

**Agreement to be executed by District Health and Family Welfare Samiti and Party
agreeing to run Diagnostic Services in Block Primary Health Centres /Rural Hospitals
under Public Private Partnerships**

This Agreement is made on this _____ day of _____ 200__ between Department of Health and Family Welfare, Government of West Bengal represented by the District Health and Family Welfare Samiti of _____ District, hereinafter referred as `the DHFWS' and _____, a company incorporated under the Companies Act, 1956 having its registered office at _____ / _____ an NGO registered under the Society Registration Act of 1860/The Indian Trusts Act of 1982/The Co-operative Societies Registration Act or The Statutory Body or The Professional Association or The Social Welfare Organisation represented by its _____, namely _____ and having its main office at _____, in the District of _____ in the State of West Bengal, hereinafter referred to as "the Concessionaire".

WHEREAS

- A. Department of Health (DoHFW), Government of West Bengal (GoWB) has taken initiatives to strengthen some of the major areas of health and medical care services in the state. The purpose of these initiatives is to improve the health status of the poor and vulnerable population in the state.
- B. One such initiative that GoWB already identified for implementation was establishment of Diagnostic Facilities in the Block Primary Health Centres /Rural Hospitals (RH) with the participation of private sector/NGOs for conducting standard diagnostic tests like pathological, bio-chemical, haematological, micro-biological, serological and radiological tests. The objective of this initiative was to have greater access of the people to quality diagnostic services at affordable cost. Accordingly, Government has decided to establish diagnostic facility under PPP in all the Rural Hospitals and upgraded BPHCs in the State. In the meanwhile, diagnostic facilities have been established in more than 50 Rural Hospitals / BPHCs under PPP. To establish diagnostic facilities in the remaining Rural Hospitals and upgraded BPHCs, DoHFW invited proposals from eligible persons for implementing the Project (as hereinafter defined) and in response thereto received proposals from several persons including the Concessionaire for the same.
- C. After evaluating the proposals, District Health & FW Samiti, _____ District accepted the proposal submitted by the Concessionaire and the selected party was accordingly given offer to establish the diagnostic centre in _____ Rural Hospital / BPHC. The Concessionaire has duly accepted the offer vide their letter dated _____.

NOW THIS AGREEMENT WITNESSETH as follows: -

**ARTICLE 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:

“Agreement” means this agreement including schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions hereof.

“ACMOH” means the Assistant Chief Medical Officer Health of the Sub-division

“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 hereinafter in India, including the Act, judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

“Applicable Permits” means all clearances, permits, authorisations, consents and approvals under or pursuant to any of the Applicable Laws, required to be obtained and maintained by the Concessionaire, in order to implement the Project and to transact in the facilities and services in accordance with 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.

“BMOH” means the Block Medical Officer of Health of the Hospital.

“BHFWS” means the Block Health and Family Welfare Samiti.

“BPL” means Below Poverty Line

“Clearance” means any consent, license, approval, registration, certification, exemption, permit, sanction or other authorization of any nature which is required to be granted by any Government Authority for the Project and for all such other matters as may be necessary in connection with the Project.

“Clinical Establishment Rules” means The West Bengal Clinical Establishment Rules as modified upto 2003 or modified hereafter.

“Competent Authority” means the Government Agency responsible for regulating/regulating the operations of the Diagnostic Centre, the Standard Diagnostic Services and the Special Tests.

“Concessions” shall have the meaning ascribed to it in Section 2.1 of this Agreement.

“Concession Period” shall have the meaning ascribed to it in Section 2.2 of this Agreement.

“DoHFW” means the Department of Health and Family Welfare, GoWB.

“DHFWS” means District Health and Family Welfare Samiti, _____ District, West Bengal.

“Diagnostic Centre” means the diagnostic centre/laboratory as described in Schedule ‘A’ that the Concessionaire is to set up in the Project Site.

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

“Free Services” means tests/investigations to be conducted at free of cost.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project.

“Government Agency” means GoWB, DHFW, CMOH, Deputy CMOH, ACMOH, Superintendent, BMOH or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the RH or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“GoWB” means the Government of the State of West Bengal.

“Hospital” means Block Primary Health Centres /Rural Hospitals of the Government of West Bengal.

“Lenders” means financial institutions, banks, funds or trusts who provide or refinance the debt component of the cost of the Project including those providing working capital for the Project.

“Material Adverse Effect” means material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” means a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“Monitoring Agency” means the ACMOH under whose jurisdiction the RH falls.

“Project” means the equipping, financing, operating, maintaining and transferring the Diagnostic Centre and providing Standard Diagnostic Services in accordance with the provisions of this Agreement.

“Project Site” means the unit no. _____/room no. _____ in the RH, particulars whereof are set out in Schedule ‘B’ in which the Diagnostic Centre is to be implemented and the Standard Diagnostic Services to be provided by the Concessionaire in accordance with this Agreement. A **Possession Letter** as per the format set out in the same Schedule (Schedule ‘B’) duly signed by “the Concessionaire” shall form part of this agreement.

“Price” means the price chargeable for a Standard Diagnostic Service (mandatory tests) to Referral Patients of the Hospital, fixed as per Schedule C hereof.

“Price Notification” means the notification as appended hereto as Schedule C.

“Referral Patients” means the patients referred from the RH to the Diagnostic Centre by the Superintendent/BMOH of the RH and Medical Officers of the RH.

“Scheme” means the scheme promulgated by the GoWB/other Competent Authority for and in respect of the Project.

“Special Tests” means the diagnostic tests not comprised in the Mandatory Diagnostic Services that the Concessionaire may conduct at the Diagnostic Centre with the written consent of DHFWS.

“Standard Diagnostic Services” means the mandatory diagnostic tests/investigations described in Schedule ‘A’ that the Concessionaire is required to provide.

“Standard Operating Procedures” means the service standards and quality assurance systems prepared/stipulated by DoHFW.

“Superintendent” Superintendent of the Hospital

“Termination” means early termination of this Agreement pursuant to Article 7 of this Agreement.

“Utilities” means water connection and electricity connection for the Diagnostic Centre.

“Working Day” means any day when the normal operations and services of the RH i.e. operations other than casualty services are available to the public.

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 or is capable of applying to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- (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, organisations 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 shall mean a reference to a calendar day;
- (g) any reference to month shall mean a reference to a calendar month;
- (h) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- (i) 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;
- (j) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Monitoring Agency shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Monitoring Agency, as the case may be, in this behalf and not otherwise;
- (k) unless otherwise stated, 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.

ARTICLE 2 CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the DHFWS hereby grants and authorises the Concessionaire to operate and maintain the Project, and to exercise and/or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (“the Concession”).

2.2 Concession Period

The Concession hereby granted is for a period of 5 years commencing from the date hereof and ending with _____ (“the Concession Period”) during which the Concessionaire is authorised to implement the Project in accordance with the provisions hereof.

Provided that the District Health & FW Samity, _____ District shall be entitled to review the performance of the Concessionaire at the end of two years from the date hereof.

Provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the date hereof and ending with the Termination Date.

2.3 Acceptance of Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the Project and to perform/discharge all of its obligations in accordance with the provisions hereof.

2.4 Project Site & Utilities

- (a) DHFWS has on the date hereof handed over to the Concessionaire physical possession of the Project Site free from Encumbrance. DHFWS hereby represents that the Project Site is ready-to-use and adequate for the Diagnostic Centre, as per the norms of the Clinical Establishment Rules.
- (b) The Concessionaire shall have the right to the use of the Project Site in accordance with the provisions of this Agreement.
- (c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site.
- (d) The Concessionaire shall not, except with the prior permission in writing of DHFWS carry out any structural or major modifications in the Project Site but shall be entitled to make such minor modifications as may be necessary in its opinion for the Diagnostic Centre. Provided, any such modifications should be in accordance with the Clinical Establishment Rules.
- (e) The Concessionaire shall not without the prior written consent or approval of DHFWS use the Project Site for any purpose other than for the purpose of the

Diagnostic Centre and the Standard Diagnostic Services and purposes incidental or necessary thereto.

- (f) At all times during the pendency of this Agreement, DHFWS shall provide/arrange for Utilities for the Diagnostic Centre. The water supply shall be free of cost. A separate electric meter shall be installed by the Concessionaire to record the electricity consumed at the Diagnostic Centre and the Concessionaire shall pay for the electricity consumed in accordance with the provisions of this Agreement. Installation Charges shall be borne by the Concessionaire.

ARTICLE 3

CONCESSIONAIRE'S OBLIGATIONS

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

3.1 Project Implementation

- (a) The Concessionaire shall within one month of the date of this Agreement, equip and install the Project Site with such furniture and equipment as may be required for the Diagnostic Centre. Such modifications shall be carried out by the Concessionaire at its own cost and expense.
- (b) The Concessionaire shall hire qualified technical personnel and train them to manage the Diagnostic Centre and provide the Standard Diagnostic Services (mandatory tests) and other permissible services therein. The Concessionaire shall comply with the requirements of the Clinical Establishment Rules for hiring of technical personnel.
- (c) The Concessionaire shall procure the Clearances licenses required for commencing the Standard Diagnostic Services including the licenses required under the Laboratory License (Clinical Establishment Rules), Trade License etc.
- (d) The Concessionaire shall commence providing of the Standard Diagnostic Services only after the CMOH has duly certified that all requirements of the Clinical Establishment Rules in respect thereof have been fulfilled.

Provided, the Concessionaire shall procure such certification of the CMOH latest by 3 months from the date hereof failing which this Agreement shall be liable to be terminated.

3.2 Operation and Maintenance

The Concessionaire shall operate and maintain the Diagnostic Centre and provide the Standard Diagnostic Services, as under:

- (a) Operate and maintain the Diagnostic Centre, conduct the Standard Diagnostic Services and Special Tests therein as per the Standard Operating Procedures and in absence thereof, Good Industry Practices. The Concessionaire shall comply with the requirements of the Clinical Establishment Rules.
- (b) Deliver test reports of highest quality so as to commensurate with Standard Operating Procedures and in absence thereof, Good Industry Practices.
- (c) Maintain cleanliness, dispose off waste and maintain the Project Site and the Diagnostic Centre as per guidelines issued by the Central Pollution Control Board.
- (d) Arrange for and maintain security of the Diagnostic Centre at its own cost.
- (e) Ensure that the Special Tests, if any provided also adhere to the Standard Operating Procedures, if any stipulated and/or the Applicable Law and commensurate with Good Industry Practices.
- (f) Maintain the Clearances by complying with the conditions there under and renewals if any required from time to time and comply with all statutory

requirements for running its operation and submit the same for review of DHFWS or any Governmental Authority.

- (g) Set up systems for the operations of the Diagnostic Centre including systems in respect of inventory management, customer servicing, financial accounting, record-keeping and MIS.
- (h) Submit monthly reports in prescribed format to Superintendent /BMOH of the RH / BPHC with copy to ACMOH of the concerned Sub-Division & Deputy CMOH-I of the District.
- (i) Submit documents needed as per Standard Operating Procedures in a timely manner.
- (j) Coordinate with Superintendent/ BMOH or a person designated for such co-ordination by the Superintendent/ BMOH for matters concerning operational activities relating to patient servicing on day-to-day basis.
- (k) Abide by the advice of the ACMOH, under whose jurisdiction the Hospital falls and who shall be monitoring the Diagnostic Centre and the services provided therein.
- (l) Install/provide for a suggestion box in the Diagnostic Centre to enable patients to give feedback based on which actions are to be taken for patient/customer satisfaction.
- (m) Make prompt payment of user charges for the electricity used in the Diagnostic Centre as per the billing of the electricity provider based on the meter reading of the meter installed for the purpose of recording the electricity supply to the Diagnostic Centre.
- (n) Make prompt payment to the suppliers to ensure uninterrupted supply of reagents, stocks and consumables required for the Diagnostic Centre;
- (o) Regularly pay salaries and other emoluments to the staff engaged by it at the Diagnostic Centre;
- (p) Display conspicuously in the Diagnostic Centre, the list of Price Notification and charge for the Standard Diagnostic Services, the Prices notified against bills issued for the same;
- (q) Maintain a record of bills issued and amounts collected and submit the counterfoils of the bills issued for inspection of DHFWS or any person(s) designated for such inspection by DHFWS;
- (r) Obtain and maintain insurance's for the Diagnostic Centre as per Good Industry Practice including insurances against damages to property due to force majeure, insurances against theft and loss of equipment, insurance's against professional indemnity for the Standard Diagnostic Services, etc.

3.3 Free services

- (a) The policy on free services for diagnostic tests is applicable to BPL category of patients referred to the Diagnostic Centre under PPP by Superintendent/ BMOH / MoIC of the Rural Hospital / BPHCs with required prescription of the concerned patients.

- (b) In consideration of the Concession hereunder granted, the Concessionaire shall extend for BPL category of Patients, the mandatory tests free of cost as per prescription of the Superintendent/ MoIC of the Hospital. These free services to the BPL patients in each month will be not less than 20% of the total patients referred to the diagnostic centre in the previous month. The provision will be for each month and unutilized provision (if any) will not be carried forward to the next month.

3.4 Stable Availability

- (a) The Concessionaire shall ensure that all the Standard Diagnostic Services (mandatory tests) are available at all times during the tenure of the Concession. For this purpose, the Concessionaire shall keep the Diagnostic Centre open for services from _____ a.m. to _____ p.m., every Working Day.

ARTICLE 4

DHFWS'S OBLIGATIONS

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

4.1 Specific obligations

DHFWS shall:

- (a) develop Standard Operating Procedures and management systems with the help of DoHFW from time to time.
- (b) procure that appropriate orders be issued by the Competent Authority, directing the RH and doctors engaged by the Government Agencies to refer patients to the Diagnostic Centre.

4.2 General obligations

DHFWS shall:

- (a) grant or where appropriate provide necessary assistance to the Concessionaire in securing Clearances;
- (b) ensure peaceful use of the Project Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from the Hospital authorities or any Governmental Agency or persons claiming through or under it/them;

ARTICLE 5

PRICE AND PAYMENT

5.1 Levy, Collection and appropriation of charges

- (a) Subject to the provisions of this Agreement, the Concessionaire shall be entitled to levy, demand and collect Prices for the Standard Diagnostic Services provided to Referral Patients only in accordance with the Price Notification and appropriate the same.
- (b) The Concessionaire shall not charge any amount for services provided to Exempt Patients.
- (c) For the Standard Diagnostic Services provided to patients other than Referral Patients and Exempt Patients, the Concessionaire shall be entitled to levy and collect prices as per the prevailing market rates. However, these rates have to be intimated in writing to BHFWS and DHFWS

5.2 Fixing/Revision of Prices

Prices will be fixed as per existing rate determined by DoHFW. General consultations will be done among the diagnostic service providers at the time of revision of prices but no individual discussion will take place on case-to-case basis.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

6.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to DHFWS that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association 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 are bound or affected;
- (h) 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 other judicial, quasi judicial or other authority, the outcome of which may in the aggregate may result in Material Adverse Effect;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (j) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to DHFWS or to any Government Agency in relation to Clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any Person to procure the Concession.

6.2 Representations and Warranties of DHFWS

DHFWS represents and warrants to the Concessionaire that:

- (a) DHFWS has full power and authority to grant the Concession;
- (b) DHFWS has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes DHFWS's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.
- (d) There are no suits or other legal proceedings pending or threatened against DHFWS in respect of the Project Site or the Project.

6.3 Obligation to notify change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 7 TERMINATION

7.1 Causes of Termination

Any of the following events shall constitute an event of default by the Concessionaire entitling the DHFWS to terminate this Agreement:

- (a) Failure by the Concessionaire to deliver timely reports in respect of the Standard Diagnostic Services (mandatory tests) sought on more than five occasions in a month.
- (b) Failure by the Concessionaire in following Standard Operating Procedures for performing the mandatory tests in respect of the Standard Diagnostic Services
- (c) Improper disposal of laboratory wastes from the Diagnostic Centre or by the staff engaged by the Concessionaire.
- (d) Inaccuracy detected in at least three occasions in a period of three months in the diagnostic reports generated in the Diagnostic Centre.
- (e) Failure/non compliance by the Concessionaire of statutory requirements including Clearances.
- (f) The Concessionaire collecting charges in excess of the Prices fixed under the Price Notification from the Referral Patients and in respect of the Exempt Patients.
- (g) Criminal indictment of the promoters, directors, key personnel of the Concessionaire engaged by it in the Diagnostic Centre.
- (h) Engagement of unqualified persons for running the Diagnostic Centre /conducting the diagnostic tests.
- (i) The Concessionaire's indulgence in unethical diagnostic practices.
- (j) Failure by the Concessionaire to commence Standard Diagnostic Services (mandatory tests) at the Diagnostic Centre within 3 months from the date of this Agreement.

7.2 Notice/Show Cause and Cure

- (a) Upon the occurrence of any of the events of default specified under Section 7.1 above, DHFWS, upon becoming aware of the event of default, shall notify the Concessionaire of the event of the default by a notice in writing.
- (b) If the default so notified constitutes of a default as specified under Section 7.1 (a) to (d) above, the Concessionaire may, within 15 days of the receipt of such notice:
 - (i) inform DHFWS of the reasons for the occurrence of the event of default and rectify the default immediately, and/or
 - (ii) propose a plan of action satisfactory to DHFWS to remedy the default and ensure that such default is not repeated.
- (c) If the default so notified constitutes of a default as specified under Section 7.1 (e) to (j) above, the Concessionaire may, within 15 days of the receipt of such notice by a written representation to DHFWS, show cause why the same should not be treated as a default

by the Concessionaire and why action may not be taken against the Concessionaire for such default.

7.3 Termination by DHFWS

- (a) If the Concessionaire fails to demonstrate to DHFWS that the default has been cured, or as the case may be develop a plan of action satisfactory to DHFWS in terms of Section 7.2 (b) or fails to satisfy DHFWS in terms of Section 7.2 (c), DHFWS may terminate this Agreement.
- (b) The decision of DHFWS to terminate shall be final and binding on the Concessionaire.

7.4 Termination due to Change in Law

- (a) The Concessionaire shall have the right to terminate on account of a "Change in Law". For the purpose hereunder Change in Law means any of the following events which, as a direct consequence thereof, has a Material Adverse Effect:
 - (i) adoption, promulgation, modification, reinterpretation or repeal after the date of this Agreement by any Government Agency of any Applicable Law by any Government Authority; or
 - (ii) the imposition by any Government Agency of any material condition (other than a condition which has been imposed as a consequence of a violation by the Concessionaire of any Clearance or Applicable Law) in connection with the issuance, renewal or modification of any Clearance after the date of this Agreement; or
 - (iii) any Clearance previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the Concessionaire or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided nothing contained in this Section 7.4 (a) shall be deemed to mean or construe any increase in taxes, duties, cess and the like effected from time to time by any Government Agency, as Change in Law.

- (b) In the event of Change in Law the Concessionaire may propose to DHFWS modifications to the relevant terms of this Agreement, which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of this Agreement so as to place the Concessionaire in substantially the same legal, commercial and economic position as it were prior to such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that this Agreement is frustrated or is rendered illegal or impossible of performance in accordance with the provisions hereof, this Agreement shall stand terminated.

7.5 Consequences of Termination

- (a) Upon Termination of this Agreement for any reason whatsoever under Section 7.3, the Concessionaire shall remove from the Project Site/Diagnostic Centre all equipment installed by it in the Diagnostic Centre and the consumables. In doing so however, it shall refrain from damaging the Project Site/Diagnostic Centre in any manner

whatsoever. The Concessionaire shall also return all the equipment taken from the government in working condition subject to normal wear and tear.

- (b) DHFWS shall have the power and authority to :
 - (i) enter upon and take possession and control of the Project Site and the Diagnostic Centre;
 - (ii) prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Site/Diagnostic Centre;
- (c) If the Agreement is terminated pursuant to Section 7.4 hereof, The Concessionaire shall hand over/transfer vacant, unencumbered and peaceful possession of Project Site, and all the equipment, materials etc. of the Concessionaire existing therein. DHFWS shall pay to the Concessionaire, reasonable cost of equipment and purchase cost of the materials and consumables taken over DHFWS and all costs incidental to the transfer. The Parties shall negotiate in good faith and arrive at a reasonable cost of the equipment.

ARTICLE 8 DISPUTE RESOLUTION

8.1 Amicable Resolution

Where a dispute arises under this Agreement, the Parties shall make all reasonable efforts to resolve the dispute through good faith negotiations failing which they shall attempt at dispute resolution with the intervention of the Principal Secretary- Health, Department of Health and Family Welfare, GoWB.

8.2 Arbitration

Except for a dispute in connection with Termination, in which respect the decision of DHFWS shall be final, any dispute between the Parties arising out of or relating to this Agreement which cannot be resolved through good faith negotiations shall be finally settled by arbitration in accordance with the provisions of the Arbitration Act.

ARTICLE 9

MISCELLANEOUS

9.1 Validity

This Agreement shall be initially valid for a period of 5 years from the date of signing, subject to renewal on such terms and conditions and for such a period as may be mutually decided by both the parties, within the overall policy framework of GoWB.

9.2 Handback of Project Site/Diagnostic Centre/Equipment

Upon the expiry of the validity of this Agreement by efflux of time and in the normal course, the Concessionaire shall hand back vacant and peaceful possession of Project Site/Diagnostic Centre to DHFWS free of cost and in the condition not worse than when it took occupation thereof, subject to normal wear and tear. The Concessionaire shall also return all the equipment taken from the government in working condition subject to normal wear and tear.

9.3 Assignment and Charges

- (a) The Concessionaire shall under no circumstances whatsoever create Encumbrance over the Project Site. Subject to sub-sections (b) and (c) hereinbelow, the Concessionaire shall not assign this Agreement or the rights, benefits and obligations hereunder save and except with prior written consent of DHFWS.
- (b) Except as provided in this provision, the Concessionaire shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of DHFWS, which consent DHFWS shall be entitled to decline without assigning any reason whatsoever. Restraint set forth hereinabove shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) over the equipments and facilities installed by the Concessionaire, in the ordinary course of business of the Concessionaire;
 - (ii) pledges/hypothecation of goods/assets other than Project Site and the immovable premises comprised in the Diagnostic Centre, as security for indebtedness, in favour of the lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the lenders and working capital providers for the Project, as security for financial assistance provided by them.
- (c) DHFWS shall be free to assign all or a part of its rights, benefits or novate its obligations under this Agreement at any time.

9.4 Indemnity

The Concessionaire shall indemnify, defend and hold DHFWS harmless against any and all proceedings, actions and third party claims arising out of a breach by Concessionaire of any of its obligations under this Agreement.

9.5 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at West Bengal, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.6 Redressal of Public Grievances

The Concessionaire shall promptly redress the grievances, if any reported by the patients, Competent Authority etc. on account of deficiencies in services provided at the Diagnostic Centre.

9.7 Supercession & Order of Priority

This Agreement constitutes the entire understanding between the parties hereof with and supercedes any previous expressions of intent, correspondence or understandings in respect of the Project.

Without prejudicing the aforesaid, the Parties hereby agree that in case of any inconsistency between the provisions of this Agreement and the Scheme, the provisions of the Scheme shall prevail.

9.8 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

9.9 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to DHFWS

_____ (name and designation of the person)

_____ (address)

Fax No. _____

If to the Concessionaire

_____ (name and designation of the person)

_____ (address)

Or such address or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

9.10 Severability

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

9.11 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

SCHEDULE A

STANDARD DIAGNOSTIC SERVICES

A-1 - MANDATORY TESTS / INVESTIGATIONS THAT MUST BE CONDUCTED AT THE DIAGNOSTIC CENTRE:

I Bio-chemistry

1. Blood Sugar (Fasting /PP/Random)
2. Urea
3. Uric Acid
4. Creatinine
5. Serum Triglycerides
6. Serum Cholesterol
7. Liver Function Test
8. Urine Albumin / Sugar.
9. Sugar, Urea & Creatinine (combined)
10. Lipid Profile
11. CSF – Sugar, Micro Protein, Chloride (each)

II Haematology

12. Hb, TC, DC, ESR.
13. Platelet Count
14. Reticulocyte count
15. Foetal HB%
16. Blood Grouping & Rh factor.

III Pathology

17. PAP Stain
18. Peritoneal /Pleural/ Ascitic Fluid / Other body Fluids for Cytology (each)
19. FNAC with slide

IV Micro-Biology

20. Blood Culture
21. Urine Culture
22. Stool Culture
23. Pus Culture
24. Sputum Culture other than TB
25. Sputum / other smears for AFB or Gram Stain
26. Throat swab culture
27. Conjunctival Culture

V Serology

28. Australia Ag
29. VDRL
30. Mantoux Test
31. ASO Titre
32. Widal test
33. Pregnancy Test

VI Clinical Pathology

- 34. Stool / Urine for Routine Examination**
- 35. Stool for Occult Blood**
- 36. CSF Cell type & Cell Count, Gram Stain, AFB Cell Type**
- 37. Semen Analysis**

VII Radiological Investigations

- 38. X-Ray**
- 39. U.S.G.**

VIII Cardiological Investigations

- 40. ECG**

However, the PSP will not be allowed to set up a ***separate facility*** for either X-ray and / or ECG facility under PPP in Block Primary Health Centres /Rural Hospitals where X-Ray and / or ECG facilities are already functioning,

A-2. In addition to the above-mentioned mandatory tests, the following advanced tests may also be conducted at the Diagnostic Centre:

Micro-Biology

- 1. Blood Culture and Sensitivity**
- 2. Anaerobic Culture and Sensitivity**

A-3. Apart from the tests mentioned under Section A-1 and A-2, additional tests may also be conducted by the PSP in the Diagnostic centre with prior approval of BHFWS and DHFWS.

Schedule B

Project Site and Possession Certificate

Project Site: Possession Certificate

Whereas it has been decided by the Government vide Order No. _____ that a Diagnostic Centre would be set up in _____ Rural Hospital /BPHC of _____ district with the participation of private sector/NGO by - _____ of _____ (the Concessionaire) to provide Standard Diagnostic Services in accordance with the Agreement executed on _____ between the Concessionaire and CMOH/ Member Secretary, District Health and Family Welfare Samity(DHFWS).

Whereas in terms of the aforesaid Government Order and the Agreement executed, Government is required to provide adequate rent-free space in the above mentioned _____ Rural Hospital / BPHC of _____ district to the above Concessionaire to set up the Diagnostic centre.

Whereas the covered space in total area of _____ square feet as indicated in the enclosed site map, within the premises of _____ Rural Hospital /BPHC has been identified as the project site in respect of the Diagnostic Centre referred to above.

Now in keeping with the decision of the Government and the Agreement aforesaid, the right of occupancy of the space, details of which are indicated in the site map is hereby handed over to _____ (the Concessionaire) on the following terms and conditions:

1. The ownership of the project site remains with the Government of West Bengal and the Concessionaire shall have only occupancy right to the project site for running Diagnostic Centre till such date as the agreement executed between CMOH/Member Secretary, DHFWS and the the Concessionaire shall remain valid.
2. No encumbrance of any nature shall be created in the project site.
3. The occupant shall not do anything, which would be prejudicial to the soundness and safety of the property or reduce the value thereof.
4. The occupant shall not sell, transfer or rent out this project site for any purpose whatsoever and this site will be used exclusively for Diagnostic Centre by the Concessionaire, signatory to the agreement with the CMOH/Member Secretary, DHFWS.
5. The occupant shall in respect to the said project site be subject to the provisions of the said agreement and shall comply strictly with the covenants, conditions and restrictions set forth in the agreement with CMOH/Member Secretary, DHFWS.
6. The occupant shall vacate the project site in the event of the termination of the agreement or at the end of 5 years whichever is earlier.

(Signature)

Date:

Superintendent/BMOH -----Rural Hospital / District: -----

Received the possession of the above mentioned project site on this day of _____
of _____ and solemnly declare that I shall abide by all the terms and
conditions of the agreement as well as the terms mentioned in this certificate.

(Signature of Authorized Representative of the Concessionaire)

Date:

<Name of the Organization>

<Address of the Organization>

<Name of the Authorized Representative>

<Designation>

Schedule C

Price Notification

(Fixed under Memorandum No. HF/PPP/13/2009/15 dated January 28, 2010)

STANDARD DIAGNOSTIC SERVICES

(Mandatory Tests/Investigations described in Schedule A-1 and advanced tests described in Schedule A-2)

Sl.	Name of the Tests/Investigations	Approved Rate (in Rupees)
Biochemistry		
1	Blood Sugar (fasting/PP/Random)	15
2	Urea	15
3	Uric Acid	15
4	Creatinine	17
5	Serum Triglycerides	65
6	Serum Cholesterol	25
7	Liver Function Test	100
8	Urine Albumin/Sugar	10
9	Sugar, Urea & Creatinine (combined)	45
10	Lipid Profile	150
11	CSF : Sugar, Micro protein, Chloride (each)	40
Haematology		
12	Hb% ,TC ,DC , ESR	25
13	Platelet Count	20
14	Reticulocyte Count	20
15	Foetal Hb%	30
16	Blood Grouping and RH factor:	20
Pathology		
17	PAP Stain	85
18	Peritoneal/ Pleural/ Ascitic Fluid/ Other Body Fluids for Cytology (each)	50
19	FNAC with slide	150
Microbiology		
20	Blood Culture	50
21	Urine Culture	50
22	Stool Culture	50
23	Pus Culture	50
24	Sputum Culture other than TB	30
25	Sputum/ Other Smears for AFB or Gram Stain	30
26	Throat Swab Culture	30
27	Conjunctival Culture	30
Serology		
28	Australian Antigen	50
29	VDRL	20

Sl.	Name of the Tests/Investigations	Approved Rate (in Rupees)
30	Mantoux Test	20
31	ASO Titre	70
32	Widal Test	30
33	Pregnancy Test	25
Clinical Pathology		
34	Stool/Urine for routine examination	10
35	Stool for Occult Blood	10
36	CSF Cell type & Cell Count, gram stain AFB Cell type:	60
37	Semen Analysis:	50
Radiological		
38	USG Upper Abdomen:	225
39	USG Lower Abdomen:	225
40	USG Whole Abdomen:	350
41	USG Pregnancy:	200
42	USG Liver, G.B, Pancreas, Spleen:	225
43	USG- KUB and Prostate:	225
44	Plain X-Ray (per plate)	40
ECG		
45	ECG *	25

* Fixed under Memorandum No. HF/O/MS/121/W/10/2001 dated March 18, 2002

IN WITNESS WHEREOF the parties hereto of the first and second part have set and subscribed their respective hands and seals on the day, month and year first above written.

SIGNED SEALED AND DELIVERED by the
District Health & Family Welfare Samiti
through the Chief Medical Officer of Health
& Member Secretary, DHFWS of
_____ District in the
State of West Bengal.

SIGNED SEALED AND DELIVERED
by the Authorized Representative of the
Concessionaire at _____

Witness:

1. _____

2. _____

Rates /Prices for Diagnostic Services *

(Fixed under Memorandum No. HF/PPP/13/2009/15 dated January 28, 2010)

Sl.	Name of the Tests/Investigations	Approved Rate (in Rupees)
Biochemistry		
1	Blood Sugar (fasting/PP/Random)	15
2	Urea	15
3	Uric Acid	15
4	Creatinine	17
5	Serum Triglycerides	65
6	Serum Cholesterol	25
7	Liver Function Test	100
8	Urine Albumin/Sugar	10
9	Sugar, Urea & Creatinine (combined)	45
10	Lipid Profile	150
11	CSF : Sugar, Micro protein, Chloride (each)	40
Haematology		
12	Hb% ,TC ,DC , ESR	25
13	Platelet Count	20
14	Reticulocyte Count	20
15	Foetal Hb%	30
16	Blood Grouping and RH factor:	20
Pathology		
17	PAP Stain	85
18	Peritoneal/ Pleural/ Ascitic Fluid/ Other Body Fluids for Cytology (each)	50
19	FNAC with slide	150
Microbiology		
20	Blood Culture	50
21	Urine Culture	50
22	Stool Culture	50
23	Pus Culture	50
24	Sputum Culture other than TB	30
25	Sputum/ Other Smears for AFB or Gram Stain	30
26	Throat Swab Culture	30
27	Conjunctival Culture	30
Serology		
28	Australian Antigen	50
29	VDRL	20
30	Mantoux Test	20
31	ASO Titre	70
32	Widal Test	30
33	Pregnancy Test	25
Clinical Pathology		

Sl.	Name of the Tests/Investigations	Approved Rate (in Rupees)
34	Stool/Urine for routine examination	10
35	Stool for Occult Blood	10
36	CSF Cell type & Cell Count, gram stain AFB Cell type:	60
37	Semen Analysis:	50
Radiological		
38	USG Upper Abdomen:	225
39	USG Lower Abdomen:	225
40	USG Whole Abdomen:	350
41	USG Pregnancy:	200
42	USG Liver, G.B, Pancreas, Spleen:	225
43	USG- KUB and Prostate:	225
44	Plain X-Ray (per plate)	40
ECG		
45	ECG **	25

* Fixed under Memorandum No. HF/O/MS/121/W/10/2001 dated March 18, 2002

** Rates / Prices are subject to modification / revision by the Government from time to time.

SELECTION CRITERIA FOR EXISTING DIAGNOSTIC FIRM FOR BEING CONSIDERED TO ESTABLISH DIAGNOSTIC UNIT UNDER PPP

1. Eligibility Criteria of the applicant :

- i. Existing Lab of the applicant functioning as Large Laboratory for at least 3 years
- ii. External Quality Assurance System (EQAS) in place in biochemistry for at least 2 years
- iii. Annual turnover over Rs 15 lakhs
- iv. Profit making
- v. Having USG facilities
- vi. Having all statutory licences required for running the lab and they are all valid on date
- vii. Should submit a detailed plan for setting up the diagnostic lab in PPP mode
- viii. No penal measures taken / or litigations pending against the applicant on date under CE Act.

* Note: Applicant failing to fulfill any of the abovementioned Eligibility Criteria will not be considered for selection.

2. Selection criteria for the applicant diagnostic firm with scores in the manner as mentioned below:

i. Establishment as Large Lab	a. More than 7 years = 5 marks b. 5 to 7 years = 3 marks c. 3 to 5 years = 1 mark
ii. Accreditation / Certification	a. NABL certification = 5 marks b. ISO certification = 3 marks
iii. EQAS	a. Hematology, Biochemistry, Histopathology, Microbiology = 5 marks b. Biochemistry, Histopathology, Microbiology = 3 marks c. Biochemistry = 1 mark
iv. Distance of existing lab from the proposed diagnostic unit under PPP	a. 0-20 kms = 5 marks b. 21-40 kms = 3 marks c. more than 40 kms = 1 mark
v. Experience of running diagnostic unit under PPP	a. more than 3 years = 5 marks b. 2- 3 years = 3 marks c. 1-2 years = 1 mark
vi. Annual turnover	a. more than Rs 50 lakhs = 5 marks b. Rs 25-50 lakhs = 3 marks c. Rs 15-25 lakhs = 1 mark
vii. Number of Specialists with the existing diagnostic unit (Pathologist, Biochemist, Microbiologist as per CE Act)	a. For each specialist = 2 marks
viii. Number of Sonologist	a. For each sonologist=3 marks
ix. Having full time and dedicated Quality Assurance Personnel in charge in the existing diagnostic unit.	a. For QA Personnel in-charge=5 marks

Application Form for submission by the Private Party / NGO intending to set up Diagnostic Unit in Rural Hospital / BPHC under Public Private Partnerships

1. Name of the Rural Hospital / BPHC for which application is made:
(Separate application is to be submitted for each Rural Hospital / BPHC)
2. Name of the Organization / Firm / NGO:
3. Complete Address of the Organization / Firm / NGO:
4. Phone No. : Fax No. Email Id:
5. Status of the Organization : Limited Company / Private Limited Company / Partnership Firm / Proprietorship Firm / NGO / Others (Specify with documentary evidence):
6. Nature of Business Activities: Diagnostic Centre of the Applicant relating to Medical Profession (Please tick)
 - a) Hospital with diagnostic facilities
 - b) Nursing home with hospital facilities
 - c) Dedicated Diagnostic Centre
 - d) Any other (specify)
7. No. of years of operation of the existing Diagnostic Unit (Clinical Establishment):
8. Registration details of the Organization / Firm / NGO (Whether registered under Company Act / Society Act etc. with documentary evidence)
9. Details of Licence for the diagnostic unit (CE) of the organization under WB CE Act & Rules (Enclose copies of license) :
10. Annual Turn Over of the diagnostic unit (CE) for last three years with documentary evidence (Balance Sheet):
11. Other information as required in terms of Eligibility Criteria & Selection Criteria in Schedule VII.

Signature
Name in Full
Designation in the Organization
Date

List of documents to be submitted with the application.

1. Copy of the Registration details of the organization (refer item no. 8 of the application)
2. Memorandum & Article of Association
3. Copies of all relevant licenses (refer item no. 9 of the application)
4. Copies of Balance Sheets for last 3 years
5. Statement showing investigation facilities provided in the existing diagnostic centre of the applicant.
6. Specifications & Make of the equipment proposed to be installed in the diagnostic units in Rural Hospital / BPHC applied for.
7. Supporting documents in respect of the details of the Selection Criteria as referred to in paragraph 2 of the document regarding Selection Criteria (Schedule -VII)