

CONCESSION AGREEMENT

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GARICK HOSPITAL ABUJA

BETWEEN

FEDERAL CAPITAL TERRITORY ADMINISTRATION  
(GRANTOR)

AND

NISA PREMIER HOSPITAL LIMITED  
(CONCESSIONAIRE)

MARCH 2007

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## CONCESSION AGREEMENT

THIS CONCESSION AGREEMENT is made this 20th day of  
MARCH 2007.

BETWEEN

A. THE MINISTER, FEDERAL CAPITAL TERRITORY, Abuja for and on behalf of the Federal Capital Territory Administration of Area 11, FCTA Headquarters Garki, Abuja (hereinafter called the "Grantor" which expression where the context so admits shall include its successors, agents and assigns) of the one part

AND

B. NISA PREMIER HOSPITAL LIMITED, a private medical services company incorporated under the Laws of the Federal Republic of Nigeria whose registered office is at Plot 618, Alex Ekwueme Way, Jabi, Abuja (hereinafter called the "Concessionaire" which expression where the context so admits shall include its successors and assigns) of the other part.

WHEREAS:

1. The Government of the Federal Republic of Nigeria through the Federal Capital Territory Executive Committee had authorized the concessioning of the Garki Hospital Abuja to a competent private health care provider on the basis of a Public Private Partnership for a period of 15 years.
2. In furtherance of Recital 1, the Grantor had invited bids from interested health care providers in the private sector in the form of proposals based on the technical and financial terms and conditions prescribed in the Instructions to Bidders.
3. The Concessionaire submitted a Bid in collaboration with Messrs Apeiron Nigeria Limited, a hospital engineering company incorporated in Nigeria and having its parent company, the Apeiron Group, situated in Hamburg, Germany.

4. At the end of the bid process, the Grantor evaluated the proposal of the Concessionaire as being the most responsive by which the Concessionaire became the preferred bidder for the concession.
5. In view of the novelty of the concession, the Grantor went into further detailed negotiations with the Concessionaire all with a view to arriving at a most practicable concession.
6. The Grantor wishes to concession the Garki District Hospital to the Concessionaire and the Concessionaire accepts the concession to operate and manage the Garki District Hospital to provide primary, secondary and tertiary health care in an efficient and commercially viable manner, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL CONVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

## ARTICLE I

### 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:

**"Accounting Year"** means the financial year commencing from 1<sup>st</sup> January of any calendar year and ending on 31<sup>st</sup> December of the same calendar year.

**"Additional Facilities"** means the facilities which the Concessionaire may provide or procure for the benefit of the

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Project and which are (i) in addition to the Hospital Facilities, and (ii) not situated on the Site at the date of this Agreement.

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

**"Applicable Laws"** means all laws, promulgated or brought into force and effect by the Government of the Federal Republic of Nigeria including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

**"Appointed Date"** means the date on which Financial Close is achieved in accordance with Article ... and shall be deemed to be the date of commencement of the Concession Period.

**"Arbitration Act"** means the Arbitration and Conciliation Act Cap. 19 Laws of the Federal Republic of Nigeria 1990 and shall include modifications to or any re-enactment thereof as in force time to time.

**"Bank"** means a bank incorporated in Nigeria and having a minimum share capital of N25 billion and having a branch in the proximity of the Project or at any other place acceptable to the Grantor.

**"Bid"** means the documents in their entirety comprised in the bid submitted by the Bidder in response to the Tender Notice in accordance with the provisions thereof.

**"Bid Security"** means the security provided by the Bidder to the Grantor along with the Bid in the sum of N25 million in accordance with the Tender Notice and which is to remain in force until substituted or subsumed by the Performance Security.

**"Change in Law"** means the occurrence of any of the following after the date of this Agreement:

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- i. the enactment of any new Nigerian law;
  - ii. the repeal, modification or re-enactment of any existing Nigeria law;
  - iii. the commencement of any Nigeria law which has not entered into effect until the date of this Agreement;
  - iv. a change in the interpretation or application of any Nigerian law by a court of record as compared to such interpretation or application by a court of record prior to the date of this Agreement.

**"Concession"** shall have the meaning ascribed thereto in Article II.

**"Concession Fee"** shall have the meaning ascribed thereto in Article V.

**"Concession Period"** means the period beginning from the Appointed Date and ending on the Termination Date.

**"Concessionaire"** means NISA Premier Hospital and its successors and assigns expressly approved in writing by the Grantor.

**"Cure Period"** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and upon failing of which the Agreement may be terminated by the other Party.

**"Debt Service Payments"** means the sum of all principal and interest payments due and payable in an Accounting Year to the Lenders under the Financial Documents.

**"Dispute"** shall have the meaning set forth in Article XVII.

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**"Dispute Resolution Procedure"** means the procedure for Dispute resolution set forth in Article XVII.

**"Divestment Requirements"** means the obligations of the Concessionaire and the Grantor for and in respect of the Termination of this Agreement as set forth in Article XVI.

**"Document"** or **"Documentation"** means documentation printed or in written form, tapes, discs, drawings, computer programmes, writings, reports, photographs, cassettes, or expressed in any other written, audio or visual form.

**"Dedicate Account"** means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement.

**"FCT"** means the Federal Capital Territory, Abuja.

**"FCTA"** mean the Federal Capital Territory Administration.

**"FCTA Representative"** means such person or persons as may be authorized in writing by FCTA to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of FCTA under this Agreement.

**"Financial Close"** means the date on which the Financial Documents providing for funding by the Lenders have become effective and the concessionaire has immediate access to such funding under the Financial Documents.

**"Financial Package"** means the financing package of the Concession furnished by the Concessionaire during negotiations indicating the Total Project Cost and the means of financing thereof.

**"Force Majeure"** or **"Force Majeure Event"** shall mean an act, event, condition or occurrence specified in Article XV.

**"GFRN"** means the Government of the Federal Republic of Nigeria.

**"Good Industry Practice"** means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement.

**"Hospital"** means the Garki Hospital, Abuja.

**"Hospital Assets"** means all or any constituent part of the Hospital Estate and of the Hospital Movable Assets. For avoidance of doubt, Hospital Asset is also deemed to include any Improvements thereon made by Grantor or Concessionaire during the Term in accordance with this Agreement.

**"Hospital Fixed Assets"** means the property affixed to real property of the Hospital Estate, as described in Appendix A.

**"Hospital Movable Assets"** means Rolling Stock, work equipment, furniture, spare parts, consumables and other assets, owned by Grantor and conceded to Concessionaire as more particularly described in Appendix C.

**"LFN 1990"** means the Laws of the Federal Republic of Nigeria 1990.

**"Material Adverse Effect"** means material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement.

**"Material Breach"** means a breach by either Party of any of its obligations in this Agreement which shall be deemed to have a

Material Adverse Effect on the Project and which it shall have failed to cure within the Cure Period.

**"Minister"** means the Minister, Federal Capital Territory, Abuja.

**"NIPAC"**, means NISA Premier – Apeiron Consortium as represented in the Concessionaire's Bid.

**"Parties"** means the parties to this Agreement collectively and **"Party"** shall mean any of the Parties to this Agreement individually.

**"Personnel"** means persons hired by the Concessionaire or by any approved sub-contractor as employees and assigned to the performance of services in accordance with this Agreement.

**"Prudent Industry Standard"** means the generally accepted practices, methods, techniques and standards employed by the international health system industry in accordance with Applicable Law with respect to:

- (a) the development, operation and maintenance of health systems;
- (b) personnel safety and environmental protection; and
- (c) optimizing the performance of the Hospital Operations.

**"Services"** means financing and execution of the upgrading, operation, maintenance and management of the Hospital in accordance with the provisions of this Agreement.

**"Realizable Fee"** means all the Fees due and realizable under this Agreement but does not include Fees that the Concessionaire has not been able to realize after due diligence and best efforts.

**"Lenders"** means the financial institutions, banks, funds and agents or trustees of debenture holders, including their

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successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting costs of all or any part of the Services and who hold pari passu charge on the Concession granted by this Agreement.

“Site” means the real estate licensed by the Grantor to the Concessionaire under and in accordance with this Agreement on which the Hospital is situated.

“Statutory Auditors” means an independent, recognized and reputable firm of Chartered Accountants duly licensed to practice in Nigeria acting as independent statutory auditors of the Concessionaire under the provisions of the Companies & Allied Matters Act, 1990 including any statutory modification or re-enactment or replacement thereof, for the time being in force, and appointed in accordance with Article...

“Termination” means the expiry or termination of this Agreement and the Concession hereunder.

“Termination Date” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.

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

“Termination Payment” means the amounts payable by the Grantor Concessionaire under this Agreement upon the Termination of this Agreement and shall consist of payments relating to Debt Due, Subordinated Debt and Equity, as the case may be, and such other amounts as are expressly provided for under this Agreement.

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authorized representatives of such Party as the case may be, in this behalf and not otherwise.

- (h) 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.
- (i) Priority of contract documents:

The Several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provide elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:-

- (i) This Agreement;
- (ii) All other documents forming part of this Agreement

i.e. document at (i) above shall prevail over the documents at (ii) above.

## ARTICLE II

### GRANT OF CONCESSION

- 2.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Grantor hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 15 (fifteen) years commencing from the Appointed Date, including the exclusive right, license and authority during the subsistence of this Agreement to implement the Concession in respect of the Garki District Hospital.
- 2.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle the Concessionaire to enjoy, and oblige the Concessionaire to

undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

- i. To upgrade, develop, manage, operate and maintain the Hospital during the Concession Period in accordance with best practices in the health industry and as contained in the business plan.
- ii. Levy, demand, collect and appropriate the Fees from patients and clients of the Hospital as provided for in this Agreement.
- iii. Perform and fulfill all of the Concessionaire's obligations under this Agreement.
- iv. Bear and pay all expenses, costs and charges incurred in the fulfillment of all the Concessionaire's obligations under this Agreement.
- v. Not to assign or create any lien or Encumbrance on the Concession hereby granted or on the whole or any part of the Hospital nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement.

2.3 The Concession Period shall commence on the Appointed Date and shall end on the Termination Date.

### ARTICLE III

#### TERM

3.1 **Execution Date:** The provisions of this Article, along with the provisions of Article IV (Closing and Conditions Precedent), Article IX (Representations and Warranties) and Article XXVII (Governing Law; Disputes), shall be in full force and effect, binding upon the Parties hereto, and enforceable in accordance with their terms, from the Execution Date.

- 3.2 **Effective Date:** Except as otherwise provided in Section 3.1, this Agreement shall become effective only upon the date that all of the conditions set forth in Article IV have been satisfied (the "Effective Date"), which date shall not be later than 28 days after Execution Date.
- 3.3 **Custody Transfer Date:** On the Custody Transfer Date, Concessionaire shall take custody of the Hospital Assets and commence conducting Hospital Operations and providing Hospital services on the Hospital.
- 3.4 **Term of Agreement:** This Agreement shall have a term (the "Term"), which commences on the Effective Date and terminates on the date that occurs on the 15<sup>th</sup> anniversary of the Effective Date, unless earlier terminated in accordance with the terms hereof.
- 3.5 **Transition Period:** Between the Effective Date and the Custody Transfer Date, Concessionaire shall coordinate with Grantor to plan all aspects of the transfer of the Hospital and to ensure, as of the Effective Date, full commencement of Hospital Operations and Health Services.

## ARTICLE IV

### CLOSING AND CONDITIONS PRECEDENT

- 4.1 **Closing:** The consummation of the Transaction shall take place at the offices of the Grantor in Abuja, Nigeria, on the date on which all of conditions set out in Sections 4.2, 4.3 and 4.4 have been satisfied or waived, as the case may be (the "Effective Date") subject to the provisions of Sections 4.5.
- 4.2 **Conditions to Obligations of Each Party:** The obligations of Grantor and Concessionaire to consummate the Transaction shall be subject to the fulfillment prior to the Effective Date of the following conditions:

- (a) *Execution and Delivery of this Agreement:* Each Party shall have duly executed and delivered to the other Party this Agreement.

*No Injunctions, etc.* Consummation of the transactions contemplated by this Agreement shall not have been restrained, enjoined or otherwise prohibited in any material respect by any Applicable Law, including any order, injunction, decree or judgment of any court Authority, and there shall not have been promulgated, entered, issued or determined by any court or other Governmental Authority to be applicable to this Agreement any Applicable Law making illegal the consummation of the transactions contemplated by this Agreement.

- (b) *Government Consents:* All consents or authorizations of Governmental Authorities that are required to concession, transfer or assign (as applicable), Concessionaire, the Hospital, shall have been made or obtained.

#### 4.3 Conditions to Obligations of Grantor: The obligation of Grantor to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to the Execution Date and/or the Effective Date, as applicable, of the following additional conditions (unless waived in writing by Grantor):

- (a) *Payment of Initial Fixed Concession Fee:* Concessionaire shall have paid to Grantor, and Grantor shall have received, the initial Fixed Concession Fee payable in accordance with Section 5.2.
- (b) *Performance Security:* Within fifteen (15) days after the Effective Date, Concessionaire shall have delivered to Grantor the Performance Security described in Article VI.
- (c) *Corporate Authorization of Concessionaire:* Concessionaire shall have delivered to Grantor the corporate documentation evidencing the authority of the Concessionaire to enter into the transactions contemplated by this Agreement, including:

- i) a copy of Concessionaire's corporate documents, certified by Concessionaire's secretary or other duly authorized corporate officer as to the completeness and correctness of such documents;
  - ii) a copy of resolutions adopted by Concessionaire's board of directors evidencing the authority of Concessionaire to enter into the transactions contemplated by this Agreement, duly certified by its secretary (or other officer authorized to make such a certification) as to the completeness and correctness of such documents;
  - iii) a copy of resolutions evidencing the authority of the officers of Concessionaire executing this Agreement and related documents required hereunder, duly certified by its secretary (or other officer authorized to make such a certification) as to the completeness and correctness of such documents; and
  - iv) a certificate of incumbency duly executed by Concessionaire's secretary or other duly authorized corporate officer as to the incumbency of the officers of Concessionaire executing documents and their genuine original specimen signatures.
- (d) *Representations and Warranties of Concessionaire:* The representations and warranties of Concessionaire in Article IX shall be true and correct as at the Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as of a specific date shall be true and correct in all material respects as of such date.
- (e) *Covenants of Concessionaire:* Concessionaire shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it at or before the Effective Date.

- (f) *Officer's Certificate:* Concessionaire shall have delivered to Grantor a certificate in form and substance satisfactory to Grantor, dated the Effective Date and signed by a duly authorized officer, as to the fulfillment of the conditions set forth in Sections 4.3(d) and (e).
- (g) *Financial Information:* Concessionaire shall have delivered to Grantor the following which shall be in form and substance satisfactory to Grantor:
- (i) audited financial statements and statement of accounts of Concessionaire, prepared by a reputable accounting firm through the end of the immediately preceding fiscal year.
  - (ii) unaudited financial statements and statement of accounts of Concessionaire through the most recent fiscal year.
- (h) *Evidence of Technical Partnership:* Concessionaire shall have delivered to Grantor evidence of a legally binding contract between it and Apeiron Nigeria Limited as represented by the Concessionaire in its bid.

#### 4.4 Conditions to Obligations of Concessionaire: The obligations of Concessionaire to consummate the transaction contemplated by this Agreement shall be subject to the fulfillment prior to the Execution Date and/or Effective Date, as applicable, of the following additional conditions (unless waived in writing by Concessionaire):

- (a) *Representations and Warranties of Grantor:* The representations and warranties of Grantor in Article IX shall be true and correct in all material respects when made and at and as of the Execution Date and Effective Date with the same effect as though made at and as of such time, except that those representations and warranties which are made as

of a specific date shall be true, and correct in all material respects as of such date.

- (b) *Covenants of Grantor:* Grantor shall have duly performed and complied in all material respects with all covenants and agreements contained in this Agreement required to be performed or complied with by it on or before the Effective Date.
- (c) *Officer's Certificate:* Grantor shall have delivered to Concessionaire a certificate in form and substance satisfactory to Concessionaire, dated the Effective Date and signed by a duly authorized officer, as to the fulfillment of the conditions set forth in Sections 4.4(a) and (b).
- (d) *Registration:* Concessionaire shall register with Grantor's assistance (which shall not include financial assistance) with Agreement with the appropriate Governmental Authorities if required by the Applicable Law. Grantor shall use its best efforts to assist Concessionaire with such registration.

#### **4.5 Failure to Timely Effect Closing:**

- (a) *Right to Suspend or Terminate Agreement:* If the Effective Date does not take place on or prior to the ninth day following the signature of this Agreement by all Parties because a Party fails to comply with any of its obligations under this Article, Concessionaire (in the case of a failure by Grantor) or Grantor (in the case of a failure by Concessionaire) may by notice to the other Party postpone Closing to a later date or terminate this Agreement.
- (b) *Effect of Termination:* Termination of this Agreement under this section shall result in this Agreement being deemed null and void without any liability attaching to either Grantor or Concessionaire. The foregoing provision does not in any way affect the possible forfeiture of the Bid Security by the Bidder pursuant to its bid which is a matter distinct from this Agreement.

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## ARTICLE V

### CONCESSION FEE/PROFIT SHARING

- 5.1 **Concession Fee in General:** In consideration of the rights and privileges granted to Concessionaire by virtue of this Agreement, Concessionaire shall pay to Grantor: (a) a Fixed Concession Fee and (b) a Variable Concession Fee (collectively, the "Fees").
- 5.2 **Fixed Concession Fee:** Concessionaire shall pay the Fixed Concession Fees in the amount of N25 million (the "Fixed Concession Fee"), which is inclusive of the Signature bonus.
- 5.3 **Variable Concession Fee:** Concessionaire shall pay the Variable Concession Fees in the amounts, manner and at the times set out in the Profit Sharing Formula in Appendix E.
- 5.4 **Payments:** All payments made by Concessionaire shall be made to an account of Grantor as duly notified by Grantor in writing.
- 5.5 **Late Payment:** If Concessionaire is late in any of its payments of any of the Concessionaire Fees, it shall owe Grantor by way of liquidated damages, interest on the overdue amount at the Late Payment Rate from the date the payment was due to the date of actual payment, [compounded monthly].
- 5.6 **No Right of Set-Off:** All payments to be made by Concessionaire under this Agreement shall be made without any right of set-off, counterclaim, retention, restriction or condition, except as provided.
- 5.7 **Taxes:** Concessionaire shall pay any taxes, levies, duties, withholdings, or other fees imposed by Governmental Authorities and are required by Applicable Law to be paid by Concessionaire as a result of the performance of its obligations hereunder.

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## ARTICLE VI

### PERFORMANCE/WARRANTY/GOVERNANCE STRUCTURE

- 6.1 **Performance Warranty:** Without prejudice to the other provisions of this Agreement for warranties and assurances, the Concessionaire has further undertaken that it shall perform its financial obligations as and when due, including, but not limited to, the payment of the Concession Fees, all other costs and financial liabilities arising under this Agreement. Failure to do so shall constitute a material breach of this Agreement by Concessionaire and the Grantor shall be entitled to exercise any and all of its rights and remedies under this Agreement.
- //6.2 **Governance Structure:** There shall be a 7-Man Governing Board for the Hospital, made up of 4 non executive directors and 3 executive directors. The Grantor and the Concessionaire shall each nominate 2 non executive directors. The Grantor's nominees under this section shall be appointed by the Minister from the cadre of Directors in the Health and Human Services Department of the Grantor. The proceedings of the Governing Board shall be in accordance with the Business Plan (Appendix D).

## ARTICLE VII

### TRANSFER OF CUSTODY OF HOSPITAL

- 7.1 **Concession of Hospital; Custody Transfer Date:** In consideration of the covenants and agreements set forth in this Agreement and other good and valuable consideration, commencing on the Effective Date, Grantor shall concede the Hospital to Concessionaire, and Concessionaire shall take custody the Hospital Assets from the Grantor. The transfer of physical custody of the Hospital from the Grantor to Concessionaire shall occur on the following dates (the "Custody Transfer Date"): (i) the Effective Date or (ii) a later date to be agreed by Grantor and

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Concessionaire, which shall in no event occur later than 14 days following the Effective Date.

## 7.2 Condition of Hospital on Custody Transfer Date:

- (a) *Undisturbed Possession:* Grantor warrants that as of the Custody Transfer Date, it will have the power to grant possession and use of the Hospital to Concessionaire for the entire Term of this Agreement.
- (b) *No Liens or Encumbrances:* Grantor warrants that as of the custody transfer date, the Hospital Assets shall be free and clear of all liens, charges, claims, encumbrances, and security interests, and to the other terms and conditions set forth in this Agreement.
- (c) *Hospital Operations and Hospital Asset "As Is":* Subject to Section 7.2(a) and (b), Concessionaire specifically acknowledges and agrees that it has carried out its due diligence on the Hospital and on the Hospital Assets, including technical and financial information; and based upon such review Concessionaire has already exercised whatever right or recourse it may have had, if any, including any adjustment in the Fees, accepts the Hospital and Hospital Assets as they exist on the day this Agreement is signed, and waives any rights against Grantor with respect to the condition of the Hospital Assets.

## 7.3 Title to Hospital Assets:

Grantor shall remain the owner of the Hospital except as otherwise expressly provided in this Agreement or agreed to in writing by Grantor. Concessionaire may not dispose of any portion of the Hospital's movable Assets without the written approval of Grantor.

## 7.4 Cooperation during Transfer of Custody:

The Parties shall cooperate in good faith to ensure the smooth and effective transfer of the custody of the Hospital, the Hospital Operations, and the Hospital services (to the extent Grantor conducts such services) from Grantor to Concessionaire.

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**Identification and Return of Redundant Assets:** During the Term of this Agreement, Concessionaire shall promptly return to Grantor all redundant Hospital Assets. Such assets shall include those identified from time to time by Concessionaire as having ceased to be useful or necessary for Hospital Operations or Hospital services. Such redundancy will be noted in the Hospital Assets Inventory delivered to Grantor under Section 7.6.

#### 7.6 Hospital Asset Inventory:

- (a) *Initial Inventory:* Within six months of Custody Transfer Date, Concessionaire shall compile and submit to Grantor an initial inventory of the Hospital Assets (the "Hospital Assets Inventory"). The HOSPITAL Assets inventory so compiled, once verified and agreed to by Grantor, shall become an integral part of this Agreement and replace Appendix B (with respect to fixtures), and Appendix C.
- (b) *Annual Update:* Concessionaire shall yearly update the Hospital Assets Inventory in the manner prescribed by Grantor, detailing all Upgrades, additions and deletions. These updated inventories shall be audited, at Concessionaire's own expense, and promptly submitted to Grantor once completed, but in no event later than [March 31st] of each calendar year.

#### 7.7 Concessionaire-Provided Assets:

- (a) *Right of Concessionaire to Use:* Concessionaire may bring at its own cost and use additional equipment on the Hospital other than the Hospital Movable Assets and the Hospital Fixed Assets and not included in the Business Plan (the "Concessionaire-Provided Assets") to satisfy its obligations hereunder, including without limitation, its Performance Requirements, subject to the Grantor being notified in writing.
- (b) *Title to Concessionaire-Provided Assets:* Concessionaire-Provided Assets shall remain Concessionaire's property

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notwithstanding the termination of this Agreement for any reason, unless the Parties otherwise agree that Grantor shall become owner of such Concessionaire-Provided Assets on the Termination Date.

(c) *Removal of Concessionaire-Provided Assets:*

Concessionaire shall, at its own expense, remove Concessionaire-Provided Assets from the Hospital Estate on the Termination Date if Grantor requires such removal or Concessionaire does not agree to transfer the same to Grantor. Concessionaire shall provide Grantor with a full list of Concessionaire-Provided Assets during the Termination Period, stating in such list whether it is prepared to sell such Concessionaire-Provided Assets to Grantor and, if so, at what purchase price.

**7.8 Return of Hospital Assets on Termination Date:** On the Termination Date, Concessionaire shall return to Grantor in good condition the Hospital. At such time the Hospital Assets must be in a condition adequate to permit the immediate continuation of Hospital Operations and Hospital services.

**7.9 Requisition of Assets during a National Emergency:** In the event of a national emergency the FGN shall be entitled to requisition for the duration of the emergency and any reasonable period thereafter the Hospital Assets. Grantor shall pay compensation for all financial losses and expenses incurred by Concessionaire as a result of this requisition, including but not limited to, any lost revenue, profits and liabilities for failure to comply with its contractual obligation to third parties, unless fair and reasonable compensation is paid directly to Concessionaire by FGN under Applicable Law or otherwise.

## ARTICLE VIII.

### 8.1 CONCESSIONAIRE'S PERSONNEL

- (a) *Qualified Personnel:* Concessionaire shall select and employ sufficient, suitably skilled and qualified personnel to enable it to perform the Hospital Operations and Hospital services in accordance with this Agreement.
- (b) *Sources of Labour:* When sourcing personnel, Concessionaire shall comply with the Staffing and Succession Plan to the extent applicable. Concessionaire shall use reasonable efforts to employ Nigerian nationals who satisfy the requirements for such positions.
- (c) *Employment Contracts:* With respect to personnel employed by Concessionaire under Section 9.2(a) and (b); Concessionaire shall be responsible for the negotiation of the applicable employment and labour contracts which shall be made in accordance with Applicable Law. Notwithstanding the foregoing, all Concessionaire personnel shall remain its or its Affiliate's employees for all salary and benefit purposes and shall be compensated in accordance with Concessionaire's normal policies as may be modified by the Concessionaire from time to time.
- (d) *Training:* Concessionaire shall be responsible for the preparation and implementation of all training of all staff working at the Hospital in accordance with the Staffing and Succession Plan and Applicable Law.
- (e) *Identification of Concessionaire Personnel:* Concessionaire shall ensure that its personnel are issued appropriate identification documentation. Such identification documentation shall be produced to any official or authorized person who has reasonable grounds to request the identification of such personnel.

### 3.2 GRANTOR'S PERSONNEL.

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- (a) The Grantor hereby further covenants with the Concessionaire that qualified medical personnel of the Grantor who are willing to go into the employment of the Concessionaire will be granted the requisite leave of absence, especially during the take-off period of the Concession.
  - (b) *Employment Contracts:* Until such time as Concessionaire and the Transferring Employees agree on new employment contracts, Concessionaire will honour the terms and conditions of the employment contracts of the Transferring Employees as they existed on the Execution Date. The new employment contracts must comply in all respects with Applicable Law and be no less favourable to the Transferring Employees than what prevailed in their employment contracts with Grantor.

## ARTICLE IX REPRESENTATIONS AND WARRANTIES

### 9.1 Representations and Warranties of Concessionaire

The Concessionaire represents and warrants to the Grantor that:

- (i) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.
- (ii) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.
- (iii) It has taken all necessary corporate and other action under Applicable Laws and its corporate documents to authorize the execution, delivery and performance of this Agreement.

- (iv) It has the financial standing and capacity to undertake the Concession.
- (v) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (vi) It is subject to civil and commercial laws of Nigeria with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof.
- (vii) All information furnished in the Business Plan is, and shall be, true and correct as on the Appointed Date and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Appointed Date furnished to Grantor shall give true and fair view of the affairs Concessionaire.
- (viii) It shall furnish a copy of the audited accounts of the Company within 180 (one hundred and eighty) days of the close of each Accounting Year after the Appointed Date and any material change subsequent to the date of such accounts shall be notified to Grantor by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct.
- (ix) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Memorandum and Articles of Association of the Concessionaire or any Applicable Laws or any covenant, agreement, 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.
- (x) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any

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other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement.

- (xi) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement.
- (xii) It has complied with all Applicable Laws and has not been subjected to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement.

## 9.2 Representations and Warranties of the Grantor.

The Grantor represents and warrants to the Concessionaire that:

- (i) The Grantor is duly organized and validly existing under the laws of Nigeria.
- (ii) The Grantor has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby.
- (iii) The Grantor has taken all necessary action to authorize the execution, delivery and performance of this Agreement.
- (iv) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

(v) The Grantor is subject to civil and commercial laws of Nigeria with respect to this Agreement.

(vi) The Grantor shall not unduly interfere with the day to day running of the Hospital.

### 9.3 DISCLAIMER

The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Hospital and all the information provided by the Grantor and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

## ARTICLE X HOSPITAL SERVICES

**10.1 General Obligation to Perform hospital Services:** Grantor hereby appoints Concessionaire, and Concessionaire hereby accepts such appointment, to perform the Hospital services on the Hospital in accordance with the terms of this Agreement. Grantor confirms that it hereby delegates to Concessionaire all such powers and authority as are necessary for Concessionaire to perform the Health Services.

**10.2 Scope of Services:** Concessionaire shall as of Custody Transfer Date and for the entire term of this Agreement offer the Health Services contained in Appendix D of this Agreement.

**10.3 Publication of Hospital services Rate:** Concessionaire shall at all times publish its rates, charges and conditions of the Hospital services as directed by Grantor or the Regulator, and shall make such information immediately available upon request by the Grantor.

10.4 No Discriminatory pricing: Concessionaire shall afford to all who may request the Hospital services uniform treatment under like conditions and shall not apply discriminatory charges on any Person. For the avoidance of doubt, the provisions of this Section shall not prohibit Concessionaire from granting Preferential Rates.

## ARTICLE XI

### PERFORMANCE STANDARDS AND COMPLIANCE

11.1 Standard of Performance: Concessionaire shall perform the Hospital Operations and Hospital services (i) in a safe, efficient, effective and economic manner; (ii) with due care and skill; and (iii) in accordance with Applicable Law and Prudent Industry Standards.

#### 11.2 Performance Requirements.

- (a) *General Requirements:* Concessionaire shall use its best efforts to: (i) conduct the Hospital Operations and Hospital services in order to achieve maximum utilization of the Hospital Assets in a manner which is consistent with Applicable Law, Prudent Industry Standards, and the provisions of this Agreement; and (ii) ensure that there is visible improvement in the standards of the Hospital Operations.
- (b) *Specific Requirements:* Concessionaire shall perform the Hospital Operations and Hospital services in such a manner as to achieve the performance requirements described in Appendix D in the respective years of the term set forth therein.
- (c) *Interruptions:* Concessionaire shall ensure that its performance of the Hospital Operations and Hospital services shall be as continuous and without interruptions as is reasonably practical. Concessionaire shall maintain records of the number, duration, location and extent of all Emergencies

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and unforeseen interruptions. Subject to prior written notification to Grantor, the Hospital Operations and Hospital services may be interrupted in order to carry out maintenance, rehabilitation or reinforcement of the Hospital Assets. During any such repairs or in the event of an accident or Emergency requiring immediate interruption of the Hospital Operations and Health Services, Concessionaire may take all reasonably necessary measures to manage the same. Concessionaire shall maintain records of the number, duration, location and extent of all interruptions in the Hospital Operations and Hospital services (noting specifically any interruptions). If the performance of the Hospital Operations and/or Hospital services are adversely affected by interruptions during an Operational Year, the Performance Requirements shall be reduced by a pro rata percentage of the number of days that an Interruption prevented Hospital Operations or Hospital services over three hundred and sixty five days.

**11.3 Tracking and Evaluation of Performance:** Grantor shall evaluate Concessionaire's performance of the Hospital Operations and Hospital services on an annual basis. The process of evaluation shall commence on the Effective Date and shall be conducted as follows:

- (a) **Concessionaire Evaluation and Report:** Following the completion of each Operating Year, Concessionaire shall provide to Grantor with a report in respect of that Operating Year which shall include, inter alia, a full account of its performance against the applicable Performance Requirements, an explanation of any failure to meet such Performance Requirements and any other information requested by Grantor to enable it to make its evaluation (the "Concessionaire Report") within ninety (90) days after the end of each Operational Year.
- (b) **Grantor Evaluation and Report:** Grantor's evaluation, which shall have been ongoing during the Operating Year, shall be completed by Grantor and Grantor shall produce and deliver to Concessionaire an evaluation report containing its own

## FINANCING ARRANGEMENT

**A. FINANCIAL CLOSE FOR FIRST YEAR OPERATION**

- 13.1 The Concessionaire shall provide to the Grantor, a copy of the Financing Package furnished by it to the prospective Lenders. As and when such Financial Package is approved by the Lenders, with or without modifications, a copy of the same shall be furnished by the Concessionaire to the Grantor.
- 13.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with the Grantor that it shall achieve Financial Close for the first year of operation within 180 (one hundred and eighty) days from the date of this Agreement.
- 13.3 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within 180 (one hundred and eighty) days as set forth in Clause 13.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and the Concessionaire Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

**B. BUSINESS PLAN FOR TERM OF CONCESSION**

It is hereby expressly agreed between the Parties that the Business Plan attached to this Agreement as Appendix D shall apply for the duration of the Concession unless otherwise agreed by the Grantor and the Concessionaire in writing.

**C. SUBSIDIES**

Nothing in this Agreement shall preclude the Grantor from approving a Subsidy programme on the Hospital Services for

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members of its staff or the general public. Where this occurs, the Parties shall agree on the modalities for implementing same.

## ARTICLE EIGHT DOCUMENTATION AND AUDITS

**14.1 Updates to Approved Programme of Hospital Operations:** Each year, no later than thirty (30) days prior to the anniversary of the Commencement Date, Concessionaire may submit to Grantor for its written approval, a proposed updated version of the current Approved Programme of Hospital Operations comprising:

- (a) a summary of the operating and maintenance standards that will govern the Hospital Operations to be conducted by Concessionaire during the balance of the Term;
- (b) a detailed Business Plan for the next five (5) years of the Term, or for the balance of the Term of less than five (5) years, covering traffic forecasts, maintenance and investment plans, train operation plans and staffing projections; and
- (c) an indicative Investment Plan for the balance of the Concession Period, if any, following the Period covered by the Development Plan.

Grantor will review and, if satisfied, approve such proposed updated programme. Once approved by Grantor in writing, such programme shall be deemed the new Approved Programme of the Hospital Operations (superseding the Approved Programme of Hospital Operations that was in effect up until such time) and shall form an integral part of this Agreement.

**14.2 Updates to Approved Programme of Health Services:** Each year, no later than thirty (30) days prior to the anniversary of the Commencement Date, Concessionaire may submit to Grantor for its written approval, a proposed updated version of the current

Approved Programme of Health Services. Grantor will review and, if satisfied, approve such proposed updated programme. Once approved by Grantor in writing, such programme shall be deemed the new Approved Programme of the Hospital Operations (superseding the Approved Programme of Hospital Operations that was in effect up until such time) and shall form an integral part of this Agreement.

#### 14.3 Records and Reports:

- (a) *Maintenance of Books and Records:* Concessionaire shall prepare and maintain registers, books, records and other means of recording information in the quality and quantity required for facilitating efficient management and supervision of the Hospital Assets, for providing information to Grantor, and for informing the public and its customers of the quality and performance of its Hospital Operations and Health Services.
- (b) *Accounting:* Concessionaire shall maintain suitable and complete accounting and non-accounting records that summarize technical, commercial, financial and personnel information. All such information shall be retained in a form that shall permit regular audits. Financial records and accounts shall be maintained in accordance with applicable international generally accepted accounting principles as agreed to by Grantor. Technical records (including without limitation engineering designs and drawings) shall be maintained in accordance with Prudent Industry Standards.
- (c) *Hospital Assets:* Beginning on the Effective Date, Concessionaire shall prepare and maintain current records of the Hospital Assets in sufficient detail as required by Grantor, to provide a full understanding of the location and state of the Hospital Assets at all times during the Term. Such records shall be comprised of physical drawings, databases and calculation sheets along with historical records relating to their constitution, repairs, and maintenance, including all works carried out as replacements, rehabilitation and maintenance.

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- (d) *Copies of Records:* Concessionaire shall provide Grantor and the Regulator with copies of the foregoing records as requested by Grantor on a yearly basis.

**14.4 Audits:** Within a year following the Effective Date, Concessionaire shall, at its own cost and expense, select and contract an independent external financial auditor to perform a statutory audit. Grantor may appoint, at its own cost and expense, an independent auditor to undertake the duties of an external auditor including without limitation:

- (a) verification of standards and quality of Hospital Operations and Health Services;
- (b) review of the performance of any statutory or contractual obligation of Concessionaire; and
- (c) verification of financial records of Concessionaire.

**14.5 Annual Report:** Concessionaire shall submit to Grantor an Annual Report ("Annual Report") within one hundred and twenty (120) days after the end of each year during the Term (or such earlier date as required under Applicable Law). The Annual Report shall be in form and substance reasonably acceptable to Grantor. Concessionaire shall provide any clarification of the Annual Report requested by Grantor and the Regulator. At a minimum, the Annual Report shall contain the following technical and financial information:

- (a) any circumstances having an impact on the financial obligations of Concessionaire under this Agreement;
- (b) numbers and categories of patients;
- (c) numbers and categories of personnel employed;
- (d) levels of performance of Hospital Operations and Health Services;

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- (e) quality compliance;
  - (f) renovation works and repairs carried out or to be carried out;
  - (g) exceptional events such as pollution incidents, strikes, etc;
  - (h) Emergencies;
  - (i) Measures, if any, taken by Concessionaire during the applicable year with respect to its obligations hereunder related to the protection and preservation of the environment;
  - (j) The Hospital Operations and Hospital services performed during the applicable year; and
  - (k) An audited set of accounts prepared in accordance with generally accepted national accounting principles and practices.

## ARTICLE XV

### FORCE MAJEURE

- 15.1 For the purpose of this Agreement, "Force Majeure" means an event which could not reasonably have been avoided by a diligent party, which is beyond the reasonable control of a party and which makes a party's performance of its responsibilities hereunder impossible or impracticable as reasonably to be considered impossible in the circumstances and includes but not limited to acts of war, riots, civil disorder, earthquake, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial actions, confiscation or any action by government agencies.
- 15.2 Force Majeure shall not include any event which is caused by the negligence or intentional act or omission of a party or such party's Sub-Contractors or Agents or Employees or by failure to observe sound/standard professional practice.

15.3 No Breach of Agreement

The failure of a Party to fulfill any of its obligations shall not be considered to be a breach or default under this Agreement in so far as such inability arises from an event of Force Majeure, provided that the party affected by such an event has taken all reasonable precautions, due care and diligent alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

#### 15.4 Measures to be Taken:

- (i) A Party affected by an event of Force Majeure shall take all reasonable measures to remove the inability to fulfill its obligations within a reasonable time.
- (ii) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible and in any other event not later than fourteen (14) days following the occurrence of such event and shall similarly give notice of the restoration of normal conditions.
- (iii) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

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

**15.6 Liability for other losses, damages, etc:** Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article.

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15.7 Duty to Report: The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure event is likely to have on the performance of its obligations under this Agreement.
- (b) Any notice pursuant to this Clause shall include full particulars of:
  - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article with evidence in support thereof;
  - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
  - (iii) the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
  - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as the other Party may reasonably request the Affected Party to provide.

**15.8 Excuse from performance of obligations:** If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event provided that:

- (a) The suspension of performance shall be no greater scope and of no longer duration than is reasonably required by the Force Majeure Event.
- (b) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence.
- (c) When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder.

## ARTICLE XVI

### DEFAULT/TERMINATION

#### **16.1 DEFAULT**

**16.1.1 Concessionaire Event of Default:** Except if resulting from a Grantor Event of Default, or Force Majeure, each of the following events shall be considered to constitute a "Concessionaire Event of Default":

- (a) Concessionaire becomes insolvent, or, makes an arrangement for the benefit of its creditors, petitions or applies to any court or tribunal for the appointment of a receiver or a trustee for itself or any part of its property, or commences or has commenced or has commenced against it

any legal proceeding for its reorganization, readjustment of debt, dissolution or liquidation.

- (b) Other than as a consequence of an interruption, Concessionaire fails to perform the entire Hospital Operations for fourteen (14) consecutive days in an Operating Year or ninety (90) non consecutive days in an Operating Year.
- (c) Concessionaire fails to pay any amounts due in accordance with this Agreement.
- (d) The Performance Security shall at any time cease to be in effect.
- (e) Concessionaire commits a breach of any material provision of this Agreement.

**16.1.2 Grantor Events of Default** Except if resulting from a Concessionaire Event of Default or Force Majeure, each of the following events shall be considered to constitute a "Grantor Event of Default":

- (a) Grantor repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement.
- (b) The Hospital (in whole or in part) is expropriated, compulsorily acquired, or nationalized by Governmental Authority (other than an action of Grantor under this Agreement).
- (c) Grantor commits a breach of material provision of this Agreement.

**16.1.3 Consequences of Default**

- (a) *Insolvency:* Upon an Event of Default or insolvency described in Section 16.1.2, the party that is not in default may immediately serve a Termination Notice.

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(b) *Expropriation and Taking to Use Upon a Grantor Event of Default*: described in Section 16.1.2, Concessionaire may immediately serve a Termination Notice.

**16.1.4 Compensation on Termination Due to Concessionaire Event of Default:** If the termination is due to a Concessionaire Event of Default, Concessionaire shall be responsible for any and all actual costs, expenses, charges, damages and/or penalties incurred or sustained by Grantor as a consequence of such termination.

**16.1.5 Termination due to Grantor Event of Default:** If the termination is due to a Grantor Event of Default, the compensation payable by Grantor shall be the aggregate of any and all actual costs, expenses, charges, damages and/or penalties incurred or sustained by Concessionaire as a consequence of such termination.

**16.1.6 Remedies Cumulative:** The exercise of the right to terminate this Agreement by either Party shall not preclude such Party from availing of other rights or remedies that may be available to it under law. 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 remedies by such Party.

## 16.2 TERMINATION

**16.2.1** This Agreement can be terminated in any of the following ways:

- The expiry of the terms;
- Upon the occurrence of an Event of Default subject to any applicable notice and cure period in accordance with Section 16.1 of this Article;
- Upon the occurrence of a prolonged event of Force of Majeure in accordance with Article XV.

Any such termination shall be without prejudice to the accrued rights and liabilities of the Parties in respect hereof as at the date of such termination or which may thereafter accrue in respect of any act or omission prior to such termination and shall be without prejudice to any provisions of this Agreement which are expressed to remain in force thereafter.

### 16.3 Termination due to public interest

**16.3.1** The Grantor may terminate the Concession unilaterally at any time whenever overriding public interest so recommend, regardless of whether the Concessionaire has violated any of its obligations.

**16.3.2** Should the Concession be terminated as provided for in this Section, the Concessionaire shall be entitled to a compensation in the full amount of its investment in the Concession under other applicable laws.

## ARTICLE XVII

### GOVERNING LAW/DISPUTE RESOLUTION

**17.1 Governing Law:** This Agreement shall be governed by construed and enforced in accordance with the laws of Nigeria.

**17.2 Disputes:** Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement and the activities carried out hereunder, including without limitation any dispute as to the construction, validity, interpretation, enforceability or breach of this Agreement shall be exclusively and finally settled pursuant to the dispute resolution process described in this Article.

**17.3 Mutual Consultation:** if either Party believes that a Dispute exists, it may deliver a notice to the other Party requesting that the Dispute be referred to the senior management of the Parties. Any such notice shall include the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule

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of their availability during the twenty one (21) day period following the date of the notice. Within seven (7) days after receipt of a notice pursuant to the preceding sentence, the other Party shall provide a notice to the requesting Party indicating the names of the senior management of the Party nominated to attempt to resolve the Dispute, and a schedule of their availability during the remainder of the twenty one (21) day period following the date of the notice. During the remainder of such period following delivery of the notice, the nominated members of the senior management of the Parties shall meet as frequently as possible, and shall attempt in good faith to use best efforts to resolve the Dispute.

**17.4 Assistance of Expert Mediator:** The Parties may, in appropriate cases agree to refer the matter to a Mediator. The Parties shall agree on the period within which the Mediator shall conclude the assignment. The cost of using such Mediator shall be shared equally between Grantor and Concessionaire. Where either Party disagrees with the opinion of the Mediator, the dispute may be referred to arbitration.

**17.5 Arbitration:** In the event that Parties are unable to reach an amicable settlement in respect of a dispute or difference or claims of any kind within sixty (60) days, such dispute or difference or claim of any kind shall be finally settled under the Arbitration & Conciliation Act, Cap 19 LFN 1990.

**17.6 Place of Arbitration:** The place of arbitration shall be Abuja or any other place mutually agreed by the Parties.

**17.7 Performance during Arbitration:** Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

## NOTICES.

18.1 **Signatories:** Any notice, consent, command or approval or other communication required or permitted to be given under this Agreement shall be deemed to have been given if in the case of a notice to be given by:

- (a) **Grantor**, such notice is signed on behalf of Grantor by either the Chief Executive or such authorized representatives as their respective responsibilities;
- (b) **Concessionaire**, such notice is signed by Concessionaire's Managing Director or authorized representative or by a person who possesses a valid power of attorney issued by the Board of Directors or the Managing director.

18.2 **Delivery of Notices:** Any notices, request, document, or other communication required or permitted under this Agreement must be in writing and shall be given in one of the manners provided below to the address (or number) provided in paragraph (b) below. Each such shall be deemed effective:

- (a) if delivered (in person) or by courier, on the date it is delivered; or
- (b) if sent by certified or registered mail or the equivalent on the date that mail is delivered; unless the date of such delivery or receipt, as applicable, is not a business day in the place of such delivery or receipt, or such communication is delivered or received, as applicable, after the close of business on a business day in the place of such delivery or receipt, in which case such communication shall be deemed given and effective on the next business day in the place of such delivery or receipt from its such day.

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18.3. Addresses for Notice notices shall be sent to the following addresses (or to such other address as the receiving Party may have designated via written notice):

(a) If to Grantor:

Federal Capital Territory Administration  
FCTA Headquarters  
Kapital Road  
Area 11 Garki, Abuja.

(b) If to Concessionaire:

NISA Premier Hospital  
Plot 618, Alex Ekwueme Way  
Jabi, Abuja.

Or

At the Hospital

- 19.1 **Further Assurances:** Both Parties shall execute such documents and do such acts from time to time during power, and which are necessary to give full effect to this Agreement.
- 19.2 **Amendments:** No change, amendment, or modification of this Agreement shall be valid or binding upon the Parties hereto, unless such change, amendment, or modification shall be in writing and duly executed by both Parties hereto.
- 19.3 **Assignment:** This Agreement may be assigned to other parties only upon the prior written consent of the non-assigning Party hereto; except Grantor may assign this Agreement in whole or in part to any Governmental Authority. When duly assigned in accordance with its foregoing sentence, this Agreement shall be binding upon and shall inure to the benefit of the assignee. Any assignment not in accordance with provision of this Section shall be void and without force or effect.
- 19.4 **Sub-Contracting:** Each Party may engage any contractor or sub-contractor possessing the requisite skill, expertise, capability and legal capacity under Applicable Law for the purpose of performing some, but not all, of its obligations under this Agreement; provided, however, that the Party engaging the sub-contractor shall, at all times, be solely responsible for the action and omissions of that sub-contractor; and; provided further, that Concessionaire shall not subcontract to any third party for certain Core Services without the prior written consent of Grantor.
- 19.5 **Survival:** All rights accrued prior to the termination of this Agreement shall survive its termination.
- 19.6 **Return of Facilities:** At the end of the term of the Concession, the Concessionaire shall return to the Grantor the whole of the facilities involved in the Concession free of any charges, encumbrances and liabilities. The facilities shall be transferred in good conditions, ensuring that the Services can still be provided without any loss in quality.

**19.7 Confidentiality:** Each Party agrees to hold in confidence during the Term and for a period of five (5) years following the termination of this Agreement, any information supplied to such Party (the "Receiving Party") by the other Party (the "Disclosing Party")—and related to the Hospital Assets, the Hospital Operations, or this Agreement (the "Confidential Information"). The Receiving Party shall be entitled to disclose such information to its officers, directors, employees, external advisors, subcontractors, and/or agents who have a need to know in order to assist the Receiving Party in the performance of its obligations hereunder; provided that the Receiving Party shall be responsible for ensuring that all such persons keep such Confidential Information confidential. Information within any one of the following categories or any combination thereof shall not be deemed to be Confidential Information:

- (a) information that was in the public domain prior to the receiving Party's receipt thereof from the Disclosing Party or that subsequently becomes part of the public domain by publication or otherwise except by the Receiving Party's wrongful act;
- (b) information that the Receiving Party can show was lawfully in its possession prior to receipt thereof from the Disclosing Party through no breach of any confidentiality obligation; or
- (c) information received by the Receiving Party from a third party having no obligation of secrecy with respect thereto.

Notwithstanding the foregoing, either Party shall be entitled to disclose confidential information as required by Applicable Law.

**19.8 No Waiver:** Any failure of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its items at any time during the term of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any provision of such provision.

- 19.9 **Severability:** The invalidity of one or more clauses, notwithstanding, clauses, sections or articles contained in this Agreement shall not affect validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 19.10 **Further Assurances:** The Parties agree to provide such information, execute and deliver any such instrument and documents and to take such other actions as may be necessary or reasonably requested by the other party that are not inconsistent with the provisions of this Agreement but do not involve the assumptions of obligations other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.
- 19.11 **Concessionaire Compliance with Laws:** Concessionaire shall comply with all laws applicable to its performance under this Agreement including those dealing with improper or illegal payment, gifts or gratuities.
- 19.12 **Grantor Monitoring:** For purposes of the proper monitoring and supervision of the Concessionaire's performance of its obligations under this Agreement the Health and Human Services Department of the State shall be the Grantor's authorized representative.
- 19.13 **Revision of the Agreement:** Notwithstanding that the Concession shall terminate fifteen years after commencement, except where a prior termination event occurs, the Parties may proceed to a revision of the present Agreement periodically on conditions to be agreed by the Parties.
- 19.14 **Joint Negotiation:** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption of authorship of proof "shall arise favouring or disfavouring any Party in virtue of the authorship of any of the provisions of this Agreement."

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19.15 Entire Agreement: The terms and provisions contained in this Agreement (including the appendices) constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any prior written or oral agreements relating to such subject matter, and all contemporaneous oral agreements, understandings and negotiations.

IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THEIR RESPECTIVE COMMON SEALS TO BE AFFIXED HERETO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED BY:

*M. A. M.*

THE MINISTER, FEDERAL  
TERRITORY, ABUTMENT AND  
OF THE GRANTOR

In the Presence of:

Name: *Engr. M. A. M.*

Address: *FCMA*

Designation: *Executive Engineer*

Signature: *[Signature]*

THE COMMON SEAL OF MEGHNA MILK  
HOSPITAL (The Within Seal is CONFESSIONAL)  
WAS HERETO AFFIXED

In the Presence of:

*J. S. P. B.*

MANAGING DIRECTOR

SEAL

SECRETARY