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THIS CONCESSION AGREEMENT is entered into on this the 10th day of February 2014

AMONGST

The Governor of the State of Himachal Pradesh for and on behalf of the Government of the State of Himachal Pradesh, acting **through the Special Secretary, Health, Govt. Of Himachal Pradesh** (hereinafter referred to as the **“Concessioning authority” or “DoH&FW”**) which expression shall, unless the context otherwise requires, include its successors and assigns) of the **FIRST PART**;

AND

Mission director, National Rural Health Mission (MD, NRHM), HP State Health and Family Welfare society acting (hereinafter referred to as the **“Confirming Party or SH&FWS”** which expression shall, unless the context otherwise requires, include its successors and assigns) of the **SECOND PART**;

AND

M/s Rahi Care Dharamshala Private Limited, a Company incorporated under the Companies Act, 1956 and having its registered office at 342, 2nd Floor, Motor Market, Manimajra, Chandigarh – 160101, India (hereinafter referred to as the **“Concessionaire”** which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the **OTHER PART**.

WHEREAS the Concessioning Authority along with the Confirming Party, with its drive to improve the health services in the state, has decided to develop Hemodialysis Unit (the **“Project Facilities of Hemodialysis Unit”**) in State of Himachal Pradesh, through Public Private Partnership (PPP) Mode (‘the Project’).

AND WHEREAS with an objective to seek private sector participation in the aforesaid Project, the Concessioning Authority, undertook the process of selection of a suitable Concessionaire through competitive

bidding process, after issuing a Request for Proposal document (RFP) dated August 2013 inviting Bids/ Proposals from prospective Bidders to implement the said Project.

AND WHEREAS the Concessionaire, selected through the transparent competitive bidding process, met the Eligibility Criteria {as laid down in Section-I (Instructions to Bidders) of the RFP document} and quoted the lowest user fee for successfully completing the Project. After evaluation of the Proposals so received, the Concessioning Authority and Confirming Party accepted the Proposal of the Concessionaire and issued Notice of Award dated 31 October 2013 to the Concessionaire requiring, inter alia, the execution of this Concession Agreement.

AND WHEREAS the Successful Bidder/ Concessionaire acknowledges and confirm that it has undertaken a due diligence and audit of all aspects of the Project/ Project Facilities including technical & financial viability and legal due diligence and on the basis of its independent satisfaction hereby accepts the Concession and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Concession Agreement.

AND WHEREAS following the issue of the Notice of Award and (i) submission by the Successful Bidder, Deed of Guarantee/s towards the Concessionaire; (ii) provision of the Performance Security of **Rs 5,00,000 (Rupees five Lakhs only)** to the Concessioning Authority within 3 (three) weeks of date of receipt of the Notice of Award to the Concessionaire, the Concessioning Authority hereby agrees and grants to the Concessionaire this Concession on the mutually agreed terms and conditions for the Concession Period to (a) plan, design, procure and install new equipment for Hemodialysis Unit as per the applicable statutory guidelines (b) operate, maintain and manage the Hemodialysis Unit and (c) at the end of the successful Concession Period hand back the Project Facilities, having all the immovable assets/ equipments and the movable assets, operational and in good working conditions.

AND WHEREAS the Concessionaire hereby accepts the Concession granted and undertakes to implement the Project in accordance to the provisions of this Concession Agreement.

NOW THEREFORE, in view of the offer, mutual promises and consideration set out herein, the Concessioning Authority and the Concessionaire (each individually a "**Party**" hereto, and collectively the "**Parties**") hereby agree to be bound by the provisions of this Concession Agreement.

ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Concession Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them: -

- i) **“Agreement”** means this agreement and includes any amendments hereto made in accordance with hereof.
- ii) **“Applicable Laws”** means all laws which are applicable to the Project and/or the Concessionaire extending to the State of Himachal Pradesh, having been enacted or brought into force by GoI (Government of India) or GoHP (Government of Himachal Pradesh) including regulations and rules made thereunder, and judgements, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
- iii) **“Applicable Permits”** means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the concessionaire under applicable law, in connection with the project during the subsistence of this agreement.
- iv) **“Associates”** means in relation to either Party and/or Joint Venture (JV) Members, a person who controls, is controlled by, or is under the common control with such Party or Joint Venture (JV) Member. As used in this definition, the expression “control” means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
- v) **“Book Value”** means the amount of historical cost of asset less accumulated depreciation applicable to the assets as certified by the statutory auditor.
- vi) **“Clearance”** means, as on the date of execution of this Agreement, any consents, licences, approvals, permits, exemptions, registrations, filings or other authorisations of whatever nature, which is necessary for effective Development of the Project.
- vii) **“Concession”** or **“Concession Agreement”** means and includes this signed Concession Agreement (including the Schedules of the Concession Agreement, the “Notice of Award” issued by Concessions Authority, the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexure/ appendix).
- viii) **“Concessionaire”** means Rahi Care Dharamshala Private Limited, [a Special Purpose Company incorporated, either by the Joint Venture (JV) Members or the Individual Successful Bidder under the Companies Act, 1956], having its registered office at 342, 2nd Floor, Motor Market, Manimajra, Chandigarh – 160101, India and includes its successors/ successors in business and permitted assigns and substitutes.
- ix) **“Concessionaire's Representative”** means the Person appointed by Concessionaire under Article 24.11.
- x) **“Concession Period”** is the period of 7(seven) years for which this Concession is granted, commencing from the Compliance Date.
- xi) **“Conditions Precedent”** means the conditions set out in Article 4 hereof.

- xii) **“Competent Authority”** means any agency, authority, department, ministry, public or statutory Person of the Government of Himachal Pradesh or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of Development of the Project having jurisdiction over all or any part of the Facility or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Concession.
- xiii) **“Compliance Date”** means the later of the date of issuance of the Certificate of Compliance to the Concessions Authority or Concessionaire under Article 4.3.
- xiv) **“Concession Agreement Completion Certificate”** means the certificate issued under Article 11, after the termination of this Concession Agreement.
- xv) **“Change in Law”** means the occurrence of any of the following events after the Proposal Acceptance Date:
- i) Enactment of any new Law.
 - ii) The repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Law.
 - iii) The commencement of any Law, which has not yet entered into effect.
 - iv) The change in interpretation or application of any Law by a Court of Record.
 - v) The imposition or requirement for a new statutory or regulatory approval or a modification in the terms and conditions on which a statutory or regulatory approval has already been obtained.
 - vi) A fresh imposition of a tax or duty that was not in existence on the Proposal Acceptance Date. It is specially clarified that a change in the rate of a tax or duty etc. shall not be considered a Change in Law for the purpose of this Article if the tax or duty etc. itself was in existence on the Proposal Acceptance Date.
- xvi) **“Cost”** means all expenditure properly incurred (or to be incurred) by the Concessionaire, on the Project, including overheads and similar charges, but does not include profit.
- xvii) **“Cure Period”** has the meaning given in Article 14.1 and 14.3.
- xviii) **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.
- xix) **“Development Completion Certificate”** means the certificate issued under Article 9.1.
- xx) **“Development Period” or “Time for Completion of Development”** means the period from the Compliance Date to the date of issue of Development Completion Certificate, wherein the development has been carried out in accordance with the Concession Agreement, according to the applicable statutory guidelines and which involves the upgradation of the Project Facility(ies); procuring and installation of Equipments within the Project Facility(ies); commissioning, testing and certification of the Equipments and recruitment of operating and other staff.
- xxi) **“Debt Due”** means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Senior Lender under the Financing Documents: -
- (a) The principal amount of the debt provided by the Senior Lender under the Financing Documents for financing the Project which is outstanding as on the

Termination Date, excluding any part of the principal that had fallen due for repayment one year prior to the Termination Date unless such repayment had been rescheduled with the prior consent of the Concessions Authority; and

- (b) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the para (a) above upto the date preceding the Termination Date but excluding any interest or charges that had fallen due one year prior to the Termination Date, and penal interest or charges payable under the Financing Documents to any Senior Lender.
- xxii) **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Concessions Authority to the Concessionaire, and any modification, extension or replacement thereof from time to time in force
- xxiii) **“Emergency”** means a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.
- xxiv) **Equipment** means all the equipments listed in **Schedule-3 (Equipment Capacity & Specifications)**.
- xxv) **“Encumbrances”** means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Equipments installed within the Project Facility(ies).
- xxvi) **“Equity”** means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any Joint Venture (JV) Member or by any of the shareholders of the Concessionaire for meeting the equity component of the Total Project Cost. Provided, however, that for the purposes of computing Termination Payments under this Concession, Equity shall be reckoned as an amount that is arrived at after excluding from the equity share capital of the Concessionaire the sum by which the capital cost of the Project as stated by the Concessionaire for purposes of claiming Termination Payments exceeded the Total Project Cost.
- xxvii) **“Hemodialysis Unit Facility / Project Facilities”** means Hemodialysis unit situated at the allotted space wherein treatment, processes incidental to such treatment is carried out and includes treatment facilities. The details of the same have been stipulated in **Schedules of the concession agreement**. Here, collectively the Hemodialysis unit Facilities shall be referred to as “Project Facilities” and any one of the Hemodialysis unit shall be referred to as “Project Facility”.
- xxviii) **“Financial Close”** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Concessionaire has fulfilled all the conditions needed for draw down of Financing and the Concessionaire has immediate access to such Financing and which shall in any case not be later than 45 days from the date hereof.
- xxix) **“Financial Model”** means the financial model adopted by Senior Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Senior Lenders, and includes a

- description of the assumptions and parameters used for making calculations and projections therein.
- xxx) **“Financial Year”** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
- xxxii) **“Financing Documents”** means the documents executed by the Concessionaire in respect of financing of the Project to be provided by the Senior Lenders by way of loans, guarantees, subscription to non convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
- xxxiii) **“Financing Package” or “Financing”** means the financing package of the Project furnished by the Concessionaire indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding the Project.
- xxxiiii) **“Force Majeure” or “Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 16.
- xxxv) **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in installation and operation of projects akin to the Project. It would include good practices in the design, and installation which would be expected to result in the performance of its obligation by the Concessionaire and in operation and maintenance of the Hemodialysis unit in accordance with this Concession Agreement, Applicable Laws, Clearances, reliability, safety, environment protection, economy and efficiency.
- xxxvi) **“GoHP”** means the Government of the State of Himachal Pradesh, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of Himachal Pradesh and its administrators, successors and assigns.
- xxxvii) **“Intangible Assets”** means non monetary asset without physical substance i.e. good will, trade mark, brand value, Intellectual Property Rights, etc. As certified by the statutory auditor.
- xxxviii) **“Joint Venture (JV) Members”** means Rahi Care Private Limited & Abhilasha Hospital.
- xxxix) **“Key Personnel”** means the Project Facility manager deployed for reporting at Hemodialysis unit.
- xl) **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Concession ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Concession Agreement, or (c) frustrates a material provisions of this Concession Agreement or any of the Project Agreements.
- xl) **“Operation and Maintenance Manual – O&M Manual”** means document as per which the operations and maintenance of the Hemodialysis unit is carried out to fulfil all the obligations

- under this Concession Agreement and to maintain the service level as per the Schedules to this Concession Agreement.
- xli) **“Operation and Maintenance Period”** is the period commencing from the Operations Date and terminating at the Transfer Date.
- xlii) **“Operations Date” or “Date of Issuance of Development Completion Certificate”** means the date on which the Concessions Authority issues a Development Completion Certificate for the start-up and operationalisation of the Hemodialysis unit.
- xliii) **“Party”** means any of the parties to this Concession Agreement.
- xliv) **“Performance Security”** means a Bank Guarantee for an amount of Rs 5 Lakhs (Rupees Five Lakhs) and shall be in the format as set out in Schedule- 5 from a scheduled bank approved by the Concessions Authority.
- xlv) **“Performance Standards”** means the standards to which the operation, maintenance and management of the Project must adhere and which the Concessionaire undertakes to meet. Performance Standards to be met by the Concessionaire under this Agreement and specifically listed in Schedules, to this agreement.
- xlvi) **“Person”** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
- xlvii) **“Project”** means, subject to the provisions of this Concession Agreement, (i) Planning and Designing of the Hemodialysis Unit, as per all the Schedules of this Agreement and thereafter, procurement and installation of Equipments in the Hemodialysis Unit as per Schedules to this agreement (Equipment Capacity & Specifications); (ii) recruitment of operating and other staff, (iii) operation and maintenance of the Hemodialysis Unit, as per the terms and conditions of the Concession Agreement and Schedules to this agreement and other applicable rules/ guidelines, (iv) insurance of the Hemodialysis Unit, developed for the purposes of providing the services on a continuous basis and (v) transfer of the Hemodialysis Unit (along with movable and immovable assets), in good and operational condition, to the Concessions authority/ Confirming Party at the end of the Concession Period or on prior termination of the Concession Agreement on Concessionaire/ Concessions Authority Event of Default or otherwise.
- xlviii) **“Project Agreements”** means, collectively, this Concession Agreement, the Financing Documents, hire purchase agreements, Development Agreements and Operation & Maintenance Agreements, in each case as amended, supplemented or otherwise modified from time to time and any appended annexure, Schedules to this Agreement.
- xliv) **“Proposal Acceptance Date”** means the date of signing of this Concession Agreement.
- l) **“Project Insurance”** means the insurance taken out by or on behalf of the Concessionaire pursuant to the provisions of this Concession Agreement.
- li) **“Project Revenues”** means all sources of revenues, as specified in Article 22 of the Concession Agreement, accruing to the Concessionaire from the Project.
- lii) **“RFP”** means the Request for Proposal document issued by the Concessions Authority/Himachal Pradesh Infrastructure Development Board. The terms "RFP" and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
- liii) **“Schedules”** mean the Schedules to this Concession Agreement.

- liv) **“Senior Lender”** means the financial institutions, funds and banks who have advanced or agreed to advance term loan to the Concessionaire under any of the Financing Documents for meeting all or part of the Total Project Cost.
- lv) **“Service Level Specifications”** means the service level expectations as mentioned in Schedules to the Concession Agreement and any other statutory rules/ acts/ guidelines by concerned authorities.
- lvi) **“Statutory Auditors”** means an Independent, recognised and reputable firm of the chartered accountants duly licensed to practice in India acting as the Independent statutory auditors of the Concessionaire under the provisions of Companies Act, 1956 including any statutory modification or re-enactment or replacement thereof, for the time being in force.
- lvii) **“Subcontractor”** means the Development contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of services or equipments or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts.
- lviii) **“Subordinated Debt”** means any borrowings by the Concessionaire subordinated to the financial assistance provided by the Senior Lenders for meeting the Total Project Cost but does not include any interest thereon.
- lix) **“Substitute Entity”** means the entity defined in the Substitution Agreement.
- lx) **“Substitution Agreement”** means the agreement set out in Schedule-7.
- lxi) **“Support Services”** means those services that are ancillary to the Medical Services including (a) patient registration, investigation, reporting and caring, (b) management of patient records and data (either in soft copy or in hard copy) including the provision of access to patients records and data to the relevant and qualified staff of the relevant and qualified staff of the relevant hospital as may be required, and (c) the operation, management and maintenance of all software related to the services, including Hemodialysis Unit information system software used for registration, data management and retrieval or any software supporting the Equipment in the project facility.
- lxii) **“Tax”** means any tax, duty, levy, charge whatsoever charged, imposed or levied under Applicable Laws.
- lxiii) **“Tender/ Bid/ Proposal”** means the Concessionaire's quoted Financial Proposal and detailed Proposal for the Project, including the Concessionaire's Proposal, submitted to the Concessioning Authority and as accepted by the Concessioning Authority.
- lxiv) **“Termination Date”** means the date on which this Concession Agreement terminates by efflux of time or by issuance of a Termination Notice.
- lxv) **“Termination Notice”** means the communication issued in accordance with this Concession Agreement by a Party to the other Party for terminating this Concession Agreement.
- lxvi) **“Termination Payment”** means the amount payable by the Concessioning Authority to the Concessionaire upon the termination of this Concession Agreement and shall consist of payments relating to Debt Due, Subordinated Debt or Book value of Assets, as the case may be, and other such amounts as are expressly provided for under this Agreement. Provided, however, that for the purposes of determining Termination Payments to be made by the Concessioning Authority under this Agreement, the capital cost of the Project shall at all times be reckoned as an amount not exceeding the Total Project Cost and the liability of the Concessioning Authority to make such Termination Payments relating to Debt Due,

Subordinated Debt or Book Value of Assets shall be determined as if such capital cost was restricted to Total Project Cost.

- lxvii) **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Concession Agreement.
- lxviii) **“Total Project Cost”** means the lowest of the following:
- (a) Total Project Cost as set forth in the Financing Documents.
 - (b) Actual Capital Cost of the Project upon completion of the Project as certified by Statutory Auditors.
 - (c) The Total Cost of Project submitted by Concessionaire as part of its Conditions Precedent.
- lxix) **“Transfer Date”** means the day immediately following the last day of the Concession Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Concession Agreement.
- lxx) **“Variation”** means a modification, improvement or change in the Works, services, and facilities etc. to be carried out by the Concessionaire, such that the cost of implementing the modification, improvement or change can be recovered through a 30-day adjustment of the Concession Period.

1.2 Principles of Interpretation.

In this Concession Agreement, unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. Reference to laws of Government of Himachal Pradesh, laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of Himachal Pradesh;
- c. The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- d. Terms and words beginning with capital letters and defined in this Agreement including the Schedules;
- e. Words importing Person or Parties shall include firms and corporations and any organisation having legal capacity to sue and be sued in its name.
- f. Words importing the singular shall include the plural and vice-versa where the Concession requires.
- g. Any reference to day shall mean a reference to a calendar day;
- h. Any reference to month shall mean a reference to a calendar month;
- i. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

- j. Any reference at any time to any agreement, deed, instrument or document of any description shall be construed as reference to that agreement, deed, instrument or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- k. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- l. Any Agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hands of duly authorised representative of such party, as the case may be, in this behalf and not otherwise;
- m. Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include either such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of next business day.
- n. The damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty

1.3 Measurements and Arithmetic Calculations

All measurements and calculations shall be in metric system and calculations done in 2 decimals places, with the third digit of 5 or above rounded up and below 5 belong down except in Fee calculation which shall be rounded off to nearest Rupee.

1.4 Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (a) Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;
- (b) Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;
- (c) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (d) Between the written description on the Drawing and the specific written dimension, the latter shall prevail; and
- (e) Between any value written in numerals and that in words, the later shall prevail.

1.5 Priority of Documents

The documents forming this Concession Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Concessions Authority shall issue any necessary clarification or instruction to the Concessionaire, and the priority of the documents shall be as follows:

- i) This signed Concession Agreement (including its Schedules), along-with any Addendums issued to the RFP document dated August 2013;
- ii) Instructions to Bidders (ITB) {Section I of the RFP document dated August 2013}, enclosed/ attached with this signed Concession Agreement; and
- iii) All other documents enclosed/ attached with this signed Concession Agreement.

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project

The Scope of the Project (the “**Scope of the Project**”) shall mean and include during the Concession Period:

1. Planning and designing of Hemodialysis Unit within the Zonal Hospital, Dharamshala, as per the provisions laid down in the concession agreement and schedules.
2. Development of the Hemodialysis Unit by installing minimum Six (6) Dialysis machines and other related equipments and apparatus within the Zonal Hospital, Dharamshala as per the provisions of this Concession agreement and schedules.
3. Procurement and installation of new Hemodialysis equipments of not less than the specified minimum technical specifications as provided by the Concessioneing Authority & Confirming Parties and in conformity with the Technical Specifications and Standards set forth in the Schedules to the Concession Agreement.
 - i. *It is expressly stated that the Concessionaire shall install only brand new Hemodialysis Machines in the Hemodialysis Unit. No refurbished, second hand or used machines / equipments shall be installed at any of the Project Facilities.*
4. Recruitment of minimum required number of Key Personnel and manage and train them for the smooth operations of the Hemodialysis Unit by providing them adequate training and preparing them to discharge their roles and responsibilities as defined in schedule 2.
 - i. *It is expressly stated that the Concessionaire shall ensure that sufficient clinical manpower is available at all times to conduct the Hemodialysis procedures tests, as detailed out in this Concession Agreement & Schedules specifically to meet the service level specifications and performance thresholds as described in Concession agreement and Schedules.*
5. Operation and Maintenance of the Hemodialysis Unit, throughout the Concession Period, in accordance with the provisions of the Concession Agreement and schedules.
6. Perform all the Hemodialysis procedures as per the Good Industry Practices;
7. Collect User Charges, as per Schedule 12
8. Respond to emergency cases including in odd hours and difficult weather conditions as per the provision of emergency services detailed out in Schedules.
9. Calibrate and maintain the equipments in optimum performance conditions by ensuring preventive maintenance and following good industry practice.
10. Devise a safety plan and practice measures to ensure safety of patients, employees, staff, equipment and the facility by adopting adequate safety standards.
11. Implement a Quality Control Program across in the Hemodialysis Unit.
12. Performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of the Concession Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under the Concession Agreement.
13. The Hemodialysis unit would attend to all related emergency cases round the clock.
14. The raw built up space for the project will be provided by the DoH&FW to the private partners.
15. The concessionaire (s) would be required to Build, Operate and Transfer the Hemodialysis unit at the Zonal Hospital, Dharamshala. All renovations / upgradations are also under the scope of work of Concessionaire.
16. The Concessionaire would take commercial connection and install meter / sub meter for water and electricity on his own name & costs and pay all the recurring, enhancement of

- load costs and transformer costs (if any) to the concerned authority. The concessionaire would also install DG set at their own cost to ensure uninterrupted power supply.
17. The concessionaire would install Reverse Osmosis (RO) unit, raw and product water storage tank, layout piping and other necessary infrastructure up to the point of use. The recurring cost of water would be borne by the successful bidder.
 18. The successful bidder would dedicate one machine exclusively for patients infected with Hepatitis-B. The infected patients will be treated in isolated rooms. All care will be taken by the Concessionaire to isolate the infected patients.
 19. The concessionaire would maintain adequate inventory of all consumables. Concessionaire would procure only the best quality consumables. The quality of consumables would be subjected to periodic inspection by the representatives of DoH&FW.
 20. Deleted
 21. The concessionaire would maintain all purchases and inventory records through the software proposed.
 22. The concessionaire would use consumables to the patients of the Hemodialysis unit only and not to outsiders. However, in case of emergency to any outside patient, the successful bidder could sell consumables after the approval of Chief Medical Officer (CMO) of the concerned Hospital.
 23. The services to various category of free patients as defined as per the State policy or relevant guidelines would be provided free of any user charges and consumables. However, The Concessionaire shall have the right to claim reimbursements for the amount spent on such Patients.
 24. It is responsibility of the concessionaire to keep Hemodialysis unit in good working condition.
 25. The concessionaire would install a latest version of any licensed hospital management application software. The software should be capable of generating invoices, Manage patient data, patient history (including test results), manage patient queuing system, inventory management, generate reports etc.
 26. The concessionaire would provide two (2) licenses of the proposed application software to the zonal Hospitals/Regional Hospital, free of cost along with a copy of the software documentation. The license cost during the contract period would be borne by the concessionaire.
 27. The hardware required to run the hospital management software mentioned above would have to be provided by the concessionaire.

It is clarified herewith that in addition to the above-stated "Scope of Work", the Concessionaire shall be required to carry out any incidental works and services as required and to comply with all the provisions of the Concession Agreement, the Schedules to the Concession Agreement and the Technical Specifications of the Concession Agreement and as per the requirements of applicable byelaws/ norms/ guidelines of relevant statutory authorities etc, while development, operation and management of the Project.

ARTICLE 3: CONCESSION

3.1 Grant of Concession

- 3.1.1 Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, the Concessions Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 7 (seven) years, commencing from the Compliance Date, including the exclusive right, authority and authorisation during the subsistence of this Agreement, including extension thereof, to plan, design, procure, install, develop, operate, maintain, and manage the Project and enjoy its benefits for the Concession Period.
- 3.1.2 Subject to and in accordance with the terms and conditions set forth in this Concession Agreement, the Concession hereby granted shall entitle the Concessionaire, the exclusive right and authority to undertake the following in accordance with the provisions of this Concession Agreement, the Applicable Laws and the Applicable Permits:
- (a) To develop the Project as per the Scope of Work of the Project more specifically mentioned in Article 2 and Schedules of this Concession Agreement;
 - (b) To have access and liberty to procure and install the new Hemodialysis Equipments in the Project Facilities and operate, maintain and manage the Hemodialysis services during the Concession Period;
 - (c) Any installation of Equipments made by the Concessionaire within the specified Project Facilities in respect of the Project shall be deemed to be the property of the Concessions Authority and the Concessionaire relinquishes all his rights in such property in favour of Concessions Authority;
 - (d) Exclusive right and authority, during the Concession Period, to carry out the specified activities in relation to the Project;
 - (e) To fulfil its obligations under this Agreement, undertake Hemodialysis services by itself and non-clinical allied activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;
 - (f) Arrange for all the clearances from the Competent Authority for the development of the Project and the Concessions Authority is no way liable for the same. Responsibility of taking all necessary approvals of development and installation lies with the Concessionaire. Nevertheless Concessions Authority without any binding obligation may provide any assistance upon written request from the Concessionaire.
 - (g) Exercise such other rights as the Concessions Authority may determine as being necessary or desirable for the purposes incidental and necessary for developing, managing, operating, & maintaining the Project.
 - (h) Bear and pay all expenses, costs and charges incurred in the fulfilment of all the Concessionaire's obligations under this Agreement; and
 - (i) Nothing contained herein shall vest or create any proprietary interest in the Project or any part thereof including in favour of the Concessionaire or any person claiming through or under the Concessionaire. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create lien or otherwise encumber or deal with the

Project in any manner. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this Agreement.

3.2 Actions in Support of the Concession

- (a) The Concessions Authority shall recognize and undertake not to, in any manner, violate or cause breach of the terms of this Concession Agreement.
- (b) For the purpose of Financing the Project, the Concessionaire shall have the right to mortgage, hypothecate, transfer, assign or otherwise encumber to Lenders its rights and interests under or pursuant to this Concession Agreement, including, without limitation, its rights in and to (i) the Project Agreements and (ii) the cash flows generated, by the Concessionaire, through this Project and to create a security in such rights and interests in favour of the Lenders. However, it is also clarified that the Concessionaire shall not be entitled to mortgage any movable and immovable asset, which is a part of the Project Facilities.
- (c) The Concessions Authority undertakes not to terminate or repudiate this Agreement prior to the expiry of the Concession Period otherwise than in accordance with the provisions of this Agreement;
- (d) The Concessionaire shall take all necessary approvals/ licenses from the Competent Authority.
- (e) The Concessions Authority shall provide assistance and recommendations to the Competent Authority/ies, including GoI, in support of the Concessionaire's applications for clearances that may be needed from time to time for the Development of the Project; *provided* that the Concessionaire has made the requisite applications and is in compliance with the necessary conditions for the grant of such Clearances.

3.3 Concession Period

- 3.3.1 The Concession Period for ***“the Project”*** shall commence from the Compliance Date and shall extend for a period of **7 (seven) years** from such date (**the “Concession Period”**) and during which the Concessionaire is authorized to develop the Project and to operate & maintain the Project in accordance with the provisions hereof. ***For the avoidance of doubt, the Concession Period shall include the Development Period.***
- 3.3.2 It is hereby made clear that in the event of early Termination, the Concession Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination Date.
- 3.3.3 At the end of the Concession Period, all rights given under this Concession Agreement shall cease to have effect and the Project Facilities along-with all the immovable and movable assets, in good and operational condition, shall revert to the Concessions Authority without any obligation to Concessions Authority to pay or adjust any consideration or other payment to the Concessionaire. On sooner/ pre-mature termination of this Concession Agreement for any reason whatsoever, the Concessionaire shall also hand back the movable and immovable assets specifically the equipment, installations, software etc., present within the Project Facilities in fully functional condition to be verified by the concessions authority at the time of handover.

3.4 Development Period

- a. The **“Development Period”** or **“Time for Completion of Development”** shall be a period of **6 (Six) months** (starting from the Compliance Date), wherein the Concessionaire shall be required to comply with the following obligations:

- (i) Take all necessary/ mandatory clearances, permits etc. which are required for commencing the procurement and installation of new Equipments, within the Project Facilities, so that all such conditions have been satisfied in full, and all such Clearances, Permits, etc. are in full force and effect;
 - (ii) Procure and Install new Equipments, within the Project Facilities, as per the design approved by the Concessioneing Authority and the Confirming Party as detailed out in Schedule – 3 (Equipment Capacity & Specifications) of the Concession Agreement;
 - (iii) Procure insurance for the Project Facilities and the Equipments, as installed by the Concessionaire during/ after the Development Period; and
- b. The Concessionaire guarantees that the time for completion of Development for the Project shall be achieved in accordance with the provisions of this Concession Agreement and not later than the Development Period, as specified in Article 3.4 (a), from the Compliance Date.
- c. In the event that Development Completion is not achieved for any reason other than Force Majeure or reasons attributable to the Concessioneing Authority, Confirming Party or any Competent Authority, the Concessionaire shall, subject to sub-clause (d) below, pay to the Concessioneing Authority damages for delay beyond the date of Development Completion to the extent of 0.1% of the Performance Security per day for every day of delay or part thereof until Development Completion is achieved. Provided that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay by the Concessionaire in achieving Development Completion.
- d. In the event that Development Completion does not occur within 120 (one hundred and twenty) days from the scheduled date of Development Completion, the Concessioneing Authority shall be entitled to invoke the Performance Security and to terminate this Concession Agreement for a Concessionaire Event of Default in accordance with the provisions of Article 14 hereof. Provided that instead of terminating this Agreement, the Concessioneing Authority may at its sole option extend the time for achieving Development Completion on such terms and conditions as it deems fit in its sole discretion.
- e. Extension of Time

The Concessionaire may apply for an extension of the Time for Completion of Development if it is or shall be delayed either before or after the Time for Completion of Development, by any of the following causes:-

- i) A Variation;
- ii) A Force Majeure event;
- iii) A cause of delay giving an explicit and express entitlement to extension of time under any Articles in this Concession Agreement, unless the Concessionaire has not complied with such Article;
- iv) Any delay, impediment or prevention by the Concessioneing Authority;
- v) Any delay caused by Competent Authorities.

Provided that the Concessionaire shall at all times use its best endeavours to minimise any delay in the performance of its obligations under this Concession Agreement, whatever may be the cause of such delay.

If the Concessionaire intends to apply for an extension of the Time for Completion of Development, the Concessionaire shall give notice to Concessions Authority of such intention as soon as possible and in any case within 28 (twenty eight) days of the start of the event giving rise to any such delay, together with any other notice required by this Concession Agreement and relevant to such cause. Any such notice shall state the extent of the actual and anticipated delay and its anticipated effect on the Time for Completion of Development, and shall specify the steps the Concessionaire proposes to take to minimise such delay. The Concessionaire shall keep such records as may be necessary to substantiate any application, at a location acceptable to Concessions Authority, and such other records as may reasonably be requested by Concessions Authority. The Concessionaire shall provide and permit Concessions Authority to inspect all such records.

Within 28 (twenty-eight) days of the first day of such delay (or such other period as may be agreed by Concessions Authority), the Concessionaire shall submit full supporting details of its application. Except that, if the Concessionaire cannot submit all relevant details within such period because the cause of delay continued for a period exceeding 7 (seven) days, the Concessionaire shall submit interim details at intervals of not more than 28 (twenty-eight) days (from the first day of such delay) and full and final supporting details of its application within 21 (twenty-one) days of the last day of delay.

Provided that the Concessionaire has complied with this Article, the Concessions Authority shall proceed in accordance with Article 13.3 to determine either prospectively or retrospectively such adjustment as may be due, taking into account all relevant circumstances. Concessions Authority shall notify the Concessionaire accordingly. When determining each extension of time, Concessions Authority shall review its previous determinations and may revise, but shall not decrease, the extension, and provided that the extension of time is not a consequence of any negligence, default or breach of Concession Agreement by the Concessionaire or those for whom it is responsible.

However, the Concessionaire shall not be entitled to an extension of the Time for Completion of Development, to the extent that the delay in respect of which the extension of time is requested is attributable to any negligence, default or breach of this Concession Agreement by the Concessionaire or those for whom it is responsible, as determined by the Concessions Authority and/ or the Expert Committee.

ARTICLE 4: CONDITIONS PRECEDENT

Subject to the express terms to the contrary, limited aspects of the Development Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Concession Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 4.1 and 4.2 on or before the expiry of a period of 45 (Forty Five) days from the Proposal Acceptance Date. However, the Concessions Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Concessionaire.

4.1 Conditions Precedent for Concessions Authority

The Concessions Authority shall have:

- a. Constituted an Expert Committee, as per Article 19, within 10 (ten) days from the Proposal Acceptance Date.
- b. Issued government orders or gazette notifications as necessary for implementing the Project
- c. Handed over the Project site on *as is where is* basis (as detailed out in Schedule 1), for a period co-terminus with this Concession Agreement **It is however clarified that this Conditions Precedent on the part of the Concessions authority shall be fulfilled at the end, when all other Conditions Precedent of both the Parties are met/fulfilled or waived off as per Article 4.2.**

4.2 Conditions Precedent for Concessionaire

The Concessionaire shall have:

- a. Submitted the Total Project Cost to the Concessions Authority for perusal;
- b. Achieved Financial Close and delivered complete Financial Package to the Concessions Authority that Financial Close has been accomplished.
- c. Provided an undertaking that all of the Representations and Warranties of the Concessionaire set forth in Article 12.2 are true and correct as on date of this Agreement and as on the Compliance Date and thereafter;
- d. Provided the Concessions Authority copies (certified as true copies by an authorised officer of the Concessionaire) of its constitutional documents of the Concessionaire;
- e. Provided the Concessions Authority copies (certified as true by the Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance of this Agreement by the Concessionaire;
- f. Received from the Indian Legal Counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;

Provided that upon request in writing by the Concessionaire, the Concessions Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 4.2.

4.3 Obligations to satisfy Condition Precedents

- a. Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 45 (forty five) days of Proposal Acceptance Date.
- b. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a Certificate of Compliance with Conditions Precedent (**the "Certificate of Compliance"**).
- c. The later of the date of issue of Certificate of Compliance to the Concessionaire or the Concessions Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Concession Agreement shall commence and whereon the Concessions Authority shall issue the Notice to Commence to the Concessionaire. However, it is being clarified here that any work of whatever nature, which the Concessionaire elects to carryout prior to the Proposal Acceptance Date including investigations, surveys etc. shall be entirely at the risk and cost of the Concessionaire. Also, the Concessionaire shall not be permitted to commence the work at any part of the Project Facilities prior to the issuance of Notice to Commence.
- d. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

4.4 Non-fulfillment of Conditions Precedent

- (a) In the event that any of the Conditions Precedents relating to the Concessionaire have not been fulfilled within 45 (forty five) days of the signing of this Agreement and also, the Concessions Authority has not waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or persons claiming through or under it.
- (b) In the event that the Concessionaire has fulfilled its Conditions Precedent and Concessions Authority has not procured fulfilment of any or all of the Condition Precedents set forth in Article 4.1 within the period specified in respect thereof, the Concessions Authority shall pay to the Concessionaire damages equivalent to an amount calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day's delay until the fulfilment of the Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security. In the event when the maximum damages as above has become payable and the Concessions Authority/ Confirming Party has still not been able to procure fulfilment of any or all the condition Precedent set forth in Article 4.1 and the period for achievement of the same has not been mutually extended then the Concessions Authority shall be liable to return, to the Concessionaire, the Performance Security submitted before the signing of the Concession Agreement.
- (c) In the event the Concessions Authority has terminated this Agreement under Article 4.4 (a) due to non fulfilment of Conditions Precedent by the Concessionaire, the Concessions Authority shall not be liable in any manner whatsoever to the Concessionaire or its contractors, agents and employees. In addition to this, the Concessions Authority shall forfeit the Performance Security submitted before the signing of the Concession Agreement, by the Concessionaire.

- (d) Instead of terminating this Agreement as provided in paragraph (a), (b) above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

ARTICLE 5: COMMERCIAL CONSIDERATION

5.1 Commercial Consideration to the Concessionaire

- a The user fee charged by the concessionaire shall be the amount quoted by the Successful Bidder/ Concessionaire in its Financial Proposal, dated 5th October 2013, which shall be increased at the rate of 5% after every year, over the previous User Fee. Calculation of user fee per dialysis procedure including consumables for concession period incorporating annual increase is as per schedule- 12
- b The services to various category of free patients as defined as per the State policy or relevant guidelines would be provided free of any user charges and consumables. However, The Concessionaire shall have the right to claim reimbursements for the amount spent on such Patients.

5.2 Performance Security

- a. The Concessionaire shall ensure that for the entire Concession Period, it will maintain a Performance Security of Rs 5 Lakhs and in the format as specified in Schedule- 5.
- b. The Performance Security shall be from a scheduled bank or a financial institution approved by the Concessions Authority, payable at Shimla.
- c. Upon occurrence of a Concessionaire Event of Default, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Concessionaire shall, within the time so granted replenish or furnish to the Concessions Authority a fresh Performance Security as aforesaid, failing which the Concessions Authority shall be entitled to terminate this Agreement.

ARTICLE 6: OBLIGATIONS OF THE CONCESSIONING AUTHORITY/ CONFIRMING PARTY DURING DEVELOPMENT PERIOD

6.1 General Obligations

It shall be the Concessioning Authority's obligation to ensure that the following are made available or executed by the Concessioning Authority:

- a. The Concessioning Authority shall provide, and shall cause the concerned Zonal Hospital and Regional Hospital to provide, all reasonable assistance that may be required in getting permissions and exemptions under laws relating to it and regulating the Project as applicable in the State of Himachal Pradesh;
- b. The Concessioning Authority shall ensure that from the date of issuance of the Notice to Commence and till the completion of the Concession Period, the Concessionaire has access to the Project Facilities for the purpose of carrying out the Concessionaire's obligations under this Concession Agreement.
- c. The Concessioning Authority and the SH&FWS, as well as their respective staff and employees, shall have a general right of access to the Project Facilities for the normal performance of their duties, to the extent that such access is made without undue disruption to the activities of the Concessionaire as set out under this Agreement.
- d. From the Compliance Date, the concerned Zonal Hospital, Dharamshala and, shall not operate whether (i) directly or (ii) by means of any administrative arrangement with any other Government entity or (iii) by means of any contractual agreement with any person other than concessionaire for Hemodialysis Unit facility. Not standing above, concerned health institutions shall be entitled to avail such services from third party in case the concessionaire has for any reason whatsoever expressly refused to provide services.

ARTICLE 7: OBLIGATIONS OF THE CONCESSIONAIRE DURING DEVELOPMENT PERIOD

7.1 General Obligations

- a. The Concessionaire shall observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Concession, the following:
- i) The Concessionaire shall be responsible to procure back-up systems at each Project Facility to maintain uninterrupted services at all times, comply and observe all applicable laws/ rules/guidelines pertaining to pollution control, labor law, or any other relevant law of Central/State government as may be applicable from time to time for running the project.
 - ii) Obtain any and all permits, in a timely manner, necessary approvals, clearances and sanctions from the Competent Authority (ies), as and when they may be required, and in accordance with Good Industry Practice.
 - iii) Comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Contractors/ Sub-Contractors;
 - iv) Carry out the Works strictly in accordance with the provisions of this Concession Agreement, and the Schedules of this Concession Agreement, and all works not mentioned in this Concession Agreement but which may be inferred to be necessary for safe, reliable and efficient development and operation of the Project;
 - v) Undertake to achieve completion no later than 6 (six) months from the Compliance Date , *provided* that the Concessionaire shall not be in breach of this Article 7.1(a)(v) if any non-fulfilment or the delay in fulfilment of its obligation are caused by (i) the occurrence of an event of Force Majeure or (ii) a Concessioning Authority Event of Default or any other act or omission of the Concessioning Authority in contravention of its obligations under this Concession Agreement;
 - vi) Be responsible from the date of issue of “Notice to Commence” for all liabilities arising out of development, operation and maintenance of the Project. The Concessionaire shall plan, organise and execute the works so that there is least disruption to the movement on adjoining roads and minimal inconvenience to the public at large. The Concessioning Authority shall assist the Concessionaire in all respects with reference to such works, but the assistance or denial thereof shall not release the Concessionaire from its obligations;
 - vii) Submit to the Concessioning Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution;
 - viii) To be responsible for safety, soundness and durability of the Project, including other services forming part thereof and their compliance with the local bye-laws.
 - ix) To ensure that no structural damages is caused to the Project Facilities and other permanent structures at the Project Facilities as a result of Concessionaire’s activities or any of its agents, contractors etc.

- x) The Concessionaire shall ensure that any/all materials/ Equipments used/ installed during the Development Period are as per Schedule – 3 (Equipment Capacity & Specifications) for hemodialysis procedure and all the materials, equipment, furniture, fixtures etc. are of best quality;
- xi) To pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the services tax, TCS, TDS, stamp duty, registration charges and any other legal documentation charges, if any, in respect of the said Project, as leviable;
- xii) To duly supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary;
- xiii) To effect and maintain, or cause to be effected and maintained, at its own expense, insurance policies as may be required to be maintained by the Senior Lenders, under applicable Laws and/ or such insurances that are necessary or desirable in accordance with Good Industry Practice;
- xiv) To take all reasonable precautions for the prevention of accidents on or about the Project Facilities and provide all reasonable assistance and emergency medical aid to accident victims;
- xv) Not to permit any contractor, sub-contractors or other person, claiming through or under the Concessionaire, to create or place any security interest over all or any part of Project Facilities or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement.
- xvi) To provide all assistance to the expert/ independent auditor/ arbitrator/ Expert Committee as it may require for the performance of their duties and services.
- xvii) To develop infrastructure such as water supply, electricity etc. at his own cost on the project facility.
- xviii) To upgrade the technology from time to time at his own if required under any legislation or orders of the state government/ central government or any legal/binding directions from competent authority.
- xix) Shall within the time permitted by the Concessions Authority/ SH&FWS / Expert Committee, make good all the defects and ensure that the items or materials complies with the Concession Agreement.
- xx) Staffing and Employment:**
 - (a) The Concessionaire shall in its sole discretion and at its sole cost make all appropriate arrangements to employ and remunerate, in accordance with Concession Agreement and its Schedules, Applicable Law, staff and personnel in suitable numbers and with appropriate qualifications, accreditation and experience in order to provide the services in accordance with this Concession Agreement.
 - (b) In the event the replacement of any member of the Key Personnel is requested during the Concession Period, the Concessionaire shall immediately inform the Concessions Authority and shall submit to the Concessions Authority for comments and review its plan for replacement, including the detailed resume of the person(s) identified in replacement. The Concessions Authority shall be entitled to attend, without intervening, any interviews led by the Concessionaire

- with a view to securing the replacement of Key Personnel. The replacement of Key Personnel shall be subject to the prior written consent of the Concessioneing Authority, which shall not be unreasonably withheld or delayed, provided that the proposed replacement Key Personnel has at least equivalent qualifications, accreditation and (but not or) experience to that of the person being replaced. To the extent possible, the Concessionaire shall ensure that there is a minimum of ten (10) days' overlap between the individuals concerned to allow for a smooth handover of responsibilities. Replacement of any of the Concessionaire's staff, including Key Personnel, shall be carried out at the sole cost and expense of the Concessionaire.
- (c) The concessionaire shall ensure adherence to execution of works based on approved quality programmes and take adequate precautions in observing safety of personnel and property.
- (d) The concessionaire shall ensure sanitation and hygiene of Hemodialysis unit and the health and safety of his/her employees by providing prescribed training to personnel, protective equipments, carbon gumboots, gloves, face masks, eye shield, head gears and shall get regular health checkups and vaccinations etc to employees at his own cost.
- xxi) Shall ensure that if any designated devices, materials or any process covered by letters of “**Patents**” or “**Copyrights**”, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Patents owner. A copy of the agreement shall be filed with the Concessioneing Authority.
- xxii) Intentionally left blank
- xxiii) The Concessionaire shall be entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to development, installation of services/ Equipments, maintenance and operation of the Project except Hemodialysis services. However, the Concessionaire shall be sole and primary person responsible to the Concessioneing Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its subcontractor, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of his obligations and liabilities under this Concession Agreement.
- xxiv) Labour: The Concessionaire shall make its own arrangements for the engagement of all its staff and labour, local or otherwise, and for their payment, housing, feeding and transport. The Concessionaire shall be solely responsible for the liability, cost, and responsibility for all the laws relating to labour employed by Concessionaire and for their conditions under this Article. However, it is being clarified here that the Concessionaire shall be under no obligation to recruit any or part of the staff and labour from amongst persons in the service of the Concessioneing Authority.
- xxv) Shall be solely and primarily responsible to Concessioneing Authority for observance of all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of their employees and agents and any person acting under or for and on behalf of the Concessionaire, the sub-contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees.
- xxvi) Shall be liable for and shall indemnify, protect, defend and hold harmless Concessioneing Authority, Concessioneing Authority's officers, SH&FWS, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs,

- expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this Concession Agreement and to comply with the provisions of Applicable Laws and Applicable Permits.
- xxvii) The Concessionaire shall acknowledge and recognise that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.
- xxviii) The Concessionaire shall not be authorised to incur any expenditure on behalf of the Concessioning Authority, or to enter into any commitment as agent of the Concessioning Authority, unless specifically and explicitly authorised by the Concessioning Authority under the terms of this Concession Agreement. The Concessionaire shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Concessioning Authority.
- xxix) The concessionaire shall provide all data, documents and information to concerned authority from time to time as prescribed during execution, operation and maintenance of Hemodialysis unit.
- xxx) Each Hospital shall facilitate the Concessionaire to obtain the commercial connection for electrical power and water for the Project Facility located in the Hospital. It is being agreed that the commercial connection shall be in the name of the Concessionaire and the Concessionaire undertakes to pay such invoices as and when due as per the prevailing rules. The Concessionaire shall set up a meter at its own cost to measure its power consumption, no later than on the Operations Date for said Project Facility. The Hospitals shall not be liable for power interruptions or insufficient power supply. The Concessionaire shall directly deal with the concerned government agency responsible for power and water supply to the concessionaire.
- xxxi) Notwithstanding the above, the Concessionaire shall be responsible to procure back-up systems at each Project Facility to maintain uninterrupted power at all times (in the event sufficient electrical power is not available) in order to comply with the Minimum Technical Requirements, including un-interruptible power supply configuration for the Equipment and alternate generation facilities.

7.2 Minimum Equity requirements

- a. The aggregate shareholding of the Joint Venture (JV) Members {in case of Joint Venture (JV)} or Associate/s (in case of Individual Bidder) in the issued and paid up equity share capital of the Concessionaire (*here the term "Concessionaire" connotes only the special purpose company as formed by the Joint Venture (JV) Members or the Single Bidder*) shall be not less than:
- (i) 76% till the issuance of Development Completion Certificate and
 - (ii) 51% during the Operation and Maintenance Period till the Transfer Date/ issuance of Concession Agreement Completion Certificate.
- b. In addition to the above obligations, the Lead Member of the Joint Venture (JV) i.e., Rahi Care Private Limited shall maintain a minimum equity component of 51% in the stipulated issued and paid up equity share capital of the Concessionaire as specified under Article 7.2(a)(i) and Article 7.2(a)(ii) respectively.
- c. At no stage shall any change in the Equity Components/ shareholding patterns be made by the Joint Venture (JV) Members or by any of the Associates without obtaining prior approval from Concessioning Authority. On an application made for the purpose, Concessioning Authority may permit the change of Equity Components/ shareholding patterns, provided Concessioning Authority is satisfied that the proposed changes shall be

in the interest of the Development of the Project in future and would not be detrimental to any of the rights or interests of the Concessions Authority. However, no such change in the Equity Components/ shareholding pattern shall be permitted by Concessions Authority, which would make the Joint Venture (JV) Members or Associates or the Concessionaire non-compliant with Articles 7.2(a) and 7.2(b) above.

- d. In case any such change in composition of Joint Venture (JV) has been agreed upon, the modified Joint Venture (JV) would be required to submit a revised Memorandum of Understanding to the Concessions Authority.
- e. The Concessionaire shall be mandatorily required to provide minimum 25% (twenty percent) of the Total Project Cost as promoters' contribution / equity in the Project.

ARTICLE 7A: OBLIGATIONS OF PARTIES

Each Party shall:

- a. Comply with and perform its respective obligations under this Concession Agreement and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party;
- b. Agree to innovation and modification of the Concession Agreement upon appointment of the Substitute Entity by Senior Lender in accordance with the Substitution Agreement that will be executed between the Senior Lenders, the Concessionaire and the Concessions Authority;
- c. Carry out their respective obligations during the Development Period and Operation & Maintenance Period.
- d. The Parties understand that the title to and ownership of the Project Facilities and other equipments shall at all times vest in the Concessions Authority and shall not under any circumstance whatsoever pass over or be deemed to pass over to the Concessionaire or Persons or any other Third Party claiming by, under or through the Concessionaire. The Equipments as installed by the Concessionaire shall be owned by the Concessionaire during the Concession Period and shall be transferred to the Concessions Authority upon the expiry or prior termination of the Concession Agreement.

ARTICLE 8: FREE PATIENT CELL

8.1 Constitution

Prior to issuance of the Development Completion Certificate, the Expert Committee shall form a Free Patient Cell wherein representative/s of the Concessioneing Authority, Confirming Party and concerned Zonal Hospital/Regional Hospital (hereinafter referred as "Official/s") shall be appointed.

The fees and expenses of the Official/s shall be borne by the Concessioneing Authority.

8.2 Role and Responsibility

The Cell shall be responsible for setting the guidelines for confirming the status of the patients as Free Patients as per the State Policy / Guidelines by checking all the relevant documents available with the patients, claiming to be a Free Patient.

The patients confirmed as Free patients shall be referred to the Project Facilities for free dialysis procedures and consumables. The Concessionaire shall ensure that the free patients are being treated at par with the general patients, without any delay and with the same quality.

8.3 Reimbursements

The Concessionaire shall have the right to claim reimbursements for the amount spent on the consumables and dialysis procedure for free patients. The Concessionaire shall submit a list of such patients with details of procedures conducted and amount as claimed for conducting the procedures within 7 days of the end of every month. The Concessioneing Authority shall, without any delay, reimburse the amount due within a period of 21 (Twenty One) days from the date of receipt of the bills from the Concessionaire.

ARTICLE 9: COMPLETION OF DEVELOPMENT

9.1 Development Completion Certificate

- a. The development work in this Concession Agreement shall not be considered to be completed until the Development Completion Certificate has been signed by the confirming party and delivered to the Concessions Authority and the Concessionaire, stating that the Concessionaire has completed its development obligations under the Concession Agreement to the confirming party's satisfaction.
- b. The Concessionaire shall conduct the commissioning and performance testing of Project facility. For Project Facility, upon successful completion of all commissioning and performance tests and upon obtaining all Permits required for the delivery of the Services in said Project Facility, the Concessionaire shall give notice to the Concessions Authority, and the Parties shall thereafter arrange for a joint inspection of the said Project Facility no later than 10 (ten) days following the Concessionaire's notice. If the Concessions Authority and confirming party are satisfied that the said Project Facility complies with the Minimum Technical Requirements and Schedules of this Concession Agreement, the Concessions Authority shall, within 28 (twenty eight) days, issue a Development Completion Certificate.
- c. In the course of joint inspection, the Concessions Authority and the Concessionaire shall draw up a list of minor defects and the schedule in which such minor defects shall be remedied by the Concessionaire. It is being agreed that all such minor defects shall have been remedied within 2 (two) months of the Operations Date for the said Project Facility. Failure to have remedied all defects within the agreed schedule shall constitute a Concessionaire Event of Default.
- d. The Concessions Authority would be required to issue the "Development Completion Certificate" after the Development has been completed in all respect and is ready to use.
- e. In pursuance to the issue of the Development Completion Certificate, the Concessionaire shall comply with all the obligations, wherein mentioned in the Concession Agreement, required to be met before and after the issuance of the Development Completion Certificate.

9.2 Development Completion Certificate not a Cessation of Liability

The issuance of the Development Completion Certificate under this Article shall not in any way:

- i) Alter the liabilities of the Concessionaire;
- ii) Constitute a waiver of unfulfilled obligations;
- iii) Bar remedy and rectification of defects; and
- iv) Constitute an acceptance of the Works.

But it shall be a milestone for reckoning the commencement of operations of the Project.

9.3 Rectification

If the Concessionaire is obliged to carry out adjustments, repairs, replacements or modifications after completion of development, the Concessions Authority shall permit the Concessionaire to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations, then such request shall only be granted if the Concessionaire's request is reasonable under all the

circumstances, having regard to the Concessing Authority's obligations to keep the operation of the Project open during all hours of the day.

ARTICLE 10: OPERATIONS AND MAINTENANCE PERIOD

10.1 Commencement and Duration

The Operation and Maintenance Period of the Project shall commence from the date of issue of Development Completion Certificate and terminate at the Transfer Date.

10.2 Obligations of the Concessionaire during Operations and Maintenance Period

In addition to what is provided elsewhere in this Concession Agreement, the Concessionaire shall have the following obligations and responsibilities during the Operations and Maintenance Period:-

- a. The Concessionaire shall be responsible, at his own cost, for the overall maintenance and management of Project Facility including:
 - i. Routine maintenance and repair works and minor alterations;
 - ii. Maintenance, repair and renewal/ replacement of the Equipments;
 - iii. Cleaning and sanitization of the Facilities and infectious disease control within the Facilities;
 - iv. Safety and security of persons and property within the Project Facility; and
 - v. The Concessionaire shall be responsible to procure back-up systems at each Project Facility to maintain uninterrupted services at all times, comply and observe all applicable laws/ rules/guidelines pertaining to pollution control, labor law, or any other relevant law of Central/State government as may be applicable from time to time for running the project.
- b. The Concessionaire shall perform and complete all services/ obligations, including all facilities management, regularly and diligently, in accordance with the (i) Minimum Technical Requirements, (ii) Good Industry Practices, and (iii) all other requirements and undertakings set out in this Concession Agreement and Schedules. The Concessionaire shall also be required to seek timely and obtain and maintain in effect and renew all Permits that may be required for the provision of any of the Services/ obligations.
- c. **Concessionaire's Reporting Obligation:** The Concessionaire shall submit to the Concessions Authority and Confirming Party the compliance reports in such numbers and frequency as required by Concessions Authority and Confirming Party of various standards as provided in schedules to the agreement. The form of the reports shall be agreed with the Concessions Authority and would substantially cover the specifications and indicators as described in the above mentioned schedules. Any reports required to be provided by the Concessionaire in respect of a time period pursuant to Schedules as aforesaid (whether monthly, quarterly or annual reports, or otherwise), shall be provided within ten (10) days of the end of such period. In the event that the Concessions Authority/ Confirming Party considers that a report has not been properly prepared or contains erroneous information or data, then he may serve a notice to that effect to the Concessionaire within thirty (30) days of receipt of such report expressing his objections. If the resolution of any objection made pursuant to this Article requires any revision or adjustment to any report, then the Concessionaire shall, as soon as practicable, issue a revised version of his report and such revised report shall for all purposes of this Agreement take the place of the original report.
- d. During the working hours of the Project, the Concessionaire shall be responsible for keeping the unauthorized persons off the Project Facilities, and authorized persons shall be limited to the employees of the Concessionaire and persons authorized by the Concessions Authority.
- e. The concessionaire shall ensure that disposal of biomedical waste shall be as per applicable statutory guidelines.

- f. The Concessionaire shall ensure to comply with the following “Service Level Specifications” and Key Performance Indicators as mentioned in Schedules and any modifications thereto as may be indicated by the Concessions Authority/ Confirming Party from time to time:

The Concessions Authority may impose, in consultation with the Concessionaire, other measurable service level indicators/ specifications from time to time.

- g. The Concessionaire shall maintain a complaint register to record grievances of any member of the public in relation to the operations of the Project Facilities. The Concessionaire shall clearly display on the signboard that the user may record the grievance in relation to the Project Facilities in the complaint register. The Concessions Authority, Confirming Party and the Expert Committee shall at all times have the right to inspect the complaint register.

h. Erection of Sign-Board

- i. The Concessionaire shall erect a signboard, of a size not less than 4 ft. by 8 ft, adjacent to the main entrance to the Project Facility in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall prominently display the following text in black upper case letters on a white/yellow background –

“This Project Facility is under Public Private Partnership (PPP) amongst; DoH&FW, Himachal Pradesh, SH&FWS and Rahi Care Dharamshala Private Limited from 10th February 2014 to 9th February 2021”.

- ii. The Concessionaire shall clearly display on a separate signboard the User Charges. The reference to User Charges would also specify the period for which the User Charges would be applicable and that the User Charges will not be changed without the prior written permission of the Concessions Authority.
- iii. The Concessionaire shall clearly display on the signboard that a complaint register is being maintained by the Concessionaire and that any user may record or register his grievance/complaint in the complaint register on any aspect related to the Hemodialysis unit.
- iv. The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

- i. The Concessionaire shall be responsible, at its own cost, for the rectification and replacement of faulty or non-working Equipments, during the entire Concession Period.
- j. The Concessionaire shall maintain and renew, at its own expense, insurance policies as may be required to be maintained, by the Senior Lenders, under Applicable Laws and such insurances that are necessary or desirable to cover the Operations and Maintenance Period.
- k. Carry out its obligations/duties with regard to the operation and maintenance of the Project in accordance with the Schedules, and Performance Standards. The obligations shall include all works which is necessary to satisfy the Schedules, and Performance Standards or is implied by this Concession Agreement, or arises from any obligation of the Concessionaire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;

- l. Operate and maintain the Project and all its components, including maintaining necessary records, for the periods stipulated hereinafter, as per the Performance Standards set out, and shall remedy any defects within the Concession Period. The Concessionaire shall provide all superintendence, labour, materials, equipment, and all such other things for such operation and maintenance (including remedying of defects).
- m. The Concessionaire shall at its cost, carry out such periodic inspections, preventive maintenance as described in O & M Manual as well as assist Concessioneing Authority and Confirming Party or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test/s shall be borne by the Concessionaire.
- n. The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations.
- o. The Concessionaire shall ensure general upkeep of the Project Area in accordance with the development envisaged.
- p. **Medico-Legal Cases:** In the event of Medico-Legal Cases, the Concessionaire shall submit a preliminary report to the Concessioneing Authority's Representative and Hospital's Representative in relation to the relevant Patient. The Hospital shall then prepare and sign a final report for which it will be responsible. Any judicial obligation to participate in legal proceedings as a witness or expert relating to a Medico-Legal Case shall consequentially be the responsibility of the Hospital, except where expressly required otherwise by a court. For the avoidance of doubt, the Concessionaire shall be responsible for all the services rendered by it. Further it is expressly clarified here that the Concessionaire shall be liable for any cases/ allegations of medical negligence as well as solely responsible for vicarious liability arising due to any/ all services rendered by the Concessionaire to any/ all category (ies) of patients.

10.3 Operations & Maintenance Manual (O&M Manual)

- a. The Concessionaire shall prepare and evolve, not later than 90 (ninety) days prior to the Scheduled Operations Date, a draft Operation and Maintenance Manual ("**O&M Manual**") providing the detailed plan for regular and preventive maintenance of the Project. The Concessionaire shall at its cost, provide within 21 (twenty-one) days of its finalisation, submit the draft of the O&M Manual to the Concessioneing Authority and Confirming Party for its review. The O&M Manual will become final only after it has received the final approval of the Concessioneing Authority and Confirming Party. Within a period of 30 (thirty) days from the date of receipt of the O&M Manual, the Concessioneing Authority shall revert to the Concessionaire with its comments and suggestions (if any) on the O&M Manual, which shall be implemented and the O&M Manual shall be re-submitted for approval of the Concessioneing Authority. If the Concessioneing Authority fails to approve the re-submitted O&M Manual within 10 (Ten) days of the re-submission, it will be considered as deemed approval of the O&M Manual

ARTICLE 11: CONCESSION AGREEMENT COMPLETION CERTIFICATE

- (a) Within 90 (ninety) days of the end of the Concession Period, Concessioneing Authority shall issue the "Concession Agreement Completion Certificate", which concludes the Concessionaire's liability under this Concession Agreement. This certificate shall be issued after the Concessionaire submits to Concessioneing Authority, a request for issue of such certificate. The form shall be as approved by Concessioneing Authority, and shall include a detailed condition survey of the Project Facility.
- (b) On the successful expiry of the Concession Period, the Concessionaire shall prepare a detailed inventory of all Project Facilities (including immovable assets/ mpveable assest /Equipments). The detailed inventory shall be submitted to the Concessioneing Authority within 15 days of the expiry of the Concession Period. However, on sooner/ pre-mature termination of the Concession Agreement/ Concession Period, the Concessionaire shall also prepare the detailed inventory of the project facilities, which shall also revert back to Concessioneing Authority/ Hospitals.
- (c) The Performance Security furnished by the Concessionaire shall be released only after the issuance of the Concession Agreement Completion Certificate.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of the Concessing Authority

The Concessing Authority represents and warrants to the Concessionaire that:

- (i) The Concessing Authority has full power and authority to execute, deliver and perform its obligations under this Concession Agreement and to carry out the transactions contemplated hereby;
- (ii) The Concessing Authority have taken all necessary action to authorize the execution, delivery and performance of this Concession Agreement ;
- (iii) This Concession Agreement constitutes a legal, valid and binding obligation enforceable against the Concessing Authority in accordance with the terms hereof;
- (iv) The Concessing Authority is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Concession Agreement;
- (v) The Concessionaire shall have complete, lawful and uninterrupted Site Possession of the Project Site by way of license in accordance with this Concession Agreement;
- (vi) All information provided by the Concessing Authority in the RFP document in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- (vii) The Concessing Authority has the financial standing and capacity to perform its obligations under the Concession Agreement.

12.2 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessing Authority that:

- i) It is duly organised, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- ii) It has full power and authority to execute, deliver and perform its obligations under this Concession and to carry out the transactions contemplated hereby;
- iii) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Concession Agreement;
- iv) It has the financial standing and capacity to undertake the Project;
- v) This Concession constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- vi) It is subject to civil and commercial laws of India with respect to this Concession and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- vii) All the information furnished in the Concessionaire's Bid/Proposal is, and shall be, true and correct as on the Proposal Acceptance Date & throughout the Concession Period/ subsistence of the Concession Agreement and the Balance Sheet and Profit and Loss

Account of the Concessionaire for each of the Financial Years after the Proposal Acceptance Date furnished to the Concessions Authority shall give true and fair view of the affairs of the Concessionaire. If in case any false or misleading information, as furnished by the Concessionaire (as a Bidder) in its Bid/Proposal, is found at a later stage after the signing of the Concession Agreement, it shall entitle Concessions Authority to terminate the said signed Concession Agreement between the Parties. The costs and risks for such termination shall be entirely borne by the Concessionaire.

- viii) It shall furnish a copy of the audited accounts of the Concessionaire within 180 (one hundred and eighty) days of the close of each Financial Year after the Proposal Acceptance Date and any material change subsequent to the date of such accounts shall be notified to the Concessions Authority by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- ix) The execution, delivery and performance of this Concession Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- x) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Concession or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Concession Agreement;
- xi) The Concessionaire has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Competent Authority which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Concession Agreement;
- xii) The Concessionaire has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other Civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Concession Agreement;
- xiii) The aggregate equity share holding of the Joint Venture (JV) Members and their Associates (in case of a Joint Venture (JV)) or equity share holding of the Associates (in case of individual bidder) in the issued and paid up equity share capital of the Concessionaire are in accordance with the requirements stipulated in Article 7.2. ;
- xiv) Each Joint Venture (JV) Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has consented to the Concessionaire entering into this Concession and has agreed to and unconditionally accepted the terms and conditions set forth in this Concession Agreement;
- xv) All rights and interests of the Concessionaire in the Project shall pass to and vest in the Concessions Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Concessionaire or the

Concessions Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Concession Agreement;

- xvi) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Concessions Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- xvii) The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of commission or otherwise for securing the Concession or entering into of this Concession Agreement or for influencing or attempting to influence any officer or employee of the Concessions Authority.

12.3 Obligation to Notify Change

In the event that any of the representations or warranties made/ given by the Concessionaire ceases to be true or stands changed, it shall promptly notify Concessions Authority of the same.

ARTICLE 13: VARIATIONS

13.1 Initiated by the Concessing Authority

- a. Variations may be initiated by Concessing Authority at any time during the Concession Period, either by instruction or by a request for the Concessionaire to submit a proposal. The Concessionaire shall not make any alteration or modification of the Works, unless and until Concessing Authority instructs or approves a Variation. If the Development/ Operation and Maintenance Procedures are not in accordance with this Concession Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.
- b. If Concessing Authority requests a proposal, prior to instructing a Variation, the Concessionaire shall submit as soon as practicable:
 - i) A description of the proposed work to be performed and a programme for its execution.
 - ii) The Concessionaire's proposal for any necessary modifications to the Equipments and,
 - iii) The Concessionaire's proposal for adjustment to the Concession Period, Time for Completion of Development and/ or modifications to this Concession Agreement.
- c. Concessing Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments. If Concessing Authority instructs or approves a Variation, it shall proceed in accordance with Article 13.3 to agree or determine adjustments to the Concession Period.

13.2 Initiated by Concessionaire

- a. The Concessionaire may, at any time during the Concession Period, initiate a Variation, by submitting to Concessing Authority a written proposal which in the Concessionaire's opinion will reduce the cost of Development, maintaining or operating the Works, or improve the efficiency or value to the Concessing Authority of the completed Works, or otherwise be of benefit to the Concessing Authority or to rectify a divergence between any law or directive and the Performance Standards. Any such proposal shall be prepared at the cost of the Concessionaire and shall include the items listed in Article 13.1 b.
- b. Concessing Authority shall, as soon as practicable after receipts of such proposals respond with approval, rejection or comments. If Concessing Authority approves a Variation, it shall proceed in accordance with Article 13.3 to agree or determine adjustments of the Concession Period.

13.3 Concessing Authority's Determination

- a. When Concessing Authority is required to determine the adjustment (increase or decrease) to the Concession Period, it shall consult with the Concessionaire in an endeavour to reach agreement within 30 (thirty) days of the receipt of notice wherein the Concessing Authority is required to determine such adjustment to the Concession Period. The Concessing Authority's determination on adjustment of the Concession Period shall be intimated to the Concessionaire within 30 (thirty) days of the date of receipt of the notice requesting any such adjustment.
- b. If the Concessionaire disputes Concessing Authority's determination of adjustment to the Concession Period, the matter shall be referred to the Expert Committee in accordance with the following provisions:

- (i) If the Concessionaire disagrees with the adjustment determined by Concessioneing Authority it shall give notice in writing of its intention to Concessioneing Authority, as soon as may be reasonable and in any event within 7 (seven) days after receipt of notice of the adjustment and thereafter within a further period of 7 (seven) days to notify the Expert Committee of such dispute.
- (ii) The Expert Committee upon receipt of a notice under this Article shall require Concessioneing Authority to furnish to the Expert Committee all the reasons, records and documents based upon which Concessioneing Authority had determined the adjustment.
- (iii) The Concessionaire shall permit the Expert Committee to inspect all records and shall supply him with copies thereof and with all such further information as and when the Expert Committee shall so require.

13.4 Adjustment of the Concession Period

- a. The Concession Period shall not be adjusted for changes in the cost of labour, materials or other matters. The Concession Period shall only be adjusted as expressly and explicitly stated in the Articles to this Concession Agreement and there shall be no other implied adjustments for any other reasons whatsoever.
- b. Subject to the Change in Law, the Concessionaire shall pay all applicable taxes, duties, levies, as per the Applicable Laws.
- c. If the Concessionaire suffers (or will suffer) delays or incurs (or will incur) additional costs or loss in revenue resulting from such Changes in Law, made after the Proposal Acceptance Date, the Concessionaire shall give notice to the Concessioneing Authority. After receipt of such notice Concessioneing Authority shall proceed in accordance with Article 13.3 to agree or determine any adjustment to the Concession Period to which the Concessionaire is entitled, and shall notify the Concessionaire accordingly. The Concession Period shall be adjusted taking into account any increase or decrease in the costs resulting from Changes in Law specifically in relation to the Project, made after the Proposal Acceptance Date.
- d. The guiding principle in the operation of this Article shall be so as to place the Concessionaire in subsequently the same legal, commercial and financial position as it was prior to such Change in Law.

ARTICLE 14: TERMINATION FOR DEFAULT

14.1 The Concessing Authority Events of Default

Each of the following events or circumstances, to the extent not caused by a default of the Concessionaire or Force Majeure, and if not cured within the Cure Period, which shall be 60 (sixty) days (unless provided otherwise in this Concession Agreement), from the date of notice of default (the "Default Notice") from the Concessionaire, shall be considered for the purpose of this Agreement as events of default of the Concessing Authority ("the Concessing Authority Event of Default"):

- i) The Concessing Authority is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessionaire or the Project and this breach is not cured within a Cure Period of 60 days from the date of Default Notice.
- ii) The Concessing Authority is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- iii) GoHP or any Competent Authority have by an act of commission or omission created circumstance that has a Material Adverse Effect on the Concessionaire, and the Concessing Authority has failed to compensate the Concessionaire for the same through an adjustment to the Concession Period.

14.2 Termination by Concessionaire

Without prejudice to any right or remedy, which the Concessionaire may have under this Agreement, upon occurrence of a Concessing Authority Event of Default, the Concessionaire shall be entitled to issue a Termination Notice to the Concessing Authority. The Termination Notice shall grant the Concessing Authority a further period of 30 (thirty) days (the "Termination Period") to make a representation, and if, during the Termination Period the Concessing Authority takes suitable steps to remedy the situation, the Concessionaire shall be entitled to withdraw the Termination Notice. If the Termination Notice is not withdrawn within the Termination Period, this Concession Agreement will automatically terminate on the expiry of the Termination Period.

14.3 Concessionaire Event of Default

Each of the following events or circumstances, to the extent not caused by a default of the Concessing Authority or Force Majeure, and if not cured within the "Cure Period" which shall be 60 (sixty) days from the date of notice of default (the "Default Notice") from the Concessing Authority, shall be considered for the purpose of this Agreement as Events of Default of the Concessionaire ("Concessionaire Events of Default"):

- i) The Concessionaire is in breach of its obligations under this Concession Agreement, which has a Material Adverse Effect upon the Concessing Authority or the Project.
- ii) The Concessionaire is in breach of any representation or warranty made under this Agreement or it repudiates this Concession Agreement.
- iii) The Concessionaire fails to meet the progressive milestones or amendments thereto as provided for in this Concession Agreement.

- iv) The Concessionaire abandons the Project or any of its material obligations as provided under this Agreement.
- v) The Concessionaire fails to maintain Performance Security under Article 5.2 or any replenishment or furnishing of fresh Performance Security in the event of partial appropriation by the Concessions Authority.
- vi) The Concessionaire fails to install the prescribed Equipments within the Development Period
- vii) The Concessionaire does not comply with its Minimum Equity requirements under Article 7.2.
- viii) A Senior Lender recalls its loan under the Financing Documents on the ground that the Concessionaire has defaulted on its obligations to the Senior Lender under the Financing Documents.
- ix) Any transfer pursuant to law of either (a) the rights and/or obligations of the Concessionaire under this Concession Agreements and/ or (b) all or material part of the assets or undertaking of the Concessionaire; except (i) to the extent permitted by this Concession Agreement or (ii) where any such transfer, in the reasonable opinion of the Concessions Authority, does not affect the ability of the Concessionaire to perform its obligations under this Concession Agreement.
- x) In the event a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- xi) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- xii) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and Project Agreements, and provided that:
 - (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under the this Agreement and Project Agreements;
 - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Concessionaire as on the Compliance Date;
 - (c) And all the Project Agreements remain in full force and effect;
- xviii) The Concessionaire assigns this Concession Agreement or any of its rights or obligations under the Concession Agreement, where such assignment is not in accordance with the terms and conditions of the Concession Agreement.

14.4 Termination by Concessions Authority.

Without prejudice to any other right or remedies which the Concessing Authority may have under this Agreement, upon occurrence of a Concessionaire Event of Default, the Concessing Authority shall be entitled to terminate this Agreement by following the procedure set forth hereinafter:

- a. The Concessing Authority shall be entitled to issue a Termination Notice to the Concessionaire. The Termination Notice shall grant the Concessionaire 30 (thirty) days (the "Termination Period") to make a representation, and if, during the Termination Period the Concessionaire takes suitable steps to remedy the default/ situation, the Concessing Authority shall be entitled to withdraw the Termination Notice.
- b. If the Termination Notice is not withdrawn within the Termination Period, the Concessing Authority shall send a copy of the Termination Notice to the Senior Lender, thereby granting the Senior Lender a 30 (thirty) day "Suspension Period" in accordance with the terms of the Substitution Agreement. During the Suspension Period, the Senior Lender may exercise its Step-In Rights in accordance the Substitution Agreement such that the Senior Lender may nominate an 'Additional Obligor'. In the Step-In Period, the Senior Lender may procure that the default stated in the Termination Notice is cured, and upon the curing of the default, the Concessing Authority shall withdraw its Termination Notice and grant permission to the Concessionaire to resume its work under the Concession Agreement.
- c. The Suspension Period may be extended up to a maximum of 180 (One hundred and eighty) days at the request of the Senior Lender.
- d. During the Suspension Period the Senior Lender may request the Concessing Authority to replace the Concessionaire with a "Substitute" named by the Senior Lender, who shall be a Person capable of discharging the roles and responsibilities of the Concessionaire under the Concession. Upon receipt of such a request the rights and obligations of the Concessionaire under the Concession Agreement shall be assigned to the substitute, who shall step into the shoes of the Concessionaire from the date of the assignment.
- e. If, upon receipt of a copy of the Termination Notice, the Senior Lender fails to exercise its rights under this Article 14.4 and procure that either:-
 - (i) The Concessionaire Event of Default is cured within the Suspension Period, or
 - (ii) The Concession is assigned under Article 14.4 (d) to a Substitute Entity capable of discharging the roles and responsibilities of the Concessionaire,

The Concessing Authority shall be entitled to terminate this Concession Agreement with no liability of the Concessionaire or the Senior Lender save and except as provided in Article 15 hereof.

ARTICLE 15: CONSEQUENCES OF TERMINATION

15.1 Termination Payment for Termination by Concessionaire

- a. Upon termination by the concessionaire on account of the concessioning authority event of default under Article 14.1 and 14.2, the concessionaire shall be entitled to receive from the Concessioning Authority by the way of termination Payment a sum equal to the lowest of the following (i) or (ii) :

i) 100% of book value of the Project Assets based on historic investment (net of depreciation) created by concessionaire less intangible assets. It is specially clarified here that the cost of original assets would not include the cost of original project facility which was provided to Concessionaire.

Or

ii) 100% of debt due less pending insurance claims.

In addition to this, the performance security shall be released by the Concessioning Authority.

- b. All payments due to concessionaire as calculated under article 15.1 shall be made within 30 (Thirty) days of termination of the Concession Agreement.

15.2 Termination Payment for Termination by Concessioning Authority

- a. Upon termination by the concessioning authority on account of the concessionaire event of default, the concessionaire shall not be entitled to receive any Termination Payment during development period. However, during operation and maintenance period, the concessionaire shall be entitled to receive from the Concessioning Authority by the way of termination payment a sum equal to the lowest of the following:

i) 75% of book value of Project Assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the concessionaire.

or

ii) 75% of debt due less pending insurance claims.

In addition to the above stated, the concessioning authority shall also forfeit the performance security.

- b. if the termination by the Concessioning Authority is on account of the concessionaire's failure to achieve financial close obligations the Concessioning authority shall forfeit the entire amount of the performance security.

15.3 Rights and obligations upon Termination

- a. Upon Termination of this Agreement, the Concessioning Authority shall:-

(i) Take possession and control of the Project forthwith;

- (ii) Take possession and control of all Equipments and Machinery, Materials, stores and equipment on or about the Project Site;
 - (iii) Require the Concessionaire to comply with the provisions relating to the Transfer of Project under Article 23; and
- b. Upon Termination of this Agreement it shall be the responsibility of the Concessionaire to do the following:-
- (i) Hand over the works to the Concessioneing Authority in accordance with the provisions laid down under Article 23.
 - (ii) Provide all relevant data, design and drawings, records and information accedes to all reasonable requests from the Concessioneing Authority in connection with taking over the Project.
 - (iii) Cease all further Works, except for such essential Works as may be necessary and as instructed by Concessioneing Authority, for the purpose of making safe, protecting or continuing operations on the Project.
 - (iv) Hand over all the Design Documents.
 - (v) repatriate all its staff and labour from the Project Site, except for such essential equipment, staff and labour as may be necessary and as instructed by Concessioneing Authority, for the purpose of making safe, protecting or continuing operations on the Project, and
 - (vi) Co-operate with the Concessioneing Authority and the substitute entity nominated by the senior lenders and complies with all reasonable requests thereof, including the execution of any documents and other actions.

ARTICLE 16: FORCE MAJEURE

16.1 Force Majeure Event

In this Concession Agreement, "Force Majeure" means an event occurrence in India of any or all of the Non-Political Force Majeure Event, Indirect Political Force Majeure Event and Political Force Majeure Event described in Articles 16.2, 16.3 and 16.4 respectively hereinafter which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Concession Agreement and which act or event:-

- (i) Is beyond the reasonable control of and not arising out of the fault or negligence of the Affected Party or the failure of such Party to perform its obligations hereunder;
- (ii) The Affected Party has been unable to prevent by the exercise of due diligence and reasonable efforts, skill and care and
- (iii) Has a Materially Adverse Effect on the Project.

16.2 Non-Political Force Majeure Events

For the purposes of Article 16.1, Non-Political Force Majeure Events shall mean one or more of the following acts or events:

- i) Acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, , earthquakes, , , landslides, , floods, volcanic eruptions (to the extent originating from a source external to the Project Facility or not designed for in Development Works);
- ii) Radioactive contamination or ionising radiation;
- iii) Strikes or boycotts (other than those involving the Concessionaire, Contractors, or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 16.3;
- iv) Any judgement or order of any court of competent jurisdiction or statutory authority in India made against the Concessionaire in any proceedings for the reason other than failure of the Concessionaire to comply with any Applicable Law or Clearances or on account of breach thereof, or of any contract, or enforcement of this Concession Agreement or exercise of any of its rights under this Concession Agreement by the Concessioneing Authority; or
- v) Any other event or circumstance of a nature analogous to the foregoing, to the extent that insurance is available at a reasonable cost to cover the occurrence of any of the natural events. The Concessionaire will ensure that it has insured itself against such risks.

16.3 Indirect Political Force Majeure Event

For the purposes of Article 16.1, Indirect Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Concessioneing Authority, GoH, GoI or any other Competent Authority:

- i. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, unexpected call up of armed forces, blockade, embargo, rebellion, riot, religious strife, bombs or civil commotion, sabotage, terrorism which prevents collection of User

Charges by the Concessionaire for a period exceeding a continuous period of 7 (seven) days in an Accounting Year;

- ii. Industry wide or state wide or India wide strikes or industrial action for a period exceeding a continuous period of 7(seven) days in an Accounting Year; or
- iii. Any public agitation which prevents collection of User Charges by the Concessionaire for a period exceeding a continuous of 7 (seven) days in an Accounting Year.

16.4 Political Force Majeure Event

For the purposes of Article 16.1, Political Force Majeure Events shall mean one or more of the following acts or events by or on account of the Concessions Authority, GoHP, GoI or any other Competent Authority:

- i) Expropriation or compulsory confiscation, by any Competent Authority of any Project Assets or rights of the Concessionaire or of the Contractors; or
- ii) Any unlawful or unauthorised or without jurisdiction, revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire or any of the Contractors to perform their respective obligations under the Project Agreements (other than a consent, the obtaining of which is a condition precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any contractor's inability or failure to comply with any condition relating to the grant, maintenance or renewal of such consents or permits.

16.5 Exceptions Applicable to the Concessionaire

The Concessionaire shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement other than the circumstances resulting from an event of Force Majeure:-

- (a) Delay in performance by the Concessionaire, Subcontractor(s), agents and employees of the Concessionaire; or
- (b) Breakdown or ordinary wear and tear of materials, equipment machinery or parts relating to the Project.

16.6 Exceptions Applicable to the Concessions Authority

The Concessions Authority shall not have the right to consider any of the following circumstances to be an event of Force Majeure that would suspend the performance or excuse the non-performance of its obligations under this Concession Agreement:

- a) the expropriation, confiscation, nationalisation or requisition of the Project, Project Assets by the Concessions Authority;
- b) the imposition of any blockade, embargo, import restrictions, rationing or allocation by the Concessions Authority or any Competent Authority; or
- c) any delay or difficulty in handing over the Project Facility as a result of any intervention or directive of the Concessions Authority or any Competent Authority.

16.7 Effect of Force Majeure before the issue of Notice to Commence

Upon occurrence of any Force Majeure Event prior to the issuance of the Notice to Commence, the following shall apply:

- i) There shall be no Termination except as provided in Article 16.10.
- ii) The Compliance Date shall be extended by the period of which such Force Majeure event shall subsist and
- iii) The Parties shall bear their respective costs arising out of such Force Majeure Event.

16.8 Effect of Force Majeure after Compliance Date

Upon occurrence of any Force Majeure Event after the Compliance Date, the following shall apply:

- i) There shall be no Termination of this Concession Agreement except as provided in Article 16.10.
- ii) Where the Force Majeure Event occurs before the issue of Development Completion Certificate or Provisional Certificate, the dates set forth in the Design Documents and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist;
- iii) Where the Force Majeure Event occurs after the issuance of Development Completion Certificate, the Concessionaire shall make all reasonable efforts to collect Project Revenues, but if he is unable to collect Project Revenues during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof and
- iv) All cost arising out or concerning such Force Majeure Event shall be borne in accordance with provisions of Article 16.9.

16.9 Allocation of costs during the subsistence of Force Majeure

Upon occurrence of a Force Majeure Event after Compliance Date, the cost arising out of such event shall be allocated as follows:

- i) When the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any cost arising out of any such Force Majeure Event;
- ii) Where the Force Majeure Event is an Indirect Political Event, the costs attributable to such Force Majeure Event and directly relating to the Project (the Force Majeure Costs) shall be borne by the Concessionaire to the extent of Insurance Cover, and to the extent Force Majeure Costs as duly certified by the Statutory Auditors exceed the Insurance Cover, one half of the same shall be reimbursed by the Concessions Authority to the Concessionaire within 120 (one hundred and twenty) days from the date of receipt of Concessionaire's claim therefore;
- iii) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and duly certified by the Statutory Auditors shall be reimbursed by the Concessions Authority to the Concessionaire in one lump sum not later than 120 (one hundred and twenty) days after the end of the Force Majeure Event and receipt of notice by the Concessions Authority to that effect.

16.10 Termination Notice

If the Force Majeure Event subsists for a period of 270 (two hundred seventy) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Concession Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever save and except as per the provisions of Article 16.11.

16.11 Termination Payments for Force Majeure Events

Upon termination of this concession agreement pursuant to Article 16.10, termination payments to the concessionaire shall be made in accordance to the following:

- i. If the termination is on account of Non Political Event, the concessionaire shall be entitled to receive from the concessioning authority a sum equal to the lowest of the following a or b:
 - a. 90% of book value of project assets based on historic investment (net of depreciation) created by the concessionaire less intangible assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Concessionaire.
 - or
 - b. 90% of debt due less pending insurance claims
- ii) If the Termination of this Concession is on account of an Indirect Political Event, the Concessionaire shall be entitled to receive from the Concessioning Authority by the way of Termination Payment a sum equal to lowest of the following a or b:
 - a. 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Concessionaire.
 - Or
 - b. 100% of debt due less pending insurance claims
- iii) If the Termination of this Concession is on account of a Political Event, the Concessionaire shall be entitled to receive from the Concessioning Authority by the way of Termination Payment a sum equal to lowest of the following a or b:
 - a. 100% of Book Value of Project Assets based on historic investment (net of depreciation) created by the Concessionaire less Intangible Assets. It is specially clarified here that the cost of project assets would not include the cost of original project facility which was provided to the Concessionaire.
 - Or
 - b. 100% of debt due less pending insurance claims

16.12 Termination Payments

The Termination Payments pursuant to the Article 16.11 shall become due and payable to the Concessionaire by the Concessioning Authority upon actual or constructive transfer of the Project Assets by the Concessionaire to the Concessioning Authority free from all Encumbrances, charges and liens whatsoever, unless expressly directed by the Concessioning Authority otherwise.

16.13 Mode of Payments

Payments of compensation and costs by the Concessioneing Authority pursuant to this Article 16 shall constitute valid discharge of the Concessioneing Authority's obligations for Termination Payments hereunder.

16.14 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution procedure as under Article 17, provided however that the burden of proof as to the occurrence or existence of such Force Majeure event shall be upon Party claiming relief and/or excuse on the account of such Force Majeure Event.

16.15 Liability for other losses, damages etc.

Save and except as expressly provided in this Article neither party hereto shall be liable in any manner whatsoever to other Party in respect of any loss, damage, cost, expense, claims, demand and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article.

16.16 Duty to Report

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

- i) The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew or ought reasonably to have known of its occurrence and the probable Material Adverse Affect that the Force Majeure Event is likely to have occurred on the performance of its obligations under this Concession Agreement.
- ii) Any notice pursuant to this Article 16.16 shall include full particulars of:
 - (a) The nature and extent of each Force Majeure Event under this Article 16 with evidence in support thereof;
 - (b) The estimated duration and effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Concession Agreement;
 - (c) The measure which the Affected Party is taking or proposes to take to alleviate the impact of such Force Majeure Event; and
 - (d) Any other information relevant to the Affected Party's Claim.
- iii) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 16.16, and such other information as the other Party may reasonably request the Affected Party to provide.

16.17 Excuse from performance of obligations

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

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

ARTICLE 17: DISPUTE RESOLUTION

17.1 Dispute Resolution

Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever regarding the validity, interpretation, implementation or the rights and obligations arising out of, or in relation to, or howsoever arising under or in relation to this Concession Agreement between the Parties and so notified by either Party to the other Party (the “**Dispute**”) shall be subject to the dispute resolution procedure set out hereinafter.

17.2 Direct discussion between the Parties

The Parties agree that any Dispute that may arise between them shall be first submitted for direct discussion between the Parties. For this purpose, the notice of Dispute (the “**Notice of Dispute**”) sent by one Party to the other Party under Article 17.1 shall be considered an invitation for direct discussion, and it should specify a reasonable time and venue for conduct of the negotiation proceedings. In addition, the Notice of Dispute shall specify the basis of the Dispute and the relief sought. In the direct discussion proceedings, each Party shall be represented by officials or employees with sufficient knowledge and authority over the subject matter of the Dispute in order for the discussion to be meaningful. At the discussion proceedings, the Party that has given the Notice of Dispute shall present an offer of a settlement, which may form that starting point of discussions between the two Parties during the discussion proceedings.

17.3 Adjudication by Authority

In the event that the parties are unable to resolve the Dispute through Direct Discussion under Article 17.2, the Parties shall refer the dispute to sole arbitrator duly appointed by Principal Secretary, Health, Govt. of Himachal Pradesh. The award of such arbitrator shall be final and binding on the parties thereto. Arbitration and Conciliation Act 1996 & rules made thereunder as amended from time to time shall be applicable to such arbitration proceedings.

17.4 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Clause. The provisions for dispute settlement shall be binding upon the successors, assigns and any trustee or receiver of either the Concessions Authority or the Concessionaire.

ARTICLE 18: SUBCONTRACTORS

18.1 General

18.1.1 The Concessionaire may enter into Subcontracts with the Concessioneing Authority's prior approval, which shall not be unreasonably withheld or delayed if the proposed Subcontractor possesses sufficient skills, reputation and resources in the circumstances to undertake such obligations (and any Subcontract entered into by the Concessionaire without such Concessioneing Authority's approval shall be deemed to be a Concessionaire Event of Default).

18.1.2 The Concessionaire shall ensure that any and all Subcontracts contain the following provisions:

- (a) provisions enabling the rights and obligations of the Concessionaire under that contract to be novated or assigned (free of charge) to the Concessioneing Authority upon Concessioneing Authority's written request in the event this Agreement is terminated;
- (b) provisions imposing on the Subcontractor insurance requirements, including professional liability requirements, in accordance with Good Industry Practice; and
- (c) provisions undertaking a confidentiality obligation similar to the one set out for the Concessionaire in this Concession Agreement.

18.1.3 Notwithstanding any consent or approval of the Concessioneing Authority to such Subcontract and/or such Subcontractor:

- (a) the Concessionaire shall in no way be relieved of any of its obligations under this Agreement due to the existence or performance of any Subcontract by any Subcontractor, and
- (b) the consent or approval given by the Concessioneing Authority shall not create any responsibility or liability of the Concessioneing Authority to any Subcontractor, and the Concessionaire shall indemnify and hold harmless the Concessioneing Authority against any liability, claim, suit or other proceeding arising as a result of any Subcontract or of the relationship between the Concessionaire and any Subcontractor.

18.2 Intentionally left blank

ARTICLE 19: EXPERT COMMITTEE

19.1 Appointment

- (a) The SH&FWS i.e. confirming Party shall have the power of supervision over the working of the Project and the Project deliverables. The Concessioneing Authority, in consultation with Confirming Party, shall also constitute an Expert Committee (the “**Expert Committee**”) comprising of domain experts from DoH&FW, SH&FWS and public to periodically monitor the Project deliverables.
- (b) The Concessioneing Authority will coordinate the meetings of the Expert Committee. The Expert Committee shall consist of the following members
- a. Representative of the Concessioneing Authority;
 - b. Representative of the Confirming Party ;
 - c. 2 (two) domain experts from medical college/ hospital,
 - d. Representative(s) from the Concerned Zonal Hospital(s) / Regional Hospital
 - e. Representative of the Concessionaire.
 - f. Any other Representative

The representative of the Concessioneing Authority shall act as the Convenor of the Expert Committee. Wherever possible, the Expert Committee shall act by consensus. If consensus is not reached, it shall act by voting, and if there is a tie in such voting, the representative of the Concessioneing Authority shall have the casting vote.

19.2 Powers and Duties

- a. The Expert Committee shall have the powers and duties set out in this Concession Agreement or any other powers required for the proper development, operation and maintenance of the Project, including, (without limitation):
- i) Compliance to the O & M Manual
 - ii) Review the Concessionaires periodic reports;
 - iii) Review and verify the Development of Variations;
 - iv) Approve any improvements or modifications (that are not Variations) proposed by any of the members of the Expert Committee ;
 - v) Review Performance Security requirements;
 - vi) Any other matter which it deem necessary for the Development, operation or maintenance of the Project;
 - vii) Review and take actions on matters arising out of the Complaints Register.
 - viii) Impose penalties on the Concessionaire as stipulated in the Concession agreement.
 - ix) Since the outputs in terms of transportation, treatment and disposal of Biomedical Waste are the prime deliverables of the entire Project, the Expert Committee would evaluate the efforts and outputs of these activities by the Concessionaire.

- x) Review and decide on matters/ information as furnished by the SH&FWS and monitor the Project deliverables.
 - xi) Monitor the actual implementation of the Project by measuring the Key Performance Indicators achieved by the Concessionaire.
- b. The Expert Committee shall have the power to appoint Expert or Specialist Person in any area required, for a review of the operation, maintenance and planning of the Project. Such persons shall act as an "Expert", whose expert professional opinion, once confirmed by the Expert Committee shall be binding on the Parties and the Expert Committee.
- c. Without limitation to the generality of the foregoing Articles, the Expert Committee shall have the power to appoint a valuer/ Independent Auditor as an Expert to undertake and determine the adjustment of Concession Period.
- a. The Concessionaire and the Concessions Authority shall extend full co-operation to the Expert Committee and to any Expert appointed by the Expert Committee. All the expenses of the Expert Committee shall be borne by the Concessions Authority.
- b. The Expert Committee shall meet at least once every quarter of the calendar year at such time & venue as may be indicated by the Convenor and notified to all the members of the Expert Committee at least 14 (fourteen) days before the date of the meeting.

ARTICLE 20: FINANCING AND LENDER'S RIGHTS

The Concessioneing Authority hereby agrees that it shall enter into a Substitution Agreement as given Schedule 7 with the Senior Lender and the Concessionaire thereby shall grant the Senior Lender certain rights in the event of 'Termination by the Concessioneing Authority' as set out in Article 14.4. The Concessioneing Authority further confirms to the Concessionaire that it can represent to the Senior Lenders that the Concessioneing Authority has agreed to be bound by the terms and conditions specified therein.

ARTICLE 21: TAXATION AND CONFIDENTIALITY

21.1 Local Taxation

- a. The Concession Agreement shall include all charges towards import licence, toll, customs duties, import duties, business taxes, etc., that may be levied in accordance with the Applicable Laws as on the Proposal Acceptance Date in India on the Concessionaire's Equipment, Machinery and Materials (whether permanent, temporary or consumable) acquired for the purpose of this Concession Agreement and on the services to be performed under this Concession Agreement. Nothing in this Concession Agreement shall relieve the Concessionaire from its responsibility to pay any tax that may be levied in India on profits made by it in respect of this Concession Agreement.
- b. Under the provisions of the Indian Income Tax Act, the Concessioneing Authority is required to deduct tax at source/ TCS at the rates prevailing in case any payments are envisaged under this Concession Agreement.

21.2 Income Taxes on Staff

The Concessionaire's staff, Person and labour will be liable to pay personal income taxes in India in respect of their salaries and wages as chargeable under the laws and regulations for the time being in force, and the Concessionaire shall make such deductions in respect of such taxes as required by law.

21.3 Confidentiality

Neither of the Parties shall, at any time, before the expiry or termination of this Concession Agreement, without the consent of the other Party, divulge or suffer or permit its officers, employees, or agents to divulge to any person (other than to any of its or their respective officers or employees who require the same to enable them to properly to carry out their duties), any information relating to the negotiations concerning the operations, contracts, commercial or financial arrangements or affairs of the other Party or any proprietary information of the other Party.

21.4 Exceptions to Confidentiality

The restrictions imposed by Article 21.3 shall not apply to the disclosure of any information:

- i) Which now or hereafter comes into the public domain otherwise than as a result of a breach of an undertaking of confidentiality or which is obtained with no more than reasonable diligence from sources other than the Parties.
- ii) Which is required by law to be disclosed to any Person who is authorised by law to receive the same.
- iii) Which is required to be disclosed by the regulations of any recognised exchange upon which the share capital of the Party making the disclosure is or is proposed to be from time to time listed or dealt in,
- iv) To a court, arbitrator or administrative tribunal in the course of proceedings before it to which the disclosing Party is a Party.
- v) To any consultants, banks, financiers or advisers to the disclosing Party, or
- vi) In accordance with this Concession Agreement.

ARTICLE 22: PROJECT REVENUES

22.1 User Charges

- (a) The Concessionaire shall have the right to collect and appropriate User Charges as per the Schedule- 12.
- (b) The User charges shall constitute the prime source of revenues for the project

22.2 Branding Rights

- (a) The Concessionaire shall have the right to locate Branding boards/ hoardings on the Project Facility from the date of issuance of this Development Completion Certificate. However, the Concessionaire shall comply with it as per applicable rules, regulations, standards etc.
- (b) It is explicitly mentioned here that any branding rights shall have to be explicitly approved by the Concessions Authority and Confirming Parties to this Agreement.
- (c) The concessionaire shall use the Branding rights solely for the purpose of branding of the JV/ SPC or the constituents of such JV/ SPC.

ARTICLE 23: TRANSFER OF PROJECT

- (a) On the Transfer Date, the Concessionaire shall, transfer and assign to the Concessions Authority or its nominated agency, as the case may be, free and clear of any charges, liens and Encumbrances created or suffered by the Concessionaire after the Compliance Date of all the Concessionaire's right, title and interest in and to the Works/ immovable assets and movable assets. The Concessionaire shall also deliver to the Concessions Authority or its nominated agency on such date such operating manuals, plans, design drawings, reports, accounts and other information as may reasonably be required by the Concessions Authority or its nominated agency to enable it to continue the operation of the Project either directly or by its nominated agency. The personnel of the Concessionaire shall continue to be the employees of the Concessionaire and the transfer of any Equipments, immovable assets and movable assets shall not in any manner affect their status as employees of the Concessionaire and they shall have no claim to any type of employment or compensation from the Concessions Authority or its nominated agency.
- (b) The Concessionaire shall to the extent possible assign to the Concessions Authority or its nominated agency at the time of transfer all unexpired guarantees and warranties by Subcontractors and suppliers and all insurance policies. The Concessionaire shall ensure that any rights, which are to be so assigned, are capable of assignment and the counterpart to the Concessionaire has approved such assignment under the terms and conditions of the relevant contract.
- (c) The Concessionaire shall, to the extent possible at the time of transfer, assign to the Concessions Authority or its nominated agency all contracts, equipment contracts, supply contracts and all other contracts relating to the Project entered into by the Concessionaire and subsisting at the time of transfer except any contracts with employees.
- (d) At the time of transfer of the Project, all the Equipments shall be in good and operational conditions.
- (e) Six months prior to the Transfer Date, the Concessions Authority shall be entitled to appoint any Consulting Engineer/ Independent Auditor to assess the condition of the Project. Such Consulting Engineer shall be entitled to have free access to inspect the Project, provided that such inspection is reasonable and is carried out with minimum disruption to normal operation of the Project.
- (f) Until the Transfer Date, all risks shall lie with the Concessionaire for loss of or damage to the whole or any part of the Project, unless such loss or damage is due to an act or omission of the Concessions Authority in contravention of its obligations under this Concession Agreement.
- (g) The Concessionaire shall provide fair and just compensation to its employees as required under the Laws or under this Concession Agreement, and shall indemnify the Concessions Authority against any claims from any such employees for their loss of office, redundancy, loss of employment or otherwise. The Concessions Authority shall accept absolutely no liability on account of any matter pertaining to the Concessionaire's employees, staff, labour etc.
- (h) The Concessions Authority shall be responsible for the costs and expenses, including stamp duties, taxes, legal fees and expenses, incurred in connection with the Transfer of the Project to it by the Concessionaire.

- (i) On the Transfer Date, the Concessionaire shall hand over the Equipments, other immovable assets and movable assets, to the Concessioneing Authority or its nominated agency at zero cost .
- (j) From the Transfer Date, the obligations and the rights of the Concessionaire under this Concession Agreement shall terminate vis-à-vis the Concessioneing Authority and the Concessioneing Authority or its nominated agency shall take over the Project and the operation and maintenance and any other rights or obligations arising out of this Concession Agreement which either expressly or implicitly survive termination of this Concession Agreement; provided, however, that the Concessionaire may continue with any other business operations arising other than in connection with this Concession Agreement and; provided further that the Concessionaire shall no longer act in its capacity as Concessionaire in relation or pursuant to this Concession Agreement.
- (k) On completion of the transfer by the Concessionaire to the Concessioneing Authority,, the Concessioneing Authority shall issue a 'Concession Agreement Completion Certificate' to the Concessionaire. The Concession Agreement Completion Certificate will have the effect of constituting evidence of transfer of all rights, titles and interests in the Project by the Concessionaire, and their vesting in the Concessioneing Authority hereto.

ARTICLE 24: MISCELLANEOUS PROVISIONS

24.1 Governing Law and Jurisdiction

This Concession shall be construed and interpreted in accordance with and governed by the laws of India. The Courts of district headquarters of Himachal Pradesh and High Court of Himachal Pradesh, Shimla only, whatever the case may be, shall have jurisdiction over all matters arising out of or relating to this Concession Agreement.

24.2 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this Concession Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Concession Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party ; and
- (c) shall not affect the validity or enforceability of this Concession Agreement in any manner.

Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Concession Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

24.3 Exclusion of implied warranties

This Concession Agreement expressly excludes any warranty, condition or any other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

24.4 Severability

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

24.5 Entire Agreement

This Concession Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such

modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties.

24.6 Custody of Documents

The Design Documents shall be in the custody and care of the Concessionaire. Unless stated otherwise in this Concession Agreement, the Concessionaire shall provide four copies for the use of the Concessioning Authority.

24.7 Copyright

The Concessionaire, as beneficial owner, hereby transfers to the Concessioning Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Concessionaire, in relation to the Design Documents made or to be made by or on behalf of the Concessionaire, during the Concession Period for which such copyright subsists in such works. The Concessioning Authority hereby grants to the Concessionaire non-exclusive royalty-free licence to use such documents and drawings solely for the purpose of complying with its obligations under this Concession Agreement.

24.8 Use of the Concessioning Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Concessioning Authority to the Concessionaire shall (as between the Parties) remain the property of the Concessioning Authority. The Concessionaire may, at its cost, copy, use and communicate any such documents for the purposes of this Concession Agreement. They shall not, without the Concessioning Authority's consent, be used, copied or communicated to a Third Party by the Concessionaire, except as necessary for the purposes of this Concession Agreement.

24.9 Compliance with Laws and Directives

- a. The Concessionaire shall, in all matters arising in the performance of this Concession Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Central or State law or directive or any regulation of any legally constituted public authority having jurisdiction over the Works. The Concessionaire shall obtain all permits, licences or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the Plant and Machinery and Materials and required for completion of the Works. The Concessioning Authority and the Concessionaire shall comply with all the laws as applicable.
- b. In the performance of this Concession Agreement, the Concessionaire shall ascertain and comply with all relevant laws and directives. The Concessioning Authority will provide such reasonable assistance as may be requested by the Concessionaire in ascertaining the nature and extent of such relevant Indian laws and directives.
- c. The Concessionaire shall indemnify the Concessioning Authority, the Concessioning Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Concessionaire, any Subcontractor or their respective agents or employees to comply with any law or directive applicable to the Development, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.
- a. If the Concessionaire or the Concessioning Authority finds any divergence between any law or directive and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with Article 14.

24.10 Joint and Several Liability

If the Concessionaire is a joint venture of two or more Persons, all such Persons shall be jointly and severally liable to the Concessions Authority for the fulfilment of the terms of this Concession Agreement. Such Persons shall designate one of them to act as "Lead Member" with authority to bind the joint venture and each of its members. The composition or the constitution of the joint venture shall not be altered without prior approval of the Concessions Authority and as per the specific provisions in this regard provided in this Concession Agreement.

24.11 Notifications

- a. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- b. All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt, or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- c. In the case of the Concessionaire, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Concessions Authority by the Concessionaire from time to time.

Name of Concessionaire's Representative : Mr Shaurya Tayal

Address for communication : Rahi Care Dharamshala Private Limited
342, 2nd Floor, Motor Market, Manimajra,
Chandigarh

- d. In the case of the Concessions Authority, all communication shall be addressed to:
Mission Director, NRHM, HP

24.12 Language

The language of this Concession Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for Development, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English, Hindi and Punjabi.

24.13 Counterparts

This Concession may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Concession Agreement.

IN WITNESS whereof the Parties have executed and delivered this Concession Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

for and on behalf of

Department of Health & Family Welfare, Govt. of Himachal Pradesh (Concessing Authority) by:

SIGNED SEALED AND DELIVERED

for and on behalf of National Rural Health Mission, HP State Health and Family Welfare society
(Confirming Party) by:

Mission Director, National Rural Health Mission, HP (Designation)

SIGNED SEALED AND DELIVERED

for and on behalf of

M/s Rahi Care Dharamshala Private Limited (Concessionaire) by:

Shaurya Tayal

Director

Witness 1

1. _____ (Signature)
_____ (Name)
_____ (Designation)
_____ (Address)

Witness 2

2. _____ (Signature)
_____ (Name)
_____ (Designation)
_____ (Address)

ADDENDUM – 1

**Request for Proposal for
Setting up of Hemodialysis Units for Maintenance of Hemodialysis at Mandi, Dharamshala and Solan on PPP**

Clarifications / Replies to the Queries raised by the Prospective Bidders during the Pre Bid Meeting held at 1500 hrs on 26 August 2013 at Shimla

Sr. No.	Clause / Article	Query	Clarification / Reply
1.	Clause 3.2 of Instructions to Bidders	Are sole proprietorship firms allowed in the eligibility criteria?	The Sole proprietors are allowed to bid for the project. However, they have to submit their annual audited accounts as described in the RFP document.
2.	Clause 2.4 of Instructions to Bidders	Kindly consider extending the last date by a month in order to give more time to the interested parties.	The last date of bid submission has been extended up to 1500 hrs on/before 7 th October 2013.
3.	Clause 2.4 of Instructions to Bidders	Opening of Technical Bids	The technical bids would be opened on 1700 hrs on 7 th October 2013.
4.	Clause 2.1.2 of Instructions to Bidders	According to us the consumable cost will be extra than the procedure and it will be given to patient at 20% discount on MRP or they will buy themselves. Kindly provide us the Consumables details.	Consumables list is attached as <i>Annexure – 1</i> to this Addendum. Now the bidder has to quote the cost per dialysis procedure including consumables. The revised format C for financial proposal is attached as <i>Annexure – 2</i> to this Addendum.
5.	Clause 2.1.2 para 15, 17, 18, 19 of Instructions to Bidders	<p>Existing Clause 2.1.2 para 15 The patients will have the option to buy consumables from the open market.</p> <p>Existing Clause 2.1.2 para 17 The successful bidder would charge the patients for consumable at a rate which would be atleast 20% less than the prevailing MRP.</p> <p>Existing Clause 2.1.2 para 18 The successful bidder would maintain all purchases and inventory records through the software proposed. The representative of DoH&FW would periodically review the inventory cost and compare with prevailing MRP to verify the actual price charged to the patients.</p>	<p>Revised Clause 2.1.2 para 15 <i>Para Deleted</i></p> <p>Revised Clause 2.1.2 para 17 <i>Para Deleted</i></p> <p>Revised Clause 2.1.2 para 18 <i>The successful bidder would maintain all purchases and inventory records through the software proposed.</i></p>

		<p>Existing Clause 2.1.2 para 19 The successful bidder would sell consumables to the patients of the Hemodialysis unit only and not to outsiders. However, in case of emergency to any outside patient, the successful bidder could sell consumables after the approval of Chief Medical Officer (CMO) of the Zonal and Regional Hospitals.</p>	<p>Revised Clause 2.1.2 para 19 <i>The successful bidder would use consumables to the patients of the Hemodialysis unit only and not to outsiders. However, in case of emergency to any outside patient, the successful bidder could sell consumables after the approval of Chief Medical Officer (CMO) of the Zonal and Regional Hospitals.</i></p>
6.	Clause 2.1.2 para 20 of Instructions to Bidders	<p>Is concessionaire allowed to perform tests on the patient?</p> <p>Existing Clause: The services to various category of free patients as defined as per the State policy or relevant guidelines would be provided free of any user charges and consumables. However, The Concessionaire shall have the right to claim reimbursements for the amount spent on the Tests of such Patients.</p>	<p>The Concessionaire shall not be allowed to perform any tests on the patients.</p> <p>Revised Clause: <i>The services to various category of free patients as defined as per the State policy or relevant guidelines would be provided free of any user charges and consumables. However, The Concessionaire shall have the right to claim reimbursements for the amount spent on such Patients.</i></p>
7.	Clause 2.2 of Instructions to Bidders	<p>Existing Clause: The Successful Bidder/ Concessionaire would quote 'User Fee per Dialysis Procedure' without consumables to be charged from patients i.e. Bid Variable as per its Financial Proposal/Bid. The User Fee shall be increased at the rate of 5% (five percent) after every year, over the preceding user fee to be rounded off to the nearest rupee. The Successful Bidder/ Concessionaire shall charge the User Fee on and after the Operations Date. {For details refer Article 5.1 of the draft Concession Agreement (Section-II of the RFP document)}.</p>	<p>Revised Clause: <i>The bidders would quote 'User Fee per Dialysis Procedure' with consumables to be charged from patients i.e. Bid Variable as per its Financial Proposal/Bid. The User Fee shall be increased at the rate of 5% (five percent) after every year, over the preceding user fee to be rounded off to the nearest rupee. The Successful Bidder/ Concessionaire shall charge the User Fee on and after the Operations Date. {For details refer Article 5.1 of the draft Concession Agreement (Section-II of the RFP document)}.</i></p>
8.	Clause 2.1.2 of Instructions to Bidders	<p>Is there a list or any and all dialysis relevant consumables?</p>	<p>Consumables list is attached as <i>Annexure –1</i> to this Addendum. The bidder has to quote the Cost per Dialysis Procedure including consumables. The revised format C for financial proposal is attached as <i>Annexure – 2</i> to this Addendum.</p>
9.	Clause 2.1.2 of Instructions to	<p>The concessionaire should be allowed to stock EPO, iron sucrose and dietary supplements and sell these items in a formulary so that patients</p>	<p>No Change</p>

	Bidders	have easy access to these items when required	
10.	Clause 3.2 of Instructions to Bidders	There should be minimum criteria in terms of 100 machines being operated by the service providers. The bidder should also have 1 year prior experience of running a PPP project.	No change
11.	Clause 3.3 and 3.4 of Instructions to Bidders	It should be made mandatory for all Companies whether individual or JV to establish a SPC registered under Indian Companies Act, 1956.	No Change
12.	Clause 3.5 of Instructions to Bidders	Proposal security must be revised to INR 10 Lakhs in order to make sure only capable companies bid for the project.	No Change
13.	Clause 3.5 of Instructions to Bidders	Performance security must be revised to INR 50 lakhs in order to make sure that companies perform with their full commitment in adhering to Service Level specification.	The Performance Security is increased to Rs. 10 (ten) Lacs, to be submitted separately, by the successful bidder for each location.
14.	Clause 4.6.1. (d) of Instructions to Bidders	<p>Existing Clause: All the above envelopes shall be enclosed in an outer cover/ envelope marked as "RFP for setting up of Hemodialysis unit for maintenance of Hemodialysis in the state of Himachal Pradesh under PPP format for Location_____".</p>	<p>The bidders have to mention the name(s) of the location(s) on the outer envelope for which they are applying</p> <p>Revised Clause: <i>All the above envelopes shall be enclosed in an outer cover/ envelope marked as "RFP for setting up of Hemodialysis unit for maintenance of Hemodialysis in the state of Himachal Pradesh under PPP format for Location(s)_____".</i></p>
15.	Article 2.1 para 3 (i) of Draft Concession Agreement	<p>Existing Article: It is expressly stated that the Concessionaire shall install only brand new diagnostic equipments in the Diagnostic Centre. No refurbished, second hand or used diagnostic equipments shall be installed at any of the roject Facilities.</p>	<p>Revised Article: <i>It is expressly stated that the Concessionaire shall install only brand new Hemodialysis Machines in the Hemodialysis Unit. No refurbished, second hand or used machines / equipments shall be installed at any of the project Facilities.</i></p>
16.	Article 2.1 para 19, 20, 21, 22 of Draft Concession	<p>Existing para 19: The patients will have the option to buy consumables from the open market. The concessionaire would also maintain adequate inventory of</p>	<p>Revised para 19: <i>The concessionaire would maintain adequate inventory of all consumables. Concessionaire would procure only the best quality</i></p>

	Agreement	<p>all consumables. Concessionaire would procure only the best quality consumables. The quality of consumables would be subjected to periodic inspection by the representatives of DoH&FW.</p> <p>Existing para 20 The concessionaire would charge the patients for consumable at a rate which would be atleast 20% less than the prevailing MRP.</p> <p>Existing para 21 The concessionaire would maintain all purchases and inventory records through the software proposed. The representative of DoH&FW would periodically review the inventory cost and compare with prevailing MRP to verify the actual price charged to the patients.</p> <p>Existing para 22 The concessionaire would sell consumables to the patients of the Hemodialysis unit only and not to outsiders. However, in case of emergency to any outside patient, the successful bidder could sell consumables after the approval of Chief Medical Officer (CMO) of the Zonal Hospitals and Regional Hospital.</p>	<p><i>consumables. The quality of consumables would be subjected to periodic inspection by the representatives of DoH&FW.</i></p> <p>Revised para 20 <i>Para Deleted</i></p> <p>Revised para 21 <i>The concessionaire would maintain all purchases and inventory records through the software proposed.</i></p> <p>Revised para 22 The concessionaire would use consumables to the patients of the Hemodialysis unit only and not to outsiders. However, in case of emergency to any outside patient, the successful bidder could sell consumables after the approval of Chief Medical Officer (CMO) of the Zonal Hospitals and Regional Hospital.</p>
17.	Article 8 of the Draft Concession Agreement	Whether the bid price will be charged from the patients and whatever patients are done free will be charged to the government. Please clarify.	Please refer Article 8 of the Draft Concession Agreement.
18.	Article 8.3 of Draft Concession Agreement	A contractual late payment penalty (say 2% per month) in case the reimbursements are delayed by more than 30 days after the concessionaire submitting the requisite bills to the Government.	No Change
19.	Article 3.3 of Draft Concession Agreement	In our experience, dialysis machines typically last for 8 years, It is therefore suggested to increase the term of the agreement to 8.5 years in order to ensure that the term accurately reflects the lifecycle of the dialysis machine (6 months of development period and 8 years of running).	No change

20.	Article 3.1.2 (c) of Draft Concession Agreement	Concessioning Authority by mentioning in the clause that Concessionaire will not have ownership on the equipments, the services will be liable to attract tax. This may be an extra cost to concessionaire. The Concessioning Authority may allow the equipments to be property of Concessionaire which automatically gets transferred after termination of the contract as mentioned in Article 7 A and Article 23	No Change
21.	Article 1.1 (lvii), 3.1.2 (b) (e), Article 7.1. a. (xxiii) of Draft Concession Agreement	<p>Please clarify which activities may be subcontracted?</p> <p>Existing Article 1.1 (lvii): “Subcontractor” means the Development contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of services or equipments or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts the Works in full or part.</p> <p>Existing Article 3.1.2 (b): To have access and liberty to procure and install the new Hemodialysis Equipments in the Project Facilities and operate, maintain and manage the Hemodialysis either by itself or through Sub-Contractors (which should be clearly and unambiguously defined) during the Concession Period;</p> <p>Existing Article 3.1.2 (e): To fulfil its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;</p> <p>Existing Article 7.1. a. (xxiii): The Concessionaire shall be entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to development, installation of</p>	<p>The Concessionaire may subcontract any services except Hemodialysis Services i.e. housekeeping, security, etc.</p> <p>Revised Article 1.1 (lvii): <i>“Subcontractor” means the Development contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of services or equipments or part thereof, as the context may require, to whom the Concessionaire contracts or subcontracts.</i></p> <p>Revised Article 3.1.2 (b): <i>To have access and liberty to procure and install the new Hemodialysis Equipments in the Project Facilities and operate, maintain and manage the Hemodialysis services during the Concession Period;</i></p> <p>Revised Article 3.1.2 (e): <i>To fulfil its obligations under this Agreement, undertake Hemodialysis services by itself and non-clinical allied activities either by itself or through subcontracting arrangements and to appoint contractors, sub-contractors, agents, advisors and consultants without in any way relieving the Concessionaire of its obligations as set out in this Agreement;</i></p> <p>Revised Article 7.1. a. (xxiii): <i>The Concessionaire shall be entitled to subcontract tasks relating to its obligations and responsibilities under this Concession Agreement, including but not limited to tasks relating to</i></p>

		services/ Equipments, maintenance and operation of the Project. However, the Concessionaire shall be sole and primary person responsible to the Concessioneing Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its subcontractor, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of his obligations and liabilities under this Concession Agreement.	<i>development, installation of services/ Equipments, maintenance and operation of the Project except Hemodialysis services. However, the Concessionaire shall be sole and primary person responsible to the Concessioneing Authority for the observance of all the provisions of this Concession Agreement. The Concessionaire shall be responsible for the acts or defaults of any of its subcontractor, its agents or employees, as if they were the acts or defaults of the Concessionaire, its agents or employees. Any subcontracting shall not relieve the Concessionaire of his obligations and liabilities under this Concession Agreement.</i>
22.	Article 7.1. a. (xvii) of Draft Concession Agreement	Existing Article 7.1. a. (xvii) : To develop infrastructure such as roads, water supply, electricity etc. at his own cost on the project facility.	Revised Article 7.1. a. (xvii) : <i>To develop infrastructure such as water supply, electricity etc. at his own cost on the project facility.</i>
23.	Article 3.2 (b) of the Draft Concession Agreement	This clause will significantly allow people to bid, who are not financially stable.	No Change
24.	Article 6.1 (d) of the Draft Concession Agreement	During the period of contract of concessionaire agreement, Govt. hospital cannot buy or install or allow any equipment/set up which would compete with the in house set up of dialysis.	Please refer Article 6.1 (d) for clarification.
25.	Article 6.1 (a) of the Draft Concession Agreement	Govt. hospital should provide all necessary approval to Concessionaire. E.g.- Fire fighting safety approval, PWD, Electrical dept, etc. at the time of agreement.	Please refer Article 6.1 (a) for clarification.
26.	Article 10.2 (p) of the Draft Concession Agreement	As Medico Legal Cases to be reported & signed by concern authority, bidder should not be responsible for MLC liabilities in any manner.	Please refer Article 10.2 (p) for clarification.
27.	Article 3.4 of Draft Concession Agreement	In case of delay in development period due to its authority, approvals lead to extension of the concession period. How this is to be considered or modified from bidder view point?	No Change

28.	Article 5.1 (a) of the Draft Concession Agreement	User charges should be revised upward by 10% every year for viability of project.	No Change
29.	Clause 2.1.2 of Instructions to Bidders & Article 2.1 of Draft Concession Agreement	Clarification required with regard to dedicating one machine each for HIV+, Hepatitis B and Hepatitis C. In a facility having 6 Hemodialysis machines only. Existing Clause / Article: The successful bidder would dedicate one machine each for patients infected with HIV, hepatitis-B and hepatitis-C. These infected patients will be treated in isolated rooms. All care will be taken by the PPP partner to isolate the infected patients.	Selected bidder is required to dedicate one machine for Hepatitis B positive patients only. Revised Clause / Article: <i>The successful bidder would dedicate one machine exclusively for patients infected with Hepatitis-B. The infected patients will be treated in isolated rooms. All care will be taken by the Concessionaire to isolate the infected patients.</i>
30.	Clause 2.1.2 of Instructions to Bidders & Article 2.1 of Draft Concession Agreement	What is the expected number of free patients per day?	Please refer Clause 3.10 of Instructions to Bidders for clarification.
31.	Clause 2.1.2 of Instructions to Bidders & Article 2.1 of Draft Concession Agreement	What if the facility is flooded with free patients and the project becomes unviable?	The Concessionaire shall have the right to claim reimbursements for the amount spent on Hemodialysis procedure of free Patients. Please refer Article 8 of the Draft Concession Agreement.
32.	Clause 2.1.2 of Instructions to Bidders, Article 2.1 of Draft Concession Agreement & Schedule 1	Please define the term "Built-up space".	The built up space is raw covered area excluding common area.
33.	Clause 2.1.2 para 6 of Instructions to Bidders &	The provision of water and electricity connections should be the responsibility of the Concessions Authority. It is further suggested that the hospitals, and not the Concessionaire, provide for recurring	Revised Clause / Article: <i>The selected bidder has to take commercial connection and install meter / sub meter for water and electricity on his own</i>

	Article 2.1 para 16 of Draft Concession Agreement	<p>electricity and water to reduce the chances of higher electricity and water costs.</p> <p>Existing Clause / Article: The existing power and water connection, if any, will be provided by the DoH&FW and the recurring costs and the enhancement of load costs will be borne by the private partners. The concessionaire would install DG set at their own cost.</p>	<p><i>name & costs and pay all the recurring, enhancement of load costs and transformer costs (if any) to the concerned authority. The concessionaire would also install DG set at their own cost to ensure uninterrupted power supply.</i></p>
34.	Clause 2.1.2 of Instructions to Bidders & Article 2.1 of Draft Concession Agreement	Concessionaire is required to build operate and transfer. Is renovation under the scope of Concessionaire?	Yes. All renovations / up gradations are under the scope of work of Concessionaire.
35.	Schedule 2 Minimum Key Personnel	Whether full time Consulting Nephrologists would be required separately at each location?	There must be at least one monthly visit by the Nephrologists to the Hemodialysis Unit. Consultant Nephrologists may supervise all patients of the Hemodialysis centre by online/real time. Cost of the same to be borne by the bidder.
36.	Schedule 2 Minimum Key Personnel	Experience of the staff shall be maximum 2 years instead of 5 years. Minimum one resident doctor should be present in the dialysis unit during the hours of operation. The requirement for the same should be minimum 1 RMO per shift of 8 hrs. The number of dialysis technicians may be reduced from 4 to 2. They should have diploma in dialysis technology or alternatively have served in dialysis units for minimum of 3 years.	The experience for all the medical staff would be minimum 2 years. Revised schedule 2 is attached as <i>Annexure – 4</i> to this Addendum.
37.	Schedule 2 Minimum Key Personnel	Staff availability should be best left to the operator of the facility depending upon the workload otherwise dialysis cost will increase unnecessarily.	No Change.
38.	Schedule 3 Indicative	Reverse Osmosis Unit with output of 300-400 liters /hr should be good enough for 6 machines dialysis centre.	The Reverse Osmosis Unit with minimum output of 600 litres/ hr to be installed by the selected bidder. Revised Schedule 3 is

	Equipment Capacity & Specifications		attached as <i>Annexure - 5</i> to this Addendum.
39.	Schedule 3 Indicative Equipment Capacity & Specifications	Only 1 or at the most 2 cardiac monitors are required.	Minimum 2 (two) Cardiac monitors are required. Revised Schedule 3 is attached as <i>Annexure –5</i> to this Addendum.
40.	Schedule 3 Indicative Equipment Capacity & Specifications	Body Composition Monitor is not required.	Body Composition Monitor will be optional equipment. Revised Schedule 3 is attached as <i>Annexure - 5</i> to this Addendum.
41.	Schedule 1 Built up Space	Whether built up space is available at all three locations and can the bidders be allowed to start the project with 4 dialysis machines gradually to be taken over to two more later?	Concessioneing Authority will make sure the availability of suitable space. The revised Schedule 1 is enclosed as <i>Annexure - 3</i> to this Addendum. The bidder has to start with minimum six Hemodialysis machines.
42.	Schedule 2 Key Personnel	It may be specified that a concessionaire may run 3 shifts on requirement. The Concessionaire may initiate running an extra shift per day, if the demand increases to accommodate the patients, only after the maximum expansion capacity of machines is achieved. Further the concessionaire is required to maintain minimum staff of 1:3 for manpower to machines ratio.	No Change
43.	Schedule 3 Indicative Equipment Capacity & Specifications	Technical Specifications must be detailed out of optional items.	No Change
44.	Schedule 4	Key Performance Indicators must be detailed out with specific acceptable limit of each parameter.	No Change
45.	Schedule 3 Indicative Equipment	In case, the 6 machines proposed at a center are running on 100% capacity utilization and there is a waiting list of patients for getting enrolled for dialysis in that dialysis centre. Expansion clause will make	The Schedule specifies the minimum number of machines to be installed. The selected bidder is free to install more machines as per the demand.

	Capacity & Specifications	the Concessionaire certify to add capacity as per the demand. The maximum limit of expansion per centre may be specified as 4 machines. Hence total capacity will become 10 machines in a centre	
46.	Schedule 6 Penalties for Non Conformance / Performance	The Schedule provides for penalty by concessionaire but not provide for penalty by Authority to Concessionaire. It should be applicable to both the parties.	No Change
47.	Schedule 4 Key Performance Indicators	Existing para (m): For other patients the dialyser will be used maximum five (5) times or two (2) weeks, whichever is earlier with disinfection with paracetic acetic acid (Renalin).	Revised para (m): <i>For other patients, the dialyser will be used maximum five (5) times or two (2) weeks, whichever is earlier with disinfection with paracetic acetic acid.</i>
48.	General	Whether Advance Life Support System shall be available on all sites since ICU back up is not available?	Backup ICU is available on all three locations. In addition, dedicated ALS-IFT Ambulances are also available.
49.	General	Will there be any difference in charges for dialysis during night hours as emergency call to staff attracts overtime payments.	No Change
50.	General	Will there be any difference in payment for dialysis done for HIV, Hepatitis B and C patients, because in case of a staff contracting it, they are entitled for compensation.	No Change
51.	General	Whether authority can provide project over view in terms of IP & OP cases both in terms of overall numbers and Nephrology Department at the given locations, also how can the private player be given security like some kind of minimum Guarantees?	No Change. Please refer Clause 3.10 of Instructions to Bidders for clarification.
52.	General	Can authority provide TDS and hardness of the water at each site?	To be assessed by the bidder on his own cost. Please refer Clause 3.10 of Instructions to Bidders for clarification.
53.	General	What would be the remedy in case the Authorities are not able to	Alternative water source has to be arranged by the selected

		provide adequate raw water?	bidder on his own cost.
54.	General	Technical Bids must also contain Technical Specification for all equipments, letter of compliance and proof of compliance to be attached as Annexure to Technical Bids	No Change
55.	General	Authority shall make available adequate space, 100% leak proof & well constructed (Clear Area). All relevant NOC of said centre to be provided at the time of agreement.	The built up space will be provided on ' <i>as is where is basis</i> '.
56.	General	Hospital should provide complete security against damage to the equipment & other facilities against theft, act of vandalism, etc.	The Concessionaire shall be responsible, at his own cost, for the overall maintenance and management of Project Facility as part of his obligations.
57.	General	How Hospital is going to ensure that all doctors refer dialysis patients to in-house facility & not to the dialysis center outside the Hospital?	The Concessioning Authority will issue the necessary instructions to the concerned doctors in this regard.
58.	General	Whether entry tax or Local Body Tax exemption certificate will be provided wherever applicable as per present policy in HP.	No Change
59.	General	Fistula and Catheterization and cost thereof	<p>The successful bidder will not be allowed to create fistula and Permacath Insertion since it requires special surgical skills. However, the successful bidder can use catheterization procedures wherever required. The bidders are advised to take into account all such charges in their final bid price.</p> <p>It is clarified that the successful bidders shall not be allowed to charge any extra price for such procedures and consumables.</p>

List of Consumables

Serial No	Dialysis Consumables
1	A.V.F Needles
2	Heparin 5000 I.U
3	HD Solution Sodium Bicarb
4	Acid Concentrate
5	CitroSteril
6	Diasafe
7	Cleaning Fluid (Hydrogen Peroxide)
8	N.S 1000 ml
9	N.S 500 ml
10	Initiation kit
11	Sterile Gloves
12	Non Sterile
13	Syringe 20 ml
14	Syringe 10 ml
15	Micropore Tape 2inch
16	Micropore Tape 1 inch
17	3M hand rub (Sterilium)
18	Povidone Solution
19	Betadine Ointment
20	Dyna plaster
21	Transducer Protector
22	IV Set
23	Head Cap
24	Face Mask
25	Xylocaine
26	3M Tegaderm
27	Insulin Syringes
28	Dialyzer (Polysulphone) Size 1.2-1.5 Square meter

Note - The Reprocessing has to be machine based. No manual reprocessing is allowed

C. Format for Financial Proposal

(To be submitted and signed on the Bidder's letterhead by the Bidder's authorised signatory)

Mission Director,

National Rural Health Mission, HP
 Director of Health and Family Welfare,
 Block No.-6,
 SDA Complex,
 Kasumtti,
 Shimla-171009,
 Himachal Pradesh, India

Sub: **RFP for setting up of Hemodialysis unit for maintenance of Hemodialysis in the State of Himachal Pradesh under PPP format**

Sir,

We hereby submit our Financial Proposal for the Location Zonal hospital Mandi/Dharmshala / Regional Hospital, Solan. If the project is awarded to us, we agree to charge the following rates.

Lowest charges proposed by the technically qualified bidders shall be the sole criteria for selection of the successful bidder.

Description	Amount (Rs.)
User Fee per Dialysis Procedure including Consumables	Rs.....(in fig) Rs.....only (in words)

We agree that the above agreed User shall be payable by us in accordance with Clauses 2 & 4 of Section I (Instructions to Bidders) of the RFP Document and Article 5.1 of the draft Concession Agreement (Section-II of the RFP document).

We are making this Proposal after taking into consideration all the terms and conditions stated in the RFP document, and after careful assessment of the site, all risks and contingencies and all other conditions that may affect the financial proposal.

We agree to keep our Proposal valid for 180 (One Hundred and Eighty) days from the due date of submission of this Proposal.

Authorised signatory

Date:

Name and seal of Bidder

Place:

* Separate Financial Proposal to be submitted for each of the Locations.

Schedule 1

BUILTUP SPACE TO BE ALLOCATED

S. No.	Zonal Hospital/Regional Hospital	Available built up Area in Sq. Ft. *
1.	Zonal Hospital, Mandi	Approx. 1000 Sq. Ft.
2.	Zonal Hospital, Dharmshala	Approx. 1000 Sq. Ft.
3.	Regional Hospital, Solan	Approx. 1000 Sq. Ft.

**The built up Area would be provided on 'as is where is' basis.*

Schedule 2

MINIMUM KEY PERSONNEL

S.NO.	Description	Minimum Qualification and experience	Total Number	Key Responsibilities
1.	Consulting Nephrologists	DM or DNB in Nephrology with 2 years of experience / MD with 2 year training in nephrology from a recognized centre with 2 years of experience.	1	<ol style="list-style-type: none"> 1. There must be at least one monthly visit by the Nephrologists to the Hemodialysis Unit. 2. Consultant Nephrologists may supervise all patients of the Hemodialysis centre by online/real time. Responsible for overall functioning of the unit. 3. Perform review of all patient charts. 4. Carry out periodic review of water quality and infection control measures. 5. Periodically evaluate the performance of dialysis doctors, technicians, and nurses. 6. Be responsible for enforcement of patient care and safety rules and regulations. 7. Act as liaison between the hospital management, statutory bodies, dialysis staff, and patients. 8. Protect patient rights. 9. Be in charge of periodic performance audit. 10. She/he should sit with the team and discuss all issues of concern. The unit should maintain a record of performance parameters, including but not limited to: proportion of patients with arteriovenous fistula (AV) fistula, treatment compliance rates, infection rates categorized by site, organism and sensitivity, nutrition, rehabilitation status, co-morbidity management, clinically important events, Drop- outs and outcomes.
2.	Dialysis Doctor	MBBS and Certified in advanced cardiac life support (ACLS) with 2 years of experience	2 (at least 1 per 8 hrs. shift)	<ol style="list-style-type: none"> 1. To be involved in day to day patient management. 2. Before starting dialysis: Assess hemodynamic status, indication of dialysis, vascular access, and any co-morbid illness. 3. During dialysis: Overall direct monitoring including dialysis prescription, care of vascular access, adequacy of flow, complications, and maintain liaison with and follow instruction of the nephrologists. 4. At the time of closure: Check access site, hemodynamic status, any complication, and give specific instruction if needed. 5. For in-patients: assess the patient at least once in the ward after dialysis. 6. Accompany the patient to the ward, if critically ill. 7. Handle/supervise/guide supporting staff in cardiopulmonary resuscitation. 8. Have working knowledge of the dialysis machine, water treatment plant, ventilator, defibrillator, and other gadgets in the dialysis unit. 9. Act as the team leader during the day to day functioning of the unit. 10. Ensure implementation of all guidelines. 11. Look after the safety and security of the supporting staff. 12. Take regular teaching sessions for the dialysis staff.
3.		One year or longer certificate	4 (at	<ol style="list-style-type: none"> 1. Performing all aspects of the dialysis procedure as

	Dialysis Technician	course in Dialysis Technology (after high school) certified by a government authority with 2 years of experience	least 2 per 8 hrs. Shift)	<ul style="list-style-type: none"> per prescription. 2. Conducting discharge assessment. 3. Following instructions of the dialysis doctors. 4. Conveying to the dialysis doctor any new event/change in patient status and recommending changes in the treatment based on the current needs of the patient. 5. Facilitating communication between the patient and patient's family on one side and the treating team on the other. 6. Keeping an inventory of items in the unit. 7. Providing oversight and direction to the trainee technicians/nurses. 8. Participating in continuous quality improvement activities. 9. Entry and maintenance of records of all patients and produce them for medical auditing.
4.	Nurses	Auxiliary nurse midwife (ANM) and registered with Nursing Council with 6 month experience in a dialysis unit.	4 (at least 2 per 8 hrs. Shift)	<ul style="list-style-type: none"> 1. Performing all aspects of the dialysis procedure as per prescription. 2. Conducting discharge assessment. 3. Following instructions of the dialysis doctors. 4. Conveying to the dialysis doctor any new event/change in patient status and recommending changes in the treatment based on the current needs of the patient. 5. Facilitating communication between the patient and patient's family on one side and the treating team on the other. 6. Keeping an inventory of items in the unit. 7. Providing oversight and direction to the trainee technicians/nurses. 8. Participating in continuous quality improvement activities. 9. Entry and maintenance of records of all patients and produce them for medical auditing.
5.	Ward Boys/Attendant	2 years of experience	2	<ul style="list-style-type: none"> 1. Perform the function of helper and assist the medical staff / patients in performing various activities in dialysis unit.

Note: The above list of key personnel is minimum and it is obligatory for Concessionaire to hire/employ other necessary clinical and non clinical staff for running the Hemodialysis Unit as per the good industry practices / applicable statutory guidelines.

Schedule 3

INDICATIVE EQUIPMENT CAPACITY AND SPECIFICATIONS

✓ **Dialysis Machines (Minimum Six (6) Machines to be installed)**

1. Should be certified and approved by an appropriate statutory authority to ensure compliance with relevant safety standards for electrical equipment in clinical use.
2. New HD machine (s) will have the following components, which should be properly functioning at all times:
 - a) Peristaltic blood pump to achieve a unidirectional flow of up to 400 ml/ min.
 - b) Heparin pump.
 - c) Arterial and venous line pressure monitors.
 - d) Air bubble detector.
 - e) Mixing proportion unit with bicarbonate dialysis facility, rate of dialysate delivery from 300 to 500 ml/ min or more.
 - f) Conductivity meter.
 - g) Blood leak detector.
 - h) Dialysate temperature regulator with a range of 35–39°C.
 - i) Volumetric adjustable ultrafiltration (UF) control.
 - j) Safety devices: alarms, venous blood clamp.
 - The following may be optional items :
 - a) On-line blood volume monitor.
 - b) On-line urea clearance.
 - c) Sodium and ultrafiltration profiling.
 - d) Single needle dialysis.
 - e) Optical detector (online monitoring of dialysis adequacy).

It is specifically mentioned here, that at any given point of time the patient safety should not be compromised.

✓ **Reverse Osmosis Unit**

- Capacity minimum 6,00 litres/hour (for 6-machines)
- High quality RO treated water as per AAMI standards
- The Concessionaire shall maintain and monitor RO water quality at all times.

✓ **Central Oxygen Supply Point**

Install oxygen manifold system and it shall be provided to the dialysis unit for at least five (5) points.

✓ **UPS**

Rating 3 KVA. One UPS per dialysis machine will be installed or as specified by the manufacturer.

- **Dialyser Reprocessing Unit**

The unit will have automated dialyser reprocessing unit.

- **Cardiac Monitors**

At least two (2) cardiac monitors would be provided.

- **Refrigerator / Freezer**

As per requirement.

- **Body Composition Monitor (Optional)**

The unit will have one body composition monitor.

- **Defibrillator**

The unit will have facility of Defibrillator.

- **Others**

Two (2) suction apparatus, two (2) nebulizers, one (1) glucometer and crash card (emergency trolley), one (1) ECG machine with all emergency drugs.

Note: The above capacity and specifications are minimum and it is obligatory for Concessionaire to install other necessary infrastructure and procure best quality consumables for running the Hemodialysis Unit as per the good industry practices / applicable statutory guidelines.