

(AGREEMENT)

INDIAN NON JUDICIAL STAMP OF Rs-100

HEALTHCARE SERVICES AGREEMENT

THIS AGREEMENT is entered into on this the {•} day of {•}, Two Thousand and Eleven at New Delhi.

BY AND AMONGST

National Highways Authority of India, a Statutory body constituted under the National Highways Authority of India Act, 1988, and having its Corporate Office at G-5 & 6, Sector-10, Dwarka, New Delhi - 110 075 (hereinafter referred to as “**NHAI**” which expression, unless repugnant to the context, shall mean and include its successors and assigns) of the One Part;

AND

[•],an organization engaged in administrating quality healthcare services and has represented that it has significant experience and access to expertise in all such areas

that are incidental and/or ancillary thereto (hereinafter referred to as "Service Provider" which expression shall unless excluded by or repugnant to the context, be deemed to include its successors, permitted assigns and substitutes) of the Second Part.

WHEREAS:

- A. NHAI intends to provide health care facilities to its Staff/Employees through the Service Provider;
- B. NHAI has invited Expression of Interest/Bids ("EOI" or "Bids") from reputed health care service providers vide its Request for Proposal ("RFP") dated [•] for providing the Services;
- C. After evaluation of the EOI/Bids received, NHAI had accepted the Bid of the [•] and has accordingly agreed to enter into this Agreement with the Service Provider subject to and on the terms and conditions set forth hereinafter;
- D. NHAI has earmarked an area of approximately 250 sq. ft. within its premises situated at G-5 & 6, Sector-10, Dwarka, New Delhi wherein the Service Provider shall set up a world class primary healthcare facility/infirmery (hereinafter referred to as Clinic) for providing primary healthcare to its Employees;
- E. NHAI is desirous of engaging the Service Provider to provide its expertise in setting up and operating the Clinic and providing medical assistance to the Employees/Staff of NHAI, by providing required service staff, as mentioned in this Agreement for operation of the Clinic and for administration of the Services to the Employees/Staff;
- F. The Service Provider agrees to conduct himself/itself ethically and in a manner that shall preserve and maintain highest standard of care and shall convey to the users of such healthcare facility courtesy, compassion and concern while providing medical treatment;

NOW, THEREFORE in consideration of the mutual covenants herein contained and for good and valuable considerations, the legal adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

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 ascribed to them hereunder:

“Agreement” means this Agreement including its Recitals, Schedules hereto, as of the date hereof and includes any amendments hereto made in accordance with the provisions hereof;

“Agreement Date” means the date of signing of this Agreement;

“Applicable Laws” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect by Government of India (GoI) hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement;

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

“Basic Medical Facilities” means Medical services as defined in the scope of services.

“Contract Period” shall have the meaning ascribed to in Article 3;

“Dispute” shall have the meaning set forth in Article ___;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article ___;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed thereto in Article ___;

“GoI” means the Government of India;

“Parties” means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require;

“Request for Proposals” or **“RFP”** shall have the meaning set forth in Recital B;

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

“Services” shall have the meaning set forth in Article 2;

“Termination” means termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include the expiry of this Agreement due to efflux of time in the normal course;

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs;

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- b. references to Applicable Laws shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- d. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- e. the words "include" and "including" are to be construed without limitation;
- f. any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g. the Schedules/Annexure to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- h. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- i. references to Recitals, Articles, Sub-articles, or Schedules/ Annexure in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Sub-articles, and Schedules/ Annexure of or to this Agreement;

- j. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorized representative of such Party in this behalf and not otherwise;
- k. any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;

2. SCOPE OF SERVICES

NHAI hereby agree to engage the Service Provider to provide the following Services and the Service Provider agrees to provide the same to the Employee/Staff of NHAI. The Service Provider does hereby agrees that it will provide the following Services:

- (i) A General Physician who shall visit the Clinic for 3(three) hours a day from Monday to Friday (5 working days) between 1400 hrs to 1700 hrs.
- (ii) To provide Basic Medical Facilities including for treating cuts, bruises, fractures, sprains and minor burns and first aid.
- (iii) A qualified nurse who shall be on duty for 8(eight) hours a day from 900 hrs to 1800 hrs from Monday to Saturday.
- (iv) A qualified physiotherapist who shall visit the Clinic thrice a week (Tuesday, Thursday & Saturday) for 3 hours a day from 1300 hrs to 1600 hrs.
- (v) Additional facilities

3. DURATION OF AGREEMENT:

The duration of this Agreement shall be for a period of 2 (two) years commencing from Agreement Date and ending on a date two years after the date of signing of this Agreement (both days inclusive) or early Termination thereof, as per the terms of this Agreement, . This Agreement is extendable for subsequent years, on yearly basis, without any escalation of rates on any account whatsoever, subject to written approval from NHAI and mutual consent of the Parties.

4. FEES TO BE PAID TO THE SERVICE PROVIDER

- (i) In consideration of the Service Provider providing the Services, NHAI shall pay to the Service Provider a consolidated monthly fee of

Rs..... (Rupees _____ only) per month. The applicable service tax shall be borne by NHAI and is not included in the monthly fee payable to the Service Provider. The break up of the amount is specified in the Annexure annexed hereto.

- (ii) The aforesaid fee shall be paid by the 7th (Seventh) of each calendar month by way of account payee Cheque/ DD in favour of the Service Provider, upon submission of its ___ by the Service Provider at least 5 (five) days in advance. .

5. RESPONSIBILITES AND OBLIGATIONS OF SERVICE PROVIDER

The Service Provider shall:

- (a) be responsible for performing and discharging the Services, as per the requirements of NHAI and in accordance with this Agreement.
- (b) engage external agencies as and when required, with prior written approval of NHAI to complement the Services, so as to offer a comprehensive healthcare delivery to the employees / staff of NHAI, in the areas of waste management, infection and pest control, pathology services, ambulance services, tie ups with referral facilities for services beyond the scope of the Services as defined in this Agreement. The cost of such additional services shall be borne by NHAI.
- (c) engage one Doctor, one Nurse and one Physiotherapist for the Clinic to provide the Services, and make available the aforesaid persons for the days and hours as specified herein above in this Agreement.
- (d) with the proper patient consent and in accordance with all governing laws regarding confidentiality, make available to Employees/staff of NHAI, copies of all medical records and shall not disclose the record to any third party without the consent of the Employee.
- (e) furnish, upon request and without charge, all information reasonably required by NHAI to verify and substantiate its provision of Medical Services, the charges for such Services.

6. RESPONSIBILITIES AND OBLIGATIONS OF NHAI

NHAI expressly agrees and undertakes that it shall:

- (a) apply for and obtain all necessary permissions, sanctions, license, permits, etc. from the appropriate authorities, Governmental,

Municipal or otherwise, as the case may be, in connection with the functioning of the Clinic and the Service Provider shall not at any time be responsible for any consequences arising out of the delay or failure on the part of NHAI to obtain such permissions, sanctions, license & permits, etc;

- (b) at its own expense, undertake all repairs and maintenance activities as may be required and advised by the Service Provider which are essential for the proper functioning of the Clinic and in connection thereto.
- (c) bear all costs with relation to structural changes to the Clinic to maintain the Clinic in good operational condition or by reason of any laws or conditions applicable at the time of signing of this Agreement or hereinafter in force or by reason of any governmental or any municipal order or otherwise, all such repairs, changes and replacements with relation hereto shall be carried out by NHAI.
- (d) provide facilities such as house keeping as per requirements of the Service Provider, general maintenance and bear the cost of such engagement.
- (e) provide for water, electricity etc. as required for the operation of the Clinic and as per the requirements of the Service Provider.
- (f) bear all costs with respect to providing operating supplies, consumables and medicines as per the requirement of the General Physician on duty on a day to day basis. The charges for the same shall be borne by NHAI.
- (g) Make payments to the Service Provider in accordance with Article 4 above.

7. OPERATING EXPENSES

NHAI shall bear all necessary working capital and all expenses for setting up the Clinic during the Contract Period.

8. INDEMNITY

In taking any action pursuant to this Agreement, the Service Provider shall be deemed to be acting entirely for the benefit of, and assistance to, NHAI and NHAI shall indemnify the Service Provider and any of the Service Provider's personnel/staff acting under this Agreement harmless from and against any and all claims, actions and demands, whatsoever, including costs,

expenses and fees payable to any lawyer or attorney or the like in defending such claims, and Service Provider shall not be liable to NHAI for any action taken or admitted to be taken by Service Provider except for any loss caused by Service Provider's own willful misconduct or gross negligence.

NHAI hereby releases the Service Provider from any liability in connection with any claim asserted against NHAI or by any third party including government of a State or Central or Semi-governmental or local or municipal authority for any payment or non-payment of taxes, levies specifically for the purpose of establishment of the Clinic.

9. INSURANCE

The Service Provider shall at its own expense at all times during the Contract Period insure itself for any medico legal liabilities. In the event of the Service Provider fails to provide such insurance as mentioned hereinabove, NHAI shall under no circumstances be responsible for any liability arising out of any medico legal claim arising due to such failure of the Service Provider and if any liability is placed on NHAI due to negligent performance of the Services by the Service Provider, the Service Provider shall indemnify NHAI.

10. IN THE EVENT OF BREACH

- (i) In the event of any failure or default on the part of NHAI to observe discharge perform carry out or fulfill any of the responsibilities obligations undertakings or covenants herein contained or in the event of any default by NHAI in respect of usage of trade marks signs, trade names, logos, emblems or any other copyright, the Service Provider may without prejudice to its other rights, be entitled to do one or more of the following, each of which shall be independent to the other:-
 - (a) Discontinue after a notice of 30 days the Services to be rendered by it under the terms mentioned herein and withdraw at the cost of NHAI from the Clinic all staff seconded by the Service Provider to the Clinic under these terms.
 - (b) Serve notice to rectify or cure such failure or default and if such failure or default is rectified or cured by NHAI within 30 days of such notice then the Service Provider will continue rendering the Services.
 - (c) If NHAI fails to comply with such notice and cure or rectify such failure or default within 30 days of such notice, the Service Provider shall be entitled to terminate this Agreement without

any further notice. For the avoidance of doubt it shall be clarified that the Service Provider shall not be entitled to any claim of damages whatsoever arising out of NHAI's such failure or default.

- (ii) In the event of the Service Provider failing to meet its liabilities and entering into a composition or arrangement with its creditors or in the event of liquidation proceedings being commenced against the Service Provider or of a receiver or liquidator being appointed of the whole or a substantial part of the assets of the Service Provider then in any such event NHAI shall have the right to terminate this Agreement without notice and without prejudice to its claims for damages.
- (iii)
 - (a) In the event of any failure or default on the part of the Service Provider to observe, discharge, perform, carry out or fulfill any of the responsibility obligations undertakings or covenants on the Service Provider herein contained, NHAI may, without prejudice to its other rights, serve notice on the Service Provider to rectify or cure such failure or default within 30 days of such notice.
 - (b) Upon receipt of such notice the Service Provider shall promptly rectify or cure such failure or default or take action to rectify or cure such failure or default. If such failure or default is not susceptible of being cured within (30) days, NHAI shall be entitled to terminate this Agreement without giving any further notice for the same.
 - (c) In such an event of Termination NHAI shall return the fixtures and fittings being provided or belonging to the Service Provider.
- (iv) The rights granted hereunder shall not be in substitution of, but in addition to, any or all rights and remedies for breach of contract granted by the provisions of law in force from time to time.
- (v) Upon the Termination of this Agreement for any cause whatsoever all accounts due and owing between the Parties shall become due and be paid within sixty (60) days of the date of Termination of this Agreement.

11. FORCE MAJEURE

Neither Party shall be liable to the other Party on account of any loss, damage or delay occasioned or caused by non-performance of any obligation under

this Agreement due to reasons attributed to acts of God or other causes beyond the control of the Parties (Force Majeure). The Parties shall immediately, on the first clear notice of Force Majeure inform each other of the Force Majeure circumstances and discuss remedial measures. If Force Majeure conditions continue to affect a Party beyond a period of 3 months, the other Party shall have a right to terminate this Agreement.

12. TITLE TO THE CLINIC

It is agreed that NHAI has, and shall always have, throughout the terms of this Agreement, full ownership and title to the Clinic and to the furniture, equipment etc. supplied by NHAI for reasons mentioned herein.

13. TRADE NAMES, MARKS, SIGNS, ETC.

- (a) To facilitate recognition of quality of standing and acceptance of the Clinic, the Service Provider may in its sole discretion allow the use of its trademarks, signs, logos and emblems in respect of, and for use by, the Clinic. Such permitted use by the Clinic is entirely at the Service Provider's sole discretion. Any use or the right to use by the Clinic of any such trade names, trade marks, signs, logos, emblems and other identifying symbols shall cease upon the Termination or earlier determination or expiry of this Agreement.
- (b) The above stated trade names, trade marks, signs, logos, emblems and other identifying symbols permitted by the Service Provider to be used as provided herein shall at all times be and remain the exclusive property of the Service Provider and NHAI undertakes not to sublease or sublicense or utilize any or all of such trade name, trade marks, signs, logos, emblems, etc. for all the benefit of any business of NHAI present or future.
- (c) NHAI agrees that it will always acknowledge and recognize, both before and after the expiration of this Agreement, exclusive right of the Service Provider to use or to grant to others the right or license to use whether separately or as part of or in connection with other words, slogans, symbols, designs, any of the trade names, trade marks, emblems, signs, logos or other identifying symbols which may now or in future be generally used in connection with the operation of any of the Service Provider's healthcare facilities.
- (d) Upon Termination or earlier determination or expiry of this Agreement, NHAI shall forthwith cease to use or utilize the above said marks in connection with the Clinic or any of its operating supplies, operating equipment or furniture and equipment.

- (e) Parties acknowledge and agree that either Party shall not use the name of the other Party or any of its holding, subsidiary or associated companies in any manner whatsoever for raising any funds from financial institutions, banks public and other without the prior written consent of the other Party.

14. ARBITRATION

Initiation of proceeding: In the event of any dispute arising out of or in any way related to this Agreement, the Parties shall seek to settle their differences amicably between themselves, including entering into non-binding mediation. Any unresolved dispute shall be finally resolved by final and binding arbitration in accordance with this Agreement. Whenever a Party decides to institute arbitration proceedings, it shall give written notice to that effect to the other Party. The Party giving such notice shall refrain from instituting the arbitration proceedings for a period of 30 (thirty) days following such notice to allow the Parties to attempt to resolve the dispute between them. If the Parties are still unable to resolve the dispute, the Party giving the notice may institute the arbitration proceedings under the Arbitration and Conciliation Act, 1996.

Venue, Language and Number of Arbitrators: Arbitration shall be held in New Delhi, India, and the language used for such arbitration proceedings shall be English. The arbitration shall be conducted before a sole Arbitrator appoint by NHAI.

15. CONFIDENTIALITY

It is agreed that all written materials made available to a Party by the other Party in furtherance of implementation of this Agreement are of strictly confidential nature and shall always remain the property of Party providing such written materials and the contents thereof shall not be disclosed by the receiving Party or any of its staff to any third party or parties without the prior written permission of the Party providing such written material and that upon the Termination of the operating term of this Agreement or earlier determination thereof all of all such material shall be returned in good order to the other Party.

16. TERMINATION:

- (a) This Agreement may be Terminated by either party:
 - (i) if the other Party commits a breach of any of its obligations under this Agreement and which is not remedied within thirty

- (d) his Agreement together with the Annexure hereto annexed constitutes the entire Agreement between the Parties hereto relating to the subject matter hereof superseding all prior agreements oral or written. This Agreement together with other writings signed by the Parties expressly stated to be supplementary hereto and together with any instruments in writing to be executed and delivered shall constitute the entire Agreement superseding all prior oral understandings and shall binding upon and inure to the benefit of NHAI and the Service Provider. Any change in this Agreement shall only be made in writing signed by Parties hereto.
- (e) In no event shall either Party or any person or persons associated with such Party shall make any claim against the other Party or any other Party's seconded staff on account of any alleged errors of judgment made in good faith in connection with either Party rendering all or any of the Services specified in this Agreement in respect of the Clinic.
- (f)
 - (i) All Services to be rendered by the Service Provider under this Agreement shall be assignable by the Service Provider to any of its holding, subsidiary or associated companies with prior written approval of NHAI, provided that such companies agree in writing to be bound by the terms hereof. Provided further that in all such cases NHAI reserves the right to terminate this Agreement forthwith upon notice served on the Service Provider according to the terms of this Agreement.
 - (ii) NHAI shall not assign its duties obligations and liabilities under this Agreement to any person or persons without obtaining the prior consent of the Service Provider in writing provided however that in all such cases the Service Provider reserves the right to terminate this Agreement forthwith upon notice served on NHAI according to the terms of this Agreement.
- (g) Nothing herein shall construe a partnership or JV between NHAI and the Service Provider.
- (h) This Agreement may be executed in number of counterparts, each of which shall be deemed an original but all of such together shall constitute on and the same instrument.
- (i) **Nondiscrimination:** Service Provider agrees that it shall not exclude or deny aid, care, Service or other benefits available under this Agreement in any other way discriminate against any employee because of that person's race, colour, ancestry, marital status, national original, gender, age, economic status, physical or mental disability,

political or religious affiliation or beliefs in accordance with Indian laws. In addition, Service Provider shall not discriminate against beneficiaries in any manner, including, but not limited to, admission practices, room selection and placement meals provision and waiting time for surgical procedures. Without exception, Service Provider shall provide to employees their specific benefit in the same manner as Service Provider also directly, or indirectly, renders those same Services to other patients in their normal course of business, regardless of pay or source.

- (j) **Disclosure of Information:** to NHAI. Service Provider agrees to disclose all information as required under applicable laws and regulations and any other information required by NHAI, and to respond to all requests from NHAI for information. Service Provider further agrees that all bills or claims for payment to NHAI by Service Provider shall not be due and owing to Service Provider for any period(s) for which information was not reported or was reported falsely to NHAI. Service Provider further agrees to reimburse those funds/payment received during any period for which information was not reported, or reported falsely, to NHAI.
- (k) **Service Provider Fraud and Abuse.** Service Provider agrees that it shall not engage in or commit fraud or abuse. "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable laws. "Abuse" means either: (1) practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the NHAI. (2) practices that are inconsistent with sound medical practices and result in reimbursement by NHAI, for services that are unnecessary or for substandard items or Services that fail to meet professionally recognized standards for health care.
- (l) **Severability.** If one or more of the provisions of this Agreement shall be invalid, illegal, void, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. Either Party having knowledge of such a provision shall promptly inform the other Party of the presumed non-applicability of such provision. Should the non-applicable provision go to the heart of this Agreement, the Agreement shall be Terminated in a manner commensurate with the interests of both Parties.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE HEREUNTO SET THEIR PERSPECTIVE HANDS THE DATE MONTH AND THE YEAR FIRST ABOVE WRITTEN.

**For and on behalf of
National Highways Authority of India**

**For and on behalf of
(The Second part)**

(.....)
General Manager (Administration)

(.....)
Vice President (Finance)

In presence of:

In presence of:

WITNESS

WITNESS

1

1

2

2

ANNEXURE

MEDICAL RESOURCE	FEE PER MONTH
General physician - 03 Hrs. daily (Monday - Friday)	Rs./-
Medical Assistant (Nurse) - 08 Hrs. daily (Monday - Saturday)	Rs./-
Physiotherapist - 03 Hrs. thrice a week (Tuesday, Thursday & Saturday)	Rs./-
TOTAL	Rs./-

**For and on behalf of
National Highways Authority of India**

**For and on behalf of
(The Second part)**

(.....)
General Manager (Administration)

(.....)
Vice President (Finance)