HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 22236 OF 2023 (T-RES)
C/W
WRIT PETITION NO. 23928 OF 2023 (T-RES)
C/W
WRIT PETITION NO. 23931 OF 2023 (T-RES)

IN WP No. 22236/2023

BETWEEN:

M/S HEALTHCARE GLOBAL ENTERPRISES LTD
HAVING OFFICE AT
NO. 8, HCG TOWERS, 5TH FLOOR,
P KALINGA RAO ROAD,
SAMPANGIRAMNAGAR,
BANGALORE – 560 027
REPRESENTED BY SUNU MANUEL ABEY,
DESIGNATED AS COMPANY SECRETARY,
AGED 45 YEARS
WITH OFFICE OPERATING AT
HCG TOWER, NO. 8, P KALINGA RAO ROAD,
SAMPANGIRAMANAGAR,
BANGALORE – 560 027.
PUBLIC LIMITED COMPANY REGISTERED
UNDER TEH COMPANIES ACT, 1956.

…PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE APPEARING FOR
SRI. PRASHANTH SABARISH SHIVADASS,
SRI. RISHAB.J, AND
SMT. SHARADHA.R, ADVOCATES)

AND:

1. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
(ENFORCEMENT), SOUTH ZONE,
ROOM NO. 201, 2ND FLOOR, VTK -2, BUILDING,
RAJENDRANAGARA, KORAMANGALA,
BENGALURU – 560 047.

2. JOINT COMMISSIONER OF COMMERCIAL TAXES OF DGST -03
TTMC BLOCK, BMTC BUILDING,
2ND FLOOR, SHANTHINAGAR,
BENGALURU – 560 027.

3. THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENNGALURU – 560 001.

…RESPONDENTS

(BY SMT. JYOTI.M.MARADI, HCGP)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUITON OF INDIA PRAYING TO HOLD THAT THE BENEFIT OF NOTIFICATION NO. 12/2017-CGST (RATE) DATED JUNE 28, 2017 WHICH UNCONDITIONALLY EXEMPT HEALTHCARE SERVICES FROM PAYMENT OF GST, WILL BE AVAILABLE EVEN WHEN THE SERVICES ARE PROVIDED BY THE PETITIONER TO THE PATIENT THROUGH ANOTHER HOSPITAL.

IN WP NO. 23928/2023

BETWEEN:

M/S HEALTHCATE GLOBAL ENTERPRISES LTD
PUBLIC LIMITED COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956 HAVING OFFICE AT
NO. 8, HCG TOWERS, 5TH FLOOR,
P KALINGA RAO ROAD,
SAMPANGIRAMNAGAR,
BANGALORE, KARNATAKA - 560027
COMPANY REGISTERED UNDER
COMPANIES ACT OF 1956
REPRESENTED BY SUNU MANUEL ABEY,
DESIGNATED AS COMPANY SECRETARY
AGED ABOUT 45 YEARS
WITH OFFICE OPERATING AT
HCG TOWER NO 8 P KALINGA RAO ROAD,
SAMPANGIRAMANAGAR,
BANGALORE - 560027

...PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE APPEARING FOR
SRI. PRASHANTH SABARISH SHIVADASS,
SRI. RISHAB.J, AND
SMT. SHARADHA.R, ADVOCATES)

AND:

1. COMMERCIAL TAX OFFICER (ENF)-11
OFFICE OF ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES(INFORCEMENT), SOUTH ZONE,
ROOM NO. 204, 2ND FLOOR,
VTK-2 BUILDING, RAJENDRANAGARA,
KORAMANGALA
BENGALURU – 560 047.

2. THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT, VIDHANA SOUDHA
BENGALURU - 560001

...RESPONDENTS

(BY SMT. JYOTI.M.MARADI, HCGP)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO HOLD THAT THE BENEFIT OF NOTIFICATION NO. 12/2017 - CGST (RATE) DTD JUNE 28, 2017 AT ANNEXURE-P, WHICH UNCONDITIONALLY EXEMPT HEALTHCARE SERVICES FROM PAYMENT OF GST, WILL BE AVAILABLE EVEN WHEN THE SERVICES ARE PROVIDED BY THE PETITIONER TO THE PATIENT THROUGH ANOTHER HOSPITAL.

IN WP NO. 23931/2023

BETWEEN:

M/S HEALTHCATE GLOBAL ENTERPRISES LTD
PUBLIC LIMITED COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
HAVING OFFICE AT NO.8, HCG TOWERS,
5TH FLOOR, P KALINGA RAO ROAD
SAMPANIGRAMANAGAR
BANGALORE - 560 027
COMPANY REGISTERED UNDER
COMPANIES ACT OF 1956
REPRESENTED BY SUNU MANUEL ABEY
DESIGNATED AS COMPANY SECRETARY
AGED ABOUT 45 YEARS
WITH OFFICE OPERATING AT HCG TOWER,
NO.8, P KALINGA RAO ROAD
SAMPANGIRAMANAGAR
BANGALORE-560 027.

...PETITIONER

(BY SRI. G. SHIVADASS, SENIOR ADVOCATE APPEARING FOR
SRI. PRASHANTH SABARISH SHIVADASS,
SRI. RISHAB.J, AND
SMT. SHARADHA.R, ADVOCATES)

AND:

1. COMMERCIAL TAX OFFICER (ENF)-11
OFFICE OF ADDITIONAL COMMISSIONER OF COMMERICAL TAXES(ENFORCEMENT) SOUTH ZONE
ROOM NO.204, 2ND FLOOR, VTK-2 BUILDING
RAJENDRANAGARA
KORAMANGALA
BENGALURU-560 047.

2. THE STATE OF KARNATAKA
THROUGH THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT
VIDHANA SOUDHA
BENGALURU-560 001

...RESPONDENTS

(BY SMT. JYOTI.M.MARADI, HCGP)

THIS W.P IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUITON OF INDIA PRAYING TO HOLD THAT THE BENEFIT OF NOTIFICATION NO. 12/2017 - CGST (RATE) DTD JUNE 28, 2017 AT ANNEXURE-P, WHICH UNCONDITIONALLY EXEMPT HEALTHCARE SERVICES FROM PAYMENT OF GST, WILL BE AVAILABLE EVEN WHEN THE SERVICES ARE PROVIDED BY THE PETITIONER TO THE PATIENT THROUGH ANOTHER HOSPITAL,

THESE PETITIONS, COMING ON FOR DICTATING ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In W.P.No.22236/2023, the petitioner seeks the following reliefs:

> *" a) To hold that the benefit of Notification No.12/2017-CGST(Rate) dated: June 28, 2017 at Annexure-N, which unconditionally exempt healthcare services from payment of GST, will be available even when the services are provided by the petitioner to the patient through another hospital;*
>
> *b) To issue order(s), directions, writ(s) in the nature of Certiorari quashing the impugned Show Cause Notice No. ADCOM/ENF/SZ/ACCT-10/DRC01/2023-24/01 dated: 24.08.2023, along with Form GST DRC 01 bearing File No. ADCOM/ENF/SZ/ACCT-10/DRC01/INS-967/2021-22 dated: 24.08.2023 at Annexure-A and Form GST DRC-01A bearing File No. ADCOM/ENF/SZ/ACCT-10/ADJ/2023-24 dated: 05.08.2023 issued by Respondent No.1, enclosed as Annexure-B ,on the ground that that same is bad in law as it seeks to tax indirectly, a service that cannot be taxed directly;*
>
> *c) To issued order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the inserts of justice."*

In W.P.No.23928/2023, the petitioner seeks the following reliefs:

> *"a) To hold that the benefit of Notification No.12/2017-CGST(Rate) dated: June 28, 2017 at Annexure-P, which unconditionally exempt healthcare services from payment of GST, will be available even when the services are provided by the petitioner to the patient through another hospital;*
>
> *b) To issue order(s), directions, writ(s) in the nature of Certiorari quashing the impugned Form GST DRC-01 bearing File No. Notice No. ADCOM/ENF/SZ/ACTO-11/AP-05/2023-24 dated: 30.09.2023 at Annexure-A and Form GST DRC- 01A bearing File No. Respondent No.1, enclosed as Annexure-B, on the ground that the same is bad in law as it seeks to tax indirectly, a service that cannot be taxed directly;*
>
> *c) To issued order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstances of the case in the inserts of justice."*

In W.P.No.23931/2023, the petitioner seeks the following reliefs:

> *" a. To hold that the benefit of Notification No 12/2017-COST (Rate) dated June 28, 2017 at Annexure P,*

which unconditionally exempt healthcare services from payment of GST, will be available even when the services are provided by the Petitioner to the patient through another hospital;

b. To issue order(s), directions, writ(s) in the nature of Certiorari quashing the impugned Form GST DRC-01 bearing File No. ADCOM/ENF/SZ/CTO-11/AP-05/2023-24 dated 30.09.2023 at Annexure A and Form GST DRC 01A bearing File No. ADCOM/ENF/SZ/CTO-11/AP-05-/2023-24 dated 19.08.2023 Issued by Respondent No 1, enclosed as Annexure B, on the ground that the same is bad in law as it seeks to tax indirectly, a service that cannot be taxed directly;

c. To issues order(s), directions, writ(s) or any other relief as this Hon'ble Court deems it fit and proper in the facts and circumstance of the case in the interest of justice."

2. A perusal of the material on record will indicate that the petitioner in all the three petitions is the same and has preferred the present petitions *interalia* assailing the impugned Show Cause Notices (SCNs) issued by the respondents under Section 73(1) of the CGST/KGST Act, 2017 to the petitioner demanding Tax, Interest and Penalty alleged to be payable by the petitioner. W.P.No.23928/2023 is in relation to the Tax period/Financial Year

2017-18 and W.P.No.23931/2023 relates to Tax period/Financial Year 2018-19 while W.P.No.22236/2023 pertains to Tax periods/Financial Years 2019-20, 2020-21 and 2021-22. Since the petitioner and respondents in all the petitions are the same and common questions of law and fact arise for consideration in all the petitions, they are taken up together and disposed of by this common order.

3. A perusal of the material on record will indicate that the petitioner is a Public Limited Company *interalia* engaged in providing Health Care Services, Medical Laboratory and Diagnostic – Imaging Services, Technical Testing, Inspection Certification Service etc. The petitioner entered into a Medical Services Agreement dated 10.07.2017 with M/s. Suchirayu Health Care Solutions Limited (hereinafter referred to as 'SHCS'). It is contended that as per the terms of the agreement, the patients at SHCS are provided with health care services by a medical team of Doctors and Para Medics supported both by petitioner and SHCS and the petitioner receives 75% of the total gross revenue of SHCS received from the patients every month.

4. The respondents inspected the premises of the petitioner who submitted its initial replies, subsequent to which, the respondent issued the impugned intimations in Form GST DRC – 01A, which was followed by the impugned SCNs calling upon the petitioner to pay sums of money towards Tax, Interest and Penalty. Aggrieved by the impugned SCNs, the petitioner is before this Court by way of the present petition.

5. Heard learned Senior Counsel for the petitioner and learned HCGP for the respondents and perused the material on record.

6. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior Counsel for the petitioner submits that the petitioner which is engaged in providing Health Care Services having entered into Medical Services Agreement with SHCS for providing health care services to patients through their medical team, who work at the establishment of SHCS, out of whose total revenue generated, 75% of the gross revenue is paid to the petitioner, which purely consists of Health Care Services and allied services is covered by Sl.No.74-Heading 9993 of the Exemption Notification No.12/17-

CGST(Rate) dated 28.06.2017, which exempts payment of GST by the petitioner, who is providing health care services. It was submitted that pursuant to the 25th GST Council Meeting held on 18.01.2018, the respondents issued Circular No.32/06/2018 – GST dated 12.02.2018 clarifying and reiterating at Sl.No.5 that health care services provided by the petitioner referred to in the aforesaid Exemption Notification dated 28.06.2017 were exempt from payment of tax and as such, the impugned SCNs were illegal, arbitrary and without jurisdiction or authority of law and the same deserve to be quashed. It was submitted that apart from the fact that it was never the intention of the respondent/Government to tax health care services either the pre-GST regime or under the GST regime, the services provided by the petitioner cannot be classified as "Support Services" under SAC 9985 as incorrectly/erroneously contended by the respondents, who are not entitled to indirectly impose or levy tax upon the petitioner, which they cannot do directly and the impugned SCNs deserve to be quashed on this ground also. It was also submitted that the impugned SCNs purporting to levy interest and penalty upon the petitioner are also

illegal and contrary to facts and law and as such, the impugned SCNs deserve to be quashed.

7. In support of his submissions, he places reliance upon the following judgments:

i) Commissioner of Central Excise, Pondicherry v. Acer India Ltd. (Citation: 2004 (172) E.L.T. 289 (S.C.))

ii) Commissioner of Central Excise, Indore v. Grasim Industries Ltd. (Citation: 2018 (360) E.L.T. 769 (S.C.))

iii) J.K. Synthetics Ltd. v. Commercial Taxes Officers (Citation: (1994) 4 SCC 276)

iv) Hindustan Steel Ltd. v. State of Orissa (Citation: AIR 1970 SC 253)

v) EID Parry v. ACCT (Citation: 2000 AIR SCW 86)

vi) Jindal Stainless Steel limited and others Vs State of Harayana and Ors (AIR 2016 SC 5617)

vii) Kunnathat Thathunni Moopil Nair v. The State of Kerala and Anr reported at(AIR 1961 SC 552)

viii) Khandige Sham Bhat v. Agrl. ITO (AIR 1963 SC 591)

ix) Whirlpool Corporation vs Registrar of Trademarks ((1998) 8 SCC 1)

x) Radha Kishan Industries vs State of Himachal Pradesh (Civil Appeal No. 1155 of 2021)

xi) Magadh Sugar & Energy Limited at Vs the State of Bihar and Ors (MANU/SC/0706/2021)

8. Per contra, learned HCGP for the respondents would reiterate the various contentions urged in the statement of objections and submits that the petitioner, which is providing Support Services and getting 75% of the gross revenue from SHCS is covered by heading SAC 9985 and is liable to pay GST at 18% together with interest and penalty as demanded in the impugned SCNs, which do not warrant interference by this Court in the present petitions, which are liable to be dismissed.

9. I have given my anxious consideration to the rival submissions and perused the material on record.

10. A perusal of the material on record will indicate that the issue involved in the present petition concerns taxability of revenue received by the petitioner from SHCS, which also operates a Hospital at Hubbali. It is an undisputed fact and a matter of record, that the petitioner is also a Clinical Establishment registered under the Clinical Establishments (Registration and Regulation) Act, 2010. The primary ground for challenge to the impugned SCNs by the petitioner is by contending that the same are illegal, arbitrary and without jurisdiction or authority of law inasmuch as the

petitioner being provider of health care services, the same is specifically exempted under the Exemption Notification at Sl.No.74 Heading 9993 dated 28.06.2017; on the other hand, respondents contend that since petitioner receives 75% of the total gross revenue of SHCS as per the Agreement, the services provided by the petitioner are taxable at 18% as other business support services under SAC 9985 under the CGST/KGST Act and Rules.

11. In this context, it is relevant to state that it is a matter of record and an undisputed fact that the petitioner entered into an agreement dated 06.10.2016, which is an Operation and Management Service Agreement dealing with the operational and management functions of the SHCS Hospital and this agreement related to Hospital operations, staffing support, administrative procedures, branding, equipment management and various functional responsibilities provided by the petitioner to SHCS; in addition thereto, the petitioner also entered into an another agreement dated 10.07.2017 with SHCS, which is a Medical Services Agreement under which the petitioner provides medical services to in-patients and out-patients at SHCS Hospital through a team of Doctors, Specialists, Technicians, Para-Medical Staff etc.;

it is this Agreement that governs the services provided by the petitioner which are the subject matter of the impugned SCNs; this Medical Services Agreement dated 10.07.2017 sets out a revenue sharing model, whereby the petitioner is contractually entitled to 75% of the actual gross collections realised by the SHCS from the services provided by them; Gross revenue under this Agreement includes collections from medical services, investigations, diagnostics, surgical procedures, in-patient treatment, pharmacy revenue, allied services such as food and beverages and other patient related services; in terms of 2017 Agreement, SHCS raised invoices on patients for the medical services provided and out of the total invoice amount, the petitioner raises an invoice on SHCS for 75% of the total amount and this amount represents the consideration payable to the petitioner for its role in providing health care services at SHCS facilities. The aforesaid Medical Services Agreement dated 10.07.2017 entered into between the petitioner and SHCS is as hereunder:

"MEDICAL SERVICES AGREEMENT

This Medical Services Agreement ("Agreement") is made on this 10th day of July, 2017 ("Execution Date") at Hubli,

BY AND BETWEEN:

1. HEALTHCARE GLOBAL ENTERPRISES LIMITED, a company incorporated under the Companies Act, 1956, having its registered office at # 8, HCG Towers, P. Kalinga Rao Road, Sampangiram Nagar, Bangalore 560027, India, through its authorized signatory, Mr. Anant Kittur, Director - Projects (hereinafter referred to as "HCG" which expression, unless repugnant to the context or meaning thereof, includes its successors and permitted assigns);

AND

2. SUCHIRAYU HEALTH CARE SOLUTIONS LIMITED, a company incorporated under the Companies Act, 1956, having its registered office at Survey No. 29, Javali Garden, Gokul Road, Hubli 580030, Karnataka, India, through its authorized signatory Dr. Rajendra Dugani, Managing Director (hereinafter referred to as "Company" which expression, unless repugnant to the context or meaning thereof, includes its successors and permitted assigns).

(HCG and the Company shall be individually referred to as a "Party" and collectively as "Parties").

WHEREAS:

(A) The Company presently owns and is operating a multi-specialty Hospital (defined below) located on the Property (defined below).

(B) HCG is one of the largest cancer care networks in India, providing specialty healthcare, focused on cancer and

fertility and also operates diagnostic centres using advanced technologies including molecular pathology and molecular imaging and is engaged, inter-alia, in the business of operating and managing hospitals across India.

(C) The Company is now desirous of receiving certain Services (defined below) at the Hospital and has accordingly approached HCG, and HCG has agreed to provide the Services to the Company at the Hospital on the terms and subject to the conditions set out herein.

(D) The Parties, based on their aforesaid intention, shall, on the Commencement Date (defined below) commence provision of the Services by HCG on the terms and conditions set out in this Agreement.

Accordingly, the Parties are now entering into this Agreement to record the terms of provision of the Services by HCG.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS HEREIN SET FORTH, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In addition to the terms defined in the introduction, recitals, or elsewhere in this Agreement, the following words and terms shall have, whenever used in this Agreement, unless repugnant to the meaning or context thereof, the meaning assigned to them in this Clause;

"Affected Party" shall have the meaning ascribed to it in Clause 18.1;

"Affiliate" means any company (i) which is directly or indirectly controlled by a Party; (ii) which, directly or indirectly, controls a Party; or (iii) which is, directly or indirectly, controlled by a company which also, directly or indirectly, controls a Party. For the purposes of this definition, "control" means the right to cast more than 50% (fifty percent) of the votes exercisable at an annual general meeting of such Party (or its equivalent) or ownership of more than 50% (fifty percent) of the equity share capital of or other ownership interests in such entity, or the right to direct the policies or operations of such entity;

"Agreement" means this medical services agreement and includes all schedules, exhibits, annexures and/or any supplements or amendments to this Agreement executed in writing by the Parties;

"Applicable Law" means any laws, by-laws, statutes, rules, regulations, subordinate legislation, orders, ordinances, notices, notifications, directions, restrictions, common law, judgments, decrees, circulars, decisions or other requirements or directives of any Governmental Authority or any individual, partnership, corporation, company, unincorporated organisation, association, trust or other entity acting under the authority of any Governmental Authority, as well as any protocols, policies, codes, guidelines, standards, resolutions and guidance notes and

any interpretation of any of the foregoing by a Governmental Authority that has the force of law;

"Approvals" means any and all consents, approvals, authorizations, allowances, waivers, permits, grants, franchises, concessions, agreements, clarifications, sanctions, licenses, certificates, waivers, exemptions, orders, registrations declarations, filings, reports or notices, of, with or to any Governmental Authority, as may be applicable to each Party;

"Business Day" means a day other than Saturday and Sunday on which commercial banks are open for normal banking business in Karnataka, India;

"Commencement Date" shall have the meaning ascribed to it in Clause 7.1.1;

"Confidential Information" means any and all confidential or proprietary knowledge, information and materials (including all oral, visual, electronic information, and all information recorded in writing or electronically or in any other medium or by any other method, all Patient Records), as well as all trade secrets, belonging to either Party, its Affiliates, or to their customers, or other Third Parties who furnish such information, materials, and/or trade secrets to such Parties with expectations of confidentiality to the extent the receiving Parties know or reasonably should know of such expectations, and includes without limitation and regardless of whether such knowledge, information or materials are expressly identified as confidential or proprietary, whether or not stored in any medium:

(i) all information (written or oral) that a Party shall have obtained or received as a result of the discussions leading up to or the entering into or implementation of this Agreement and the terms of this Agreement;

(ii) any and all information, data and documents (in whatever form) disclosed to it by the other Party and/or its Affiliates from time to time prior to and during the Term (as defined hereinafter), including such information relating to the disclosing party and/or its Affiliates, their business operations or any dispute under this Agreement;

(iii) information and materials relating to future plans, including but not limited to marketing strategies, pending projects and proposals, and similar items;

(iv) personnel information and materials, including but not limited to employee lists and contact information, employee performance information, employee compensation information, recruiting sources, consulting information, contacts, and cost, and similar information; and

(v) all industrial and intellectual property rights used or required by the concerned Party, including (without limitation) patents, trademarks, service marks, trade names, domain names, designs, copyrights and the copyright in all drawings, plans, specifications, designs and computer software (including in each application thereof) in any part of the world and whether or not registered or registerable and all know-how, inventions, formulae, trade secrets, confidential or secret processes and information including all documents relating thereto).

"Dispute" shall have the meaning ascribed to it in Clause 17.1.1;

"Due Date" shall have the meaning ascribed to it in Clause Error! Reference source not found.;

"Encumbrance" means any mortgage, charge (whether fixed or floating), pledge, hypothecation, deed of trust, title retention, assignment, deposit arrangement, encumbrance, lien, including negative lien, preference, priority, right of first refusal, pre emptive right or any other security agreement or arrangement of any kind or nature whatsoever having the effect of conferring security or any interest, including any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security under Applicable Laws, or agreement, arrangement or obligation to create any of the foregoing, whether imposed by contract, understanding or Applicable Laws;

"Environmental Laws" means all Applicable Laws relating to the environment including, without limitation: (a) natural resources, pollutants, contaminants, wastes, chemicals; (b) treatment, storage, disposal, generation, transportation, manufacture, processing, use, distribution or handling of hazardous materials; (c) air, water, land and noise pollution, (d) groundwater, surface water or soil contamination; (e) the release or threatened release into the environment of hazardous materials; (f) public health and safety; (g) the registration, evaluation, authorisation, or

restriction of hazardous materials, or (h) the protection of wild life, plants, and habitat;

"Event of Force Majeure" shall have the meaning ascribed to it in Clause 18.1;

"Escrow Account" shall mean the escrow account opened by the Parties with the bank nominated by HCG, where all the collections of the Hospital will be deposited on daily basis;

"Execution Date" shall mean the date of execution of this Agreement;

"Facilities" means the facilities provided by the Company in accordance with the timelines mutually agreed to between the Parties, but in no event later than the Commencement Date.

"Governmental Authority" means:

(i) the government of any jurisdiction (including any national, state, municipal or local government or any political or administrative subdivision thereof) and any department, ministry, agency, statutory authority, instrumentality, court, central bank, commission or other authority thereof;

(ii) any public international organizations or supranational body and its institutions, departments, agencies and instrumentalities; or

(iii) any governmental, quasi-governmental or private body or agency lawfully exercising, or entitled to exercise, any administrative, executive, judicial, legislative, regulatory,

licensing, competition, Tax, importing or other governmental authority or quasi-governmental authority;

"General Insurance" shall have the meaning ascribed to it in Clause 10.3;

"Gross Revenue" in any period, during the Term, shall mean the amount of all revenue billed by the Hospital (including the revenue from the delivery of any Services, and the sale of drugs, pharmaceuticals and consumables at the Hospital, income from the out-patient services, in-patient services, investigation and diagnostic services, surgical procedures, pharmacy income, allied services such as food and beverage and revenue from other outsourced services) during the said period. The Gross Revenue in any period shall be computed based on the actual collections in such period and shall be net of any and all Taxes, including, inter alia, service tax or any such applicable Taxes, included in the invoices. For the purposes of clarity, the tax deduction at source deducted on the payments made by customers availing credit facilities to Hospital shall form part of the Gross Revenue and shall not be excluded from the definition of Gross Revenue;

"Hospital" means the 280 (two hundred and eighty) bed hospital at Mariyan Timmasagar Village, Hubli Taluk, Dharwad District located on the Property;

"Hospital Advisory Committee" means the committee constituted by HCG and the Company jointly, in accordance with this Agreement.

"Hospital Insurance" shall have the meaning ascribed to it in Clause 10.1;

"HCG Intellectual Property" shall have the meaning ascribed to it in Clause 12.1(a);

"Indemnified Person" shall have the meaning ascribed to it in Clause 15.1;

"Indemnifying Person" shall have the meaning ascribed to it in Clause 15.1;

"Invoice" shall have the meaning ascribed to it in Clause Error! Reference source not found.;

"Maintenance Capex" means capex spent for replacing the existing assets or facilities;

"Medical Liability Insurance" shall have the meaning ascribed to it in Clause 10.2;

"Person" means any natural person, limited or unlimited liability company, corporation, partnership firm (whether limited or unlimited), proprietorship firm, trust, union, association, government or any agency or political subdivision thereof or any other entity that may be treated as an entity under Applicable Laws;

"Patient Records" means all information or data collected by HCG as part of provision of the Services, that relates to a specific, identifiable individual, and information derived from such information, including sensitive personal information collected under Applicable Laws relating to data privacy and data protection;

"Property" means the land admeasuring 44,000 Sq ft. situated at No. 13, Gokul Road, Timma Sagar, Hubli 580030, Survey No. 29 and more-fully described under Schedule I hereto.

"Services" means the medical services provided by HCG to the Company in accordance with the terms and conditions of this Agreement and such other services that are additionally provided by HCG as mutually agreed between the Parties more fully described in Schedule 2 hereto.

"Service Addendum" shall have the meaning ascribed to it in Clause 2.2;

"Service Fees" shall have the meaning ascribed to it under Clause 3.1;

"Tax(es)" means all taxes including income tax, withholding tax, capital gains tax, sales tax, customs duty, wealth tax, gift tax, gains, franchise, property tax, municipal taxes, statutory levies and charges sales tax, tax relating to employment, excise duty, service tax, payroll tax, occupation tax, value added or transfer taxes, governmental charges, fees, levies or assessments or other taxes, levies, fees, stamp duties, withholding obligations and similar charges imposed by a Governmental Authority and shall include any interest, fines, and penalties related thereto and, with respect to

such taxes, any estimated tax, education cess, surcharge, interest and penalties or additions to tax and interest on such penalties and additions to tax;

"Term" shall mean the term of this Agreement or any renewal thereof commencing from the Execution Date as contemplated in Clause 14.2;

"Third Party" shall mean any Person other than the Parties to this Agreement.

1.2 Interpretation

(a) Any reference herein to any Clause or Annexure is to such Clause of, or Annexure to, this Agreement unless the context otherwise requires. The Schedules, Annexures and Exhibits to this Agreement shall be deemed to form part of this Agreement.

(b) The headings are inserted for convenience only and shall not affect the construction of this Agreement.

(c) Unless the context otherwise requires, words importing the singular include the plural and vice versa, and pronouns importing a gender include each of the masculine, feminine and neuter genders.

(d) The terms "hereof", "herein", "hereby", "hereto", "hereunder" and any derivative thereof or similar words refer to this entire Agreement or specified Clauses of this Agreement, as the case may be.

(e) Reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to such statutory provisions.

(f) Reference to the word "include" shall be construed without limitation.

(g) Time is of essence in the performance of the Parties' respective obligations. If any time period specified herein is extended by mutual agreement between the Parties, such extended time shall also be of essence. Further, if any Approvals are required for the provision of Services and such Approvals have not been received due to delays from the Governmental Authorities, the Parties shall take into consideration the extended time caused by such delays as well.

(h) Unless the context otherwise requires, any period of time referred to shall be deemed to expire at the end of the last date of such period.

(i) In case of any discrepancy between words and figures, the words shall prevail over the figures.

(j) Whenever provision is made for the giving of notice, Approval or consent by any Person, unless otherwise specified, such notice, Approval or consent shall be in writing and the words "notify" and "approve" shall be construed accordingly.

(k) Provisions including the word "agree", "agreed", "agreement" require the agreement to be recorded in writing.

(l) The Recitals shall form integral part of this Agreement.

(m) The words "directly or indirectly" mean directly or indirectly through one or more intermediary persons or

through contractual or other legal arrangements, and "direct or indirect" shall have the correlative meanings.

1.3 In this Agreement:

(a) where a word or phrase is defined, its other grammatical variations shall be construed to have a corresponding meaning;

(b) if a payment or other act must be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day; and

(c) if a period occurs from, after or before a day or the day of an act or event, it excludes that day.

2. PROVISION OF SERVICES

2.1 *Subject to the terms and conditions of this Agreement, and on and from the Commencement Date, HCG hereby agrees to provide to the Company, and the Company hereby agrees to avail exclusively from HCG only, the Services without any interference or obstruction from the Company on a, principal to principal basis, in consideration whereof, HCG shall receive the Service Fees in accordance with the terms of this Agreement.*

2.2 *In the event that the Parties reach an agreement with respect to the provision of any additional services other than the Services, then HCG and the Company shall execute an addendum, in the format as circulated by HCG ("Services Addendum"). Each Services Addendum executed by the Parties shall specify the additional services and the fees payable for such services and be appended to this*

Agreement. The applicable Services Addendum and this Agreement shall constitute the entire agreement for providing the Services. To the extent any terms set forth in a Services Addendum conflict with the terms set forth in this Agreement, the terms of this Agreement shall prevail unless otherwise specifically set forth in the Services Addendum.

***2.3** The Parties agree and acknowledge that HCG shall perform the Services directly, or cause the Services to be performed through other specialized personnel/Third Parties that HCG may deem fit. The Company hereby expressly acknowledges and agrees that HCG may appoint or authorize one or more appropriate specialists or domain expert groups or Third Party service providers to provide any of the Services and shall not in any way object to the utilisation of such personnel.*

3. SERVICE FEES

***3.**1 In consideration of HCG providing the Services set out under this Agreement, HCG shall be paid 75% (seventy five per cent) of the total Gross Revenue per month as service fees ("Service Fees"). The Company shall prepare and submit clear and legible periodic reports to HCG pertaining to the operations of the Hospital, within the timelines set out by HCG. The report shall provide the amount of Gross Revenue and the revenue share determined in accordance with Clause 3.1, broke down by amounts due and payable to HCG and such other details as HCG considers necessary, for such calendar month.*

3.3 The Service Fees, if subjected to any taxes, anytime during the currency of this Agreement shall be charged and be paid by the Company.

3.4 All payments towards Service Fees shall be made in Indian rupees through wire transfer or in such other manner at the discretion of HCG.

3.5 In the event of any delay in the payment of any Service Fee and if such delay is attributable to the Company, the Company shall be liable to pay interest compounded monthly at the rate of 2% (two percent) over the base lending rate set by State Bank of India, which shall be applicable from the Due Date (or revised Due Date) of the payment in terms of Clause Error! Reference source not found. till the date of actual payment by the Company.

3.6 HCG shall have the right to determine, in its sole discretion and from time to time, the charges for its Services to the patients in the Hospital.

4. INFORMATION AND AUDIT OBLIGATIONS

4.1 The Parties agree and acknowledge that:

4.1.1 The Company shall keep full, complete and adequate books of accounts pertaining to the operations of the Hospital and its bank account where the Gross Revenue is accrued.

4.1.2 The Company shall obtain and maintain during the Term, complete and accurate books, records and accounts of the business in accordance with generally accepted accounting principles and Applicable Law.

4.1.3 During the Term, HCG shall be entitled to, after giving a reasonable notice to the Company, inspect, verify or independently audit the books of accounts maintained by the Company for the Hospital/Property. The Company shall also provide a parallel terminal of its books of accounts, such that the same is accessible by HCG, to enable HCG to review the collection of Gross Revenue.

5. BRANDING RIGHTS

5.1 Unless otherwise notified in writing by HCG, the Parties agree that the Hospital shall be called "HCG Hospital" or any other name as it deems fit at its discretion and HCG shall have the right to use its own signages, banners, posters or any other promotional material for advertising and marketing the Hospital at any place within the Hospital and/or the Property and specifically on the Hospital building, entrance to the Hospital and the Property, the reception area of the Hospital and other prominent areas where patients and potential patients can view the signage, in accordance with Applicable Laws.

5.2 HCG shall be entitled to undertake promotion activities to advertise the Services provided at the Hospital and create awareness among general public in order to increase uptake of Services and patient footfalls and such promotion activities shall suitably feature the logos and trademarks of the Parties at HCG's sole discretion.

5.3 The Company shall obtain the necessary Approvals from Third Parties for displaying such signage, branding or advertising activities.

5.4 The Company shall include suitable content on its website(s), promoting the Hospital and its activities in the manner jointly agreed to between the Parties. The Company shall promote and market the Hospital in the statements and communications made by the Company, in the manner agreed to between the Parties.

5.5 The Company agrees and acknowledges that in no event shall any signages, stationery, advertising, marketing and promotional materials, etc., belonging to HCG, be removed at any place within the premises of the Hospital/Property, either by the Company or any Third Party contracting with the Company, without the prior written consent of HCG. The Company further agrees that a breach of this Clause 5.5 shall be a material breach of the terms of this Agreement. It is also agreed and understood by the Company that in the event that the Company fails to comply with the provisions of this Clause 5, irreparable loss, harm and injury would be caused to HCG on a continuous basis for which HCG shall be compensated on a daily basis over and above and without prejudice to the rights, remedies and compensation available and permitted to HCG under any Applicable Law. Therefore the Parties hereto have after detailed consideration of various factors quantified such compensation as INR 1,00,000/-, to be paid to HCG for each day that the Company has removed or permitted Third Parties to remove, the signages, stationery, advertising, marketing and promotional materials. The Company hereby agrees that the aforesaid amount of liquidated damages payable to HCG is reasonable compensation for any losses

suffered or incurred by HCG based on a genuine pre-estimate of the losses that HCG would suffer or incur in the event the Company breaches this Clause 5.5, whether partially or otherwise.

6. ACCESS RIGHTS

6.1 The Company shall provide complete, unrestricted and free access to HCG and its employees, representatives, nominees, delegates, agents, officers, executives and appointees (free from any hindrance or expulsion or discharge or impairment by the Company or any other Person claiming under, through or by right of the Company) to the Hospital and/or the Property for the duration of the Term, in order for HCG to provide the Services, in accordance with the terms of this Agreement.

6.2 The Company agrees to pay and discharge any payments and charges, at its own cost and expense, to prosecute all appropriate actions, judicial or otherwise, necessary to assure HCG's free and quiet use of the Hospital and/or the Property in accordance with the terms of this Agreement. In the event that the Company carries out construction of any land to the Hospital building or construction to the Property the Company covenants that due care shall be taken by the Company to ensure that the Hospital's and/or the Property's access is not obstructed as a result of the construction activity on such land, and the Company shall keep the Hospital visible from the main entrance. During the Term of the Agreement, Company shall not obstruct the free and unrestricted access to HCG, as set

out in this Clause 6 and further agrees that a breach of this Clause 6 shall be a material breach of the terms of this Agreement.

6.3 It is also agreed and understood by the Company that in the event that the Company fails to provide free and unrestricted access to HCG, as set out in Clause 6.1 and Clause 6.2 above, irreparable loss, harm and injury would be caused to HCG on a continuous basis for which HCG shall be compensated on a daily basis over and above and without prejudice to the rights, remedies and compensation available and permitted to HCG under any Applicable Law. Therefore the Parties hereto have after detailed consideration of various factors quantified such compensation as INR Five Lacs, to be paid to HCG for each day that the Company fails to provide free and unrestricted access to HCG as required under this Agreement. The Company hereby agrees that the aforesaid amount of liquidated damages payable to HCG is reasonable compensation for any losses suffered or incurred by HCG based on a genuine pre-estimate of the losses that HCG would suffer or incur, in the event the Company breached this Clause 6.3, whether partially or otherwise.

7. OBLIGATIONS OF THE COMPANY

7.1 The Company undertakes to be bound by, at all times during the Term of this Agreement, and perform each of the following obligations:

7.1.1 The Company shall make the Hospital available for the Services on or prior to August 1st, 2017 or such other

date mutually agreed to between the Parties ("Commencement Date"), and in such a manner that HCG is able to provide the Services to the fullest extent. The Company shall further ensure that all approvals and licenses including building sanctioned plan, fire license, occupancy certificate and utilities such as electricity, generator back up, UPS, water, central air conditioning and high speed internet access are made available on or prior to the Commencement Date.

7.1.2 The Company shall be responsible for all payments towards bank debts including and not limited to other liabilities, security deposits, professional fees and other creditors.

7.1.3 The Company shall be solely responsible for all the payment towards utility services like water, drainage, telephone, pumps, electricity (including generator fuel consumed) to the Hospital, repairs and maintenance including AMC's and CMC of equipments during the Term of this Agreement.

7.1.4 The Company shall enter into long time definitive agreement with all promoter doctors who will be working exclusively with the Company and shall be solely responsible for their payments during the Term of this Agreement.

7.1.5 The Company shall also undertake the Maintenance Capex as required from time to time during the Term of this Agreement.

7.1.6 The Company shall not undertake or carry out: (a) any construction on the Hospital/Property which directly

or indirectly affects the provision of the Services; (b) any repair, renovation or interior work which, in the opinion of an expert appointed by HCG, will affect or is reasonably likely to affect the structural stability of the building on which the Hospital lies or the Property in general; or (c) make any modifications or additions to the premises of the Hospital, without the prior consultation and written consent from HCG. The Parties agree and acknowledge that such prior consultation and consent is essential to ensure that HCG's ability to perform its obligations under this Agreement and the day-to-day operations of the Hospital are not hindered in any way.

7.1.7 The Company shall permit HCG to complete due diligence as may be necessary, and shall, at all times during the subsistence of this Agreement, provide and produce all the required original documents, certificates, records, correspondences, permissions, licenses, building and infrastructure plans related Approvals and all other Approvals etc., with respect to the Hospital and/or the Property at the request of HCG, including copies thereof.

7.1.8 The Company shall be responsible for maintaining all Hospital's equipment in good and operable condition, including incurring costs to evaluate and correct major equipment failure. The Company agrees that it shall be responsible for maintenance and general upkeep of the Hospital equipment and shall always ensure that such equipment is readily available.

7.1.9 The Company shall obtain and will maintain throughout the Term of this Agreement, all the Approvals including Approvals required under all Environmental Laws which are or which may at any time be required for or in connection with HCG providing the Services.

7.1.10 The Company shall be responsible for liaisoning with the Government Authorities and the public, and providing such cooperation and information to Government Authorities and public, as the Company or HCG may determine to be necessary or appropriate under the circumstances on matters that are related to or will affect the provision of Services under this Agreement.

7.1.11 The Company shall be solely responsible to procure and supply drugs and consumables from local wholesalers and distributors. HCG shall also have the right to procure such drugs and supplies at the expense of the Company.

7.1.12 The Company shall be responsible for the payment of all Taxes including all ground rents or other rental payments, all property taxes, municipal taxes, concessions, charges, cesses and any other incidental and ancillary charges payable in respect of the Hospital/Property and undertakes to prosecute and take all appropriate action, judicial or otherwise, required for efficient, quiet and peaceful use of the Hospital/Property.

7.1.13 The Company shall use commercially reasonable efforts to prevent any liens or other security interests from being carried out or filed against the Hospital

or any part thereof, that arises from any structural repairs, maintenance, general repairs, alterations, improvements, renewals or replacements in or to the Hospital or any part thereof.

7.1.14 The Company shall be responsible for complying with requirements imposed by Governmental Authorities.

7.1.15 The Company shall be responsible for providing HCG copies of the Hospital related documents and any additions, amendments or replacements thereto, which are relevant for HCG to fulfill its obligations under this Agreement.

7.1.16 The Company shall in no event borrow money in the name of or pledge the credit or title of HCG.

7.1.17 The Company shall be responsible for adhering to HCG's internal company policies, code of conduct and best practices, as well as standard operating procedures that are released by HCG from time to time.

7.1.18 The Company shall be responsible for providing for fire fighting equipment and power back-up facilities at the Hospital.

7.1.19 The Company shall be responsible for signing/attesting all necessary documents as per the requirements/requests of HCG and also obtaining the necessary authorization(s) to do so from the board of directors of the Company.

7.1.20 The Company shall be responsible for ensuring adequate representation before any court of law, tribunal or other judicial body with respect to any legal or disciplinary proceedings against the Hospital, or any of its doctors or other personnel and duly appointing adequate legal representation in that regard, and also bearing the costs towards the same.

7.1.21 The Company shall inform HCG of any dispute, litigation, notice, correspondence, etc., of which the Company is aware, which has the potential to cause disruption to the provision of the Services to the patients, directly or indirectly. Further, HCG shall have the right to implead itself in any proceedings before any authority, court, etc. at its own cost and expense without any objection by the Company.

7.1.22 The Company shall adhere to the standard pricing schedule, pricing policies, discounting policies as agreed to between the Company and HCG from time to time.

7.1.23 The Company agrees and undertakes to execute such further documents,agreements, deeds, writings, bonds and take all such actions as may be required by HCG and reasonably necessary to implement and give full effect to this Agreement.

8. BANKING ARRANGEMENTS

8.1 Both Parties agree to open an Escrow Account with the bank nominated by HCG, where all the collections of the Hospital will be deposited on daily basis.

8.2 Company shall authorise HCG solely to operate all its bank accounts, including Escrow and other operating accounts and HCG shall be responsible for depositing the daily collections at the Hospital to the Escrow Account on a daily basis. This authorisation shall not be revoked or altered during the Term of this Agreement.

8.3 The amounts from the Escrow Account shall be transferred to an operating bank account of the Company as per their banking arrangement as mentioned in Clause 3.1 above will be transferred.

8.4 The Service Fee payable to HCG as mentioned in Clause 3.1 above will be transferred from the operating account to HCG's designated bank account on daily basis.

9. PERSONNEL

9.1 Each Party agrees that their staff, employees, officers and personnel shall not, nor shall they be deemed to be at any time during the Term, the employees of the other Party. The personnel deployed by HCG to provide the Services acting under the terms of this Agreement, shall be deemed at all times to be under the supervision and responsibility of HCG. Similarly the existing personnel or the personnel employed by the Company in the Hospital shall at all times be deemed to be under the supervision and responsibility of the Company. Each Party shall be solely responsible for disbursement of wages/salaries every month to the personnel employed by them and HCG shall in no manner be responsible for any of the exiting personnel at the Hospital. Each Party shall comply with all the statutory

provisions including labour legislations applicable to such Party from time to time. The Company shall indemnify and hold harmless HCG against all claims, demands etc. that may be made for non-compliance of this Clause 9. Each Party shall make it clear to the personnel deployed by them that they will have no claim for employment with the other Party.

9.2 The Company shall not induce, directly or indirectly any employee of HCG to leave the employment of HCG and/or directly or indirectly hire or use the services of any employee of HCG in any manner whatsoever, except with the prior written consent of HCG, either during the Term or for a period of 3 years following the termination of the Agreement. Parties hereby agree that a breach of this Clause 9 shall be a material breach of the terms of this Agreement.

9.3 The Company shall be responsible for notifying HCG within 24 (twenty-four) hours of its becoming aware of any events within the knowledge of the Company's personnel that will have an adverse effect on the performance of the Services under this Agreement.

10. INSURANCE

10.1 Hospital Insurance

Commencing from the Execution Date and throughout the Term, the Company shall procure, maintain and keep in force property insurance (and, to the extent applicable, builders risk insurance), for the Hospital and the Property

against any loss or damage by risks generally covered by an "all risk of physical loss" insurance (the "Hospital Insurance"). Such coverage shall be for not less than the total replacement value of the Hospital and/or the Property. All Hospital Insurance procured in accordance with this Clause 10.1 shall be obtained from an approved insurance company. The Company shall provide copies of the Hospital Insurance policies and renewal certificates procured upon HCG's request.

10.2 Medical Liability Insurance

Commencing from the Execution Date and throughout the Term, the Company shall procure, maintain and keep in force professional liability insurance/medical liability insurance for claims made against the Hospital with respect to the patients treated at the Hospital ("Medical Liability Insurance"). Such coverage shall be as decided by Hospital Advisory Committee from time to time. The Medical Liability Insurances procured in accordance with this Clause 10.2 shall be obtained from an approved insurance company. The Medical Liability Insurance shall be carried in the name of the Company and any losses thereunder shall be payable to the Company. The Company shall provide copies of the Medical Liability Insurance policies and renewal certificates procured upon the HCG's request.

10.3 General Insurance

Commencing from the Execution Date and throughout the Term, the Company shall procure, maintain and keep in force suitable exhaustive Company Medical Liability

Insurances insurance coverage from a competent insurance company covering every risk/peril against the Hospital and its personnel/staff, including business interruption, all risk policy for plant and equipment breakdown insurance covering the full value of the plant and equipment and Third Party cover ("General Insurance"). Such coverage shall be as decided by Hospital Advisory Committee from time to time. The General Insurance procured in accordance with this Clause 10.3 shall be obtained from an approved insurance company. The General Insurance shall be carried in the name of the Company and any losses thereunder shall be payable to the Company. The Company shall provide copies of the General Insurance policies and renewal certificates procured upon the HCG's request.

10.4 Damage to the Hospital

10.4.1 The Parties agree that any repair, replacement or rebuilding of the Hospital shall be the sole responsibility of the Company and HCG shall not be responsible for the same on any account.

10.4.2 In the event the Hospital has been destroyed (whether fully or partially), by fire or any other reason to an extent which will materially interfere with the provision of the Services in the manner contemplated under this Agreement, the Company covenants and agrees to repair, replace or rebuild, from the insurance proceeds received by the Company (and where required from its own account), any damage to or impairment or destruction of the Hospital or any portion thereof within a reasonable period of time so that

after such repair, rebuilding or replacement, the Hospital shall be substantially in the same condition and standard, as prior to such damage or destruction.

10.4.3 It is agreed between the Parties that in the event the Hospital has been destroyed or damaged in such a manner that HCG is unable to continue to provide the Services, this Agreement shall stand suspended. It is further provided that in the event the repair, replacement or rebuilding of the Hospital is not completed within a period of [90 (ninety)] Business Days from the suspension of the operation of the Hospital such that HCG is unable to provide Services, HCG shall have the right to terminate this Agreement and the provisions of Clause Error! Reference source not found. (Termination) shall become applicable.

11. REPRESENTATIONS AND WARRANTIES

11.1 Each Party hereby represents and warrants to the other that as of the date hereof:

(a) It is duly organized and validly existing under Applicable Laws of its incorporation, and has full power and authority to enter into this Agreement or any other agreement that may be executed by the Parties in connection with the Agreement;

(b) The execution and delivery of this Agreement and/ or any other agreement that may be executed by the Parties in connection with the Agreement; to the extent it is a party thereto and the performance by it of the obligations under this Agreement or any other agreement that may be

executed by a Party in connection with the Agreement to the extent it is a party thereto, has been duly and validly authorized by all necessary corporate action on its part and shall not violate its charter documents, any Applicable Law, or any other deed, document, undertaking or covenant executed by it, including any obligation related to non-compete or exclusivity;

(c) This Agreement and any other agreement that may be executed by the Parties in connection with the Agreement, to the extent it is a party thereto, constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms;

(d) It has not taken any action and no other steps have been taken or legal proceedings started by or against the Party in any court of Law for winding up, dissolution, administration or re-organisation or for the appointment of a receiver, administrator, administrative receiver, trustee or similar officer of any or all of its assets; and

(e) It has not taken any action and no other steps have been taken or legal proceedings started by or against the Party for declaring it as insolvent or the appointment of a receiver, trustee or similar officer of any or all of its assets.

11.2 The Company represents and warrants to HCG, that as of the date hereof, and as on the Execution Date:

(a) The Company has obtained and will maintain throughout the Term of this Agreement, all Approvals including any Approvals required under Environmental Law,

which are or which may at any time be required for or in connection with the Services to be provided to the Hospital; corporate Approvals; business Approvals; and all related Approvals, and has complied with all terms and conditions of such Approvals.

(b) There is no outstanding action, investigation, enquiry or proceeding which is likely to result in the suspension, cancellation, refusal, modification or revocation of any of the Approvals obtained by the Company and no notice has been received of any suspension, cancellation, refusal, modification, revocation or non-renewal of any of the Approvals of the Company.

(c) The Company is absolutely seized and possessed of and entitled to the Hospital and the Property on which the Hospital is located, and has a good, valid, subsisting, enforceable and clear title to the same and is also fully and solely entitled to the Hospital and/or the Property on which the Hospital is located on an ownership basis and is in exclusive possession, occupation and use of the Property.

(d) There is no contract or agreement between the Company and any Third Party which adversely affects the interest or right of the Company in or to the Hospital. No Person has made, or given notice of any claim or demand in relation the Hospital and there are no trusts, liens, licenses or easements affecting the same.

(e) There are no disputes regarding boundaries, rights, covenants or other matters relating to Hospital or their use and there is no reason for the Company to believe that

HCG shall not have uninterrupted and undisputed right to have access to the Hospital in accordance with this Agreement from the date hereof.

(f) The Company hereby represents that, the Hospital is in good and tenable condition and there are no structural design defects of any sort in the Hospital.

(g) All payments required to be made by the Company with respect to the Hospital and/or the Property have been duly made by or on behalf of the Company, and there are no arrears or outstanding liabilities of the Company in respect of the Hospital and/or the Property or under any contract. All Taxes, property taxes, municipal taxes, land revenue, water charges, levies, assessments, outgoings and dues etc., payable to the Governmental Authorities and any other concerned authority in respect of the Hospital and/or the Property have been duly paid as on the Execution Date and there are no arrears or outstanding liabilities of such Taxes, cesses, rates, revenues, outgoings or other dues.

12. INTELLECTUAL PROPERTY AND RECORDS

12.1 The Parties agree that the Company shall not:

(a) use or permit to be used any intellectual property including the trade name or trade mark or logo, brand name or copyrights, softwares, service marks, patents, owned or being used by HCG or its Affiliates ("HCG Intellectual Property"), or any trade name, trade mark, logo or brand name which is identical or phonetically or deceptively similar

to in any manner whatsoever at any time during the Term or thereafter without obtaining prior written approval from HCG;

(b) make any claims to any HCG Intellectual Property or do any act that adversely affects HCG's right, title or interest in the HCG Intellectual Property and agrees that all the rights, title and interest in the trade name or trade mark or in the brand name, design, logo, business name of HCG or its variants, exclusively belong to it and its Affiliates and that the Company shall have no right or property therein other than as may be approved in writing by HCG; and

(c) cause or permit anything to be done, which may damage or endanger the right of HCG to the HCG Intellectual Property.

12.2 HCG shall keep full, complete and adequate Patient Records including copies of all prescriptions, correspondence, instructions, receipts, vouchers, memoranda and all documents regarding referrals by the Hospital and its medical practitioners for any of the Services (both in physical and electronic form) which will be and remain, as between the Parties, the property of HCG.

12.3 Each Party will establish and maintain adequate safeguards intended to protect all Patient Records and prevent unauthorized destruction, loss or alteration of Patient Records in accordance with all Applicable Laws.

13. COMPLIANCE WITH LAW

The Company agrees that it shall comply with all Applicable Laws including but not limited to Environmental

Laws, obtain all Approvals, make all filings required to be made by it to the relevant Governmental Authority and maintain its corporate records and documents in accordance with Applicable Laws at all times during the Term in respect of the Hospital and/or the Property. The Parties agree that subject to Applicable Law, in relation to the Hospital and/or the Property, the Company and not HCG shall be considered as the owner and occupier under all Applicable Laws and Approvals.

14. TERM & TERMINATION

14.1 This Agreement shall come into effect on the Execution Date.

14.2 The initial term of the Agreement will be a period of 15 (fifteen) years from the Execution Date, ("Term") will be lock-in-period ("Lock-in-Period") and neither of the Parties can terminate this Agreement during the Lock in Period unless the Parties mutually agree to extend the Term on terms acceptable to both Parties.

14.3 The Parties may, at any time, mutually agree in writing to change the Term or to extend the Term of the Agreement in such manner and subject to such terms and conditions as the Parties may mutually agree to.

15. INDEMNIFICATION

15.1 The Company ("Indemnifying Person") hereby covenants, undertakes and agrees to indemnify and keep indemnified and otherwise save harmless, HCG ("Indemnified Person"), its Affiliates, agents, employees and

representatives from and against all losses including any losses, damages, claims and demands, which the Indemnified Person its directors, employees, representatives and agents may suffer or incur, as well as all actions, suits and proceedings which they may face and all costs, charges and expenses relating thereto, arising out of:

(a) any breach, violation or non-compliance on the part of the Indemnifying Person or its directors or employees or agents, of any statutory provisions and Applicable Laws including any rules, regulations, bye-laws and lawful directions of any Governmental Authority or public authorities including but not limited to a situation where the Indemnified Person is unable to provide Services during the Term or any renewal thereof;

(b) any execution, attachment or like proceedings being initiated against the Indemnifying Person which directly affects or concerns the Hospital or any rights or obligations of the Parties under this Agreement;

(c) any breach of the terms of this Agreement (including the representations and warranties) by the Indemnifying Person or failure or neglect on the part of the Indemnifying Person to fulfil or perform any of its obligations under this Agreement including but not limited to a situation where Indemnified Person is unable to provide Services during the Term or any renewal thereof.

15.2 The Indemnified Person shall send a notice to the Indemnifying Person in accordance with Clause 20.2 (Notices), with reasonable particulars, and the details of the

claim under Clause 15.1. The failure or omission by the Indemnified Person to send a notice in accordance with this Clause 15.2 shall not discharge the Indemnifying Person with respect to the claims made under Clause 15.1 by the Indemnified Person. Upon receipt of the notice of the claim in accordance with this Clause, the Indemnifying Person shall remit to the Indemnified Person, the amount specified in such notice within a period of [30 (thirty)] days from the receipt of the notice under this Clause 15.2. In the event of any delay in the payment of any amount specified in such notice as set out in this Clause 15.2, the Company shall be liable to pay interest compounded monthly at the rate of 2% (two percent) over the base lending rate set by State Bank of India, which shall be applicable from the date of receipt of such notice till the date of actual payment by the Company.

15.3 The Indemnifying Person hereby covenants and agrees to indemnify the Indemnified Person against any valid claim from any Third Party, including costs and expenses incidental thereto, by reason of any action taken or omitted to be taken by the Indemnifying Person or its officers, employees, agents or representatives pursuant to this Agreement.

15.4 The obligations under this Clause 15, shall survive the termination of this Agreement for an additional period of [2 (two)] years. The provisions contained in this Clause 15, shall be in addition to any other rights or remedies of the Parties in Law or under this Agreement.

16. EXCLUSIVITY, IRREVOCABILITY AND NON-COMPETE

16.1 The Company agrees and undertakes that it shall not, directly or indirectly, engage or appoint any Person other than HCG for the purpose of providing Services in the Hospital or take any other action or step that conflicts with the rights of HCG under this Agreement, at any time during the Term, without the prior written consent of HCG.

16.2 The Parties hereby agree that in the event that: (i) the Company is desirous of setting up other hospitals apart from the Hospital; and/or (ii) the Company is desirous of availing any other services apart from the Services at the Hospital, from any other service provider, then, the Company shall provide HCG a right of first option to: (a) provide services similar to the services at such other hospitals or (b) provide services other than the Services at the Hospital. The Company shall, prior to setting up such other hospitals apart from the Hospital or prior to commencing other services at the Hospital, issue a written notice to HCG on the terms and conditions on which it is desirous of setting up the hospital or receiving other services at the Hospital and HCG shall within a period of [30 (thirty)] days from the date of issuance of such notice, respond to the written notice with respect to its acceptance or refusal of the terms and conditions of providing services similar to the services at such other hospitals or providing services other than the Services at the Hospital. In the event that the Company does not receive the acceptance notice from HCG within a period of [30 (thirty)] days from the date of issuance of such notice, then the

Company shall be entitled to appoint any other service provider for the purposes of providing services similar to the services at such other hospitals or providing other services at the Hospital, provided however that, such service provider shall enter into an agreement to provide such other services on the same terms and conditions as provided to HCG and HCG shall have a right to verify the same.

16.3 Non-Compete

16.3.1 During the Term and for a period of one year from the expiry of the Term, the Company shall and shall ensure that its promoters and its directors shall not, directly or indirectly, collaborate with any Third Party to establish, develop, assist, set-up, operate or manage any business or service line in the healthcare industry, without the prior written approval of HCG.

16.3.2 During the Term, and for a period of one year from the expiry of the Term, the Company shall cause the doctors employed by the Company to undertake that they shall not personally engage in any activity with a competitor of the Company and/or HCG, whether as a partner, member, shareholder, principal, agent, director or Affiliate, without the prior written approval of HCG.

16.3.3 The Parties agree and acknowledge that the covenants and obligations with respect to non-compete, as set-forth in this Clause 16.3 relate to special, unique and extraordinary matters, and that a violation or default of any of the terms of such covenants and obligations shall cause HCG irreparable injury and loss. Therefore, Company agrees

that HCG shall be entitled to an interim injunction, restraining order or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the Company from committing any violation of the covenants and obligations contained in this Clause 16.3. These injunctive remedies are cumulative and are in addition to any other rights and remedies that HCG may have against the Company, at law or in equity.

16.3.4 The Parties agree and acknowledge that the restrictions contained in this Clause 16.3 are considered reasonable for the legitimate protection of the business and goodwill of HCG. However, in the event that such restriction shall be found to be void, but would be valid if some part thereof was deleted or the scope, period or area of application were reduced, the above restriction shall apply with the deletion of such words or such reduction of scope, period or area of application, as may be required to make the restrictions contained in this Clause 16.3 valid and effective. It is also agreed and understood by the Company that in the event that the Company fails or breaches the provision as set out in Clause 16.3, irreparable loss, harm and injury would be caused to HCG on a continuous basis for which HCG shall be compensated on a daily basis over and above and without prejudice to the rights, remedies and compensation available and permitted to HCG under any Applicable Law. Therefore the Parties hereto have after detailed consideration of various factors quantified such compensation as INR 10 Lacs, to be paid to HCG for each day that the Company breaches this Clause 16.3 as required

under this Agreement. The Company hereby agrees that the aforesaid amount of liquidated damages payable to HCG is reasonable compensation for any losses suffered or incurred by HCG based on a genuine pre-estimate of the losses that HCG would suffer or incur, in the event the Company breached this Clause 16.3, whether partially or otherwise.

17. DISPUTE RESOLUTION AND ARBITRATION

17.1 Amicable Settlement

17.1.1 If any dispute or difference of opinion of any kind whatsoever shall arise between the Company and HCG, in connection with or arising out of this Agreement, including without prejudice to the generality of the foregoing, any question regarding its existence, validity, termination, or execution, whether during the progress of Services or upon completion and whether before or after the termination, abandonment or breach of this Agreement, or a situation wherein HCG is unable to provide the Services ("Dispute"), the Parties shall seek to resolve the Dispute by referring the Dispute to the Hospital Advisory Committee for its decision on the matter. If the Hospital Advisory Committee fails to resolve the Dispute within 30 (thirty) Business Days after notice of the Dispute by one Party to the other Party, then the provisions of Clause 17.2 shall apply.

17.2 Dispute Resolution

17.2.1 If any Dispute is not resolved by the Parties pursuant to Clause 17.1 within 60 (sixty) Business Days of the notice of the Dispute, then either Party may, within 30

(thirty) Business Days of such reference, provide notice to the other Party, of its intention to commence arbitration, as hereinafter provided, as to the matter in Dispute, and no arbitration in respect of the said Dispute shall be commenced unless such notice is provided.

17.2.2 Any Dispute, in respect of which a notice of intention to commence arbitration has been provided, in accordance with Clause 17.2.1, shall be finally settled by arbitration.

17.2.3 Any Dispute submitted by a Party to arbitration shall be heard by a sole arbitrator, to be appointed mutually by the Parties.

17.2.4 Arbitration proceedings under Clause 17.2 shall be conducted pursuant to The Indian Arbitration and Conciliation Act, 1996 and rules made thereunder, from time to time, in Bangalore, India and in English language.

17.2.5 The decision of the arbitrator shall be final and binding and shall be enforceable in any court of competent jurisdiction as decree of the court. The Parties thereby waive any objections to or claims of immunity from such enforcement.

17.2.6 The arbitrator shall provide a written and reasoned award.

17.3 Performance Obligations

17.3.1 Notwithstanding the reference of any Dispute to be resolved through arbitration pursuant to this Clause 17.2

(Dispute Resolution & Arbitration), the Parties shall continue to perform their respective obligations under this Agreement.

18. FORCE MAJEURE

18.1 Neither Party shall be liable to the other Party or be deemed to be in breach of this Agreement by reason of any delay in performing or observing, or any failure to perform or observe, any of its obligations under this Agreement, if the delay or failure was due to any event which is not within the reasonable control of the Party affected ("Affected Party"), and with the exercise of due diligence, could not reasonably be prevented, avoided or removed by the Affected Party, and does not result from the Affected Party's negligence or the negligence of its agents, employees or sub-contractors, which causes the Affected Party to be delayed, in whole or in part, or unable to partially or wholly perform its obligations under this Agreement (other than a lack of funds or finances or any obligation for the payment of money) ("Event of Force Majeure") and shall include:

(a) event of war (whether war declared or not), act of terror, sabotage, civil commotion, local disturbance, bomb-blasts, invasion, act of foreign enemy, hostilities, civil war, riot, rebellion, revolution, insurrection, mutiny, civil commotion, military or usurped power, martial law, conspiracy, confiscation, commandeering, [non-availability of essential raw material], any act of malicious Person or group of malicious Persons acting on behalf of or in connection with any political organization, requisition or destruction or

damage by order of any government de jure or de facto or by any Government Authority;

(b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;

(c) strikes, working to rule, go-slows and/or lockouts directly affecting the Hospital;

(d) any act of the Governmental Authority or change in Applicable Laws directly affecting the Hospital and making it illegal to provide Services; or

(e) any event or circumstances of a nature analogous to any events set forth in paragraph (a) to (d) above;

18.2 Notwithstanding anything to the contrary, an event of force majeure in a sub-contract shall be considered to be an Event of Force Majeure under this Agreement, upon notification of such an event by HCG to the Company.

18.3 Where there is an Event of Force Majeure and the Affected Party is prevented from or delayed in performing its obligations under this Agreement, it shall as soon as reasonably practicable notify (and in no event later than 2 (two) days from the occurrence of such an Event of Force Majeure) in writing to the other Party, giving full particulars of the Event of Force Majeure and the reasons for the Event of Force Majeure preventing the Affected Party from, or

delaying the Affected Party in performing its obligations under this Agreement.

18.4 If the Affected Party claims force majeure protection pursuant to this Clause 18 (Force Majeure), then it shall:

(a) Exercise all reasonable efforts to continue to perform its obligations hereunder;

(b) Consult with the other Party and agree upon the action to be taken, implement such plan of remedial action and take reasonable alternative measures to correct or cure such Event of Force Majeure excusing performance;

(c) Exercise all reasonable efforts to mitigate or limit damages to the other Party to the extent such action will not adversely affect its own interests;

(d) The Affected Party shall thereafter supply weekly reports to the other Party detailing its progress in overcoming the adverse effects of the Event of Force Majeure, and shall as soon as reasonably practicable after the commencement of the same submit to the other Party information supporting any claim for relief under this Clause 18.4.

18.5 The Affected Party shall not be obliged, when complying with its obligations under this Clause 18.4 to take any steps which would not be in accordance with prudent industry practice or to take any steps beyond its reasonable control.

18.6 Upon cessation of the effect of the Event of Force Majeure, the Affected Party shall, as soon as reasonably

practicable, recommence the performance of its obligations under this Agreement.

18.7 An Event of Force Majeure shall not relieve a Party from its obligations which arose before the occurrence of such Event of Force Majeure and shall not affect the obligations to pay money in a timely manner.

19. CONFIDENTIALITY

19.1 Save as permitted pursuant to Clause 19.3, each Party shall treat as strictly confidential and shall not disclose to any Person any Confidential Information without the other Party's prior written consent.

19.2 The Party receiving Confidential Information shall take all reasonable precautions in dealing with any Confidential Information of the disclosing Party and shall establish and maintain sufficient security measures and procedures to provide for the safe custody of such Confidential Information and to prevent unauthorized access thereto or use thereof.

19.3 Either Party may disclose information, which would otherwise be Confidential Information, if and to the extent:

(a) required by Applicable Law of any jurisdiction to which the disclosure is subject, provided that the disclosing Party has taken all practicable legal steps to prevent such disclosure and has notified the other Party of such disclosure in advance and the other Party shall have the right to take steps as it considers necessary to resist production, pending

which the disclosing Party shall take all reasonable steps to resist (or where that is not practicable, to minimise) any production of the Confidential Information;

(b) reasonably required by this Agreement, including where the disclosure (i) is required to facilitate performance of the Services; or (ii) is made to the employees, officers, contractors, consultants, or agents of the disclosing Party or of any of its Affiliates, to the extent such disclosure is necessary for the proper performance of their services in connection with this Agreement and/or any document referred to in it;

(c) that it is already or becomes public knowledge or is in the public domain otherwise than as a result of a breach by the Party disclosing or using the information;

(d) required by any securities exchange or regulatory agency to which either Party is subject, wherever situated, whether or not the requirement has the force of law provided that the disclosing Party has taken all reasonable steps to prevent such disclosure and the disclosing Party has notified the other Party of such disclosure in advance and the other Party shall have the right to take steps as it considers necessary to resist production, pending which the disclosing Party shall take all reasonable steps to resist (or where that is not practicable, to minimise) any production of the Confidential Information;

(e) disclosed to its professional advisers or to its auditors or its legal advisers or to any actual or potential

bankers, financiers or insurers of that Party, in each case for purposes of this Agreement;

(f) following prior written notice to the other Party, it is disclosed to a bona fide potential assignee of the disclosing Party's interest in this Agreement or in the case of the Company, its proprietary interest in the equipment, the Hospital or the Hospital site, provided that the recipient of such Confidential Information shall be bound by the same if not stricter confidentiality obligations set-out hereto;

(g) it is disclosed to the extent necessary and in connection with any legal proceedings between the Parties or referral to an independent engineer or in connection with any legal proceedings involving Third Parties only to the extent required by such proceedings) provided that the disclosing Party has taken all reasonable steps to prevent such disclosure and the disclosing Party has notified the other Party of such disclosure in advance and the other Party shall have the right to take steps as it considers necessary to resist production, pending which the disclosing Party shall take all reasonable steps to resist (or where that is not practicable, to minimise) any production of the Confidential Information;

(h) that the other Party has given prior written approval to such disclosure; or

(i) such information was, prior to the date of disclosure hereunder, rightfully in the possession of the receiving Party either without limitation on disclosure to others or subsequently becoming free of such limitation.

19.4 A Party disclosing information pursuant to Clause 19 (other than the circumstances described in subsections (a), (c), (d) and (g) to any Person shall, prior to making the disclosure, obtain from the Person to whom the disclosure is to be made, a written undertaking in favor of the Parties to keep the information which is to be disclosed confidential on the terms at least as restrictive as are set out in this Clause 19 (Confidential Information), provided that the foregoing shall not apply to legal counsel or other similar professionals who have a professional responsibility to keep such disclosed information confidential. The disclosing Party (a) accepts that undertaking shall be deemed to be an unauthorized disclosure or use by the disclosing Party and (b) shall, at its own cost and expense, use all reasonable endeavors to secure that such Person complies with such undertaking (including, if necessary, through the taking of legal proceedings to prevent an unauthorized disclosure by such Person).

19.5 Nothing contained herein shall restrict HCG from disclosing any Confidential Information about the Company to its Affiliates, investors, lenders, advisors and any potential purchasers of shares or assets of the Company or any other Third Party in relation to the shares or assets owned by HCG in the Company.

19.6 It is also agreed and understood by the Company that in the event that the Company fails or breaches the provision as set out in Clause 19, irreparable loss, harm and injury would be caused to HCG on a continuous basis for which HCG shall be compensated on a daily basis over and

above and without prejudice to the rights, remedies and compensation available and permitted to HCG under any Applicable Law. Therefore the Parties hereto have after detailed consideration of various factors quantified such compensation as INR Rs. 10 Lacs, to be paid to HCG for each day that the Company breaches this Clause 19 as required under this Agreement. The Company hereby agrees that the aforesaid amount of liquidated damages payable to HCG is reasonable compensation for any losses suffered or incurred by HCG based on a genuine pre-estimate of the losses that HCG would suffer or incur, in the event the Company breached this Clause 19, whether partially or otherwise.

20. MISCELLANEOUS

20.1 EXPENSES

Each Party shall bear its respective expenses and costs incurred in connection with the preparation, execution and delivery of this Agreement.

20.2 NOTICE

20.2.1 All notices, reports, certificates or other communication to be provided under this Agreement shall be in writing, and shall be sent by personal delivery (against receipt), special courier, registered post with acknowledgment due, facsimile or electronic mail to the address of the relevant Party specified below:

If to the Company:

Name: Dr. Rajendra I Dugani

Address: Survey No. 29, Javali Garden, Gokul Road, Hubli-580030

E-Mail: dr_ri_dugani@yahoo.co.in

If to HCG:

Name: Sunu Manuel

Address: Unity Building, # 3 HCG Corporate Office, P. Kalinga Rao Road, Sampangiram Nagar, Bangalore-560027

E-Mail: sunumanuel@hcgoncology.com

20.2.2 Except as otherwise specified in this Agreement, any notice sent by electronic mail or facsimile shall be deemed received on the date of transmission provided that a confirmation of receipt is obtained within [2 (two)] days after the transmission but before 5 p.m. If the confirmation is received at any time after 5 p.m. the same shall be deemed to have been received on the following day.

20.2.3 Either Party may change its address, phone or facsimile number, electronic mail address and addressee for receipt of such notices by 10 (ten) Days' notice to the other Party. Notices shall be deemed to include any Approvals, consents, instructions, orders and certificates to be provided under this Agreement.

20.3 ASSIGNMENT

Neither Party shall, without the prior consent of the other Party, assign, mortgage or charge to any Third Party this Agreement or any part thereof, or any right, benefit, obligation or interest therein or thereunder, except that HCG shall be entitled to assign, without the consent of the

Company, either absolutely or by way of creation of a charge on any monies due and payable to it or that may become due and payable to it under this Agreement.

20.4 THIRD PARTY RIGHTS

Nothing herein is intended, nor shall be construed to confer upon any Third Party any right, remedy or claim under or by reason of this Agreement. This Agreement shall inure to the benefit of, and be binding upon, the Parties only.

20.5 AMENDMENTS

20.5.1 Subject to requisite approval and consents as applicable, no amendment or other variation of this Agreement shall be effective unless it is in writing, is dated, expressly refers to this Agreement, and is signed by a duly authorized representative of each Party.

20.6 WAIVERS AND CONSENTS

20.6.1 Subject to Clause 20.6.2, no relaxation, forbearance, delay or indulgence by either Party in enforcing any of the terms and conditions of this Agreement or the granting of time by either Party to the other shall prejudice, affect or restrict the rights of that Party under this Agreement, nor shall any waiver by either Party of any breach of Agreement operate as waiver of any subsequent or continuing breach of Agreement.

20.6.2 Any waiver of a Party's rights, powers or remedies under this Agreement must be in writing, must be dated and signed by an authorized representative of the

Party granting such waiver, and must specify the right and the extent to which it is being waived.

20.7 RELATIONSHIP BETWEEN PARTIES

20.7.1 HCG shall be an independent contractor performing this Agreement. Nothing in this Agreement shall constitute or be deemed to constitute any agency, partnership, joint venture, unincorporated association, co-operative entity or other joint relationship between the Company and HCG for any purpose.

20.7.2 No provision of this Agreement shall constitute either Party as the legal representative or agent of the other, nor shall either Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name of or on behalf of the other Party except as provided expressly under this Agreement.

20.8 PARTIAL INVALIDITY

If at any time the provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any Applicable Law, the Parties shall negotiate in good faith with a view of agreeing to one or more provisions which may be substituted for any such invalid, illegal or unenforceable provision and produce as nearly as is practicable in all the circumstances the appropriate balance of the commercial interest of the Parties.

20.9 SEVERABILITY

The provisions of this Agreement are severable. If any provision or condition of this Agreement is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of this Agreement. The Parties agree in such circumstances to negotiate an equitable amendment to the provisions of this Agreement to give effect to the original intention of the Parties.

20.10 FURTHER ASSURANCE

Each Party will, at its own respective cost and expense, execute and do (or procure to be executed and done by any other necessary party) all such deeds, documents, acts and things as may be required from time to time or as may be necessary to give full effect to this Agreement or for performance of its obligations under this Agreement or for compliance with the provisions of Applicable Laws.

20.11 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all communications, negotiations and agreements, whether written or oral, of Parties with respect hereto made prior to the date of Agreement.

20.12 SPECIFIC PERFORMANCE

The Parties agree that a non-defaulting Party shall suffer immediate, material, immeasurable, continuing and

irreparable damage and harm in the event of any material breach of this Agreement and that damages in respect of such breach shall be inadequate and that the non-defaulting Party(ies) shall be entitled to an injunction, restraining order, right for recovery, suit for specific performance or such other equitable relief as a court of competent jurisdiction may deem necessary or appropriate to restrain the other Parties from committing any violation or enforce the performance of the covenants, representations and obligations contained in this Agreement. These injunctive remedies are cumulative and are in addition to any other rights and remedies the Parties may have at law or in equity, including without limitation a right for damages.

20.13 LANGUAGE

This Agreement, all correspondence and communications to be provided and all other documentation to be prepared and supplied under this Agreement shall be written in English language and this Agreement shall be construed and interpreted in accordance with that language. If any correspondence or communications are prepared in any language other than the English language, the English translation of such documents, correspondence or communications shall prevail in matters of interpretation.

20.14 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and interpreted in accordance with laws of India. Subject to Clause 17.2 (Dispute Resolution & Arbitration), the courts of Bangalore

shall have exclusive jurisdiction in all matters arising under this Agreement.

20.15 SURVIVAL

Clauses 12 (Intellectual Property), Error! Reference source not found. (Consequences of termination), 15 (Indemnification), 20.1 (Expenses), 20.2 (Notice), 20.4 (Third Party Rights), 19 (Confidentiality), 20.14 (Governing Law and Jurisdiction), 17 (Dispute resolution), 20.7 (Relationship between Parties) and 20.15 (Survival) shall survive termination of this Agreement along with all other Clauses which should survive termination to give effect to the terms of this Agreement.

20.16 COUNTERPARTS

The Parties have executed this Agreement in counterparts, each of which so executed and delivered, shall be deemed as an original. All such counterparts shall together constitute one and the same agreement.

12. The relevant portion of the Exemption Notification bearing No.12/2017-Central Tax (Rate) dated 28.06.2017 is as under:

74	*Heading 9993*	*Services by way of –* *(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;* *(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above*	*Nil*	*Nil*

> *(k) "authorised medical practitioner" means a medical practitioner registered with any of the councils of the recognised system of medicines established or recognised by law in India and includes a medical professional having the requisite qualification to practice in any recognised system of medicines in India as per any law for the time being in force;*
>
> *(s) "clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;*
>
> *(zg) "health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;*

13. A perusal of the aforesaid 2017 Agreement entered into between the petitioner and SHCS will clearly establish that the services rendered by the petitioner constitute health care services within the meaning of the aforesaid Exemption Notification and these services involve diagnosis, treatment and medical care provided to patients at a recognized clinical establishment and are therefore, squarely/fully/totally/completely covered by the said

Exemption Notification especially since the petitioner's Doctors, Specialists and Para-Medical Personnel render treatment directly to patients and the consideration received for such services is wholly exempt from payment of tax and the impugned demands in the impugned SCNs seeking to tax such services is clearly contrary to law as well as being illegal, arbitrary and without jurisdiction or authority of law warranting interference by this Court in the present petition.

14. A perusal of the material on record will indicate that subsequent to issuance of the aforesaid Exemption Notification dated 28.06.2017, the Central Board for Indirect Taxes issued a CBIC Circular No.32/6/2018 dated 12.02.2018, which reiterates, clarifies and states that services rendered by Doctors, Consultants and Technicians engaged by Hospital, whether employed or otherwise are health care services and consequently, exempt from GST. The said Circular at Sl.No.5 which is relevant in this regard is as under:

5.	*Is GST leviable in following cases:* *(1) Hospitals hire*	*Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt. [Sl. No. 74 of Notification No. 12/2017-CT(Rate) dated 28-6-*

	doctors/senior consultants/technicians independently, without any contract of such persons with the consultancy patient and pay them. charges, employee without there being any employer-relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST? *(2) Retention money: Hospitals charge the patients, say, Rs.10000/-and pay to the consultants/technicians only Rs. 7500/-and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, care, services, paramedic emergency checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?* *(3) Food supplied to the patients: Health care services provided by the clinical establishments will*	*2017 as amended refers).* *(1) Services provided by senior doctors/consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.* *(2) Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, Injury. deformity, abnormality or pregnancy in any recognised system of medicines in India [para 2(zg) of Notification No. 12/2017-CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.* *(3) Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.*

	include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If Hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.	

15. A conjoint/cumulative reading/effect of the aforesaid Exemption Notification and Circular reflect a clear legislative intention not to burden essential health care services, where the Exemption Notification exempts whole of the GST leviable on services by way of health care services provided by a clinical establishment, an authorized Medical Practitioner or Para-Medics; the Circular further clarifies that Hospitals themselves provide

health care services and that the entire amount charged by them from patients including the retention money and any portion shared with Doctors is exempt from payment of GST; the exemption for health care has been retained consistently across the Indirect Tax Regime to ensure affordability of medical treatment end-to-end and any interpretation that results in taxing the services of the petitioner would defeat this intent and would result in an increased cost to the patient as the tax on the petitioner would not be available as ITC to SHCS whose output services are exempt by the same Notification and this amount of tax will then be added to the cost charged by SHCS on its patients.

16. In the case of ***Government of Kerala Vs. Mother Superior Adoration Convent – 2021 (376) ELT 242 (SC),*** the Hon'ble Apex Court held as under:

> *"24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object*

sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions reached by the impugned judgments of the Division Bench and the Full Bench.

25. The matter can also be seen from a slightly different angle. Where a High Court construes a local statute, ordinarily deference must be given to the High Court judgments in interpreting such a statute, particularly when they have stood the test of time (see State of Gujarat v. Zinabhai Ranchhodji Darji (1972) 1 SCC 233 at paragraph 10, Bishamber Dass Kohli v. Satya Bhalla (1993) 1 SCC 566 at paragraph 11, Duroflex Coir Industries Ltd. v. CST 1993 Supp (1) SCC 568 at paragraph 2, State of Karnataka v. G. Seenappa 1993 Supp (1) SCC 648 at paragraph 3 and Bonam Satyavathi v. Addala Raghavulu 1994 Supp (2) SCC 556 at paragraph 4). This is all the more applicable in the case of tax statutes where persons arrange their affairs on the basis of the legal position as it exists.

26. In the result, the appeals filed by the State of Kerala are dismissed. The appeal filed in Civil Appeal No.204 of 2012 is allowed and the judgment of the Division Bench is set aside."

17. As stated supra, both the petitioner and SHCS are undisputedly clinical establishments and the health care services provided by the petitioner are covered by Sl.No.74 – Heading 9993 and the definitions of Clinical Establishment and Health Care Services in the Exemption Notification read along with the aforesaid CBIC Circular dated 12.02.2018, which is sufficient to come to the conclusion that the petitioner is exempt from payment of GST as sought to be demanded in the impugned SCNs. It is therefore clear that the Notification and Circular must be read in a manner that gives full effect to their object, namely, to exempt health care services provided by Clinical Establishments, Authorized Medical Practitioners and Para-Medical Staff from the levy of GST and consequently, the impugned SCNs deserve to be quashed.

18. A perusal of the impugned SCNs will indicate that the respondents have attempted to classify the petitioner's activities as "Support Services" on the ground that the services provided by the petitioner is nothing but supply of skilled Doctor service to SHCS vide SAC 9985 is liable to GST at 18%; in this context, it is

pertinent to state that the SCNs fail to consider and appreciate that as per the Medical Services Agreement entered into between the petitioner and SHCS, the true and predominant nature of the services is medical treatment rendered to patients; the petitioner does not provide man power or administrative assistance to SHCS; rather it delivers health care services through qualified Medical Professionals and classification of the services must follow its substance and once the substance of the services provided by the petitioner are found to be health care services, their classification as "Support Services" under SAC 9985 as sought to be contended by the respondents is not only misplaced but also untenable; the respondents cannot indirectly impose GST by treating the agreement/arrangement between petitioner and SHCS as a taxable B2B transaction when the underlying service i.e., medical services to patients is exempt when viewed directly and the said exemption granted in favour of the petitioner, which is a clinical establishment providing health care services cannot be nullified by misinterpreting or misconstruing contractual or revenue sharing agreement/arrangements between the petitioner and SHCS and

consequently, the said contentions urged on behalf of the respondents cannot be accepted.

19. In ***Acer India***'s case supra, the Hon'ble Apex Court held as under:

> *"80. In other words, computers and softwares are different and distinct goods under the said Act having been classified differently and in that view of the matter, no central excise duty would be leviable upon determination of the value thereof by taking the total value of the computer and software. So far as, the valuation of goods in terms of 'transaction value' thereof, as defined in Section 4(3)(d) of the Act is concerned, suffice it to say that the said provision would be subject to the charging provisions contained in Section 3 of the Act as also Sub-Section (1) of Section 4. The expressions "by reason of sale" or "in connection with the sale" contained in the definition of 'transaction value' refer to such goods which is excisable to excise duty and not the one which is not so excisable. Section 3 of the Act being the charging section, the definition of 'transaction value' must be read in the text and context thereof and not de'hors the same. The legal text contained in Chapter 84, as explained in Chapter Note 6, clearly states that a software, even if contained in a hardware, does not lose its character as such. When an exemption has been granted from levy of any excise duty on software whether it is operating software or application software in terms of*

heading 85.24, no excise duty can be levied thereupon indirectly as it was impermissible to levy a tax indirectly. In that view of the matter the decision in PSI Data Systems (supra) must be held to have correctly been rendered."

20. Insofar as the contention of the respondents that the present petitions challenging the impugned SCNs are premature and are liable to be dismissed having regard to the existence of equally efficacious and alternative remedies available to the petitioner, who is liable to participate in the adjudication proceedings is concerned, in the light of lack/absence/want of the requisite/foundational jurisdictional facts, which are essential for the purpose of issuing the impugned SCNs by declining to grant exemption from levy/payment of GST under the aforesaid Notification and Circular, I am of the considered opinion that mere availability of alternative remedies would not come in the way of this Court exercising its jurisdiction under Articles 226 and 227 of the Constitution of India and as such, this contention urged on behalf of the respondents cannot be accepted.

21. In view of the aforesaid facts and circumstances, I am of the considered opinion that the impugned SCNs issued by the

respondents are illegal, arbitrary and without jurisdiction or authority of law and contrary to the provisions of the CGST/KGST Act as well as the Exemption Notification No.12/2017-CT dated 28.06.2017 and the CBIC Circular No.32/06/2018 dated 12.02.2018 and consequently, the impugned SCNs deserve to be quashed.

22. In the result, I pass the following:

ORDER

i) W.P.No.22236/2023 is hereby ***allowed*** by holding that the services provided by the petitioner through another Hospital, being health care services are exempt from payment/levy of GST under Exemption Notification No.12/2017-CT dated 28.06.2017 and the CBIC Circular No.32/06/2018 dated 12.02.2018;

ii) The impugned Show Cause Notice dated 24.08.2023 along with Form GST DRC – 01 dated 24.08.2023 issued by respondent No.1 at Annexure-A is hereby quashed.

iii) W.P.No.23928/2023 is hereby ***allowed*** by holding that the services provided by the petitioner through another Hospital, being health care services are exempt from payment/levy of GST

under Exemption Notification No.12/2017-CT dated 28.06.2017 and the CBIC Circular No.32/06/2018 dated 12.02.2018;

iv) The impugned Show Cause Notice dated 30.09.2023 along with Form GST DRC – 01 dated 30.09.2023 issued by respondent No.1 at Annexure-A is hereby quashed.

v) W.P.No.23931/2023 is hereby allowed by holding that the services provided by the petitioner through another Hospital, being health care services are exempt from payment/levy of GST under Exemption Notification No.12/2017-CT dated 28.06.2017 and the CBIC Circular No.32/06/2018 dated 12.02.2018;

vi) The impugned Show Cause Notice dated 30.09.2023 along with Form GST DRC – 01 dated 30.09.2023 issued by respondent No.1 at Annexure-A is hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

Srl/Mds