# ANNEXURE E

**FORMAT OF CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

[*To be stamped for the adequate amount as per the applicable stamp laws*]

**THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (“**Agreement**”) is made on this [●] day of [●], 2019 by and between:

**PVS Memorial Hospital Private Limited**, a company incorporated in India under the Companies Act, 1956, having its registered office at NO XXIV/1484, Kaloor Cochin Ernakulam Kerala 682017 India (“**Corporate Debtor**” unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), acting through **Mr. Bijoy Prabhakaran Pulipra,** being a registered insolvency professional bearing registration no. IBBI-IPA 02/IP- N00607/11864 (“**Disclosing Party / IRP/RP**” unless repugnant to or inconsistent with the context or meaning thereof mean and include its successors and assigns), and appointed as the Resolution Professional of the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”), of the **FIRST PART**;

# AND

[●], a [company] incorporated in India under the [Companies Act of 1956], having its registered office at [●] (“**Recipient / Prospective Resolution Applicant**”, which expression shall, unless excluded by or repugnant to the context or meaning thereof, include its successors, transferees and permitted assigns), of the **SECOND PART**.

(the Disclosing Party / IRP/RP and the Recipient / **Prospective** Resolution Applicant are hereinafter referred to as a “**Party**” individually and as “**Parties**” collectively)

# WHEREAS:

1. Pursuant to the advertisement published by the IRP in *([●]),* the IRP had invited expressions of interest (“**EOI**”) from prospective resolution applicants for the purpose of submission of resolution plans for the Corporate Debtor in accordance with the provisions of the Code. The Prospective Resolution Applicant, has accordingly, submitted its EOI to the IRP/RP on [●], 2019.
2. As per the provisions of the Code and the CIRP Regulations, in the event that the Prospective Resolution Applicant is mentioned in the final list of prospective resolution applicants issued by the IRP/RP, the Prospective Resolution Applicant shall have the right to submit a resolution plan for the Corporate Debtor to the IRP/RP. For the purpose of preparation and submission of the resolution plan for the Corporate Debtor (“**Purpose**”), the IRP/RP is required to provide the Prospective Resolution Applicant with access to the relevant information in that respect, provided that the Prospective Resolution Applicant provides a Non-Disclosure Agreement to the IRP/RP with respect to such information provided.
3. In view of the above, the IRP/RP will be sharing certain Confidential Information (*as defined in Clause 1 below*) with the Prospective Resolution Applicant and accordingly the Parties have agreed to enter into this Agreement and be bound by the terms and conditions hereinafter set forth governing, *inter-alia*, the disclosure, use and protection of such Confidential Information.

**NOW THEREFORE THIS AGREEMENT WITNESSES that** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

* 1. In this Agreement, in addition to the capitalised terms defined in the introduction to, recitals of and the text of this Agreement, the following capitalised terms used herein shall, unless a contrary intention appears, have the following meaning:

“**Affiliate**” shall mean, with respect to the Recipient, any person or entity who is directly or indirectly Controlling, or is Controlled by, or is under the direct common Control of the Recipient and the term “**Control**” means a person who has the power to direct the management and policies of any person or entity, directly or indirectly, whether by ownership of voting securities, board control, by contract or otherwise. The terms “**Controlling**” and “**Controlled by**” or “**under common Control**” shall have corresponding meanings

“**Confidential Information**” shall mean any and all information disclosed or submitted to the Recipient by or on behalf of the Disclosing Party (including by any officers, and/or advisors including, without limitation, duly authorized attorneys, accountants, legal advisors and financial advisors of a Disclosing Party), whether written, oral, pictoral, electronic, visual or other form relating, in any manner whatsoever, to the Corporate Debtor or to any group entity (including any holding, subsidiary, associate, joint venture or related entity) of the Corporate Debtor. Without prejudice to the generality of the foregoing, Confidential Information includes, without limitation:

1. any information which relates to the business, business plans, products, sales and marketing, operations, pricing arrangements, suppliers, customers, network, finance, technology, corporate, organisation, management, strategic initiatives, human resource and plans, policies and reports, of the Corporate Debtor;
2. all technical, commercial, operational, financial, accounting, legal and administrative information, and any notes, analyses, compilations, studies, forecasts, interpretations, memoranda, summaries, reports and other materials which contain, reflect or are based upon, in whole or in part, any of such information;
3. any drawing, calculation, specification, instruction, diagram, catalogue, manual, data, templates, models, prototypes, samples, materials, debts, presentations, proposals, quotations, computer programs, software;
4. any unpatented invention, formula, procedures, method;
5. any unregistered patent, design, copyright, trademark including any pending applications and any intellectual or industrial proprietary right vested in the Disclosing Party or in which Corporate Debtor has an interest of any kind;
6. any information belonging to identified third parties with whom the Corporate Debtor has business dealings;
7. any proposed business deals, contracts or agreements;
8. information, documents, agreements, materials, communications, fact, matter or thing about the corporate insolvency resolution process of the Corporate Debtor, or the terms or conditions or any other facts relating thereto, including, without limitation, the status thereof, that discussions or negotiations are occurring or have occurred, the existence of this Agreement;
9. information and details regarding the terms, conditions and structure of, and other facts relating to, the Corporate Debtor and/or the corporate insolvency resolution process of the Corporate Debtor, including the status thereof, whether oral, on paper or computer disk or in electronic format; whether prepared by the Disclosing Party, its advisors or other third party on behalf of the Disclosing Party; and/or
10. all reports, analysis, studies, compilations, interpretations or other documents or materials (whether on paper or computer disk or in electronic format) prepared by the Disclosing Party or its representatives which contain, refer to, reflect, enhance, modify, improve, quote or are based upon, in whole or in part, the information mentioned in (i) to (ix) above which is provided to the Recipient and/or its representatives in connection with the corporate insolvency resolution process of the Corporate Debtor.

**“Representative”** shall means any agent, officer, employee, director, legal or financial advisor, Affiliate, investor, counsel, potential financing source who (i) needs to know such information for the Purpose; (ii) who agrees to keep such information confidential in accordance with the provisions of this Agreement; (iii) who is provided with a copy of this Agreement; (iv) who agrees to be bound by the terms contained in this Agreement to the same extent as if it was a party hereto; and (vi) who has confirmed that it has no conflict with the Disclosing Party, and the term “**Representatives**” shall be construed accordingly. In relation to any Disclosing Party, its “**Representative**” shall mean any agent, officer, employee, director, consultant, legal or financial advisor, authorized attorney, accountant and/or any other person duly authorized in this regard.

* 1. The Recipient shall (and shall procure that each Representative shall), at all times:
1. hold in trust, in strict confidence and as required under Regulation 36(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Confidential Information provided to the Recipient and/or its Representatives by the Disclosing Party;
2. not use the Confidential Information for any purpose other than for the Purpose;
3. not disclose, reveal, disseminate, reproduce, quote, share with, refer to, use or make available to any other person, or use or permit others to disclose or use any Confidential Information to any person or party whatsoever (save and except as provided below) without the prior consent of the Disclosing Party;
4. disclose the Confidential Information to its Representatives, strictly on a need to know basis and solely for the Purpose. The Recipient acknowledges that any agreement (written or otherwise) entered into between the Recipient and the employees/advisors would not discharge the Recipient from its confidentiality obligations under this Agreement. In any event, breach by any Representative of the Recipient shall be deemed as breach by the Recipient;
5. use the same degree of care in respect of the protection, security and safekeeping of the Confidential Information as the Recipient and its Representatives use to protect its own confidential information but no less than a reasonable degree of care to prevent the unauthorised access, use, dissemination, copying, theft, and/or re- publication of the Confidential Information;
6. at no time, discuss with any person, the Confidential Information or any other matter in connection with, or arising out of, the discussions or negotiations in relation to the Purpose (other than to the extent permitted hereunder);
7. immediately, upon the earlier of (a) the conclusion of the Purpose; or (b) termination of this Agreement as per Clause 13 below; or (c) a notification by the Disclosing Party for any reason whatsoever, surrender and return to the Disclosing Party, all Confidential Information and any notes, memoranda or the like, including any copies or reproductions in its possession, or destroy the same in accordance with the directives of the Disclosing Party, in each case, except to the extent, retention of such Confidential Information is required under applicable law, provided that the Recipient in these cases, shall notify the Disclosing Party of the information that has been retained as a result of such applicable law along with the corresponding details of the applicable law which warranted such retention. Further, any Confidential Information that is not returned shall remain subject to the confidentiality obligations set forth in this Agreement. Notwithstanding the return of the Confidential Information, the Recipient will continue to be bound by its obligations of confidentiality and other obligations hereunder, which shall survive termination of this Agreement;
8. not publish any news release or make any announcements or denial or confirmation in any medium concerning this Agreement in any manner nor advertise or publish the same in any medium, without the prior written consent of the Disclosing Party;
9. promptly notify the Disclosing Party of any Confidential Information which has been lost or disclosed or used by any unauthorised third party provided that such notification shall not relieve the Recipient from any liability arising from its breach of this Agreement; and
10. not utilize the Confidential Information to avail any undue gain or undue loss to itself or any other person and shall comply with all provisions of applicable law, including Section 29(2) of the Code.
	1. The Recipient shall not be liable for disclosure or use of the Confidential Information in the event and to the extent that such Confidential Information:
11. is or becomes available to the public domain without breach of this Agreement by the Recipient; or
12. is disclosed with the written approval of the Disclosing Party; or
13. was in the possession of the Recipient prior to its disclosure to them under this Agreement, as evidenced by written documentation; or
14. is disclosed pursuant to any law or a court order or any requirement of any stock exchange provided that in the event the Recipient is required to make such disclosure in lieu of a court order/ stock exchange announcement, then in that case the Recipient shall, to the extent permissible, promptly notify the Disclosing Party in advance, so that the Disclosing Party has the opportunity to object to such disclosure or discuss the extent of disclosure by the Recipient. Additionally, the Recipient and/or its Representatives shall only disclose such portion of the Confidential Information as it is compelled to disclose pursuant to any law or a court order or any requirement of any stock exchange.
	1. It is agreed that without the prior written consent of the Disclosing Party, the Recipient shall not disclose and shall ensure that its Representatives do not disclose to any person or entity (a) that the Confidential Information has been made available to it or its Representatives, (b) that discussions or negotiations are taking place concerning a possible transaction between the Parties, or (c) any terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
	2. Ownership of the Confidential Information, including all intellectual property rights and related rights in the Confidential Information or arising out of the use of the Confidential Information shall at all times remain with the Disclosing Party, in perpetuity and throughout the world. All improvements, derivatives, enhancements, modifications and recommendations to the Confidential Information will also belong exclusively to the Disclosing Party, and the Recipient agrees to specifically convey and assign, and hereby do convey and assign to the Disclosing Party all right, title and interest in and to the same in perpetuity and throughout the world. The Recipient covenants and agrees to sign any papers and do all acts necessary to secure for the Disclosing Party and/or its successors or assigns, any and all rights, titles and interest in any such improvements, derivatives, enhancements, modifications and recommendations, including rights to any patent and copyright in any jurisdictions, during the term of this Agreement, or any time thereafter.
	3. The Parties agree that unless and until a definitive agreement(s) in connection with the Purpose is executed between the Parties, neither Party will be under any legal obligation of any kind whatsoever with respect to the Purpose by virtue of this Agreement except for the matters specifically agreed to herein. The Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or any of its Representatives with regard to the Purpose between the Parties and to terminate discussions and negotiations at any time. The Recipient further acknowledges that the resolution plan proposed by it may be rejected by the committee of creditors of the Corporate Debtor and/or the National Law Company Tribunal at any time.
	4. The Recipient agrees that the Disclosing Party, by the disclosure of the Confidential Information to the Recipient, does not grant, express or implied, any right or license to use the Confidential Information for any purpose other than the Purpose contemplated under this Agreement or vest any intellectual property rights or legal or beneficial interest in the Confidential Information so disclosed to the Recipient.
	5. For the avoidance of doubt, nothing in this Agreement shall compel the Disclosing Party to disclose to the Recipient, any or all the Confidential Information requested by the Recipient and the Disclosing Party shall, at all times during the subsistence of this Agreement, reserve the right to determine, in its sole discretion, whether it shall disclose such Confidential Information (in whole or part).
	6. The Disclosing Party or its Representatives makes no representation, warranty or inducement, whether express or implied, as to the accuracy, completeness or relevance of the Confidential Information and shall not be liable in any way in connection with the use of, or termination of the Recipient’s right to use the Confidential Information.
	7. The Recipient acknowledges that the Confidential Information is valuable to the Disclosing Party and that damages (including, without limitation, all legal fees and expenses on a solicitor and client basis) may not be a sufficient remedy for any breach of its obligations under this Agreement and the Recipient further acknowledges and agrees that the remedies of specific performance or injunctive relief (as appropriate) without the necessity of posting bond, guarantees or other securities, are appropriate remedies for any breach or threatened breach of its obligations under this Agreement, in addition to and without prejudice to, any other remedies available to the Disclosing Party at law or in equity.

11. The Recipient shall indemnify and hold harmless the Disclosing Party against all direct losses, damages and liabilities including but not limited to all legal fees and expenses arising from or connected with any unauthorized disclosure, use or misuse of the Confidential Information whether by itself or its Representatives or gross negligence or wilful misconduct of the Recipient and/or its Representatives. The Recipient further agrees and undertakes, at its sole cost and expense, to take any and all reasonable measures (including but not limited to court proceedings) to restrain any person to whom it has disclosed Confidential Information, directly or indirectly, from disclosing or using the Confidential Information in violation of this Agreement.

12. The Recipient shall not, without prior written consent of the Disclosing Party, engage any advisor, whether professional, legal or otherwise, where a conflict of interest exists with the Disclosing Party in relation to the corporate insolvency resolution process of the Corporate Debtor.

13. This Agreement shall be effective and shall stay in force for a period of two (2) years from the date first stated above. Upon expiry of this Agreement, the confidentiality obligations of the Parties herein shall cease, provided that payment obligations if any that may arise under this Agreement (including under the indemnity Clause 11 above) shall survive the termination of this Agreement.

14. All notices and other communications provided for hereunder shall be: (i) in writing; and (ii) hand

delivered, sent through an overnight courier (if for inland delivery) or international courier (if for overseas delivery) to a party hereto or sent by electronic mail, at its address specified below or at such other address as is designated by such party in a written notice to the other parties hereto.

# For Disclosing Party/ IRP/RP

Postal Address : R/o Ground Floor, TC 11/789(1), Vayal Road,

 Nandancode, Kowdiar P O, 695003

Contact Person : Mr. Bijoy Prabhakaran Pulipra

Email : bijoy.pvs@artismc.com

# Recipient/ Prospective Resolution Applicant

Postal Address : [●]

Contact Person : [●]

Email : [●]

All such notices and communications shall be effective: (i) if hand-delivered, when delivered; (ii) if sent by courier, (a) one (1) business day after its deposit with an overnight courier if for inland delivery; and (b) 5 (five) calendar days after its deposit with an international courier if for an overseas delivery; and (c) if sent by registered letter, when the registered letter would, in the ordinary course of post, be delivered whether actually delivered or not; and (iii) if sent by electronic mail, when actually received in readable form.

15. If any provision of this Agreement is invalid or illegal, then such provision shall be deemed automatically adjusted to conform to the requirements for validity or legality and as so adjusted, shall be deemed a provision of this Agreement as though originally included. If the provision invalidated is of such a nature that it cannot be so adjusted, the provision shall be deemed deleted from this Agreement as though the provision had never been included, in either case, the remaining provisions of this Agreement shall remain in full force and effect.

16. No amendments, changes or modifications of any provision of this Agreement shall be valid unless made by a written instrument signed by a duly authorised representative of each of the Parties.

17. No failure or delay by any Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other exercise thereof or the exercise of any other right, power or privilege hereunder.

18. Neither Party may assign or transfer its rights or obligations contained in this Agreement or any interest therein without the prior written consent of the other Party.

19. This Agreement shall be governed by and construed in all respects according to the laws of the India and, the Parties hereto agree to submit to the exclusive jurisdiction of the courts and tribunals of Chennai.

20. This Agreement comprises the full and complete agreement of the Parties hereto as at the date hereof with respect to the disclosure of Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto, whether

 written or oral, expressed or implied.

21. This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties hereto have executed and delivered this Agreement be effective as of the day and year first above written.

Signed by/for and on behalf of

the Disclosing Party/ IRP/ RP

**For** PVS Memorial Hospital Private Limited

**Mr. Bijoy Prabhakaran Pulipra**

**Resolution Professional**

In the presence o

Name:

Designation:

Signed by

for and on behalf of

the Recipient/Prospective Resolution Applicant

In the presence of

Name: Designation: