per cent) of such Costs (**Threshold Limit**); and
 - (ii) for any additional Costs resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be entitled to be compensated for such additional Costs, in excess of the Threshold Limit, by way of,
 - (A) a lump-sum payment of an amount equivalent to the additional Costs incurred by the Concessionaire, over and above the Threshold Limit; or
 - (B) an appropriate adjustment in the relevant O&M Charges,at the election of the Government.
- (f) If the Concessionaire has complied with Clause 21.2(c) and the Parties mutually agree or it is determined in accordance with Clause 29 that the Concessionaire will suffer delay as a result of the occurrence of a Qualifying Change in Law, then the Concessionaire shall be entitled to an extension of time in accordance with Clause 8.7.
- (g) The quantum of relief (whether extension of time or compensation or both) that the Concessionaire shall be entitled to under this Clause 21.2 shall be as agreed by the Parties or as determined in accordance with Clause 29, provided always that:

- (i) the Concessionaire shall bear any increased Cost to the extent of the Threshold Limit; and
 - (ii) the Concessionaire shall only be entitled to relief that is reasonable for such Qualifying Change in Law.
- (h) Notwithstanding anything to the contrary in this Agreement, the Concessionaire shall not, in relation to the Project or any component thereof, be entitled to any relief and/or compensation (including adjustment to the O&M Charges) due to a Qualifying Change in Law, if such Qualifying Change in Law becomes applicable as a result of a delay in the execution of the Project, which delay is not attributable to a Delay Event.

Reduction in Costs

- (i) If the Concessionaire has complied with Clause 21.2(c) and the Parties mutually agree or it is determined in accordance with Clause 29 that there is a reduction in Costs due to a Qualifying Change in Law, then:
 - (i) the Concessionaire shall be entitled to retain Costs savings resulting from any one or more Qualifying Change in Law events, up to the Threshold Limit; and
 - (ii) for any additional Costs savings resulting from the Qualifying Change in Law, which is in excess of the Threshold Limit, the Concessionaire shall be obligated to pass on to the Government the entire benefit of such Costs savings, in excess of the Threshold Limit, by way of:
 - (A) a lump-sum payment of an amount equivalent to the additional Costs savings achieved by the Concessionaire, over and above the Threshold Limit; or
 - (B) an appropriate adjustment in the relevant O&M Charges,
- at the election of the Concessionaire.

Fundamental Change in Law

- (j) If a Fundamental Change in Law occurs, then:
 - (i) the affected Party may notify the other Party of the effects of such Fundamental Change in Law on the validity and enforceability of this Agreement or on the rights and obligations of either Party under this Agreement; and
 - (ii) any Party may propose amendments to this Agreement, which would make this Agreement compliant with Applicable Laws, while enabling the Parties to achieve their commercial objectives.

If the Parties are unable to agree on necessary amendments to the terms of this Agreement within 20 (twenty) Business Days of receipt of a notice from the Affected Party or the Fundamental Change in Law event is such that it cannot be mitigated with amendments to the terms of this Agreement, the Fundamental Change in Law event shall be treated as a Direct Political Force Majeure Event in accordance with Clause 22.

22 FORCE MAJEURE

22.1 Force Majeure Events

- (a) A **Force Majeure Event** means any act, event or circumstance or a combination of acts, events or circumstances or the consequence(s) thereof occurring in the Republic of Fiji after the date of this Agreement, which is/are:
 - (i) beyond the reasonable control of the Affected Party;
 - (ii) such that the Affected Party is unable to overcome or prevent despite exercise of due care and diligence;
 - (iii) which does/do not result from the negligence of such Affected Party or the failure of such Affected Party to perform its obligations hereunder; and
 - (iv) such that it/they has/have a Material Adverse Effect.
 - (b) A Force Majeure Event means the following events and circumstances to the extent that they satisfy the conditions set out in Clause 22.1(a):
 - (i) ***Non-Political Force Majeure Events***
 - (A) acts of God including storm, tempest, cyclone, hurricane, tsunami, flood, whirlwind, lightning, earthquake, washout, landslide, soil erosion, volcanic eruption, or extreme adverse weather or environmental conditions or actions of the elements, but excluding heavy rainfall;
 - (B) fire or explosion, caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (C) chemical or radioactive contamination or ionising radiation, caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (D) epidemic, plague or quarantine, caused by reasons not attributable to the Concessionaire or any Concessionaire Related Parties;
 - (E) the discovery of geological conditions, toxic contamination or Artefacts on the Site that could not reasonably have been expected to be discovered through a site inspection; and
 - (F) accidents of navigation, air crash, shipwreck, train wreck or other similar failures of transportation of equipment and/or material necessary for Construction Works or Operation and Maintenance.
- A Non-Political Force Majeure Event shall not include the following conditions, except to the extent resulting from a Non-Political Force Majeure Event:
- (A) unavailability, late delivery or changes in cost of plant, machinery, equipment, materials or spare parts required for undertaking the Project;

- (B) a delay in the performance of any Subcontractor;
- (C) non-performance resulting from normal wear and tear; or
- (D) non-performance caused by the non-performing Party's (I) negligent or intentional acts, errors or omissions, (II) failure to comply with the Applicable Laws or Applicable Permits, or (III) breach of, or default under, this Agreement, as the case may be.

(ii) ***Indirect Political Force Majeure Events***

- (A) hostilities (whether declared as war or not), riot, civil disturbance, revolution, rebellion, insurrection, act of terrorism involving or affecting the Republic of Fiji;
- (B) invasion, armed conflict, coup d'état, act of foreign enemy, blockade, embargo, revolution, insurgency, nuclear blast/explosion, politically motivated sabotage, religious strife or civil commotion, in each case involving or affecting the Republic of Fiji;
- (C) strikes, lockout, boycotts or other industrial disputes which are not directly attributable to the actions of the Affected Party;
- (D) Utility Interruption for a consecutive period of 60 (sixty) days;
- (E) any orders issued by any Government Authority, which require the Concessionaire to suspend the Construction Works or Operation and Maintenance of the Project Hospitals provided that, such orders are not attributable to the Concessionaire's breach of this Agreement or violation of any Applicable Laws or Applicable Permits; and
- (F) undue delay or failure by any Government Authority in renewing or granting any Applicable Permit, despite the Concessionaire having applied for such Applicable Permit expeditiously and complied with the requirements of Applicable Laws in making such application or the unlawful revocation of any Applicable Permit.

(iii) ***Direct Political Force Majeure Events***

- (A) occurrence of a Fundamental Change in Law in accordance with Clause 21.2(j);
- (B) compulsory acquisition or expropriation of the Project Hospitals; and
- (C) any order, notification or judgement issued or passed by any Government Authority which restricts the Concessionaire from undertaking Construction Works or Operating and Maintaining the Project Hospitals as contemplated in this Agreement on the Site, unless such restriction is, in any manner, attributable to the Concessionaire.

- (c) Without prejudice to the provisions of Clause 22.1(a) or 22.1(b):

- (i) any act, event or circumstance which primarily affects any of the Concessionaire Related Parties associated with the Project shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Concessionaire, it would have come within the definition of Force Majeure Event under this Clause 22.1; and
- (ii) any act, event or circumstance which primarily affects any of the Government Related Parties shall constitute a Force Majeure Event if and to the extent that it is of a kind or character that, if it had directly affected the Government, it would have come within the definition of Force Majeure Event under this Clause 22.1.
- (d) If the Parties are unable to agree in good faith on the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the dispute resolution procedure set out in Clause 29, provided however that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Affected Party.

22.2 Notice of Force Majeure Events

- (a) The Affected Party shall give notice to the other Party in writing of the occurrence of any Force Majeure Event (**FM Notice**), as soon as the same arises or as soon as reasonably practicable and in any event within 5 (five) Business Days after the Affected Party knew of its occurrence, the adverse effect it has or is likely to have on the performance of the Affected Party's obligations under this Agreement, the actions being taken and an estimate of the time period required to overcome the Force Majeure Event and/or its nature and effects (if it is possible to estimate the same).
- (b) If, following the issue of the FM Notice, the Affected Party receives or becomes aware of any further information relating to the Force Majeure Event, it shall submit such further information to the other Party as soon as reasonably practicable.
- (c) Any Party claiming to have been affected by a Force Majeure Event shall not be entitled to any relief unless it has complied with all the provisions of this Clause 22.2.

22.3 Excuse of Performance

- (a) The Affected Party, to the extent rendered unable to perform its obligations or part of the obligation thereof under this Agreement as a consequence of the Force Majeure Event, shall be excused from performance of the affected obligations.
- (b) If a Force Majeure Event affects only one but not the other Project Hospital, then the Affected Party shall only be excused from the performance of its obligations in relation to the Affected Project Hospital.
- (c) Provided that, notwithstanding anything to the contrary, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.

22.4 Alternative Arrangements

- (a) Where the Concessionaire being excused from performing its obligations under this Agreement results in any of the Services not being provided, the Government may require

the Concessionaire to deliver those Services by an alternative method, including by making arrangements at an alternate location (and such arrangements being adequate in the given circumstances).

- (b) If the Government requires the Concessionaire to deliver those Services by an alternative method, the Government, in addition to paying Annuity Payments and the O&M Charges, shall also be liable to pay to the Concessionaire any additional Costs that the Concessionaire incurs as a direct consequence of delivering Services by the alternative method prescribed by the Government.
- (c) For the avoidance of doubt, it is clarified that during the period when the Concessionaire is delivering Services through an alternative method due to a Force Majeure Event, the Concessionaire shall not be required to adhere to the Service Level Standards and shall not be liable to pay any Performance Liquidated Damages.

22.5 No Liability for Other Losses

Except as expressly provided in this Agreement, no Party shall be liable in any manner whatsoever to the other Party for any loss relating to or arising out of the occurrence or existence of any Force Majeure Event or the exercise by it of any right pursuant to this Clause 22.

22.6 Resumption of Performance

The Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of a Force Majeure Event on the performance of its obligations under this Agreement. The Affected Party shall also make reasonable efforts to resume performance of its obligations under this Agreement as soon as possible and upon resumption, shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

22.7 Rectification and Repair

Without prejudice to the provisions of Clause 22.6, the Concessionaire shall within a reasonable time period, after cessation of a Force Majeure Event, at its sole cost and expense, undertake Rectification and Repair of any damage caused to the Affected Project Hospital.

22.8 Allocation of costs during a Force Majeure Event

- (a) Upon occurrence of a Force Majeure Event which affects the Ba Hospital (whether prior to or after the Ba Hospital CCD), then each Party shall bear their respective costs in connection with such Force Majeure Event and neither Party shall be required to pay any costs to the other Party in connection with such Force Majeure Event, provided that, it is clarified that if a Force Majeure Event affects the Ba Hospital and if the Ba Hospital CCD has been achieved at that time, the Government shall, for the duration of the Force Majeure Event and any time period thereafter required for the Rectification and Repair of the Ba Hospital, continue to pay to the Concessionaire: (i) O&M Charges payable in connection with the Ba Hospital; and (ii) if at that time the Lautoka Hospital CCD has also been achieved, Ba Hospital Annuity Payments, in each case, in accordance with the terms of this Agreement.
- (b) Upon occurrence of a Force Majeure Event which affects the Lautoka Hospital, then, if

such Force Majeure Event occurs:

- (i) before the Lautoka Hospital CCD, then each Party shall bear their respective Costs in connection with such a Force Majeure Event and neither Party shall be required to pay any Costs to the other Party in connection with such a Force Majeure Event, provided that, it is clarified that if a Force Majeure Event affects the Lautoka Hospital, the Government shall continue to pay to the Concessionaire, for the duration of the Force Majeure Event and any time period thereafter required for the Rectification and Repair of the Lautoka Hospital, O&M Charges applicable in connection with the Lautoka Hospital in accordance with the terms of this Agreement; and
- (ii) after the Lautoka Hospital CCD, then, notwithstanding the existence of such Force Majeure Event or anything else to the contrary contained in this Agreement, the Government shall continue to pay to the Concessionaire, for the duration of the Force Majeure Event and any time period thereafter required for the Rectification and Repair of the Lautoka Hospital, the Lautoka Hospital Annuity Payments and O&M Charges payable in connection with the Lautoka Hospital in accordance with the terms of this Agreement.

22.9 Termination due to Force Majeure Event

(a) *Termination due to a Non-Political Force Majeure Event*

- (i) If a Non-Political Force Majeure Event occurs, which affects the Ba Hospital only and such Non-Political Force Majeure Event continues for a period of 75 (seventy-five) Business Days after the notification of such Non-Political Force Majeure Event (or any other mutually agreed extended period) or results in a Total Loss of the Ba Hospital, then the Government shall, after the expiry of the 75 (seventy-five) Business Day period (or any other mutually agreed extended period) or upon occurrence of such Total Loss of the Ba Hospital, be entitled to forthwith terminate this Agreement vis-à-vis the Ba Hospital only by issuing a notice to that effect to the Concessionaire and upon issuance of such a notice, the following shall be deemed to occur:
 - (A) this Agreement shall be deemed to be terminated with respect to the Ba Hospital only;
 - (B) the provisions of this Agreement relating to the Ba Hospital only, including the rights and obligations of the Parties under this Agreement relating to the Ba Hospital only, shall be deemed to be severed from this Agreement, on and from the date of such termination;
 - (C) the remainder of this Agreement relating to the Lautoka Hospital, including all rights and obligations of the Parties under this Agreement relating to the Lautoka Hospital, shall continue mutatis mutandis in full force and effect; and

(D) in case such Non-Political Force Majeure Event occurs:

(I)

(x) prior to the Ba Hospital CCD, notwithstanding whether the Lautoka Hospital CCD has occurred or not; or

(y) after the Ba Hospital CCD but before the Lautoka Hospital CCD,

then the consequences in Clause 25.3(a)(i) shall apply; and

(II) after the Ba Hospital CCD and Lautoka Hospital CCD, then the consequences in Clause 25.3(a)(ii) shall apply; and

provided that nothing in this Clause shall affect or be deemed to affect the rights and obligations of the Parties under this Agreement relating to the Ba Hospital arising prior to such termination.

(ii) If a Non-Political Force Majeure Event occurs which affects both Project Hospitals or the Lautoka Hospital only and such Non-Political Force Majeure Event continues for a period of 75 (seventy-five) Business Days after the notification of such Non-Political Force Majeure Event (or any other mutually agreed extended period) or results in a Total Loss of the Lautoka Hospital only or of both Project Hospitals, then the Government shall, after the expiry of the 75 (seventy-five) Business Day period (or any other mutually agreed extended period) or upon occurrence of such Total Loss event, be entitled to forthwith terminate this Agreement in its entirety by issuing a notice to that effect to the Concessionaire and upon issuance of such a notice, the following shall be deemed to have occur:

(A) notwithstanding whether such Non-Political Force Majeure Event affects the Ba Hospital or not, this Agreement shall be deemed to be terminated in its entirety; and

(B) in case:

(I) the Non-Political Force Majeure Event occurs prior to the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has occurred or not, the consequences in Clause 25.3(b)(i) shall apply;

(II) the Non-Political Force Majeure Event occurs after the Lautoka Hospital CCD, notwithstanding whether the Ba Hospital CCD has occurred or not, the consequences in Clause 25.3(b)(ii) shall apply,

provided that nothing in this Clause shall affect or be deemed to affect the rights and obligations of the Parties under this Agreement arising prior to such termination.

(b) ***Termination due to an Indirect Political Force Majeure Event***

If an Indirect Political Force Majeure Event occurs and affects either one or both Project Hospitals and continues for a period of 60 (sixty) Business Days after the notification of such Indirect Political Force Majeure Event (or any other mutually agreed extended period) or results in a Total Loss of any Project Hospital, then the Government shall, after the expiry of the 60 (sixty) Business Day period (or any other mutually agreed extended period) or upon occurrence of such Total Loss event, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the Concessionaire and upon issuance of such a notice, the following shall be deemed to occur:

- (i) notwithstanding whether the Indirect Political Force Majeure Event affects one or both Project Hospitals, this Agreement shall be deemed to be terminated in its entirety; and
- (ii) in case:
 - (A) the Indirect Political Force Majeure Event occurs prior to the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the consequences in Clause 25.4(a) shall apply;
 - (B) the Indirect Political Force Majeure Event occurs after the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has occurred or not, the consequences in Clause 25.4(b) shall apply,

provided that nothing in this Clause shall affect or be deemed to affect the rights and obligations of the Parties under this Agreement arising prior to such termination.

(c) ***Termination due to a Direct Political Force Majeure Event***

If a Direct Political Force Majeure Event occurs and affects either one or both Project Hospitals and continues for a period of 60 (sixty) Business Days after the notification of such Direct Political Force Majeure Event (or any other mutually agreed extended period) or results in a Total Loss of any Project Hospital, then the Government shall, after the expiry of the 60 (sixty) Business Day period (or any other mutually agreed extended period) or upon occurrence of such Total Loss event, be entitled to forthwith terminate this Agreement in its sole discretion by issuing a notice to that effect to the Concessionaire and upon issuance of such a notice, the following shall be deemed to occur:

- (i) notwithstanding whether the Direct Political Force Majeure Event affects one or both Project Hospitals, this Agreement shall be deemed to be terminated in its entirety; and
- (ii) in case:
 - (A) the Direct Political Force Majeure occurs prior to the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the consequences in Clause 25.5(a) shall apply;

- (B) the Direct Political Force Majeure occurs after the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has occurred or not, the consequences in Clause 25.5(b) shall apply,

provided that nothing in this Clause shall affect or be deemed to affect the rights and obligations of the Parties under this Agreement arising prior to such termination.

23 EMERGENCY EVENTS AND GOVERNMENT STEP-IN RIGHTS

23.1 In the event of an emergency (as communicated by the Government, in writing, to the Concessionaire, at its sole discretion) (**Emergency Event**), then the Government may, in its sole discretion, notify in writing (such notice, an **Emergency Event Notice**) the Concessionaire of:

- (a) any action it wishes to take or be undertaken by the Concessionaire (**Emergency Action**);
- (b) the reason for such action;
- (c) the date it wishes to commence such action or for the Concessionaire to commence such action; and
- (d) if reasonably estimable, the time period which it believes will be necessary for such action.

23.2 For the avoidance of doubt, it is clarified that upon occurrence of an Emergency Event, the Government may, in its discretion, require any Emergency Action to be taken, including the manner in which the Concessionaire operates any Project Hospital (including, if required, closing down any Project Hospital (in part or in whole). Without in any way limiting the generality of the foregoing, the Parties agree that the Government shall also have the right, but not the obligation, as part of the Emergency Action, to take over the operations and control of either one or both Project Hospital(s) upon occurrence of an Emergency Event (such right, the **Emergency Step-in Right**, and, the exercise of such right, the **Emergency Step-in**).

23.3 It is further clarified that if the Government exercises its Emergency Step-in Right, it shall endeavour, as soon as reasonably practicable after the underlying Emergency Event ceases, to hand-back the possession of, and control over, the Project Hospital (taken over by the Government) to the Concessionaire in a condition substantially similar to the condition in which it was taken over by the Government pursuant to the Emergency Step-in (excluding normal wear and tear) (**Government Step-out**). The Government shall, at least 15 (fifteen) Business Days prior to the Government Step-out, notify the Concessionaire of its intention to hand-back the Project Hospital taken over by the Government (pursuant to the Emergency Event Notice) to the Concessionaire, and the Concessionaire shall, at the end of the 15 (fifteen) Business Day notice period mentioned above (or such other date as the Parties may agree) take-back possession and control of the Project Hospital(s).

23.4 Concessionaire's obligations during Emergency Events

The Concessionaire shall provide all reasonable assistance to the Government during an Emergency Event and shall carry out or assist with all Emergency Action, including, assisting the Government in exercising its Emergency Step-in Right. To the extent required by the Government, the Concessionaire shall make available to the Government and the Government Related Parties all

Project Hospital staff and personnel, equipment and assets for use by the Government or any Government Related Party during any Emergency Event.

23.5 Relief from Performance

- (a) If any Emergency Action is taken, then for so long as and to the extent that the Emergency Action is taken, and this prevents the Concessionaire from carrying out any of its obligations under this Agreement, the Concessionaire shall be relieved from performance of such obligations under this Agreement.
- (b) Subject to Clause 23.5(e), if the Government issues an Emergency Event Notice which does not require an Emergency Step-in, then for the duration that such Emergency Event Notice is applicable, the Government shall continue to pay to the Concessionaire the Lautoka Hospital Annuity Payments, Ba Hospital Annuity Payments and the O&M Charges in accordance with the terms of this Agreement. In addition to the foregoing, the Government shall also pay to the Concessionaire any Costs that the Concessionaire incurs as a direct consequence of complying with any Emergency Action required by the Government.
- (c) If the Government issues an Emergency Event Notice which requires an Emergency Step-in by the Government with respect to either or both Project Hospitals (such Project Hospital, a **Government Taken-over Hospital**), then for the duration of the Emergency Step-in, the Government shall continue to pay to the Concessionaire the Annuity Payments for the Government Taken-over Hospital (to the extent then payable under the terms of this Agreement), but no O&M Charges shall be payable by the Government to the Concessionaire for such Government Taken-over Hospital, provided that the Government shall pay directly (wherever possible) or otherwise by reimbursing the Concessionaire all operating costs pertaining to the O&M of such Government Taken-over Hospital for the duration of the Emergency Step-in, including, without limitation and for illustration only, costs of utilities, consumables and Project Hospital staff costs.

Notwithstanding Clause 22.8, if the Emergency Step-in is on account of a Force Majeure Event, then the Concessionaire shall be entitled to payment only in accordance with this Clause 23.5(c).

- (d) Notwithstanding anything to the contrary contained in this Agreement, if the Government issues an Emergency Event Notice and exercises its Emergency Step-in Rights with respect to any one or both Project Hospitals and such Emergency Step-in continues for a continuous period of at least 120 (one hundred and twenty) Business Days with respect to either or both Project Hospitals, then the Concessionaire shall have the right to forthwith terminate this Agreement by issuing a notice to that effect to the Government and upon issuance of such a notice, the following shall be deemed to occur:
 - (i) notwithstanding whether one or both Project Hospitals have been taken over, this Agreement shall be deemed to be terminated in its entirety;
 - (ii) such event shall be deemed to be:
 - (A) a Non-Political Force Majeure Event, if the Emergency Action has been undertaken by the Government on account of a Non-Political Force Majeure Event and the provisions contained in Clause 22.9(a) shall apply;

- (B) an Indirect Political Force Majeure Event, if the Emergency Action has been undertaken by the Government on account of an Indirect Political Force Majeure Event and the provisions contained in Clause 22.9(b) shall apply; and
- (C) a Direct Political Force Majeure Event, if the Emergency Action has been undertaken by the Government on account of a Direct Political Force Majeure Event or any other reason (except a Concessionaire Event of Default) and the provisions contained in Clause 22.9(c) shall apply,

provided that nothing in this Clause 23 shall affect or be deemed to affect the rights and obligations of the Parties under this Agreement arising prior to such termination.

- (e) Notwithstanding anything contained in this Agreement, if any Emergency Action has been undertaken by the Government upon occurrence of a Concessionaire Event of Default, and if the Government has issued an Emergency Event Notice, then such Emergency Event Notice shall be deemed to be a Notice of Intent to Terminate issued by the Government under Clause 24.2 and the provisions set out in Clause 24.2 in relation to the Notice of Intent to Terminate and substitution rights of the Senior Lenders shall continue to apply.

If the Government issues an Emergency Event Notice and exercises its Emergency Step-in Rights, on account of a Concessionaire Event of Default, with respect to any one or both Project Hospitals and:

- (i) such Emergency Step-in continues for a continuous period of at least 120 (one hundred and twenty) Business Days with respect to either or both Project Hospitals;
- (ii) the Senior Lenders have not notified their intent to substitute the defaulting Concessionaire within the time period set out in this Agreement; and
- (iii) the Concessionaire has not cured the underlying Concessionaire Event of Default within the cure period set out in this Agreement,

then this Agreement shall terminate (at the end of the 120 (one hundred and twenty) Business Day period). Such termination shall be deemed termination on account of a Concessionaire Event of Default and the corresponding consequences set out in Clause 25 shall apply.

24 EVENTS OF DEFAULT

24.1 Concessionaire Events of Default

A **Concessionaire Event of Default** means any of the following events arising out of any acts or omissions of the Concessionaire and which have not occurred solely as a consequence of a Government Event of Default, a Qualifying Change in Law, a Fundamental Change in Law or any Force Majeure Event, and where the Concessionaire has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) failure to achieve: (a) the Lautoka Hospital CCD by the Lautoka Hospital Completion

Long-stop Date; or (b) the Ba Hospital CCD by the Ba Hospital Completion Long-stop Date;

- (b) failure to pay Liquidated Damages for an amount aggregating to at least 50% (fifty per cent) of the amount of the Performance Security set out in Clause 10.1;
- (c) breach by the Concessionaire of its material obligations under this Agreement (to the extent not covered elsewhere in any of the other sub-clauses under this Clause 24.1), including breach by the Concessionaire of its obligations relating to Construction Works and/or Operation and Maintenance of the Project Hospitals, which breach, if capable of being remedied, is not remedied within 20 (twenty) Business Days of issuance of written notice from the Government specifying such breach and requiring the Concessionaire to remedy such breach;
- (d) breach by the Concessionaire of its obligations under Clause 7, Clause 18.2 or Clause 30.15;
- (e) failure of the Concessionaire to fulfil the Transition Phase Completion Conditions to the satisfaction of the Independent Monitor in accordance with Clauses 9.4, 9.5 and 9.6 and such failure to fulfil the Transition Phase Completion Conditions, if capable of being fulfilled, are not fulfilled within 20 (twenty) Business Days from the expiry of the Extended Transition Phase;
- (f) if in any 2 (two) consecutive quarters during the O&M Period, the total number of Foreign Patients admitted in a quarter at a Project Hospital is more than 25% (twenty-five per cent) of the total number of Patients admitted at such Project Hospital in that quarter;
- (g) if in a Financial Year during the O&M Period, the total number of Foreign Patients admitted in the Financial Year at a Project Hospital is more than 25% (twenty five per cent) of the total number of Patients admitted at such Project Hospital in that Financial Year;
- (h) breach of the Concessionaire's obligations under Clause 20;
- (i) any representation made or warranties given by the Concessionaire under this Agreement being found to be false or misleading in any material respect when made or repeated;
- (j) failure of the Concessionaire to submit and maintain to the full extent required a valid Performance Security in accordance with Clause 10;
- (k) failure of the Concessionaire to obtain, renew and maintain any Concessionaire Applicable Permit which has or can reasonably be expected to have a Material Adverse Effect;
- (l) failure of the Concessionaire to comply with any Applicable Law which has or can reasonably be expected to have a Material Adverse Effect;
- (m) failure of the Concessionaire to obtain and maintain insurance cover in accordance with Clause 19.2;
- (n) the Concessionaire entering into bankruptcy, liquidation or similar state or if any order is made for the compulsory winding up or dissolution of the Concessionaire or if the Concessionaire becomes unable to pay its debts or the appointment of a receiver or

administrator in respect of the Concessionaire, its business and assets or any re-structuring, re-organisation, amalgamation, arrangement or compromise affecting the Concessionaire's ability to fulfil its obligations under this Agreement or that otherwise has or may have a Material Adverse Effect; or

- (o) the breach of the Concessionaire's material obligations under or the occurrence of an 'event of default' or analogous event under any other Project Document or the Financing Documents.

24.2 Notice of Intent to Terminate upon occurrence of a Concessionaire Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Concessionaire Event of Default, the Government may initiate termination by delivering a Notice of Intent to Terminate to the Concessionaire (with a copy to the Senior Lenders). The Notice of Intent to Terminate shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 60 (sixty) Business Days from the date of the Notice of Intent to Terminate, the Concessionaire rectifies or remedies the Event of Default to the satisfaction of the Government or the Government is satisfied with the steps taken or proposed to be taken by the Concessionaire or the Event of Default has ceased to exist, the Government shall withdraw the Notice of Intent to Terminate, in writing to the Concessionaire (with a copy to the Senior Lenders).
- (c) If, within 60 (sixty) Business Days from the date of the Notice of Intent to Terminate, the Concessionaire does not rectify or remedy the Event of Default to the satisfaction of the Government or the Government is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Event of Default, the Government shall issue a notice (**Termination Notice**) to the Senior Lenders (with a copy to the Concessionaire) to exercise their substitution rights.
- (d) If, within 45 (forty-five) Business Days from the date of receipt by the Senior Lenders of the notice issued by the Government pursuant to Clause 24.2(c) or such longer period as may be mutually agreed between the Government and the Senior Lenders, the Senior Lenders have notified their intent to substitute the defaulting Concessionaire, then:
 - (i) the Government shall withdraw the Notice of Intent to Terminate, in writing, with a copy to the Senior Lenders; and
 - (ii) the process set out in the Substitution Agreement for nomination and approval of a substitute concessionaire will apply.
- (e) If, within 45 (forty-five) Business Days from the date of receipt by the Senior Lenders of the Termination Notice issued by the Government pursuant to Clause 24.2(c) or such longer period as may be mutually agreed between the Government and the Senior Lenders, the Senior Lenders have not notified their intent to substitute the defaulting Concessionaire, then, the Government shall terminate this Agreement and the consequences set out in Clause 25 shall apply.
- (f) Notwithstanding anything contained in this Clause 24.2 but subject to Clause 17, during the subsistence of a Concessionaire Event of Default, the Parties shall continue to perform

such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

24.3 Government's Events of Default

A **Government Event of Default** means any of the following events, unless such an event has occurred as a consequence of a Concessionaire Event of Default, or a Force Majeure Event and where the Government has failed to remedy the defects within any specified time period (to the extent any time period is provided):

- (a) a breach by the Government of Clause 30.15;
- (b) a breach by the Government of its obligations under this Agreement which has a Material Adverse Effect on the ability of the Concessionaire to undertake the Construction Works or Operate and Maintain a Project Hospital and such breach, if capable of being remedied, is not remedied within 20 (twenty) Business Days of a notice being given by the Concessionaire;
- (c) any representation made or warranties given by the Government under this Agreement being found to be false or misleading in any material respect; or
- (d) a failure by the Government to maintain the Minimum Escrow Balance in accordance with the Escrow Agreement for 90 (ninety) consecutive Business Days.

24.4 Notice of Intent to Terminate upon occurrence of a Government Event of Default

- (a) Without prejudice to the other provisions of this Agreement, upon the occurrence of a Government Event of Default, the Concessionaire may initiate termination of this Agreement by delivering a Notice of Intent to Terminate, which shall specify with reasonable detail the grounds on which termination is sought.
- (b) If, within 60 (sixty) Business Days from the date of the Notice of Intent to Terminate, the Government rectifies or remedies the Government Event of Default, to the satisfaction of the Concessionaire or the Concessionaire is satisfied with steps taken or proposed to be taken by the Government or the Government Event of Default has ceased to exist, the Concessionaire shall withdraw the Notice of Intent to Terminate.
- (c) If, within 60 (sixty) Business Days from the date of the Notice of Intent to Terminate, the Government Event of Default has not been remedied or the Government has not taken steps or proposed to take steps to remedy the Government Event of Default to the satisfaction of the Concessionaire, then the Concessionaire shall terminate this Agreement, by issuing a notice to the Government, and the consequences set out in Clause 25 shall follow.
- (d) Subject to Clause 17.7(j), during the subsistence of a Government Event of Default, the Parties shall continue to perform such of their respective obligations under this Agreement, which are capable of being performed in accordance with this Agreement.

24.5 Subject to Clauses 24.2 and 24.4, if an Event of Default affects only one Project Hospital but not the other Project Hospital, then, notwithstanding anything to the contrary contained in this Agreement, this Agreement shall be terminated in its entirety as if both the Project Hospitals were terminated on account of the Event of Default affecting both the Project Hospitals.

25 TERMINATION COMPENSATION

25.1 Termination Compensation for termination after the Handover Date but prior to the Lautoka Hospital CCD

(a) *For a Government Event of Default*

If this Agreement is terminated for a Government Event of Default after the Handover Date but prior to the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the Government shall be liable to pay to the Concessionaire an amount equivalent to:

- (i) 130% (one hundred and thirty per cent) of the Book Value of the Project Hospital Assets,

LESS

- (ii) any amount due to the Government by the Concessionaire pursuant to this Agreement.

(b) *For a Concessionaire Event of Default*

If this Agreement is terminated for a Concessionaire Event of Default after the Handover Date but prior to the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the Government shall be liable to pay to the Concessionaire an amount equivalent to:

the lesser of:

- (i) Debt Due; and
- (ii) Book Value of the Project Hospital Assets,

LESS

- (iii) any amount due to the Government by the Concessionaire pursuant to this Agreement.

25.2 Termination Compensation for termination after the Lautoka Hospital CCD

(a) *For a Government Event of Default*

If this Agreement is terminated for a Government Event of Default after the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the Government shall be liable to pay to the Concessionaire an amount equal to the aggregate of:

- (i) Debt Due; and
- (ii) 120% (one hundred and twenty per cent) of the Make Whole Share Capital,

LESS

- (iii) any amount due to the Government by the Concessionaire pursuant to this Agreement.

(b) ***For a Concessionaire Event of Default***

If this Agreement is terminated for a Concessionaire Event of Default after the Lautoka Hospital CCD, then, notwithstanding whether the Ba Hospital CCD has then occurred or not, the Government shall be liable to pay to the Concessionaire an amount equal to:

- (i) Debt Due,

LESS

- (ii) any amount due to the Government by the Concessionaire pursuant to this Agreement.

25.3 Termination Compensation for termination due to a Non-Political Force Majeure Event

- (a) In the case of a partial termination of this Agreement pursuant to Clause 22.9(a)(i) due to a Non-Political Force Majeure Event only affecting the Ba Hospital after the Handover Date, and:

- (i) if the provisions of Clause 22.9(a)(i)(D)(I) apply, then the Government shall pay to the Concessionaire an amount equal to:

- (A) the Procurement Value of the Ba Hospital,

LESS, the aggregate of:

- (B) any amount due to the Government by the Concessionaire in relation to the Ba Hospital pursuant to this Agreement; and
 - (C) all insurance claims received by the Concessionaire or admitted by the insurer in relation to the Ba Hospital in connection with such Force Majeure Event.

- (ii) if the provisions of Clause 22.9(a)(i)(D)(II) apply, then the Government shall pay to the Concessionaire an amount equal to:

- (A) the Net Present Value (calculated as at the date of the immediately next scheduled Annuity Payment following such termination and applying a discount rate of 15% (fifteen per cent) per annum) of the Annuity Payments scheduled to be paid by the Government to the Concessionaire for the unexpired portion of then applicable Annuity Payments Cycle in which the partial termination of this Agreement occurs pursuant to Clause 22.9(a)(i),

LESS, the aggregate of:

- (B) any amount due to the Government by the Concessionaire in relation to the Ba Hospital pursuant to this Agreement; and

- (C) all insurance claims received by the Concessionaire or admitted by the insurer in relation to the Ba Hospital in connection with such Force Majeure Event.
- (b) If this Agreement is terminated pursuant to Clause 22.9(a)(ii) due to a Non-Political Force Majeure Event affecting both Project Hospitals or the Lautoka Hospital only, and:
 - (i) if the provision in Clause 22.9(a)(ii)(B)(I) applies, then the Government shall pay to the Concessionaire an amount equal to:
 - (A) the Book Value of the Project Hospital Assets,

LESS, the aggregate of:

 - (B) any amount due to the Government by the Concessionaire pursuant to this Agreement; and
 - (C) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.
 - (ii) if the provision in Clause 22.9(a)(ii)(B)(II) applies, then the Government shall pay to the Concessionaire an amount equal to:

the aggregate of:

 - (A) Debt Due; and
 - (B) Make Whole Share Capital,

LESS, the aggregate of:

 - (C) any amount due to the Government by the Concessionaire pursuant to this Agreement; and
 - (D) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.

25.4 Termination Compensation for termination due to an Indirect Political Force Majeure Event

If this Agreement is terminated pursuant to Clause 22.9(b) due to an Indirect Political Force Majeure Event, and:

- (a) if the provision in Clause 22.9(b)(ii)(A) applies, then the Government shall pay to the Concessionaire an amount equal to:
 - (i) 130% (one hundred and thirty per cent) of the Book Value of the Project Hospital Assets,

LESS, the aggregate of:

 - (ii) any amount due to the Government by the Concessionaire pursuant to this Agreement; and

- (iii) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.
- (b) if the provision in Clause 22.9(b)(ii)(B) applies, then the Government shall pay to the Concessionaire an amount equal to:
 - the aggregate of:
 - (i) Debt Due; and
 - (ii) 120% (one hundred and twenty per cent) of Make Whole Share Capital,
 - LESS, the aggregate of:
 - (iii) any amount due to the Government by the Concessionaire pursuant to this Agreement; and
 - (iv) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.

25.5 Termination Compensation for termination due to a Direct Political Force Majeure Event

If this Agreement is terminated pursuant to Clause 22.9(c) due to a Direct Political Force Majeure Event, and:

- (a) if the provision in Clause 22.9(c)(ii)(A) applies, then the Government shall pay to the Concessionaire an amount equal to:
 - (i) 130% (one hundred and thirty per cent) of the Book Value of the Project Hospital Assets,
 - LESS, the aggregate of:
 - (ii) any amount due to the Government by the Concessionaire pursuant to this Agreement; and
 - (iii) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.
- (b) if the provision in Clause 22.9(c)(ii)(B) applies, then the Government shall pay to the Concessionaire an amount equal to:
 - the aggregate of:
 - (i) Debt Due; and
 - (ii) 120% (one hundred and twenty per cent) of the Make Whole Share Capital,
 - LESS, the aggregate of:
 - (iii) any amount due to the Government by the Concessionaire pursuant to this Agreement; and

- (iv) all insurance claims received by the Concessionaire or admitted by the insurer in connection with such Force Majeure Event.

25.6 For the purposes of calculating the Termination Compensation payable to the Concessionaire pursuant to this Clause 25:

- (a) cash standing to the credit of the Concessionaire in the Concessionaire's bank account, as on the date of Notice of Intent to Terminate, shall be excluded; and
- (b) reliance will be placed on the Concessionaire's audited financial statements and the period for which audited financial statements are not available, a certificate from the Concessionaire's statutory auditor's certifying, as on the date of the certificate, the 'Debt Due', Capital and all distributions and payments made to Shareholders in respect of such capital contributions (in the form of distributions, dividends and repayment of principal and interest in respect of any Shareholder Loans).

25.7 All Termination Compensation required to be paid by the Government to the Concessionaire shall be paid within 45 (forty-five) Business Days of issuance of the Vesting Certificate in accordance with Clause 26 and subject to release of all Security by the Lenders.

25.8 Full and Final Settlement

Notwithstanding anything to the contrary elsewhere in this Agreement, any Termination Compensation determined pursuant to this Clause 25 shall, once paid, be in full and final settlement of any claim, demand and/or proceedings of the Concessionaire against the Government, in relation to termination of this Agreement or part thereof and the Concessionaire shall be excluded from all other rights and remedies in respect of such termination.

25.9 The provisions of this Clause 25 shall survive the termination of this Agreement.

26 TRANSFER ON TERMINATION

26.1 Transfer of the Project Hospitals

Upon the expiry or early termination of this Agreement, the Concessionaire shall hand-back the Project Hospitals to the Government or any other entity nominated by the Government, in accordance with this Clause 26. Provided that the Parties agree that, notwithstanding anything to the contrary contained in this Clause 26, if a Project Hospital is affected by a Force Majeure Event (**Affected Project Hospital**) and this Agreement is terminated (either in its entirety or with respect to the Affected Project Hospital only) as a result of occurrence of such Force Majeure Event in accordance with the terms of this Agreement, then, the Concessionaire shall hand over the Affected Project Hospital to the Government or any entity nominated by the Government on an as-is-where-is basis. For the avoidance of doubt, it is clarified that in case of termination of this Agreement on account of a Force Majeure Event, the Concessionaire will not be required, in relation to the Affected Project Hospital, to meet the Hand-back Conditions or Hand-back Requirements to the extent it is unable to do so on account of the underlying Force Majeure Event. It is further clarified that the Concessionaire shall not be responsible for Rectifying and Repairing any defects or deficiencies affecting an Affected Project Hospital to the extent such defect or deficiency has been caused or has arisen as a direct result of the underlying Force Majeure Event.

26.2 Inspection of the Project Hospitals

- (a) No later than 20 (twenty) Business Days from the Termination Date or 6 (six) months prior to the Expiry Date, as the case may be, the Government shall cause the Independent Monitor to carry out a survey of the Project Hospitals, to assess whether they have been maintained by the Concessionaire in accordance with its obligations under this Agreement, and are in working condition in line with the Hand-back Conditions.
- (b) The Government shall notify the Concessionaire at least 5 (five) Business Days prior to the date on which it wishes the Independent Monitor to carry out the survey of the Project Hospitals.
- (c) If the survey carried out by the Independent Monitor shows that the Concessionaire has not or is not complying with its obligations under this Agreement, then the Independent Monitor shall notify the Concessionaire (with a copy to the Government) of the Rectification and Repair and/or maintenance work which is required to ensure that the condition of the Project Hospitals, is restored to the Hand-back Conditions.
- (d) The Concessionaire shall carry out such Rectification and Repair and/or maintenance work to achieve the Hand-back Conditions within 20 (twenty) Business Days from the receipt of a notice from the Independent Monitor in accordance with Clause 26.2(c), at its own cost and risk. Upon completion of the Rectification and Repair and/or maintenance work, the Concessionaire shall request the Independent Monitor to carry out a final survey and inspection of the Project Hospitals. The Independent Monitor shall carry out the final survey within 5 (five) Business Days of receipt of a notice from the Concessionaire pursuant to this Clause 26.2(d).
- (e) If the Independent Monitor is satisfied with the results of the final survey, then the Independent Monitor shall notify the Concessionaire and the Government within 5 (five) Business Days of carrying out the final survey that the Project Hospitals, comply with the Hand-back Conditions. If the Independent Monitor is not satisfied with the results of the final survey, then the Independent Monitor shall be required to estimate the cost of restoring the Project Hospitals to the Hand-back Conditions and notify the estimate to the Government and the Concessionaire. The Government shall have the right to recover such cost from the Concessionaire, including by adjusting against the Termination Compensation.
- (f) Subject to normal wear and tear, the Concessionaire shall be responsible for undertaking the Rectification and Repair of all defects and deficiencies in the Project Hospitals (excluding any Affected Project Hospital) for a period of 6 (six) months from the date of issuance of the Vesting Certificate.

26.3 Hand-back Requirements

On the expiry or early termination of this Agreement, the Concessionaire shall:

- (a) hand-back to the Government or any entity nominated by the Government, the Project Hospitals, free of any Encumbrances and in a condition, that is no worse than the Hand-back Conditions;
- (b) to the extent that such rights and interests are not already vested in the Government, transfer all its rights and interests in the assets comprising the Project Hospitals and execute such deeds and documents as may be necessary for this purpose and complete all related legal

or other formalities;

- (c) hand over all documents relating to the Project Hospitals, including access codes to all doors/entrances to the Project Hospitals, Designs and Drawings, Maintenance Manuals, Project Hospital Asset Registers and Project Hospital Records;
- (d) obtain the consent of any Project Hospital Assets supplier to assign all subsisting warranties for the Project Hospital Assets in favour of the Government;
- (e) transfer or cause to be transferred to the Government or its nominee any Subcontract that the Government or its nominee has chosen to take over and terminate all other Subcontracts;
- (f) transfer to the Government or its nominee all Concessionaire Applicable Permits which the Government or its nominee may require and which can be legally transferred; and
- (g) subject to Clause 26.4(b), remove from the Site all employees and workmen, and assets, equipment and materials that are not required to be transferred by the Government or its nominee.

26.4 Cooperation and assistance on transfer of the Project

- (a) The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project Hospitals in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Patients, visitors and staff.
- (b) Upon expiry or termination, as the case may be, the Government shall have the right, but not the obligation, to hire (on contract basis or other), on mutually agreed terms, any staff that was directly or indirectly engaged by the Concessionaire to implement the Project.

The Concessionaire shall ensure all contracts executed by the Concessionaire with its staff contain provisions that provide, at the Government's option, for such contract to be novated or assigned to the Government or its nominee, if this Agreement is terminated due to a Concessionaire Event of Default or expired due to efflux of time.

- (c) The Parties shall provide to each other, 9 (nine) months prior to the Termination Date in the event of termination by efflux of time and immediately in the event of either Party issuing a Notice of Intent to Terminate to the other Party, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Termination Date. The Concessionaire shall further provide such advice and assistance as the Government and Government Related Parties may reasonably require for implementing the Project until the expiry of 6 (six) months after the Termination Date.

26.5 Vesting Certificate

The divestment of all rights, title and interest in the Project Hospitals shall be deemed to be complete on the date when all of the Hand-back Conditions and Hand-back Requirements have been fulfilled, and the Government shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule 22 (*Vesting Certificate Format*) (**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 Hospitals, and their vesting in the Government pursuant hereto. It is expressly agreed that any defect or deficiency in the Hand-back Conditions and Hand-back Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Government or its nominee on, or in respect of, the Project Hospitals.

26.6 Hand-back costs

The Concessionaire shall bear and pay all costs incidental to the hand-back of all of the rights, title and interest of the Concessionaire in the Project Hospitals to the Government upon termination of this Agreement.

26.7 Risk

- (a) Until issuance of the Vesting Certificate, all risks relating to the Project shall be borne by the Concessionaire, at its sole cost and expense, and the Government shall not be liable in any manner for such risks or the consequences thereof, except for any loss or damage caused to or suffered by the Concessionaire or to the Project Hospital on account of any action or omission of the Government or Government Related Parties.
- (b) Notwithstanding anything contained in this Agreement, no liability (accrued or contingent) of the Concessionaire or relating to the Project Hospitals arising on account of actions or inactions prior to the date of issuance of the Vesting Certificate shall be assumed or transferred to the Government or its nominees. The Government or its nominees shall only be liable for liabilities in relation to the Project Hospitals arising on and from the date of issuance of the Vesting Certificate.
- (c) Without prejudice to the foregoing, the Concessionaire agrees to indemnify and keep indemnified the Government and its nominees from and against all actions, proceedings, losses, damages, liabilities, claims, costs and expenses whatsoever which may be sustained or suffered by the Government and/or its nominee as a result of any actions or omissions of the Concessionaire prior to the date of issuance of the Vesting Certificate.

26.8 Survival

The provisions of this Clause 26 shall survive the termination of this Agreement. If this Agreement is partially terminated in accordance with Clause 22.9(a)(i), the provisions of this Clause 26 shall apply only to the extent of the terminated portion of the Project.

27 REPRESENTATIONS AND WARRANTIES

27.1 Mutual Representations and Warranties

Each Party represents and warrants to the other Party that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement, the Substitution Agreement, the Escrow Agreement, any Project Document and any other agreements required in relation to the Project;

- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement, the Substitution Agreement and the Escrow Agreement; and
- (c) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under this Agreement, the Substitution Agreement or the Escrow Agreement.

27.2 Concessionaire's Representations and Warranties

The Concessionaire represents and warrants to the Government that:

- (a) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (b) it is subject to the laws of the Republic of Fiji, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (c) the information furnished in the Bid of the Selected Bidder, and as updated on or before the date of this Agreement is true and accurate in all respects as on the Execution Date;
- (d) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under any of the terms of its articles of association or any Applicable Laws or Applicable Permits 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;
- (e) 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 the Government of the Republic of Fiji 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;
- (f) it has complied with all Applicable Laws and Applicable Permits 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; and
- (g) no representation or warranty by it contained in this Agreement or in any other document furnished by it to the Government of the Republic of Fiji in relation to Applicable Permits contains any untrue or misleading statement of material fact or omits to state a material fact necessary to make such representation or warranty true and correct.

27.3 Government's Representations and Warranties

The Government represents and warrants to the Concessionaire that:

- (a) it is duly organised, validly existing and in good standing under the laws of the Republic of Fiji;
- (b) it has the financial standing and legal capacity to execute this Agreement and perform its obligations under this Agreement;
- (c) it has taken all necessary approvals to execute this Agreement and perform its obligations under this Agreement;
- (d) this Agreement constitutes legal, valid and binding obligations enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of the Government of the Republic of Fiji, which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (f) it has complied with all Applicable Laws and Applicable Permits in all material respects; and
- (g) the Project Hospitals are not subject to any mortgage, lien, charge or any other Encumbrance.

27.4 Acknowledgement

- (a) The Parties acknowledge and confirm that the Parties have relied upon and have entered into this Agreement on the basis of the representations, warranties and undertakings made by the Parties hereunder.
- (b) If any occurrence or circumstance comes to the attention of a Party that renders any of its aforesaid representations or warranties untrue or incorrect in any material respect, such Party shall immediately notify the other Party. 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 a Party under this Agreement.
- (c) The Government and the Government Related Parties or any of their agents or employees shall not be liable to the Concessionaire in contract, tort, including negligence or breach of statutory duty, statute or otherwise as a result of:
 - (i) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the information relating to the Project disclosed by the Government to the Concessionaire; or
 - (ii) any failure to make available to the Concessionaire any materials, documents, plans or other information relating to the Project.

28 VARIATION

Both the Government and the Concessionaire may, at any time during the Term, propose a Variation to the Scope of the Project, Specifications and Standards, Service Level Standards, the

Designs and Drawings and/or any other requirement set out in this Agreement.

28.1 Government Proposed Variation

- (a) The Government may propose a Variation in the Scope of the Project, Specifications and Standards, Service Level Standards the Designs and Drawings, and/or any other requirement set out in this Agreement. Provided that, the Government shall not propose a Variation, which: (i) is not technically feasible; or (ii) is not in compliance with any Applicable Law or Applicable Permit.
- (b) Within 10 (ten) Business Days of receipt of a request for Variation from the Government, the Concessionaire shall have the right (but not the obligation) to submit a proposal to the Government (with a copy to the Independent Monitor) setting out in sufficient detail the implications of the proposed Variation, including any implications on the relevant Project Hospital SCCD(s) (if any), and the Scope of the Project, additional Costs to be incurred in undertaking the Variation or any reduction in Costs resulting from the Variation, and the manner in which Costs incurred by the Concessionaire in undertaking the Variation is proposed to be reimbursed to the Concessionaire (**Variation Proposal**).
- (c) Notwithstanding anything to the contrary in this Clause 28.1 but subject to the provisions of Clause 28.3, the Concessionaire shall have the right at any time prior to the approval of a Variation Proposal by the Government to reject a Variation proposed by the Government.
- (d) Based on a review of the Variation Proposal, the Government may, at its sole discretion: (i) accept the Variation Proposal; (ii) provide its comments on the Variation Proposal seeking amendments and/or justification for the implications put forth by the Concessionaire; or (iii) reject the Variation Proposal and withdraw the proposed Variation, within 10 (ten) Business Days from the date of receipt of the Variation Proposal.
- (e) To the extent the Government seeks amendments and/or justification in the Variation Proposal, the Concessionaire shall, to the extent reasonably practicable, incorporate or address, in writing, the Government's comments and submit a revised Variation Proposal within 10 (ten) Business Days after receiving the Government's request.
- (f) On approval of the Variation Proposal or the revised Variation Proposal, as the case may be, the Government shall issue a Variation Order and the Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (g) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment to the relevant Project Hospital SCCD and/or payment of additional amounts, if any, set out in the Variation Order.

28.2 Concessionaire Proposed Variation

- (a) The Concessionaire may propose a Variation if: (i) it considers such Variation necessary or desirable to improve the efficiency, quality, reliability, durability, maintainability or safety of the relevant Project Hospital(s); or (ii) in its view, it is required to undertake additional work to equip the Project Hospital over and above the Scope of the Project.
- (b) To propose a Variation, the Concessionaire shall submit a proposal to the Government (with a copy to the Independent Monitor), with a statement setting out:

- (i) the need for a Variation;
 - (ii) the additional work required; and
 - (iii) adjustment to the relevant Project Hospital SCCD(s).
- (c) Based on its review of the proposal submitted by the Concessionaire, if the Government is of the view that the proposed Variation is justified, then it will determine the Costs of the proposed Variation as determined by the Independent Monitor. Thereafter, the Government shall notify the Concessionaire of the additional Costs determined by the Government for the proposed Variation and any other comments that the Government may have on the implications of the proposed Variation. To the extent the Government seeks amendments and/or justification in the proposal submitted by the Concessionaire, the Concessionaire shall incorporate or address, in writing, the Government's comments.
- (d) On the Concessionaire's acceptance of the Costs determined by the Government for the proposed Variation and any other amendments sought by the Government to the Concessionaire's proposal, the Government shall issue a Variation Order and the Concessionaire shall proceed with the Variation in accordance with the Variation Order.
- (e) On implementation of a Variation Order, the Concessionaire shall be entitled to the agreed adjustment in the relevant additional Costs, as set out in the Variation Order.
- 28.3 Notwithstanding anything to the contrary in this Clause 28, the Concessionaire shall be bound to implement any Variation that is necessitated by a Change in Law and any consequent adjustment in the relevant Designs and Drawings and/or Transition Plan and additional Costs shall be determined in accordance with Clause 21.
- 28.4 No Variation shall invalidate this Agreement.

29 DISPUTE RESOLUTION

29.1 Amicable Settlement

In the event of any dispute, controversy or claim arising out of, relating to, or in connection with this Agreement, or the formation, existence, negotiation or interpretation of this Agreement, or the breach, termination, validity or enforceability of this Agreement (a **Dispute**), the representatives of the Parties shall, within 10 (ten) Business Days of service of a written notice from one Party to the other Parties (**Dispute Notice**) hold a meeting (**Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any agreement to the contrary, the Dispute Meeting shall be held at a mutually agreed venue in Suva, Fiji or any other location in Fiji, as mutually agreed by the Parties.

29.2 Dispute Resolution by Arbitration

- (a) If a Dispute is not resolved within 20 (twenty) Business Days, or any such extended period as may be agreed upon between the Parties, after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, either Party to the Dispute shall be entitled to refer the Dispute to be finally settled by arbitration (**Notice of Arbitration**). This Agreement and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.

- (b) Unless otherwise agreed by the Parties, the Dispute shall be determined by a sole arbitrator to be jointly appointed by the Parties, and if the Parties are unable to jointly appoint a sole arbitrator within 20 (twenty) Business Days from the date of service of the Notice of Arbitration, then the Chief Justice shall appoint a sole arbitrator (**Tribunal**). Each Party shall be entitled to appoint an assessor to sit with the sole arbitrator but the sole arbitrator alone shall adjudicate the Dispute. The procedure in relation to the arbitration shall be governed by the provisions of the Arbitration Act.
- (c) ***Seat, Venue, Language and Rules of Arbitration***

The seat of the arbitration shall be Suva, Fiji. The Parties are free to choose a venue which may be convenient for different stages of the arbitration proceedings. The language of the arbitration shall be English. The arbitration shall be conducted in accordance with the arbitration law of the Republic of Fiji.
- (d) The award shall be rendered within 3 (three) months of the appointment of the Tribunal, unless the Parties hereto agree that such limit be extended or the Tribunal, considering the nature of the Dispute, determines that such limit must be extended.
- (e) The arbitration award shall be final and binding on the Parties hereto and the Parties hereto hereby irrevocably waive their right to any form of appeal, review or recourse in so far as such waiver may be validly made.

29.3 Survival

The provisions contained in this Clause 29 shall survive the termination of this Agreement.

30 MISCELLANEOUS

30.1 Survival

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the end of the Term by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of this Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Term or the termination of this Agreement and the obligations of the Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

30.2 Entire Agreement

The Parties acknowledge, confirm and undertake that this Agreement along with the Project Documents and the RFT constitutes the entire understanding between the Parties regarding the development of the Project and supersedes all previous written or oral representations and/or arrangements regarding the Project between the Parties.

30.3 Non-exhaustive Remedies

- (a) Save and except as provided in this Agreement, the remedies available to the Parties under this Agreement are not exhaustive and either Party shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (b) Save and except as provided in this Agreement, the exercise of any rights by any Party under this Agreement shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Agreement or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

30.4 Notices

- (a) Any notice or request in reference to this Agreement shall be written in the English language and shall be sent by e-mail, registered post or courier and shall be directed to the other Party at the address mentioned below:

Government:

Attention: The Permanent Secretary for Economy
Address: Level 10, Ro Lalabalavu House,
370 Victoria Parade, Suva, Fiji
Tel: (679) 330 7011
E-mail: pppinfo@govnet.gov.fj

Concessionaire:

Attention: Mr. Paul Dyer
Address: Level 4, Plaza 2, Provident Plaza, 33 Ellery Street, Suva.
Tel: 3238 447
Fax: 3307 611
Email: JaojiK@fnpf.com.fj

- (b) Subject to Clause 30.4(c), a notice is received:
 - (i) in the case of delivery by hand, on delivery;
 - (ii) in the case of prepaid registered post, on the date of receipt of the registered post; and
 - (iii) in the case of e-mail, on delivery to the recipient's server and provided no error message is received by the sender.
- (c) Any notice received on a day that is not a Business Day, or after 17.00 hours local time at the recipient's location on a Business Day, is deemed received at 09.00 hours local time at the recipient's location on the following Business Day.
- (d) Each Party may change the above address by prior written notice to the other Party. Provided however, that if a Party fails to notify the other Party of such change in address, then any notice under this Agreement shall be sent at the earlier notified address.

30.5 Related Parties

Subject to the provisions of this Agreement, the Concessionaire shall be responsible for and indemnify, the Government for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Government shall be responsible to and indemnify the Concessionaire for the acts and omissions of the Government Related Parties, as if they were the acts and omissions of the Government.

30.6 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of the Republic of Fiji and, subject to the provisions contained in Clause 29, shall be subject to the exclusive jurisdiction of the courts in the Republic of Fiji.

30.7 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart has the same force and effect as an original instrument.

30.8 Language

- (a) The formal text of this Agreement and other agreements in relation to the Project shall be in the English language.
- (b) All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

30.9 Confidentiality

- (a) No recipient Party shall, without the prior written consent of the disclosing Party, at any time divulge or disclose or suffer or permit its representatives to divulge or disclose to any person or use for any purpose unconnected with the Project any Confidential Information during the Term and for a period of 5 (five) years after the expiry or termination of this Agreement, except to its representatives officers, directors, advisers, employers, agents and Affiliates (including the Government Related Parties and the Concessionaire Related Parties) who have a legitimate need to know the Confidential Information in order to perform their duties relating to this Agreement.
- (b) This Clause 30.9 shall not apply to Confidential Information, which:
 - (i) at the time of disclosure or thereafter has become part of public knowledge or literature without a breach of this Agreement;
 - (ii) is already in the possession of the Party receiving such Confidential Information before it was received from the other Party and which was not obtained under any obligation of confidentiality from the Party which disclosed such information;
 - (iii) was obtained from a third party (other than one disclosing it on behalf of a Party) who was free to divulge the same and who was not under any obligation of

confidentiality in relation to such Confidential Information to the Party, which disclosed the information;

- (iv) is disclosed by the Concessionaire to the Lenders, any actual or *bona fide* potential shareholders, investors or bankers (and their professional advisers) of the Concessionaire;
- (v) is required to be disclosed pursuant to any legal and mandatory requirement of any court, legislative or administrative body or any Government Authority, or the rules of any applicable stock exchange;
- (vi) is disclosed by the Concessionaire to its Affiliates, the Concessionaire Related Parties or the permitted assignees and transferees;
- (vii) is disclosed by the Concessionaire to any Subcontractor of the Concessionaire;
- (viii) is disclosed to actual or prospective insurers, re-insurers and insurance brokers;
- (ix) is disclosed to any professional advisers or consultants of any persons to whom a Party is entitled to disclose Confidential Information under this Clause 30.9(b);
- (x) is disclosed to any Person in connection with the dispute resolution provisions under this Agreement;
- (xi) is independently developed by the receiving Party without reliance on the Confidential Information disclosed by the disclosing Party; or
- (xii) is disclosed to any Government Authority or any other body in any relevant jurisdiction in connection with the obtaining or renewal of any Applicable Permit required for the Project.

Provided that the Party making a disclosure of Confidential Information pursuant to (iv) and (vi) to (ix) (inclusive) shall ensure that any Person to whom it makes such disclosure undertakes to hold such Confidential Information subject to the same confidentiality obligations as those set out in Clause 30.9(a).

- (c) A Party making a disclosure of Confidential Information pursuant to Clause 30.9(a) shall:
 - (i) at the time of making such disclosure, inform its representatives and Affiliates of their obligation of confidentiality pursuant to this Agreement and ensure their compliance; and
 - (ii) be liable for any breach of such obligations by such representatives and Affiliates.
- (d) In the event that a Party is required or requested to make a disclosure of Confidential Information referred to in Clause 30.9(b)(v), such Party shall prior to such disclosure (to the extent permissible by Applicable Law) use its best efforts to promptly notify the disclosing Party or its Affiliate so that an appropriate protection order and/or other action can be taken if possible. In the absence of such a protection order restricting disclosure, the Party required to make such disclosure may disclose only that portion of the Confidential

Information which it is legally required to disclose and shall use reasonable efforts to obtain assurances that confidential treatment will be accorded to the Confidential Information.

- (e) The recipient Party agrees that it, its Affiliates and its representatives shall, upon request by the disclosing Party promptly:
 - (i) return, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall return, all the Confidential Information that is in tangible form (including Confidential Information contained on compact discs or other electronic storage media or devices) furnished, together with any copies or extracts; and
 - (ii) destroy, and use all reasonable endeavours to procure that any third party to whom the recipient Party has disclosed the Confidential Information pursuant to this Agreement shall destroy, all analysis, compilations, studies or other documents which have been prepared and which reflect or refer to any Confidential Information,

provided that the recipient Party shall be entitled to retain such Confidential Information which forms part of the permanent records of the recipient Party or its Affiliates and which was prepared for the purposes of the review or decision-making process of the recipient Party or such Affiliate and/or which the recipient Party or its Affiliates is required to retain by Applicable Law if it continues to keep such Confidential Information confidential in accordance with this Agreement.

30.10 Branding

- (a) On or before the Effective Date, the Parties shall mutually agree on the branding of the Project Hospitals and the name by which it shall be known, promoted, displayed and/or advertised.
- (b) The Concessionaire shall have the right to erect any signage or advertising: (i) on the Site; or (ii) on or in the Project Hospitals.

Provided that such signage or advertising shall be limited to Services being provided by the Concessionaire under this Agreement.

- (c) The branding of the Project Hospitals and the name, signage and advertising material of the Project Hospitals which denotes a connection with such Selected Bidder will be removed by the Concessionaire within 20 (twenty) Business Days from the Termination Date.

30.11 Public Announcements

- (a) The Government shall have the right to make public announcements in relation to the Project Hospitals, their operations and outreach programmes, any disruption to or cessation of Services, the safety and security of the Project Hospitals and Patients and any other matter connected with, related to or arising out of this Agreement.
- (b) Unless a public announcement is required by any Applicable Law or by the requirements of a recognised stock exchange or any other relevant regulatory authority or Government Authority or expressly required by this Agreement, the Concessionaire undertakes that it

shall not and shall procure that the Concessionaire Related Parties shall not, issue or make any public announcement or statement regarding this Agreement or matters contemplated under this Agreement unless, prior to such public announcement by the Concessionaire, the Government has been furnished with a copy of the proposed public announcement and has approved in writing such public announcement.

30.12 Amendments

This Agreement may be amended provided that such amendment is in writing and signed by both Parties.

30.13 Waivers and Consents

- (a) Unless otherwise specified, any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (b) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (c) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

30.14 Severability

- (a) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (b) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

30.15 Assignment

- (a) Except as expressly permitted in this Agreement, the Concessionaire shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Agreement, without the prior written consent of the Government.
- (b) The rights and obligations of the Government under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (i) is a single entity;
 - (ii) acquires the whole of this Agreement;
 - (iii) has the legal capacity, power and authority to become a party to and to perform the obligations of the Government under this Agreement, as the case may be; and

- (iv) has sufficient financial standing or financial resources to perform the obligations of the Government under this Agreement, as the case may be.

30.16 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and neither of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

30.17 Costs and Expenses

- (a) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement, the Substitution Agreement and the Escrow Agreement.
- (b) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement, the Substitution Agreement and the Escrow Agreement.

30.18 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by a Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to the Party upon any default or otherwise under this Agreement shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Party in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Party in respect of any other default.

30.19 Third Parties

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Government Related Parties, the Concessionaire Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

30.20 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitutes 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 Government with respect to its assets; and
- (c) consents to the enforcement of any judgment or award against it in any such proceedings.

30.21 Acknowledgement of the Government's regulatory function

The Parties acknowledge and agree that the Government has legislative, regulatory and statutory functions and those functions are separate from the obligations of the Government under this Agreement. If the Government has legislative, regulatory or statutory functions outside of this Agreement, the Government shall be deemed not to be acting in the capacity of the Government under this Agreement when exercising those functions.

[Signature page follows.]

SIGNATURE PAGE

IN WITNESS HEREOF, the below mentioned Parties have hereunto set their hands on the day month and year first hereinabove mentioned.

GOVERNMENT OF THE REPUBLIC OF FIJI

Authorised Signatory

Name: Aiyaz Sayed-Khaiyum

Designation: Attorney-General and Minister for Economy

HEALTH CARE (FIJI) PTE LIMITED

Authorised Signatory

Name: Bruce Maxwell Armstrong

Designation: Director

SCHEDULE – 1
SITE

PART A: LAUTOKA HOSPITAL

1. Lautoka Hospital Site

There are 3 (three) lots of lands in respect of the Lautoka Hospital, with the gross land area totaling 118,000 (one hundred eighteen thousand) square metres. The land is situated centrally in Lautoka City and is surrounded by Lautoka Primary School and Natabua High School to the North, an undeveloped parcel of land to the West, and residential housing to the south and to the east of the Lautoka Hospital.

Lautoka Hospital Site Coordinates	Latitude 17°36'53.35"S		Longitude 177°27'16.32"E
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Land allocated to Lautoka Hospital Site	Gross area (square metres)
Lot 1 DP 52443	32982
Lot 1 ND 3225	42290
Lot 1 DP 3052	42467
Total	117739

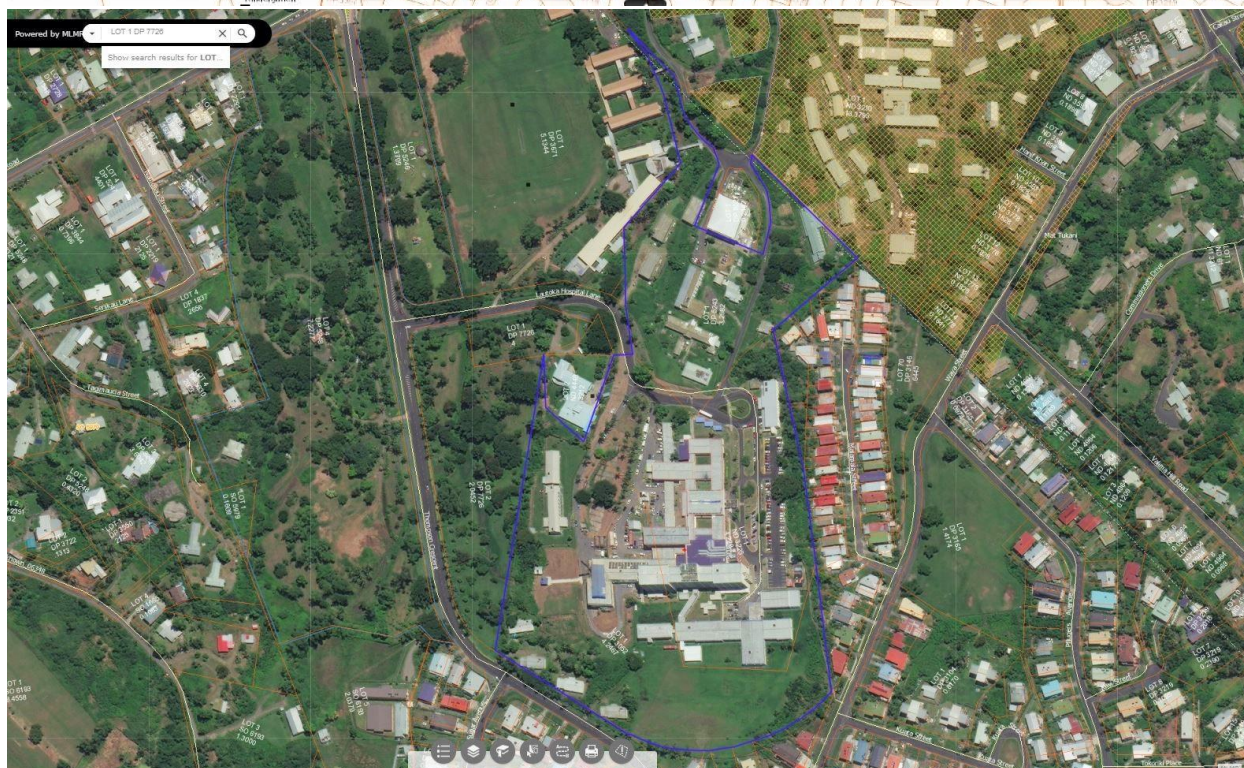
2. Road Access

The primary access to the Lautoka Hospital Site is at the end of Hospital Road, which leads to the visitor parking area located in front of the main ground floor entrance to the Lautoka Hospital. Ambulance access to the emergency bay is through the main parking area, next to the main ground floor entrance.

A secondary road provides access to the main building's stores for delivery of vehicular supplies at the back of the main building, as well as staff access.

3. Location Map

The map depicted below shows the boundary area of the land at the Lautoka Hospital Site.



PART B: BA HOSPITAL

1. Ba Hospital Site

The total area of the land in respect of the Ba Hospital is 45,000 (forty-five thousand) square metres which is situated centrally 3 (three) kilometres outside the town centre West of the Ba River. The lot is surrounded by residential housing to the West, an undeveloped area to the North, and an industrial area to the East.

Ba Hospital Site Coordinates	Latitude 17°31'47.86"S	Longitude 177°40'12.28"E
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Land allocated to Ba Hospital Site	Gross area (square metres)
Lot 1 DP 914	44662
Total	44662

2. Road Access

The primary access to the Ba Hospital Site is off Clopcott Street along its northern boundary. An internal road leads to the visitor parking area next to the main entrance hall, and goes around the central building to the South and through a security check-point for staff access and deliveries. Secondary access to the services yard is located to the West of the central building, off Togo Street. There are also two further points of access to the staff headquarters off Clopcott Street and Togo Street.

3. Location Map

The map depicted below shows the boundary area of the land at Ba Hospital Site.

SCHEDULE – 2

SPECIFICATIONS AND STANDARDS

PART A: LAUTOKA HOSPITAL

1. Objectives

1.1. Architectural Objectives

- (a) The architectural design shall be focussed on the therapeutic needs of Patients and adopt the following principles:
 - (i) create an environment conducive to recovery, which blends in with existing architecture and local landscape setting in the Republic of Fiji;
 - (ii) to create a hospital that offers architectural quality standards in accordance with Best Construction Practices, whilst providing a cost-effective whole-life solution;
 - (iii) maximize natural light in all Patient accommodation areas, whilst maintaining adequate Patient privacy;
 - (iv) achieve low stress-inducing noise levels;
 - (v) achieve high environmental comfort levels in terms of air quality, temperature, lighting, acoustics and hygiene, etc.;
 - (vi) provide an environment which encourages a sense of pride and high morale for the Lautoka Hospital staff and helps attract the best healthcare professionals;
 - (vii) provide access to appropriately sized and located break areas for all staff (clinical and non-clinical) at the Lautoka Hospital staff, conducive to relaxation;
 - (viii) promote a sense of security and safety for the Lautoka Hospital staff, Patients and visitors;
 - (ix) attain a high level of environmental health and safety particularly through infection prevention and control in accordance with the Safety Requirements;
 - (x) provide easy internal and external way-finding within the compounds at the Lautoka Hospital; and
 - (xi) minimise dependence on off-island specialist parts and expertise for maintenance and replacement.
- (b) Where viable, use locally sourced materials and incorporate local artwork.

1.2. Flexibility and Expandability

Since medical needs and modes of treatment will continue to change, the Lautoka Hospital shall:

- (a) maximise flexibility and allow for expandability in layouts;
- (b) achieve a high level of modularity in spatial planning using generic room sizes and plans as much as possible, rather than highly specific ones; and
- (c) be served by modular, easily accessed, and easily modified mechanical and electrical systems.

1.3. Security and Safety

In addition to the general safety concerns of all buildings, the Lautoka Hospital shall incorporate a means of controlling the access of the general public to all rooms and also to ensure:

- (a) protection of Lautoka Hospital Assets, including medications and other supplies;
- (b) protection of Patients, including incapacitated Patients, and staff;
- (c) safe control of violent or unstable Patients and protection of staff and other Patients against any such violent or unstable Patients; and
- (d) full functioning of fire protection systems even in the event of natural disasters.

2. **Lautoka Hospital requirements**

2.1. General Standards and Statutory Requirements

The Lautoka Hospital must be built with a 60 (sixty) year horizon in terms of maintenance and replacement. The Lautoka Hospital must be designed, built and maintained in accordance with the Applicable Laws, E&S Standards and GIIP.

2.2. Building Regulations and Planning Legislation

(a) *Health Care Facility Standards*

- (i) The Lautoka Hospital shall be designed and constructed in accordance with the Australasian Health Facility Guidelines (**AusHFG**) Revision 6.0 published by the Australasian Health Infrastructure Alliance insofar as the area impacts compliance with the applicable Service Level Standards required to be met by the Concessionaire. A minimum, but not necessarily exhaustive, list of AusHFG documents to which the Lautoka Hospital must comply with are provided in Appendix A to this Schedule.
- (ii) Once the Lautoka Hospital is completed the Concessionaire shall seek JCI accreditation for the Lautoka Hospital within the timelines set out in the Agreement. Therefore, the Lautoka Hospital shall be designed, constructed and maintained so as to comply with all JCI accreditation standards in so far as it is related to design, construction and maintenance.
- (iii) The Lautoka Hospital shall be designed, constructed and maintained such that the laboratory service complies with the standards set out in ISO15189 and ISO15190.

- (iv) Design and construct the Lautoka Hospital so as to achieve EDGE Certification requirements. However, in order to control infection, the installation of a green roof or the recovery of grey water is prohibited. Particular attention should be given to design techniques which reduce energy costs during operation, for example through considerations such as window shading and building orientation, thermal insulation and energy efficient systems.
- (b) *Standards for Natural Disasters and Emergencies*
- (i) The Lautoka Hospital shall be designed and constructed to withstand the natural disasters typical in this part of the world. This includes cyclones and seismic events, as well as localised flood events.
 - (ii) Without prejudice to the generality of paragraph 2.2(b)(i), the Lautoka Hospital shall be designed and constructed to withstand surface water and tidal flood peak flows of up to and including a 1 (one) in a 100 (one hundred) year return event. During and following such events, the Lautoka Hospital must remain structurally sound and accessible. Key, life-critical areas must remain fully operational at all times during such disasters, in order to protect the lives of Patients and staff and to accommodate victims of the disaster requiring urgent treatment.
 - (iii) In addition, in order to provide protection from natural disasters, the Lautoka Hospital shall be maintained with emergency back-up utility supplies, including back-up power, water, etc.
- (c) *Social and Environmental Sustainability*
- (i) The Concessionaire shall prepare and maintain the Lautoka Hospital ESMS in accordance with Appendix – D to this Schedule.
 - (ii) The Concessionaire shall implement the Lautoka Hospital ESIA and the Lautoka Hospital ESMP prior to commencement of the Construction Works provided that the Independent Monitor has approved the Lautoka Hospital ESMP in accordance with Clause 4.2(g) of the Agreement.
 - (iii) The Concessionaire shall undertake the Lautoka Hospital Land Contamination Assessment at the Lautoka Hospital Site, and in case of pre-existing contamination at the Lautoka Hospital Site, undertake the Lautoka Hospital Land Contamination Remediation Plan before the commencement of the Construction Works in respect of the Lautoka Hospital.
- (d) *Minimum Functional Requirements*
- (i) Minimum functional requirements have been provided in Appendix B and Appendix C to this Schedule which indicates the minimum rooms to be provided in terms of clinical care.
 - (ii) The Concessionaire shall provide sufficient space (in accordance with GIIP) for other clinical and non-clinical spaces to meet the specifications for the Services stated in this Agreement.

- (iii) The Concessionaire shall meet the sanitary provision requirements for closet fixtures, urinals, washbasins, shower facilities according to the Building Code of Australia 2016- Part F2 Sanitary and Other Facilities.

(e) *Lautoka Hospital Layout*

- (i) The layout of the Lautoka Hospital shall:
 - (A) promote staff efficiency by minimizing distance of necessary travel between frequently used spaces;
 - (B) allow easy visual supervision of Patients by clinical staff;
 - (C) avoid redundant spaces;
 - (D) provide an efficient logistics system;
 - (E) make efficient use of space by locating support spaces so that they may be shared by adjacent functional areas, and by making prudent use of multi-purpose spaces;
 - (F) group or combine functional areas with similar system requirements; and
 - (G) provide optimal functional adjacencies.
- (ii) The layout shall allow for the Lautoka Hospital to be securely fenced.
- (iii) The layout will be in line with the functional content listed below:

Service Area	Quantity*	Description
General Outpatients Department (GOPD)		
Specialist Outpatients Department		
Renal Dialysis	12	Chairs
Chemotherapy	12	Chairs
Accident & Emergency Department		
Female Medical Ward	31	Beds
Male Medical Ward	28	Beds
Female Surgical Ward	26	Beds
Male Surgical Ward	30	Beds
Stress Ward	6	Beds

Service Area	Quantity*	Description
Female Trauma Ward	18	Beds
Male Trauma Ward	18	Beds
Adult Intensive Care Unit	5	Beds
Adult High Dependency Unit	7	Beds
Plastic Surgery Unit	3	Beds
Burns Unit	3	Beds
Paediatric Intensive Care Unit	5	Beds
Coronary Care Unit	9	Beds
Maternity Antenatal Ward	22	Beds
Maternity Postnatal Ward	23	Beds
Delivery Suites	12	Beds
Maternity ICU	12	Beds
Neonatal Care Unit	15	Beds
TB Ward	5	Beds
Medical Oncology Ward	4	Beds
Children's Ward	25	Beds
Operating Theatres Complex	7	Theatres
Day Surgery Theatres	2	Theatres
Cardiac Catheter Laboratory	1	Theatre
Endoscopy Unit	2	Rooms
Imaging Department		
Laboratory		
Pharmacy		
Physiotherapy		
CSSD		

Service Area	Quantity*	Description
Diabetic Day Care		
Mortuary		
Nurses accommodation	100	Rooms
Student Hostel Building	30	Rooms

** The Concessionaire shall have the right to vary the number of Beds in the relevant Service area, subject to maintaining an aggregate of 305 Beds in the Lautoka Hospital.*

- (iv) Accommodate future expansion for up to 100 (one hundred) additional Beds. The Government shall be responsible for the provision of additional land where an expansion of greater than 100 (one hundred) Beds is required and is agreed between the Parties in accordance with the provisions of this Agreement. Such additional land required for the Lautoka Hospital shall be acquired or cleared in a way consistent with the Applicable Laws and the E&S Standards. If the land required for the Lautoka Hospital is occupied and/or used, any involuntary resettlement (physical and/or economic displacement) shall be undertaken in way consistent with the Applicable Laws and the E&S Standards.

2.3. Ward Layout

Each ward area should have access to at least 2 (two) single occupancy Patient rooms. These rooms may be used to isolate Patients who:

- (a) may have acquired infections, for example, diarrhoea and vomiting or methicillin-resistant staphylococcus aureus, amongst others, and to prevent the spread of this to other Patients in the ward; or
- (b) may be dying, to provide a quiet space where family and relatives can visit.

2.4. Clinical Adjacencies

To deliver the proposed model of care and provide as seamless a service to Patients as possible, there are a number of key clinical adjacencies which shall be adhered to within the design layout of Lautoka Hospital. These include:

- (a) observation/ assessment bed space for medical and surgical Patients in close proximity to the accident and emergency (A&E) department;
- (b) access by the A&E and OPD to imaging and laboratory services;
- (c) intensive care next to the theatre complex;
- (d) obstetric theatre adjacent to the obstetric department; and
- (e) paediatric assessment, paediatric critical beds located in the paediatric unit.

2.5. Infection Prevention and Control

Prevention and control of infection shall remain a primary consideration of the Concessionaire in the design of the Lautoka Hospital.

The whole Lautoka Hospital design and planning shall place the highest priority on infection prevention and control in relation to the movement of goods and in particular the segregation as far as is reasonably practical of clean linen, food trolleys and the removal of waste, soiled linen and empty food trolleys.

2.6. Weather and Water Tightness

The Concessionaire shall design the building envelope to prevent rainwater from entering into Lautoka Hospital and the internal accommodation. Where water penetrates cladding elements, as part of the functional design and construction techniques, the Concessionaire shall ensure it is controlled and drained externally.

2.7. Cleanliness and Sanitation

The Lautoka Hospital shall be designed to be easy to clean and maintain. This shall be facilitated by:

- (a) appropriate, durable finishes for each functional space which are suitable for infection control; and
- (b) special materials, finishes, and details for spaces which are to be kept sterile.

2.8. Accessibility

All areas, both inside and out but within the Lautoka Hospital Site, shall be accessible to people with disabilities and be designed so as to be easy to use by Patients with temporary or permanent handicaps.

2.9. Controlled Circulation

The following circulation requirements shall be incorporated within the design:

- (a) outpatients visiting diagnostic and treatment areas shall not travel through inpatient functional areas nor encounter severely ill inpatients;
- (b) typical outpatient routes shall be simple and clearly defined;
- (c) visitors shall have a simple and direct route to each Patient nursing unit without accessing other functional areas;
- (d) separate Patients and visitors from logistical areas or floors;
- (e) if required, elevators shall be provided to aid circulation, which should be appropriately sized and arranged to minimise waiting and incorporate separate dedicated lifts for Patient beds;

- (f) outflow of waste, recyclables, and soiled materials shall be separated from movement of food and clean supplies, and both shall be separated from routes of Patients and visitors; and
- (g) transfer of cadavers to and from the mortuary shall be out of the sight of Patients and visitors.

2.10. Bed-head Services in respect of each Bed at the Lautoka Hospital

- (a) The Concessionaire shall provide bed-head services in respect of each Bed at the Lautoka Hospital at each Patient bed-head position with trunking arrangement to accommodate all Clinical Services and changes in that requirement in the future. The arrangement shall be identical for each class of Bed and shall not conflict with the elevation of the Bed. Consideration shall be given to pre-wiring the associated services within the bed-head trunking arrangement in respect of each Bed at the Lautoka Hospital.
- (b) Without prejudice to the requirements set out in paragraph 2.10(a), the bed-head trunking arrangement shall accommodate the following minimum requirements:
 - (i) two power outlets with one connected to uninterruptible power supply (UPS);
 - (ii) nurse call system;
 - (iii) cardiac arrest system;
 - (iv) medical gases; and
 - (v) bed-head lighting.
- (c) Electrical services shall have the facility of local isolation at each bed-head in respect of each Bed at the Lautoka Hospital to avoid disruption to other occupied Patient Beds, improve maintenance and limit disruption during repairs.
- (d) The design must ensure that when a Bed is raised it does not conflict with bedhead services or anything connected into them.

2.11. Acoustic Requirements

The Concessionaire shall endeavour within their design, to minimize the transfer of noise throughout the Lautoka Hospital.

The Concessionaire shall endeavour to minimise and mask ambient noise sufficiently to preserve Patient privacy, confidentiality and maintain a calming atmosphere in all Patient treatment areas.

2.12. Civil and Structural Design

The structure shall be constructed to support the anticipated loads including the proposed equipment. It shall be designed and constructed to avoid vibration and sound transmission which could impact on the delivery of Clinical Services in accordance with the requirements of the Agreement. The assumed design life shall be 60 (sixty) years. Natural and local materials shall be used wherever feasible. Non-structural elements such as windows and cladding shall be designed

to similar levels of safety as structural elements. All structural and non-structural elements shall be designed and constructed to withstand natural disasters.

2.13. Structural Loadings and Flexibility

- (a) The design shall also take into account the need for specialist measures to allow for the installation of special equipment and associated services. Structural deflections shall be limited as necessary for the proper installation and functioning of specified equipment.
- (b) The Concessionaire shall take account of concentrated point loads from both mobile and stationary plant and equipment. The structure shall incorporate all reasonable measures to accommodate updated versions of such machinery without major disruption.
- (c) The Concessionaire shall take account of the need for special screeds, raised or lowered floors, ceiling grid support grids and other such measures to allow for the installation of special equipment and associated services.
- (d) Lateral stability bracing systems shall not obstruct or hinder provision of Clinical Services or Non-Clinical Services and shall not obscure the windows or doors.
- (e) With respect to the Lautoka Hospital, the Concessionaire shall:
 - (i) Take due account of future flexibility of the Lautoka Hospital (in terms of future change of use and / or relocation of equipment);
 - (ii) Specifically make allowance for future flexibility of ceiling mounted tracking hoist equipment in specified areas, including the requirement for re-configuration, extension and / or retro-fitting of lifting equipment i.e. the whole of the specified area shall be structurally capable of accommodating hoist equipment;
 - (iii) Make specific allowance for items of particularly heavy equipment and / or other onerous loading conditions; and
 - (iv) Make specific allowance for installation, transfer and/ or removal routes for heavy equipment throughout the Lautoka Hospital.
- (f) The Concessionaire shall include, within their design, provision for removal, replacement and upgrading of installed plant and equipment. As part of this element of design, a comprehensive replacement strategy shall be prepared for implementation. This strategy shall, wherever possible, consider how these works can be undertaken whilst minimising disruption to the function of the completed Lautoka Hospital.

2.14. Movement Joints

Structural movement joints shall not be located through:

- (a) theatre rooms;
- (b) treatment and surgery rooms;
- (c) X-ray and imaging rooms;

- (d) pharmacy manufacturing rooms;
- (e) kitchens and food preparation areas;
- (f) any room (now or in the future) with ceiling mounted tracking hoists or other similar lifting equipment;
- (g) any other room requiring a sterile environment; and
- (h) any rooms where there is a risk of biological or other hazard, or risk of penetration by water, grease / oil, or other hazardous or detrimental substance.

2.15. Fire Protection

The Lautoka Hospital shall be designed and constructed to meet the requirements set forth in the fire safety requirements in the latest National Building Code of Fiji Islands.

2.16. Civil works Requirements

(a) *Sanitation*

The Concessionaire shall be responsible for the construction of sewerage pipes within the Lautoka Hospital Site and up to the boundary of the Lautoka Hospital Site and shall ensure that the sewerage pipes are able to connect to the pipelines laid by the relevant utility provider and connecting to the Lautoka Hospital at the outer limit of the boundary of the Lautoka Hospital Site.

(b) *Traffic and Parking*

- (i) The Government shall be responsible for ensuring that public roads leading to the Lautoka Hospital Site are accessible.
- (ii) The Concessionaire shall design the roads, parking and walkways within the Lautoka Hospital Site to be accessible at all times, and shall have:
 - (A) dedicated access and egress for emergency vehicles;
 - (B) sufficient access for vehicles to avoid back-up of traffic on the roads connected to the Lautoka Hospital Site;
 - (C) sufficient designated parking for key clinical and non-clinical staff;
 - (D) sufficient parking for staff, Patients and visitors to the Lautoka Hospital;
 - (E) delivery vehicle access and adequate delivery loading/unloading bays away from the main staff and visitor routes; and
 - (F) safe pedestrian walkways.

2.17. Helipad

The Concessionaire shall include in the Designs and Drawings a helipad. The helipad shall be designed and constructed to meet International Civil Aviation Organization (ICAO) criteria, standards and specifications. Security measures shall as a minimum include measures to prevent unauthorised access to the helipad. The helipad shall remain clear and available for use by the Government at all times from the commencement of the O&M Period.

2.18. Mechanical Installations

(a) *General Mechanical Installation Requirements*

The mechanical installations shall comply with Australia/New Zealand Standard: The use of ventilation and air conditioning in buildings AS/NZS 1668.

(b) *Fresh Air and Ventilation Requirements*

Mechanical ventilation and air cooling shall be provided as a minimum across all areas where Patients are being treated or recovering. Separate mechanical ventilation systems shall also be provided throughout the diagnostics centre, the mortuary, information and communication technology (ICT) rooms, offices and areas occupied by clinical staff, also in accordance with the standards specified in this Schedule and to maintain any environmental conditions required for the equipment within these areas. Elsewhere, the Lautoka Hospital should be ventilated either naturally or mechanically but should be designed to maximise the use of natural ventilation, where possible to provide a reasonable comfort level, taking into account any internal environmental control requirements as specified in this Schedule and also the need to control infection and avoid pollution or pest incursion from outside. Throughout the Lautoka Hospital, air purity shall be delivered in accordance with the standards defined in this Schedule.

Mechanical ventilation to the pharmacy shall be sufficient to prevent the degrading of the potency and stability of medications due to high temperatures.

2.19. Piped and Medical Gas Requirements

(a) A piped and medical gas distribution system shall be installed to provide medical gases across the Lautoka Hospital. Sufficient medical gas shall be stored on the Lautoka Hospital Site. These shall include but not be limited to:

- (i) Nitrogen: to all operating theatres including day surgery;
- (ii) Carbon dioxide: to all theatres including day surgery, endoscopy and colonoscopy treatment rooms;
- (iii) Oxygen (medical grade): to all bed-heads at each of the Bed at Lautoka Hospital and other areas where Patients are treated;
- (iv) Vacuum: to all bed-heads at each of the Bed at Lautoka Hospital and other areas where Patients are treated; and
- (v) Anaesthetic gas: to all operating theatres including day surgery.

- (b) An on-site oxygen generating plant shall be provided as part of the Lautoka Hospital to remove reliance on off-island oxygen supplies. A separate emergency back-up facility with sufficient oxygen shall also be provided.
- (c) All emergency back-up supplies and associated infrastructure shall be designed and constructed to withstand natural disasters in accordance with the Standards for Natural Disasters and Emergencies as specified at paragraph 2.2(b) in this Schedule.

2.20. Domestic Water Services Requirements

- (a) The Concessionaire shall provide a water supply system for Lautoka Hospital which meets the required demands for the anticipated staff, Patient and visitor numbers, as well as providing sufficient pressure at all outlet points. Potable water within the Lautoka Hospital shall as a minimum be compliant with the “Guidelines for Drinking Water Quality” as published by the World Health Organisation in 1984.
- (b) The Concessionaire shall provide sufficient on-site storage of potable water to meet the demand at the Lautoka Hospital in the event of an emergency. All infrastructure (including the Essential Areas) and back-up storage shall be designed and constructed to withstand natural disasters in accordance with the Standards for Natural Disasters and Emergencies as specified at paragraph 2.2(b) in this Schedule.
- (c) A continuous, reliable hot water supply shall be provided throughout the Lautoka Hospital to promote good hygiene. Where feasible, this shall be provided through the use of solar heated water tanks.

2.21. Sterilisation / Steam Requirements

Appropriate steam generation shall be provided to meet Lautoka Hospital’s sterilization requirements and sterilisation areas should be designed to be compliant with the standards set out in the Agreement.

2.22. Electrical Installations

All electrical installations shall meet the requirements of Australian and New Zealand Standards for Electrical Installations AS/NZS 3000:2007 and other standards set out in the Agreement.

(a) *Electrical Infrastructure*

The Concessionaire shall ensure that there is sufficient power supply to Lautoka Hospital to meet the required demands for the anticipated staff and Patient numbers. All plant and cabling which serves Essential Areas shall be designed and constructed to withstand natural disasters in accordance with the Standards for Natural Disasters and Emergencies as specified at paragraph 2.2(b) in this Schedule.

(b) *Stand-by Electrical Power*

- (i) The Concessionaire shall provide emergency electrical generators that will auto-start whenever a power failure is detected. Sufficient generator fuel shall be stored on-site. The emergency power supply system will have sufficient capacity to supply 100% (one hundred per cent) electricity required at the Lautoka Hospital.

- (ii) The Concessionaire shall ensure an uninterruptable power supply (**UPS**) to be provided to maintain continuous provision of electrical power to all key areas of the Lautoka Hospital. These shall include but not be limited to the following key areas:
 - (A) all operating suites;
 - (B) recovery rooms;
 - (C) adult and neonatal intensive care;
 - (D) emergency department;
 - (E) main X-Ray;
 - (F) laboratory;
 - (G) refrigerators and freezers in the kitchens, pharmacy store, blood bank and mortuary;
 - (H) central computer rooms; and
 - (I) telephone servers.
 - (iii) UPS shall be installed in all of the above areas and shall maintain sufficient power supply to them.
- (c) *Lighting and Emergency Lighting*
- (i) The internal lighting design shall take particular account of the following design parameters:
 - (A) the lit appearance: its quality and its ability to enhance medical purpose;
 - (B) illumination of particular areas or tasks;
 - (C) the interior design intentions;
 - (D) choice of lamp (its colour temperature and colour rendering properties);
 - (E) potential for energy efficiency; and
 - (F) control, maintenance and cleaning of the luminaires, including easy and safe access to lighting equipment and windows for cleaning and maintenance.
 - (ii) The Concessionaire shall provide an innovative lighting design within the Patient areas to reduce the risk of falls from Patient unfamiliarity during the night.
 - (iii) Night lighting shall be provided in the centre of wards and ward corridors by recessed downlights with energy efficient lamps.

- (iv) The Concessionaire shall provide an emergency lighting system supplied from a standby power source throughout the Lautoka Hospital.
 - (v) External lighting shall be provided in order to ensure that the Lautoka Hospital Site is safe during the evening, night-time and dawn whilst also enhancing the visual appearance of the Lautoka Hospital.
 - (vi) Operating and clinical areas shall comply with the recommendations of AS 1680.2.5 Interior Lighting Part 2.5 Hospital and medical tasks.
- (d) *Fire Alarms*

The Concessionaire shall provide a fully addressable automatic fire detection system throughout the Lautoka Hospital in order to provide full protection to the Lautoka Hospital and all its occupants. The design shall consider life cycle costs and provide the facility for system software to be upgraded throughout the life of the system.

2.23. Security

- (a) *Intruder Detection and Alarms*
- (i) The Concessionaire shall, as a minimum, provide an intruder detection and an alarm system in the following areas:
 - (A) theatres;
 - (B) pharmacy;
 - (C) laboratory;
 - (D) imaging;
 - (E) mortuary; and
 - (F) server rooms.
 - (ii) The system shall be linked to a monitoring centre via an appropriate means, which shall react upon sequential verification.
 - (iii) The Concessionaire shall, as a minimum, provide alarms which immediately alert upon failure of a critical system including the following:
 - (A) medical gas alarms;
 - (B) cardiac arrest alarms;
 - (C) security alarms;
 - (D) blood bank fridge alarms;
 - (E) lift alarms (if lifts are required); and

(F) critical plant alarms.

(b) Closed Circuit Television (CCTV)

The Concessionaire shall, as a minimum, provide CCTV to the following areas:

- (i) paediatric and maternity wards;
- (ii) pharmacy;
- (iii) cashiers' office;
- (iv) all internal waiting areas; and
- (v) all external entrance doors internally giving a view of people entering the Lautoka Hospital.

(c) Access Control Systems

- (i) The Concessionaire shall, as a minimum, provide secure entry system such as biometric readers, card readers or number pad to the following areas:
 - (a) main staff areas;
 - (b) key secure areas;
 - (c) staff entrances; and
 - (d) ward entrances.
- (ii) Magnet door locks shall be of robust construction to withstand the anticipated large number of users of the system. Door entry systems to ward entrances shall be complete with a door release facility at the associated nurse base which shall include an audio and/or video intercom system.
- (iii) The Concessionaire shall also provide a method of "locking down", utilising the access control system to stop entry/exit to the paediatrics and maternity wards. Individual doors shall be able to be overridden by security staff during "lock down". All exterior doors to the Lautoka Hospital should be lockable. For wards, all persons exiting from the wards shall be controlled by a door release facility at the associated nurse base.

2.24. Lightning Protection

The Concessionaire shall provide a lightning protection system to the entire Lautoka Hospital which shall reduce the following:

- (a) physical damage and life risk hazard within the structure;
- (b) failure of electrical and electronic systems within the structure; and

- (c) physical damage and failures of services connected to a structure (mainly electrical and telecommunication lines).

2.25. Lifts

The Concessionaire shall supply lifts, if required, which aid the efficient transportation of Patients, staff and visitors around the Lautoka Hospital. All lifts shall be able to accommodate 2 (two) hospital beds and 6 (six) members of staff (three per bed).

2.26. Information and Communication Technologies (ICT) and Telecommunications

The Concessionaire is responsible for designing and building appropriate structures, cabling and off-take points for telecommunications to all rooms and offices in the Lautoka Hospital.

The Concessionaire is also responsible for designing and building all necessary infrastructure, cabling and off-take points and internet broadband connections for the required computer terminals to operate the proposed electronic Hospital Information System.

2.27. Medical Equipment

- (a) All medical equipment procured by the Concessionaire for the Lautoka Hospital shall be:
 - (i) new when procured;
 - (ii) must be either CE or US FDA certified;
 - (iii) in compliance with Applicable Laws, Applicable Permits and GIIP; and
 - (iv) of sufficiently high specification and quality to enable the Concessionaire to comply with the applicable Service Level Standards prescribed under this Agreement.
- (b) The following represent the minimum specifications for the major items of medical equipment to be procured, installed, operated and maintained by the Concessionaire at the Lautoka Hospital. For the avoidance of doubt, it is clarified that the list set out below is only indicative in nature and is not, neither is it intended to be, an exhaustive list of all the medical equipment which the Concessionaire would be required to provide at the Lautoka Hospital for providing the Services in accordance with the provisions of this Agreement.
 - (i) *Imaging:*

All equipment to be DICOM compatible.

 - (A) CT scanner – minimum of 128 slice scanner.
 - (B) MRI – minimum of 1.5 Tesla scanner.
 - (C) Mammography – digital radiography with biopsy function.
 - (D) X-Ray – either Computed Radiology or Digital Radiography scanner.
 - (E) Fluoroscopy – scanner with C-arm.

- (F) Ultrasound – colour doppler, real time high frequency 2D.
 - (G) C-arm image intensifier – high resolution with 1K2 camera.
 - (H) Panoramic unit – digital with cephalostat function.
 - (I) CR system.
 - (J) ECG machine.
 - (K) EEG equipment.
 - (L) EMG equipment.
 - (M) Oximeter pulse.
- (ii) *Laboratory and blood bank:*
- (A) Blood grouping system - automated.
 - (B) Chemistry analyser – automated with a minimum capacity of 2400 tests/hour.
 - (C) Chemistry analyser – automated with a minimum capacity of 1650 tests/hour.
 - (D) Immunoassay analyser - automated.
 - (E) Whole blood counter - automated.
 - (F) Coagulator - automated.
 - (G) Blood grouping analyser – automated.
 - (H) Haematology analyser – automated with multi-parameters.
 - (I) Identification and susceptibility system – automated.
 - (J) Protein analyser.
 - (K) ESR unit – automated.
 - (L) Analyser critical care.
 - (M) Tissue processor enclosed system.
 - (N) Analyser protein.
 - (O) Blood gas analyser.
 - (P) Counter whole blood automatic.

- (Q) Blood culture system automatic.
- (iii) *Radiotherapy:*
- (A) IMRT + IGRT plus respiratory Gating/4-DRT 10 MW Linac.
 - (B) C-Arm.
 - (C) Oncology network.
 - (D) Dosimetry accessories / Mould room equipment/Med equipment.
 - (E) Brachy therapy afterloader.
 - (F) Planning System.
 - (G) Gynae Bed.
 - (H) Oncology Digital or CT Simulator
 - (I) Add on for Respiratory Gating.
 - (J) Gamma Camera.
- (iv) *Rest of the equipments at the Lautoka Hospital:*
- (A) Anaesthetic machines – O₂/N₂O/Air with monitors.
 - (B) Laser CO₂ with delivery devices.
 - (C) Anaesthesia system – with ventilator and monitor.
 - (D) Ventilators – for intensive care (suitable for adult, paediatric and neonatal units).

2.28. Lautoka Hospital Initial Equipment List

S. No	Equipment	Quantity
1	Anaesthetic machine with monitor	5
2	Orthopaedic bed	2
3	Operating table	2
4	Operating light	3
5	Warmer	1
6	Suction machine	2
7	Diathermy machine	1
8	X-Ray viewer	8
9	Autoclaving machines	2
10	Portable suction	38

11	Examination lights	9
12	Flow meters	95
13	Humidifiers	95
14	Patient monitors	59
15	Nebulizers	14
16	Drug trolley	24
17	Round trolley	16
18	Dressing trolley	25
19	Suction adapter and bottles	115
20	Infusion pumps	82
21	ECG machine	19
22	Dina map	32
23	Sphygmomanometer	7
24	Pulse oximeter	54
25	Cardiac monitor with defib	16
26	Adult scale	27
27	Paediatric scale	5
28	Oxyviva	22
29	Ventilators	9
30	Wheelchairs	23
31	Commode with wheels	12
32	CTG machine	6
33	Fetal doppler	10
34	Fundoscope	4
35	CVP cut down tray	1
36	Cut down tray	1
37	Lumber puncture tray	1
38	Sternal puncture tray	1
39	Plain aspiration tray	1
40	Casualty suture tray	1
41	Under water seal drainage (disposable)	5
42	V.E tray	1
43	Dressing tray	1

2.29. Hospital Information System

- (a) The Concessionaire shall procure and maintain the Hospital Information System at the Lautoka Hospital.
- (b) The Hospital Information System should conform with the international coding standards for hospital information system including HL7, IDC 11, ICD 10, ICD 9CM, LOINC, OPCS and HIPP.
- (c) The functions of the Hospital Information System will include, but not be limited to:

- (i) Patient registration (outpatient, inpatient, emergency care) with the identification number of Lautoka Hospital.
 - (ii) OPD consultation: doctor wise, department wise, referrer doctor wise.
 - (iii) Inpatient records.
 - (iv) Bed management with online ward transfers.
 - (v) Discharge summary and final disease diagnosis.
 - (vi) Appointment scheduling.
 - (vii) Wards management module.
 - (viii) Laboratory information system.
 - (ix) Radiology information system and archiving service.
 - (x) Human resource management including doctors, nurses and other staff.
 - (xi) Natal and postnatal records.
 - (xii) Any fire incidents/accidents in the Lautoka Hospital.
 - (xiii) Bio-medical and other hazardous waste generation.
 - (xiv) Must have compatibility to configure different insurance schemes and packages.
- (d) The Government and the Independent Monitor will be granted full viewing access to the Hospital Information System of the Lautoka Hospital, including but not limited to:
- (i) Patient records and discharge summaries – Patient records and discharge summaries will not be discarded for at least 10 (ten) years after a Patient has been discharged;
 - (ii) natal and postnatal records;
 - (iii) list of all staff including those qualified individuals permitted to administer medications;
 - (iv) Bed occupancy rate;
 - (v) number of admissions by specialty;
 - (vi) average length of stay being achieved in each specialty;
 - (vii) number of Patients with hospital acquired pressure ulcers;
 - (viii) hospital acquired infection rates within each inpatient ward area;
 - (ix) all deaths occurring in the Lautoka Hospital;

- (x) Bed closures within wards;
 - (xi) number of Patients being re-admitted as an emergency within 30 (thirty) days of discharge for the same condition;
 - (xii) periods of operating theatre downtime due to closures and/or unavailability of theatres;
 - (xiii) periods of operating theatre downtime due to closures and/or unavailability of CT/ MRI/ USG/ Autoanalyser/ Cell Counter;
 - (xiv) waiting times for OPD appointments, day care procedures, diagnostic tests and elective surgeries by specialty;
 - (xv) number of Patients in GOPD and each specialty in Specialist Outpatient Services; and
 - (xvi) number and percentage of prescribing errors in pharmacy.
- (e) The Concessionaire shall provide at the Lautoka Hospital a Hospital Information System maintenance service to maintain the software related to the Hospital Information System; the hospital's order, communication, archiving, Patient record and management information system, and appropriate security software.
 - (f) The Concessionaire shall be responsible at the Lautoka Hospital for maintaining the security of the Hospital Information System, including installing and upgrading of software.

2.30. Lautoka Hospital Functional Areas

- (a) Outpatient and day care Services areas.
- (b) 305 (three hundred five) Beds in the following operational areas:
 - (i) Hospital wards;
 - (ii) Intensive care units; and
 - (iii) Emergency Department.
- (c) Existing operating theatres.
- (d) Imaging department including CT scan unit.
- (e) Diagnostic laboratory.
- (f) Pharmacy.
- (g) Central sterile services department.
- (h) Patient waiting areas.
- (i) Administrative departments.
- (j) Kitchen/food services.
- (k) Linen/laundry services.

- (l) Staff cafeteria.
- (m) Public amenities such as nappy change area and feeding room for babies, male/female toilet facilities and accessible facilities for public with disabilities etc.
- (n) Any other functional area that may be required to provide Services in accordance with the Agreement, Applicable Laws and GIIP.

PART B: BA HOSPITAL

1. Ba Hospital requirements

1.1. Standards for Natural Disasters and Emergencies

In order to provide protection from natural disasters, the Ba Hospital shall be maintained with emergency back-up utility supplies, including back-up power, water, etc.

1.2. Social and Environmental Sustainability

- (a) The Concessionaire in respect of the Ba Hospital shall implement the Ba Hospital EHS Report and Action Plan before the commencement of the O&M Period provided that the Independent Monitor has approved the Ba Hospital EHS Report and Action Plan in accordance with Clause 4.2(g) of the Agreement.
- (b) The Concessionaire shall prepare and maintain the Ba Hospital ESMS in accordance with Appendix – D to this Schedule.
- (c) The Concessionaire shall implement the Ba Hospital OESMP prior to commencement of the Construction Works provided that the Independent Monitor has approved the Ba Hospital OESMP in accordance with Clause 4.2(g) of the Agreement.

1.3. Building Regulations and Planning Legislation

Design and construct the Ba Hospital so as to achieve EDGE Certification requirements. However, in order to control infection, the installation of a green roof or the recovery of grey water is prohibited. Particular attention should be given to design techniques which reduce energy costs during operation, for example through considerations such as window shading and building orientation, thermal insulation and energy efficient systems.

1.4. Ba Hospital Layout

- (a) The layout of the Ba Hospital shall:
 - (i) promote staff efficiency by minimizing distance of necessary travel between frequently used spaces;
 - (ii) allow easy visual supervision of Patients by clinical staff;
 - (iii) avoid redundant spaces;
 - (iv) provide an efficient logistics system;

- (v) make efficient use of space by locating support spaces so that they may be shared by adjacent functional areas, and by making prudent use of multi-purpose spaces;
 - (vi) group or combine functional areas with similar system requirements; and
 - (vii) provide optimal functional adjacencies.
- (b) The layout of the Ba Hospital shall be in accordance with the functional content listed below:

Service Area	Quantity	Description
General Outpatients Department		
Specialist Outpatients Department		
Accident & Emergency Department		
Inpatient Accommodation	70	Beds
Operating Theatres Complex	2	Theatres
Imaging Department		
Laboratory		
Pharmacy		
CSSD		
Mortuary		

1.5. Bed-head Services in respect of each Bed at the Ba Hospital

- (a) The Concessionaire shall provide bed-head services in respect of each Bed at the Ba Hospital at each Patient bed-head position with trunking arrangement to accommodate all Clinical Services and changes in that requirement in the future. The arrangement shall be identical for each class of Bed and shall not conflict with the elevation of the Bed. Consideration shall be given to pre-wiring the associated services within the bed-head trunking arrangement in respect of each Bed at the Ba Hospital.
- (b) Without prejudice to the requirements set out in paragraph 1.5 (a), the bed-head trunking arrangement in respect of each Bed at the Ba Hospital shall accommodate the following minimum requirements:
 - (i) two power outlets with one connected to UPS;
 - (ii) nurse call system;
 - (iii) cardiac arrest system;
 - (iv) medical gases; and

- (v) bed-head lighting.
- (c) Electrical services shall have the facility of local isolation at each bed-head in respect of each Bed at the Ba Hospital to avoid disruption to other occupied Patient beds, improve maintenance and limit disruption during repairs.
- (d) The design must ensure that when a Bed is raised it does not conflict with bed-head services or anything connected into them.

1.6. Traffic and Parking

- (a) The Government shall be responsible for ensuring that public roads leading to the Ba Hospital Site are accessible.
- (b) The Concessionaire shall design the roads, parking and walkways within the Ba Hospital Site to be accessible at all times, and shall have:
 - (i) dedicated access and egress for emergency vehicles;
 - (ii) sufficient access for vehicles to avoid back-up of traffic on the roads connected to the Ba Hospital Site;
 - (iii) sufficient designated parking for key clinical and non-clinical staff;
 - (iv) sufficient parking for staff, Patients and visitors to the Ba Hospital;
 - (v) delivery vehicle access and adequate delivery loading/unloading bays away from the main staff and visitor routes; and
 - (vi) safe pedestrian walkways.

1.7. Mechanical Installations

The mechanical installations shall comply with Australia/New Zealand Standard: The use of ventilation and air conditioning in buildings AS/NZS 1668.

1.8. Piped and Medical Gas Requirements

- (a) A piped and medical gas distribution system shall be installed to provide medical gases across the Ba Hospital. Sufficient medical gas shall be stored on the Ba Hospital Site. These shall include but not be limited to:
 - (i) nitrogen: to all operating theatres including day surgery;
 - (ii) carbon dioxide: to all theatres including day surgery, endoscopy and colonoscopy treatment rooms;
 - (iii) oxygen (medical grade): to all bed-heads at each of the Bed at Ba Hospital and other areas where Patients are treated;
 - (iv) vacuum: to all bed-heads at each of the Bed at Ba Hospital and other areas where Patients are treated; and

- (v) anaesthetic gas: to all operating theatres including day surgery.
- (b) An on-site oxygen generating plant shall be provided as part of the Ba Hospital to remove reliance on off-island oxygen supplies. A separate emergency back-up facility with sufficient oxygen shall be provided.
- (c) All emergency back-up supplies and associated infrastructure shall be designed and constructed to withstand natural disasters in accordance with the Standards for Natural Disasters and Emergencies as specified at paragraph 1.1 in this Schedule.

1.9. Sterilisation / Steam Requirements

Appropriate steam generation shall be provided to meet Ba Hospital's sterilization requirements and sterilisation areas should be designed to be compliant with the standards set out in the Agreement.

1.10. Stand-by Electrical Power

- (a) The Concessionaire shall provide emergency electrical generators that will auto-start whenever a power failure is detected. Sufficient generator fuel shall be stored on the Ba Hospital Site. The emergency power supply system will have sufficient capacity to supply 100% (one hundred per cent) electricity required at the Ba Hospital.
- (b) The Concessionaire shall ensure an uninterruptable power supply (UPS) to be provided to maintain continuous provision of electrical power to all key areas of the Ba Hospital. These shall include but not be limited to the following key areas:
 - (i) all operating suites;
 - (ii) recovery rooms;
 - (iii) Emergency Department;
 - (iv) main X-Ray;
 - (v) laboratory;
 - (vi) refrigerators and freezers in the kitchens, pharmacy store, blood bank and mortuary;
 - (vii) central computer rooms; and
 - (viii) telephone servers.
- (c) UPS shall be installed in all of the above areas and shall maintain sufficient power supply to them.

1.11. Lighting and Emergency Lighting

- (a) The internal lighting design shall take particular account of the following design parameters:

- (i) the lit appearance: its quality and its ability to enhance medical purpose;
 - (ii) illumination of particular areas or tasks;
 - (iii) the interior design intentions;
 - (iv) choice of lamp (its colour temperature and colour rendering properties);
 - (v) potential for energy efficiency; and
 - (vi) control, maintenance and cleaning of the luminaires, including easy and safe access to lighting equipment and windows for cleaning and maintenance.
- (b) The Concessionaire shall provide an innovative lighting design within the Patient areas to reduce the risk of falls from Patient unfamiliarity during the night.
 - (c) Night lighting shall be provided in the centre of wards and ward corridors by recessed downlights with energy efficient lamps.
 - (d) The Concessionaire shall provide an emergency lighting system supplied from a standby power source throughout Ba Hospital.
 - (e) External lighting shall be provided in order to ensure that Ba Hospital Site is safe during the evening, night-time and dawn whilst also enhancing the visual appearance of the Ba Hospital.
 - (f) Operating and clinical areas shall comply with the recommendations of AS 1680.2.5 Interior Lighting Part 2.5 Hospital and medical tasks.

1.12. Fire Alarms

The Concessionaire shall provide a fully addressable automatic fire detection system throughout Ba Hospital in order to provide full protection to both Ba Hospital and all its occupants. The design shall consider life cycle costs and provide the facility for system software to be upgraded throughout the life of the system.

1.13. Security

- (a) Intruder Detection and Alarms
 - (i) The Concessionaire shall, as a minimum, provide an intruder detection and an alarm system in the following areas:
 - (A) theatres;
 - (B) pharmacy;
 - (C) laboratory;
 - (D) imaging;
 - (E) mortuary; and

- (F) server rooms.
- (ii) The system shall be linked to a monitoring centre via an appropriate means, which shall react upon sequential verification.
- (iii) The Concessionaire shall, as a minimum, provide alarms which immediately alert upon failure of a critical system including the following:
 - (A) medical gas alarms;
 - (B) cardiac arrest alarms;
 - (C) security alarms;
 - (D) lift alarms (if lifts are required); and
 - (E) critical plant alarms.
- (b) **Closed Circuit Television (CCTV)**

The Concessionaire shall, as a minimum, provide CCTV to the following areas:

 - (i) paediatric and maternity wards;
 - (ii) pharmacy;
 - (iii) cashiers' office;
 - (iv) all internal waiting areas; and
 - (v) all external entrance doors internally giving a view of people entering the Ba Hospital.
- (c) **Access Control Systems**
 - (i) The Concessionaire shall, as a minimum, provide secure entry system such as biometric readers, card readers or number pad to the following areas:
 - (A) main staff areas;
 - (B) key secure areas;
 - (C) staff entrances; and
 - (D) ward entrances.
 - (ii) Magnet door locks shall be of robust construction to withstand the anticipated large number of users of the system. Door entry systems to ward entrances shall be complete with a door release facility at the associated nurse base which shall include an audio and/or video intercom system.

- (iii) The Concessionaire shall also provide a method of “locking down”, utilising the access control system to stop entry/exit to the paediatrics and maternity wards. Individual doors shall be able to be overridden by security staff during “lock down”. All exterior doors to the Ba Hospital should be lockable. For wards, all persons exiting from the wards shall be controlled by a door release facility at the associated nurse base.

1.14. Lifts

The Concessionaire shall supply lifts, if required, which aid the efficient transportation of Patients, staff and visitors around Ba Hospital. All lifts shall be able to accommodate 2 (two) hospital Beds and 6 (six) members of staff (three per Bed).

1.15. Information and Communication Technologies (ICT) and Telecommunications

The Concessionaire is responsible for designing and building appropriate structures, cabling and off-take points for telecommunications to all rooms and offices in the Ba Hospital.

The Concessionaire is also responsible for designing and building all necessary infrastructure, cabling and off-take points and internet broadband connections for the required computer terminals to operate the proposed electronic Hospital Information System.

1.16. Medical Equipments

- (a) All medical equipment procured by the Concessionaire for the Ba Hospital shall be:
 - (i) new when procured;
 - (ii) must be either CE or US FDA certified;
 - (iii) in compliance with Applicable Laws, Applicable Permits and GIIP; and
 - (iv) of sufficiently high specification and quality to enable the Concessionaire to comply with the applicable Service Level Standards prescribed under this Agreement.
- (b) The following represent the minimum specifications for the major items of medical equipments to be procured, installed, operated and maintained by the Concessionaire at the Ba Hospital. For the avoidance of doubt, it is clarified that the list set out below is only indicative in nature and is not, neither is it intended to be, an exhaustive list of all the medical equipments which the Concessionaire would be required to provide at the Ba Hospital for providing the Services in accordance with the provisions of this Agreement.
 - (i) *Imaging:*

All equipment to be DICOM compatible.

 - (A) X-Ray – either Computed Radiology or Digital Radiography scanner.
 - (B) Ultrasound – colour doppler, real time high frequency 2D.
 - (C) CR system.

- (D) ECG machine.
- (E) Oximeter pulse.
- (ii) *Laboratory:*
 - (A) Chemistry analyser – automated with a minimum capacity of 1650 tests/hour.
 - (B) Immunoassay analyser – automated.
 - (C) Haematology analyser – automated with multi-parameters.
 - (D) Blood gas analyser.
 - (E) Protein analyser.
 - (F) ESR unit – automated.
- (iii) *Rest of the equipments at the Ba Hospital:*
 - (A) Anaesthetic machines – O₂/N₂O/Air with monitors.
 - (B) Anaesthesia system – with ventilator and monitor.

1.17. Hospital Information System

- (a) The Concessionaire shall procure and maintain the Hospital Information System at the Ba Hospital.
- (b) The Hospital Information System should conform with the international coding standards for hospital information system including HL7, IDC 11, ICD 10, ICD 9CM, LOINC, OPCS and HIPP.
- (c) The functions of the Hospital Information System will include, but not be limited to:
 - (i) Patient registration (outpatient, inpatient, emergency care) with the identification number of Ba Hospital.
 - (ii) OPD consultation: doctor wise, department wise, referrer doctor wise.
 - (iii) Inpatient records.
 - (iv) Bed management with online ward transfers.
 - (v) Discharge summary and final disease diagnosis.
 - (vi) Appointment scheduling.
 - (vii) Wards management module.
 - (viii) Laboratory information system.

- (ix) Radiology information system and archiving service.
 - (x) Human resource management including doctors, nurses and other staff.
 - (xi) Natal and postnatal records.
 - (xii) Any fire incidents/accidents in the Ba Hospital.
 - (xiii) Bio-medical and other hazardous waste generation.
 - (xiv) Must have compatibility to configure different insurance schemes and packages.
- (d) The Government and the Independent Monitor will be granted full viewing access to the Hospital Information System of the Ba Hospital, including but not limited to:
- (i) Patient records and discharge summaries – Patient records and discharge summaries will not be discarded for at least 10 (ten) years after a Patient has been discharged;
 - (ii) natal and postnatal records;
 - (iii) list of all staff including those qualified individuals permitted to administer medications;
 - (iv) Bed occupancy rate;
 - (v) number of admissions by specialty;
 - (vi) average length of stay being achieved in each specialty;
 - (vii) number of Patients with hospital acquired pressure ulcers;
 - (viii) hospital acquired infection rates within each inpatient ward area;
 - (ix) all deaths occurring in the Ba Hospital;
 - (x) Bed closures within wards;
 - (xi) number of Patients being re-admitted as an emergency within 30 (thirty) days of discharge for the same condition;
 - (xii) periods of operating theatre downtime due to closures and/or unavailability of theatres;
 - (xiii) periods of operating theatre downtime due to closures and/or unavailability of CT/ MRI/ USG/ Autoanalyser/ Cell Counter;
 - (xiv) waiting times for OPD appointments, day care procedures, diagnostic tests and elective surgeries by specialty;
 - (xv) number of Patients in GOPD and each specialty in Specialist Outpatient Services; and

- (xvi) number and percentage of prescribing errors in pharmacy.
- (e) The Concessionaire shall provide at the Ba Hospital a Hospital Information System maintenance service to maintain the software related to the Hospital Information System; the hospital's order, communication, archiving, Patient record and management information system, and appropriate security software.
- (f) The Concessionaire shall be responsible at the Ba Hospital for maintaining the security of the Hospital Information System, including installing and upgrading of software.

APPENDIX A: COMPLIANCE DOCUMENTS

Both Project Hospitals shall comply with the following Australasian Health Infrastructure Alliance (AHIA) publications as a minimum.

Document	Publication Date
Part B: Health Facility Briefing and Planning	Mar-06
Part C: Design for Access, Mobility, OHS and Security	Mar-06
Part D: Infection Prevention and Control	Mar-06
Part E: Building Services and Environmental Design	Mar-06
Part F: Project Implementation	Mar-06

Health Planning Unit	Publication Date
HPU120 – Administration Unit	Mar-16
HPU140 – Allied Health Therapy Unit	Mar-16
HPU155 – Ambulatory Care Unit	Mar-16
HPU170 – Cardiac Investigation Unit	Mar-16
HPU190 – Sterilizing Service Unit	May-16
HPU240 – Health Information Unit	Mar-16
HPU255 – Community Health	Mar-16
HPU260 – Coronary Care Unity	Mar-16
HPU270 – Day Surgery/Procedure Unit	Jun-16
HPU280 – Oral Health Unit	Mar-16
HPU300 – Emergency Unit	Mar-16
HPU330 – Medical Assessment Unit	Mar-16
HPU340 – Inpatient Accommodation Unit	Mar-16
HPU350 – Multipurpose Service Unit	Mar-16
HPU360 – Intensive Care Unit – General	Mar-16

Health Planning Unit	Publication Date
HPU390 – Intensive Care Unit – Neonatal Special Care Nursery	Mar-16
HPU430 – Front of House Unit	Dec-16
HPU440 – Medical Imaging Unit	Mar-16
HPU490 – Hospital Mortuary Autopsy Unit	Mar-16
HPU500 – Nuclear Medicine/PET Unit	May-16
HPU510 – Maternity Unit	May-16
HPU520 – Operating Unit	Mar-16
HPU540 – Paediatric Adolescent Unit	Jun-16
HPU550 – Pathology Unit	Mar-16
HPU560 – Pharmacy Unit	Mar-16
HPU600 – Radiation Oncology Unit	Mar-16
HPU610 – Rehabilitation Inpatient Unit	Mar-16
HPU620 – Renal Dialysis Unit	May-16

APPENDIX B: MINIMUM FUNCTIONAL REQUIREMENTS

Area	Functional space	Minimum area per facility m ²
Ward	Single bedded room	18
	2 bedded room	30
	4 bedded room	60
Accident and emergency (A&E)	Observation beds including isolation unit	15
Intensive care/ high dependency unit (HDU)	Adult intensive care bed unit (including high dependency unit)	18
	Paediatric intensive care bed unit	15
	Coronary care unit bed unit	20
Children's ward	Single bedded room	18
	multi bedded ward area	10 m ² per bed
Operating theatres	General theatre	50
Day surgery theatre	Operating theatre	30
Clinical training (To be used by Partner Universities)	Nurse training facility (minimum 1 no.)	50
	Medical training facility (minimum 1 no.)	50
	8 clinical teaching spaces	20 m ² per teaching space

Area	Functional space	Minimum area per facility m²
	1 lecture room	Suitable to accommodate 150 People
	Clinical skills laboratory and surgical skills laboratory	50 m ² per laboratory
	1 Library	100
	1 Conference with video conference facility	Suitable to accommodate 20 People
Nurses accommodation	Single bedded room with attached bathroom and toilet with basic fixtures, fittings and furniture as per GIIP.	20 m ² per room
Nurses accommodation (To be handed over to the Government)	Single bedded room with attached bathroom and toilet with basic fixtures, fittings and furniture as per GIIP.	20 m ² per room

APPENDIX C: AREA SPECIFICATIONS

The following measurement method for floor area calculation applies:

- (a) External wall thickness is excluded.
- (b) Internal wall thicknesses and columns are included.
- (c) Wall thickness is divided equally between adjoining rooms.
- (d) Passing service risers and service cupboards are excluded.

Minimum technical requirements for critical spaces

Critical Space	Air pressure relationship to adjacent area	Minimum air changes of outdoor air per hour	Minimum total air changes/ hour	All air exhausted directly to outdoors	Filtration Efficiency*	Re-circulated by means of room units	Relative humidity	Design Temperature (°C)	Noise levels
Operating Theatre	Positive	AS 1668.2 (at an occupancy of 5m ² per person or 50%, whichever is greater)	20	50%	G4-F8 HEPA	No	30-60	19-24	40-45dB
Intensive Care Unit	Positive	2	6	-	G4-F8	No	30-60	21-24	35-40dB
Laboratory	Negative (except Biochemistry)	2	6 (sterilising and glass	Yes	F7	No	-	24	-

	labs Positive) -		washing - 10)						
Mortuary	Negative	-	12	Yes	F7	No	-	-	

*Filtration Efficiency: First filter listed is the pre-filter if 2 filters are listed, second is the main filter, HEPA if listed is the final terminal filter.

APPENDIX D: PROJECT HOSPITAL ESMS

The Concessionaire shall develop the Project Hospital ESMS in accordance with the requirements set forth in the E&S Standards. The Project Hospital ESMS shall manage E&S risks and impacts of the Project Hospitals in a structured way on an ongoing basis. The Project Hospital ESMS shall be initiated and at all times be duly supported and funded by the Concessionaire. The Project Hospital ESMS shall either be a standalone system or embedded in an overall integrated management system or quality assurance management system such as ISO 9001 or similar, provided that the following elements are included:

- (i) an overarching policy indicating the principles guiding the achievement of sound environmental and social (**E&S**) performance;
- (ii) organizational capacity and competency to implement the Project Hospital ESMS. The Concessionaire shall define key E&S roles and responsibilities, assign them to staff with appropriate skills and expertise, and train staff on management of E&S risks and impacts;
- (iii) a procedure to identify E&S risks and impacts associated with the Project Hospitals;
- (iv) a management program to define mitigation and performance improvement measures and actions that address identified E&S risks and impacts. The programs shall consist of a documented combination of operational procedures, practices, plans along with the relevant supporting documents. The programs shall integrate the Project Hospital Environmental Study Reports;
- (v) the programs shall cover all the E&S risks and impacts related to the activities under the Scope of the Project:
 - (a) environment, health and safety (**EHS**) management during Construction Period- to prevent and, where not possible, minimize and mitigate risks and impacts through standard operating procedures and Best Construction Practices in respect of noise, waste, transport safety, worker's occupational health and safety (**OHS**) practices, including community health and safety. This shall include co-ordination between the Concessionaire and its Subcontractors (if any) in relation to the design and implementation of such procedures;
 - (b) medical and solid waste management- a management plan defining the overall waste management system and a set of procedures tailored to the scale and type of activities and identified hazards. For infectious and hazardous medical waste, this shall include minimization of waste generated, an adequate segregation at point of generation, safe handling, collection, temporary storage, marking, decontamination, transport, treatment and disposal procedures; this shall be, accompanied by systematic record keeping of waste quantity, type and final disposal/treatment;
 - (c) hazardous materials handling- standard operating procedures on the use, storage and disposal of hazardous materials;
 - (d) air emission- standardized practice shall be applied, as a minimum, in management and in monitoring the functioning of, the ventilation system and incinerators;
 - (e) radiation protection;

- (f) water management plan to address water consumption and water quality;
 - (g) wastewater discharge– standardized procedures shall be applied to ensure that the wastewater discharged into the municipal sewage system meets the discharge limits specified in the Applicable Permits;
 - (h) transport management and safety;
 - (i) life and fire safety issues- management/planning/ implementation, staff training, fire drills etc., in accordance with the Lautoka Hospital L&FS Audit Report and Ba Hospital L&FS Audit Report; and
 - (j) emergency, preparedness and response- the plan shall be in accordance with the Applicable Laws and GIIP;
- (vi) where companies are contracted for management, treatment and disposal of (either in full or in part) the infectious, hazardous and non-hazardous medical wastes, the Concessionaire shall contract only companies that are legally operated and have valid applicable permits; and
 - (vii) external communication protocol and a grievance mechanism to receive and address stakeholders' grievances. The grievance mechanism shall be easily accessible, understandable and sufficiently advertised to the stakeholders, and ensure confidentiality of a person raising complaint.

SCHEDULE - 3

DESIGNS AND DRAWINGS

The Concessionaire shall furnish the following drawings for each of the Project Hospitals:

- (a) Master plan of the Project Hospital;
- (b) Detailed architectural drawings (floor wise);
- (c) Structural drawings;
- (d) Elevation drawings of all buildings;
- (e) Facade design and drawings;
- (f) Landscape drawings;
- (g) Electrical drawings;
- (h) Plumbing and sewerage drawings;
- (i) HVAC (Heating, Ventilation and Air Condition) drawings;
- (j) Firefighting system's drawings;
- (k) Medical gas pipeline system's drawings;
- (l) Lifts design and drawings;
- (m) Interior design and drawings;
- (n) Drawing for solar system (if any);
- (o) Signage designs;
- (p) Project Hospital Environmental Study Reports; and
- (q) Certificate issued by the L&FS Engineer certifying that Designs and Drawings being submitted to the Independent Monitor and the Government are in compliance with Applicable Laws, Applicable Permits, L&FS Standards, GIIP and other provisions of this Agreement.

SCHEDULE – 4

PROJECT HOSPITAL DEPUTED STAFF

PART A: LAUTOKA HOSPITAL

The Government will depute all staff (as listed in Tables A, B, C and D below) employed (on permanent or temporary basis) by the Government on or about the Handover Date at the Lautoka Hospital to the Concessionaire to carry out their duties and responsibilities under the management of the Concessionaire at the Lautoka Hospital during the Lautoka Hospital Transition Phase in accordance with the Lautoka Hospital Transition Plan. An indicative list of the doctors, nurses, other clinical staff, technicians and government wage owners employed by the Government at the Lautoka Hospital as at 31 March 2018 (along with details of their qualification and number of years of employment with the Government along with the Deputed Staff Support Cost payable by the Concessionaire for each staff member) is set out in the Tables A, B, C and D below for reference only. For the avoidance of any doubt, it is clarified that the final list (and corresponding details, including the Deputed Staff Support Cost) of the Lautoka Hospital Deputed Staff to be deputed by the Government to the Concessionaire in accordance with the Agreement may be different (more or less) from the list set out in the Tables A, B, C and D below. It is further clarified that, notwithstanding anything to the contrary, the Lautoka Hospital Deputed Staff may change during the course of the deputation on account of:

- (i) death, incapacitation or retirement of any Lautoka Hospital Deputed Staff;
- (ii) expiry of contract of employment of any Lautoka Hospital Deputed Staff with the Government and such contract is not renewed by the Government;
- (iii) termination of employment of any Lautoka Hospital Deputed Staff by Government for cause;
- (iv) any Lautoka Hospital Deputed Staff ceasing to be Government's employees upon accepting Concessionaire's offer of employment in accordance with Clause 9.3(d) of the Agreement; or
- (v) removal of any Lautoka Hospital Deputed Staff in accordance with Clause 9.3,

and in each such scenario, there shall be no obligation on the Government to provide any replacement or substitute staff to the Concessionaire.

Table A: List of doctors employed by the Government at Lautoka Hospital as at 31 March 2018

Post Title	Medical Specialty	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years of Experience
(1)	(2)	(3)	(4)	(5)
Consultant	Medicine	MBBS, PG Dip in Medicine and Masters in Medicine	14,482	21
Consultant	Obs & Gynae	MBBS, PG Dip in O&G	14,482	28

Post Title (1)	Medical Specialty (2)	Qualifications (3)	Deputed Staff Support Cost per month (FJD) (4)	Number of Years of Experience (5)
Consultant	Obs & Gynae	MBBS, PG Dip in O&G and Masters in Medicine subspecialised in O&G	14,482	14
Consultant	Ophthalmology	MBBS	12,654	26
Consultant	Ortho	MBBS and Masters in Medicine & Surgery	14,482	13
Consultant	Paediatrics	MBBS, PG Dip in child health and Masters in Paediatrics	14,482	22
Consultant	Radiology	MBBS and PG Dip in radiology	13,448	28
Consultant	Surgical	MBBS and Masters in Surgery	14,482	15
Chief Medical Officer	Anaesthesia	MBBS and Masters in Anaesthesia	14,001	15
Chief Medical Officer	Eye	MBBS and PG Dip in ophthalmology and Master of Medicine in ophthalmology	14,001	16
Chief Medical Officer	Obs & Gynae	MBBS, PG DIP in O&G and PG Masters in O&G	14,001	12
Chief Medical Officer	Pathology	MBBS, PG Dip in pathology and Masters in Laboratory Medicine	12,001	18
Chief Medical Officer	Surgical	MBBS, Masters in Medicine sub specilised in General Surgery and PG Dip in Surgery	14,001	17
Principal Medical Officer	Anaesthesia	MBBS, PG Dip Anaesthesia, Masters in Anaesthesia	11,656	14
Principal Medical Officer	ED	MBBS	11,656	0
Principal Medical Officer	Surgical	MBBS, PG Dip in General Surgery	11,656	0
Principal Medical Officer	Anaesthesia	MBBS, PG Dip Anaesthesia, Masters in Anaesthesia	11,656	0
Principal Medical Officer	Anaesthesia	MBBS, PG Dip Anaesthesia, Masters in Anaesthesia	11,656	0
Principal Medical Officer	Obs & Gynae	MBBS, PG Dip O & G and Masters in O & G	11,656	10
Principal Medical Officer	Ophthalmology	MBBS and PG Dip in ophthalmology and Master of Medicine in ophthalmology	11,656	12
Principal Medical Officer	Paediatrics	MBBS, PG Dip in child health and year 3 in Masters in Medicine & Paediatrics	11,656	9

Post Title (1)	Medical Specialty (2)	Qualifications (3)	Deputed Staff Support Cost per month (FJD) (4)	Number of Years of Experience (5)
Principal Medical Officer	Radiology	MBBS and 3 months overseas attachments	10,823	12
Principal Medical Officer	Surgical	MBBS, PG Dip in General Surgery	11,656	12
Principal Medical Officer	Medicine	MBBS, PG Dip in Medicine and 2 Years Masters in Medicine	11,656	16
Principal Medical Officer	Paediatrics	MBBS, Masters in Medicine sub specilised in Paediatrics	11,656	10
Senior Medical Officer	Anaesthetic	MBBS PG Dip Anaesthesia and Masters in Anaesthesia	8,315	8
Senior Medical Officer	ED	MBBS	8,315	19
Senior Medical Officer	ED	MBBS	8,315	0
Senior Medical Officer	Eye	MBBS and DNB (ophthalmology)	8,315	1
Senior Medical Officer	Medicine	MBBS, PG Dip in Medicine and Masters in Medicine	8,315	8
Senior Medical Officer	Medicine	MBBS, PG Dip in Medicine and Masters in Medicine	8,315	11
Senior Medical Officer	Medicine	MBBS and PG Dip in Medicine	8,315	13
Senior Medical Officer	Obs & Gynae	MBBS, PG Dip O & G and Masters in O & G	8,315	10
Senior Medical Officer	Obs & Gynae	MBBS, PG Dip O & G and currently pursuing Masters in O & G	8,315	7
Senior Medical Officer	Orthopaedics	MBBS, PG Dip in Surgery and 4 years in Masters in Othopaedics	8,315	15
Senior Medical Officer	TB	MBBS	7,721	0
Senior Medical Officer	Radiology	MBBS	8,315	10
Senior Medical Officer	Surgical	MBBS and MS (Surgery)	8,315	0
Medical Officer	Anaesthesia	MBBS	6,676	8
Medical Officer	Anaesthesia	MBBS	6,676	5
Medical Officer	Anaesthesia	MBBS	6,676	2
Medical Officer	Anaesthesia	MBBS	6,676	7
Medical Officer	Anesthetic	MBBS	6,676	3
Medical Officer	Anaesthesia	MBBS	6,676	2
Medical Officer	Anaesthesia	MBBS	6,676	3

Post Title	Medical Specialty	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years of Experience
(1)	(2)	(3)	(4)	(5)
Medical Officer	Anaesthesia	MBBS	6,676	0
Medical Officer	Anaesthesia	MBBS	6,676	0
Medical Officer	ED	MBBS	6,676	5
Medical Officer	ED	MBBS	6,676	6
Medical Officer	ED	MBBS	6,676	9
Medical Officer	ED	MBBS	6,676	7
Medical Officer	ED	MBBS	6,676	9
Medical Officer	ED	MBBS	6,676	3
Medical Officer	ED	MBBS	6,676	3
Medical Officer	ED	MBBS	6,676	3
Medical Officer	ED	MBBS	6,676	3
Medical Officer	ED	MBBS	6,676	9
Medical Officer	ED	MBBS	6,676	2
Medical Officer	ED	MBBS	6,676	4
Medical Officer	Eye	MBBS	5,722	3
Medical Officer	Eye	MBBS	5,722	0
Medical Officer	Medicine	MBBS	6,676	7
Medical Officer	Medicine	MBBS	6,676	0
Medical Officer	Medicine	MBBS	6,676	0
Medical Officer	Medicine	MBBS	6,676	6
Medical Officer	Medicine	MBBS	6,676	4
Medical Officer	Medicine	MBBS	6,676	6
Medical Officer	Medicine	MBBS	6,676	4
Medical Officer	Medicine	MBBS	6,676	4
Medical Officer	Medicine	MBBS	6,676	3
Medical Officer	Obs & Gynae	MBBS	6,676	9
Medical Officer	Obs & Gynae	MBBS	6,676	0
Medical Officer	Obs & Gynae	MBBS	6,676	10
Medical Officer	Obs & Gynae	MBBS	6,676	5
Medical Officer	Obs & Gynae	MBBS	6,676	4
Medical Officer	Obs & Gynae	MBBS	6,676	5
Medical Officer	Obs & Gynae	MBBS	6,676	6
Medical Officer	Obs & Gynae	MBBS	6,676	5
Medical Officer	Obs & Gynae	MBBS	6,676	4
Medical Officer	Orthopaedic	MBBS	6,676	0
Medical Officer	Orthopaedic	MBBS	6,676	5
Medical Officer	Orthopaedic	MBBS	6,676	5
Medical Officer	Orthopedic	MBBS	6,676	3
Medical Officer	Orthopaedic	MBBS	6,676	4
Medical Officer	Paediatrics	MBBS	6,676	4
Medical Officer	Paediatrics	MBBS	6,676	4
Medical Officer	Paediatrics	MBBS	6,676	4

Post Title	Medical Specialty	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years of Experience
(1)	(2)	(3)	(4)	(5)
Medical Officer	Paediatrics	MBBS	6,676	4
Medical Officer	Paediatrics	MBBS	6,676	3
Medical Officer	Paediatrics	MBBS	6,676	4
Medical Officer	Paediatrics	MBBS	6,676	3
Medical Officer	Paediatrics	MBBS	6,676	4
Medical Officer	Pathology	MBBS	5,722	6
Medical Officer	Radiology	MBBS	6,199	0
Medical Officer	Radiology	MBBS	6,199	0
Medical Officer	Surgical	MBBS	6,676	0
Medical Officer	Surgical	MBBS	6,676	4
Medical Officer	Surgical	MBBS	6,676	4
Medical Officer	Surgical	MBBS	6,676	3
Medical Officer	Surgical	MBBS	6,676	2
Medical Officer	Surgical	MBBS	6,676	2
Medical Officer	Surgical	MBBS	6,676	4
Medical Officer	Surgery	MBBS	6,676	4
Medical Officers	Internal Medicine	MBBS	6,676	8
Medical Officer	O&G	MBBS	6,676	4
Medical Officer	Paeds	MBBS	6,676	2
Medical Officer	ED	MBBS	6,676	3
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months

Post Title	Medical Specialty	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years of Experience
(1)	(2)	(3)	(4)	(5)
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	Yet to join service
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months
Medical Intern	Lautoka Hospital	MBBS	4,577	1 year
Medical Intern	Lautoka Hospital	MBBS	4,577	8 months

For the avoidance of doubt, it is clarified that ‘Medical Intern’ (as mentioned in this Schedule) and ‘Medical Students’ (as mentioned in Clause 9.8 of the Concession Agreement) are separate designations. Medical Interns are recently graduated doctors who are undergoing training during their internship. ‘Medical Students’ has the meaning ascribed to it in the Clause 1.1 of the Concession Agreement).

Table B: List of nurses employed by the Government at Lautoka Hospital as at 31 March 2018

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Director of Nursing	Diploma in Nursing, Bachelor of Health Nursing, Cert. in Midwifery, Dipl. in Frontline, Bachelor of Nursing Science	5,995	31yrs
Deputy Director of Nursing	Diploma in Nursing, Diploma in Frontline Management, Cert. in Public Health, Certificate in Midwifery Bachelor of Nursing Science	4,330	31yrs
Deputy Director of Nursing	Diploma in Nursing, Bachelor in Nursing Science, Post Grad Diploma in Leadership & Management in Nursing	4,330	25yrs
Deputy Director of Nursing	Diploma in Nursing, Bachelor in Nursing Science, Cert. in Midwifery, Diploma in Business Study.	3,476	25yrs
Senior Nurse Clinical	Diploma in Nursing, Diploma in Frontline, Bachelor in Nursing	3,476	17yrs
Senior Nurse Clinical	Diploma in Nursing, Bridging Bachelor in Nursing	3,476	21yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing, Post Grad Diploma in Midwifery	3,476	27yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing Science	3,476	29yrs
Senior Nurse Clinical	Diploma in Nursing	3,476	29yrs
Senior Nurse Clinical	Diploma in Nursing, Diploma in frontline Management, Post Grad Certificate in Midwifery Nursing, Certificate in Computer	3,476	26yrs
Senior Nurse Clinical	Diploma in Nursing, Diploma in Frontline Management, Bachelor In Nursing	3,476	17yrs
Senior Nurse Clinical	Certificate in Nursing, Post Grad Diploma in Midwifery	3,476	32yrs
Senior Nurse Clinical	Diploma in Nursing	3,476	19yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Senior Nurse Clinical	Diploma in Nursing	3,476	19yrs
Senior Nurse Clinical	Diploma in Nursing, Advance Dip in Frontline Management, Post Grad certificate in Cardiac Nursing	3,476	29yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing Science, Certificate in Tertiary Teaching, Training of Trainers	3,476	25yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing Science	3,476	26yrs
Senior Nurse Clinical	Diploma in Nursing, Certificate in Midwifery, Certificate in Reproductive Health	3,476	19yrs
Senior Nurse Clinical	Diploma in Nursing, Diploma in Accounting	3,476	22yrs
Senior Nurse Clinical	Diploma in Nursing, Post Graduate Diploma in Midwifery	3,476	12yrs
Senior Nurse Clinical	Diploma in Nursing, Post Grad Diploma in Midwifery	3,476	20yrs
Senior Nurse Clinical	Certificate in Nursing, Diploma in Nursing, Bachelor in Nursing Science, Post Grad Diploma in Midwifery	3,476	re-engaged [55yrs]
Senior Nurse Clinical	Diploma in Nursing, Certificate in Midwifery, Bachelor in Nursing, Post Grad Diploma in Leadership & Management	3,476	26yrs
Senior Nurse Clinical	Diploma in Nursing, Post Grad Certificate in ICU Nursing, Bachelor of Nursing Science	3,476	25yrs
Senior Nurse Clinical	Diploma in Nursing, Diploma in Frontline Management, Bachelor in Nursing.	3,476	16yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing	3,476	29yrs
Senior Nurse Clinical	Diploma in Nursing	3,476	13yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Public Health, Bridging Bachelor in Nursing	3,476	18yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Senior Nurse Clinical	Dip in Nursing, Masters in Community Eye Care, Post Grad Dip in Essential Eye Care, Post Grad Certificate in Diabetes Eye Care	3,476	19yrs
Senior Nurse Clinical	Diploma in Nursing	3,476	15yrs
Senior Nurse Clinical	Diploma in Nursing, Bachelor in Nursing Science, Post Grad Diploma in Palliative Care	3,476	31yrs
Senior Nurse Clinical	Diploma in Nursing, bachelor in Nursing Science	3,476	13yrs
Team Leader	Diploma in Nursing, Bachelor in Nursing	2,861	22yrs
Team Leader	Diploma in Nursing, Post Grad Diploma in Midwifery, Post Grad Diploma in Nursing Management.	2,861	27yrs
Team Leader	Diploma in Nursing, Post Grad Certificate in Mental Health Nursing	2,861	14yrs
Team Leader	Diploma in Nursing, Post Grad Diploma in Cardiac Nursing Science	2,861	19yrs
Team Leader	Diploma in Nursing Post Grad Diploma in Midwifery	2,861	16yrs
Team Leader	Diploma in Nursing, Post Grad Diploma in Midwifery	2,861	21yrs
Team Leader	Bachelor in Public Health Nursing	2,861	14yrs
Team Leader	Diploma in Nursing, Bachelor in Nursing Cert IV in Workplace Leadership, Certificate in Advance Train of Trainers	2,861	11yrs
Team Leader	Diploma in Nursing	2,861	22yrs
Team Leader	Diploma in Nursing	2,861	14yrs
Team Leader	Diploma in Nursing	2,861	15yrs
Team Leader	Diploma in Nursing, Post Grad Diploma in Midwifery	2,861	22yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Team Leader	Diploma in Nursing, Post Grad Certificate in Intensive Care, Bridging Bachelor in Nursing	2,861	17yrs
Team Leader	Diploma in Nursing, Post Grad Cert in Mental Health	2,861	23yrs
Registered Nurse	Certificate in Nursing, Bachelor in Nursing, Post Grad Diploma in Midwifery	2,253	36yrs re-engaged [58yrs]
Registered Nurse	Certificate in Nursing, Certificate in Public Health Nursing	2,253	25yrs
Registered Nurse	Diploma in Nursing	2,253	22yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	29yrs
Registered Nurse	Diploma in Nursing	2,253	21yrs
Registered Nurse	Diploma in Nursing	2,253	26yrs
Registered Nurse	Diploma in Nursing, Post Grad Certificate in Midwifery	2,253	25yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	24yrs
Registered Nurse	Diploma in Nursing, Certificate in Midwifery, Bachelor in Nursing	2,253	24yrs
Registered Nurse	Diploma in Nursing, Post Grad Dip in Public Health,	2,253	22yrs
Registered Nurse	Diploma in Nursing	2,253	22yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	22yrs
Registered Nurse	Diploma in Nursing	2,253	21yrs
Registered Nurse	Diploma in Nursing, Post Grad diploma in Midwifery	2,253	21yrs
Registered Nurse	Diploma in Nursing	2,253	20yrs
Registered Nurse	Diploma in Nursing, Certificate in Midwifery	2,253	20yrs
Registered Nurse	Diploma in Midwifery, Post Grad Diploma in Midwifery	2,253	20yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	20yrs
Registered Nurse	Diploma in Nursing	2,253	20yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	19yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health Nursing	2,253	19yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	19yrs
Registered Nurse	Diploma in Nursing, Post Grad Certificate in ICU Nursing	2,253	19yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	19yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	19yrs
Registered Nurse	Diploma in Nursing	2,253	18yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	18yrs
Registered Nurse	Diploma in Nursing	2,253	18yrs
Registered Nurse	Diploma in Nursing	2,253	18yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	18yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing, Post Grad diploma in Midwifery	2,253	18yrs
Registered Nurse	Diploma in Nursing	2,253	18yrs
Registered Nurse	Diploma in Nursing	2,253	18yrs
Registered Nurse	Bachelor in Nursing	2,253	17yrs
Registered Nurse	Diploma in Nursing	2,253	17yrs
Registered Nurse	Diploma in Nursing	2,253	17yrs
Registered Nurse	Diploma in Nursing	2,253	17yrs
Registered Nurse	Diploma in Nursing, Post Grad Certificate in Diabetes Eye Care	2,253	17yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing, Post Grad diploma in Midwifery	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	16yrs
Registered Nurse	Diploma in Nursing	2,253	15yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	15yrs
Registered Nurse	Diploma in Nursing Post Grad Diploma in Midwifery	2,253	15yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Essential Eye Care	2,253	15yrs
Registered Nurse	Diploma in Nursing	2,253	15yrs
Registered Nurse	Diploma in Nursing (Seconded to Golan Heights (RFMF))	2,253	14yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	14yrs
Registered Nurse	Diploma in Nursing	2,253	14yrs
Registered Nurse	Diploma in Nursing	2,253	14yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	14yrs
Registered Nurse	Diploma in Nursing	2,253	14yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	13yrs
Registered Nurse	Post Grad Certificate Mental Health, Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing, Post Grad Dipl in Essential Eye Care, Post Grad Cert in Diabetes Eye Care	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing, Post Grad Dip in Essential Eye Care, Post Grad Cert in Diabetes Eye Care	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs
Registered Nurse	Diploma in Nursing	2,253	13yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science, Training of Trainers, Workers Assessment Evaluation	2,253	12yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	12yrs
Registered Nurse	Diploma in Nursing, Post Grad diploma in Midwifery	2,253	12yrs
Registered Nurse	Diploma in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing	2,253	12yrs
Registered Nurse	Diploma in Nursing, Post Grad diploma in Midwifery	2,253	11yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing	2,253	11yrs
Registered Nurse	Diploma in Nursing, Post Grad Diploma in Midwifery	2,253	9yrs
Registered Nurse	Diploma in Nursing	2,253	9yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	9yrs
Registered Nurse	Diploma in Nursing	2,253	9yrs
Registered Nurse	Diploma in Nursing	2,253	9yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing, Bachelor of Nursing (Public Health)	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health	2,253	8yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing, Bachelor In Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing	2,253	8yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing Bridging Bachelor in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Bachelor in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	7yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Bachelor in nursing	2,253	7yrs
Registered Nurse	Diploma in Nursing,	2,253	7yrs
Registered Nurse	Diploma in Nursing	2,253	7yrs
Registered Nurse	Advance Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health, Bachelor in Nursing Science	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor of Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor Public Health	2,253	6yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	6yrs
Registered Nurse	Bachelor in Nursing	2,253	6yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing, Bachelor in Public Health Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing, Post Grad Certificate in Nursing Management and Professional standard	2,253	5yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	5yrs
Registered Nurse	Diploma in Nursing Bachelor in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing	2,253	5yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Diploma in Industrial Lab	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing	2,253	4yrs

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of Years Employment
(1)	(2)	(3)	(4)
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	4yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing, Bridging Bachelor in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing, Bachelor in Nursing Science	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs
Registered Nurse	Diploma in Nursing	2,253	3yrs

[illegible]

[illegible]

Post Title	Deputed Staff Support Cost per month (FJD)	Qualification
(1)	(2)	(3)
Hospital Administrator	5,113	Diploma Frontline & Post grad in Health Service Management
Senior Accounts Officer	3,471	Bachelor in Accounting & Financial Management
Assistant Accounts Officer	2,441	Diploma in Accounting & Bachelor in Accounting
Principal Dental Officer	5,113	Bachelor in Dental & Surgery
Senior Dental Officer	4,330	Bachelor in Dental & Surgery
Senior Dental Officer	4,330	Certificate in Epidemiology, Postgrad Cert in applied epidemiology, Dental, Health Promotion
Dental Officer	3,476	Bachelor in Dental Surgery
Dental Officer	3,476	Bachelor in Dental Surgery
Dental Officer	3,476	Bachelor in Dental Surgery & Currently doing certificate in Health Service Management
Dental Officer	3,476	Bachelor in Dental Surgery & Post Grad Cert. in Public Health
Dental Officer	3,476	Bachelor in Dental Surgery
Dental Officer	3,476	Bachelor in Dental Surgery
Instructor Dental Therapist	3,476	Diploma in Dental Therapy, Post Grad Cert. in Public Health & Post Grad Diploma in Public Health
Instructor Dental Therapist	3,476	Certificate in Dental Technology
Instructor Dental Therapist	3,476	Diploma in Dental Surgery
Dental Therapist	2,861	Diploma in Dental Therapy
Dental Therapist	2,861	Diploma in Dental Therapy
Dental Therapist	2,861	Bachelor in Dental Surgery
Dental Technician	2,253	Cert. in Dental Hygiene & Diploma in Dental Technology
Dental Technician	2,253	Diploma in Dental Technology
Dental Hygienist	2,222	Certificate in Dental Hygiene
Dental Hygienist	2,222	Certificate in Dental Hygiene
Dental Hygienist	2,222	Certificate in Dental Hygiene, Bachelor in Commerce, Post Grad Dip in Management & Public Admin
Dental Hygienist	2,222	Diploma in Dental Therapy
Dental Hygienist	2,222	Certificate in Dental Assistant & Certificate in Dental Hygiene
Medical Imaging Superintendent	5,113	Cert. in Radiology & Bachelor in Medical Imaging Science
Senior Technical Officer (Radio)	4,330	Bachelor in Medical Imaging Science, Dip in Diagnostic Radio & Pursuing PGCHSM

Post Title	Deputed Staff Support Cost per month (FJD)	Qualification
(1)	(2)	(3)
Senior Technical Officer (Lab)	3,476	Dip in Medical Lab Tech, Post Graduate Diploma in Health Services Management, Bachelor of Medical Laboratory Science & Pursuing: Masters candidate for Masters in Health Services Management
Supervising Radiographer	3,476	Cet. In Diagnostic Radio, Dip in X - ray/Lab & Bachelor in Medical Imaging Sc.
Supervising Lab Technician	3,476	N/A
Senior Physiotherapist	2,861	Cert in Physio, Dipl. in Physio & Bachelor in Physio
Senior Dietician	3,476	Dip Dietics & Public Health & Post Grad Public Health Care
Tech Off Higher Grade (Lab)	3,476	Diploma Medical Lab Tech & Currently Adv Dip in Management & Leadership & Pursuing: Bachelors candidate for Bachelor in Medical Laboratory Science
Tech Off Higher Grade (Lab)	3,476	Diploma in Medical Lab, Masters in Infectious Diseases, Masters in Business Administration, Bachelor of Medical Laboratory Science
Tech Off Higher Grade (Lab)	3,476	Diploma in Medical Lab & Bachelor Medical Lab Science
Technical Officer HG (Radio)	3,476	Dip Diag Radio, Advanced Cert in IT & Bachelor in Medical Imaging Science
Technical Officer HG (Radio)	3,476	Dip Diag Radio & Bachelor in Medical Imaging Science
Technical Officer HG (Radio)	3,476	Dip Diag Radio & Bachelor in Medical Imaging Science
Technical Officer I (Lab)	2,222	Diploma in Medical Lab, Bachelor of Medical Laboratory Sciences
Technical Officer I (Lab)	2,222	Diploma in Medical Lab & Bachelor in Medical Science & Pursuing: Post Graduate Certificate Candidate for PGC in Health Services Management
Technical Officer I (Lab)	2,222	Bachelor in Medical Science & Masters of Science with Commendation - Biomedical Science
Technical Officer I (Lab)	2,222	Diploma in Medical Lab & Pursuing: Bachelors candidate for Bachelor in Medical Laboratory Sciences
Technical Officer I (Lab)	2,222	Diploma in Medical Lab & Bachelor in Medical Science
Technical Officer I (Lab)	2,222	Diploma in Medical Lab, Bachelor in Medical Laboratory Sciences

Post Title	Deputed Staff Support Cost per month (FJD)	Qualification
(1)	(2)	(3)
Technical Officer I (Lab)	2,222	Diploma in Medical Lab & Bachelor in Medical Science
Technical Officer I (Lab)	2,222	Diploma in Medical Lab
Technical Officer I (Lab)	2,222	Diploma in Medical Lab & Bachelor in Medical Laboratory Sciences
Technical Officer I (Lab)	2,222	N/A
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Diploma in Medical Lab
Technical Officer II (Lab)	2,222	Diploma in Medical Lab & Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science & Pursuing: Masters candidate for Masters in Business Administration
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	N/A
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor of Medical Laboratory Sciences
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor in Medical Lab Science
Technical Officer II (Lab)	2,222	Bachelor of Medical Laboratory Sciences
Technical Officer I (Radio)	2,426	Dip Diag Radio & Bachelor in Medical Imaging Science
Technical Officer I (Radio)	2,426	Dip Diag Radio & Bachelor in Medical Imaging Science
Technical Officer I (Radio)	2,426	N/A
Technical Officer I (Radio)	2,426	N/A
Technical Officer II (Radio)	2,426	Dip Diag Radio & Bachelor in Medical Imaging Science
Technical Officer II (Radio)	2,426	Bachelor in Medical Imaging Science
Technical Officer II (Radio)	2,426	Bachelor in Medical Imaging Science
Technical Officer II (Radio)	2,426	N/A
Technical Officer II (Radio)	2,426	N/A
Technical Officer II (Radio)	2,426	N/A
Physiotherapist	2,257	Diploma in Physiotherapy
Junior Physiotherapist	2,257	Diploma in Physiotherapy
Junior Physiotherapist	2,257	Cert in Physiotherapy
Junior Physiotherapist	2,257	Diploma in Physiotherapy
Junior Physiotherapist	2,257	Diploma in Physiotherapy & Cert. in OHS Module 1 & II
Junior Physiotherapist	2,257	N/A

Post Title	Deputed Staff Support Cost per month (FJD)	Qualification
(1)	(2)	(3)
Junior Physiotherapist	2,257	N/A
Dietician	2,441	Diploma in Diet & Public Health Nutrition
Dietician	2,222	Diploma in Diet & Public Health Nutrition
Dietician	2,222	Diploma in Diet & Public Health Nutrition
Dietician	2,222	Diploma in Diet & Public Health Nutrition
Junior Dietician	2,222	Diploma in Diet & Public Health Nutrition
Junior Dietician	2,222	Diploma in Diet & Public Health Nutrition
Junior Dietician	2,222	Bachelor in Dietetics & Nutrition
Junior Dietician	2,222	Bachelor in Dietetics & Nutrition
Junior Dietician	2,222	Bachelor in Dietetics & Nutrition
Junior Dietician	2,222	Bachelor in Dietetics & Nutrition
Junior Dietician	2,222	Bachelor in Dietetics & Nutrition
Laboratory Assistant	2,222	Cert. in Clinical Lab Tech
Laboratory Assistant	2,222	Cert. in Clinical Lab Tech
Laboratory Assistant	1,683	N/A
Laboratory Assistant	1,683	N/A
Laboratory Assistant	1,683	Cert. in Clinical Lab Tech
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Phlebotomist	1,410	Cert. in Phlebotomy
Medical Orderly	1,410	N/A
Principal Pharmacy Officer	4,663	Diploma in Pharmacy/ Registered Pharmacist
Senior Pharmacy Officer	3,476	Bachelor in Science, Pharmacy /Registered Pharmacist, Post Grad Dip in Health Infor, Cert. in Basic Comp
Supervising Pharmacy Tech	2,628	Diploma in Pharmacy
Supervising Pharmacy Tech	2,628	Bachelor of Pharmacy/Registered Pharmacist
Supervising Pharmacy Tech	2,628	Bachelor in Pharmacy
Senior Pharmacy Technician	2,628	N/A
Senior Pharmacy Technician	2,628	N/A
Pharmacy Assistant	1,904	Cert. III Hosp/ Health Service Support
Pharmacy Assistant	1,904	Diploma in Industrial Lab Tech
Stores Officer I	1,904	Bachelor in Arts
Storeman	1,410	N/A
Storeman	1,410	N/A
Administrative Officer	2,628	MBA, Adv Dip Quality Management & Post Grad Cert in HRM

Post Title	Deputed Staff Support Cost per month (FJD)	Qualification
(1)	(2)	(3)
Executive Officer	2,051	Bachelor in Arts - Public Admin, Management & Economics
Secretary	2,051	Diploma in Office Admin
Clerical Officer	1,890	Diploma in Economics
Clerical Officer	1,410	Diploma in
Clerical Officer	1,410	Advanced Diploma in Management, Diploma in Business Accounting
Clerical Officer	1,410	Advanced Diploma in Management
Clerical Officer	1,410	N/A
Clerical Officer	1,410	Diploma in Economics
Clerical Officer	1,410	Diploma in Industrial Lab Tech, Cert. Business Accounting & Cert. IV in workplace Leadership Training, Diploma in Business Accounting
Clerical Officer	1,410	Diploma in Accounting
Clerical Officer	1,410	N/A
Steno Typist / Typist	1,410	Diploma in Applied Computing
Steno Typist / Typist	1,410	Form 7
Steno Typist / Typist	1,410	Cert. in Secretarial Studies & currently doing Adv Dip in Leadership & Management
Steno Typist / Typist	1,410	Diploma in Office Admin
Steno Typist / Typist	1,410	N/A
Telephone Operator	1,410	Certificate in Computing, Form 7
Assistant Statistician	2,051	Diploma in Frontline Management
Supervisor Higher Grade	3,471	Advance Diploma in Mechanical Engineering-FIT
Foreman	1,904	Trade Certificate in Plumbing & Sheetmetal, Craft Apprenticeship
Domestic Officer	1,410	N/A
Senior Domestic Assistant	1,410	Certificate in Specialized Machining-Dress Making-TPAF
Senior Domestic Assistant	1,642	Bachelor in Business Accounting & Certificate in Comp Studies
Senior Domestic Assistant	1,410	N/A
Domestic Assistant	1,410	Certificate in Caregiver, Certificate in Housekeeping, Certificate in Computing, Certificate in Infection Control, OHS-Module I & II
Domestic Assistant	1,405	Bachelor in Business Accounting
Computer Operator	1,904	Cert. in Comp Studies, Cert. in IT, Dip in Comp Studies & Adv Cert. in IT & Management

Table D: List of Government wage earners employed by the Government at Lautoka Hospital as at 31 March 2018

Post	Deputed Staff Support Cost per month (FJD)	Contract type
(1)	(2)	(3)
Carpenter A/B	1,229	Permanent
Fireman	1,229	Permanent
Fireman	1,229	Contract
Fireman	1,229	Contract
Fireman	1,229	Contract
Fitter B	1,716	Reliever
Fitter B	1,716	Permanent
Handyman I,II,III	1,716	Permanent
Electrician B	1,716	Reliever
Electrician B	1,716	Reliever
Stores Attendant	1,229	Contract
Head Ambulance Driver	1,229	Contract
Cook III	1,229	Permanent
Cook III	1,229	Reliever
Cook III	1,229	Permanent
Cook III	1,229	Contract
Cook III	1,229	Contract
Cook III	1,229	Contract
Cook III	1,229	Contract
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Reliever
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Permanent
Recorder Grade III	1,229	Contract
Recorder Grade III	1,229	Contract
Driver	1,229	Contract
Driver	1,229	Permanent
Driver	1,229	Permanent
Driver	1,229	Permanent
Driver	1,229	Contract
Driver	1,229	Reliever
Driver	1,229	Permanent
Driver	1,229	Contract
Driver	1,229	Reliever
Driver	1,229	Reliever

Post	Deputed Staff Support Cost per month (FJD)	Contract type
(1)	(2)	(3)
Driver	1,229	Reliever
Driver	1,229	Contract
Asst. Carpenter	1,229	Permanent
Lab / Attendant	1,229	N/A
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Permanent
L/Hand -III	1,229	Reliever
L/Hand -III	1,229	Contract
L/Hand -III	1,229	Contract
L/Hand -III	1,229	Contract
L/Hand -III	1,229	Contract
L/Hand -III	1,229	Contract
L/Hand -III	1,229	Contract
X-Ray Assist.	1,229	Permanent
X-Ray Assist.	1,229	Permanent
X-Ray Assist.	1,229	Contract
Grade II	1,229	Permanent
Grade II	1,229	Permanent
Grade II	1,229	Permanent
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Reliever
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Contract
Hospital Attendant	1,229	Contract
Hospital Attendant	1,229	Permanent
Hospital Attendant	1,229	Contract
Hospital Attendant	1,229	Contract
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Reliever

Post	Deputed Staff Support Cost per month (FJD)	Contract type
(1)	(2)	(3)
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Reliever
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Permanent
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Ward Assistant	1,229	Contract
Attendant [CSSD]	1,229	Permanent
Attendant [CSSD]	1,229	Reliever
Attendant [CSSD]	1,229	Permanent
Attendant [CSSD]	1,229	Contract
Attendant [CSSD]	1,229	Contract
Attendant [CSSD]	1,229	Contract
Attendant [CSSD]	1,229	Contract
Attendant [CSSD]	1,229	Contract
Attendant [CSSD]	1,229	Permanent
Attendant [CSSD]	1,229	Reliever
Attendant [CSSD]	1,229	Reliever
Attendant [CSSD]	1,229	Permanent
Messenger II	1,229	Contract
Asst. Seamstress	1,229	Contract
Asst. Seamstress	1,229	Contract
Asst. Seamstress	1,229	Contract
Asst. Seamstress	1,229	Contract
Laborer	1,133	Permanent
Laborer	1,133	Permanent
Laborer	1,229	Reliever
Laborer	1,133	Contract
Laborer	1,133	Permanent
Laborer	1,229	Permanent

Post	Deputed Staff Support Cost per month (FJD)	Contract type
(1)	(2)	(3)
Laborer	1,133	Permanent
Laborer	1,133	Permanent
Laborer	1,133	Reliever
Kitchen Hand	1,229	Contract
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Reliever
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,229	Permanent
Kitchen Hand	1,133	Contract
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,229	Permanent
Kitchen Hand	1,133	Reliever
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,133	Permanent
Kitchen Hand	1,229	Permanent
Kitchen Hand	1,229	Contract
Kitchen Hand	1,229	Contract
Kitchen Hand	1,229	Contract
Kitchen Hand	1,133	Contract
Kitchen Hand	1,133	Contract
Attendant [Housekeeper]	1,133	Permanent
Attendant [Housekeeper]	1,229	Permanent
Assistant [IT]	1,229	Permanent
Refrigeration and Air Condition	1,716	Reliever

Deputed Staff Support Cost in respect of Lautoka Hospital

The Concessionaire will pay the Government the Deputed Staff Support Cost for the actual number of Lautoka Hospital Deputed Staff deputed by the Government to the Concessionaire at the Lautoka Hospital. The Deputed Staff Support Cost for Lautoka Hospital shall be calculated as the sum of the Deputed Staff Support Cost (as mentioned in Column 4 of Table A, Column 3 of Table B, Column 2 of Table C and Column 2 of Table D above) for each Lautoka Hospital Deputed Staff actually deputed at the Lautoka Hospital and shall be paid by the Concessionaire to the Government, on a monthly basis, in accordance with Clause 17.9 (*Other Payments*) of the Agreement. The Deputed Staff Support Cost in respect of the Lautoka Hospital Deputed Staff (as mentioned in Tables A, B, C and D above) will increase by 10% (ten per cent) at the beginning of each Financial Year. In addition to the Deputed Staff Support Cost in respect of the Lautoka Hospital Deputed Staff, the Concessionaire shall pay administrative charges amounting to FJD 27,083 (Fijian Dollars Twenty Seven Thousand Eighty Three) per month to the Government during the period of deputation of the Lautoka Hospital Deputed Staff. The Concessionaire shall directly pay the

over-time charges to the Lautoka Hospital Deputed Staff and such over-time charges shall not be lesser than the over-time charges required to be paid in accordance with the Applicable Laws.

Without prejudice to the Concessionaire's rights set out in Clause 9.5(b) of the Agreement to require the Government to remove any Lautoka Hospital Deputed Staff, it is clarified that notwithstanding the actual date of removal of any Lautoka Hospital Deputed Staff in accordance with the Clause 9.5(b) of the Agreement, for the purposes of computing the Deputed Staff Support Cost payable by the Concessionaire to the Government, the date of removal of any such Lautoka Hospital Deputed Staff shall be deemed to be the last day of the month in which such Lautoka Hospital Deputed Staff was actually removed in accordance with Clause 9.5(b) of the Agreement.

The Government may, on and from the Handover Date and for the duration of the Transition Phase, depute to the Lautoka Hospital an additional number of staff than as mentioned in Tables A, B, C and D above. The Concessionaire shall notify in writing within 7 (seven) Business Days from the Handover Date its decision to either accept or reject the deputation of such additional staff at the Lautoka Hospital. In the event the Concessionaire notifies its decision to the Government to accept the deputation of such additional staff, then the Concessionaire shall be liable to pay the Deputation Staff Support Cost in relation to such additional staff deputed at the Lautoka Hospital.

PART B: BA HOSPITAL

The Government will depute all staff (as listed in Tables E, F, G and H below) employed (on permanent or temporary basis) by the Government on or about the Handover Date at the Ba Mission Hospital to the Concessionaire to carry out their duties and responsibilities under the management of the Concessionaire at the Ba Hospital during the Ba Hospital Transition Phase in accordance with the Ba Hospital Transition Plan. An indicative list of the doctors, nurses, other clinical staff, technicians and government wage owners employed by the Government at the Ba Mission Hospital as at 31 March 2018 (along with details of their qualification and number of years of employment with the Government along with the Deputed Staff Support Cost payable by the Concessionaire for each staff member) is set out in the Tables E, F, G and H below for reference only. For the avoidance of any doubt, it is clarified that the final list (and corresponding details, including the Deputed Staff Support Cost) of the Ba Hospital Deputed Staff to be deputed by the Government to the Concessionaire in accordance with the Agreement may be different (more or less) from the list set out in the Tables E, F, G and H below. It is further clarified that, notwithstanding anything to the contrary, the Ba Hospital Deputed Staff may change during the course of the deputation on account of:

- (i) death, incapacitation or retirement of any Ba Hospital Deputed Staff;
- (ii) expiry of contract of employment of any Ba Hospital Deputed Staff with the Government and such contract is not renewed by the Government;
- (iii) termination of employment of any Ba Hospital Deputed Staff by Government for cause;
- (iv) any Ba Hospital Deputed Staff ceasing to be Government's employees upon accepting Concessionaire's offer of employment in accordance with Clause 9.3(d) of the Agreement; or
- (v) removal of any Ba Hospital Deputed Staff in accordance with Clause 9.3,

and in each such scenario, there shall be no obligation on the Government to provide any replacement or substitute staff to the Concessionaire.

Table E: List of doctors employed by the Government at Ba Hospital as at 31 March 2018

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	No. of years employed
(1)	(2)	(3)	(4)
Principal Medical Officer	MBBS, Pursuing Masters in Public Health second year	10,823	8
Senior Medical Officer	MBBS, Pursuing Masters in Public Health second year	7,721	7
Medical Officer	MBBS	6,199	4
Medical Officer	MBBS	6,199	4
Medical Officer	MBBS	6,199	7
Medical Officer	MBBS	6,199	5
Medical Officer	MBBS	6,199	2
Medical Officer	MBBS	6,199	4
Medical Officer	MBBS	5,722	6

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	No. of years employed
(1)	(2)	(3)	(4)
Medical Officer	MBBS	6,199	4
Medical Officer	MBBS	6,199	2
Medical Officer	MBBS	6,918	2
Medical Officer	MBBS	6,199	3
Medical Officer	MBBS	6,199	2
Medical Officer	MBBS	5,722	1
Medical Intern	MBBS	5,722	1
Medical Intern	MBBS	5,722	1

For the avoidance of doubt, it is clarified that ‘Medical Intern’ (as mentioned in this Schedule) and ‘Medical Students’ (as mentioned in Clause 9.8 of the Concession Agreement) are separate designations. Medical Interns are recently graduated doctors who are undergoing training during their internship. ‘Medical Students’ has the meaning ascribed to it in the Clause 1.1 of the Concession Agreement).

Table F: List of nurses employed by the Government at Ba Hospital as at 31 March 2018

Medical Specialty	Qualification	Deputed Staff Support Cost per month (FJD)	Number of Years employed
(1)	(2)	(3)	(4)
Sub Division Hospital Nurse Manager	Manager	3,476	21 years
Team Leader- SOPD/ ANC	TL (NU5)	2,628	27 years
Team Leader- General Ward	TL (NU5)	2,628	13 years
Men Ward Nurse	RN (NU6)	2,253	2 years
Supervisor - Labour Ward (Mid wife)	RM (NU6)	2,861	20 Years
Antenatal/Prep room Nurse	RN (NU6)	2,253	9 years
GOPD & A&E Nurse	RN (NU6)	2,253	7 years
GOPD & A&E Nurse	RN (NU6)	2,253	4 years
GOPD & A&E Nurse	RN (NU6)	2,253	5 years
Children Ward Nurse	RN (NU6)	2,253	11 years
GOPD & A&E Nurse	RN (NU6)	2,253	2 years
Children Ward Nurse	RN (NU6)	2,253	2 years
Men Ward Nurse	RN (NU6)	2,253	8 years
GOPD & A&E Nurse	RN (NU6)	2,253	2 years
Children Ward Nurse	RN (NU6)	2,253	12 years
Post Natal ward Nurse	RN (NU6)	2,253	6 years
Women Ward Nurse	RN (NU6)	2,253	11 years
Post Natal ward Nurse	RN (NU6)	2,253	2 years
Children Ward Nurse	RN (NU6)	2,253	5 years
Post Natal ward Nurse	RN (NU6)	2,253	4 years
Post Natal ward Nurse	RN (NU6)	2,253	2 years
Women Ward Nurse	RN (NU6)	2,253	4 years

Medical Specialty	Qualification	Deputed Staff Support Cost per month (FJD)	Number of Years employed
(1)	(2)	(3)	(4)
Post Natal ward Nurse	RN (NU6)	2,426	21 years
Supervisor - Labour Ward (Mid wife)	RM (NU6)	2,861	19 Years
Men Ward Nurse	RN (NU6)	2,253	2 years
IMCI-Nurse Nurse	RN (NU6)	2,253	5 years
Post Natal ward Nurse	RN (NU6)	2,253	2 years
GOPD & A&E Nurse	RN (NU6)	2,253	5 years
IPCO/ RISK Nurse	RN (NU6)	2,253	8 years
Antenatal/Prep room Nurse	RN (NU6)	2,253	2 years
GOPD & A&E Nurse	RN (NU6)	2,253	2 years
IMCI-Nurse Nurse	RN (NU6)	2,253	2 years
GOPD & A&E Nurse	RN (NU6)	2,253	2 years
Post Natal ward Nurse	RN (NU6)	2,253	N/A
Supervisor - Labor Ward (Mid wife)	RM (NU6)	2,628	Retired re- engaged
Women Ward Nurse	RM (NU6)	2,253	10 years
Supervisor - Labor Ward (Mid wife)	RM (NU6)	2,861	15 years
Antenatal/Prep room Nurse	RN (NU6)	2,253	14 years
Antenatal/Prep room Nurse	RN (NU6)	2,253	16 years
Women Ward Nurse	RN (NU6)	2,253	2 years
Men Ward Nurse	RN (NU6)	2,253	1 year
Eye Nurse	RN (NU6)	2,253	13 years
IMCI-Nurse Nurse	RN (NU6)	2,253	11 years
Children Ward Nurse	RN (NU6)	2,253	8 years
Children Ward Nurse	RN (NU6)	2,253	2 years
Eye Nurse	RN (NU6)	2,253	13 years
GOPD & A&E Nurse	RN (NU6)	2,253	11 years
Labour Ward (Mid wife)	RM (NU6)	2,253	13 years
GOPD & A&E Nurse-Supervisor	RN (NU6)	2,253	12 years
Foot Care Nurse	RN (NU6)	2,253	11 years
Supervisor - Labour Ward (Mid wife)	RM (NU6)	2,253	N/A
Supervisor - Labour Ward (Mid wife)	RM (NU6)	2,253	Retired re- engaged
GOPD & A&E Nurse	RN (NU6)	2,253	5 years
GOPD & A&E Nurse	RN (NU6)	2,253	N/A
Supervisor - Labour Ward (Mid wife)	RM (NU6)	2,861	13 Years
Men Ward Nurse	RN (NU6)	2,253	4 years

TL Team Leader
RM Registered Midwife
RN Registered Nurse

Table G: List of other clinical staff and technicians employed by the Government at Ba Hospital as at 31 March 2018

Post Title	Role	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of years employed
(1)	(2)	(3)	(4)	(5)
Sen. Pharmacy Tech	Senior Pharmacy Technician	Diploma in Pharmacist	2,252	17 years
Pharmacy Assistant	Pharmacy Assistant	Form 7 pass	1,904	9 years
Pharmacy Assistant	Pharmacy Assistant	N/A	1,904	N/A
Technical Officer Higher Grade	Technical Officer Higher Grade	Diploma in Medical Imaging Science	3,476	9 years
TOII [Radio]	X - Ray Technician	Bachelor in Medical Lab and Science	2,426	5 years
TOII [Radio]	X-Ray Technician	Bachelor in Medical Lab and Science	2,426	2 years
TOII [Lab]	Laboratory Technician	Bachelor in Medical Lab and Science	2,222	15 years
TOII [Lab]	Laboratory Technician	Bachelor in Medical Lab and Science	2,222	14 years
Lab Assistant	Lab Assistant	Certificate in Clinical Lab Technology	1,683	1 year
Dietician	Dietician	Bachelor in dietetic & Nutrition	2,222	15 years
Dietician	Dietician	Bachelor in dietetic & Nutrition	2,222	N/A

Table H: List of Government wage earners employed by the Government at Ba Hospital as at 31 March 2018

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of years employed
(1)	(2)	(3)	(4)
Recorder III	Form 4 pass	1,229	24 years
Recorder III	Form 6 pass	1,229	1 year
Recorder III	Form 6 pass	1,229	4 years
Cook II	Form 4 pass	1,229	26 years
Cook III	Form 6 pass	1,229	8 years
Driver	Form 6 pass	1,229	19 years
Driver	Form 6 pass	1,229	4 years
Driver	Form 6 pass	1,229	4 years
Driver	Form 6 pass	1,229	4 years
Driver	Form 6 pass	1,229	1 year
Laundry hand III	Form 4 pass	1,229	22 years

Post Title	Qualifications	Deputed Staff Support Cost per month (FJD)	Number of years employed
(1)	(2)	(3)	(4)
Laundry hand III	N/A	1,229	N/A
Laundry hand III	Form 6 pass	1,229	10 years
Cleaner/Servant	Form 3 pass	1,229	29 years
Cleaner/Servant	Form 6 pass	1,229	11 years
Cleaner/Servant	Form 6 pass	1,229	4 years
Cleaner/Servant	Form 6 pass	1,229	4 years
Cleaner/Servant	Form 6 pass	1,229	3 years
Cleaner/Servant	Form 6 pass	1,229	1 year
Cleaner/Servant	Form 4 pass	1,229	15 years
Cleaner/Servant	Form 6 pass	1,229	12 years
Labourer	Form 4 pass	1,133	29 years
Labourer	Form 6 pass	1,133	3 years
Labourer	Form 5 pass	1,133	18 years
Ward Assistant	Form 6 pass	1,229	1 year
Ward Assistant	Form 4 pass	1,229	24 years
Ward Assistant	Form 7 pass	1,229	1 year
Ward Assistant	Form 4 pass	1,229	24 years
Ward Assistant	Form 7 pass	1,229	3 years
Ward Assistant	Form 6 pass	1,229	8 years
CSSD Attendant	Form 6 pass	1,229	8 years
Assistant Carpenter	Form 6 pass	1,229	1 year
Executive Officer	Diploma in Business Management	2,051	18 years
Clerical Officer	N/A	1,549	N/A
Domestic Assistant	Diploma in IT	1,243	2 years

Deputed Staff Support Cost in respect of Ba Hospital

The Concessionaire will pay the Government the Deputed Staff Support Cost for the actual number of Ba Hospital Deputed Staff deputed by the Government to the Concessionaire at the Ba Hospital. The Deputed Staff Support Cost for Ba Hospital shall be calculated as the sum of the Deputed Staff Support Cost (as mentioned in Column 3 of Table E, Column 3 of Table F, Column 4 of Table G and Column 3 of Table H above) for each Ba Hospital Deputed Staff actually deputed at the Ba Hospital and shall be paid by the Concessionaire to the Government, on a monthly basis, in accordance with Clause 17.9 (*Other Payments*) of the Agreement. The Deputed Staff Support Cost in respect of the Ba Hospital Deputed Staff (as mentioned in Tables E, F, G and H above) will increase by 10% (ten per cent) at the beginning of each Financial Year. In addition to the Deputed Staff Support Cost in respect of the Ba Hospital Deputed Staff, the Concessionaire shall pay administrative charges amounting to FJD 5,480 (Fijian Dollars Five Thousand Four Hundred Eighty) per month to the Government during the period of deputation of the Ba Hospital Deputed Staff. The Concessionaire shall directly pay the over-time charges to the Ba Hospital Deputed

Staff and such over-time charges shall not be lesser than the over-time charges required to be paid in accordance with the Applicable Laws.

Without prejudice to the Concessionaire's rights set out in Clause 9.5(b) of the Agreement to require the Government to remove any Ba Hospital Deputed Staff, it is clarified that notwithstanding the actual date of removal of any Ba Hospital Deputed Staff in accordance with the Clause 9.5(b) of the Agreement, for the purposes of computing the Deputed Staff Support Cost payable by the Concessionaire to the Government, the date of removal of any such Ba Hospital Deputed Staff shall be deemed to be the last day of the month in which such Ba Hospital Deputed Staff was actually removed in accordance with Clause 9.5(b) of the Agreement.

The Government may, on and from the Handover Date and for the duration of the Transition Phase, depute to the Ba Hospital an additional number of staff than as mentioned in Tables E, F, G and H above. The Concessionaire shall notify in writing within 7 (seven) Business Days from the Handover Date its decision to either accept or reject the deputation of such additional staff at the Ba Hospital. In the event the Concessionaire notifies its decision to the Government to accept the deputation of such additional staff, then the Concessionaire shall be liable to pay the Deputation Staff Support Cost in relation to such additional staff deputed at the Ba Hospital.

SCHEDULE – 5

TRANSITION PROCESS GUIDELINES

1. The Project Hospital Transition Plan for each Project Hospital shall be prepared by the Concessionaire in accordance with the requirements of Applicable Laws, Applicable Permits, E&S Standards, the Specifications and Standards, the Designs and Drawings and Best Construction Practices, GIIP and the other provisions of this Agreement so as to ensure minimum disruption to Services at the Project Hospitals.
2. Without prejudice to the generality of the requirements mentioned in paragraph 1 above, the Lautoka Hospital Transition Plan shall include the following:
 - (a) management and staffing proposals for the Lautoka Hospital up to (and including) Lautoka Hospital CCD;
 - (b) timetable for the transfer of each ward and department within the Lautoka Hospital during the Lautoka Hospital Construction Period;
 - (c) access routes between the old and new facilities for each ward or department for staff and Patients during the Lautoka Hospital Construction Period;
 - (d) clinical strategies for the movement of Patients in high dependency or intensive care facilities during the Lautoka Hospital Construction Period;
 - (e) proposals for dissemination of up to date information and timings to clinical staff and Patients during the Lautoka Hospital Construction Period;
 - (f) proposals for managing inpatient appointments and ensuring that appropriate information is provided in relation to the location of the appointments during the Lautoka Hospital Construction Period;
 - (g) proposals for maintaining and updating the administrative and medical systems and records during the Lautoka Hospital Construction Period;
 - (h) proposals for maintaining and updating physical records and archives during the Lautoka Hospital Construction Period;
 - (i) proposals for vehicle access routes (including parking) around the Lautoka Hospital during the Lautoka Hospital Construction Period, and shall provide for parking for staffs', Patients' and visitors' vehicles, emergency vehicles, public transport and any construction related vehicles and details of how information will be provided to all relevant parties;
 - (j) procedure for request and provision of packaging, labelling and storage facilities during the Lautoka Hospital Construction Period; and
 - (k) a risk assessment for the Lautoka Hospital Construction Period.
3. Without prejudice to the generality of the requirements mentioned in paragraph 1 above, the Ba Hospital Transition Plan shall include the following:
 - (a) management and staffing proposals for the Ba Hospital during the Ba Hospital Transition Phase;

- (b) timetable and process for the transfer of each ward and department of the Ba Mission Hospital to the Ba Hospital upon Ba Hospital CCD;
- (c) clinical strategies, timelines and process for transfer of patients and staff from the Ba Mission Hospital to the Ba Hospital upon Ba Hospital CCD, including the type of vehicle to be utilised for such transfer;
- (d) clinical strategies for movement of patients in high dependency during the Ba Hospital Transition Phase;
- (e) proposals for dissemination of up to date information and timings to staff and Patients during the Ba Hospital Transition Phase;
- (f) proposals for managing inpatient appointments and ensuring that appropriate information is provided in relation to the location of the appointments during the Ba Hospital Transition Phase;
- (g) proposals for the transfer of administrative and medical systems and Project Hospital Records from the Ba Mission Hospital to the Ba Hospital upon Ba Hospital CCD, and then maintaining and updating the same during the Ba Hospital Transition Phase;
- (h) proposals for the transfer of physical records and archives (including the Project Hospital Records) from the Ba Mission Hospital to the Ba Hospital upon Ba Hospital CCD, and then maintain and updating the same during the Ba Hospital Transition Phase;
- (i) proposals for vehicle access routes (including parking) around the Ba Hospital during the Ba Hospital Transition Phase, and shall provide for parking for staffs', Patients' and visitors' vehicles, emergency vehicles, public transport and any construction related vehicles and details of how information will be provided to all relevant parties;
- (j) procedure for request and provision of packaging, labelling and storage facilities during the Ba Hospital Transition Phase; and
- (k) a risk assessment for the Ba Hospital Transition Phase.

SCHEDULE - 6

SERVICES

A. Clinical Services

I. Service categories

The Concessionaire will provide the following categories of services (**Clinical Services**) for the period commencing from the Handover Date in respect of the Lautoka Hospital and for the period commencing from the Ba Hospital CCD in respect of the Ba Hospital:

1. Admitted Acute Care

Admitted acute care means services that each Project Hospital provides, under the direction of a qualified physician or dentist, to Patients who undergo a formal admission process in the Project Hospital, where the clinical intent or treatment goal is the provision of acute care.

2. Non-admitted Care

Non-admitted care, or Specialist Outpatient Services, encompasses services provided at each of the Project Hospital to Patients who do not undergo a formal admission process and do not occupy a Bed. Such services are provided without formally admitting the Patient.

3. Emergency care

Emergency Departments (**EDs**) are dedicated hospital-based facilities specifically designed and staffed to provide 24 (twenty-four) hours emergency care at each Project Hospital. The role of the ED is to diagnose and treat acute and urgent illnesses and injuries. Patients will be seen in order of medical urgency with non-urgent patients being seen after more acute patients.

- II. Following is the list of Clinical Services which are required to be made available at each of the Project Hospital, as a minimum, for the period commencing from the Handover Date in respect of the Lautoka Hospital and for the period commencing from the Ba Hospital CCD in respect of the Ba Hospital:

At Lautoka Hospital:

- (i) General outpatient services;
- (ii) Specialist Outpatient Services;
- (iii) Emergency Department;
- (iv) Renal dialysis;
- (v) Chemotherapy;
- (vi) Diabetic care;
- (vii) Medical oncology;
- (viii) Internal medicine;
- (ix) Gastroenterology;
- (x) General surgery;
- (xi) Stress management;
- (xii) Trauma & orthopaedics;
- (xiii) Maternity;
- (xiv) Gynaecology;
- (xv) Paediatrics;

- (xvi) Burns;
- (xvii) Plastic surgery;
- (xviii) Cardiac catheterization;
- (xix) Cardiovascular surgery;
- (xx) Adult intensive care;
- (xxi) Paediatric intensive care;
- (xxii) High dependency care;
- (xxiii) Coronary care;
- (xxiv) Neonatal care;
- (xxv) Radiology as per Appendix A;
- (xxvi) Laboratory as per Appendix B;
- (xxvii) Pharmacy; and
- (xxviii) Physiotherapy.

At Ba Hospital:

- (i) General outpatient services;
- (ii) Specialist Outpatient Services;
- (iii) Emergency Department;
- (iv) Internal medicine;
- (v) General surgery;
- (vi) Gynaecology;
- (vii) Maternity;
- (viii) Paediatrics;
- (ix) Rehabilitation;
- (x) Radiology as per Appendix C;
- (xi) Laboratory as per Appendix D; and
- (xii) Pharmacy.

B. Non – Clinical Services and maintenance services

The Concessionaire is required to provide, as a minimum, the following Non-Clinical Services and maintenance services (**Non-clinical Services**) at each of the Project Hospital, for the period commencing from the Handover Date in respect of the Lautoka Hospital and for the period commencing from the Ba Hospital CCD in respect of the Ba Hospital:

- (i) Estates management;
- (ii) Grounds maintenance;
- (iii) Pest control;
- (iv) Utilities management;
- (v) Materials management;
- (vi) Cleaning and housekeeping;
- (vii) Security and car parking;
- (viii) Catering for admitted patients;
- (ix) Reception services;
- (x) Linen services;
- (xi) Waste management and disposal;
- (xii) Hospital administration; and
- (xiii) Infection control.

C. Permitted Ancillary Activities

The Concessionaire shall have a right to undertake the following Permitted Ancillary Activities at each of the Project Hospital, for the period commencing from the Handover Date in respect of the Lautoka Hospital and for the period commencing from the Ba Hospital CCD in respect of the Ba Hospital:

- (i) Pharmacies;
- (ii) Restaurants;
- (iii) Tuck shop;
- (iv) ATM machines;
- (v) Boarding and lodging facilities;
- (vi) Child care centre; and
- (vii) Gift/flower shop.

Appendix A: List of minimum diagnostic imaging services which are required to be made available at the Lautoka Hospital by the Concessionaire:

- (i) X-Ray;
- (ii) Ultrasound;
- (iii) Computerised tomography (CT);
- (iv) Magnetic resonance imaging (MRI);
- (v) Mammography;
- (vi) Stress test (TMT);
- (vii) Holter test;
- (viii) Electroencephalogram (EEG);
- (ix) Electrocardiogram (ECG);
- (x) Electromyogram (EMG);
- (xi) Pulmonary function test; and
- (xii) Hysterosalpingogram (HSG).

Appendix B: List of minimum laboratory services and tests which are required to be made available at the Lautoka Hospital by the Concessionaire:

Laboratory Discipline	Test
Biochemistry	Sodium
	Potassium
	Chloride
	HbA1C
	Albumin
	ALP
	ALT
	ASO

Laboratory Discipline	Test
	AST
	Creatine Kinase
	Creatinine
	CSF-P
	Calcium
	Direct Bilirubin
	Glucose
	HDL
	HB
	LDH
	LDL-C
	Magnesium
	Phosphorous
	Rheumatoid Factor
	Total Bilirubin
	Total Cholesterol
	Triglyceride
	Total Protein
	UPROT
	Urates
	Urea
	Amylase
	GGT
	Troponin T
	βHCG
	PSA
	CEA
	Ca 125
	αFP
	FSH
	LH
	Prolactin
	Progesterone
	Estradiol
	Testosterone
	TSH

Laboratory Discipline	Test
	FT4
	FT3
	Vit B12
	Folate
	Ferritin
	Cortisol
	Bence Jones Protein
	24hr Urine Protein
	ABG
	Send Away Tests
	TOTAL Test
Blood Bank	1. Grouping
	a) Group and Hold
	b) X-Match Request
	c) ANC
	d) Donors
	e) PPTC/RCPA/ Internal QC
	f) Paternity
	g) Rh Du Neg
	h) Cord Blood /Others
	2. Cross Match (XM)
	a) Auto XM
	b) No. of packs cells XM
	c) No. of whole blood XM
	d) No. of pack cells issued
	3. Fresh Frozen Plasma
	a) No. of FFP units request
	b) No. of FFP issued
	4. Cryoprecipitate
	a) No. of Cryo.units Request
	b) No of Cryo. Issued
	5. Platelet Concentrate
	a) No. of Plt units request
	b) No of Plt issued
	6. Blood Donors
	a) Prep. Of Pack Cells

Laboratory Discipline	Test
	b) Prep. Of Platelet
	c) Prep. of FFP
	d) Prep. of Cryo.
	e) Labelling of Pack Cells
	7. Indirect Coombs Test
	*Antibody Identification
	*Antibody Titration
	*Cold Agglutinin
	8. Direct Coombs Test
	a) Ward
	b) Cord Blood
	9. Paternity Testing
	a) Assessment
	b) Phenotyping
	10. Transfusion Rxn
	a) Donor Pack
	11. Coombs control
	Group and Hold
	X-Match Request
	ANC
	Donors
	Paternity
	Rh Du Neg
	Cord Blood / Others
	FFP
	Cryoprecipate
	Platelet Concentrate
	ICT
	DCT
	Transfusion Rxn
	PPTC/RCPA/ Internal QC
Haematology	FBC
	Diff & Films
	Retics
	ESR
	Malaria

Laboratory Discipline	Test
	Microflarial
	FDP
	INR
	APTT
	Bleeding Time
	Bone Marrow
	Paerls Stain
	Sudan Black
	Semen Analysis
Microbiology	Urine
	Blood Culture
	Pus and Wound Stain
	Ear, Nose, Eye, Throat
	Veneraal swabs
	Urethral swabs
	Sputum
	Body fluids
	Stool
	Misc.
Serology	Mycology
	Hansens
	RPR request
	RPR reactive
	TPPA request
	TPPA reactive
	HIV request
	HIV Pos ltk
	Confirmed HIV
	HCV request
	HBsAG request
	HBsAG pos
	Lepto
	Dengue
	ANA
	DADNA
	Hpylori

Laboratory Discipline	Test
	Torch
	HAV
	CD4 count

Appendix C: List of minimum diagnostic imaging services which are required to be available at the Ba Hospital by the Concessionaire:

- (i) X-Ray;
- (ii) Ultrasound.

Appendix D: List of minimum laboratory services and tests which are required to be available at the Ba Hospital by the Concessionaire:

Laboratory Discipline	Test
Biochemistry	Urea
	Creatinine
	Na/K/Cl
	Cholesterol
	Triglyceride
	HDL Cholesterol
	Glucose (RBS/FBS/GTT)
	Urate
	Total Bilirubin
	Direct Bilirubin
	ALP
	AST
	ALT
	Amylase
	Albumin
	Total Protein
	CK
	LDH
	CKMB
	HbA1c
Haematology	FBC
	ESR

Laboratory Discipline	Test
Blood Bank	ABO Grouping
	ANC Grouping
	X-Match(UNITS)
	Cord Blood
	DCT
	D U Typing
	Donors
Serology	VDRL
	TPPA
	Rapid HBV
	Rapid HIV
	Rapid HCV
	Lepto
	Dengue
Microbiology	Urine BHCG
	Urine Microscopy
	Stool Microscopy

SCHEDULE - 7
SERVICE LEVEL STANDARDS AND PERFORMANCE LIQUIDATED DAMAGES

PART A – SERVICE LEVEL STANDARDS AND PERFORMANCE LIQUIDATED DAMAGES

1. FULL O&M PHASE SLS

The following table sets out the Full O&M Phase SLS and the corresponding Performance Liquidated Damages payable by the Concessionaire in the event of breach thereof:

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
Operational					
1	Qualified medical staff (doctors and nurses) to Bed ratio at Lautoka Hospital.	Minimum average ratio of 1 medical staff (doctors and nurses) per Bed.	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System.	Equivalent to 10% of Performance Security per breach.
2	Qualified medical staff (doctors and nurses) to Bed ratio at Ba Hospital.	Minimum average ratio of 0.8 medical staff (doctors and nurses) per Bed.	Quarterly.	Independent Monitor relying on, amongst other aspects, information from	Equivalent to 2% of Performance Security per breach.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
				the Hospital Information System.	
3	Non-availability of minimum equipment at Lautoka Hospital.	All equipment as per the Specifications and Standards applicable to the Lautoka Hospital.	Quarterly.	Independent Monitor.	Equivalent to 0.1% of Performance Security for each day of each equipment is not available at the Lautoka Hospital as required under the Specifications and Standards applicable to the Lautoka Hospital.
4	Non-availability of minimum equipment at Ba Hospital.	All equipment as per the Specifications and Standards applicable to the Ba Hospital.	Quarterly.	Independent Monitor.	Equivalent to 0.02% of Performance Security for each day of each equipment is not available at the Ba

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
					Hospital as required under the Specifications and Standards applicable to the Ba Hospital.
5	Uptime for CT/ MRI/ USG/ Autoanalyser/ Cell Counter as applicable to each Project Hospital.	Minimum of 85% of days. For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital as applicable to it and in respect of each of the Service individually.	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System.	Equivalent to 0.1% of Performance Security for each day of non-compliance.
6	Operating theatre closures	As per Table 3 in Part B of	Quarterly.	Independent Monitor relying on,	Equivalent to 0.1% of

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
	for any Project Hospital.	this Schedule . For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.		amongst other aspects, information from the Hospital Information System.	Performance Security for each day of non-compliance.
7	DRG upcoding errors ¹ at the Project Hospitals.	Maximum 10% of all Patient Episodes which received Admitted Acute Care at a Project Hospital. For the avoidance of	Quarterly.	Audits by Independent Monitor.	Equivalent to 25% of Base Rate for each instance above the threshold limit.

¹ DRG upcoding error means stating in the O&M Charges Invoice the final diagnosis for a Patient Episode which received Admitted Acute Care which has a higher Price Weight than that of the actual final diagnosis.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		doubt, it is clarified that this Service Level Standard shall be applicable collectively to both Project Hospitals .			
Clinical					
8	Waiting times for OPD at any Project Hospital.	95% cases at a Project Hospital within limits as per Table 4 in Part B of this Schedule . For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 2.5% of Base Rate for each instance of default above the threshold limit.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		each Project Hospital individually.			
9	Waiting times for day care Services at any Project Hospital.	95% cases at a Project Hospital within limits as per Table 6 in Part B of this Schedule . For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.	Quarterly.	Independent Monitoring relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 25% of Base Rate for each instance of default above the threshold limit.
10	Waiting times for Emergency Department at any	95% cases at a Project Hospital within limits as per Table	Quarterly.	Independent Monitor relying on, amongs	Equivalent to 25% of Base Rate for each instance of default

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
	Project Hospital.	1 in Part B of this Schedule . For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.		t other aspects, information from the Hospital Information System and the Complaint Register.	above the threshold limit.
11	Waiting times or turnaround times for diagnostics at any Project Hospital.	95% cases at a Project Hospital within limits as per Tables 7 and 8 respectively in Part B of this Schedule . For the avoidance of	Quarterly.	ident Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 5% of Base Rate for each instance of default above the threshold limit.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.			
12	Waiting time for cardiac procedures at the Project Hospitals.	95% of cases at a Project Hospital within 4 weeks from the date on which a qualified doctor at the Project Hospitals has determined the requirement for undertaking a cardiac procedure on such Patient.	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 2 (two) times Base Rate for each instance above the threshold limit.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		For the avoidance of doubt, it is clarified that this Service Level Standard shall apply collectively to both Project Hospitals .			
13	Ward, intensive care unit and pharmacy at any Project Hospital.	As per Tables 2 and 5 in Part B of this Schedule . For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 25% of Base Rate for each case of non-compliance above the threshold limit.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		individually.			
14	Patient satisfaction at the Project Hospitals.	<p>Minimum score of 3.5 by at least 75% respondents of Patient satisfaction survey form for a Project Hospital.</p> <p>For the avoidance of doubt, it is clarified that this Service Level Standard shall apply</p>	Quarterly.	Concessionaire submission of Patient Satisfaction Surveys as per Clause 9.18.	Equivalent to Base Rate for each respondent below the minimum threshold who scores the Project Hospital less than 3.5.

S. No.	General Description of Service	Full O&M Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		collectively to both Project Hospitals .			

2. TRANSITION PHASE SLS

The following table sets out the Transition Phase SLS and the corresponding Performance Liquidated Damages payable by the Concessionaire in the event of breach thereof:

S. No.	General Description of Service	Transition Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
Operational					
1	DRG upcoding errors at any Project Hospital .	Maximum 20% of all Patient Episodes which received Admitted Acute Care at a Project Hospital . For the avoidan	Quarterly.	Audits by Independent Monitor .	Equivalent to 10% of Base Rate for each instance above the threshold limit.

S. No.	General Description of Service	Transition Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		ce of doubt, it is clarified that Service Level Standard shall be applicable to both Project Hospitals individually.			
Clinical					
2	Waiting times for OPD at any Project Hospital .	75% cases at a Project Hospital within limits as per Table 5 in Part B of this Schedule. For the avoidance of doubt, it is clarified that this Service Level	Quarterly.	Independent Monitor relying on, amongst other aspects, the Complaint Register .	Equivalent to 1% of Base Rate for each instance of default above the threshold limit.

S. No.	General Description of Service	Transition Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
		Standard shall apply to each Project Hospital individually.			
3	Waiting times for Emergency Department at any Project Hospital .	75% cases at a Project Hospital within limits as per Table 1 in Part B of this Schedule. For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.	Quarterly.	Independent Monitor relying on, amongst other aspects, the Complaint Register.	Equivalent to 12.5% of Base Rate for each instance of default above the threshold limit.
4	Ward, ICU and pharmacy	As per Tables 2 and 5 in	Quarterly.	Independent Monitor relying on,	Equivalent to 12.5% of

S. No.	General Description of Service	Transition Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
	cy at a Project Hospital .	Part B of this Schedule. For the avoidance of doubt, it is clarified that this Service Level Standard shall apply to each Project Hospital individually.		amongst other aspects, the Complaint Register.	Base Rate for each case of non-compliance above the threshold limit.
5	Patient satisfaction at Ba Hospital .	Minimum score of 3 by at least 75% respondents of Patient satisfaction survey form.	Quarterly.	Concessionaire submission of Patient satisfaction surveys as per Clause 9.18.	Equivalent to 50% of Base Rate for each respondent below the minimum threshold who scores the Project Hospital less than 3.

3. INTERIM PHASE SLS

The following table sets out the Interim Phase SLS and the corresponding Performance Liquidated Damages payable by the Concessionaire in the event of breach thereof:

S. No.	General Description of Service	Interim Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
Operational					
1	Qualified medical staff (doctors and nurses) to Bed ratio at Lautoka Hospital.	Minimum average ratio of 1 medical staff (doctors and nurses) per Bed.	Quarterly.	Independent Monitor relying on, amongst other aspects, the Information on the Hospital Information System.	5% of Performance Security.
2	Non – availability of minimum equipment at Lautoka Hospital.	All equipments as per the Specifications and Standards for the Lautoka Hospital.	Quarterly.	Independent Monitor.	Equivalent to 0.03% of Performance Security for each day of each equipment is not available at the Lautoka Hospital as required under the Specifications and Standards

S. No.	General Description of Service	Interim Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
					applicable to the Lautoka Hospital.
3	Uptime for USG/ Autoanalyser/ Cell Counter at Lautoka Hospital.	Minimum of 80% of days.	Quarterly.	Independent Monitor relying on, amongst other aspects, the Information on the Hospital Information System.	Equivalent to 0.05% of Performance Security for each day of non-compliance.
4	Operating theatre closures.	As per Table 3 in Part B of this Schedule .	Quarterly.	Independent Monitor relying on, amongst other aspects, the Information on the Hospital Information System.	Equivalent to 0.05% of Performance Security for each day of non-compliance.

S. No.	General Description of Service	Interim Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
5	DRG upcoding errors at Lautoka Hospital.	Maximum 15% of all Patient Episodes which received Admitted Acute Care.	Quarterly.	Audits by Independent Monitor.	Equivalent to 20% of Base Rate for each instance above the threshold limit.
Clinical					
6	Waiting times for OPD at Lautoka Hospital.	80% cases within limits as per Table 4 in Part B of this Schedule .	Quarterly.	Independent Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 2.5% of Base Rate for each instance of default above the threshold limit.
7	Waiting times for day care Services at Lautoka Hospital.	80% cases within limits as per Table 6 in Part B of this Schedule .	Quarterly.	Independent Monitor relying on, amongst other	Equivalent to 20% of Base Rate for each instance of default above the

S. No.	General Description of Service	Interim Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
				aspects, information from the Hospital Information System and the Complaint Register.	threshold limit.
8	Waiting times for Emergency Department at Lautoka Hospital.	80% cases within limits as per Table 1 in Part B of this Schedule .	Quarterly.	Independent Monitoring relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to 20% of Base Rate for each instance of default above the threshold limit.
9	Waiting times or Turnaround times for diagnostics at Lautoka Hospital.	80% cases within limits as per Tables 7 and 8 in Part B of this Schedule .	Quarterly.	Independent Monitorer relying on, amongst other aspects, information from the Hospital	Equivalent to 5% of Base Rate for each instance of default above the threshold limit.

S. No.	General Description of Service	Interim Phase SLS	Monitoring period	Monitoring mechanism	Amount of Performance Liquidated Damages payable by the Concessionaire
				Information System and the Complaint Register.	
10	Waiting time for cardiac procedures at Lautoka Hospital.	70% cases within 4 weeks from the date on which a qualified doctor at the Lautoka Hospital has determined the requirement for undertaking a cardiac procedure on such Patient.		Independent Monitor relying on, amongst other aspects, information from the Hospital Information System and the Complaint Register.	Equivalent to Base Rate for each instance above the threshold limit.
11	Ward, ICU and pharmacy at Lautoka Hospital.	As per Tables 2 and 5 in Part B of this Schedule .	Quarterly.	Independent Monitor relying on, amongst other aspects,	Equivalent to 20% of Base Rate for each case of non-compliance above the

S. No.	General Descript ion of Service	Interim Phase SLS	Monitorin g per iod	Monitoring mecha nism	Amount of Performa nce Liquidate d Damages payable by the Concessio naire
				informa tion from the Hospita l Informa tion System and the Compla int Registe r.	threshold limit.
12	Patient satisfacti on at Lautoka Hospital.	Minimum score of 3 by at least 75% responde nts of Patient satisfacti on survey form	Quarterly.	Concessionaire submiss ion of Patient satisfac tion survey as per Clause 9.18.	Equivalent to 50% of Base Rate for each respondent below the minimum threshold who scores the Project Hospital less than 3.

PART B – REFERENCE TABLE FOR SERVICE LEVEL STANDARDS

Table 1: Emergency Department

Heading	Service Level Standard
Time waiting to be seen for priority setting (e.g. triage categorisation)	5 minutes
Time waiting to be seen for treatment	Dependent on priority setting: (i) Life threatening condition – immediate. (ii) Urgent – maximum 30 minutes from the time the Patient is brought to the Emergency Department. (iii) Non-urgent – 95% of Patients within a maximum 4 hours from the time the Patient is brought to the Emergency Department.
Time waiting to be admitted	6 hours from the decision to admit taken by the Concessionaire.

Table 2: Inpatient Wards and Intensive Care Unit (ICU)

Heading	Service Level Standard
Hospital acquired infection rates	Maximum rate of 0.6 cases per 1,000 admissions and/or 20 cases per 100,000 bed days for clostridium difficile infections and a maximum rate of 0.03 cases per 1,000 admissions and/or 0.03 cases per 100,000 bed days for Methicillin-Resistant Staphylococcus Aureus (MRSA) bacteraemia infections.
Hospital acquired pressure ulcers	Maximum rate of 5% of admissions with reported hospital acquired pressure ulcers.
In-hospital mortality rate	Maximum rate of 5% of discharges.
Emergency readmission for the same condition within 30 days of discharge	Maximum rate of 10% of discharges.

Table 3: Operating Theatres

Heading	Service Level Standard
Operating theatre closures	Maximum rate of 5% of available operating theatre time lost due to theatre closures.

Table 4: Outpatient Services Department (OPD)

Heading	Service Level Standard
Waiting times for an urgent appointment	Maximum 1 week.

Heading	Service Level Standard
Waiting times for a routine appointment	Maximum 3 weeks.
Appointments cancelled by hospital	Maximum 10%.

Table 5: Pharmacy and Medication Services

Heading	Service Level Standard
Percentage of prescribing/medication errors	Maximum rate of 12% of all prescriptions/medications dispensed.

Table 6: Day Care Services

Heading	Service Level Standard
Waiting times for an urgent appointment	Maximum 2 weeks.
Waiting times for a routine appointment	Maximum 13 weeks.

Table 7: Diagnostic Imaging and Testing Services

Category	Service Level Standards	
	Waiting (Referral to Investigation)	Turnaround time for production of reports
Emergency (All tests)	30 minutes	2 hours
Urgent (CT, X-Ray, Ultrasound, Fluoroscopy)	1 hour	4 hours
Urgent (Mammography)	1 week	24 hours
Routine (X-Ray)	1 week	72 hours
Routine (Ultrasound)	4 weeks	72 hours
Routine (Mammography)	4 weeks	72 hours
Routine (Fluoroscopy)	4 weeks	72 hours
Routine (CT)	2 weeks	72 hours
Routine Diagnostic Tests (ECG, EEG, Holter, Tilt, etc.)	4 weeks	72 hours

Table 8: Laboratory Services

Category	Service Level Standards
	Turnaround Time for Reporting
Emergency	2 hours
Urgent	Same day
Routine	72 hours

SCHEDULE - 8

OPERATIONAL GUIDELINES

A. CLINICAL SERVICES

1. General

1.1. Without prejudice to the obligations of the Concessionaire contained in this Agreement, the Concessionaire shall, throughout the O&M Period for each Project Hospital, deliver the following:

- (i) Clinical Services, including management and operation of the Clinical Service at each Project Hospital;
- (ii) suitably qualified clinical, clinical support/technical and administrative staff at each Project Hospital;
- (iii) access to emergency/urgent care services at each Project Hospital shall be provided 24 (twenty-four) hours per day, 365(6) days per year through appropriate rota shift patterns and access to routine/non-urgent care services at each Project Hospital shall be available between 09:00 to 17:00 at least on each day of the week; and
- (iv) ensure that the corresponding Service Level Standards are achieved through the use of GIIP, adequately trained staff, appropriate equipment, effective management systems, and clear performance.

1.2. The Concessionaire shall provide all necessary staff, equipment and consumables to undertake and deliver safe, high quality and effective Services in a manner which minimises any disruption or delays in the management of Patient care, reduces any harm to Patients and to staff, and minimises the risk of any misdiagnosis of examination results, and in accordance with the Applicable Laws, GIIP and the terms of the Agreement. This includes:

- (i) ensuring that all Clinical Services (including all clinical support Services) comply with all Applicable Laws;
- (ii) ensuring that all Clinical Services (including all clinical support Services) at the Project Hospitals comply with JCI and ISO:9001 Accreditation Standards within 3 (three) years after each Project Hospital CCD;
- (iii) confirming that all clinical, clinical support and technical staff at each Project Hospital are professionally qualified in their specific discipline having undertaken appropriate training;
- (iv) developing and managing a staff rota system to ensure that there is adequate staff cover at each Project Hospital for provision of services in accordance with paragraph 1.1(iii) of this Schedule;
- (v) providing access to training and continuing professional development for all staff at each Project Hospital to maintain the necessary skills and competencies;

- (vi) promoting safety awareness and equipment management techniques at each Project Hospital; and
- (vii) being responsible for assessing stock control and purchasing supplies in relation to the effective operation of all Clinical Services (including all clinical support Services) at each Project Hospital.

2. Emergency Department

- (a) The Concessionaire shall provide appropriately trained staff to ensure that the Emergency Department at each Project Hospital is staffed 24 (twenty-four) hours a day for 365(6) days a year.
- (b) The Concessionaire will ensure that there is a minimum of 1 (one) senior medical officer and 1 (one) medical officer (and each such officer is qualified to be designated as senior medical officer and medical officer, in accordance with the Applicable Laws and GIIP) per shift and a minimum of 4 (four) nurses per shift available at each Project Hospital.
- (c) The Concessionaire will ensure that there is sufficient cover per shift by both senior medical officer and medical officer (and each such officer is qualified to be designated as senior medical officer and medical officer, in accordance with the Applicable Laws and GIIP) to meet the varying levels of demand in Emergency Department and to meet all immediate, life threatening and urgent medical requirements of Patients that does not compromise the safety and quality of care of these Patients.
- (d) Upon arrival of any Patient at the Emergency Department of any Project Hospital, the Concessionaire shall immediately assess the Patients and determine their prioritisation for care and treatment.
- (e) The Concessionaire shall ensure that Patients arriving at the Emergency Department of a Project Hospital with life threatening conditions are given the highest priority and are given immediate lifesaving care.
- (f) The Concessionaire shall ensure that at each Project Hospital there is effective communication between the Emergency Department and all other Clinical Service departments and seek specialist opinions from these departments, where necessary.
- (g) The Concessionaire shall ensure that all clinical staff in the Emergency Department of a Project Hospital are appropriately trained and are qualified in emergency resuscitation. The Concessionaire will ensure that their training is kept up-to-date.
- (h) The Concessionaire shall ensure that there are appropriate operational procedures in place at each Project Hospital for the safe treatment and discharge of Patients no longer requiring emergency care and/or for their onward admission if required.
- (i) The Concessionaire shall provide a level of nurse staffing which ensures that Patients on average receive at least 25 (twenty) minutes of nursing care and does not exceed a maximum ratio of 5 (five) Patients per nurse at any time in the Emergency Department.

3. Ward and intensive care unit (including neonatal care unit) based inpatient services

- (a) The Concessionaire shall develop operational ward-based policies at each Project Hospital to ensure the overall Patient flow through the Project Hospital and to minimise delay and increase seamless delivery of Services and continuity of care.
- (b) The Concessionaire shall ensure that Patients at each Project Hospital are given an estimated date for discharge on or promptly after admission.
- (c) The Concessionaire shall ensure that the medical staff to Bed ratio in wards during all shifts at a Project Hospital is in accordance with the requirements of the Services and Patients' needs but in no event less than the requirement prescribed as per the applicable Service Level Standard.
- (d) The Concessionaire shall ensure that there is 24 (twenty-four) hours 365(6) days a year on-site access to middle grade and junior grade medical staff² cover at each Project Hospital and that there is on-site daytime presence and on-call emergency access to consultant and senior medical staff at each Project Hospital.
- (e) The Concessionaire shall ensure that a qualified and experienced medical intensivist³ clinically manages the intensive care unit Beds.
- (f) The Concessionaire shall ensure that a qualified and experienced medical neonatologist⁴ clinically manages the neonatal care unit Beds at each Project Hospital.
- (g) The Concessionaire shall provide adequate and appropriately trained nurses to achieve an overall staffing complement equivalent to a nurse to Bed ratio of 2.5 (two point five) for intensive care unit Beds at each Project Hospital at all times.
- (h) The Concessionaire shall ensure that whilst Patients are in intensive care and/or neonatal care units there is regular communication and updates on care in these units with those medical staff in the clinical specialties who are managing their overall care needs.
- (i) The Concessionaire shall record (in sufficient details) the care and treatment profile provided to the Patients in the Patient's records.

4. Operating theatre complex (including day case theatre)

- (a) The Concessionaire shall maintain at each Project Hospital a booking and scheduling system for Patients requiring operations.
- (b) The Concessionaire shall ensure that a qualified individual(s) is responsible for managing the sedation and anaesthesia services at each Project Hospital.
- (c) The Concessionaire shall ensure that appropriately trained and qualified medical anaesthetic staff are rostered at each Project Hospital to provide day time cover (morning

² Each staff is qualified, trained and experienced to be designated as middle grade and junior grade medical staff, in accordance with the Applicable Laws and GIIP.

³ Qualified, trained and experienced to be designated as medical intensivist, in accordance with the Applicable Laws and GIIP.

⁴ Qualified, trained and experienced to be designated as medical neonatologist, in accordance with the Applicable Laws and GIIP.

and afternoon theatre sessions) during each day of the week for routine elective surgical theatres.

- (d) The Concessionaire shall ensure that appropriately trained and qualified medical anaesthetic staff (and such medical anaesthetic staff member is qualified to be designated as medical anaesthetic, in accordance with the Applicable Laws and GIIP) are rostered at each Project Hospital to provide day time cover (morning and afternoon theatre sessions) during each day of the week for dedicated emergency theatre and that there is resident out of hours cover at each Project Hospital at all times.
- (e) The Concessionaire shall ensure that each Patient's physiological status during anaesthesia and surgery is monitored according to professional practice guidelines and documented in the Patient's record.
- (f) The Concessionaire shall ensure that information about the surgical procedure undertaken at each Project Hospital is documented in the Patient's record to facilitate continuing care.

6. Outpatient services

- (a) The Concessionaire shall ensure that Patients are offered scheduled appointments for attendance at each Project Hospital.
- (b) The Concessionaire shall maintain a booking and scheduling system at each Project Hospital for outpatient services.
- (c) The Concessionaire shall ensure that Patients are seen and examined by appropriately trained and qualified staff at each Project Hospital.

7. Pharmacy and medicines management

- (a) The Concessionaire shall ensure that the pharmacy takes the responsibility to organise and control medications throughout each Project Hospital.
- (b) The Concessionaire shall ensure that the pharmacy and medication used at each Project Hospital comply with Applicable Laws.
- (c) The Concessionaire shall ensure that the pharmacist(s) and other staff deputed at the pharmacy are appropriately qualified, trained and experienced (and each such pharmacist is qualified to be designated as a pharmacist, in accordance with the Applicable Laws and GIIP) to prepare and dispense medications at each Project Hospital in a clean and safe environment that complies with all Applicable Laws.
- (d) The Concessionaire shall ensure that qualified and appropriately experienced pharmacists (and each such pharmacist is qualified to be designated as a pharmacist, in accordance with the Applicable Laws and GIIP) supervise the pharmacy at each Project Hospital.
- (e) The Concessionaire shall ensure that the pharmacies are appropriately staffed with a qualified pharmacist available 7 (seven) days a week 365(6) days a year from 09:00 to 18:00 at each Project Hospital.

- (f) The Concessionaire shall ensure that a minimum stock of 15 (fifteen) days supplies of medications are maintained at each Project Hospital.
- (g) The Concessionaire shall ensure that there is a convenient process for obtaining medications during the night or when the pharmacy is closed.
- (h) The Concessionaire shall ensure that appropriate arrangements are in place for the safe storage of medications at each Project Hospital.
- (i) The Concessionaire shall ensure that sufficient medications for prescribing or ordering are stocked at each Project Hospital and that there is a convenient process for Patients for procuring medications not stocked or normally available at the Project Hospital or for times when the pharmacy is closed.
- (j) The Concessionaire shall ensure that medications are stored within a storage area in the pharmacy or the nursing station in the clinical units.
- (k) The Concessionaire shall ensure that medications are stored under conditions suitable for product stability, including medications stored on individual Patient care units.
- (l) The Concessionaire shall ensure that controlled substances are accurately accounted for according to Applicable Laws.
- (m) The Concessionaire shall ensure that medications and chemicals used to prepare medications are accurately labelled.
- (n) The Concessionaire shall ensure that concentrated electrolytes are not stored in care units unless clinically necessary, and when stored in care units there are appropriate safeguards in place to prevent inadvertent administration.
- (o) The Concessionaire shall ensure that appropriate sources of drug information are readily available to those involved in medication use.

8. Day care services (including chemotherapy and medical oncology)

- (a) The Concessionaire shall ensure that Patients are offered scheduled appointments for attendance at each Project Hospital.
- (b) The Concessionaire shall maintain a booking and scheduling system for day care services at each Project Hospital.
- (c) The Concessionaire shall ensure that procedures at each Project Hospital are undertaken by appropriately qualified and trained staff under the supervision of an appropriately qualified, trained and experienced medical doctor (and each such medical doctor is qualified to be designated as a medical doctor, in accordance with the Applicable Laws and GIIP).

9. Diagnostic imaging and testing services specification

- (a) The Concessionaire shall provide diagnostic imaging and testing Services to manage and operate a comprehensive diagnostic imaging and testing Services serving referral requests

from the Project Hospital's clinical departments, other public hospitals, and public primary and community services.

- (b) The Concessionaire will provide all necessary staff, equipment and consumables to undertake a safe, high quality and effective Service at each Project Hospital in a manner which minimises any disruption or delays in the management of Patient care, reduces any harm to Patients and to staff, and minimises the risk of any misreporting of diagnostic imaging and testing Services test results.
- (c) The Concessionaire shall provide diagnostic imaging Service 24 (twenty-four) hours per day 365(6) days per year at each Project Hospital through on-call staffing arrangements for out of hours for emergency Patients.
- (d) The Concessionaire shall ensure that all imaging staff performing examinations (radiologists, radiography and technicians) at each Project Hospital are professionally qualified (and each such imaging staff member is qualified to undertake such examinations, in accordance with the Applicable Laws and GIIP) in this discipline having undertaken accredited training. As a minimum, the senior radiology staff at each Project Hospital should have at least 5 (five) years' experience at the grade they are being proposed to undertake and that across the range of staff there is demonstrable experience in using digital x-ray, fluoroscopy, mammography, computerized tomography and magnetic resonance imaging equipment.
- (e) The Concessionaire shall be responsible for the interpretation and production of radiological examination and diagnostic testing reports at each Project Hospital.
- (f) The Concessionaire shall be responsible for the storage and the systematic archiving and retrieval of all radiological examination reports at each Project Hospital.
- (g) The Concessionaire shall provide high quality advice and guidance in relation to radiological examination and diagnostic testing reporting to medical, nursing and other allied health professional staff at each Project Hospital.
- (h) The Concessionaire shall ensure that the diagnostic imaging and testing equipment at each Project Hospital purchased by the Concessionaire is compatible with the Hospital Information System to ensure the electronic transfer of results and reports.

10. Laboratory service specification

- (a) The Concessionaire shall manage and operate a comprehensive laboratory service at each Project Hospital processing referral requests from the Project Hospital departments, other public hospitals, public primary and community services.
- (b) The Concessionaire will provide all necessary staff, equipment and consumables to undertake a safe, high quality and effective service at each Project Hospital in a manner which minimises any disruption or delays in the management of Patient care, reduces any harm to Patients and to staff, and minimises the risk of any misreporting of laboratory tests results.
- (c) The Concessionaire shall ensure that all laboratory staff performing laboratory tests (clinical laboratory pathologist, clinical scientists and laboratory technicians) at each

Project Hospital are professionally qualified in this discipline having undertaken accredited training. As a minimum, clinical pathologists at each Project Hospital should have at least 5 (five) years' experience at that grade and laboratory medical technician staff at each Project Hospital should have at least 2 (two) years' experience at that grade.

- (d) The Concessionaire shall provide laboratory services 24 (twenty-four) hours per day, 365(6) days per year at each Project Hospital with on-call staffing arrangements for out of hours.
- (e) The Concessionaire shall develop and manage a staff rota system at each Project Hospital to ensure that there is adequate staff cover at each Project Hospital during the extended day time service and for on-call out of hours.
- (f) The Concessionaire shall be responsible for the clerking, labelling and storage of test samples and the systematic production of all laboratory test reports at each Project Hospital.
- (g) The Concessionaire shall be responsible for the production of laboratory reports arising from the requests for Patient testing at each Project Hospital.
- (h) The Concessionaire shall be responsible for operating and managing the blood bank at each Project Hospital which will serve as the central blood bank for the entire Western division of the Republic of Fiji.
- (i) The Concessionaire shall be responsible for providing phlebotomy Services at each Project Hospital.
- (j) The Concessionaire shall provide high quality clinical advice and guidance in relation to pathology laboratory testing and reporting to medical, nursing and other allied health professionals.
- (k) The Concessionaire shall be responsible for assessing stock control and purchasing supplies in relation to the effective operation of all laboratory equipment at each Project Hospital.
- (l) The Concessionaire shall ensure that the laboratory equipment at each Project Hospital purchased by the Concessionaire is compatible with the Hospital Information System to ensure the electronic transfer of test results and reports.

11. Building management system

The Concessionaire shall maintain at each Project Hospital a building management system(s) (BMS) to manage various engineering facilities/utilities/infrastructure such as heating ventilation and air-conditioning (HVAC), lifts, lighting, water management, waste management, pollution control equipment, electricity and L&FS, in accordance with the Applicable Laws and GIIP.

B. NON – CLINICAL SERVICES

1. General

Without prejudice to the obligations of the Concessionaire contained in this Agreement, the Concessionaire shall, throughout the O&M Period for each Project Hospital, in delivering the Non-Clinical Services, comply with the following:

- 1.1. minimise disruption to Clinical Services;
- 1.2. maintain a safe environment for staff, visitors, Patients and other users, in accordance with the Applicable Laws, Applicable Permits and Best Operational Practices;
- 1.3. provide efficient, responsive, comprehensive and effective Services which are based on sound technical and operational requirements and standards;
- 1.4. operate a recognised risk assessment/management system to ensure high standards, and that any slippage is recognised and corrected;
- 1.5. ensure that the corresponding Service Level Standards are achieved through the use of GIIP, adequately trained staff, appropriate equipment, effective management systems, and clear performance; and
- 1.6. provide Services that are empathetic and fulfil the needs and expectations of Patients, visitors and staff, and respects their dignity and privacy.

2. Estates management service

The Concessionaire shall in respect of each Project Hospital:

- 2.1. provide a high quality, timely and proactive estates service that ensures the integrity of the building fabric, building services, public health and utility systems (including the incinerator and the sewage treatment system), furniture and equipment which comprises the Project Hospitals;
- 2.2. minimise disruption to the provision of Clinical Services and operations by maintaining the Project Hospitals to ensure reactive responses are limited;
- 2.3. maintain an aesthetically pleasing estate and environment that is conducive to the wellbeing of Patients and staff;
- 2.4. maintain the Project Hospitals to ensure that building elements do not deteriorate over time; and
- 2.5. ensure that the Project Hospitals do not cause or create any hazard to the local environment and/or any person.

3. Grounds maintenance service specification

The Concessionaire shall at each Project Hospital provide a comprehensive grounds maintenance service that is responsive to seasonal weather and growing conditions in order to:

- 3.1. maintain an aesthetically pleasing landscape that is both functional and complementary to the Site and local environment throughout the year;

- 3.2. maintain the grounds to facilitate the smooth running of Clinical Services including ensuring access to the Project Hospitals at all times;
- 3.3. maintain the grounds in such a way as to promote a positive image of the Project Hospitals to all Patients, visitors and staff; and
- 3.4. maintain a safe, logical and clear circulation routes across the Sites that are accessible to all Patients and visitors.

4. Pest control service specification

The Concessionaire shall at each Project Hospital:

- 4.1. provide a comprehensive, technical and fully operational pest control service;
- 4.2. ensure that effective pest control measures are implemented that do not conflict with the provision of Clinical Services and operations.

5. Utilities management service specification

The Concessionaire shall at each Project Hospital:

- 5.1. provide a comprehensive utilities management service to meet the requirements of the Clinical Services and operations;
- 5.2. optimise the use of utilities within each Project Hospital;
- 5.3. provide an environmentally friendly solution wherever practicably or economically possible; and
- 5.4. ensure that the provision of all utilities is continuously maintained throughout the duration of the Agreement.

6. Materials management service specification

The Concessionaire shall at each Project Hospital:

- 6.1. provide an integrated materials management service to ensure sufficient materials are available to maintain the continuity of Clinical Services;
- 6.2. provide an efficient and effective high-quality service for the receipt and distribution of materials to all wards and departments throughout the Sites;
- 6.3. coordinate distribution to ensure that all materials required are available at the point of use at the times and in the quantities specified;
- 6.4. ensure that all stock and materials are stored appropriately in accordance with manufacturer guidelines, Applicable Laws, Applicable Permits and Best Operational Practice; and
- 6.5. provide security and safety for materials in storage and in transit around the Sites.

7. Cleaning service specification

The Concessionaire shall at each Project Hospital:

- 7.1. achieve a high level of environmental cleanliness throughout each Project Hospital;
- 7.2. provide a quality driven cleaning service which achieves an optimum standard of cleaning for all buildings and areas of each Project Hospital appropriate for their use, and is held in high regard by all users;
- 7.3. provide a standard of service that helps to provide a positive image of the Project Hospitals and a level of cleanliness which provides a clinical and socially acceptable environment for Patients, visitors and staff;
- 7.4. encourage cleaning staff to develop quality routines and to identify opportunities to improve service delivery. The Concessionaire shall develop staff through training for the mutual benefit of both i.e. the individuals and the Project Hospitals, and to develop staff relationships between the different departments involved in the cleaning process;
- 7.5. provide a cleaning service which supports the maintenance and condition of the buildings;
- 7.6. maintain a safe environment and safe working practices including the use of a recognised risk assessment/management system; and
- 7.7. ensure that standards of comfort and cleanliness stay high, and that any reduction in the quality of service is recognised and corrected.

8. Security and car parking service specification

The Concessionaire shall at each Project Hospital:

- 8.1. provide a car parking service adequate to meet the needs of the Project Hospital including the Patients, visitors and staff and a security service to ensure the safety and security of all Patients, staff and bona fide visitors to the Project Hospitals;
- 8.2. provide professional integrated security services on a scheduled and reactive basis, which are efficient, effective and timely;
- 8.3. maintain the safety of all persons, and their belongings, at the Project Hospitals. This includes the protection of Patients, staff, service providers and visitors against violent acts or abuse;
- 8.4. ensure only bona fide visitors are allowed access to the Sites. This includes restricting access of undesirable persons to the Sites in general and restricting access to sensitive areas to authorised personnel only;
- 8.5. provide a secure and safe car park environment for car park users, their vehicles and their property; and
- 8.6. provide traffic management to facilitate the free flow of traffic ensuring access to the Project Hospitals at all times.

9. Catering service specification

The Concessionaire shall at each Project Hospital:

- 9.1. provide a high-quality catering service under the supervision of a trained and experienced dietician which offers appetizing and nutritious food and beverage to enable all Patients to have a choice which reflects their dietary needs and tastes;
- 9.2. provide a selection of food and beverages, to meet the dietary needs of the care groups serviced including healthy eating, ethnic, cultural, patients too ill to eat standard food, prescribed therapeutic, religious, vegetarian and vegan diet options;
- 9.3. provide, safe, wholesome meals (3 meals per day) and beverages in compliance with requirements of all Applicable Laws, Applicable Permits and Best Operational Practices in relation to food safety; and
- 9.4. ensure food is presented in an attractive manner which offers Patients an alternative meal choice as required, including vegetarian and vegan diet food alternatives, with particular attention paid to appearance, taste, texture, portion control and nutritional value.

10. Reception service specification

The Concessionaire shall at each Project Hospital:

- 10.1. provide a comprehensive reception service, that will be the first point of personal contact within the Project Hospital;
- 10.2. provide a welcoming, courteous and polite reception service to all visitors;
- 10.3. develop and maintain a highly motivated dedicated customer care focused team;
- 10.4. be flexible and capable of accepting change; and
- 10.5. ensure all enquiries are dealt with professionally and promptly.

11. Linen service specification

The Concessionaire shall at each Project Hospital:

- 11.1. provide a comprehensive linen service to ensure clean and appropriate linen is available in all areas and for all users at the times required and in the volumes necessary to support the smooth running of the Project Hospitals;
- 11.2. work in close collaboration with all wards and departments to ensure an effective linen service which is bespoke to the department or ward which it serves;
- 11.3. ensure that the handling and transport of linens fully comply with the control of infection policy to minimise the risk of cross-contamination within the Project Hospital;
- 11.4. manage the linen stock to maximise efficiencies whilst maintaining high service standards at all times; and

- 11.5. provide a laundering service which is based on fundamental sustainable development principles that minimise the impact on the environment and is energy efficient.

12. Waste management and disposal service specification

The Concessionaire shall at each Project Hospital:

- 12.1. provide a comprehensive waste management and disposal service for undertaking and managing through the waste disposal contract the safe segregation, handling, transport and disposal of waste from designated central storage points to its point of final disposal. The service shall be an efficient, effective, timely manner and compliant with waste management service in the operational and environmental aspects at each of the Project Hospital; and
- 12.2. contribute to promoting a clean and tidy impression of the Project Hospitals.

13. Hospital administration service specification

The Concessionaire shall at each Project Hospital:

- 13.1. provide an efficient Patient scheduling service which is fully integrated with the Hospital Information System to meet the requirements of the Project Hospitals' Clinical Services and operations;
- 13.2. where feasible, schedule Patients in such a way as to minimise Patient wait times and optimise use of the facilities and staff's time for providing Clinical Services;
- 13.3. be effective, equitable and professional in coping with varying requests for Patient scheduling;
- 13.4. provide a high level of Patient care and maintain Patient confidentiality at all times during the Patient scheduling process; and
- 13.5. provide an efficient medical records service which is fully integrated with the Hospital Information System and which provides a quality control for completeness of the information entered by clinical staff.

14. Infection control specification

In delivering sterile services, the Concessionaire in respect of each Project Hospital shall prepare infection control policies and procedures in accordance with Applicable Laws and GIIP which will comply with, inter alia, the following:

- 14.1. provide a high-quality sterilization service to sterilize theatre areas, re-usable medical equipment and theatre linen;
- 14.2. provide a sterilization service with turnaround times for theatres, theatre linen and reusable medical equipment, which minimises disruption to Clinical Services;
- 14.3. collect, decontaminate and return all re-usable medical equipment to the correct theatre, ward or department; and

14.4. provide a sterilization service to theatre areas.

15. Environmental and social sustainability

The Concessionaire shall ensure that the Operation and Maintenance of the Project Hospitals is undertaken in accordance with the E&S Standards and Project Hospital Environmental Study Reports approved by the Independent Monitor in accordance with the Agreement.

C. HUMAN RESOURCES POLICIES AND PROCEDURES

1. The Concessionaire and its Subcontractors, in respect of each Project Hospital, shall develop and maintain written human resources (HR) policies and procedures in accordance with Applicable Laws, Applicable Permits, E&S Standards and GIIP and shall ensure that such policies are available to all employees at each Project Hospital. The HR policies and procedures approved by the Independent Monitor shall be in place before commencement of the Construction Works, and shall clearly describe the working conditions, terms of employment, management of worker relationship, grievance mechanism and how it works, and roles and responsibilities of the Concessionaire and its employees.
2. The Concessionaire shall ensure safe working conditions for its employees, including its training staff, and shall have job safety instructions and measures to ensure workplace safety and mitigate OHS risks emanating from exposure to infections and diseases, hazardous materials/waste, and radiation at the Project Hospitals in accordance with the E&S Standards.

D. OTHERS

1. Patient registration process

Without prejudice to the obligations of the Concessionaire contained in this Agreement, the Concessionaire shall, throughout the O&M Period for each Project Hospital, ensure that:

- (i) each Patient presenting at the OPD or for availing diagnostic Services only at any of the Project Hospitals will have to be registered before being provided any Services;
- (ii) while registering a Patient, the Concessionaire will take a photocopy of the national medical registration card or any other legally issued and valid identification proof establishing that the Patient is a Fijian resident and, in case a Patient presents to avail a diagnostic Service only, the referral letter from a doctor or a hospital for the diagnostic Service;
- (iii) in case a Patient presents without a national medical registration card or any other identification proof establishing that the Patient is a Fijian resident or a referral letter from a doctor or a hospital for the diagnostic Service, as the case may be, he/she will be referred to the Government billing desk by the Concessionaire with a referral form. The referral form should clearly state the Service being sought by the Patient and the applicable Price Weight (and applicable cost) for that Service. The Government billing desk will then create a national medical registration card or stamp the referral form for approval of the Concessionaire to proceed with providing the Services to the Patient. The Concessionaire will then register the Patient before providing the Services;
- (iv) in case such a Patient with no national medical registration card any other identification proof establishing that the Patient is a Fijian resident but with a stamped referral form is

referred from one Specialty Outpatient Services to another or from GOPD to Specialist Outpatient Services, the Concessionaire will refer the Patient back to the Government billing desk with another referral form with details of the Services and applicable Price Weight for the Service; and

- (v) the Concessionaire will store photocopies of all national medical registration cards, identification proofs establishing that the Patient is a Fijian resident and the approved referral forms for a minimum of 6 (six) months or much longer period as prescribed under Applicable Law and will produce them if requested by the Government or the Independent Monitor.

2. Admissions for inpatient services

The Concessionaire shall ensure at each Project Hospital that:

- (i) only registered Patients will be allowed to get admitted in the Project Hospitals;
- (ii) before admitting a Patient presenting without a national medical registration card or any other identification proof establishing that the Patient is a Fijian resident, he/she will be referred to the Government billing desk by the Concessionaire. The referral form should clearly state the preliminary diagnosis with relevant Price Weight for which the Patient is getting admitted to the relevant Project Hospital. The Government billing desk will then stamp the referral form for approval of the Concessionaire to proceed with admitting the Patient;
- (iii) the Concessionaire will store photocopies of all the national medical registration cards, any other identification proof establishing that the Patient is a Fijian resident and the approved referral forms for a minimum of 6 (six) months or much longer period as prescribed under Applicable Law and will produce them if requested by the Government or the Independent Monitor; and
- (iv) the Concessionaire will inform the Government billing desk of any Patients seeking admission in a semi-private or private ward.

3. Patients presenting in Emergency Department

The Concessionaire shall ensure at each of the Project Hospital that:

- (i) a Patient presenting at the Emergency Department will first be medically stabilized;
- (ii) before discharging or admitting the Patient for inpatient services, as the case may be, the Concessionaire will register Patients using the same process as if the Patient presented in the OPD; and
- (iii) in case a Patient presents without a national medical registration card or any other identification proof establishing that the Patient is a Fijian resident or if the condition of the Patient prevents determining if the Patient is a Fijian resident or not, he/she will be referred to the Government billing desk by the Concessionaire. In case the Patient has to be admitted, the referral form should clearly state the preliminary diagnosis with relevant Price Weight for which the Patient is getting admitted to the respective Project Hospital.

The Government billing desk will then stamp the referral form for approval of the Concessionaire to proceed with discharging or admitting the patient, as the case may be.

4. Government dispensary

The Concessionaire shall ensure at each of the Project Hospital that all Patients who are given a prescription from the OPD will be informed which prescribed medicines, if any, can be procured free of cost at the Government operated dispensary.

SCHEDULE - 9

GOVERNMENT PROVIDED SERVICES

1. Setting up and maintaining a billing desk to collect requisite charges from Patients in accordance with the Applicable Law and identify and confirm citizenship of Patients.
2. Setting up and maintaining a dispensary for distributing medicines that are required to be provided free of cost to Patients, in accordance with the Applicable Law.

SCHEDULE - 10
ANNUITY PAYMENTS
PART A: FOR THE PERIOD COMMENCING FROM THE LAUTOKA HOSPITAL CCD
UNTIL THE INITIAL EXPIRY DATE

Quarter beginning from later of Lautoka Hospital CCD and Ba Hospital CCD	Ba Hospital Annuity Payment (FJD)	Quarter beginning from Lautoka Hospital CCD	Lautoka Hospital Annuity Payment (FJD)
1	740,193	1	14,748,152
2	740,193	2	14,748,152
3	740,193	3	14,748,152
4	740,193	4	14,748,152
5	261,681	5	5,213,920
6	261,681	6	5,213,920
7	261,681	7	5,213,920
8	261,681	8	5,213,920
9	269,531	9	5,370,337
10	269,531	10	5,370,337
11	269,531	11	5,370,337
12	269,531	12	5,370,337
13	277,617	13	5,531,447
14	277,617	14	5,531,447
15	277,617	15	5,531,447
16	277,617	16	5,531,447
17	285,946	17	5,697,391
18	285,946	18	5,697,391
19	285,946	19	5,697,391
20	285,946	20	5,697,391
21	294,524	21	5,868,312
22	294,524	22	5,868,312
23	294,524	23	5,868,312

24	294,524	24	5,868,312
25	303,360	25	6,044,362
26	303,360	26	6,044,362
27	303,360	27	6,044,362
28	303,360	28	6,044,362
29	312,461	29	6,225,693
30	312,461	30	6,225,693
31	312,461	31	6,225,693
32	312,461	32	6,225,693
33	321,834	33	6,412,463
34	321,834	34	6,412,463
35	321,834	35	6,412,463
36	321,834	36	6,412,463
37	331,489	37	6,604,837
38	331,489	38	6,604,837
39	331,489	39	6,604,837
40	331,489	40	6,604,837
41	341,434	41	2,669,060
42	341,434	42	2,669,060
43	341,434	43	2,669,060
44	341,434	44	2,669,060
45	351,677	45	2,749,132
46	351,677	46	2,749,132
47	351,677	47	2,749,132
48	351,677	48	2,749,132
49	362,227	49	2,831,606
50	362,227	50	2,831,606
51	362,227	51	2,831,606
52	362,227	52	2,831,606
53	373,094	53	2,916,554
54	373,094	54	2,916,554
55	373,094	55	2,916,554
56	373,094	56	2,916,554
57	384,287	57	3,004,051
58	384,287	58	3,004,051
59	384,287	59	3,004,051
60	384,287	60	3,004,051
61	395,816	61	3,094,172
62	395,816	62	3,094,172
63	395,816	63	3,094,172
64	395,816	64	3,094,172
65	407,690	65	3,186,997
66	407,690	66	3,186,997

67	407,690	67	3,186,997
68	407,690	68	3,186,997
69	419,921	69	3,282,607
70	419,921	70	3,282,607
71	419,921	71	3,282,607
72	419,921	72	3,282,607
73	432,518	73	3,381,085
74	432,518	74	3,381,085
75	432,518	75	3,381,085
76	432,518	76	3,381,085
77	445,494	77	3,482,518
78	445,494	78	3,482,518
79	445,494	79	3,482,518
80	445,494	80	3,482,518

**PART B: FOR THE PERIOD COMMENCING FROM THE INITIAL EXPIRY DATE UNTIL
THE EXTENDED EXPIRY DATE**

Quarter beginning from Initial Expiry Date	Ba Hospital Annuity Payment (FJD)	Quarter beginning from Initial Expiry Date	Lautoka Hospital Annuity Payment (FJD)
81	458,859	81	3,586,993
82	458,859	82	3,586,993
83	458,859	83	3,586,993
84	458,859	84	3,586,993
85	472,625	85	3,694,603
86	472,625	86	3,694,603
87	472,625	87	3,694,603
88	472,625	88	3,694,603
89	486,803	89	3,805,441
90	486,803	90	3,805,441
91	486,803	91	3,805,441
92	486,803	92	3,805,441
93	501,407	93	3,919,605
94	501,407	94	3,919,605
95	501,407	95	3,919,605
96	501,407	96	3,919,605
97	516,450	97	4,037,193
98	516,450	98	4,037,193
99	516,450	99	4,037,193
100	516,450	100	4,037,193

101	531,943	101	4,158,309
102	531,943	102	4,158,309
103	531,943	103	4,158,309
104	531,943	104	4,158,309
105	547,901	105	4,283,058
106	547,901	106	4,283,058
107	547,901	107	4,283,058
108	547,901	108	4,283,058
109	564,339	109	4,411,550
110	564,339	110	4,411,550
111	564,339	111	4,411,550
112	564,339	112	4,411,550
113	581,269	113	4,543,896
114	581,269	114	4,543,896
115	581,269	115	4,543,896
116	581,269	116	4,543,896
117	598,707	117	4,680,213
118	598,707	118	4,680,213
119	598,707	119	4,680,213
120	598,707	120	4,680,213
121	616,668	121	4,820,619
122	616,668	122	4,820,619
123	616,668	123	4,820,619
124	616,668	124	4,820,619
125	635,168	125	4,965,238
126	635,168	126	4,965,238
127	635,168	127	4,965,238
128	635,168	128	4,965,238
129	654,223	129	5,114,195
130	654,223	130	5,114,195
131	654,223	131	5,114,195
132	654,223	132	5,114,195
133	673,850	133	5,267,621
134	673,850	134	5,267,621
135	673,850	135	5,267,621
136	673,850	136	5,267,621
137	694,065	137	5,425,649
138	694,065	138	5,425,649
139	694,065	139	5,425,649
140	694,065	140	5,425,649
141	714,887	141	5,588,419
142	714,887	142	5,588,419

143	714,887	143	5,588,419
144	714,887	144	5,588,419
145	736,334	145	5,756,072
146	736,334	146	5,756,072
147	736,334	147	5,756,072
148	736,334	148	5,756,072
149	758,424	149	5,928,754
150	758,424	150	5,928,754
151	758,424	151	5,928,754
152	758,424	152	5,928,754
153	781,177	153	6,106,616
154	781,177	154	6,106,616
155	781,177	155	6,106,616
156	781,177	156	6,106,616
157	804,612	157	6,289,815
158	804,612	158	6,289,815
159	804,612	159	6,289,815
160	804,612	160	6,289,815

SCHEDULE - 11

O&M CHARGES

I. SERVICES

The Government will pay O&M Charges to the Concessionaire for the following 3 (three) Service categories:

4. Admitted Acute Care

Admitted Acute Care is defined as Services that are provided at a Project Hospital under the direction of a qualified physician or dentist, to Patients who undergo a formal admission process at the Project Hospital, where the clinical intent or treatment goal is the provision of acute care. Patients are required to be classified at each Project Hospital based on a diagnosis at discharge using the Australian Refined Diagnosis Related Group (AR-DRG)⁵ classification as published by Independent Hospital Pricing Authority (IHPA)⁶.

5. Non-admitted Care

Non-admitted Care, or Specialist Outpatient Service⁷, encompasses Services provided at a Project Hospital to Patients who do not undergo a formal admission process and do not occupy a Bed. Such Services are provided on an outpatient basis and includes the Services provided to a Patient at general outpatient department (**GOPD**). Patients are required to be classified at each Project

⁵ A Diagnosis-Related Group (DRG) is a statistical system of classifying any patient stay into groups for the purposes of payment. The Classification used for this Project will be the Australian Refined Diagnosis-Related Group system (AR-DRG) or any other system used to replace it.

⁶ The Government of Australia has established Independent Hospital Pricing Authority to enable Activity Based Funding for public hospitals. IHPA determines the efficient cost of providing healthcare services in public hospitals every year which is used to estimate the funding requirement of hospitals in Australia. IHPA is also responsible for developing classification system for health care and other services delivered by public hospitals called Australian Diagnosis Related Groups.

⁷ **Specialist Outpatient Service** means a process in which the help of a specialist doctor is sought to identify ways to correct problems in Patient management or in planning and implementation of health care programs.

Hospital based on a diagnosis under the Tier 2 Non-admitted Care Services classifications published by IHPA.

6. Emergency care

Emergency departments are dedicated hospital-based facilities specifically designed and staffed to provide 24 (twenty-four) hours emergency care at each Project Hospital (**Emergency Department** or **ED**). The role of the ED is to diagnose and treat acute and urgent illnesses and injuries. Patients are seen in order of medical urgency depending on the severity of the patient presentation. An Urgency Disposition Groups (UDGs) classification system as published by IHPA will be adopted for each Project Hospital.

Presentations in the ED will be classified according to the Urgency Disposition Groups (UDGs) published by the IHPA.

II. PAYMENTS

A. The O&M Charges will be paid based on the following formula for each Patient Episode (**Tariff**):

$$\text{O\&M Charges} = \sum_{i=0}^n \text{Tariff for each Patient Episode}$$

Where:

i = a specific Patient Episode

n = number of Patient Episodes

Tariff for each Patient Episode = Fixed Tariff or {Base Rate X Price Weight}

Where:

1. **Patient Episode** means an instance where a Patient receives any Service under any of the Service categories mentioned in Section I (*Services*) of this Schedule at a Project Hospital.
2. **Fixed Tariff** is the tariff for Services (as mentioned in Section I (*Services*) of this Schedule) for which Price Weights are not available.

Patient Episode	Fixed Tariff per Patient Episode
General OPD consultation	FJD 15
Laboratory test	FJD 8
CT & MRI scans	FJD 30
Other Radiology diagnostic procedures	FJD 10

The Fixed Tariffs will be applicable from the Execution Date till the end of the Financial Year in which the Execution Date occurs. Thereafter, the Fixed Tariff will be adjusted at the end of each Financial Year, to reflect the variation in the CPI. In case Price Weight for a service becomes available in future and is adopted by the Concessionaire, the Fixed Tariff for such Service will not be available.

3. **Base Rate** shall have the meaning as defined in the Agreement and is fixed for the period from the Execution Date till the end of the first Financial Year falling after the Execution Date. Thereafter, the Base Rate will be adjusted at the end of each Financial Year, to reflect the variation in the CPI.
4. **Price Weight** for a Patient Episode is the relative weight given to a Patient Episode which reflects the relative amount of activities or resources required to treat the Patient Episode at a Project Hospital. The principles for calculating Price Weights are outlined below:

4.1. For Admitted Acute Care:

- 4.1.1. Price Weights published annually by IHPA, currently in the publication named National Efficient Price Determination 2018 – 19, with the following adjustments:
 - (a) notwithstanding anything to the contrary, in case of more than one complexity level for a diagnosis or a DRG, the Minor Complexity Inlier Price Weight⁸ will be applicable; and
 - (b) for cardiac care, the Price Weights will be calculated as 1.5 times the Inlier Price Weight⁹ calculated by using steps mentioned above in sub-paragraphs 4.1.1 and 4.1.1(a). Under the current AR-DRG classification system these are code numbers AR-DRG v9 F01A to F76B.

4.2. For Non-Admitted Care:

- 4.2.1. 0.5 times the Price Weights published by IHPA annually, currently in the publication named National Efficient Price Determination 2018 – 19, with the following adjustments:
 - (a) for gynecological oncology, medical oncology and oncology, the Price Weights will be 1.25 times the published Price Weight. Under the current version, these are Tier 2 Clinic V5.0 codes 20.39, 20.42 and 40.52 respectively;
 - (b) for radiotherapy, the Price Weights will be 1.25 times the published Price Weight. Under the current version, these are Tier 2 Clinic V5.0 codes 10.12, 10.20 and 20.43; and
 - (c) the Price Weight for chemotherapy, currently Tier 2 Clinic V5.0 code 10.11, is only for administration of medicine but does not cover for costs of medicines being used for the chemotherapy. The Patient has to purchase those medicines separately.

⁸ As set out in the National Efficient Price Determination, as updated from time to time.

⁹ As set out in the National Efficient Price Determination, as updated from time to time.

4.3. For Emergency care:

- 4.3.1. 0.5 times the Price Weights published by IHPA annually, currently in the publication named National Efficient Price Determination 2018 – 19, for Emergency Department Patients.
 - 4.4. From Execution Date till the end of the next Financial Year, the Price Weights in the National Efficient Price Determination 2018 – 19 published by IHPA will be adopted.
 - 4.5. At least 1 (one) month before the beginning of each Financial Year, the Concessionaire will inform the Government whether it would like to retain (for the immediately next Financial Year) the Price Weights used in the current Financial Year or adopt the Price Weights published by IHPA for the next Financial Year. Once informed to the Government, then such Price Weights will be fixed for the Financial Year with no option to change before the next Financial Year. For the avoidance of doubt, it is clarified that the Concessionaire is not permitted to adopt only part of the Price Weights applicable in any Financial Year.
 - 4.6. In case Price Weights are not published by IHPA or are not available any more, the last used Price Weights for calculating Tariff will be used till the expiry of the Agreement.
- B.** The Tariff paid per Patient Episode is for covering all costs incurred by Concessionaire for diagnosing and treating the Patient, including diagnostics tests, consultation, consumables, implants, medicines, prosthetics and meals etc except dialysis and radiotherapy. To clarify, there will not be any payments by the Government to the Concessionaire for a Patient Episode other than what is calculated using the Tariff framework above.
 - C.** The Price Weight based Tariff paid for Specialist Outpatient Service under Non-admitted Care covers all medicines, diagnostics and procedures done on an outpatient basis in any Project Hospital but does not include medicines which are prescribed to a Patient for taking after exiting the Project Hospital. For the avoidance of any doubt, it is clarified that the Patient shall be responsible for procuring all the medicines prescribed to the Patient for taking after exiting the Project Hospital.
 - D.** The Fixed Tariff paid for GOPD consultation covers all medicines and procedures done on an outpatient basis in the Project Hospitals but does not include diagnostics or medicines which are prescribed to a Patient for taking after exiting the Project Hospital.
 - E.** Diagnostics for GOPD Patients will be paid as per the pricing mentioned above. It is clarified that the Concessionaire will be paid separately for diagnostic services only for GOPD Patients. If a Patient is referred to Specialist Outpatient Service from GOPD, the Government will pay the Concessionaire only the GOPD consultation charges as all other costs are assumed to be covered by the Price Weight based payment for Specialist Outpatient Service.
 - F.** For avoidance of doubt, it is clarified that there will not be any separate payment for blood bank services provided by the Concessionaire.
 - G.** For the avoidance of doubt, it is clarified that the Concessionaire will not be entitled to any compensation due to change in the value of the Price Weight.

Illustration of an O&M Charges Invoice

1. Patient A, a 27-year old female, receives the following Services at a Project Hospital:
 - (i) consultation in GOPD;
 - (ii) a pain killer injection;
 - (iii) an X-Ray; and
 - (iv) cast for a fracture.
2. Patient B, an 8-year old male, receives the following Services at a Project Hospital:
 - (i) consultation in ENT specialist OPD (SOPD);
 - (ii) an X-Ray;
 - (iii) a haemoglobin test;
 - (iv) medication for pain; and
 - (v) a medical procedure for removal of foreign body from nose.
3. Patient C, a 63-year old male, receives haemodialysis at a Project Hospital.
4. Patient D, an 87-year old female, receives radiotherapy at a Project Hospital.
5. Patient E, a 16-year old male, receives Services under Triage 2 in the Emergency Department of the Project Hospital.
6. Patient F, a 24-year old female, undergoes a tonsillectomy at a Project Hospital.
7. Patient G, a 54-year female, undergoes a coronary bypass surgery at a Project Hospital.
8. Patient H, a 47-year male, gets admitted at a Project Hospital for a tonsillectomy but his condition gets complicated and he undergoes a coronary bypass surgery at the Project Hospital. Thus, the patient undergoes two surgeries at the Project Hospital.

O&M Charges Invoice for the Patients above will be prepared as follows (*assuming a Base Rate of FJD 1000 for this illustration*):

S.	Name of Patient	Age	Sex	Hospital registration number	Final diagnosis/Service	Price Weight	Adjustment to Price Weight	Tariff (FJD)
1	A	27	F	XXXXXX	GOPD consultation	N/A	N/A	15
2	A	27	F	XXXXXX	X-Ray	N/A	N/A	10
3	B	8	M	XXXXXX	ENT SOPD	0.0496	0.5	24.8

4	C	63	M	XXXXXX	Renal dialysis	0.0575	0.5	28.75
5	D	87	F	XXXXXX	Radiotherapy	0.0732	1.25	91.5
6	E	16	M	XXXXXX	Triage 2	0.2275	0.5	113.75
7	F	24	F	XXXXXX	Tonsillectomy	0.7158	N/A	715.8
8	G	54	F	XXXXXX	Coronary Bypass without Invasive Cardiac Investig ation	5.1572	1.5	7,735.8
9	H	48	M	XXXXXX	Coronary Bypass without Invasive Cardiac Investig ation	5.1572	1.5	7,735.8
Total O&M Charges								16,471.2

SCHEDULE - 12

HAND-BACK CONDITIONS

1. Condition of the Project Hospitals on the Expiry Date of the Agreement

- 1.1. On the Expiry Date the Concessionaire shall hand-back the Lautoka Hospital with the following design life:
 - (i) All equipment then required at the Lautoka Hospital under the terms of this Agreement, including equipment required for providing the Services at the Lautoka Hospital in accordance with the requirements of this Agreement, forms part of the Lautoka Hospital and is free from defects, and all such equipment shall have a residual life of at least 1 (one) year after the Expiry Date.
 - (ii) The building foundations, superstructure and substructure are free from defects and has a residual life equivalent to at least 60 (sixty) years less the number of years elapsed since Lautoka Hospital CCD until the Expiry Date.
 - (iii) All other aspects of the building are free from defects and shall have a residual life of at least 5 (five) years after the Expiry Date.
- 1.2. The Concessionaire shall hand-back the Ba Hospital with the following key design life:
 - (i) All equipment then required at the Ba Hospital under the terms of this Agreement, including equipment required for providing the Services at the Ba Hospital in accordance with the requirements of this Agreement, forms part of the Ba Hospital and is free from defects, and all such equipment has a residual life of 1 (one) year after the Expiry Date.
 - (ii) The building foundations and superstructure are free from defects and has a residual life at least of 5 (five) years after the Expiry Date.

2. Condition of the Project Hospitals on early termination of the Agreement

In case of early termination of this Agreement (including with respect to any Project Hospital), the Project Hospital(s) should be in a condition that they would be if:

- (i) all the routine, non-routine and lifecycle maintenance at such Project Hospital(s) had been completed as on the Termination Date in accordance with this Agreement; and
- (ii) such Project Hospital(s) was Fit for the Intended Purposes as on the Termination Date.

3. Project Records

The Concessionaire shall provide the Government with all documentation reasonably requested by the Government or Independent Monitor, which shall include but not be limited to:

- (i) As-built drawings and specifications: The Concessionaire shall provide up to date Designs and Drawings in “CAD” or other electronic format reasonably acceptable to the Independent Monitor so as to produce accurate as-built documents for Lautoka Hospital;
- (ii) Maintenance Manual: The Concessionaire shall prepare and deliver to the Government current Maintenance Manual for each Project Hospital. The Concessionaire shall make available all specifications, warranties and related information for all the equipment and systems at the Project Hospitals;
- (iii) Design records: The Concessionaire shall provide all records of the Designs and Drawings for each Project Hospital;
- (iv) Patient records: The Concessionaire shall provide all Patient records for each Project Hospital;
- (v) Inspection reports and tests results: The Concessionaire shall provide all official reports, certified test records of all inspections and tests which were undertaken for each Project Hospital during the Term of the Agreement;
- (vi) Certification: The Concessionaire shall provide original version of all currently valid certificates obtained by the Concessionaire (including the certifications obtained in relation to Accreditation Standards) required under the Agreement for each Project Hospital;
- (vii) Utility plans: The Concessionaire shall provide utility plans for each Project Hospital and the Sites;
- (viii) Landscape plans: The Concessionaire shall provide landscape plans for each Project Hospital and the Sites; and
- (ix) Copies of all Applicable Permits: The Concessionaire shall provide copies of all Applicable Permits for the Construction Works, occupation and Operation and Maintenance of each Project Hospital and the Sites.

SCHEDULE - 13

FORMAT OF PERFORMANCE SECURITY

[On stamp paper of appropriate value]

B.G. No. [_____]

Dated:

1. In consideration of you, the **Government of the Republic of Fiji**, represented by the Ministry of Economy, with its principal office at Ro Lalabalavu House, Victoria Parade, Suva, Republic of Fiji, (referred to as **Government**, which expression will unless it is repugnant to the subject or context thereof include its, successors and assigns) having issued the letter of allotment dated *[insert date of the letter of allotment]* and executed the concession agreement on [●] 2018, with *[insert name of the Project SPV]* with its registered office at *[insert address]* (referred to as the **Concessionaire**, which expression will unless it be repugnant to the subject or context thereof include its successors and assigns), for the upgradation, development, operation, maintenance of Lautoka and Ba Hospitals (referred to as the **Concession Agreement**), we *[insert name of the Bank]* having our registered office at [_____] and one of its branches at [_____] (referred to as the **Bank**), at the request of the Concessionaire, do hereby irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and compliance of the terms and conditions of the Concession Agreement by the said Concessionaire and unconditionally and irrevocably undertake to pay forthwith on demand to the Government an amount of FJD 5,000,000 (Fijian Dollars Five Million) (referred to as the **Guarantee**) as our primary obligation without any proof or conditions, and without any demur, reservation, recourse, contest or protest and without reference to the Concessionaire if the Concessionaire will fail to fulfil or comply with all or any of the terms and conditions contained in the Concession Agreement.
2. Any such written demand made by the Government stating that the Concessionaire has failed to fulfil and comply with the terms and conditions contained in the Concession

Agreement will be final, conclusive and binding on the Bank. The Bank shall not require the Government to justify the invocation of this Guarantee, nor shall the Bank have any recourse against the Government in respect of any payment made hereunder.

3. We, the Bank, do hereby unconditionally undertake to, immediately and forthwith, pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Concessionaire or any other Person and irrespective of whether the claim of the Government is disputed by the Concessionaire or not, merely on the first demand from the Government stating that the amount claimed is due to the Government. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee.
4. The Guarantee will not be affected by any change in the constitution or winding up of the Concessionaire or the Bank or any absorption, merger, restructuring or amalgamation of the Concessionaire or the Bank with any other Person.
5. In order to give full effect to this Guarantee, the Government will be entitled to treat the Bank as the principal debtor.
6. The obligations of the Bank under this Guarantee are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of the Concession Agreement or the Bid submitted by the Concessionaire.
7. The obligations of the Bank under this Guarantee shall not be affected by any act, omission, matter or thing which, but for this provision, would reduce, release or prejudice the Bank from or prejudice or diminish its liability under this Guarantee, including (whether or not known to it, or the Government):
 - (a) any time or waiver granted to, or composition with, the Concessionaire or any other Person;
 - (b) any incapacity or lack of powers, authority or legal personality of or dissolutions; or change in the Concessionaire, as the case may be;
 - (c) any variation of the Concession Agreement, so that references to the Concession Agreement in this Guarantee shall include each such variation;
 - (d) any unenforceability, illegality or invalidity of any obligation of the Concessionaire or the Government under the Concession Agreement or any unenforceability, illegality or invalidity of the obligations of the Bank under this Guarantee or the unenforceability, illegality or invalidity of the obligations of any Person under any other document or guarantee or security, to the extent that each obligation under this Guarantee shall remain in full force as a separate, continuing and primary obligation, and its obligations be construed accordingly, as if there were no unenforceability, illegality or invalidity; and/or
 - (e) any extension, waiver, or amendment whatsoever which may release a guarantor or surety (other than performance of any of the obligations of the Concessionaire under the Concession Agreement).

8. Any notice by way of request, demand or otherwise will be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to ***[insert name of Bank along with branch address]*** and delivered at our above branch which will be deemed to have been duly authorised to receive the notice of claim.
10. It shall not be necessary for the Government to proceed against the Concessionaire before proceeding against the Bank and the Guarantee will be enforceable against the Bank, notwithstanding any other security which the Government may have obtained from the Concessionaire or any other Person and which will, at the time when proceedings are taken against the Bank, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Government in writing.
12. The Bank represents and warrants to the Government that:
 - (a) it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank;
 - (b) the Bank has duly executed and delivered this Guarantee, and this Guarantee constitutes its legal, valid and binding obligation enforceable in accordance with its terms except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles; and
 - (c) neither the execution, delivery or performance by the Bank of this Guarantee, nor compliance by it with the terms and provisions hereof will: (i) contravene any material provision of any Applicable Law; (ii) conflict or be inconsistent with or result in any breach of any of the material terms, covenants, conditions or provisions of, or constitute a default under any agreement, contract or instrument to which the Bank is a party or by which it or any of its property or assets is bound; or (iii) violate any provision of the Bank's constituent documents;
 - (d) no order, consent, approval, license, authorisation or validation of, or filing, recording or registration with, except as have been obtained or made prior to the date hereof, or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to authorise, or is required in connection with: (i) the execution, delivery and performance of this Guarantee; or (ii) the legality, validity, binding effect or enforceability of this Guarantee; and
 - (e) this Guarantee will be enforceable when presented for payment to the Bank's branch in Fiji at ***[insert address of the branch of the Bank]***.
13. For the avoidance of doubt, the Bank's liability under this Guarantee will be restricted to FJD 5,000,000 (Fijian Dollars Five Million). The Guarantee shall be irrevocable and remain in full force from the date hereof until ***[insert date falling after 23rd anniversary of the Handover Date]***, and will continue to be enforceable unless all

amounts under this Guarantee have been paid and the Bank receives written notice thereof from the Government, such notice to be issued promptly upon such occurrence. The Bank will be liable to pay the amount or any part of the Guarantee only if the Government serves a written claim on the Bank in accordance with Clause 9 of this Guarantee, on or before [*insert date falling after 23rd anniversary of the Handover Date*].

14. If, and to the extent that for any reason the Concessionaire enters or threatens to enter into any proceedings in bankruptcy or re-organisation or otherwise, or if, for any other reason whatsoever, the performance or payment by the Concessionaire of the Guarantee amount becomes or may reasonably be expected to become impossible, then the Guarantee amount shall be promptly paid by the Bank to the Government on demand.
15. So long as any amount is due from the Concessionaire to the Government, the Bank shall not exercise any right of subrogation or any other rights of a guarantor or enforce any guarantee or other right or claim against the Concessionaire, whether in respect of its liability under this Guarantee or otherwise, or claim in the insolvency or liquidation of the Concessionaire or any such other Person in competition with the Government. If the Bank receives any payment or benefit in breach of this Clause 15 of this Guarantee, it shall hold the same upon trust for the Government.
16. All documents arising out of or in connection with this Guarantee shall be served:
 - (a) upon the Government, at Ro Lalabalavu House, Victoria Parade, Suva, Republic of Fiji; and
 - (b) upon the Bank, at [*insert address of the Bank's branch*].

Either party may change the above address by prior written notice to the other party.
17. Any demand, notice or communication in connection with this Guarantee would have been deemed to have been duly served:
 - (a) if delivered by hand, when left at the proper address of services; and
 - (b) if given or made by pre-paid registered post or facsimile, when received.
18. This Guarantee shall be interpreted in accordance with the laws of the Republic of Fiji and the courts at Suva, Fiji shall have exclusive jurisdiction.
19. Capitalised terms used but not defined herein shall have the meanings given to them in the Concession Agreement.

Signed and Delivered by.....Bank

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

(Signature of the authorised signatory of the Bank)

(Official Seal)

SCHEDULE - 14
ANNUITY PAYMENT INVOICE FORMAT

Date:

Invoice Period:

S. No.	Type of Annuity Payment	Amount (in FJD)
1	Ba Hospital Annuity Payment	
2	Lautoka Hospital Annuity Payment	
<i>Total Annuity Payments</i>		
<i>VAT on Total Annuity Payments</i>		
<i>Grand Total</i>		

Annexure

[Note: Schedule – 10 (Annuity Payments) to be set out here.]

SCHEDULE - 15
O&M CHARGES INVOICE FORMAT

S.	Name of Patient	A	Sex	Hospital Registration number	Final diagnosis/ Service	Price	Adjustment to Price Weight **	Tariff (FJD)
Total O&M Charges								[Sum of all Tariffs in this column above]
VAT on Total O&M Charges								
Grand Total								

* In case of Fixed Tariff item, write N/A.

** In case of no adjustment, write 1.

SCHEDULE - 16

FORMAT OF LEASE DEED

		LD / /	State Lease No.....
		MEMORANDUM OF LEASE	(FOR TITLES OFFICE USE)
STAMP DUTY ONLY)			
Original	\$0.00	<u>STATE FREEHOLD LAND</u>	FEES
Duplicate	\$0.00		\$ c
	3.27	THE DIRECTOR OF LANDS OF FIJI	Registration Fee
			Drawing Fee
32.70			Plan Fee
Collected vide		(hereinafter referred to as the Lessor)	
32.70			
RR_____		on behalf of the Government of the Republic of Fiji	
		hereby leases to	
			Total
	\$ 68.67		
		[insert name of the Concessionaire], a company organised, incorporated, registered and existing under the Companies Act 2015 of [insert address of the registered office of the Concessionaire].....,	
		(hereinafter referred to as the Lessee which expression shall, unless repugnant to the meaning or context thereof, be deemed to mean and include its successors-in-interest and permitted assigns)	
.....		The Lessor and the Lessee shall collectively be referred to as	
for Director of Lands		the Parties and individually as a Party .	
Receipt No_____			Revenue
			Date

Initials

All that piece of Land being

C.T. or C.G (c)	Number	Name of Land	Province	District or Town	Area	Lot No.	Plan No.

the boundaries of which are more particularly delineated in the plan attached as Annexure herein to be held by the said [*insert name and registered office address of the Concessionaire*] as tenant commencing on the [Handover Date]¹⁰[Lautoka Hospital Lease Commencement Date]¹¹ and shall continue to be in full force and effect until the end of the remainder of the Concession Period as per Clause 3 below and at the rental stipulated as per Clause 4 below. Subject to the covenants and powers implied in leases under the Land Transfer Act, and the Property Law Act, and subject also to the following covenants and provisos; that is to say,-

It is expressly declared that this lease is a Protected Lease under the provisions of the State Lands Act, 1945.

And the Lessor hereby reserves all precious metals, coals and minerals of every description including crude oil upon or under the said lands with full liberty at all times to search, dig for and carry away such metals, coals and minerals of every description including crude oil and for that purpose to enter upon the said lands or any part thereof.

<p>STATE LEASE No.....</p> <p>REGISTERED at</p> <p>.....</p> <p><i>Registrar of Titles</i></p>
--

Fees Paid

Registrar of Titles

¹⁰ Applicable only for the Ba Hospital Lease Deed.

¹¹ Applicable only for the Lautoka Hospital Lease Deed.

RECITALS

- A. The Government of the Republic of Fiji (represented by the Ministry of Economy) (**Government**) is keen to augment the healthcare infrastructure at the Project Hospitals through private sector participation.
- B. For this purpose, the Government commenced an international competitive bid process by issuing an invitation for expression of interest on 17 March 2018, followed by a request for tender on 25 June 2018 and revised request for tender on 24 October 2018 (**RFT**), inviting interested parties to submit their bids.
- C. Pursuant to the terms of the RFT, the Government received tenders from various bidders, including the Bid submitted by the Selected Bidder.
- D. Following a process of evaluation of the bids submitted by the bidders (including the Selected Bidder), the Government accepted the Selected Bidder's Bid and issued the letter of award dated [●] 2018 to the Selected Bidder (**LOA**). The Selected Bidder accepted the LOA, on [●] 2018, in accordance with the requirements of the RFT.
- E. In terms of the RFT, the Fiji National Provident Fund Board (**FNPF**) has incorporated [*insert name of the Project SPV*] on [●] to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into the Concession Agreement, this Lease Deed and other Project Documents.
- F. On [●] 2018, the Lessee, FNPF and the Selected Bidder have executed the SPSHA which, among other aspects, sets out the terms on which FNPF has subscribed to and the Selected Bidder will purchase Securities of the Lessee.
- G. In accordance with the terms of the RFT, the Government has executed a concession agreement with the Lessee dated [●] (**Concession Agreement**) for implementing the Project.
- H. In order for the Lessee to perform its obligations under the Concession Agreement, the Lessor has agreed to grant lease hold rights to the Lessee over land admeasuring (*in figures*) [*in words*] in [*Province*], [*Lautoka/Ba*], Fiji described in greater detail on the first page of this Lease Deed (**Demised Premises**).
- I. The Parties agree and undertake that they shall abide by the terms, conditions and stipulations contained in this Lease Deed and therefore agree to execute this Lease Deed confirming their commitment and intention in respect thereof.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions to be complied by the Parties and covenants set forth herein, the Parties mutually agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless otherwise defined in this Lease Deed, capitalised terms used in this Lease Deed shall have the meanings given to them in the Concession Agreement. The following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Adjoining Property means any land and/or property adjoining or adjacent to any part of the Demised Premises, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.

Annexure shall mean an annexure of this Lease Deed.

Concession Agreement shall have the meaning ascribed to the term in Recital G.

Demised Premises shall have the meaning ascribed to the term in Recital H.

Dispute shall have the meaning ascribed to the term in Clause 16.1.

Dispute Meeting shall have the meaning ascribed to the term in Clause 16.1.

Dispute Notice shall have the meaning ascribed to the term in Clause 16.1.

Encumbrance means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.

FNPF shall have the meaning ascribed to the term in Recital E.

[Handover Date] shall have the meaning ascribed to the term in the Concession Agreement.]¹²

[Lautoka Hospital Lease Commencement Date] shall have the meaning ascribed to the term in Clause 2.2.]¹³

Lease Deed shall mean this lease deed, including the Annexure, as amended from time to time.

¹² Applicable only for the Ba Hospital Lease Deed.

¹³ Applicable only for the Lautoka Hospital Lease Deed.

Lessee Related Parties means any of the following:

- (a) the Selected Bidder, Affiliates of the Selected Bidder, shareholders of the Lessee [and each Member of the Selected Bidder]¹⁴;
- (b) an officer, adviser, consultant, wage earner, employee or agent of the Lessee acting in that capacity;
- (c) any Subcontractor engaged by the Lessee and their directors, officers, wage earners, employees or agents acting in that capacity; or
- (d) any Person acting on behalf of the Lessee.

Lessor Related Parties means any of the following:

- (d) an officer, servant, employee or agent of the Lessor, acting in that capacity;
- (e) any contractor or subcontractor of the Lessor and its directors, officers, servants, employees or agents, acting in that capacity; or
- (f) any Person acting on behalf of the Lessor,

in each case only if connected directly or indirectly to the Project.

For the avoidance of doubt, it is clarified that the [Lautoka/Ba] Hospital Deputed Staff will be deemed to be Lessee Related Parties under this Lease Deed.

LOA shall have the meaning ascribed to the term in Recital D.

Notice of Arbitration shall have the meaning ascribed to the term in Clause 16.2(a).

Person means any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organisation or any other legal entity.

Rent shall have the meaning ascribed to the term in Clause 4.

RFT shall have the meaning ascribed to the term in Recital B.

Security means and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.

¹⁴ To be deleted if the Selected Bidder is not a Consortium.

Term shall have the meaning ascribed to the term in Clause 3.

Tribunal shall have the meaning ascribed to the term in Clause 16.2(b).

1.2 Interpretation

In this Lease Deed, unless otherwise provided or the context otherwise requires:

- (a) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (b) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (c) Headings in this Lease Deed are for convenience of reference only.
- (d) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (e) References to any date or time of day are to Fijian Standard Time (taking into account Fijian Daylight-Saving Time, when applicable); any reference to a day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (f) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (g) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the immediately next Business Day.
- (h) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on its behalf only by any authorised persons and shall be given on a Business Day.
- (i) The words 'written' and 'in writing' include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.

- (j) The provisions of the Clauses of this Lease Deed shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses.

Provided that if there are any ambiguities, discrepancies or inconsistencies within this Lease Deed, the following shall apply:

- (iv) between two Clauses of this Lease Deed, the provisions of the Clause more specific to the issue under consideration shall prevail over those in other Clauses; and
 - (v) if there is any ambiguity, discrepancy or inconsistency regarding the requirements of quality or any standard of performance between: (A) two or more Clauses; (B) the Applicable Laws, then, notwithstanding anything contained in this Lease Deed, the highest quality or standard must be applied.
- (k) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Lessor, nor the failure to do so, shall, unless expressly stated in this Lease Deed, relieve the Lessee of any of its obligations under this Lease Deed or of any duty which it may have under this Lease Deed to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (l) The rule of construction, if any, that an agreement/deed should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Lease Deed.
- (m) For the purpose of giving full and proper effect to this Lease Deed, the Concession Agreement and this Lease Deed shall be read together and construed harmoniously. The terms of this Lease Deed shall prevail in the event of any inconsistencies with the Concession Agreement.
- (n) All measurements and calculations shall be in the metric system and calculations done to 4 (four) decimal places, with the 5th (fifth) digit of 5 (five) or above being rounded up and below being rounded down.

2. GRANT OF LEASE

- 2.1 The Lessor hereby grants the Demised Premises by way of lease to the Lessee and the Lessee hereby agrees to take the Demised Premises on lease from the Lessor. The Lessee shall be entitled to use the Demised Premises for implementing the Project, including undertaking the Construction Works and the Operations and Maintenance of [Lautoka Hospital/Ba Hospital] and other related / allied / ancillary purposes / uses in connection with implementing the Project, in accordance with the terms of the Concession Agreement.

- 2.2 [On and from the Handover Date, the Lessor has granted and the Lessee has taken possession of the Demised Premises to utilise the Demised Premises in accordance with this Lease Deed and the Concession Agreement.]¹⁵

[On and from the date of signing of this Lease Deed by both the Parties, the Lessor has granted and the Lessee has taken possession of the Demised Premises to utilise the Demised Premises in accordance with this Lease Deed and Concession Agreement (**Lautoka Hospital Lease Commencement Date**).]¹⁶

3. **EFFECTIVENESS AND TERM**

This Lease Deed shall come into full force and effect on and from the [Handover Date]¹⁷ [Lautoka Hospital Lease Commencement Date]¹⁸ and shall continue to be in full force and effect until the end of the remainder of the Concession Period (**Term**). For the avoidance of doubt, it is clarified that the Lease Deed shall be co-terminus with the Concession Agreement.

4. **RENT**

The Parties agree that the rent (**Rent**) payable by the Lessee for the Demised Premises shall be FJD 12,000.00 (Fijian Twelve Thousand Dollars) payable in 2 (two) equal half-yearly instalments in a Financial Year. The Rent shall be inclusive of all Taxes. The Rent will be payable on or before the 31st January in respect of the first half-yearly instalment and on or before the 31st July in respect of the second half-yearly instalment. Any Rent due from the [Handover Date]¹⁹ [Lautoka Hospital Lease Commencement Date]²⁰ up to 1st January or 1st July, as the case may be, shall be added to and paid with such first half-yearly instalment to be paid by the Lessee.

5. **RIGHT, TITLE AND INTEREST IN THE DEMISED PREMISES**

- (d) The ownership of the Demised Premises shall at all times vest with the Lessor and the Lessee shall be granted leasehold rights over the Demised Premises, in accordance with the terms of this Lease Deed and the Concession Agreement.
- (e) Except as otherwise provided in this Lease Deed and the Concession Agreement, the Lessee shall not:
 - (a) sell or otherwise dispose or create any Security over the Demised Premises; and
 - (b) transfer, assign or novate any of its rights and obligations under this Lease Deed,

¹⁵ Applicable only for the Ba Hospital Lease Deed.

¹⁶ Applicable only for the Lautoka Hospital Lease Deed.

¹⁷ Applicable only for the Ba Hospital Lease Deed.

¹⁸ Applicable only for the Lautoka Hospital Lease Deed.

¹⁹ Applicable only for the Ba Hospital Lease Deed.

²⁰ Applicable only for the Lautoka Hospital Lease Deed.

without the prior written consent of the Lessor (such consent not being unreasonably withheld or delayed).

6. DEMISED PREMISES DATA AND VERIFICATION

- (e) The Lessor has made available to the Lessee, the layout plans and all other relevant data, studies and reports in the Lessor's possession in connection with the Demised Premises. The Lessor however provides no warranty with respect to the information provided, and the Lessee shall be deemed to have carried out its own independent analysis of the same.
- (f) The Lessee shall further be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Demised Premises.
- (g) The Lessee shall also be deemed to have inspected and examined the Demised Premises and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by the Lessor and any other information available with respect to the Demised Premises and to have satisfied itself as to all the relevant matters including:
 - (i) the nature of the Demised Premises, including the subsurface, hydrological, climatic and general physical conditions of the Demised Premises;
 - (ii) the suitability of the Demised Premises for undertaking the Construction Works and Operation and Maintenance of the [Lautoka/Ba] Hospital, including providing the Services in each case, as required under the Concession Agreement;
 - (iii) the condition of the utilities and infrastructure available outside and within the battery limits of the Demised Premises;
 - (iv) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
 - (v) the suitability and adequacy of any access roads to the Demised Premises and other utilities and facilities to be provided by the relevant Government Authority; and
 - (vi) all other matters that may affect the performance of its obligations under this Lease Deed.
- (h) The Lessor acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Lessor, then, such error or discrepancy shall not entitle the Lessee to any compensation for additional Costs incurred by the Lessee. Further, any misinterpretation of the data, studies and reports provided by the Lessor shall not relieve the Lessee from the performance of its obligations under this Lease Deed and the Concession Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 6(c), which affect or may affect the Project or the performance of any of its obligations under this Lease Deed.

7. SITE RELATED COVENANTS

The Lessee agrees and undertakes that:

- (c) the Lessee shall not transfer, alienate, assign, dispose of, sub-license, sub-lease or create any Security over any part of the Demised Premises or its rights and interest in the Demised Premises or this Lease Deed, other than as specifically permitted under this Lease Deed and the Concession Agreement;
- (d) the Lessee shall not allow any encroachment on, or unauthorised occupation of any part of the Demised Premises and in the event of any encroachment or unauthorised occupation, the Lessee shall immediately cause such encroachment or any unauthorised occupants to be removed from the Demised Premises. The Lessee shall not be entitled to any costs incurred in removal of any encroachment or any unauthorised occupants from the Demised Premises;
- (e) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Lessee's obligations under this Lease Deed;
- (f) the Lessee shall be wholly responsible for safety and security of the Demised Premises;
- (g) the Lessee shall take all necessary measures to confine Construction Works, Operations and Maintenance, personnel and [Lautoka/Ba] Hospital Assets to the Demised Premises and not encroach on any Adjoining Property;
- (h) all Artefacts discovered at, on or under the Demised Premises shall be dealt with in accordance with Applicable Laws and the Lessee shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such Artefact. Further, immediately upon the discovery of any such Artefact, the Lessee shall inform the Lessor of such discovery and carry out the instructions of the Lessor in this regard, at the Lessor's cost and expense;
- (i) the Lessee shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Lessee or the Lessee Related Parties;
- (j) the Lessee shall use all reasonable endeavours not to do or permit to be done anything which might:
 - (i) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Demised Premises;
 - (ii) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
 - (iii) cause any contamination or damage to any Adjoining Property,

and the Lessee shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused;

- (k) if the Construction Works cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Lessee shall promptly and at its own cost obtain all necessary third-party consents and/or the approval of any Government Authority to undertake such Construction Works. The Lessor shall provide all reasonable assistance to the Lessee for procuring such approvals; and
- (l) the Lessee shall fulfil and be bound by all the terms and conditions of this Lease Deed and in the State Lands (Leases and Licences) Regulations 1980, in so far as the same are not modified or contained in this Lease Deed. For the avoidance of doubt, it is clarified that conditions stated in the State Lands (Leases and Licences) Regulations 1980 that are not specifically contained in this Lease Deed, do not apply.

8. ACCESS TO LESSOR RELATED PARTIES

Notwithstanding anything to the contrary, the Lessee shall ensure that the Lessor Related Parties have access to the Demised Premises and the leasehold right granted to the Lessee over the Demised Premises shall always be subject to:

- (d) the rights of the Lessor, the Lessor's representative, the Independent Monitor, and other Lessor Related Parties to enter upon and access the Demised Premises to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Lease Deed and the Concession Agreement, provided that the Lessor shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct, in any material manner, undertaking of the Construction Works and/or Operation and Maintenance of the [Lautoka/Ba] Hospital in any manner whatsoever;
- (e) the rights of the Lessor or utility providers to enter upon and access the Demised Premises for laying or installing telegraph lines, electric lines or for any other public purpose; and
- (f) the Applicable Laws.

If any physical damage is caused to the Demised Premises for reasons solely and directly attributable to such access and use of the Demised Premises by the Lessor, the Independent Monitor or the Lessor Related Parties, then the Lessor shall bear the costs of remedying such damage and restoring the Demised Premises.

9. INDEMNITY

- 9.1 The Lessor hereby confirms that it is the sole owner of and has absolute title and physical possession to the Demised Premises. The Lessor hereby agrees, confirms and undertakes that it shall keep the Lessee indemnified, and defend and hold the Lessee harmless against all direct claims including

third party claims, expenditure, costs, losses and damages made against, incurred or suffered by the Lessee by reason of (a) any defect in title of the Lessor to the Demised Premises, (b) any claim relating to usage of Demised Premises for implementation of the Project, (c) breach of any material provision of this Lease Deed by the Lessor, or (d) misrepresentation by the Lessor under this Lease Deed.

- 9.2 The Lessee shall indemnify, defend and hold the Lessor harmless against any claims, liabilities, damages, charges, expenses, costs, losses or injuries suffered by the Lessor arising out of or relating to any act or omission by the Lessee to comply with any material legal, statutory or regulatory duty or breach of the representations and covenants set out in this Lease Deed.

10. LESSOR'S REPRESENTATIONS AND WARRANTIES

- 10.1 The Lessor hereby represents and warrants to the Lessee that:

- (a) the Lessor is the sole and absolute owner of the Demised Premises and has valid uninhibited rights of alienation over the Demised Premises, and enjoys uninterrupted, quiet, peaceful, physical, vacant and legal possession of the Demised Premises, without any interference whatsoever;
- (b) the title of the Lessor to the Demised Premises is clear, good, marketable and subsisting and there is no impediment under any Applicable Law, order, decree or contract to lease the Demised Premises to the Lessee as proposed under this Lease Deed;
- (c) the Lessor has the full power and absolute authority to enter into and perform this Lease Deed and this Lease Deed constitutes legal, valid and binding obligations on the Lessor;
- (d) the entry into and performance of this Lease Deed by the Lessor will not conflict with any Applicable Law as of the date hereof or any agreement or document to which the Lessor is a party and will not be against any orders issued by any Government Authority etc., applicable to the Lessor;
- (e) the Demised Premises is free from all Encumbrances as at the date of execution of this Lease Deed;
- (f) all Applicable Permits for the leasing and occupation of the Demised Premises by the Lessee have been procured;
- (g) there is no bar against use of the Demised Premises for the purpose of the Project by the Lessee;
- (h) there exist no claims, actions, litigation, arbitration, land acquisition proceedings, garnishee or other proceedings relating to the Demised Premises or the transactions contemplated

under this Lease Deed;

- (i) as on the [Handover Date]²¹ [Lautoka Hospital Lease Commencement Date]²², there are no outstanding Taxes, or any interest or penalty in respect thereof, of any nature that may become a lien against the Demised Premises or any part thereof; and
- (j) subject to the terms and conditions of this Lease Deed, the Lessee will have proper and unhindered leasehold rights and interest over the Demised Premises and every part thereof and may hold and enjoy the same without any let or hindrance from the Lessor or any persons claiming through, under or in trust for the Lessor.

10.2 The representations and warranties of the Lessor contained in Clause 10.1 are continuing in nature.

11. LESSEE'S REPRESENTATIONS AND WARRANTIES

11.1 The Lessee hereby represents to the Lessor that:

- (a) the Lessee has the power to enter into and perform this Lease Deed and this Lease Deed constitutes legal, valid and binding obligations of the Lessee; and
- (b) there is no impediment under any Applicable Law, order, decree or contract which restricts the execution and compliance of the Lease Deed by the Lessee.

11.2 The representations and warranties of the Lessee contained in Clause 11.1 are continuing in nature.

12. RESTRICTIONS ON TRANSFER, SUBLETTING OR SUBDIVISION

12.1 Subject to prior written approval from the Lessor in accordance with the provisions of the State Lands Act 1945, the Lessee shall only be permitted to transfer, sublet, mortgage, assign, share or part with the possession of the Demised Premises in accordance with the terms of the Concession Agreement and this Lease Deed.

Provided that the Lessee shall be entitled to create Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, amongst other aspects as set out in the Concession Agreement, over all or any part of its rights, title and interests in and to this Lease Deed and/or the Demised Premises (to the extent of the Lessee's rights on the Demised Premises pursuant to this Lease Deed), both present and future, to the extent that the creation of such Security will not result in any financial liability to the Government. For the avoidance of doubt, it is clarified that the Lessor hereby grants its consent hereby for creation of such Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project.

²¹ Applicable only for the Ba Hospital Lease Deed.

²² Applicable only for the Lautoka Hospital Lease Deed.

- 12.2 Any permitted transfer, sublease, mortgage, assignment, sharing or parting with possession shall contain covenants by the proposed transferee, sub-tenant, mortgagee, assignee or Person sharing or taking possession for the due performance and observance of the Lessee's obligations under this Lease Deed to the satisfaction of the Lessor.
- 12.3 Any assignment, subletting or bequest of the interest of the Lessor referred in Section 95 of the Property Law Act 1971 without the Lessor's prior written consent shall be deemed to be void and a breach of this Lease Deed.
- 12.4 The Lessee shall not divide any lot or lots comprising the Demised Premises into smaller lots and shall not amalgamate any such lot or lots with other lot(s) in part or in whole.

13. TERMINATION

- 13.1 The Parties agree and acknowledge that this Lease Deed shall not be terminated by any Party for convenience.
- 13.2 In the event that the Concession Agreement is terminated due to any reason, then upon such termination of the Concession Agreement in accordance with its terms, this Lease Deed shall stand terminated automatically.

14. HANDBACK

The Lessee shall remove itself and all its employees, staff and agents, from the Demised Premises and be bound to hand-back and deliver to the Lessor promptly at the end of the Term or early termination of this Lease Deed, in accordance with the terms set out in this Lease Deed, quiet, full, complete, vacant and peaceful possession of the Demised Premises in accordance with the Lease Deed and the Concession Agreement.

15. BINDING OBLIGATIONS

This Lease Deed and all rights and duties hereunder shall inure to the benefit of, and be binding upon, the Lessor and the Lessee and their respective personal representatives, administrators, executors, successors and assignees.

16. DISPUTE RESOLUTION

16.1 Amicable Settlement

In the event of any dispute, controversy or claim arising out of, relating to, or in connection with this Lease Deed, or the formation, existence, negotiation or interpretation of this Lease Deed, or the breach, termination, validity or enforceability of this Lease Deed (a **Dispute**), the representatives of the Parties shall, within 10 (ten) Business Days of service of a written notice from one Party to the other Parties (**Dispute Notice**) hold a meeting (**Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any deed to the contrary, the Dispute Meeting

shall be held at a mutually agreed venue in Suva, Fiji or any other location in Fiji, as mutually agreed by the Parties.

16.2 **Dispute Resolution by Arbitration**

- (a) If a Dispute is not resolved within 20 (twenty) Business Days, or any such extended period as may be agreed upon between the Parties, after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, either Party to the Dispute shall be entitled to refer the Dispute to be finally settled by arbitration (**Notice of Arbitration**). This Lease Deed and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.
- (b) Unless otherwise agreed by the Parties, the Dispute shall be determined by a sole arbitrator to be jointly appointed by the Parties, and if the Parties are unable to jointly appoint a sole arbitrator within 20 (twenty) Business Days from the date of service of the Notice of Arbitration, then the Chief Justice shall appoint a sole arbitrator (**Tribunal**). Each Party shall be entitled to appoint an assessor to sit with the sole arbitrator but the sole arbitrator alone shall adjudicate the Dispute. The procedure in relation to the arbitration shall be governed by the provisions of the Arbitration Act.
- (c) ***Seat, Venue, Language and Rules of Arbitration***

The seat of the arbitration shall be Suva, Fiji. The Parties are free to choose a venue which may be convenient for different stages of the arbitration proceedings. The language of the arbitration shall be English. The arbitration shall be conducted in accordance with the arbitration law of the Republic of Fiji.
- (d) The award shall be rendered within 3 (three) months of the appointment of the Tribunal, unless the Parties hereto agree that such limit be extended or the Tribunal, considering the nature of the Dispute, determines that such limit must be extended.
- (e) The arbitration award shall be final and binding on the Parties hereto and the Parties hereto hereby irrevocably waive their right to any form of appeal, review or recourse in so far as such waiver may be validly made.

16.3 **Survival**

The provisions contained in this Clause 16 shall survive the termination of this Lease Deed.

17. **MISCELLANEOUS**

17.1 **Survival**

- (c) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Lease Deed as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Term by efflux of

time or otherwise in accordance with this Lease Deed, shall survive the expiry of the Lease Deed.

- (d) The provisions of this Lease Deed to the fullest extent necessary to give effect thereto, survive the Term and the obligations of Parties to be performed or discharged following the termination of this Lease Deed, and shall accordingly be performed or discharged by the Parties.

17.2 **Entire agreement**

The Parties hereto acknowledge, confirm and undertake that this Lease Deed constitutes the entire understanding between the Parties regarding the development of the lease of the Demised Premises and supersedes all previous written or oral representations and/or arrangements regarding the lease of the Demised Premises.

17.3 **Non-exhaustive Remedies**

- (c) Save and except as provided in this Lease Deed the remedies available to the Lessee under this Lease Deed are not exhaustive and the Lessee and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (d) Save and except as provided in this Lease Deed, the exercise of any rights by any Party under this Lease Deed shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Lease Deed or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

17.4 **Notices**

- (e) Any notice or request in reference to this Lease Deed shall be written in the English language and shall be sent by e-mail, registered post or courier and shall be directed to the other Parties at the address mentioned below:

Lessor:

Attention: The Director of Lands

Address: iTaukei Trust Fund Complex, Nasova Road, Suva, Fiji

Tel: (+679) 323 9724 or (+679) 323 9726

E-mail: landsinfo@govnet.gov.fj

Lessee:

Attention: [●]

Address: [●]

Tel: [●]

Fax: [●]
E-mail: [●]

- (f) Subject to Clause 17.4(c), a notice is received:
- (i) in the case of delivery by hand, on delivery;
 - (ii) in the case of prepaid registered post, on the date of receipt of the registered post; and
 - (iii) in the case of e-mail, on delivery to the recipient's server and provided no error message is received by the sender.
- (g) Any notice received on a day that is not a Business Day, or after 17.00 hours local time at the recipient's location on a Business Day, is deemed received at 09.00 hours local time at the recipient's location on the following Business Day.
- (h) Each Party may change the above address by prior written notice to the other Parties. Provided however, that if a Party fails to notify the other Party of such change in address, then any notice under this Lease Deed shall be sent at the earlier notified address.

17.5 Governing Law and Jurisdiction

This Lease Deed shall be governed by the laws of the Republic of Fiji and, subject to the provisions contained in Clause 16, shall be subject to the exclusive jurisdiction of the courts at the Republic of Fiji.

17.6 Counterparts

This Lease Deed may be executed in any number of counterparts, and each executed counterpart has the same force and effect as an original instrument.

17.7 Language

- (c) The formal text of this Lease Deed shall be in the English language.
- (d) All notices and communications between the Parties under this Lease Deed shall be in English and all arbitration proceedings undertaken pursuant to this Lease Deed shall be conducted in English.

17.8 Amendments

This Lease Deed may be amended provided that such amendment is in writing and signed by both Parties.

17.9 Waivers and Consents

- (d) Unless otherwise specified, any provision or breach of any provision of this Lease Deed may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (e) Any consent under or pursuant to any provision of this Lease Deed must also be in writing and given prior to the event, action or omission for which it is sought.
- (f) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

17.10 Severability

- (c) If any provision of this Lease Deed is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (d) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

17.11 Assignment

- (c) Except as provided in the Concession Agreement and this Lease Deed, the Lessee shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Lease Deed, without the prior written consent of the Lessor.
- (d) The rights and obligations of the Lessor under this Lease Deed shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (v) is a single entity;
 - (vi) acquires the whole of the Demised Premises;
 - (vii) has the legal capacity, power and authority to become a party to and to perform the obligations of the Lessor under this Lease Deed, as the case may be; and
 - (viii) has sufficient financial standing or financial resources to perform the obligations of the Lessor under this Lease Deed, as the case may be.

17.12 No Agency or Partnership

Nothing contained or implied in this Lease Deed shall constitute or be deemed to constitute a partnership or agency between the Parties and neither of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

17.13 **Costs and Expenses**

- (c) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation and preparation of this Lease Deed.
- (d) Unless exempt under the Applicable Law or otherwise provided under this Lease Deed, the Lessee shall bear all applicable stamp duty, registration fee and any other statutory charges in respect of this Lease Deed, including execution of this Lease Deed.

17.14 **Reservation of Rights**

No forbearance, indulgence, relaxation or inaction by a Party at any time to require performance of any of the provisions of this Lease Deed shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to the Party upon any default or otherwise under this Lease Deed shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Party in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Party in respect of any other default.

17.15 **Third Parties**

This Lease Deed and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Lessor Related Parties, the Lessee Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

17.16 **Waiver of sovereign immunity**

The Lessor unconditionally and irrevocably:

- (d) agrees that the execution, delivery and performance by it of this Lease Deed constitutes commercial acts done and performed for commercial purpose;
- (e) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Lease Deed or any transaction contemplated by this Lease Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Lessor with respect to its assets; and
- (f) consents to the enforcement of any judgment or award against it in any such proceedings.

[Intentionally left blank.]

ANNEXURE

PARTICULARS OF THE DEMISED PREMISES

Memorandum of prior Leases, Mortgages and Encumbrances referred to as:

Nil

We, *[insert name of the Concessionaire]* a company organised, incorporated, registered and existing under the Companies Act 2015 of *[insert address of the registered office of the Concessionaire]* do hereby accept this lease.

Executed as a Deed.

Dated this _____ day of _____ 20_____

The Common Seal of *[insert name of the Concessionaire]* was hereunto affixed in our presence and we certify that we are the proper officers by whom and in whose presence the said Seal is to be affixed to documents executed by the said company.

.....
Director Director/Secretary

.....
Witness

The Signature of was made in my presence and I verily believe that such signature is of the proper handwriting of who at present holds the office of the Director of Lands of Fiji.

.....

.....
Director of Lands

Land Clerk

Certified correct for the purposes of Land Transfer Act 1971

.....
Solicitor for the Lessee or Lessee

No..... Registeredat.....m
.....at.....m

To

To.....

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.....

.....

No..... Registered

Registrar of Titles
Registrar of Titles

No..... Registeredat.....m
.....at.....m

To

To.....

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No..... Registered

Registrar of Titles
Registrar of Titles

No..... Registeredat.....m
.....at.....m

To

To.....

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No..... Registered

Registrar of Titles
Registrar of Titles

SCHEDULE - 17

ESCROW AGREEMENT

ESCROW AGREEMENT

[•] 2018

AMONG

THE GOVERNMENT OF THE REPUBLIC OF FIJI
(as the Government)

AND

[•]
(as the Concessionaire)

AND

[•]
(as the Escrow Bank)

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ESCROW AGREEMENT

This Escrow Agreement (**Agreement**) is executed on this [●] day of [●] 2018 at Suva, Fiji:

AMONG

- (3) **THE GOVERNMENT OF THE REPUBLIC OF FIJI**, represented by the Ministry of Economy with its principal office at Level 10, Ro Lalabalavu House, Victoria Parade, Suva, Fiji (hereinafter referred to as the **Government**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (4) [●] [*insert name of the Project SPV*], a company organised, incorporated, registered and existing under the Companies Act 2015, with its registered office at [●] (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (5) [●], a [bank] licensed under the Banking Act, 1995 with its registered office at [*insert address*] and a branch office at [*insert address, Suva*] (hereinafter referred to as the **Escrow Bank**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors, novatees, transferees and permitted assigns).

The Government, the Concessionaire and the Escrow Bank shall collectively be referred to as the **Parties** and individually as a **Party**.

RECITALS

- (H) The Concessionaire has entered into the concession agreement dated [●] with the Government (**Concession Agreement**), a copy of which is attached at Annexure 1.
- (I) Under the terms of the Concession Agreement, the Government is required to establish, fund and maintain an Escrow Account with the Escrow Bank in connection with the Project and execute an escrow agreement with the Escrow Bank and the Concessionaire to govern the operations of the Escrow Account for the duration of the Term.
- (J) At the request of the Government, [●] [*insert name of the Escrow Bank and branch*] has agreed to act as the Escrow Bank.
- D. The Concessionaire, the Government and the Escrow Bank have, pursuant to the aforesaid, agreed to enter into this Agreement in order to provide for, *inter alia*, detailed terms, conditions and operating procedures for the Escrow Account.

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

31 DEFINITIONS AND INTERPRETATION

1.3 Definitions

Unless otherwise defined in this Agreement, capitalised terms used in this Agreement shall have the meanings given to them in the Concession Agreement. The following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Concession Agreement has the meaning ascribed to it in Recital A.

Concessionaire Designated Account means [●].

Escrow Account means the interest-bearing bank account denominated in FJD opened or to be opened by the Government with the Escrow Bank at its [●] office/branch in accordance with the terms of this Agreement.

Escrow Term shall have the meaning given to it in Clause 4.1.

Indemnified Parties shall have the meaning given to it in Clause 4.7(a).

Indemnifying Party shall have the meaning given to it in Clause 4.7(a).

Invoiced Amount means, with respect to any O&M Charges Invoice, the amount set out in such O&M Charges Invoice as payable by the Government to the Concessionaire under the Concession Agreement.

Monthly Test Date means the first day of each month after the Effective Date and for the remainder of the Term.

New Escrow Account shall have the meaning given to it in Clause 4.2.

No Dues Certificate means the certificate issued by the Concessionaire confirming that all amounts payable to it by the Government under the terms of the Concession Agreement and the other Project Documents have been irrevocably and unconditionally paid in full and that there are no outstanding claims or demands in connection therewith.

Successor Escrow Bank shall mean the new escrow bank appointed by the Government in accordance with Clause 4.2 or 4.3.

1.4 Interpretation and Construction

In this Agreement, unless otherwise provided or the context otherwise requires:

- (s) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (t) The words importing the singular shall mean the plural and vice-versa; and words

importing the masculine shall include the feminine and neuter and vice-versa.

- (u) Headings in this Agreement are for convenience of reference only.
- (v) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (w) References to any date or time of day are to Fijian Standard Time (taking into account Fijian Daylight Saving Time, when applicable); any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (x) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (y) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the immediately next Business Day.
- (z) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on its behalf only by any authorised persons and shall be given on a Business Day.
- (aa) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (bb) The provisions of the Clauses of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses.

Provided that if there are any ambiguities, discrepancies or inconsistencies within this Agreement, the following shall apply:

- (v) between two Clauses of this Agreement, the provisions of the Clause more specific to the issue under consideration shall prevail over those in other Clauses; and
- (vi) if there is any ambiguity, discrepancy or inconsistency regarding the requirements of quality or any standard of performance between: (A) two or more Clauses; (B) the Applicable Laws, then, notwithstanding anything contained in this Agreement, the highest quality or standard must be applied.
- (cc) For the purpose of giving full and proper effect to this Agreement, this Agreement and the other Project Documents shall be read together and construed harmoniously. Provided however, the terms of this Agreement shall prevail in the event of any inconsistencies between this Agreement and any other Project Document.

- (dd) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Government, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (ee) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (ff) Except as otherwise expressly provided in this Agreement, a reference to the Escrow Account includes any sub-account and any replacement account of the Escrow Account.

2. THE ESCROW ACCOUNT

2.1 Appointment

The Government and the Concessionaire hereby appoint the Escrow Bank to act as the escrow agent for the purposes of, and in accordance with the terms of, this Agreement and the Escrow Bank hereby accepts such appointment.

2.2 Establishment and Maintenance of the Escrow Account

- (a) On or before the Effective Date, the Government shall open the Escrow Account with the Escrow Bank.
- (b) Immediately upon the establishment of the Escrow Account, the Escrow Bank shall notify the Concessionaire of the same, including providing all relevant details of the Escrow Account, including the date of opening of the Escrow Account, account name, account number and branch details of where the Escrow Account has been opened.
- (c) The Parties agree and acknowledge that:
 - (i) the Escrow Account shall be opened pursuant to, and specifically for the purposes of, this Agreement and shall be used and operated only for the purposes and in the manner provided in this Agreement and for no other use or purposes and in no other manner;
 - (ii) the Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations; and
 - (iii) no instruction shall be given to the Escrow Bank which is not contemplated by or which is contrary to or inconsistent with this Agreement. In the event any such inconsistent or contrary instruction is given, the same shall be null and void and the Escrow Bank shall not be obliged to act upon, and shall ignore, such instructions and continue to comply with the provisions of this Agreement.

2.3 Operating Procedures

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

2.4 Deposits into the Escrow Account

- (a) On or before the Effective Date, the Government shall deposit into the Escrow Account an amount equivalent to the Minimum Escrow Balance applicable on the Effective Date.
- (b) The Government shall ensure that on each Monthly Test Date, the amount lying to the credit of the Escrow Account is, equivalent to or more than the Minimum Escrow Balance then applicable.
- (c) To the extent that on a Monthly Test Date, the amount lying to the credit of the Escrow Account is less than the Minimum Escrow Balance then applicable, then, on such Monthly Test Date, the Government shall deposit into the Escrow Account such amounts as may be required to ensure that the amount lying to the credit of the Escrow Account is equal to or more than the Minimum Escrow Balance then applicable.
- (d) The Parties agree that a failure by the Government to maintain the Minimum Escrow Balance for 90 (ninety) consecutive Business Days shall be a Government Event of Default under the Concession Agreement.

2.5 Interest

The Escrow Account shall be an interest-bearing account and all interest earned on the amounts lying in the Escrow Account shall be considered as comprising part of the Minimum Escrow Balance.

2.6 Withdrawals from the Escrow Account

(g) Annuity Payments

- (a) The Concessionaire shall, for each Project Hospital, submit to the Escrow Bank a copy of the Completion Certificate within 2 (two) Business Days of the Government issuing the Completion Certificate for the relevant Project Hospital.
- (b) In case of deemed issuance of the Completion Certificate for any Project Hospital in accordance with the Concession Agreement, the Concessionaire shall, for the relevant Project Hospital, submit to the Escrow Bank a copy of the IM Completion Certificate within 2 (two) Business Days of the time period within which the Government was required to issue the Completion Certificate to the Concessionaire.
- (c) On and from the Lautoka Hospital CCD (as evidenced by submission of the Completion Certificate or the IM Completion Certificate by the Concessionaire, as the case may be), the Annuity Payments shall be paid by the Government to the Concessionaire on a quarterly basis. The Concessionaire shall, for each Project Hospital, submit the Annuity Payments Invoice (in the format set out in the Concession Agreement) to the Government (with a copy to the Independent Monitor and the Escrow Bank) for each quarter on or before the 2nd (second) Business Day of the beginning of such quarter, which shall set out the Annuity Payments due to the Concessionaire in such quarter, for the relevant Project Hospital. The Escrow Bank shall promptly, but no later than 5 (five) Business Days of the receipt of the

Annuity Payments Invoice, transfer from the Escrow Account to the Concessionaire Designated Account the full amount specified in the Annuity Payments Invoice.

Provided that it is clarified that the Escrow Bank shall not release any amounts from the Escrow Account to the Concessionaire Designated Account towards Annuity Payments (including any Ba Hospital Annuity Payments) prior to the Lautoka Hospital CCD (notwithstanding whether the Ba Hospital CCD has occurred). It is further clarified that if the Lautoka Hospital CCD has occurred but, for whatever reason, Ba Hospital CCD has not then occurred, then the Escrow Bank shall be required to transfer from the Escrow Account to the Concessionaire Designated Account only the amount towards the Lautoka Hospital Annuity Payments and no amount towards the Ba Hospital Annuity Payments will be transferred from the Escrow Account to the Concessionaire Designated Account until such time as the Ba Hospital CCD has been achieved.

(h) **O&M Charges**

(d) The Concessionaire shall, for each Project Hospital, submit to the Escrow Bank a copy of O&M Charges Invoice (in the specified format and along with the supporting documents, as set out in the Concession Agreement) on or before the 2nd (second) Business Day of the month immediately succeeding the Invoiced Month.

(e) Subject to Clause 2.6(c),

(i) The Escrow Bank shall promptly, but no later than 5 (five) Business Days of receipt of the O&M Charges Invoice from the Concessionaire, transfer from the Escrow Account to the Concessionaire Designated Account an amount equivalent to 80% (eighty per cent) of the Invoiced Amount.

(ii) Immediately upon receipt of a Payment Certificate or expiry of 10 (ten) Business Days from the receipt of the O&M Charges Invoice from the Concessionaire, whichever is earlier, the Escrow Bank shall transfer from the Escrow Account to the Concessionaire Designated Account an amount which is the lower of:

(i) 20% (twenty per cent) of the Invoiced Amount; and

(ii) the amount specified in the Payment Certificate,

In the event that the amount mentioned in the Payment Certificate is lower than the amount paid to the Concessionaire in accordance with Clause 2.6(b)(ii)(A), then the Government, without prejudice to its rights under the Concession Agreement, shall have the right to deduct, from the O&M Charges payable for the succeeding month an amount equivalent to the aggregate of:

- (iii) the difference in the amount paid in accordance with Clause 2.6(b)(ii)(A) and the amount mentioned in the Payment Certificate; and
- (iv) interest on the amount mentioned in sub-clause (i) calculated at the rate of 6% (six per cent) per annum.

Provided further that if the Government issues a Notice of Intent to Terminate under the Concession Agreement and a copy of such notice is given by the Government to the Escrow Bank, then, notwithstanding anything to the contrary contained hereinabove, no payments shall be made by the Escrow Bank to the Concessionaire from any funds lying in the Escrow Account until such time as the Government issues to the Escrow Bank a notice revoking the Notice of Intent to Terminate.

- (iii) All amounts paid by the Escrow Bank from funds lying in the Escrow Account to the Concessionaire under this Agreement shall be deemed to be amounts paid to the Concessionaire by the Government under the Concession Agreement and shall be without prejudice to the Government's right to claim such payment back from the Concessionaire or any other dispute between the Concessionaire and the Government with respect to such payment.

(i) **Deputed Staff Support Cost and other amounts due from the Concessionaire to the Government**

- (f) The Government shall, for each Project Hospital, submit to the Escrow Bank a copy of invoice with respect to Deputed Staff Support Cost and/or any other amounts due from the Concessionaire to the Government under the Concession Agreement.
- (g) If the Concessionaire, within 5 (five) Business Days of the receipt of the relevant invoice referred to in sub-clause (i):
 - (i) notifies the Escrow Bank accepting the amount mentioned in such invoice;
 - (ii) does not issue any notice to the Escrow Bank accepting the amount mentioned in such invoice; or
 - (iii) does not submit a copy of the Dispute Notice, issued by the Concessionaire to the Government in relation to the amount mentioned in such invoice,

then the Escrow Bank shall deduct the undisputed amount mentioned in such invoice from the next payment due which will be transferred from the Escrow Account to the Concessionaire Designated Account under Clause 2.6(b)(ii)(A) or 2.6(b)(ii)(B), as the case may be.

(j) **Transition Phase Construction Obligation Completion Payment**

- (i) Subject to Concessionaire achieving Transition Phase Completion Conditions applicable to Lautoka Hospital and submission of an invoice to the Government (with a copy to the Escrow Bank) setting out the amount of Transition Phase Construction Obligation Completion Payment due to the Concessionaire, in accordance with Concession Agreement, the Government shall pay to the Concessionaire Transition Phase Construction Obligation Completion Payment.
- (ii) The Escrow Bank shall release the amount of Transition Phase Construction Obligation Completion Payment within 5 (five) Business Days from the receipt of the invoice from the Concessionaire under sub-clause (i).

2.7 Notices upon transfers

The Escrow Bank shall promptly, but no later than 2 (two) Business Days, after the receipt or withdrawal of any funds from the Escrow Account, notify both the Concessionaire and the Government informing them of such receipt or withdrawal.

2.8 Segregation of funds

- (a) The Escrow Bank shall clearly identify in its records the Escrow Account as an escrow account and shall keep the funds standing to the credit of the Escrow Account separated and segregated from the Escrow Bank's own funds or funds of any of its other customers or third parties.
- (b) Monies received by the Escrow Bank under this Agreement shall be used or applied in accordance with this Agreement only.

2.9 Escrow Account Statements

The Escrow Bank shall provide monthly statements regarding the Escrow Account to the Government and the Concessionaire upon a reasonable request by either the Concessionaire or the Government.

2.10 Set-off

The Escrow Bank agrees to not claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall, in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or litigation. It is clarified that if any payments, are due and payable by the Concessionaire to the Government in accordance with the terms of the Concession Agreement, no such amounts shall be set-off from the Escrow Account and such amounts shall be paid or adjusted in accordance with the terms of the Concession Agreement.

3. RIGHTS, DUTIES AND OBLIGATIONS OF THE ESCROW BANK

3.1 The Escrow Bank:

- (a) undertakes to perform such duties as are set forth to be performed in this Agreement. In the absence of clear direction in this Agreement, the Escrow Bank shall take no action under this Agreement until it has received specific directions from the Concessionaire and the Government;
- (b) may, in the absence of bad faith, fraud, wilful default or gross negligence on its part, rely upon the authenticity of any communication or documents received by it from the Concessionaire, the Government or any other Person in connection with this Agreement and the transactions contemplated by it;
- (c) shall, except as otherwise provided in this Agreement, within 2 (two) Business Days after receipt of any notice or document received by the Escrow Bank hereunder or in connection herewith, deliver a copy of such notice or document to the Concessionaire and the Government; and
- (d) shall maintain all records of deposits and withdrawals from the Escrow Account for the duration of the Term.

3.2 The Parties acknowledge and agree that the duties of the Escrow Bank are only as herein specifically provided, and are purely administrative in nature. The Escrow Bank shall neither be liable for, nor chargeable with knowledge of, the terms and conditions of any other agreement, instrument or document in connection herewith, including, without limitation, the Concession Agreement, and shall be required to act in respect of the amounts in the Escrow Account only as provided in this Agreement. This Agreement sets out all the obligations of the Escrow Bank with respect to any and all matters pertinent to the Escrow Account contemplated hereunder and no additional obligations of the Escrow Bank shall be implied from the terms of any other agreement. The Escrow Bank shall incur no liability in connection with the discharge (in good faith) of its obligations under this Agreement or in connection therewith, except such liability as may arise from the Escrow Bank's gross negligence, wilful misconduct or otherwise from any breach of this Agreement.

3.3 The Escrow Bank shall not be required to perform any acts which will violate any Applicable Laws.

3.4 In the event of any bankruptcy proceedings or enforcement proceedings against any of the Parties pursuant to Applicable Laws, the Escrow Bank shall, notwithstanding the provisions of this Agreement, act and perform its obligations in accordance with Applicable Laws.

4. TERM, RESIGNATION AND REMOVAL OF THE ESCROW BANK

4.1 This Agreement shall remain in full force and effect until: (a) the expiry of the Term; or (b) issue of the No Dues Certificate by the Concessionaire to the Government, whichever is later (**Escrow Term**).

Upon the expiry of the Escrow Term, the Government shall be entitled to withdraw/transfer all funds lying to the credit of the Escrow Account at its sole discretion.

4.2 The Government may, by giving not less than 45 (forty-five) Business Days' prior notice to the Escrow Bank remove the Escrow Bank with cause and appoint a Successor Escrow Bank, provided that the Successor Escrow Bank is acceptable to the Concessionaire and arrangements are made satisfactory to the Concessionaire for the transfer of amounts deposited in the Escrow Account to a new Escrow Account (**New Escrow Account**) established with the Successor Escrow Bank. Provided that, until the Successor Escrow Bank is appointed, the Escrow Bank shall continue to perform its duties under this Agreement even if the 45 (forty-five) Business Days' notice period has expired.

4.3 The Escrow Bank shall be entitled to resign from acting as the Escrow Bank by giving prior written notice of 20 (twenty) Business Days' to each of the other Parties hereto. On receipt of notice of resignation, the Government shall appoint a Successor Escrow Bank acceptable to the Concessionaire and make such arrangements as are satisfactory to the Concessionaire for the transfer of amounts lying to the credit of the Escrow Account to the New Escrow Account.

4.4 Successor Escrow Bank

(a) A Successor Escrow Bank appointed as provided under this Clause 4 shall execute, acknowledge and deliver to the Government, the Concessionaire and to its predecessor Escrow Bank an instrument acceding to this Agreement as a Successor Escrow Bank, and thereupon the resignation or removal of the predecessor Escrow Bank shall become effective and such Successor Escrow Bank, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, as if it was originally named as the Escrow Bank.

(b) Any corporation into which the Escrow Bank may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Bank shall be a party, shall be the successor of the Escrow Bank.

(c) The resignation or termination of services of the Escrow Bank, as the case may be, shall be effective and the process of changeover shall be complete only upon the transfer of all amounts standing to the credit of the Escrow Account of the Government held with the Escrow Bank to the Successor Escrow Bank or the Government, as applicable.

4.5 Fees

The Government shall pay the Escrow Bank fees, incidental charges and actual out-of-pocket expenses as may be agreed between the Escrow Bank and the Government.

4.6 Notice of Breach

The Escrow Bank undertakes to the Concessionaire that it shall notify the Concessionaire and the Government of any breach by the Government of any of the provisions of this Agreement, as soon

as it is aware of the same.

4.7 Indemnity

- (a) Each Party (**Indemnifying Party**) hereby agrees to indemnify and hold harmless the other Parties (**Indemnified Parties**) from and against all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, legal fees), claims of any kind or nature whatsoever which may be imposed upon, incurred by or asserted against the Indemnified Parties in any way in connection with or arising out of the breach by such Indemnified Party of any provision of this Agreement or of any Applicable Law (including without limitation, enforcement of this Agreement) other than for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, legal fees), claims as are determined, by a court of competent jurisdiction, to have resulted from the Indemnified Party's fraud, willful misconduct or gross negligence. The indemnities set forth in this Agreement shall survive the termination of this Agreement and/or the resignation of the Escrow Bank.
- (b) Subject to the provisions of this Agreement, the Concessionaire shall be responsible to and shall indemnify the Government for the acts and omissions of the Concessionaire Related Parties as if they were the acts and omissions of the Concessionaire and the Government shall be responsible to and shall indemnify the Concessionaire for the acts and omissions of the Government Related Parties, as if they were the acts and omissions of the Government.

5. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) this Agreement constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms;
- (d) its entry into and/or performance under this Agreement will not be in breach of any express or implied terms of: (i) its articles of association or other constituting documents (where applicable); (ii) Applicable Laws; and (iii) any contract with or other obligation to any third party;
- (e) it is solvent and able to perform all of its obligations under this Agreement;
- (f) there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might adversely affect its ability to meet or perform any of its obligations under this Agreement; and
- (g) no Event of Default is continuing or might reasonably be expected to result from the entering of this Agreement.

6. FINANCING ARRANGEMENTS

The Concessionaire shall be entitled to create Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project over all of its rights, title and interests in this Agreement.

7. MISCELLANEOUS

7.1 Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement and the Concession Agreement constitute the entire understanding between the Parties with respect to its subject matter (i.e., escrow arrangement) and replaces and supersedes all previous written or oral representations, agreements, arrangements, undertakings and/or statements regarding such subject matter.

7.2 Notices

- (i) Any notice or request in reference to this Agreement shall be written in the English language and shall be sent by e-mail, registered post or courier and shall be directed to the other Parties at the address mentioned below:

Government:

Attention: The Office of Permanent Secretary for Ministry of Economy

Address: Level 10, Ro Lalabalavu House, 370 Victoria Parade, Suva, Fiji.

Tel: (679) 3307011

E-mail: pppinfo@govnet.gov.fj

Concessionaire:

Attention: [●]

Address: [●]

Tel: [●]

E-mail: [●]

Escrow Bank:

Attention: [●]

Address: [●]

Tel: [●]

E-mail: [●]

- (j) Subject to clause 7.2(c), a notice is received:
 - (i) in the case of delivery by hand, on delivery;
 - (ii) in the case of prepaid registered post, on the date of receipt of the registered post; and
 - (iii) in the case of e-mail, on delivery to the recipient's server provided no error message is received by the sender.
- (k) Any notice received on a day that is not a Business Day, or after 17.00 hours local time at the recipient's location on a Business Day, is deemed received at 09.00 hours local time at the recipient's location on the following Business Day.
- (l) Each Party may change the above address by prior written notice to the other Parties. Provided however, that if a Party fails to notify the other Party of such change in address, then any notice under this Agreement shall be sent at the earlier notified address.

7.3 Amendments

No variation of or amendment to this Agreement shall be effective unless made in writing and executed by all the Parties hereto.

7.4 Waivers and Consents

- (g) Unless otherwise specified, any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (h) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (i) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

7.5 Survival

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Escrow Term by efflux of time, shall survive the expiry of the Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Escrow Term or the termination of this Agreement and the obligations of Parties to be performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

7.6 Assignment

Other than as provided in Clause 6, neither this Agreement nor any of the rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Parties.

7.7 Severability

- (e) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.

- (f) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

7.8 Confidentiality

The Parties, their employees, representatives and agents shall keep the provisions of this Agreement strictly confidential and, except as may be required by the Applicable Laws, shall make no disclosure thereof to any Person, except the Parties' respective legal counsels and professional advisers, without the prior written consent of the other Parties.

7.9 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of the Republic of Fiji, and subject to the provisions contained in Clause 7.10, shall be subject to the exclusive jurisdiction of the courts in the Republic of Fiji.

7.10 Dispute Resolution

In the event of any dispute between the Parties, the same shall be settled in accordance with Clause 29 of the Concession Agreement.

7.11 Counterparts

This Agreement may be executed in any number of counterparts, and each executed counterpart has the same force and effect as an original instrument.

7.12 Language

- (e) The formal text of this Agreement shall be in the English language.
- (f) All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

7.13 Costs and Expenses

- (e) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- (f) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement.

7.14 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

- (g) agrees that the execution, delivery and performance by it of this Agreement constitutes commercial acts done and performed for commercial purpose;

- (h) 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 Government with respect to its assets; and
- (i) consents to the enforcement of any judgment or award against it in any such proceedings.

7.15 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and neither of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

[Signature page follows]

In witness whereof the Parties hereto have signed this Agreement on this _____day of _____2018.

For the **Government**

By.

Name:

Designation:

For the **Concessionaire**

By.

Name:

Designation:

For the **Escrow Bank**

By.

Name:

Designation:

ANNEXURE 1
CONCESSION AGREEMENT
[Note: To be annexed.]

SCHEDULE – 18 ESIA TOR

1. ESIA SCOPE OF WORK

1.1 The scope of work for the Lautoka Hospital ESIA (**ESIA Scope of Work**) will be to (i) undertake the environmental and social impact assessment in respect of Lautoka Hospital and prepare the Lautoka Hospital ESIA Report, and (ii) prepare the Lautoka Hospital ESMP. The Concessionaire in undertaking this ESIA Scope of Work shall:

- (a) consider in an integrated manner the potential environmental and social (**E&S**) risks, benefits and impacts of establishing the Lautoka Hospital;
- (b) identify specific mitigation measures and actions necessary to comply with Applicable Laws, E&S Standards, GIIP, and other requirements set out in this Agreement with the objective to reduce E&S risks and enhance E&S benefits; and
- (c) highlight the need for any further studies, plans and/or programs that will support positive E&S development outcomes.

Concessionaire can undertake the obligations set out in this Schedule on its own or through an appropriately qualified E&S contractor, which shall be appointed, at its own cost and expense.

The Lautoka Hospital ESIA and Lautoka Hospital ESMP will assure Stakeholders²³ that all E&S risks and impacts are identified, that alternatives to avoid E&S impacts have been considered and that measures to minimise, mitigate and/or compensate adverse impacts, and/or enhance positive impacts have been designed and their implementation will be undertaken and monitored.

Prior to finalising the Lautoka Hospital ESIA and Lautoka Hospital ESMP, the Concessionaire shall undertake public consultation on the draft version of the Lautoka Hospital ESIA Report and the Lautoka Hospital ESMP. The Lautoka Hospital ESIA Report and the Lautoka Hospital ESMP shall be prepared in English, Fijian, Fiji Hindi and any other widely spoken language(s) and shall be disclosed in the Republic of Fiji after approval of the same by the Independent Monitor, in accordance with the Applicable Laws and IFC Performance Standards on Environmental and Social Sustainability.

Concessionaire shall undertake the Lautoka Hospital ESIA and Lautoka Hospital ESMP in accordance with Applicable Laws, E&S Standards and GIIP, and obtain and maintain relevant environmental related Applicable Permits, (including environment impact assessment (EIA) permits).

The following ESIA Scope of Work should be considered essential but non-exhaustive. It is up to the Concessionaire or its E&S contractor to use professional judgement in accordance with Applicable Laws, E&S Standards and GIIP, and through that, proactively identify necessary areas of engagement, ensuring that analytical output is complete.

²³

Stakeholders are persons or groups who are directly or indirectly affected by a project, as well as those who may have interests in a project and/or the ability to influence its outcome, either positively or negatively. Stakeholders may include locally affected communities or individuals and their formal and informal representatives, national or local government authorities, politicians, religious leaders, civil society organizations and groups with special interests, the academic community, or other businesses.

1.2 **Lautoka Hospital ESIA Report and Lautoka Hospital ESMP**

The Concessionaire is expected to consider the following outline, and related list of activities in the development of the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP.

Acronyms and Abbreviations

This section must be clearly and succinctly defining all acronyms and abbreviations used in the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP.

ESIA Standalone Non-Technical Summary (NTS)

The NTS will be written in non-technical language and used to demonstrate compliance with the Applicable Laws and permitting procedure, E&S Standards and other relevant requirements, and provide confirmation that the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP are ready for public disclosure. The NTS will describe and summarise the content of the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP.

Executive Summary

This executive summary shall explain the rationale behind the structure of the Lautoka Hospital ESIA Report and how to navigate between its sections and its appendixes (not to summarise in this section the content of the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP which will be done in the *ESIA Standalone Non-Technical Summary*).

Project Description and Context

This section of the Lautoka Hospital ESIA Report shall include objectives of the proposed Lautoka Hospital, overall description (i.e. components, funding sources, etc.) of the Lautoka Hospital, specific descriptions (i.e., proposed investments, clear description of the Lautoka Hospital components and associated facilities, etc.) and a summary of work carried out till date.

Legal and Regulatory Framework

This section of the Lautoka Hospital ESIA Report shall define the legal framework under which the Lautoka Hospital ESIA Report is being completed, including Applicable Laws, E&S Standards, norms and requirements set forth at the international, national, regional and/or local levels. The environmental and social impact assessment process undertaken in respect of Lautoka Hospital ESIA for obtaining the environmental related Applicable Permits shall be clearly described in this section.

Analysis of alternatives

The Lautoka Hospital ESIA Report shall compare feasible alternatives to the proposed Lautoka Hospital Site, technology, design and operation (including the “without Lautoka Hospital” situation) in terms of their potential E&S impacts, the feasibility of their mitigation measures, their capital and recurrent costs, their suitability under local conditions and their institutional and monitoring requirements. Further, the Lautoka Hospital ESIA Report shall state the basis for selecting and proposing the particular design and justifies the recommended emission levels and approaches to pollution prevention and abatement and environmental risk minimization.

Project Area of Influence

Describe and justify the project area of influence (**PAoI**) as defined in the E&S Standards. The PAoI shall be presented through graphical/areal map, using geographic information system (**GIS**) tools or similar and accredited sources.

Stakeholder Engagement

Stakeholder engagement is an ongoing process whose nature, frequency, and level of effort may vary during the different Project phases and shall be scaled to the Project risks and tailored to the needs of those affected by the activities of the Lautoka Hospital.

During the Lautoka Hospital ESIA and while preparing the Lautoka Hospital ESIA Report, the Concessionaire shall undertake comprehensive Stakeholder engagement in accordance with the Applicable Laws and E&S Standards.

The result of the Stakeholder identification, analysis, and public consultation activities prior to the finalisation of the Lautoka Hospital ESIA should be reflected in a dedicated chapter of the Lautoka Hospital ESIA Report. All the comments and concerns collected during the public consultation and disclosure of the draft Lautoka Hospital ESIA Report shall be then considered and reflected by the Concessionaire in the final Lautoka Hospital ESIA Report.

The Stakeholder engagement activities will primarily (but not exclusively) be dedicated to Affected Communities²⁴ to: (i) gather baseline information and negotiate mitigation, compensation and benefits (where applicable); (ii) keep Affected Communities informed about the development of the Lautoka Hospital; and (iii) respond to issues as they arise.

Key elements of Stakeholder engagement during Lautoka Hospital ESIA Report and Lautoka Hospital ESMP preparation and Lautoka Hospital development shall include:

- (i) systematic identification of Stakeholders and their interests;
- (ii) review of regulatory requirements for Stakeholder engagement in respect of Lautoka Hospital;
- (iii) seeking feedback from Stakeholders on how they wish to be consulted;
- (iv) provision of information ahead of public consultations on E&S impacts;
- (v) using consultation to enhance mitigations and agree on compensation and benefits, if applicable;
- (vi) maintaining involvement in public consultation led by the Government of the Republic of Fiji;
- (vii) reporting changes in the project design and activities to Stakeholders on a regular basis;
- (viii) documenting the process and results of public consultation; and
- (ix) integrating stakeholder information across the project planning functions.

Methodology

The Concessionaire shall include a section in the Lautoka Hospital ESIA Report dedicated to the methodology for the baseline data collection and on the impact assessment.

For the **baseline methodology**, the Concessionaire is expected to critically review secondary data before using them for this assignment and supplement them with primary data as needed.

- (i) *Secondary data* shall be used where relevant (e.g. trustworthy statistical records, census records, reports of Government of the Republic of Fiji, publications of non-governmental organisations, academic studies and articles, topographic maps, aerial photos, satellite

²⁴

Affected Communities means local communities located in the Lautoka Hospital's geographical proximity, who are subject to actual or potential direct risks and/or adverse impacts related to the construction or O&M of the Lautoka Hospital.

imagery, international databases, E&S studies carried out in respect of Lautoka Hospital, GIS data, etc.).

- (ii) *Primary data* necessary to meet the requirements of this assignment shall be collected by specialists applying industry-recognized survey and analysis methods to fill the gaps in the secondary data and provide an updated overview of the PAoI. All primary data collection activities shall be designed and undertaken using appropriate and statistically rigorous approach. Field sampling shall take account of seasonal factors, as relevant.

For the **impact methodology**, the Concessionaire is expected to indicate:

- (i) impact characterization (negative, positive, mixed);
- (ii) impact nature and duration (direct, secondary, indirect, cumulative, short-term, long term, permanent, reversible);
- (iii) impact significance/magnitude (negligible, minor, moderate, major);
- (iv) impacts likelihood (unlikely, possible, likely);
- (v) special scale (national, regional, local);
- (vi) measures to mitigate (adverse) or enhance (positive) impacts; and
- (vii) significance/magnitude of residual impacts (negligible, minor, moderate, major).

Impact assessment shall also consider the views and concerns of the Affected Communities and other Stakeholders (where relevant).

The mitigation hierarchy, avoidance, minimization, mitigation and the last resource compensation, indicating clearly the impact before mitigation and the residual impact after mitigation, shall be followed.

The Concessionaire is expected to use its impact methodology, if already developed, and if aligned with the above requirements. For the social impact also receptor sensitivity/vulnerability (negligible, low, medium, high) should be included in the Lautoka Hospital ESIA Report.

E&S Baseline

In the baseline section of the Lautoka Hospital ESIA Report, the E&S conditions shall be described for the PAoI, including any associated facility as defined in the E&S Standards, when relevant. The collection of data shall cover the range of physical, biological/ecological, socioeconomic and cultural heritage aspects that are likely to be affected (directly or indirectly) during the pre-construction of the Lautoka Hospital, Lautoka Hospital Construction Period, and Lautoka Hospital O&M Period. The Concessionaire is expected to collect and analyse all the baseline information needed to assess the potential impact of the Lautoka Hospital and then to be used as benchmark for future monitoring purposes.

The Concessionaire is expected to present in the baseline section of the Lautoka Hospital ESIA Report the existing E&S situation and related context in an objective manner and with clear reference to the primary and/or validated secondary data that substantiate the description.

The baseline survey undertaken in relation to Lautoka Hospital ESIA Report shall bridge all the gaps identified in the secondary data. Any required data shall be relevant to decisions about design, construction, operation, or mitigation measures in respect of Lautoka Hospital. The proposed list of items/aspects to be addressed in the baseline section of the Lautoka Hospital ESIA Report is not to be considered exhaustive and the Concessionaire or its E&S contractor is expected to use its professional judgment to complete this list in accordance with the Applicable Laws, permitting procedure requirements, and E&S Standards.

The Concessionaire is expected to take into consideration also the proximity of the Lautoka Hospital with the existing Lautoka hospital. Any information and data relevant to understand the relation and level of influence between the existing Lautoka hospital and the Lautoka Hospital, and/or to be used as benchmark for monitoring purposes, for environmental and social aspects including EHS, should be collected.

Environmental aspects

Available data on terrestrial environment shall be collected from bibliography and satellite images, and completed by field surveys. Laboratory analysis conducted by an accredited laboratory.

The Concessionaire shall take into account the following parameters while preparing the Lautoka Hospital ESIA Report:

- (i) Meteorology: meteorological data recorded by the closest meteorological stations (air temperature and humidity, rainfall, winds including seasonal and annual wind roses, stability classes statistics, visibility, Lautoka Hospital Site specific parameters, natural hazards such as flooding, wildfire, and cyclone).
- (ii) Air quality: air quality data at the Lautoka Hospital Site, if existing, and/or air quality monitoring networks and values (including, but not limited to, particulate matter, nitrogen oxides, and sulphur oxides); individuation and description of the most probable receptors. If representative data are not available, the Concessionaire or its E&S contractor will conduct ambient air quality measurements at the closest receptors to characterize baseline conditions for dust, nitrogen oxides, and sulphur oxides.
- (iii) Geology, soil and contaminated land: (A) geologic and geomorphologic characterization (including the identification of the main land features, such as slope, landslides, slope instability and surface expression of faults); (B) soil characterization (describing types and quality); (C) geotechnical characterization (including geotechnical observations on the field); (D) geohazards (including landslides, seismic risk and site-specific hazards); (E) given the current land has the existing Lautoka hospital, the likelihood of land contamination should be assessed and excluded or mitigated as per land contamination assessment and remediation plan.
- (iv) Water resources: (i) surface water: hydrographic, hydrologic and hydro chemical characterization of the main surface water bodies relevant for the Lautoka Hospital; characterization of the aquatic ecosystem situated in the PAoI; (ii) groundwater: hydrogeological characterization of groundwater and its usage in the PAoI, including proximity/overlap with recharge areas, vulnerability, well locations and depths (the latter when relevant for the Lautoka Hospital). This baseline data should be used also for the monitoring of water quality parameters, and design of related mitigation measures.

- (v) Flora and fauna: indication should be provided on the presence, and distance from the Lautoka Hospital Site, of protected areas and reserves, individuation of potential criticalities related to anthropic pressure. This baseline data should be used also for the monitoring of vegetation parameters, and design of related mitigation measures.
- (vi) Noise and vibration: characterization of existing source of noise and vibration in the PAoI and presence of other sensitive receptors in addition to the Lautoka Hospital itself.
- (vii) Waste: waste and storm water management, city sewerage treatment system where linked with the needs of Lautoka Hospital activities, monitoring protocol and results, and permit.

Social aspects

The Concessionaire shall conduct a field survey in the PAoI to characterize the socio-economic aspects and identify and characterize all potentially Affected Communities.

The Concessionaire shall also consider the following during the preparation of the Lautoka Hospital ESIA Report:

- (i) political organization at country and local level, relevant for the Lautoka Hospital;
- (ii) settlements, population and demographic characteristics, culture, religion, poverty indicators, education and employment profile, with attention to the Affected Communities, interested communities and settlements;
- (iii) economy in the Republic of Fiji and expertise relevant for the Lautoka Hospital, and production activities including details on raw material needed for the Lautoka Hospital, feasibility of supply in the existing market place;
- (iv) employees transfer from the Government to the Concessionaire, and employees' availability in the country, including number of new employees needed during construction and operation activities (technical and non-technical);
- (v) tourism influx and seasonality in the Lautoka Hospital Site;
- (vi) infrastructures and services (water, sewage and waste management, electricity, roads and communications, other health dedicated structures, accommodation for workers if required);
- (vii) civil society (including the non-governmental organisations), workers organization etc., relevant for the Lautoka Hospital;
- (viii) land ownership, type and use, related to the Lautoka Hospital Site;
- (ix) existing traffic patterns in the PAoI; and
- (x) status of settlement and housing relevant for accommodating workers during Lautoka Hospital Construction Period, and during Lautoka Hospital O&M Period.

E&S impact assessment

The impact section in the Lautoka Hospital ESIA Report shall identify and address impacts (positive and adverse) for all the components and activities (including any associated facility) in respect of the Lautoka Hospital during the (i) pre-construction of the Lautoka Hospital, (ii) Lautoka Hospital Construction Period (including for timing of construction activities and related risks to be accounted in the impact section), (iii) and Lautoka Hospital O&M Period.

The proposed list of items/aspects to be addressed in the impact section of the Lautoka Hospital ESIA Report is not to be considered exhaustive and the Concessionaire or its E&S contractor is expected to use its professional judgment to complete this list in accordance with the Applicable Laws, permitting procedure requirements and the E&S Standards.

The Concessionaire shall also take into consideration the proximity of the Lautoka Hospital with the existing Lautoka hospital. Any relation and level of influence between the existing Lautoka hospital and the Lautoka Hospital for environmental, social and health and safety aspects, shall be highlighted in the Lautoka Hospital ESIA Report, and related mitigation measures, including monitoring aspects designed and described in the Lautoka Hospital ESIA Report and Lautoka Hospital ESMP.

Potential environmental impacts

The Concessionaire shall also consider the following during the preparation of the Lautoka Hospital ESIA Report:

- (i) hazardous and non-hazardous material and waste during Lautoka Hospital Construction Period and Lautoka Hospital O&M Period, linked waste generation and waste disposal, toxic and hazardous medical waste storage and disposal, including waste transfer, re-processing, treatment and/or disposal technologies to be employed and risk related to exposure to radiations;
- (ii) waste water discharge;
- (iii) impact on flora and fauna;
- (iv) soil and groundwater: construction equipment and materials have the potential to affect soil and groundwater through spills of hazardous material such as oils, fuel or other materials. The vulnerability of groundwater should be considered. During operation, soils may become contaminated from spills of hazardous material, poor management of disposal of the hazardous waste generated etc.;
- (v) erosion and potential landslide: site clearance and digging of the necessary trenches and pits (e.g. foundation) loosen the soil and make susceptible to erosion and landslide;
- (vi) water resources and energy: impacts related to water consumption/supplying, waste water discharges, energy consumption and the need to ensure resource efficiency;
- (vii) natural drainage, rainwater catchment;
- (viii) air quality/ pollution: impact due to dust and gases emission during Lautoka Hospital Construction Period and incineration of waste during the Lautoka Hospital O&M Period;

- (ix) noise and vibrations: impact resulting from construction equipment, workers and traffic on the existing Lautoka hospital and other sensitive receptors, in the PAoI (if any). Compliance with noise criteria in accordance with Applicable Laws and the E&S Standards, at daytime and night-time, at the boundaries of the Lautoka Hospital Site and identified human and environmental receptors, with attention to sensitive receptors;
- (x) increase in traffic pattern (including the social aspects) and risks related to road dust and exhaust emissions especially through the Lautoka Hospital Site and an increase of noise and air emission from road traffic during Lautoka Hospital Construction Period and the Lautoka Hospital O&M Period;
- (xi) natural hazards and climate change, including indirect consequences; and
- (xii) availability, quality and sustainability of natural resources and raw materials. Indicate if there is any risk of extraction of raw materials or production of finished materials that will be attributable directly to the Lautoka Hospital Site.

Potential social impacts

The Concessionaire shall also consider the following during the preparation of the Lautoka Hospital ESIA Report:

- (i) workers influx during Lautoka Hospital Construction Period: (i) local versus migrant workers and their potential condition, flag any issue related to forced labour or child labour and human rights, if applicable, and any issue related to workers pressure on existing infrastructure and risks for the community; (ii) workers accommodation during construction and if applicable during operation;
- (ii) employees transfer, and impact on labour request resulting for construction and operation;
- (iii) social diversity and gender dimension;
- (iv) community cohesion;
- (v) tourism path: disturbance of tourism path during Lautoka Hospital Construction Period;
- (vi) traffic: there will be an increase in traffic associated with material and equipment haulage during Lautoka Hospital Construction Period, and increase in the capacity of the Lautoka Hospital during the Lautoka Hospital O&M Period, identify any impact on the existing traffic patterns;
- (vii) identify any impact of the Lautoka Hospital on public utilities, services, and existing infrastructure used by the community, including temporary disruption of healthcare at existing Lautoka hospital, services near the construction area of the Lautoka Hospital; this will include temporary visual blight at the Lautoka Hospital Site construction;
- (viii) OHS: during Lautoka Hospital Construction Period and Lautoka Hospital O&M Period; and

- (ix) community health and safety (**CHS**): (i) construction: activities may result in a significant increase in number of heavy vehicles during transport of construction materials and equipment, increasing community risk of traffic-related accidents or injuries within and outside the Lautoka Hospital Site; increase in dust and noise during construction activities (including earthworks and construction of buildings); (ii) operation: risk of fire outbreak at the facility from ignitable materials in laboratories, or improperly installed materials. Health care waste may pose a risk of infectious diseases (such as hepatitis, etc.) from biological waste.

Lautoka Hospital ESMP

The primary objective of an Lautoka Hospital ESMP is to safeguard the environment and staff at the Lautoka Hospital Site and the local population from any Construction Works and/or Operations and Maintenance of Lautoka Hospital which may cause harm or nuisance. The Lautoka Hospital ESMP shall provide a framework to ensure transparent and effective monitoring, prevention, minimization, mitigation, and enhancement measures to address the E&S impacts associated with the Lautoka Hospital. The Concessionaire will indicate in the Lautoka Hospital ESMP the various mitigation measures as identified through the Lautoka Hospital ESIA process during pre-construction, Lautoka Hospital Construction Period and Lautoka Hospital O&M Period and for each mitigation: the relevant standards; the monitoring measures and indicators; responsibilities and timeline for implementation; implementation procedures or specific plan needed; and indicative budget. The monitoring and reporting requirements shall include a “management of change” capacity to the Lautoka Hospital ESMP reflecting that it is intended to be a living document subject to regular review and update as the Lautoka Hospital evolves.

The Concessionaire will also outline the organizational arrangement to be put in place by the Concessionaire for the implementation of the Lautoka Hospital ESMP and related procedures and plans. The Lautoka Hospital ESMP will also include the overall budget estimate for the execution of the Lautoka Hospital ESMP.

For each plan and procedure needed, the Concessionaire shall provide in the Lautoka Hospital ESMP a detailed outline including a description of the level of content sufficient to allow the plans and procedures to be developed and implemented, thus to ensure the effectiveness of the mitigation measures identified in the Lautoka Hospital ESIA process and its compliance with the requirements of the Applicable Laws and the E&S Standards.

The following plans and procedures list is not exhaustive and shall be updated by the Concessionaire, considering the Lautoka Hospital ESIA findings, and the factor listed also in the impact section:

For Lautoka Hospital Construction Period and Lautoka Hospital O&M Period:

- (i) air quality control and monitoring: standardized practice shall be applied to manage, and monitor the functioning of, as a minimum, the ventilation system and incinerators;
- (ii) pollution prevention with the Lautoka Hospital Site specific pollution control;
- (iii) hazardous material management: to define standard operating procedures on the use, storage and disposal of hazardous materials;
- (iv) emergency, preparedness and response;

- (v) human resources management;
- (vi) CHS management and OHS management: to prevent and, where not possible, minimize and mitigate risks and impacts through standard operating procedures and good construction management practices in respect of noise, waste, transport safety, worker's OHS practices, and CHS;
- (vii) subcontractor management and monitoring;
- (viii) waste management: defining the overall waste management system and a set of procedures tailored to the scale and type of activities and identified hazards. For infectious and hazardous medical waste, this shall include minimization of waste generated, an adequate segregation at point of generation, safe handling, collection, temporary storage, marking, decontamination, transport, treatment and disposal procedures; this shall be, accompanied by systematic record keeping of waste quantity, type and final disposal/treatment;
- (ix) resource efficiency including water consumption and water quality; and
- (x) traffic management.

For Lautoka Hospital Construction Period only:

- (i) surface runoff and drainage and erosion control;
- (ii) noise and vibration control and monitoring;
- (iii) construction camp management or workers accommodation management; and
- (iv) archaeological chance find management plan (if applicable).

For Lautoka Hospital O&M Period only:

- (i) radiation exposure control;
- (ii) radioactive substance management;
- (iii) exposure control plan for blood-borne pathogens;
- (iv) life and fire safety management: including staff training, fire drills etc.; and
- (v) waste water management: standardized procedures shall be applied to ensure wastewater discharged into the municipal sewage systems meets the discharge limits in accordance with the Applicable Permits.

2. TEAM-KEY EXPERTS NEEDED FOR UNDERTAKING THE ESIA SCOPE OF WORK

A suggested composition of the team undertaking this ESIA Scope of Work is as follows (key team members, to be complemented as appropriate):

- (i) **Team Leader:** shall have at minimum a Master of Science degree in environmental engineering or other relevant disciplines with experience in managing environment and social impact assessments and E&S due diligence, environmental management of health sector including its construction and operation activities. Experience with social impact assessments is an advantage. The Team Leader should have at least 15 (fifteen) years of experience in managing complex projects of multi-disciplinary nature and involving several stakeholders with a track record of application of E&S Standards. Excellent communication skills and knowledge of the English language is essential.
- (ii) **Senior Environmental Specialist:** shall have at least 10 (ten) years of experience in conducting environmental impact studies and E&S due diligence assessments for health sector projects. Knowledge and experience with E&S Standards and other relevant requirements. Excellent communication skills and knowledge of the English language is essential.
- (iii) **Senior Social Sciences Specialist:** shall have at least 8 (eight) years of experience in conducting social impact studies for health sector projects. Knowledge and experience with E&S Standards. Excellent communication skills and knowledge of the English language is essential.

SCHEDULE – 19

INDEPENDENT MONITOR TERMS OF REFERENCE

(enclosed separately as part of the Independent Monitor Agreement - Schedule 2)

SCHEDULE – 20

SUBSTITUTION AGREEMENT

SUBSTITUTION AGREEMENT

[•] 2018

AMONG

THE GOVERNMENT OF THE REPUBLIC OF FIJI
(as the Government)

AND

[•]
(as the Concessionaire)

AND

[•]
(as the Lenders' Agent)

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SUBSTITUTION AGREEMENT

This Substitution Agreement (**Agreement**) is executed on this [●] day of [●] 2018 at Suva, Fiji:

AMONG

- (6) **THE GOVERNMENT OF THE REPUBLIC OF FIJI**, represented by the Ministry of Economy with its principal office at Level 10, Ro Lalabalavu House, Victoria Parade, Suva, Fiji (hereinafter referred to as the **Government**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (7) [●] [*insert name of the Project SPV*], a company organised, incorporated, registered and existing under the Companies Act 2015, with its registered office at [●] (hereinafter referred to as the **Concessionaire**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors and permitted assigns);

AND

- (8) [●], a [●] registered under the [●] [*insert relevant Fijian law*] with its registered office at [*insert address*] and a branch office at [*insert address*] in its capacity as an agent for the Senior Lenders under the Financing Documents (hereinafter referred to as the **Lenders' Agent**, which expression shall, unless it be repugnant to the context or meaning thereof, include its successors, novatees, transferees and permitted assigns) acting for itself and for and on behalf of the Senior Lenders listed in Annexure 1.

The Government, the Concessionaire and the Lenders' Agent shall collectively be referred to as the **Parties** and individually as a **Party**.

RECITALS

- (K) The Concessionaire has entered into the concession agreement dated [●] with the Government (**Concession Agreement**).
- (L) The Senior Lenders have agreed to finance the Project in accordance with the terms and conditions of the Financing Documents.
- (M) Under the terms of the Concession Agreement, the Government, the Concessionaire and the Senior Lenders are required to enter into this Agreement for securing the interests of the Senior Lenders through substitution of the Concessionaire to a nominee.
- (N) The Lenders' Agent is entering into this Agreement as an agent of the Senior Lenders.
- (O) The Parties have agreed to execute this Agreement on the terms and conditions mentioned herein below.

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

32 DEFINITIONS AND INTERPRETATION

1.5 Definitions

Unless otherwise defined in this Agreement, capitalised terms used in this Agreement shall have the meanings given to them in the Concession Agreement. The following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Concession Agreement has the meaning ascribed to it in Recital A.

Financial Default means a Concessionaire event of default as set out under the Financing Documents.

Indemnified Party has the meaning ascribed to it in Clause 6.2.

Indemnifying Party has the meaning ascribed to it in Clause 6.2.

Lenders' Dues means the aggregate of all monies owed by the Concessionaire to the Senior Lenders under the Financing Documents on account of principal thereunder for funding the whole or any part of the cost to be incurred for implementing the Project and all accrued interest, additional interest, liquidated damages, commitment fees, commission, prepayment premium, costs, charges and other monies including financing charges and fees owed by the Concessionaire to the Senior Lenders under the Financing Documents for the Project that are payable up to the date of the Notice of Intent to Terminate or notice of termination issued under the Concession Agreement, or up to the date of issuance of the Notice of Financial Default under the Financial Documents, as the case may be.

Notice of Financial Default has the meaning ascribed to it in Clause 3.2(a).

Proposal has the meaning ascribed to it in Clause 4.1(b).

Selectee means a new company proposed by the Senior Lenders pursuant to this Agreement for performing the rights and obligations of the Concessionaire for the remaining Term of the Concession Agreement.

Substitution Notice under Concession Agreement has the meaning ascribed to it in Clause 3.3(c).

Substitution Notice under Financing Documents has the meaning ascribed to it in Clause 3.2(b).

1.6 Interpretation and Construction

In this Agreement, unless otherwise provided or the context otherwise requires:

- (gg) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (hh) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (ii) Headings in this Agreement are for convenience of reference only.
- (jj) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (kk) References to any date or time of day are to Fijian Standard Time (taking into account Fijian Daylight Saving Time, when applicable); any reference to day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (ll) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (mm) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the immediately next Business Day.
- (nn) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on its behalf only by any authorised persons and shall be given on a Business Day.
- (oo) The words written and in writing include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (pp) The provisions of the Clauses of this Agreement shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses.

Provided that if there are any ambiguities, discrepancies or inconsistencies within this Agreement, the following shall apply:

- (vii) between two Clauses of this Agreement, the provisions of the Clause more specific to the issue under consideration shall prevail over those in other Clauses; and

- (viii) if there is any ambiguity, discrepancy or inconsistency regarding the requirements of quality or any standard of performance between: (A) two or more Clauses; (B) the Applicable Laws, then, notwithstanding anything contained in this Agreement, the highest quality or standard must be applied.
- (qq) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Government, nor the failure to do so, shall, unless expressly stated in this Agreement, relieve the Concessionaire of any of its obligations under this Agreement or of any duty which it may have under this Agreement to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (rr) The rule of construction, if any, that an agreement should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Agreement.
- (ss) Harmonious construction:
 - (i) For the purpose of giving full and proper effect to this Agreement, the Concession Agreement and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any inconsistencies with the Concession Agreement.
 - (ii) The consultation, recommendation or approval of the Lenders' Agent under this Agreement shall always be taken as consultation, recommendation or approval of every concerned Senior Lender and each such Senior Lender shall be bound by the same and hereby waives its right to question or dispute it.
 - (iii) This Agreement shall be in addition to and shall not be in derogation of the terms of the Financing Documents.
 - (iv) It shall not be necessary for the Senior Lenders or the Lenders' Agent to enforce or exhaust any other remedy available to them under the Financing Documents before invoking the provisions of this Agreement.

2. ASSIGNMENT

- 2.1 The Concessionaire agrees to assign by way of Security in favour of the Senior Lenders, all its rights, title and interests under the Concession Agreement and the other Project Documents (to which the Government is a Party) entered into by it in connection with the Project.
- 2.2 The Government hereby consents to the assignment by way of Security by the Concessionaire of all its rights, title and interests under the Concession Agreement and the other Project Documents (to which the Government is a Party) entered into by it in connection with the Project in favour of the Senior Lenders.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Right of Substitution

- (a) The Government hereby agrees to substitute the Concessionaire with a Selectee, selected by the Senior Lenders in accordance with the provisions of this Agreement and as approved by the Government.
- (b) The Senior Lenders shall, at their sole discretion, exercise one of the two modes below for substituting the Concessionaire in accordance with the provisions set out in this Agreement and Applicable Laws:
 - (i) Novation: In this case, the Concession Agreement and the other Project Documents (to which the Government is a party) entered into by it in connection with the Project will be novated in favour of the Selectee, and the Selectee will become a party to the Concession Agreement and the other Project Documents (to which the Government is a party) as the Concessionaire; or
 - (ii) Share sale: In this case, the Selectee will acquire the entire Capital of the Concessionaire, and upon such transfer, the 'Concessionaire' will be deemed to be the Selectee under and in accordance with this Agreement.
- (c) Subject to compliance of the Selectee with the Applicable Laws, the Government further agrees to provide all necessary consents which are required under the Project Documents and assist in giving full effect to such substitution of the Concessionaire with a Selectee.
- (d) It is clarified that nothing contained herein shall entitle the Senior Lenders to: (i) design, finance, procure, construct, improve, upgrade, equip and fit out the Project Hospitals; or (ii) Operate and Maintain the Project Hospitals themselves under and in accordance with the Concession Agreement.

3.2 Procedure in case of a Financial Default

- (a) Upon occurrence of a Financial Default, the Lenders' Agent shall notify the Concessionaire by a notice, with a copy simultaneously sent to the Government, about the occurrence of a Financial Default and the amount of the Lenders' Dues (**Notice of Financial Default**).

The Notice of Financial Default shall be conclusive evidence of the occurrence of the Financial Default and the Lenders' Dues, and shall be final, conclusive and binding upon the Concessionaire for the purpose of this Agreement and the Financing Documents.

The Parties agree that the Government shall have the right to trigger a Concessionaire Event of Default and issue a Notice of Intent to Terminate under the Concession Agreement upon receipt of a Notice of Financial Default.

- (b) The Lenders' Agent (on behalf of the Senior Lenders) may, within 20 (twenty) Business Days after the issuance of the Notice of Financial Default under Clause 3.2(a) or such longer period as may be mutually agreed between the Government and the Lenders' Agent, make a representation to the Government, stating the intention to substitute the Concessionaire with a Selectee (**Substitution Notice under Financing Documents**).

In the event that the Lenders' Agent issues the Substitution Notice under the Financing Documents, then, within 120 (one hundred and twenty) Business Days of issue of such notice, the Senior Lenders shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee, in accordance with the provisions of this Agreement. The Senior Lenders' right to substitute the Concessionaire shall be without prejudice to any other right or remedy available to the Senior Lenders under the Financing Documents and/or this Agreement.

- (c) If the Lenders' Agent does not convey the intention to substitute the Concessionaire with a Selectee (by issuing a Substitution Notice under Financing Documents) within 20 (twenty) Business Days of the Notice of Financial Default or such longer period as may be mutually agreed between the Government and the Lenders' Agent, or the Senior Lenders fail to substitute the Concessionaire after issuing a Substitution Notice under the Financing Documents within the time period set out in Clause 3.2(b), the Government shall be entitled to terminate the Concession Agreement in accordance with its provisions.

3.3 Procedure in case of a Concessionaire Event of Default

- (a) Upon occurrence of a Concessionaire Event of Default, the Government shall issue a Notice of Intent to Terminate to the Concessionaire, with a copy to the Lenders' Agent.
- (b) If within 60 (sixty) Business Days from the date of the Notice of Intent to Terminate, the Concessionaire does not rectify or remedy the Concessionaire Event of Default, to the satisfaction of the Government, or the Government is not satisfied with the steps taken or proposed to be taken by the Concessionaire to remedy the Concessionaire Event of Default or if the Concessionaire Event of Default is not waived, then the Government shall issue a notice to the Lenders' Agent/Senior Lenders (at the address details mentioned in the Annexure 1) to exercise their substitution rights.
- (c) The Lenders' Agent (on behalf of the Senior Lenders) may, within 45 (forty-five) Business Days from the date of receipt by the Senior Lenders of the notice issued by the Government pursuant to Clause 3.3(b) or such longer period as may be mutually agreed between the Government and the Senior Lenders, make a representation to the Government, stating the intention to substitute the Concessionaire with a Selectee (**Substitution Notice under Concession Agreement**).

- (d) In the event that the Lenders' Agent issues the Substitution Notice under the Concession Agreement, then, within 120 (one hundred and twenty) Business Days of issue of such notice, the Senior Lenders shall be entitled to undertake and complete the substitution of the Concessionaire with a Selectee, in accordance with the provisions of this Agreement. The Senior Lenders' right to substitute the Concessionaire shall be without prejudice to any other right or remedy available to the Senior Lenders under the Financing Documents and/or this Agreement.
- (e) If the Lenders' Agent does not convey the intention to substitute the Concessionaire with a Selectee (by issuing a Substitution Notice under Concession Agreement) within 45 (forty-five) Business Days from the date of receipt by the Senior Lenders of the notice issued by the Government pursuant to Clause 3.3(b) or such longer period as may be mutually agreed between the Government and the Senior Lenders, or if the Senior Lenders fail to substitute the Concessionaire after issuing a Substitution Notice under Concession Agreement within the time period set out in Clause 3.3(d), the Government shall be entitled to terminate the Concession Agreement in accordance with its provisions.

3.4 Criteria for Selection of Selectee

- (a) The Senior Lenders shall apply the following criteria while selecting the Selectee:
 - (a) the Selectee shall meet the technical, financial, eligibility and qualification criteria set out in the RFT, demonstrating that it has the necessary experience and technical qualification to undertake the Project;
 - (ii) the Selectee shall be capable of properly discharging the duties, obligations and liabilities of the Concessionaire under the Concession Agreement and the other Project Documents;
 - (iii) the Selectee shall provide Security to the satisfaction of the Senior Lenders for the repayment of the Lenders' Dues;
 - (iv) the Selectee shall have the capability and shall unconditionally consent to assume the liability for the payment and discharge of dues of the Concessionaire to the Government under and in accordance with the Concession Agreement and the other Project Documents and of the Lenders' Dues upon terms and conditions as agreed to with the Senior Lenders;
 - (v) neither the Selectee nor any of its Affiliates shall have been in breach of any agreement entered into with the Government; and

- (vi) any other appropriate condition or criterion determined by the Senior Lenders or the Government, whereby continuity in the performance of the Concessionaire's obligations under the Concession Agreement and other Project Documents is maintained and the Security in favour of the Senior Lenders under the Financing Documents is preserved.
- (b) At any time prior to the approval of the Selectee by the Government pursuant to this Agreement, the Government may require the Senior Lenders (acting through the Lenders' Agent) to satisfy the Government as to the eligibility of such Selectee and the decision of the Government in determining the eligibility of such Selectee shall be reasonable, final, conclusive and binding on the Senior Lenders and such Selectee.

4. MODALITIES OF SUBSTITUTION

4.1 Modalities

The following modalities shall be applicable to any substitution of the Concessionaire by the Selectee:

- (a) the Lenders' Agent may invite, negotiate, procure offers either through private negotiations or public auction or process of tender or otherwise for the substitution of the Concessionaire pursuant to this Agreement;
- (b) the Lenders' Agent shall on behalf of the Senior Lenders propose to the Government, pursuant to Clause 4.1(c), the name of and provide all relevant details relating to the proposed Selectee for its approval in accordance with and subject to the terms and conditions set out in the Concession Agreement, in a written proposal (**Proposal**).

The Proposal shall contain details of the proposed Selectee (including information in relation to the proposed Selectee's ability to meet the technical and financial criteria set out in the RFT), the Lenders' Dues and any other data and information as may be relevant for the Government to consider and take a decision on the Proposal.

Without prejudice to the foregoing, the Lenders' Agent agrees and undertakes to provide to the Government, such further and other information and clarifications in respect of any data, details or information, furnished by the Lenders' Agent as the Government may reasonably require. The Government shall convey its approval or otherwise of such Proposal, including such company proposed as the Selectee, in its sole discretion within 30 (thirty) Business Days of: (i) the date of receipt of the Proposal by the Government; or (ii) the date when the last of any further information and clarifications in respect of any data, details or information comprised in the Proposal, have been provided by the Lenders' Agent to the Government, whichever is later. It is expressly agreed between the Parties that the Proposal shall be accompanied by an unconditional undertaking of the proposed Selectee that it shall, upon approval by the Government of the Proposal, perform and fulfil the terms and conditions of the Concession Agreement as if such proposed Selectee was the original signatory to the Concession Agreement and shall be liable for and shall assume,

discharge and pay the Senior Lenders' Dues under and in accordance with the terms and conditions of the Financing Documents. Upon approval of the Proposal by the Government, the proposed Selectee shall become the Selectee hereunder;

- (c) in case the Senior Lenders intend to exercise their substitution rights through: (i) share transfer; or (ii) novation, the Lenders' Agent shall also apply to the Government for permitting such share transfer, in the case of (i), and for permitting the: (A) novation of the Concession Agreement and other Project Documents to the proposed Selectee; and (B) the execution of a new substitution agreement with the proposed Selectee, upon being approved as the Selectee, for the remaining Term, under the Concession Agreement and other Project Documents, on the same terms and conditions as set out in this Agreement, in the case of (ii);
- (d) the Government shall, upon its satisfaction of the eligibility of the proposed Selectee and in accordance with the provisions of this Agreement and subject to the provisions of Clause 4.1(e), proceed to substitute the Concessionaire with the Selectee: (i) by novation of the Concession Agreement and other Project Documents or such other form of document as the Government may reasonably require, on the same terms and conditions as set out under the Concession Agreement and other Project Documents for the remaining Term; or (ii) by requiring the Selectee to acquire the entire Capital of the Concessionaire, in accordance with Applicable Laws;
- (e) the substitution as aforesaid shall be subject to the Selectee completing corporate compliances for executing the documents and obtaining any Applicable Permits necessary for performing its obligations under and in accordance with the Concession Agreement;
- (f) the Government shall have the right to object to the choice of the proposed Selectee after meeting the Senior Lenders (acting through the Lenders' Agent), provided however, that in the event of a refusal as stated above, the Senior Lenders (acting through the Lenders' Agent) may propose another Selectee, within the time period prescribed under Clause 3.2(b) or 3.3(d) for substitution of the Concessionaire by the Senior Lenders. In the event that no objection is raised with respect to the proposed Selectee by the Government within the period set forth in Clause 4.1(b), the proposed Selectee shall be deemed to have been accepted by the Government;
- (g) the substitution as aforesaid, shall be deemed to be complete only upon the: (i) completion of acquisition of the Capital of the Concessionaire; or (ii) the Selectee signing and executing the novation agreement to novate the Concession Agreement to the Selectee; and
- (h) all actions of the Lenders' Agent hereunder shall be deemed to be authorised by and on behalf of the Senior Lenders and be binding upon them.

4.2 Waiver of Concessionaire's Right to Remedy

The Concessionaire hereby irrevocably agrees and waives any right to challenge the Senior Lenders' decision to apply to the Government for substitution as aforesaid and neither the

Concessionaire nor the Government shall be entitled to prevent the Lenders' Agent from proceeding to seek such a substitution of the Concessionaire by the Selectee as provided in this Clause 4. The Parties acknowledge that the rights of the Senior Lenders under this Clause 4 are irrevocable and shall not be contested in any proceedings before any court of law and the Concessionaire shall not have any right or remedy to prevent, obstruct, injunct or restrain the Government and/or the Senior Lenders from effecting or causing the substitution as aforesaid. No third party shall have the right to question the decision of the Senior Lenders/Lenders' Agent or the Government in relation to substitution of the Concessionaire.

4.3 No Guarantee

Nothing contained in this Clause 4 shall mean or be interpreted as a provision of any guarantee or surety by the Government to the Senior Lenders and it is expressly agreed that the Government has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of amount of Financial Assistance advanced by the Senior Lenders to the Concessionaire.

5. STAND-STILL

Subject to the exercise of the Emergency Step-in Right by the Government upon the occurrence of an Emergency Event under the Concession Agreement, the Government agrees that on the occurrence of any Concessionaire Event of Default or a Financial Default, it shall not exercise: (a) its right to step-in in place of the Concessionaire; or (b) suspend or terminate the Concession Agreement, until the expiry of the time period available to the Senior Lenders to exercise their substitution rights, as set out in Clause 3.

6. INDEMNITY

6.1 Indemnity

- (a) The Concessionaire shall indemnify, defend and hold harmless the Government, the Senior Lenders and the Lenders' Agent against any and all proceedings, actions and third-party claims for any loss, damage, cost and expenses 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.
- (b) The Senior Lenders shall indemnify, defend and hold harmless the Government against any and all proceedings, actions and third party claims for any loss, damage, cost and expenses arising out of the Senior Lenders' or the Lenders' Agent's failure to fulfil their obligations under this Agreement, materially or adversely affecting the performance of the Concessionaire's or the Government's obligations under the Concession Agreement and other Project Documents, other than any loss, damage, cost and expenses arising out of acts done in discharge of their lawful functions by the Senior Lenders/Lenders' Agent.

6.2 Notices and Contest of Claims

In the event that any Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 6.1 or in respect of which it is entitled to reimbursement (**Indemnified Party**), it shall notify the other Party responsible for indemnifying such claim hereunder (**Indemnifying Party**) within 20 (twenty) Business Days of receipt of claim and shall not settle or pay the claim without prior approval of the Indemnifying Party, such approval not being 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 it. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnified Party may reasonably require.

7. TERM

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

- (a) termination of the Concession Agreement; or
- (b) confirmation by the Lenders' Agent that all sums in connection with the Financing Documents have been unconditionally and irrevocably repaid in full.

8. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) this Agreement constitutes a legally valid and binding obligation, enforceable against it in accordance with its terms; and
- (d) its entry into and/or performance under this Agreement will not be in breach of any express or implied terms of: (i) its articles of association or other constituting documents (where applicable); (ii) Applicable Laws; and (iii) any contract with or other obligation to any third party.

9. SURVIVAL

- (a) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Agreement as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Term by efflux of time or otherwise in accordance with this Agreement, shall survive the expiry of the Agreement.
- (b) The provisions of this Agreement, to the fullest extent necessary to give effect thereto, survive the Term or the termination of this Agreement and the obligations of Parties to be

performed or discharged following the termination of this Agreement, shall accordingly be performed or discharged by the Parties.

10. GOVERNING LAW AND JURISDICTION

This Agreement shall be construed and interpreted in accordance with and governed by the laws of the Republic of Fiji, and subject to the provisions contained in Clause 11.5, shall be subject to the exclusive jurisdiction of the courts in the Republic of Fiji.

11. MISCELLANEOUS

11.1 Entire Agreement

The Parties hereto acknowledge, confirm and undertake that this Agreement and the Concession Agreement constitute the entire understanding between the Parties with respect to its subject matter (i.e., substitution of the Concessionaire under the Concession Agreement and other Project Documents) and replaces and supersedes all previous written or oral representations, agreements, arrangements, undertakings and/or statements regarding such subject matter.

11.2 Notices

(m) Any notice or request in reference to this Agreement shall be written in the English language and shall be sent by e-mail, registered post or courier and shall be directed to the other Parties at the address mentioned below:

Government:

Attention: The Office of Permanent Secretary for Ministry of Economy

Address: Level 10, Ro Lalabalavu House, 370 Victoria Parade, Suva, Fiji.

Tel: (679) 3307011

E-mail: pppinfo@govnet.gov.fj

Lenders' Agent:

Attention: [●]

Address: [●]

Tel: [●]

E-mail: [●]

Concessionaire:

Attention: [●]

Address: [●]

Tel: [●]

E-mail: [●]

- (n) Subject to clause 11.2(c), a notice is received:
 - (i) in the case of delivery by hand, on delivery;
 - (ii) in the case of prepaid registered post, on the date of receipt of the registered post; and
 - (iii) in the case of e-mail, on delivery to the recipient's server provided no error message is received by the sender.
- (o) Any notice received on a day that is not a Business Day, or after 17.00 hours local time at the recipient's location on a Business Day, is deemed received at 09.00 hours local time at the recipient's location on the following Business Day.
- (p) Each Party may change the above address by prior written notice to the other Parties. Provided however, that if a Party fails to notify the other Party of such change in address, then any notice under this Agreement shall be sent at the earlier notified address.

11.3 Amendments

- (a) No variation of or amendment to this Agreement shall be effective unless made in writing and executed by all the Parties hereto.
- (b) This Agreement shall not be affected by re-organisation of any Senior Lender, Lenders' Agent, the Government and the successor-in-interest of such Senior Lender, Lenders' Agent and the Government shall have the benefit of this Agreement.

11.4 Waivers and Consents

- (j) Unless otherwise specified, any provision or breach of any provision of this Agreement may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (k) Any consent under or pursuant to any provision of this Agreement must also be in writing and given prior to the event, action or omission for which it is sought.
- (l) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

11.5 Dispute Resolution

In the event of any dispute between the Parties, the same shall be settled in accordance with Clause 29 of the Concession Agreement.

11.6 Assignment

Neither this Agreement nor any of the rights or obligations hereunder may be assigned by a Party without the prior written consent of the other Parties, other than the assignment by the Concessionaire for the benefit of the Senior Lenders.

11.7 Severability

- (g) If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (h) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

11.8 Confidentiality

The Parties, their employees, representatives and agents shall keep the provisions of this Agreement strictly confidential and, except as may be required by the Applicable Laws, shall make no disclosure thereof to any Person, except the Parties' respective legal counsels and professional advisers, without the prior written consent of the other Parties.

11.9 Counterparts

This Agreement may be executed in three counterparts, each of which, when executed and delivered, will be an original, and all three counterparts together shall constitute one and the same instrument.

11.10 Language

- (g) The formal text of this Agreement shall be in the English language.
- (h) All notices and communications between the Parties under this Agreement shall be in English and all arbitration proceedings undertaken pursuant to this Agreement shall be conducted in English.

11.11 Costs and Expenses

- (g) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.
- (h) The Concessionaire shall bear the applicable stamp duty and registration fee (if applicable) in respect of this Agreement.

11.12 Waiver of sovereign immunity

The Government unconditionally and irrevocably:

- (j) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (k) 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 Government with respect to its assets; and
- (l) consent to the enforcement of any judgment or award against it in any such proceedings.

11.13 No Agency or Partnership

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or agency between the Parties and neither of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

[Signature page follows]

In witness whereof the Parties hereto have signed this Agreement on this _____ day of _____ 2018.

For the **Government**

By

Name

Designation

For the **Lenders' Agent**

By

Name

Designation

For the **Concessionaire**

By

Name

Designation

ANNEXURE 1

Details of Senior Lenders

S. No.	Details of Senior Lenders
1.	Name of the Senior Lender: [●] Address: [●] Telephone: [●] E-mail: [●] Attention: [●]
2.	[●]

SCHEDULE – 21

PATIENT SATISFACTION SURVEY

Patient feedback & grievance handling

- a) The Concessionaire shall ensure the provision of patient feedback forms at each of the Project Hospital as provided in this Schedule which will be provided to a Patient as chosen by the Concessionaire in accordance with Clause 9.18.
- b) The patient satisfaction form to be used for obtaining feedback from the Patients should be substantially in the form provided below.

PATIENT SATISFACTION SURVEY

Dear Sir/Madam,

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

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

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

We wish you the very best of health and longevity.

Thank You

Regards

Director

[Lautoka Hospital/Ba Hospital]

Patient Details:

Address :

Phone :

E-mail :

Hospital ID No. :

Date of filling out this form:

Date of Service provided at the Hospital:

Were you an:

Outpatient :

Inpatient:

Emergency Room patient:

Name of Treating Doctor:

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

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

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

	1	2	3	4	5
Cleanliness & hygiene standards of room and toilet					
Adequate supply of clean linen & Toiletries					
Maintenance of Rooms					
Equipment in rooms in working Condition					
Promptness in service					
Discharge Process					
Discharge formalities were completed	In more than 3 hours	Within 3 hours	Within 2 hours	Within 1 hour 30 minutes	In less than 1 hour
Accuracy in billing					
Facilities					
Signages					
Seating arrangements					
Facilities for attendants					
Cafeteria					
Overall Experience					
What overall score would you give to [Lautoka Hospital/Ba Hospital]?					
How do you feel about the service you experienced					
Based on your experience, would you recommend [Lautoka Hospital/Ba Hospital] to your friends and family?					

Would you nominate any employee for the “Outstanding Service”?

Name :

Area of Work :

Reason :

How can we make the experience at [Lautoka Hospital/Ba Hospital] even better for patients & their families?

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

SCHEDULE - 22

VESTING CERTIFICATE FORMAT

(To be issued on the letterhead of the Ministry of Economy, Government of the Republic of Fiji)

With respect to the Concession Agreement dated [●], executed between Government of the Republic of Fiji, represented by the Ministry of Economy (**Government**) and [insert name of the Project SPV] (**Concessionaire**) for the construction, upgradation, Operation and Maintenance of the Project Hospitals, the Government hereby acknowledges:

- (i) compliance and fulfilment by the Concessionaire of its obligations set out in Clause 26.3 of the Concession Agreement and Hand-back Conditions;
- (ii) receipt of actual possession of the Project from the Concessionaire; and
- (iii) receipt from Concessionaire of a certificate confirming that all forms of Security whatsoever on the Project have been released by the Lenders,

on the basis that upon the issue of this Vesting Certificate, Government or its nominees shall be deemed to have acquired, and all rights, title and interest of the Concessionaire in or about the Project Hospitals and shall be deemed to have vested, unto the Government free from all Encumbrances.

Notwithstanding anything to the contrary contained hereinabove, issuance of this Vesting Certificate is without prejudice to the Concessionaire's obligation to Rectify and Repair any defect or deficiency being found or discovered at any time hereafter, in accordance with Clause 26.2(f) of the Concession Agreement.

The Government further undertakes to pay all Termination Compensation to be paid by the Government to the Concessionaire within 45 (forty-five) Business Days from the date of issuance of this Vesting Certificate.

All capitalised terms not defined in this Vesting Certificate shall have the meaning ascribed to it in the Concession Agreement.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Government by:

(Signature)

(Name)

(Designation)

(Address)

AGREED, ACCEPTED AND SIGNED

For and on behalf of

CONCESSIONAIRE by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - 23

FORMAT OF LICENCE DEED

DEPARTMENT OF LANDS & SURVEYS GOVERNMENT BUILDINGS SUVA

LD .../.../....

Fees

Stamp duty	- \$ 00.00
Plan	- \$ <u>32.70</u>
Drawing Fees (License)	- \$ <u>32.70</u>
Total	\$ 65.40

Collected vide RR

of

.....
for Director of Lands

SPECIAL LICENCE TO OCCUPY STATE LAND UNDER STATE LANDS (LEASES AND LICENCES) REGULATIONS

THE DIRECTOR OF LANDS OF FIJI for and on behalf of the State (hereinafter called “the **Licensor**”) in accordance with regulation 30(1) of the State Lands (Leases and Licences) Regulations 1980 hereby grants a licence to [*insert name of the Concessionaire*], a company organised, incorporated, registered and existing under the Companies Act 2015 and having its registered office at [*insert registered office address of the Concessionaire*] (hereinafter called ‘the **Licensee**’) for the right of occupation and use of [*insert*

details of Lautoka Hospital Site]²⁵ [*insert details of the Student Hostel Building Site*]²⁶ (hereinafter called ‘the **Demised Premises**’ and more particularly shown in the plan attached as Annexure herein) for a period commencing from the [Handover Date]²⁷ [Lautoka Hospital Lease Commencement Date]²⁸ and shall continue to be in full force and effect until the [Lautoka Hospital Lease Commencement Date]²⁹ [issuance of the Student Hostel Building Vesting Certificate]³⁰, and at the rental stipulated as per Clause 4 below payable at the Licensor’s office at Government Buildings, Suva and subject also to the under-mentioned conditions:-

RECITALS

- J. The Government of the Republic of Fiji (represented by the Ministry of Economy) (**Government**) is keen to augment the healthcare infrastructure at the Project Hospitals through private sector participation.
- K. For this purpose, the Government commenced an international competitive bid process by issuing an invitation for expression of interest on 17 March 2018, followed by a request for tender on 25 June 2018 and revised request for tender on 24 October 2018 (**RFT**), inviting interested parties to submit their bids.
- L. Pursuant to the terms of the RFT, the Government received tenders from various bidders, including the Bid submitted by the Selected Bidder.
- M. Following a process of evaluation of the bids submitted by the bidders (including the Selected Bidder), the Government accepted the Selected Bidder’s Bid and issued the letter of award dated [●] 2018 to the Selected Bidder (**LOA**). The Selected Bidder accepted the LOA, on [●] 2018, in accordance with the requirements of the RFT.
- N. In terms of the RFT, the Fiji National Provident Fund Board (**FNPF**) has incorporated [*insert name of the Concessionaire*] on [●] to act as the Concessionaire, to implement the Project and perform the obligations and exercise the rights of the Concessionaire, including the obligation to enter into the Concession Agreement, this Licence Deed and other Project Documents.
- O. On [●] 2018, the Licensee, FNPF and the Selected Bidder have executed the SPSHA which, among other aspects, sets out the terms on which FNPF has subscribed to and the Selected Bidder will purchase Securities of the Licensee.

²⁵ Applicable only for the Lautoka Hospital Licence Deed.

²⁶ Applicable only for the Student Hostel Building Licence Deed.

²⁷ Applicable only for the Lautoka Hospital Licence Deed.

²⁸ Applicable only for the Student Hostel Building Licence Deed.

²⁹ Applicable only for the Lautoka Hospital Licence Deed.

³⁰ Applicable only for the Student Hostel Building Licence Deed.

- P. In accordance with the terms of the RFT, the Government has executed a concession agreement with the Licensee dated [●] (**Concession Agreement**) for implementing the Project.
- Q. In order for the Licensee to perform its obligations under the Concession Agreement, the Licensor has agreed to grant an exclusive licence to the Licensee over land admeasuring (*in figures*) [*in words*] in [*Province*], [Lautoka], Fiji described in greater detail on the first page of this Licence Deed (**Demised Premises**).
- R. The Parties agree and undertake that they shall abide by the terms, conditions and stipulations contained in this Licence Deed and therefore agree to execute this Licence Deed confirming their commitment and intention in respect thereof.

NOW THEREFORE, in consideration of the mutual promises, terms and conditions to be complied by the Parties and covenants set forth herein, the Parties mutually agree as follows:

7. DEFINITIONS AND INTERPRETATION

1.3 Definitions

Unless otherwise defined in this Licence Deed, capitalised terms used in this Licence Deed shall have the meanings given to them in the Concession Agreement. The following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

Adjoining Property means any land and/or property adjoining or adjacent to any part of the Demised Premises, including all conduits, roads, footpaths, walls, fences, buildings and other erections, structures and other apparatus on, under or within such land and/or property.

Annexure shall mean an annexure of this Licence Deed.

Concession Agreement shall have the meaning ascribed to the term in Recital G.

Demised Premises shall have the meaning ascribed to the term in Recital H.

Dispute shall have the meaning ascribed to the term in Clause 16.1.

Dispute Meeting shall have the meaning ascribed to the term in Clause 16.1.

Dispute Notice shall have the meaning ascribed to the term in Clause 16.1.

Encumbrance means mortgage, charge, pledge, lien (statutory or otherwise), assignment by way of security, hypothecation, right of set-off, trust, priority, retention of title or ownership or other security interest and any other agreement or arrangement having substantially the same effect.

FNPF shall have the meaning ascribed to the term in Recital E.

[Handover Date] shall have the meaning ascribed to the term in the Concession Agreement.]³¹

[Lautoka Hospital Lease Commencement Date] shall have the meaning ascribed to the term in the Concession Agreement.]³²

Licence Deed shall mean this licence deed, including the Annexure, as amended from time to time.

Licensee Related Parties means any of the following:

- (a) the Selected Bidder, Affiliates of the Selected Bidder, shareholders of the Licensee [and each Member of the Selected Bidder]³³;
- (b) an officer, adviser, consultant, wage earner, employee or agent of the Licensee acting in that capacity;
- (c) any Subcontractor engaged by the Licensee and their directors, officers, wage earners, employees or agents acting in that capacity; or
- (d) any Person acting on behalf of the Licensee.

Licensor Related Parties means any of the following:

- (g) an officer, servant, employee or agent of the Licensor, acting in that capacity;
- (h) any contractor or subcontractor of the Licensor and its directors, officers, servants, employees or agents, acting in that capacity; or
- (i) any Person acting on behalf of the Licensor,

in each case only if connected directly or indirectly to the Project.

For the avoidance of doubt, it is clarified that the Lautoka Hospital Deputed Staff will be deemed to be Licensee Related Parties under this Licence Deed.

LOA shall have the meaning ascribed to the term in Recital D.

Notice of Arbitration shall have the meaning ascribed to the term in Clause 16.2(a).

Parties shall mean collectively the Licensor and the Licensee, and the term **Party** shall refer to either the Licensor or the Licensee, as the context may require.

³¹ Applicable only for the Lautoka Hospital Licence Deed.

³² Applicable only for the Student Hostel Building Licence Deed.

³³ To be deleted if the Selected Bidder is not a Consortium.

Person shall mean any individual, company, corporation, partnership, joint venture, trust, society, sole proprietor, limited liability partnership, co-operative society, government company, unincorporated organisation or any other legal entity.

Rent shall have the meaning ascribed to the term in Clause 4.

RFT shall have the meaning ascribed to the term in Recital B.

Security shall mean and includes any Encumbrance, or any other agreement or arrangement having substantially the same economic effect.

Term shall have the meaning ascribed to the term in Clause 3.

Tribunal shall have the meaning ascribed to the term in Clause 16.2(b).

1.4 **Interpretation**

In this Licence Deed, unless otherwise provided or the context otherwise requires:

- (o) Any reference to a statutory provision shall include such provision as modified or re-enacted or consolidated from time to time.
- (p) The words importing the singular shall mean the plural and vice-versa; and words importing the masculine shall include the feminine and neuter and vice-versa.
- (q) Headings in this Licence Deed are for convenience of reference only.
- (r) The references to the word 'include' or 'including' or to the phrase 'in particular', shall be construed without limitation.
- (s) References to any date or time of day are to Fijian Standard Time (taking into account Fijian Daylight-Saving Time, when applicable); any reference to a day shall mean a reference to a calendar day; any reference to a month shall mean a reference to a calendar month, any reference to a year shall mean a reference to a calendar year.
- (t) The references to any agreement, deed or other instrument shall be construed as a reference to such agreement, deed, or other instrument as may be amended, varied, supplemented or novated, from time to time.
- (u) A requirement that a payment be made on a day which is not a Business Day shall be construed as a requirement that the payment be made on the immediately next Business Day.

- (v) Whenever provision is made for the giving or issuing of any notice, endorsement, consent, approval, permission, certificate or determination by any Person, such notice, etc., shall be reasonably given, shall not be unreasonably withheld or delayed and shall be in writing and the words 'notify', 'endorse', 'approve', 'permit', 'certify' or 'determine' shall be construed accordingly. Where any notice, consent or approval is to be given by any Party, the notice, consent or approval shall be given on its behalf only by any authorised persons and shall be given on a Business Day.
- (w) The words 'written' and 'in writing' include a facsimile transmission and any means of reproducing works in a tangible and permanently visible form.
- (x) The provisions of the Clauses of this Licence Deed shall be interpreted in such a manner that will ensure that there is no inconsistency in interpretation between the intent expressed in the Clauses.

Provided that if there are any ambiguities, discrepancies or inconsistencies within this Licence Deed, the following shall apply:

- (vi) between two Clauses of this Licence Deed, the provisions of the Clause more specific to the issue under consideration shall prevail over those in other Clauses; and
- (vii) if there is any ambiguity, discrepancy or inconsistency regarding the requirements of quality or any standard of performance between: (A) two or more Clauses; (B) the Applicable Laws, then, notwithstanding anything contained in this Licence Deed, the highest quality or standard must be applied.
- (y) Neither the giving of any approval or consent, the review, knowledge or acknowledgement of the terms of any document by or on behalf of the Licensor, nor the failure to do so, shall, unless expressly stated in this Licence Deed, relieve the Licensee of any of its obligations under this Licence Deed or of any duty which it may have under this Licence Deed to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, review, knowledge or acknowledgement.
- (z) The rule of construction, if any, that an agreement/deed should be interpreted against the Party responsible for the drafting and preparation thereof shall not apply to this Licence Deed.
- (aa) For the purpose of giving full and proper effect to this Licence Deed, the Concession Agreement and this Licence Deed shall be read together and construed harmoniously. The terms of this Licence Deed shall prevail in the event of any inconsistencies with the Concession Agreement.
- (bb) All measurements and calculations shall be in the metric system and calculations done to 4

(four) decimal places, with the 5th (fifth) digit of 5 (five) or above being rounded up and below being rounded down.

8. GRANT OF LICENCE

5.1 The Licensors hereby grants the Demised Premises by way of an exclusive licence to the Licensee and the Licensee hereby agrees to take the Demised Premises on licence from the Licensors. The Licensee shall be entitled to use the Demised Premises for implementing the Project, including undertaking [the Operations and Maintenance of the Lautoka Hospital and other related / allied / ancillary purposes / uses in connection with implementing the Project, in accordance with the terms of the Concession Agreement]³⁴ [the Construction Works in respect of the Student Hostel Building and other related / allied / ancillary purposes / uses in connection with implementing the Project, in accordance with the terms of the Concession Agreement]³⁵.

5.2 [On and from the Handover Date and until the Lautoka Hospital Lease Commencement Date, the Licensors has granted and the Licensee has taken possession of the Demised Premises to utilise the Demised Premises in accordance with this Licence Deed and the Concession Agreement.]³⁶

[On and from the Lautoka Hospital Lease Commencement Date and until the issuance of the Student Hostel Building Vesting Certificate to the Concessionaire in accordance with the terms of the Concession Agreement, the Licensors has granted and the Licensee has taken possession of the Demised Premises to utilise the Demised Premises in accordance with this Licence Deed and Concession Agreement.]³⁷

5.3 As required under the terms of regulation 30(1) of the State Lands (Leases and Licences) Regulations 1980, the Minister has approved the licence being granted herein to the Licensee by the Licensors.

9. EFFECTIVENESS AND TERM

This Licence Deed shall come into full force and effect on and from the [Handover Date]³⁸ [Lautoka Hospital Lease Commencement Date]³⁹ and shall continue to be in full force and effect until the [Lautoka Hospital Lease Commencement Date]⁴⁰ [issuance of the Student Hostel Building Vesting Certificate to the Concessionaire in accordance with the terms of the Concession Agreement]⁴¹ **(Term)**.

³⁴ Applicable only for the Lautoka Hospital Licence Deed.

³⁵ Applicable only for the Student Hostel Building Licence Deed.

³⁶ Applicable only for the Lautoka Hospital Licence Deed.

³⁷ Applicable only for the Student Hostel Building Licence Deed.

³⁸ Applicable only for the Lautoka Hospital Licence Deed.

³⁹ Applicable only for the Student Hostel Building Licence Deed.

⁴⁰ Applicable only for the Lautoka Hospital Licence Deed.

⁴¹ Applicable only for the Student Hostel Building Licence Deed.

10. RENT

The Parties agree that the rent (**Rent**) payable by the Licensee for the Demised Premises shall be FJD payable in 2 (two) equal half-yearly instalments in a Financial Year. The Rent shall be inclusive of all Taxes except for value added tax. The Rent will be payable on or before the 31st January in respect of the first half-yearly instalment and on or before the 31st July in respect of the second half-yearly instalment. Any Rent due from the [Handover Date]⁴² [Lautoka Hospital Lease Commencement Date]⁴³ up to 1st January or 1st July, as the case may be, shall be added to and paid with such first half-yearly instalment to be paid by the Licensee.

11. RIGHT, TITLE AND INTEREST IN THE DEMISED PREMISES

- (f) The ownership of the Demised Premises shall at all times vest with the Licensor and the Licensee shall be granted licence over the Demised Premises, in accordance with the terms of this Licence Deed and the Concession Agreement.
- (g) Except as otherwise provided in this Licence Deed and the Concession Agreement, the Licensee shall not:
 - (a) sell or otherwise dispose or create any Security over the Demised Premises; and
 - (b) transfer, assign or novate any of its rights and obligations under this Licence Deed, without the prior written consent of the Licensor (such consent not being unreasonably withheld or delayed).

12. DEMISED PREMISES DATA AND VERIFICATION

- (i) The Licensor has made available to the Licensee, the layout plans and all other relevant data, studies and reports in the Licensor's possession in connection with the Demised Premises. The Licensor however provides no warranty with respect to the information provided, and the Licensee shall be deemed to have carried out its own independent analysis of the same.
- (j) The Licensee shall further be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the implementation of the Project at the Demised Premises.
- (k) The Licensee shall also be deemed to have inspected and examined the Demised Premises and its surroundings, analysed and verified the accuracy and reliability of the studies, reports and data provided by the Licensor and any other information available with respect to the Demised Premises and to have satisfied itself as to all the relevant matters including:

⁴² Applicable only for the Lautoka Hospital Licence Deed.

⁴³ Applicable only for the Student Hostel Building Licence Deed.

- (vii) the nature of the Demised Premises, including the subsurface, hydrological, climatic and general physical conditions of the Demised Premises;
 - (viii) the suitability of the Demised Premises for undertaking [the Operation and Maintenance of the Lautoka Hospital]⁴⁴ [the Construction Works]⁴⁵, as required under the Concession Agreement;
 - (ix) the condition of the utilities and infrastructure available outside and within the battery limits of the Demised Premises;
 - (x) the risk of injury or damage to Adjoining Property and to the occupiers of such property or any other risk;
 - (xi) the suitability and adequacy of any access roads to the Demised Premises and other utilities and facilities to be provided by the relevant Government Authority; and
 - (xii) all other matters that may affect the performance of its obligations under this Licence Deed.
- (l) The Licensor acknowledges and agrees that if any error or discrepancy is subsequently discovered in the data made available by the Licensor, then, such error or discrepancy shall not entitle the Licensee to any compensation for additional Costs incurred by the Licensee. Further, any misinterpretation of the data, studies and reports provided by the Licensor shall not relieve the Licensee from the performance of its obligations under this Licence Deed and the Concession Agreement on the ground that it could not reasonably be expected to have foreseen any of the matters listed in Clause 6(c), which affect or may affect the Project or the performance of any of its obligations under this Licence Deed.

7. SITE RELATED COVENANTS

The Licensee agrees and undertakes that:

- (m) the Licensee shall not transfer, alienate, assign, dispose of, sub-licence, sub-lease or create any Security over any part of the Demised Premises or its rights and interest in the Demised Premises or this Licence Deed, other than as specifically permitted under this Licence Deed and the Concession Agreement;
- (n) the Licensee shall not allow any encroachment on, or unauthorised occupation of any part of the Demised Premises and in the event of any encroachment or unauthorised occupation, the Licensee shall immediately cause such encroachment or any unauthorised occupants to be removed from the Demised Premises. The Licensee shall not be entitled to any costs incurred in removal of any encroachment or any unauthorised occupants from the Demised

⁴⁴ Applicable only for the Lautoka Hospital Licence Deed.

⁴⁵ Applicable only for the Student Hostel Building Licence Deed.

Premises;

- (o) the grant of any rights to a Subcontractor or any other third party shall not interfere with or hinder the performance of the Licensee's obligations under this Licence Deed;
- (p) the Licensee shall be wholly responsible for safety and security of the Demised Premises;
- (q) the Licensee shall take all necessary measures to confine [Construction Works]⁴⁶ [Operations and Maintenance, personnel and Lautoka Hospital Assets]⁴⁷ to the Demised Premises and not encroach on any Adjoining Property;
- (r) all Artefacts discovered at, on or under the Demised Premises shall be dealt with in accordance with Applicable Laws and the Licensee shall take all necessary precautions to prevent its or its Subcontractor's personnel from removing or damaging any such Artefact. Further, immediately upon the discovery of any such Artefact, the Licensee shall inform the Licensor of such discovery and carry out the instructions of the Licensor in this regard, at the Licensor's cost and expense;
- (s) the Licensee shall make good any damage to any roads, footpaths, conduits, and other works on any Adjoining Property, which is caused by the Licensee or the Licensee Related Parties;
- (t) the Licensee shall use all reasonable endeavours not to do or permit to be done anything which might:
 - (iv) cause destruction, scarring or defacing of natural surroundings in the vicinity of the Demised Premises;
 - (v) be or become a danger or nuisance or give rise to liability in tort to any owners or occupiers of the Adjoining Property or to members of the public; or
 - (vi) cause any contamination or damage to any Adjoining Property,and the Licensee shall, at its own expense, take all reasonable measures and precautions to avoid any such danger, nuisance, tort, damage or interference and shall make good any damage so caused;
- (u) if the [Operation and Maintenance of the Lautoka Hospital]⁴⁸ [Construction Works]⁴⁹ cannot be carried out without interfering with the rights of the owner or occupier of any Adjoining Property, the Licensee shall promptly and at its own cost obtain all necessary third-party consents and/or the approval of any Government Authority to undertake such

⁴⁶ Applicable only for the Student Hostel Building Licence Deed.

⁴⁷ Applicable only for the Lautoka Hospital Licence Deed.

⁴⁸ Applicable only for the Lautoka Hospital Licence Deed.

⁴⁹ Applicable only for the Student Hostel Building Licence Deed.

[Operation and Maintenance of the Lautoka Hospital]⁵⁰ [Construction Works]⁵¹. The Licensor shall provide all reasonable assistance to the Licensee for procuring such approvals;

- (v) if applicable, the Licensee shall obtain permission upon each entry to the area within the [Lautoka Hospital Site]⁵² [Student Hostel Building Site]⁵³, that will normally be under lock and key, kept with the Mineral Resources Department for security reasons; and
- (w) the Licensee shall fulfil and be bound by all the terms and conditions of this Licence Deed and in the State Lands (Leases and Licences) Regulations 1980, in so far as the same are not modified or contained in this Licence Deed. For the avoidance of doubt, it is clarified that conditions stated in the State Lands (Leases and Licences) Regulations 1980 that are not specifically contained in this Licence Deed, do not apply.

8. ACCESS TO LICENSOR RELATED PARTIES

Notwithstanding anything to the contrary, the Licensee shall ensure that the Licensor Related Parties have access to the Demised Premises and the licence granted to the Licensee over the Demised Premises shall always be subject to:

- (g) the rights of the Licensor, the Licensor's representative, the Independent Monitor, and other Licensor Related Parties to enter upon and access the Demised Premises to inspect and monitor the progress of the Project, and for the exercise of their rights and the performance of their obligations under this Licence Deed and the Concession Agreement, provided that the Licensor shall ensure that the exercise of the inspection or monitoring rights do not impede or obstruct, in any material manner, undertaking of the [Operation and Maintenance of the Lautoka Hospital]⁵⁴ [Construction Works]⁵⁵ in any manner whatsoever;
- (h) the rights of the Licensor or utility providers to enter upon and access the Demised Premises for laying or installing telegraph lines, electric lines or for any other public purpose; and
- (i) the Applicable Laws.

If any physical damage is caused to the Demised Premises for reasons solely and directly attributable to such access and use of the Demised Premises by the Licensor, the Independent Monitor or the Licensor Related Parties, then the Licensor shall bear the costs of remedying such damage and restoring the Demised Premises.

⁵⁰ Applicable only for the Lautoka Hospital Licence Deed.

⁵¹ Applicable only for the Student Hostel Building Licence Deed.

⁵² Applicable only for the Lautoka Hospital Licence Deed.

⁵³ Applicable only for the Student Hostel Building Licence Deed.

⁵⁴ Applicable only for the Lautoka Hospital Licence Deed.

⁵⁵ Applicable only for the Student Hostel Building Licence Deed.

9. INDEMNITY

- 10.3 The Licensors hereby confirm that it is the sole owner of and has absolute title and physical possession to the Demised Premises. The Licensors hereby agree, confirm and undertake that it shall keep the Licensee indemnified, and defend and hold the Licensee harmless against all direct claims including third party claims, expenditure, costs, losses and damages made against, incurred or suffered by the Licensee by reason of (a) any defect in title of the Licensors to the Demised Premises, (b) any claim relating to usage of Demised Premises for implementation of the Project, (c) breach of any material provision of this Licence Deed by the Licensors, or (d) misrepresentation by the Licensors under this Licence Deed.
- 10.4 The Licensee shall indemnify, defend and hold the Licensors harmless against any claims, liabilities, damages, charges, expenses, costs, losses or injuries suffered by the Licensors arising out of or relating to any act or omission by the Licensee to comply with any material legal, statutory or regulatory duty or breach of the representations and covenants set out in this Licence Deed.

10. LICENSOR'S REPRESENTATIONS AND WARRANTIES

- 11.1 The Licensors hereby represent and warrants to the Licensee that:
- (k) the Licensors is the sole and absolute owner of the Demised Premises and has valid uninhibited rights of alienation over the Demised Premises, and enjoys uninterrupted, quiet, peaceful, physical, vacant and legal possession of the Demised Premises, without any interference whatsoever;
 - (l) the title of the Licensors to the Demised Premises is clear, good, marketable and subsisting and there is no impediment under any Applicable Law, order, decree or contract to licence the Demised Premises to the Licensee as proposed under this Licence Deed;
 - (m) the Licensors has the full power and absolute authority to enter into and perform this Licence Deed and this Licence Deed constitutes legal, valid and binding obligations on the Licensors;
 - (n) the entry into and performance of this Licence Deed by the Licensors will not conflict with any Applicable Law as of the date hereof or any agreement or document to which the Licensors is a party and will not be against any orders issued by any Government Authority etc., applicable to the Licensors;
 - (o) the Demised Premises is free from all Encumbrances as at the date of execution of this Licence Deed;
 - (p) all Applicable Permits for the licensing and occupation of the Demised Premises by the Licensee have been procured;

- (q) there is no bar against use of the Demised Premises for the purpose of the Project by the Licensee;
 - (r) there exist no claims, actions, litigation, arbitration, land acquisition proceedings, garnishee or other proceedings relating to the Demised Premises or the transactions contemplated under this Licence Deed;
 - (s) as on the [Handover Date]⁵⁶ [Lautoka Hospital Lease Commencement Date]⁵⁷, there are no outstanding Taxes, or any interest or penalty in respect thereof, of any nature that may become a lien against the Demised Premises or any part thereof; and
 - (t) subject to the terms and conditions of this Licence Deed, the Licensee will have proper and unhindered licence and interest over the Demised Premises and every part thereof and may hold and enjoy the same without any let or hindrance from the Licensor or any persons claiming through, under or in trust for the Licensor.
- 11.2 The representations and warranties of the Licensor contained in Clause 10.1 are continuing in nature.

11. LICENSEE'S REPRESENTATIONS AND WARRANTIES

- 11.3 The Licensee hereby represents to the Licensor that:
- (c) the Licensee has the power to enter into and perform this Licence Deed and this Licence Deed constitutes legal, valid and binding obligations of the Licensee; and
 - (d) there is no impediment under any Applicable Law, order, decree or contract which restricts the execution and compliance of the Licence Deed by the Licensee.
- 11.4 The representations and warranties of the Licensee contained in Clause 11.1 are continuing in nature.

12. RESTRICTIONS ON TRANSFER, SUB-LICENCING OR SUBDIVISION

- 12.5 Subject to prior written approval from the Licensor in accordance with the provisions of the State Lands Act 1945, the Licensee shall only be permitted to transfer, create tenancy, sub-licence, mortgage, assign, share or part with the possession of the Demised Premises in accordance with the terms of the Concession Agreement and this Licence Deed.

⁵⁶ Applicable only for the Lautoka Hospital Licence Deed.

⁵⁷ Applicable only for the Student Hostel Building Licence Deed.

Provided that the Licensee shall be entitled to create Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project, amongst other aspects as set out in the Concession Agreement, over all or any part of its rights, title and interests in and to this Licence Deed and/or the Demised Premises (to the extent of the Licensee's rights on the Demised Premises pursuant to this Licence Deed), both present and future, to the extent that the creation of such Security will not result in any financial liability to the Government. For the avoidance of doubt, it is clarified that the Licensor hereby grants its consent hereby for creation of such Security in favour of the Lenders for the purpose of obtaining Financial Assistance for the Project.

- 12.6 Any permitted transfer, sub-licence, mortgage, assignment, sharing or parting with possession shall contain covenants by the proposed transferee, sub-tenant, mortgagee, assignee or Person sharing or taking possession for the due performance and observance of the Licensee's obligations under this Licence Deed to the satisfaction of the Licensor.
- 12.7 The Licensee shall not divide any lot or lots comprising the Demised Premises into smaller lots and shall not amalgamate any such lot or lots with other lot(s) in part or in whole.

13. TERMINATION

- 13.3 The Parties agree and acknowledge that this Licence Deed shall not be terminated by any Party for convenience.
- 13.4 In the event that the Concession Agreement is terminated due to any reason, then upon such termination of the Concession Agreement in accordance with its terms, this Licence Deed shall stand terminated automatically.

14. HANDBACK

The Licensee shall remove itself and all its employees, staff and agents, from the Demised Premises and be bound to hand-back and deliver to the Licensor promptly at the end of the Term or early termination of this Licence Deed, in accordance with the terms set out in this Licence Deed, quiet, full, complete, vacant and peaceful possession of the Demised Premises in accordance with the Licence Deed and the Concession Agreement.

15. BINDING OBLIGATIONS

This Licence Deed and all rights and duties hereunder shall inure to the benefit of, and be binding upon, the Licensor and the Licensee and their respective personal representatives, administrators, executors, successors and assignees.

16. DISPUTE RESOLUTION

16.1 Amicable Settlement

In the event of any dispute, controversy or claim arising out of, relating to, or in connection with this Licence Deed, or the formation, existence, negotiation or interpretation of this Licence Deed, or the breach, termination, validity or enforceability of this Licence Deed (a **Dispute**), the representatives of the Parties shall, within 10 (ten) Business Days of service of a written notice from one Party to the other Parties (**Dispute Notice**) hold a meeting (**Dispute Meeting**) in an effort to resolve the Dispute in good faith. In the absence of any deed to the contrary, the Dispute Meeting shall be held at a mutually agreed venue in Suva, Fiji or any other location in Fiji, as mutually agreed by the Parties.

16.2 **Dispute Resolution by Arbitration**

- (f) If a Dispute is not resolved within 20 (twenty) Business Days, or any such extended period as may be agreed upon between the Parties, after the service of a Dispute Notice, whether or not a Dispute Meeting has been held, either Party to the Dispute shall be entitled to refer the Dispute to be finally settled by arbitration (**Notice of Arbitration**). This Licence Deed and the rights and obligations of the Parties shall remain in full force and effect pending the award in such arbitration proceeding.
- (g) Unless otherwise agreed by the Parties, the Dispute shall be determined by a sole arbitrator to be jointly appointed by the Parties, and if the Parties are unable to jointly appoint a sole arbitrator within 20 (twenty) Business Days from the date of service of the Notice of Arbitration, then the Chief Justice shall appoint a sole arbitrator (**Tribunal**). Each Party shall be entitled to appoint an assessor to sit with the sole arbitrator but the sole arbitrator alone shall adjudicate the Dispute. The procedure in relation to the arbitration shall be governed by the provisions of the Arbitration Act.
- (h) ***Seat, Venue, Language and Rules of Arbitration***

The seat of the arbitration shall be Suva, Fiji. The Parties are free to choose a venue which may be convenient for different stages of the arbitration proceedings. The language of the arbitration shall be English. The arbitration shall be conducted in accordance with the arbitration law of the Republic of Fiji.
- (i) The award shall be rendered within 3 (three) months of the appointment of the Tribunal, unless the Parties hereto agree that such limit be extended or the Tribunal, considering the nature of the Dispute, determines that such limit must be extended.
- (j) The arbitration award shall be final and binding on the Parties hereto and the Parties hereto hereby irrevocably waive their right to any form of appeal, review or recourse in so far as such waiver may be validly made.

16.3 **Survival**

The provisions contained in this Clause 16 shall survive the termination of this Licence Deed.

17. **MISCELLANEOUS**

17.17 Survival

- (e) Any cause or action which may have occurred in favour of any Party or any right which is vested in any Party under this Licence Deed as a result of any act, omission, deed, matter or thing done or omitted to be done by any Party before the expiry of the Term by efflux of time or otherwise in accordance with this Licence Deed, shall survive the expiry of the Licence Deed.
- (f) The provisions of this Licence Deed to the fullest extent necessary to give effect thereto, survive the Term and the obligations of Parties to be performed or discharged following the termination of this Licence Deed, and shall accordingly be performed or discharged by the Parties.

17.18 Entire agreement

The Parties hereto acknowledge, confirm and undertake that this Licence Deed constitutes the entire understanding between the Parties regarding the development of the licence of the Demised Premises and supersedes all previous written or oral representations and/or arrangements regarding the licence of the Demised Premises.

17.19 Non-exhaustive Remedies

- (e) Save and except as provided in this Licence Deed the remedies available to the Licensee under this Licence Deed are not exhaustive and the Licensee and third parties shall be entitled to all other rights and remedies and to take all actions in law and in equity in addition to the remedies provided for herein.
- (f) Save and except as provided in this Licence Deed, the exercise of any rights by any Party under this Licence Deed shall not preclude such Party from availing of any other rights or remedies that may be available to it under this Licence Deed or any other agreement in relation to the Project. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

17.20 Notices

- (q) Any notice or request in reference to this Licence Deed shall be written in the English language and shall be sent by e-mail, registered post or courier and shall be directed to the other Parties at the address mentioned below:

Licensor:

Attention: The Director of Lands

Address: iTaukei Trust Fund Complex, Nasova Road, Suva, Fiji

Tel: (+679) 323 9724 or (+679) 323 9726

E-mail: landsinfo@govnet.gov.fj

Licensee:

Attention: [●]
Address: [●]
Tel: [●]
Fax: [●]
E-mail: [●]

- (r) Subject to Clause 17.4(c), a notice is received:
 - (i) in the case of delivery by hand, on delivery;
 - (ii) in the case of prepaid registered post, on the date of receipt of the registered post; and
 - (iii) in the case of e-mail, on delivery to the recipient's server and provided no error message is received by the sender.
- (s) Any notice received on a day that is not a Business Day, or after 17.00 hours local time at the recipient's location on a Business Day, is deemed received at 09.00 hours local time at the recipient's location on the following Business Day.
- (t) Each Party may change the above address by prior written notice to the other Parties. Provided however, that if a Party fails to notify the other Party of such change in address, then any notice under this Licence Deed shall be sent at the earlier notified address.

17.21 Governing Law and Jurisdiction

This Licence Deed shall be governed by the laws of the Republic of Fiji and, subject to the provisions contained in Clause 16, shall be subject to the exclusive jurisdiction of the courts at the Republic of Fiji.

17.22 Counterparts

This Licence Deed may be executed in any number of counterparts, and each executed counterpart has the same force and effect as an original instrument.

17.23 Language

- (i) The formal text of this Licence Deed shall be in the English language.
- (j) All notices and communications between the Parties under this Licence Deed shall be in English and all arbitration proceedings undertaken pursuant to this Licence Deed shall be conducted in English.

17.24 Amendments

This Licence Deed may be amended provided that such amendment is in writing and signed by both Parties.

17.25 Waivers and Consents

- (m) Unless otherwise specified, any provision or breach of any provision of this Licence Deed may be waived before or after it occurs only if evidenced by an agreement in writing signed by the Parties.
- (n) Any consent under or pursuant to any provision of this Licence Deed must also be in writing and given prior to the event, action or omission for which it is sought.
- (o) Any such waiver or consent may be given subject to any conditions thought fit by the Party giving it and shall be effective only in the instance and for the purpose for which it is given.

17.26 Severability

- (i) If any provision of this Licence Deed is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the legality, validity or enforceability of the remaining provisions will not, in any way, be affected or impaired.
- (j) The Parties shall negotiate in good faith with a view to agreeing one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and which produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interests of the Parties.

17.27 Assignment

- (e) Except as provided in the Concession Agreement and this Licence Deed, the Licensee shall not be entitled to divest, transfer, assign or novate all or substantially all of its rights, interests, benefits and obligations under this Licence Deed, without the prior written consent of the Licensor.
- (f) The rights and obligations of the Licensor under this Licence Deed shall not be assigned, novated or otherwise transferred (whether by virtue of any Applicable Law or otherwise) to any Person other than a public body or a government company or a statutory corporation that:
 - (ix) is a single entity;
 - (x) acquires the whole of the Demised Premises;
 - (xi) has the legal capacity, power and authority to become a party to and to perform the obligations of the Licensor under this Licence Deed, as the case may be; and
 - (xii) has sufficient financial standing or financial resources to perform the obligations of the Licensor under this Licence Deed, as the case may be.

17.28 No Agency or Partnership

Nothing contained or implied in this Licence Deed shall constitute or be deemed to constitute a partnership or agency between the Parties and neither of the Parties shall have any authority to bind, commit or make any representations on behalf of the other Party.

17.29 Costs and Expenses

- (i) Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation and preparation of this Licence Deed.
- (j) Unless exempt under the Applicable Law or otherwise provided under this Licence Deed, the Licensee shall bear all applicable stamp duty, registration fee and any other statutory charges in respect of this Licence Deed, including execution of this Licence Deed.

17.30 Reservation of Rights

No forbearance, indulgence, relaxation or inaction by a Party at any time to require performance of any of the provisions of this Licence Deed shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision, and no delay in exercising or omitting to exercise any right, power or remedy accruing to the Party upon any default or otherwise under this Licence Deed shall impair any such right, power or remedy or shall be construed to be a waiver thereof or any acquiescence in such default, nor shall the action or inaction of the Party in respect of any default or any acquiescence by it in any default, affect or impair any right, power or remedy of the Party in respect of any other default.

17.31 Third Parties

This Licence Deed and all rights hereunder are intended for the sole benefit of the Parties and, to the extent expressly provided, for the benefit of the Licensor Related Parties, the Licensee Related Parties and the Lenders, and shall not imply or create any rights on the part of, or obligations to, any other Person.

17.32 Waiver of sovereign immunity

The Licensor unconditionally and irrevocably:

- (m) agrees that the execution, delivery and performance by it of this Licence Deed constitutes commercial acts done and performed for commercial purpose;
- (n) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Licence Deed or any transaction contemplated by this Licence Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Licensor with respect to its assets; and
- (o) consents to the enforcement of any judgment or award against it in any such proceedings.

[Intentionally left blank.]

ANNEXURE

PARTICULARS OF THE DEMISED PREMISES

DATED this day of 20..

The Common Seal of
was hereunto affixed in our presence and we
certify that we are the proper officers by whom
and in whose presence the said Seal is to be
affixed to documents executed by the said
Company.

.....
Director Director/Secretary

.....
Licensee

SIGNED by the Licensor in presence
of

.....
Director of Lands
(Licensor)

.....
Lands Officer