

JOINT-VENTURE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Joint Venture Agreement (or Agreement) is executed on this DEC 23 2024 in the City of San Fernando Pampanga, by and between:

B.BRAUN AVITUM PHILIPPINES, INC., a corporation organized and existing under the laws of the Philippines with principal office at 15/F Sun Life Centre, 5th Avenue cor. Rizal Drive, Bonifacio Global City, Taguig City, Metro Manila, represented herein by its Sales Director, **MR. RICKY PAGLICAWAN** and its Managing Director, **MR. SINON ESERMANN**, by virtue of Secretary's Certificate dated November 28, 2024, and hereinafter referred to as "**THE PRIVATE PARTNER**"

-and-

THE PROVINCE OF PAMPANGA, a local government unit duly organized and existing under the laws of the Republic of the Philippines, with principal address at Capitol Compound, Sto. Niño, City of San Fernando, Pampanga Philippines, represented herein by its Governor, **HON. DENNIS G. PINEDA**, and hereinafter referred to as the "**THE PROVINCE**".

THE PRIVATE PARTNER and **THE PROVINCE** are individually referred to as "party" and collectively referred to as "parties"

WITNESSETH: That

WHEREAS, the **PRIVATE PARTNER** is engaged in the operation and maintenance of Renal Centers, sales and marketing of medical equipment, supplies and consumables;

WHEREAS, The Province of Pampanga (**THE PROVINCE** for brevity) is the owner of two (2) Free-Standing Dialysis Centers located in the Municipality of Guagua, within the compound of Diosdado Macapagal Memorial Hospital, and in the Municipality of Apalit, both known as Pampanga Dialysis Center;

WHEREAS, the estimated total cost of the Project for the operation and maintenance of the Dialysis Centers for a period of five (5) years is Seven Hundred Twenty-Nine Million Nine Hundred Fifty-Seven Thousand Five Hundred Thirty-Five Pesos (Php 729,957,535.00);

WHEREAS, the **PRIVATE PARTNER** shall manage and operate the Dialysis Units, provide personnel, and necessary supplies, while **THE PROVINCE** shall provide the equipment, space, utilities, and essential services;

WHEREAS, in June 16, 2023, **PRIVATE PARTNER** submitted an unsolicited proposal to **THE PROVINCE** pertaining to the operation and maintenance of the said Dialysis Centers.

WHEREAS, the appropriate committee of **THE PROVINCE**, after thorough evaluation and deliberations as well as comparison against other proposals that were received after **THE PRIVATE PARTNER** submitted its unsolicited proposal, declared **THE PRIVATE PARTNER** as the original proponent;

WHEREAS, after a series of negotiations, the committee endorsed the proposed contract for the approval of the Provincial Governor;

WHEREAS, the Provincial Board, through Resolution Number 8540, authorized HON. DENNIS G. PINEDA, the Governor of THE PROVINCE, to enter into a contract with THE PRIVATE PARTNER on the operation and maintenance of the aforementioned Dialysis Centers.

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto agree as follows:

SECTION 1
TERM OF THE AGREEMENT

1.1 This agreement shall be binding upon signing of the parties and shall be valid for five (5) years from the date the center starts operation.

1.2 The agreement may be renewed subject to such terms and conditions to be agreed upon by the parties in writing. The terms and conditions of the renewal or extension of this agreement shall be subject to the written agreement of the parties.

1.3 If either party wishes to renew or extend this agreement, it shall serve notice to the other party of its intent to renew or extend not later than six (6) months prior to the expiration date, otherwise the agreement shall be deemed terminated at the expiration date. In case THE PRIVATE PARTNER is allowed to continue performing its obligations under the Agreement after the Agreement has expired without a new Agreement being signed, the Agreement shall be deemed renewed for another five (5) years.

1.4 In the event any of the parties find difficulty in faithfully complying with the terms and provisions of this agreement because of the prevailing conditions, economic or otherwise, that may lead to the possibility of the concerned party committing breach of the agreement, the affected party may inform the other party, in writing, of its predicament and request for the renegotiation of the terms of the agreement. The affected party shall be required to present documents and proof of its claim. Upon confirmation of the claimed difficulties, the parties shall meet and renegotiate the terms of the agreement, provided, that in case the parties fail to reach an agreement, the Agreement may be terminated pursuant to Section 13 hereof.

1.5 THE PRIVATE PARTNER shall be bound by a lock-in period equivalent to the term of this Agreement (i.e., 5 years) during which no changes to the management, or control of its operations related to this contract may occur without the written consent of THE PROVINCE. This ensures the continuity and stability of operations.

SECTION 2
SCOPE AND COVERAGE OF THE JOINT VENTURE

2.1 This agreement shall cover the two (2) Free-Standing Dialysis Facilities, known as Pampanga Dialysis Centers, located within the compound of Diosdado Macapagal Memorial Hospital in the Municipality of Guagua and in the Municipality of Apalit.

2.2 Without prejudice to the parties' respective obligations as stated in the following paragraphs and sections, THE PRIVATE PARTNER shall, during the term of this agreement, shall be responsible for the general management and daily operation of the Dialysis Unit, deployment of administrative, clinical and technical personnel as well as provision of supplies. THE PROVINCE, on the other hand, shall be responsible for the provision of the equipment, space, utilities as well as other necessary medical and administrative services, provided that the

value thereof should not exceed 50% of the project cost. **THE PROVINCE** shall likewise be responsible for the collection the billing and collection of treatment fees from patients, Philhealth, PCSO, HMO and all other organizations that pay for the treatments of dialysis patients.

2.3 In the event that either party fails to comply with its undertaking as provided in this agreement and is found liable by final judgment of court or competent authority, the interest on the liability shall in no case be lower than the risk-free rate prevailing at time of execution of such final judgment.

SECTION 3

GENERAL OBLIGATION OF THE PRIVATE PARTNER

3.1 General Management and Operation - **THE PRIVATE PARTNER** shall be responsible for the general management and daily operation of the Dialysis Unit based on its established procedures and protocols, including but not limited to patient care, maintenance of medical records, inventory management, technical concerns such as machine maintenance, among others.

3.2 Machine Maintenance - **THE PRIVATE PARTNER** shall be responsible for the maintenance, including provision of replacement parts and preventive maintenance, of all machines and systems installed and used on the Dialysis Unit and shall ensure that said equipment are in good operating condition at all times. However, any replacement item for defective parts due to malfunctioning main electric and/or water supply as well as damages resulting from natural disaster or calamity shall be for the account of **THE PROVINCE**.

3.3 Additional or Replacement Dialysis Machines - **THE PRIVATE PARTNER** shall provide up to five (5) units of additional back up dialysis machines which are of the same make and model or similar to the existing machines, when the dialysis center achieves an average of eighty (80) treatments per day sustained for at least three (3) consecutive months. **THE PRIVATE PARTNER** shall provide the said machines within sixty (60) days after the achievement of the preceding condition.

During the term of the agreement, in the event any of the existing dialysis machines shall need replacement upon reaching the mandatory retirement age as prescribed by the Department of Health, **THE PRIVATE PARTNER** shall provide replacement units for the "retired" machines within sixty (60) days prior to the expected date of retirement of the said machines, at no cost to **THE PROVINCE**. **THE PRIVATE PARTNER** shall retain ownership of all machines that it shall provide.

3.4 Dialysis Supplies and Consumables - **THE PRIVATE PARTNER** shall provide all standard dialysis supplies and consumables as well as pharmaceutical products necessary in the conduct of the dialysis treatments. In the performance of this obligation, **THE PRIVATE PARTNER** shall provide all items included in Philhealth Hemodialysis (HD) Benefit Package under Philhealth Circular No. 2024-0023 and other future PhilHealth issuances applicable during the effectivity of this agreement. However, all medicines that are not necessary for the performance of the treatments as well as maintenance medicines shall be for the account of **THE PROVINCE** or the patients, whichever is applicable.

3.5 Dialysis Personnel - **THE PRIVATE PARTNER** shall provide and employ the necessary administrative, clinical, medical and technical personnel for the operation of the Dialysis Unit. These employees shall not, in any way, be considered as employees of **THE PROVINCE**. They, however, shall be required to comply with the prevailing policies of **THE PROVINCE** in relation to the performance of their duties, which may have direct impact on the image of **THE PROVINCE**. **THE PRIVATE PARTNER** shall be liable for damages for

any negligent act/s or omission of its dialysis personnel resulting in damage and/or injury to **THE PROVINCE** or any of its patients, visitors, employees and officers.

For purposes of clarity, **THE PRIVATE PARTNER** shall provide and deploy adequate number of certified dialysis / renal nurses, nursing assistants / technicians, center technicians as well as necessary administrative personnel.

3.6 Physician on Duty - **THE PRIVATE PARTNER** shall bear the costs of the deployment of necessary Physicians-on-Duty in compliance with the requirement of the Department of Health. **THE PRIVATE PARTNER** shall select and appoint the Physician-on-Duty.

3.7 Utilities - **THE PRIVATE PARTNER** shall bear the costs of utilities, including power, water, cable and/or internet services.

3.8 Waste Disposal - **THE PRIVATE PARTNER** shall be responsible for the proper disposal of all wastes, including infectious and medical items, produced in the Dialysis Unit and shall engage the services of a service provider for the transport and eventual disposal of the said waste. All general wastes, however, shall be disposed of through the waste disposal facility of **THE PROVINCE**.

3.9 Security Services - **THE PRIVATE PARTNER** shall provide the Dialysis Unit with adequate security twenty-four (24) hours a day.

3.10 Compliance with Prevailing Laws - **THE PRIVATE PARTNER** shall ensure full and religious compliance with all applicable laws and government regulations pertaining to the operation and maintenance of a healthcare facility, specifically a dialysis unit, such as but not limited to anti-corruption, labor and environmental laws, magna carta for health workers and data privacy, among others.

3.11 Gender, Social, Disability, And Environment Safeguards - The **PRIVATE PARTNER** shall ensure that all activities under the Project comply with gender, social, disability, and environmental safeguards. This includes: Promoting gender equality in recruitment, decision-making, and service provision, ensuring services are accessible to marginalized groups, including those from vulnerable communities, guaranteeing that facilities and services are inclusive and accessible to individuals with disabilities, and complying with applicable environmental laws, regulations, and standards to minimize the environmental impact of the Project.

The **PRIVATE PARTNER** shall submit regular reports on compliance with these safeguards, ensuring that all actions are in line with the relevant local and national guidelines as contemplated under Section 5.4.1 herein.

3.12 Quality Improvement Program - **THE PRIVATE PARTNER** shall exert best efforts to provide the highest standards of care and services and treatments to the patients. As such, it shall implement quality systems and programs to maintain or improve the quality of services that it provides to the patients. The said programs, shall include, but not be limited to the following:

3.12.1 Continuous Quality Improvement Systems

3.12.2 Patients' Forum

3.12.3 Quarterly Operational Meeting with the stakeholders, including representatives from **THE PROVINCE**.

3.13 ISO Certification - **THE PRIVATE PARTNER**, at its own option and upon approval of **THE PROVINCE**, may include the Dialysis Unit to be one of the ISO-certified

Dialysis Centers of **THE PRIVATE PARTNER** Renal Network. Provided, that the expenses for securing ISO accreditation and certification should be for the account of the Private Partner.

3.14 Data Management System - **THE PRIVATE PARTNER** shall implement and maintain a comprehensive patient and treatment data management system (NEXADIA), which shall be utilized to ensure better process management, including patient and treatment monitoring, and data analytics, among others. In addition, **THE PRIVATE PARTNER** shall provide a Billing Management System, which **THE PROVINCE** may utilize for purposes of submission of PhilHealth claims. For this purpose, the parties, when necessary, shall execute a separate agreement in compliance with the Data Privacy law.

3.15 Other Equipment / Instruments - **THE PRIVATE PARTNER** shall provide and bear the costs of equipment and / or instruments that it shall need related to Information Technology (IT) and other related instruments required for any system that **THE PRIVATE PARTNER** shall install or implement in the dialysis unit.

3.16 Obligation of the Private Partner to Disclose Loan or Financing Documents - The **PRIVATE PARTNER** shall be obligated to disclose to **THE PROVINCE**, upon request, all documents relating to any loan, credit facility, or financing arrangement it has entered into for the purpose of financing the Project, if any. Such documents shall include, but not be limited to, loan agreements, promissory notes, mortgages, security agreements, and any amendments or addendums thereto.

These documents must be disclosed in full within fifteen (15) days from **THE PROVINCE**'s request. The Private Partner acknowledges that the failure to comply with this obligation may be considered a material breach of the Agreement and may trigger any remedies available to **THE PROVINCE**, including, but not limited to, the right to terminate the Agreement or demand liquidated damages.

THE PRIVATE PARTNER shall also provide notice to **THE PROVINCE** of any material changes to the financing arrangements, within fifteen (15) days of such changes occurring.

SECTION 4

GENERAL OBLIGATIONS OF THE PROVINCE

4.1 Dialysis Unit Physical Facilities - **THE PROVINCE** shall be responsible for and bear the costs of the construction and/or physical improvements of the Dialysis Unit including architectural, electrical, plumbing and other necessary fixtures and systems required in a Dialysis Unit as per the guidelines issued by the Department of Health. All licenses and permits needed to renovate the Dialysis Center shall be for the account of and be secured by **THE PROVINCE**.

THE PROVINCE shall allow **THE PRIVATE PARTNER** to occupy the said facility and perform its obligations and functions related to the operation and maintenance of the dialysis unit, at no cost to **THE PRIVATE PARTNER**.

4.2 Dialysis Equipment and Systems - **THE PROVINCE** shall provide, at its own cost, the dialysis machines, systems and instruments, as required by the Department of Health, necessary in the conduct of dialysis treatments. **THE PROVINCE** shall ensure that said equipment and systems comply with the minimum requirements of the Department of Health and other government agencies that have regulatory jurisdiction on them.

4.3 Facility Maintenance - **THE PROVINCE** shall be responsible for and bear the costs of the maintenance of the infrastructure of the facility and other non-medical equipment

installed in the dialysis unit, such as air conditioning systems, water and electrical systems as well as the building maintenance, among others.

4.4 Utilities - **THE PROVINCE** shall provide the main supply of utilities, including power and water. **THE PROVINCE** shall also provide and bear the costs of operation and maintenance of a suitable stand by generator set.

4.5 Laboratory Services - **THE PROVINCE** shall provide and perform all laboratory requests / requirements of the dialysis patients. **THE PRIVATE PARTNER** shall refer all laboratory requests exclusively to the laboratory unit of **THE PROVINCE**, which shall exert best efforts to accommodate said requests with reasonable promptness.

4.6 Dialysis Unit Medical Director - **THE PROVINCE** shall provide, appoint and/or assign, at its own cost, a licensed Nephrologist qualified to head a Dialysis Unit. **THE PROVINCE** shall also invite other Nephrologists practicing in the province to actively involve themselves in the clinical management of the patients and compensate them properly as per Philhealth guidelines.

4.7 Clinical and Medical Support - **THE PROVINCE** shall allow and provide consent to its physicians who may want to serve a Physician/s-on-Duty in the Dialysis Unit. **THE PROVINCE** shall also ensure that its other medical facility shall always be available on call by the Dialysis Unit to address any emergency situations that may arise in the Dialysis Unit.

4.8 Administrative and Technical Personnel - **THE PROVINCE** shall employ and deploy adequate number of administrative and social service personnel, who shall be responsible for the screening and classification of patients, processing of their documents and coordination with relevant offices of **THE PROVINCE** prior to allowing the patients to have their treatments done in the dialysis unit. The said personnel shall assist the patients during their scheduled treatment days.

THE PROVINCE shall also deploy at least one (1) technical personnel who shall be responsible for the maintenance of the infrastructure, electrical and water facilities, among others as mentioned under Section 4.3.

4.9 Dialysis Center Registration and Licenses - The Dialysis Center shall be registered under the name of **THE PROVINCE**, as such, **THE PROVINCE** shall be responsible for and bear the costs of the application and processing of all related licenses and permits pertaining to the Dialysis Center. **THE PROVINCE** shall also be responsible for the application for accreditation with Philippine Healthcare Insurance Corporation (Philhealth), PCSO and other organizations.

4.10 Billing and Collection - **THE PROVINCE** shall be responsible for the collection of treatment fees from the patients, Philhealth and other organizations or third-party payors that sponsor the treatments of patients in the Dialysis Unit. In addition, **THE PROVINCE** shall be responsible for and bear the costs of the preparation and submission of claim documents required by Philhealth and other organizations.

4.11 Healthcare Programs - **THE PROVINCE** shall implement suitable and applicable healthcare programs for the patients of the dialysis unit and shall be responsible for the dissemination of the availability of said programs in the dialysis facility to its constituents.

SECTION 5

GENERAL OBLIGATIONS OF PARTIES

5.1 Compliance with GEDSI Principles - Both parties shall ensure that the implementation of this Agreement complies with the principles of Gender Equality, Disability,

and Social Inclusion (GEDSI). This includes ensuring equitable representation of women, persons with disabilities, and marginalized groups in all relevant activities and opportunities, when possible.

5.2 Achievement of KPIs and Targets - The parties agree to work collaboratively to achieve the following Key Performance Indicators (KPIs) and targets within the timelines stipulated below:

	KPI	Target	Measurement
Gender Equality	Percentage of women in leadership roles	Achieve at least 50% representation of women in leadership by one (1) year.	Annual reports submitted by the Human Resources department detailing leadership composition.
Disability Inclusion	Percentage of accessible facilities.	Ensure that 80% of facilities are fully accessible to persons with disabilities by upon take-over.	Annual facility audits conducted by a third-party assessor to ensure compliance with accessibility standards.
Social Inclusion	Proportion of marginalized groups participating in programs or accessing services.	Ensure 40% of participants in community programs are from marginalized groups upon take-over.	Annual demographic tracking of program participants using self-reported data and demographic analysis.

5.3 Monitoring and Evaluation - The parties agree to implement the above monitoring framework to track progress towards the KPIs listed. Data collection shall be conducted regularly using the following methods: Surveys and feedback forms targeting employees and community members, facility audits to assess accessibility compliance and demographic tracking to monitor gender and social inclusion metrics.

5.4 Reporting - The parties shall submit the following reports as part of the Monitoring and Evaluation framework:

5.4.1 Annual Reports - A summary of progress toward KPIs, including a comparison of actual performance against targets for gender equality, disability inclusion, and social inclusion.

5.4.2 Annual Review - A comprehensive evaluation at the end of each calendar year, including an analysis of challenges and recommendations for corrective actions where targets have not been met.

5.4.3 GEDSI-Specific Reports - Detailed GEDSI reports focusing on gender, disability, and social inclusion dimensions, to be submitted annually to ensure that marginalized groups are not being excluded from benefits.

5.5 In the event that any party fails to meet the agreed-upon KPIs or targets, corrective actions shall be implemented within 30 days. These actions may include adjustments in program implementation, additional training, or increased resource allocation.

SECTION 6
IMPLEMENTATION OF MILESTONES AND FINANCIAL CLOSE

6.1 Milestone Implementation Schedule - **THE PRIVATE PARTNER** agrees to adhere to the following implementation schedule and milestones as part of the execution of the Project:

6.1.1 Milestone 1 - Financial Close: **THE PRIVATE PARTNER** shall achieve Financial Close as defined under the IRR of the PPP Code within ten (10) days from the date of this Agreement, ensuring that all necessary financing is in place and conditions for financing have been satisfied.

6.1.2 Milestone 2 - Project Commencement: **THE PRIVATE PARTNER** shall commence the implementation phase of the project from the Financial Close date or expiration of the ten-day period as provided in the preceding paragraph, whichever comes first.

6.1.3 Milestone 3 - Project Completion: **THE PRIVATE PARTNER** shall ensure delivery of all project components within five (5) years from the date of project commencement, subject to any extensions that may be granted by mutual agreement between the Parties.

6.2 Extensions of Financial Close - **THE PRIVATE PARTNER** may request an extension of the period for achieving Financial Close by submitting a written request to **THE PROVINCE** at least five (5) days prior to the expiration of the original Financial Close period. **THE PROVINCE** may, at its discretion, grant or deny such extension based on reasonable grounds. Any extension given shall not delay the project commencement.

6.3 Penalties for Failure to Achieve Financial Close - In the event that **THE PRIVATE PARTNER** fails to achieve Financial Close within the period specified under Section 6.2, without any fault attributable to **THE PROVINCE**, the following penalties shall apply:

6.3.1 A penalty of the amount of the delayed services per day plus one tenth (1/10) of one percent (1%) thereof for every day of delay beyond the Financial Close deadline.

6.3.2 In the event that Financial Close is not achieved within the deadline or any extension thereof, **THE PROVINCE** reserves the right to terminate this Agreement and recover any costs or damages incurred due to such delay.

6.4. Deduction of Penalties - Any penalties accrued under this section shall be deducted from payments due to **THE PRIVATE PARTNER** under the terms of this Agreement or, where payments are insufficient, shall be invoiced to the Private Partner and payable within fifteen (15) days from the date of invoicing.

SECTION 7
ACCEPTANCE TESTS

7.1 Purpose - Upon the commencement of operations under this Agreement, **THE PROVINCE** shall conduct Acceptance Tests to ensure that the Dialysis Units, as managed and operated by **THE PRIVATE PARTNER**, meet the operational, clinical, and performance standards stipulated in this Agreement. These tests are intended to verify that the Dialysis Units are capable of being operated efficiently, safely, and in accordance with the Key Performance Indicators (KPIs) and other criteria set forth in the Agreement, including the adequacy of personnel, equipment, and supplies under the following procedures:

7.1.1 Notification of Operational Readiness: **THE PRIVATE PARTNER** shall notify **THE PROVINCE** in writing when the Dialysis Units are ready for operation,

confirming that all administrative, clinical, and technical personnel have been deployed and that necessary equipment and supplies are in place to commence operations.

7.1.2 **THE PROVINCE** or an independent third-party assessor designated by it shall conduct the Acceptance Tests. These tests will assess the operational readiness of the Dialysis Units including equipment functionality, staff preparedness, and the availability of necessary medical supplies, all in compliance with agreed-upon performance standards and clinical protocols.

7.1.3 If the Acceptance Tests reveal any deficiencies or failures to meet the required operational standards, **THE PRIVATE PARTNER** shall, at its own cost, rectify the issues (e.g., correcting equipment malfunctions, deploying additional personnel, or supplying additional materials) and notify **THE PROVINCE** upon completion of corrective measures. **THE PROVINCE** shall re-test the relevant portions of the Dialysis Units to ensure compliance.

7.1.4 Once the Dialysis Unit has successfully passed the Acceptance Tests and is verified to be operating in accordance with the terms of the Agreement, **THE PROVINCE** shall issue an Acceptance Certificate within five (5) days. The issuance of the Acceptance Certificate will confirm that the Dialysis Unit is fit for operation under the management of **THE PRIVATE PARTNER**.

SECTION 8

PROCUREMENT OF INDEPENDENT CONSULTANT

8.1 Engagement of Independent Consultant - **THE PROVINCE** shall procure an Independent Consultant, which may be an individual, partnership, or corporation, to provide independent advice, monitoring, and evaluation throughout the operation and maintenance of the Project and during the handover process, as applicable. The Independent Consultant shall provide independent advice to both **THE PROVINCE** and **THE PRIVATE PARTNER** to ensure the effective execution and compliance with the PPP Contract.

8.2 Scope of Services - The Independent Consultant shall be responsible for the following:

8.2.1 Monitoring and Evaluation: Continuous monitoring of the performance of the contracting parties, ensuring compliance with contractual KPIs and targets, especially in terms of gender, social, disability, and environmental safeguards.

8.2.2 Audit and Reporting: Submission of regular reports to **THE PROVINCE** on project performance, including financial and operational aspects, project progress, and compliance with environmental and social impact management.

8.2.3 Dispute Resolution Support: Assisting in the resolution of any disputes that may arise between **THE PROVINCE** and **THE PRIVATE PARTNER**.

8.2.4 Oversight of Handover: Ensuring a smooth transition during the handover phase, with oversight of all required deliverables and compliance measures.

8.3 Timing of Procurement - The procurement of the Independent Consultant shall commence within thirty (30) calendar days from the signing of the PPP Contract or from a date deemed appropriate by **THE PROVINCE**. The period of the Independent Consultant's engagement shall be consistent with the duration of the Agreement and/or handover phases stipulated in the PPP Contract.

8.4 Costs of Procurement - The costs for procuring the Independent Consultant shall be shared equally by **THE PROVINCE** and **THE PRIVATE PARTNER**. The **THE PROVINCE**'s share of the costs shall not be considered a form of Subsidy.

8.5 Independence and Integrity of the Consultant - Both parties shall provide all necessary assistance to enable the Independent Consultant to carry out its duties. No party shall deceive, intimidate or unduly influence the Independent Consultant, or take any action that could impact its independence and integrity.

8.6 Reporting and Communication - The Independent Consultant shall provide reports on a regular basis to **THE PROVINCE**, **THE PRIVATE PARTNER**, the Commission on Audit (COA), a designated government panel, and the PPP Center. Reports shall include, at a minimum, project progress, compliance with social and environmental safeguards, issues and concerns, risk management plans, and project status in terms of accomplishments and delays.

SECTION 9

TREATMENT RATES AND REVENUE SHARING

9.1 In full compliance with the mandate of Philhealth that all government-owned healthcare facility must practice and implement the No-Balance Billing Policy, the dialysis unit shall not charge the payment for the treatment services.

9.2 In consideration of its services, **THE PRIVATE PARTNER** shall be entitled to a share from Philhealth claims equivalent to sixty percent (60%) of the reimbursement rate as management fee while **THE PROVINCE** is entitled to the remainder. Based on the current reimbursement rate of P 6,000.00, net of Professional Fee, this shall amount to Three Thousand Six Hundred Pesos (P 3,600.00). The said management fee shall be inclusive of the standard dialysis supplies and consumables, provision of personnel and other services, as mentioned in the preceding provisions, that **THE PRIVATE PARTNER** shall render in relation to the operation and maintenance of the Dialysis Center.

The above rate does not include any additional item or product that the patient may require. As such, said item or product shall be for the account of the patient, **THE PROVINCE**, or **THE PRIVATE PARTNER**, whichever is applicable, in relation to 3.4 of this contract.

9.3. In the event Philhealth increases the reimbursement rate, **THE PRIVATE PARTNER** shall continue to be entitled to the sixty percent (60%) share from the prevailing rate. However, in the unlikely event that the reimbursement rate is reduced, the parties shall meet, discuss and agree on the appropriate management fee of **THE PRIVATE PARTNER**.

9.4 **THE PRIVATE PARTNER** shall provide and submit to **THE PROVINCE** monthly treatment summary, on which the subsequent Statement of Account / Billing shall be based. **THE PRIVATE PARTNER** shall submit to The Province the Statement of Account within two (2) weeks of the following month.

9.5 **THE PROVINCE** shall remit the management fee to **THE PRIVATE PARTNER** sixty (60) days from the release of the Philhealth funds to the Province.

9.6 **THE PROVINCE** shall set up a separate account (trust fund) for the Dialysis Center in which all revenue and collections as well as additional financial support shall be maintained. The said account shall be the source of payments to **THE PRIVATE PARTNER** for its services and professional fees for the medical personnel.

SECTION 10
PERFORMANCE SECURITY FOR OPERATIONS AND MAINTENANCE

10.1 Posting of Performance Security for Operations and Maintenance - Simultaneously with the acceptance of the facility, **THE PRIVATE PARTNER** shall post a performance security for operations. This security will serve as a guarantee for the proper operation of the facility in accordance with the prescribed minimum performance standards and specifications as set forth in this PPP Contract. The performance security shall be in a form that complies with the IRR of the PPP Code, as acceptable to **THE PROVINCE**.

The amount of the performance security shall be determined by **THE PROVINCE** based on the project scope and risk profile and must be posted by **THE PRIVATE PARTNER** prior to the start of the operations phase.

10.2 Validity and Duration - The performance security for operations shall remain valid for the entire operations period of the PPP Project. It shall be monitored and reviewed periodically by **THE PRIVATE PARTNER** to ensure its sufficiency and compliance with this Agreement and the PPP Code.

10.3 Top-up Mechanism - In the event that the performance security falls below the amount required under the contract, **THE PRIVATE PARTNER** shall, within fifteen (15) calendar days from such occurrence, provide an additional performance security to meet the required amount. This top-up mechanism ensures that the total performance security remains at the prescribed level throughout the operations period.

10.4 Adjustments for Approved Variations - If any government-approved variations cause an increase in the Project Cost, the amount of the performance security shall be proportionately increased. **THE PRIVATE PARTNER** must provide the necessary additional performance security within fifteen (15) calendar days from the approval of the variation. The adjusted performance security shall be maintained for the remainder of the operations period or until any further modifications are required. **THE PROVINCE** shall monitor the sufficiency and validity of the performance security throughout the operations period.

10.5 Release of Performance Security - The performance security for operations shall be released by **THE PROVINCE** upon termination of the contract, provided that there are no outstanding claims filed against **THE PRIVATE PARTNER**. If claims exist, the performance security shall remain in effect until the resolution of such claims to the satisfaction of **THE PROVINCE**.

10.6 Other securities - Any security interest or encumbrance that **THE PRIVATE PARTNER** will create or grant in relation to its rights, assets, or revenues under this Agreement, should be approved by **THE PROVINCE** and subject to the following conditions:

10.6.1 Any security interest granted by the Private Partner shall not:

1. Impair the ability of the Private Partner to fully perform its obligations under the Agreement.
2. Interfere with the day-to-day management, operation, or maintenance of the facility;
3. Hinder the delivery of services in accordance with the KPIs.

10.6.2 Prior Approval from Implementing Agency - **THE PRIVATE PARTNER** must obtain the prior written approval of **THE PROVINCE** before creating any security interest over its rights under the contract, assets used for operations, or future revenues derived from the project. Such approval shall not be unreasonably withheld. The security interest must exclude assets deemed essential to the continued operation and maintenance of the facility.

10.6.3 In the case of any such assignment, the lenders must agree in writing to be bound by the terms and conditions of this Agreement, ensuring continued compliance with KPIs, operational standards, and all relevant contractual provisions.

SECTION 11

CONFIDENTIALITY / NON-DISCLOSURE

11.1 No ownership shall be acquired by a party with respect to information, such as, but not limited to regulatory, corporate, business, legal, sales, marketing, accounting, financial and technical information, specifications, drawings, sketches, models, samples, data and documentation, in whatever form recorded or orally provided (all hereinafter referred to as "Information"), by one party that is furnished or made available or otherwise disclosed in the course of the preliminary negotiations or at any time between the parties, their respective employees, agents, and/or representatives.

11.2 Each party shall protect the information using no less than the standard of care with which it treats its own confidential information but in no event less than reasonable care and shall ensure that the Information shall be handled in such a way as to prevent unauthorized disclosure thereof. However, the duty to treat the information in confidence pursuant to this Agreement shall not apply to Information: (a) which is, or may subsequently be developed by the receiving party; or (b) which is, or subsequently may become generally available to the public as a matter of record without breach of this Agreement by the receiving party; or (c) which at the time of disclosure to the receiving party was known to such party and evidenced by documentation in such party's possession; or (d) which the disclosing party agrees in writing to be free of such restriction; or (e) which may subsequently be obtained lawfully for a third party who has obtained the information through no fault of the receiving party; or (f) which is disclosed to a third party by the disclosing party, or by a division, subsidiary or affiliate of the disclosing party without a corresponding obligation of confidence.

11.3 Ownership or Retention of Patents, Technology, and Consultant Reports – **THE PROVINCE** retains all rights, title, and interest to any patents, technology, proprietary knowledge, or consultant reports developed or used under the PPP Contract. Any intellectual property or technology specifically created or adapted for the Project shall be owned by **THE PROVINCE** upon the conclusion of the contract or earlier, as mutually agreed upon.

THE PRIVATE PARTNER may not claim ownership over any part of these assets unless explicitly authorized by the **PROVINCE**. Any technology or innovation brought into the Project that is pre-owned by **THE PRIVATE PARTNER** shall remain under its ownership but licensed to **THE PROVINCE** for the duration of the Contract.

SECTION 12

TEMPORARY OR PERMANENT TAKEOVER

12.1 In cases of emergency or when public interest so requires, **THE PROVINCE** may, by written notice to **THE PRIVATE PARTNER**, immediately take over the PPP Project or any part thereof, either temporarily or permanently, under the conditions set forth below:

12.1.1 Temporary Takeover – **THE PROVINCE** may take temporary control of the PPP Project to rectify, operate, and maintain the project when public interest, emergencies, or failure by **THE PRIVATE PARTNER** to perform its obligations requires such an action. **THE PROVINCE** shall notify **THE PRIVATE PARTNER** of the temporary takeover and the expected duration. The duration of the PPP Contract

shall be suspended during the temporary takeover period until the project is returned to the Private Partner.

12.1.2 During the temporary takeover period, **THE PROVINCE** shall retain all revenues or tariffs generated from the operation of the PPP Project and shall be responsible for the corresponding costs to rectify, operate, and maintain the project. **THE PRIVATE PARTNER** shall not be liable for any operational costs during this period unless caused by its own failure or negligence.

12.1.3 Conditions for Cessation of Temporary Takeover - The temporary takeover shall cease when **THE PROVINCE** has determined that the emergency or public interest concerns have been resolved. **THE PRIVATE PARTNER** shall be given written notice of the cessation of the temporary takeover and the terms for the return of the project.

12.1.4 Upon cessation of the temporary takeover, the following terms shall apply:

1. Compensation - **THE PRIVATE PARTNER** shall be compensated for any direct and measurable damages incurred during the temporary takeover, including but not limited to loss of revenue, costs associated with rectifying any defects, and any additional operational costs.
2. Adjustment of Key Performance Indicators (KPIs) - The KPIs of the PPP Project may be adjusted to the extent that defects in the project, not rectifiable during the temporary takeover, affect its performance. These adjustments shall be agreed upon by both parties in writing.
3. Warranty of Project Return - **THE PROVINCE** shall ensure that the PPP Project is returned to **THE PRIVATE PARTNER** in a state that is capable of meeting the adjusted KPIs. A warranty period thirty (30) days from the time of return shall be in place to ensure that the project is able to operate in accordance with the agreed-upon terms.

12.2 Permanent Takeover - In the event of a prolonged emergency, public interest concerns, or if **THE PROVINCE** deems it necessary for the continuous and uninterrupted operation of the PPP Project, the Government may decide to permanently take over the project. A permanent takeover will be deemed to occur if the takeover continues uninterrupted for a minimum period of one (1) year from the date of receipt by the Private Partner of the written notice of takeover.

12.2.1 Termination Payments Due to Private Partner - Upon permanent takeover, the Private Partner shall be entitled to Termination Payments in accordance with the applicable provisions of Title XVI of the IRR of the PPP Code and the terms of this PPP Contract. Such Termination Payments shall be made within ninety (90) days from the date of permanent takeover.

12.2.2 Issuance of Rules and Regulations - If necessary, **THE PROVINCE** shall issue any relevant rules, regulations, or ordinances to facilitate the permanent takeover of the PPP Project, including any required adjustments to tariffs, permits, or operational procedures.

SECTION 13
TERMINATION AND EFFECT OF TERMINATION

13.1 Either party shall have the right to seek immediate termination of this Agreement in case of a breach by the other party of any material obligation hereunder. Termination may also be resorted to by either party where such breach cannot be remedied, provided written notice is given to the party in breach of its obligation within a reasonable time, and such breach remains unremedied for at least thirty (30) days from receipt of such notice. This agreement shall not be terminated for an event of default without exhausting the corresponding remedy. Only upon failure to remedy or cure the breach in accordance with the contract can termination shall take place.

13.2 Neither party shall be liable to the other for failure or delay in the performance of its obligations hereunder for causes due to force majeure or fortuitous event. For purposes of this Agreement, the term "fortuitous event" shall include events which are beyond the control of any of the parties such as acts of public authorities, labor/transport strikes, epidemics and other calamities that would render it impossible for the parties to perform their respective obligations herein under without risk or danger to themselves or their property. The party affected by any fortuitous event shall notify the other regarding such fact as soon as possible and shall take such steps in order to mitigate the effects of such fortuitous event. However, if the fortuitous event shall continue for at least sixty (60) days, the other party not affected thereby shall have the option to terminate this Agreement upon giving written notice to the other party not less than fifteen (15) days prior to the intended date of termination.

13.3 Either party shall have the right to seek immediate termination of this Agreement:

13.3.1 If the other party assigns its rights and obligations hereunder to third parties, which are not affiliated with the said party, without the written consent of the other;

13.3.2 If the business or property of either party shall be placed in the hands of a receiver, assignee or trustee in bankruptcy, whether or not by the act of the other party;

13.3.3 If more than fifty percent (50%) of the shares issued by either party shall be assigned to third parties, except when the assignment is made to an affiliate of concerned party,

13.4 Within one week after termination of the agreement, **THE PROVINCE** shall allow **THE PRIVATE PARTNER** to pull out the all machines and systems that **THE PRIVATE PARTNER** provided and installed in the Dialysis Unit as well as all unused dialysis supplies, consumables and pharmaceutical products, provided all amounts due and payable to **THE PROVINCE** have been fully paid by **THE PRIVATE PARTNER**.

13.5 Termination of this Agreement shall not, in any event, have the effect of extinguishing any right one party may have against the other arising prior to such termination.

13.6 All obligations of either party to the other party become immediately demandable and must be settled within sixty (60) days after the expiration or termination of the agreement except when as provided in Section 18 of this Agreement.

13.7 Default and Remedies - In the event of default by either party under this agreement, the defaulting party shall be deemed in breach of contract. Upon such default, the defaulting party shall be liable to pay default interest on the outstanding amount at the legal rate equal to 6% per annum, calculated on a daily basis from the due date of payment until the date of actual payment or until the date determined by a court of competent jurisdiction, whichever is earlier.

13.8 Liquidated Damages - In addition to default interest, the defaulting party shall be liable to pay liquidated damages to the non-defaulting party, without the need for proof of actual damages. The amount of liquidated damages shall be calculated in no case be lower than the risk-free rate prevailing at time of execution of such final judgment.

13.8.1 Liquidated damages shall apply in cases of failure to meet performance milestones or timelines as specified in this Agreement; or non-compliance with obligations that materially affect the timely delivery or completion of the Project.

13.8.2 Notice of Default: The non-defaulting party must notify the defaulting party in writing, specifying the nature of the default, the amount of default interest and liquidated damages payable, and the corrective actions required, if any.

13.8.3 Other Remedies: The payment of default interest and liquidated damages shall not preclude the non-defaulting party from pursuing other remedies available under this Agreement, including but not limited to specific performance, termination of this Agreement, or seeking compensation for additional losses incurred.

SECTION 14 **VETO RIGHTS OF THE PROVINCE**

14.1 Scope of Veto Rights - **THE PROVINCE** shall have the right to veto any major decisions or actions by **THE PRIVATE PARTNER** that may significantly affect the public interest, the financial viability of the PPP Project, or its compliance with applicable laws, regulations, or standards.

14.2 Procedure for Exercise of Veto Rights - **THE PROVINCE** shall exercise its veto rights by providing written notice to **THE PRIVATE PARTNER** within *[insert time period]* of being informed of the proposed action or decision by **THE PRIVATE PARTNER**. The written notice must clearly state the reasons for the veto and outline any actions **THE PRIVATE PARTNER** must take to address the concerns raised.

THE PROVINCE agrees that its veto rights shall be exercised in good faith and shall not be unreasonably withheld, delayed, or exercised in a manner that would impede the performance of **THE PRIVATE PARTNER**'s obligations under the PPP Contract.

SECTION 15 **MISCELLANEOUS PROVISIONS**

DISPUTE AVOIDANCE AND **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

15.1 In case of any dispute or controversy of any kind whatsoever between the Parties arising out this Agreement, said Parties shall first endeavor to resolve within sixty (60) days such dispute by mutual discussion and amicable means between the President of **THE PRIVATE PARTNER** and **THE PROVINCE**.

15.2 Should the dispute (meetings) not be settled amicably by mutual discussion within sixty (60) days from the initial meeting of the President of **THE PRIVATE PARTNER** and **THE PROVINCE**, the dispute shall be finally and exclusively resolved by binding arbitration. The arbitration shall proceed in accordance with the rules or arbitration contained in Republic Act No. 9285 or the ADR Law of 2004, in such place as the Parties may agree. While the dispute is being arbitrated, the performance by the Parties of their respective obligations shall

not be suspended, unless otherwise declared by the arbitral tribunal or otherwise agreed by the Parties or unless the obligation to be performed is the very issue of the arbitration.

15.3 All expert panel and arbitral awards shall be in writing and shall state the reasons upon which they are based. The decision of the arbitral tribunal shall be final, binding and unappealable. The awards may include an award of costs, including reasonable attorneys' fees and disbursements. Judgments upon the awards may be enforced or executed by any court having jurisdiction thereof or having jurisdiction over the Parties or their assets.

ANTI-CORRUPTION MEASURES AND RESOLUTION PROCEDURES

15.4 The Parties to this Agreement hereby commit to upholding the highest standards of integrity, transparency, and accountability in the performance of their duties and obligations. Any form of corruption, including bribery, undue influence, or other corrupt practices as defined under relevant laws and this Agreement, shall not be tolerated.

15.5 All parties shall strictly adhere to the provisions of Section 32 of the PPP Code of the Philippines, which outlines the prohibited acts and penalties related to corruption, including but not limited to:

15.5.1 Falsification of documents or submission of false information at any stage of the project.

15.5.2 Approval of contracts grossly disadvantageous to the government or public.

15.5.3 Acts that restrict transparency, suppress competition, or otherwise influence the fairness of the bidding process.

15.5.4 Collusive bidding, submission of malicious bids, and similar activities aimed at undermining the integrity of the PPP process.

Violations of these provisions will result in severe administrative, civil, and penal sanctions, including imprisonment of three (3) to six (6) years, fines ranging from One million pesos (P1,000,000.00) to Five million pesos (P5,000,000.00), termination of the contract, and disqualification from future public-private partnerships.

15.6 Procedures for Resolution of Corruption Allegations - In the event of allegations of corruption, the following procedures shall be observed:

15.6.1 **Initial Review:** A thorough review of the allegations shall be conducted by an internal oversight body within thirty (30) days from the receipt of the complaint.

15.6.2 **External Investigation:** Should the initial review indicate the need for further investigation, an independent third-party entity, duly accredited by the Commission on Audit or another relevant body, shall be engaged to conduct a full investigation.

15.6.3 **Sanctions and Remedies:** If the investigation confirms corrupt practices, the guilty party will be subject to sanctions in accordance with Section 32 of the PPP Code and Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). This may include the termination of the contract, imposition of fines, imprisonment, or disqualification from future projects.

15.7 No administrative, criminal, or civil proceedings shall lie against any person for actions performed in good faith in the regular performance of duties related to this Agreement. This protection is provided without prejudice to the accountability of those found to have acted in bad faith or with gross negligence.

SECTION 16
WIND UP AND TRANSFER MEASURES

16.1 Prior to the end of the concession period, **THE PRIVATE PARTNER** shall arrange for the training of an adequate number of **THE PROVINCE'S** personnel in relation to the operation of the dialysis centers. On the transfer date, **THE PRIVATE PARTNER** shall transfer to **THE PROVINCE** (and shall execute such documents as may reasonably be considered necessary to effect such transfer), free from any lien or encumbrance created by **THE PRIVATE PARTNER** and without the payment of any compensation, all its right, title, and interest in and to the fixtures, fittings, equipment and all improvements comprising the of the dialysis centers.

16.2 **THE PRIVATE PARTNER** shall also deliver to **THE PROVINCE** on such date such operation summaries/transfer notes, manuals on the operation of dialysis machines and other information as may be reasonably required by **THE PROVINCE** to enable it take over the dialysis centers.

16.3 In the event that as a result of any laws or regulation of the Republic of the Philippines, or any agency or other body under the control of the Government of the Republic of the Philippines, or any regional or municipal authority thereof, coming to effect after the date of this Agreement, or as a result of any such laws or regulations (including any official interpretation thereof which **THE PRIVATE PARTNER** has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed, the interest of **THE PRIVATE PARTNER** and/or **THE PRIVATE PARTNER'S** financial rate of return (net of tax or other imposition, including, without limitation any withholding or remittance tax on the payment of dividends) on its investment is materially reduced, prejudiced or otherwise adversely affected (including without limitation, any restriction on the ability to remit funds in foreign currency outside the Philippines), or any changes which would drastically reduce the demand for the project's services, then the parties hereto shall meet and endeavor to agree to make amendments to this Agreement, and if after 90 days no such agreement has been reached, the provision of this contract on Dispute Avoidance and Alternative Dispute Resolution (ADR) shall apply.

16.4 **THE PROVINCE** and **THE PRIVATE PARTNER** shall first undergo arbitration as provided above prior to resorting to a buy-out option should buy-out be resorted to or ruled upon in the arbitration. The consideration, terms and conditions of the buy-out shall be settled or ruled upon in the arbitration.

SECTION 17
NATURE OF RELATIONSHIP

17.1 In the performance of their obligations and functions under this Agreement, the parties hereby acknowledge that there shall neither be an employer-employee co-partnership nor a principal agent relationship between them.

17.2 The personnel of one party shall not be considered employees of the other party. A party shall be solely liable or responsible for the acts of its own and organic personnel.

SECTION 18
LIABILITY TO PATIENTS

18.1 As per the policy of **THE PRIVATE PARTNER** and **THE PROVINCE**, the patients shall be asked to sign a waiver in relation to the treatments, stating among other the complications associated with the dialysis treatments. Under this stipulation, any responsibility towards the patient shall be restricted exclusively to cases involving negligence or acts of omission committed by the individual personnel representing **THE PROVINCE** or **THE PRIVATE PARTNER** while the patient is undergoing treatment within the facility. This limitation ensures that liability is specifically delineated to instances where such actions or negligence occur within the scope of treatment provided by the respective entities.

18.2 Notwithstanding the preceding paragraph, **THE PRIVATE PARTNER** shall hold **THE PROVINCE** free and harmless from any claims from any patient, who incurred damages or suffered an injury resulting from the act of negligence or omission of any **THE PRIVATE PARTNER** personnel.

18.3 Likewise, **THE PROVINCE** shall hold **THE PRIVATE PARTNER** free and harmless from any claims from any patient, who incurred damages or suffered injury resulting from the act of negligence or omission of any **THE PROVINCE** personnel.

SECTION 19
INSURANCE COVERAGE

19.1 **THE PRIVATE PARTNER** shall obtain and maintain, at its own cost, insurance policies for the entire duration of the PPP Contract, covering operations, and maintenance phases of the Project. These policies shall be taken out with reputable and duly licensed insurance companies, subject to the prior approval of **THE PROVINCE**, and must be maintained for the duration of the respective risks they cover. The following insurance coverage shall be required, as applicable:

19.1.1 **Third-Party Liability Insurance:** This insurance shall cover any liability arising from bodily injury or death of persons, or loss of or damage to property, occurring in connection with the performance of the Project. The insurance policy shall include coverage for damages, compensation, and legal costs.

19.1.2 **Comprehensive General Liability Insurance (CGL):** This insurance shall cover general liabilities arising from accidents, injuries, or damage occurring on the project site or as a result of the Private Partner's activities. It shall include, but not be limited to, public liability, completed operations, and product liability.

19.1.3 **Insurance Amounts and Deductibles -** The minimum insurance coverage amounts, deductibles, and specific provisions for each of the above policies shall be determined by **THE PROVINCE** based on the Project's scope, risk profile, and legal requirements. **THE PRIVATE PARTNER** shall provide certificates of insurance and copies of the policies to the Implementing Agency prior to the commencement of operations and construction, and on an annual basis thereafter.

19.2 **Proof of Insurance -** **THE PRIVATE PARTNER** shall provide **THE PROVINCE** with certificates of insurance and evidence of payment of premiums, as well as copies of the insurance policies, at such times as may be requested by the latter. **THE PRIVATE PARTNER** shall ensure that all insurance policies remain valid and in full force for the periods specified in this Agreement.

19.3. Failure to Insure - In the event that **THE PRIVATE PARTNER** fails to obtain or maintain the required insurance coverage, **THE PROVINCE** may obtain such insurance coverage on behalf of the former, and the costs thereof shall be borne it, without prejudice to any other remedies available to **THE PROVINCE** under this Agreement or applicable law.

SECTION 20
FORCE MAJEURE

20.1 No party shall be responsible for any default or failure to assist or delays in the delivery and performance of its obligations due to causes beyond its control including, but without limitation, to acts or orders of the government, fires, floods, strikes, epidemics, severe weather or incidents of war unless otherwise expressly stipulated or its delivery is required by such exigencies as agreed upon by the parties.

SECTION 21
NOTICES

21.1 All notices required to be given hereunder shall be made in writing and sent by a personal delivery or facsimile (with confirmation copy) to the parties at their addresses stated herein or as may be given by them from time to time. In case of notice by facsimile, the same shall be deemed given at the time of transmission.

SECTION 22
ADDITIONS / AMENDMENTS

22.1 This agreement constitutes the entire understanding between the parties with respect to the matter hereof, superseding all prior negotiations, discussions and agreement, Any and all additions, supplements and/ or amendments to any to the provisions hereof shall be effected provided the same shall be made in writing signed by the parties' duly authorized representatives.

SECTION 23
NON-WAIVER OF RIGHTS

23.1 The failure of either party to enforce at any time or for a period of time the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such party thereafter to enforce each and every provision.

SECTION 24
REPRESENTATIONS

24.1 Each of the parties hereby represents and warrants to the other that:

1. It has the necessary power, approvals and authority to enter into this agreement.
2. It shall perform the obligations herein provided in a timely and competent manner.
3. This agreement was entered into on arms-length basis and is to be interpreted as an agreement between two parties of equal bargaining capacities.
4. It shall comply, at all times, with the existing laws of the Philippines, such as but not limited to the Privacy Act, among others.

24.2 **THE PRIVATE PARTNER** shall provide a warranty ensuring that the facility's operations and management services fully meet the Key Performance Indicators (KPIs) and related performance targets for a minimum period of one (1) year following the termination of the contract or transfer of the operational control of the facility to **THE PROVINCE**.

24.3 During the warranty period, **THE PRIVATE PARTNER** shall ensure that all defects, deficiencies, or failures in the operations or management services, as identified through performance monitoring, are promptly corrected.

24.4 Warranty Procedures (Post-Transfer) - Upon the transfer of the operational management of the facility to **THE PROVINCE**, the following procedures shall govern the administration of the warranty:

24.4.1 Notification of Operational Deficiencies - **THE PROVINCE** shall **THE PRIVATE PARTNER** in writing of any operational or management deficiencies identified during the warranty period.

24.4.2 Rectification Timeline - **THE PRIVATE PARTNER** shall remedy any reported operational deficiencies within fifteen (15) from the date of notification, unless a different timeline is mutually agreed upon, based on the nature of the deficiency.

24.4.3 Warranty Security - **THE PRIVATE PARTNER** shall furnish a warranty security to ensure that the operational KPIs and management service targets are maintained during the warranty period. The amount and form of the warranty security shall be determined by **THE PROVINCE** and stipulated in the PPP Contract. Acceptable forms of warranty security may include: cash deposit, bank guarantee, surety bond, or any other mutually agreed form of security.

24.3 Conditions of the Warranty Security - The warranty security shall be made effective immediately upon the transfer of operational control to the Implementing Agency. The security shall be retained throughout the warranty period to cover any potential non-compliance with operational KPIs and management targets.

SECTION 25

CONSTRUCTION AND VENUE

25.1 The interpretation of this Agreement or any part thereof shall be governed by Philippine laws and any legal action for the enforcement or construction of any of the provisions hereof shall be brought before the proper court in the area of the complaining party only, to the exclusion of all other venues.

SECTION 26

RIGHT OF FIRST REFUSAL

26.1 **THE PROVINCE** shall grant **THE PRIVATE PARTNER** the right of first refusal or to match an agreement proposal submitted by another party upon or after the expiration of this agreement. Consequently, **THE PROVINCE** shall award the new agreement to **THE PRIVATE PARTNER** if it would be able to offer the same or better proposal.

SECTION 27

INCORPORATION BY REFERENCE

27.1 The project proposal dated June 16, 2023 submitted by **THE PRIVATE PARTNER** to **THE PROVINCE**, the findings and recommendations of the Provincial

Development Council and the Public-The Private Partnership Selection Committee (PPP-SC) shall be considered as integral component of this Agreement. In case of any conflict between the terms contained therein and those stipulated within this Agreement, the provisions of this Agreement shall prevail.


IN WITNESS WHEREOF, the parties have hereunto set their hands this DEC 23 2024 at CITY OF SAN FERNANDO.

THE PROVINCE OF PAMPANGA

B. BRAUN AVITUM PHILIPPINES INC.

Private Partner

By:



HON. DENNIS G. PINEDA
Governor

By:

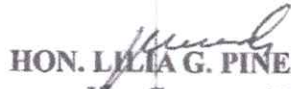


MR. RICKY PAGLICAWAN
Sales Director



MR. SINON ESERMANN
Managing Director

Signed in the presence of:



HON. LILIA G. PINEDA
Vice Governor

ACKNOWLEDGMENT

REPUBLIC OF THE PHILIPPINES)
City of San Fernando Pampanga)S.S.

BEFORE ME, a Notary Public, for and in the above jurisdiction, personally appeared the following:

NAME	Government-Issued ID No.	DATE/PLACE ISSUED
DENNIS G. PINEDA		
RICKY PAGLICAWAN		
SINON ESERMANN		

known to me and to me known to be the same persons who executed the foregoing instrument and they acknowledged to me that the same are their own free and voluntary act and deed.

WITNESS MY HAND AND SEAL.

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Book No. LXXXI
Series of 2024.

CECIL L. ANDIN

Notary Public
City of San Fernando, Pampanga
Until December 31, 2024
Notarial Commission No. 29-23
PTR No. 5275434 - 01/02/2024 - Pamp
IBP No. 300926 - 01/02/2024 - Pamp
MCLE Comp. No. VII-0012272 - 03/07/2022