



**REQUEST FOR QUALIFICATION (RFQ) CUM REQUEST FOR  
PROPOSAL (RFP)**

**For**

**Selection of Hemodialysis Unit Service Provider (HDU-SP) in  
18 District Hospitals in other than Divisional Headquarters  
in Uttar Pradesh**

**Part II: Draft Agreement**

**Issue Date: 20.09.2016**

**Bid Reference Number: SPMU/NHM/PROC./DIALYSIS/2016-  
17/29**

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**Table of Contents**

1	AGREEMENT.....	3
1.1	ARTICLE 1 - DEFINITIONS & INTERPRETATIONS.....	5
1.2	ARTICLE 2 – OBJECTIVE OF THIS AGREEMENT .....	9
1.3	ARTICLE 3 – ENGAGEMENT OF THE Hemodialysis Unit Service Provider- HDU-SP .....	10
1.4	ARTICLE 4 – DURATION OF THIS AGREEMENT .....	11
1.5	ARTICLE 5 – AREA OF OPERATION .....	11
1.6	ARTICLE 6 – COMMENCEMENT OF SERVICE S .....	11
1.7	ARTICLE 7 – CONSIDERATION AND PAYMENT TO HDU-SP .....	12
1.8	ARTICLE 8 – PROJECT FACILITIES.....	13
1.9	ARTICLE 9 – MANPOWER.....	14
1.10	ARTICLE 10 – MOBILIZATION ADVANCE .....	15
1.11	ARTICLE 11 – REVIEW OF HEMODIALYSIS UNIT PROJECT .....	15
1.12	ARTICLE 12 – COVENANTS OF THE HDU-SP AND THE SELECTED BIDDER.....	16
1.13	ARTICLE 13 – COVENANTS OF THE AUTHORITY .....	19
1.14	ARTICLE 14 – PERFORMANCE SECURITY .....	20
1.15	ARTICLE 15 – APPOINTMENT OF COMMITTEES, AGENCIES, ETC.....	20
1.16	ARTICLE 16 - REPRESENTATIONS AND WARRANTIES.....	21
1.17	ARTICLE 17 – FORCE MAJEURE .....	23
1.18	ARTICLE - 18 TERMINATION.....	26
1.19	ARTICLE 19 - DISPUTE RESOLUTION.....	28
1.20	ARTICLE 20 - GOVERNING LAW AND JURISDICTION.....	29
1.21	ARTICLE 21 – INDEMNITY.....	29
1.22	ARTICLE - 22 INCENTIVES .....	31
1.23	ARTICLE - 23 MISCELLANEOUS.....	31

# **Selection of Hemodialysis Unit Service Provider (HDU-SP) in 18 District Hospitals Located in Divisional Headquarters in Uttar Pradesh**

## **AGREEMENT**

Between

**Director General, Medical & Health Services, U.P - The  
Authority**

And

**<<>>- The Hemodialysis Unit-Service Provider  
(<<Address>>)**

And

**<<>> - The Selected Bidder  
(<<Address>>)**

### **1 AGREEMENT**

This Agreement is entered into on this the <<day of Month>>, 2016 by and between

1. Governor of Uttar Pradesh, acting through the Director General, Medical & Health services, Uttar Pradesh (hereinafter referred to as "the Authority" or his representative which expression shall unless repugnant to the context or meaning thereof include its successors in office) of the First Party,

AND

2. <<>>, acompany incorporatedunder the provisionsof the <<Registered as Organizational type details>>and having its registered office at<<Address>> (hereinafter referred to as the “HDU-SP (Hemodialysis Unit – Service Provider)” which expression shallunless repugnantto the context or meaning thereofincludeits successors)of the Second Party.

AND

3. <<Agency Details and registration details>> registered under the provisions of <<Registered as Organizational type details>>, having its registered office at <<Address>> (hereinafter referred to as the “Selected Bidder” which expression shall unless repugnant to the context or meaning thereof include its successors) of the Third Party(Confirming Party) .

“Authority”, “HDU-SP” and the “Selected Bidder” shall hereinafter be individually referred to as “Party” and jointly as “Parties”.

WHEREAS:

- A. The Authority is desirous of engaging organizations/entities with experience in the health sector and having social commitment to implement the Project i.e. to, inter-alia, implement Hemodialysis Units in 18 District Hospitals Located in other than Divisional Headquarters in Uttar Pradeshto provide Maintenance Dialysis services in the State for the benefit of the general population.
- B. The Mission Director, NHM, UP on behalf of Authority had accordingly invited proposals by its Request For Qualification Cum Request for Proposal No.<<>> dated <<>> (the “Request for Qualification Cum Request For Proposal” or “RFQ Cum RFP”) under a single-stage-two step bid process from interested parties for implementing the project.
- C. In response to the RFQ Cum RFP, the Authority received applications from various Bidders including the Bid dated <<>> submitted by the Selected Bidder.
- D. The Authority, after evaluating all the proposals received by it from the various Bidders, accepted the Bid dated <<>> submitted by the Selected Bidder and communicated its acceptance to the Selected Bidder vide Letter of Intent No. <<>> dated <<>> (“LOI”).
- E. The Selected Bidder accepted the LOI and returned to the Authority a duplicate copy of the LOI duly signed by its Authorized representative in token of acceptance thereof.
- F. One of the requirements of the RFQ Cum RFP was that the Selected Bidder if Consortium shall incorporate a Special Purpose Vehicle(SPV)forexecutionandimplementationofthe Project and the Selected Bidder has since promoted andincorporatedthe HDU-SPasacompanyundertheCompaniesAct,1956.

- G. By its letter dated <<>>, the HDU-SP has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOI. The HDU-SP has further represented to the effect that the Selected Bidder has promoted it for the purposes hereof.
- H. The Authority has agreed to the said request of the Selected Bidder and the HDU-SP, and has accordingly agreed to enter into this Agreement with the HDU-SP for execution of the Project on the terms and conditions set forth hereinafter, subject to the selected Bidder also signing this Agreement as the Confirming Party.
- I. The HDU-SP has furnished the Performance Security of Rupees << Amount in figures and words >> in the form of Bank Guarantee dated <<>>.
- J. The HDU-SP has complied or has undertaken to comply with all the conditions contained in the RFP enabling the signing of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE COVENANTS AND AGREEMENTS SET FORTH IN THIS AGREEMENT, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

## 1.1 ARTICLE 1 - DEFINITIONS & INTERPRETATIONS

1. In this Agreement, unless the context otherwise requires the following expressions shall have the meaning assigned as under:
  - a. "Agreement" shall include the contents and provisions of this Agreement; of all Schedules hereto; of the terms contained in the Request For Qualification Cum Request for Proposal (RFQ Cum RFP) as amended and clarified by Authority until the submission of the bid by the interested parties; the LOI No. .... dated .....; the related agreements, inter-alia, including Bank Guarantee, undertaking and other instruments furnished by the HDU-SP and the memorandums signed between the HDU-SP and Authority from time to time in terms of this Agreement in regard to the Area of Operation and other matters, manner and method for execution and implementation of the Project.
  - b. "Agreement Period" shall have the meaning as ascribed to it under Article 4.
  - c. "Hemodialysis Units" means well-equipped Dialysis Centers/ Units which has been fabricated and made functional specifically for the purpose of providing services as per scope of work. The same has been described in detail in Part-III Schedules to Agreement.

- d. "Hemodialysis Unit– Staff" hereafter referred as "HDU- Staff" includes the following three types of staff, (i) Medical Staff (ii) Para-medical Staff (iii) Other HDU staff as specified in the specifications in Part- III.
- e. "Hemodialysis – Equipment's" hereafter referred as "HDU- Equipment's" are as specified in the specifications in Part-III
- f. "HDU– IT Application" hereafter referred as "HDU- IT Application" refers to the software application designed, operated and maintained for the purpose of HDU project activities such as HDU Staff attendance, patient record entry, inventory management, EQUIPMENT Maintenance record, report generations for monitoring etc. which will be linked to the MIS System being provided by the Authority. The HDU-IT Application will be developed by the Authority and will be provided to the Hemodialysis Service Provider. The installation work of software in the Hemodialysis units will be the responsibility of the Hemodialysis Service Provider.
- g. "Applicable Laws" means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in the State of Uttar Pradesh, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.
- h. "Applicable Permits" means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement.
- i. "Area of Operation" shall mean the HDU Units to be established by the bidder in Designated Hospitals as mentioned in this agreement.
- j. "Beneficiary" or "Beneficiaries" shall mean the general population suffering from Kidney disease and need regular maintenance dialysis.
- k. "Commencement Date" shall mean the date of start of 1st Hemodialysis procedure at respective hospital as detailed in point 4 of RFQ cum RFP Part III.

- I. The 'Effective Date' shall be the date of signing the Agreement between HDU-SP and the Authority.
- m. "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 any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project and/or the Project Facilities.
- n. "Good Industry Practice" means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced HDU-SP engaged in operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and the services contemplated under the Project.
- o. "HDU Services" shall mean the services provided by the Hemodialysis units to general population under Hemodialysis Project inclusive of the scope of services as specified in Description of Services as described in Schedule-A in Part-III.
- p. "Project" means the implementation of Hemodialysis Units Project, in the State of Uttar Pradesh in accordance with the provisions of this Agreement and Schedules.
- q. "Project Facilities" shall bear the meaning as ascribed to it under Article 8 of this Agreement.
- r. "State" shall mean the State of Uttar Pradesh.
- s. "SPV" shall mean a Company incorporated under the Companies Act, 1956 exclusively for the purpose of executing the Project as per terms and conditions of this Agreement.
- t. "Standard Operating Procedures" shall mean the procedure for operation of the Project to be developed by the HDU-SP and approved by the Authority as per the guiding principles laid down in Part -III.
- u. "Agreement Signing Authority" will be "an officer of the rank of Dy. Secretary and above of the Govt. of Uttar Pradesh" and "Implementing Authority" will be "Director General (Medical & Health Services, Govt. of Uttar Pradesh)' The

“Authority “mentioned anywhere in the document will mean “Implementing Authority”.

2. The capitalized terms not specifically defined in this Agreement shall have the meaning ascribed to them in the RFQ Cum RFP.
3. In this Agreement, unless the context otherwise requires,
  - (a) Reference to any legislation or any provision thereof shall include an amendment or reenactment or consolidation of such legislation or any provision thereof so far as such an amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
  - (b) Words referring to a “person” shall be construed as a reference to any individual, firm, company, corporation, society, trust, or any association;
  - (c) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
  - (d) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;
  - (e) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
  - (f) Any reference to day shall mean a reference to a calendar day;
  - (g) Any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
  - (h) Reference to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Uttar Pradesh are generally open for business;
  - (i) Any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days and 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 the next business day;



- (j) The words importing singular shall include plural and vice versa;
- (k) Reference to any genders shall include the other and the neutral gender;
- (l) Lakhs means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (m) references to the "winding-up", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (n) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- Provided that this sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (o) any agreement, consent, approval, authorization, 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 hand of a duly authorized representative of such Party, as the case may be, in this behalf and not otherwise;
- (p) The Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (q) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

## 1.2 ARTICLE 2 – OBJECTIVE OF THIS AGREEMENT

The Service Provider is required to provide maintenance dialysis services to all the patients referred to it by the MS/CMS/Director of the associated Hospital of respective Regional Hospitals.

**The key considerations are:**

- a. To reduce out of pocket recurring expenses for the patients suffering from ESRD (End Stage Renal Disease).
- b. To provide affordable quality, dialysis and allied facilities in various government hospital services.
- c. To provide universal access to Dialysis facilities for the patients suffering from ESRD.
- d. To provide state-of-the-art Hemodialysis equipment and ancillary equipment required for smooth operations of Hemodialysis Centre and allied services to Government of Uttar Pradesh.
- e. To provide free of charge services to all the identified ESRD patients, which would be reimbursed by government at pre-determined rates.

**1.3 ARTICLE 3 – ENGAGEMENT OF THE Hemodialysis Unit Service Provider- HDU-SP**

1. Subject to the terms and conditions contained in this Agreement, the Authority hereby engages the HDU-SP, and the HDU-SP hereby accepts the engagement to provide the Services through Hemodialysis Units. The HDU-SP shall be responsible for operation and maintenance of the Project Facilities in the Area of Operation.
2. The services to be provided and the work to be undertaken by the HDU-SP under the projects are detailed in the Part-III Schedule-A, Description of Services hereto and shall, inter- alia, include:
  - a. Procurement, installation and Maintenance of Medical Equipment as specified.
  - b. Equipping HDUs with necessary medical and other facilities as stated in RQ cum RFP Part III of the Agreement,
  - c. Setting up Dialysis Help line per cluster,
  - d. Appointment and recruitment of HDU- Staff
  - e. Operating Hemodialysis Units to provide services as per scope of work to the Beneficiaries
  - f. Procurement, installation and maintenance of R/O Plant as per Dialysis Grade.
  - g. Operation, maintenance and management of the Dialysis Helpline per cluster, Dialysis Unit premises/, the storage facility and any other associated/related facilities as defined in RFQ cum RFP part III;
  - h. Operations and maintenance of equipment and hardware required for HDU project and the Dialysis Helpline;
  - i. Procurement, financing, stocking and maintaining of inventories;

- j. Staffing and training of Manpower for the operation, maintenance and management of HDU.
- k. Reporting and maintenance of the database that is generated through operation, maintenance and management of HDU and the Helpline;
- l. ensuring that the performance standards in relation to HDU and the Centralized Control Room are satisfied at all times;
- m. undertake IEC (Information, Education and Communication)/IPC (Inter Personal Education) activities, promotion and advertisement of HDU to create mass awareness among the people it serves and thereby increase uptake of HDU; and
- n. To operate and maintain the HDU in a sustained manner.

#### **1.4 ARTICLE 4 – DURATION OF THIS AGREEMENT**

This Agreement, unless otherwise terminated in accordance with the provisions of Article 18 herein, shall remain valid and in force for a period of 60 (Sixty) months from the date of start of Dialysis Services delivery to the patients at the respective hospitals. The agreement can be renewed for a period of additional Five years subject to the review of performance. The CGHS rates applicable at the time of renewal will be the base rate and discount will remain the same as per the financial bid.

#### **1.5 ARTICLE 5 – AREA OF OPERATION**

The HDU-SP shall provide the Hemodialysis Unit services only in the defined Area of Operation.

#### **1.6 ARTICLE 6 – COMMENCEMENT OF SERVICE S**

1. The HDU-SP shall commence and execute the Project as per the time lines as specified in Part-III and in accordance with the terms and conditions of this Agreement.
2. In the event the HDU-SP fails to commence and execute the Project within the timelines stated in Part-III, the HDU-SP shall be subject to payment of Liquidity Damages as provided under Schedule-F-.in part-III.
3. It is clarified that if (i) on any particular month during the Agreement Period any Hemodialysis Units operated by the HDU-SP should complete procedures less than specified in Schedule E of Part III , or (ii) on any particular day the number of operational Hemodialysis Units falls below 80% of the total number of Hemodialysis Units put in operation at that time as part of Hemodialysis Units, then the Authority shall, notwithstanding any other remedy or recourse available to it under this Agreement or at law, be entitled to levy/impose the penalty on the HDU-SP . It is further clarified that the HDU-SP may hold Hemodialysis Units up to maximum of 20% of the total number Hemodialysis Units put in operation at that time (and upto a maximum of 20% of the machines in one UNIT,) for the purposes of repair and

maintenance only and the same shall not be treated as a default on the part of the HDU-SP under this Agreement. The rates of penalty will be same as applicable under Liquidity Damages specified in Schedule-F in part-III

## **1.7 ARTICLE 7 – CONSIDERATION AND PAYMENT TO HDU-SP**

1. The consideration provided in this Agreement shall be the full and comprehensive consideration for all the services to be performed and the obligations undertaken by the HDU-SP under this Agreement and the HDU-SP shall not directly or indirectly be entitled to any other sum either from the Authority, users/Beneficiaries of Hemodialysis Units project or any other person, whatsoever.
2. HDU-SP will be entitled for 90% payment within 30 days on submission of bills directly to the Authority (Director General, Medical & Health Service, U.P) based on MIS reports on number of procedures accompanied by the Invoice without approval of MS/CMS/Director of the associated Hospital. HDU SP will submit the bills on 7th day of every month. MS/CMS/Director has to forward the verified bills along with Daily and Weekly monitoring reports to the Authority within next 7 days. For Balance 10% payment, the HDU-SP will submit bills along with Daily and Weekly monitoring reports to MS/CMS/Director on every 7th day of a month, to the associated authority and payment will be provided as per Performance Linked payment after due approval of the Hospital Authority within 45 days of submission of bills. A no-fee receipt shall be provided by the service provider to every patient. A copy of all such receipts shall be submitted by the service provider to the District Hospital Authority. This will form the basis of BALANCE payment along with other criteria by purchasing authority to the service provider for the said services. All receipts shall be subjected to a third party annual audit and the audit report submitted as part of annual work report of the service provider for that facility. The performance criteria to be added are "adequacy of dose monitored (as per MoHFW Guidelines), rate of bacterimia monitored and control of Blood Pressure monitored "(as per Mohfw Guidelines.)" and the same will all be reviewed in Quarterly Internal Audit Sheet issued annexure VII of RFP-cum RFQ-part - III On reconciliation if it is found that extra payment has been made (during the first payment i.e. 90 %) than the same will be recovered and adjusted in the current months billing cycle.
3. However, if the Authority finds any mistake in the bills or need clarity on some issue, a notification will be sent to the service provider for rectification. This rectification process should not take time more than 7 days.
4. Payments Based on Performance-The payment to the service providers shall be subjected to the performance of the services provided. The reimbursement of the payment is linked to the performance in following way:

The payments shall be linked to the weekly monitoring sheet (Annexure IV Part-

III ) which will be filled separately for all PARAMETERS on weekly basis. Thus, there will be total FOUR reports FOR ONE month to be submitted to the authority after duly signed by the designated Hospital authority or its representative,. The average cumulative score for the center will be calculated.

Similarly, a patient feedback review sheet (Annexure V- in PART-III) shall be attached with the discharge slip of inpatients and filled up by each patient during discharge. The hospital staff shall coordinate with patient or his/her attendant/relative to fill this sheet and clarify, if there is any query. The same sheet will also be filled up by all the Patients availing Dialysis procedures in a month. The average cumulative score per patient will be calculated.

During the calculation of final score value, 80% of the weightage to be given to the average cumulative score of Weekly Monitoring Sheet and remaining 20% shall be given to the average cumulative score of Patient Feedback Review sheet. The payment will be made as per the following weighted average:

<b>Weighted Average Score</b>	<b>Percentage of Payment to be approved</b>
0-39	No payment
40-59	50
60-79	80
80-100	100

- The Service Provider will be entitled for 90% payment on submission of the Invoice based on the records of procedures in MIS without the approval of Hospital Authority and balance will be paid on approval of Hospital Authority as per performance linked parameters as explained above. After reconciliation of the invoices in the next month if the approved payment is found to be less than the paid amount (paid in last month) then the balance amount will be recovered in the current billing cycle

\* Refer to Annexure VI- of Part-III for an example describing various calculations for performance linked payment.

## **1.8 ARTICLE 8 – PROJECT FACILITIES**

- “ProjectFacilities” shall mean and include all assets including the Hemodialysis Unit fitted with medicalequipment’s,otherequipment’s,accessories, databaseandothermaterialsusedfortheworkandoperation ofHDU project underthis Agreement.
- Ownership of all the Project Facilities including Dialysis Helpline for the purposes of the implementation of the Project shall vest with the Authority. The Dialysis Helpline will be integrated with the MIS provided by the authority.

3. Ownership as well as property rights of the database generated by HDU Application during the Agreement Period and after shall vest exclusively with the Authority.
4. The HDU-SP has no right, title or interest in any form of ownership rights over any of the Project Facilities which have been provided by the Authority. It is hereby clarified that the HDU-SP shall not get any right, title or interest in the HDU or any equipment and material provided by Authority under this Agreement and the HDU-SP has no right to create any right, interest or title or any Encumbrance in relation to the Project Facilities in favor of any third party for any project facility that has been provided by the authority.
5. The Authority may consider transfer of Project Facilities (including Hemodialysis Units, staff vans, equipment's, etc.) and technology including any software back-ups except the HDU Staff that are procured for the purpose of providing healthcare services under implementation of the HDU Project upon the expiry of the Agreement to the Authority. The transfer of Project facilities will be governed by Income Tax applicable depreciation norms and rates.

MIS will be provided by the Authority and all the data generated will be the property of the Authority and HDU-SP will have no claim on it and will not disclose/transfer the database to any one without the approval of the Authority.

6. The HDU-SP shall bear all costs and expenses relating to obtaining any user license in favor of the Authority or for ensuring the due transfer of the equipment, software back-ups and technology to the Authority upon the expiry of this Agreement. The licenses should have a validity of at least 1 (one) year beyond the date of expiry of the Agreement. The HDU-SP shall ensure that all warranties and/or guarantees that may be valid and existing at the time of expiry and/or earlier termination of this Agreement are also transferred to the Authority with the relevant equipment hardware/software back-ups and/or technology, as the case may be to the Authority.

## **1.9 ARTICLE 9 – MANPOWER**

1. The HDU-SP acknowledges that it shall appoint and recruit Manpower (HDU Staff) and impart adequate training to the Manpower for performance of all its the obligations in accordance with the terms, conditions and covenants set forth in this Agreement for the operation, maintenance and management of Hemodialysis Units and the Project Facilities. The Manpower appointed or hired for the operation of the Hemodialysis Units and the Project Facilities shall be the employees of the HDU-SP and the Authority will not be liable for any acts of omission/ commission vis-à-vis the Manpower appointed or hired by the HDU-SP.
2. The HDU-SP shall be responsible to comply with all applicable labor legislation in respect of the Manpower appointed or hired by the HDU-SP in respect of execution and implementation of the Project and shall indemnify and keep indemnified the Authority for any claim, action or demand whatsoever in that regard.

## 1.10 ARTICLE 10 – MOBILIZATION ADVANCE

Not Applicable

## 1.11 ARTICLE 11 – REVIEW OF HEMODIALYSIS UNIT PROJECT

### Monitoring, Evaluation and Reporting –

The following Annexures in Part- III, Schedules to the Agreements define the Monitoring, Evaluation and Reporting procedures:

Annexure- II- Essential Monitoring Criteria-  
 Annexure- III- Daily Monitoring Check List-  
 Annexure-IV- Weekly MonitoringSheet -  
 Annexure-V-Patient Feedback Review Sheet-  
 Annexure-VI- Weighted Average Score Calculation-  
 Annexure-VII- Quarterly Internal Audit Sheet-  
 Annexure- VIII- Third PartyAudit Sheet-

- Any problem encountered on daily basis which means that services are not complying with the required standards shall be recorded as a comment in the format attached in Annexure III (Part-III) and reported to the authorized representative of service provider to rectify the problem in accordance within 48 Hours and if not rectified within the timeframe, this will be recorded in the Annexure-IV- Weekly Monitoring Sheet (Part-III) where there will be ZERO Score Marking.
- If any patient send his/her complaint regarding Dialysis in the hospital through IVR or SMS service or written application , a notification shall be sent to the supervisor through his/her mobile and after taking necessary actions the supervisor has to notify back within 24 Hours and the same shall be recorded for monitoring purposes: A time log book will be maintained at the office of contract signing authority and a copy of the same shall be maintained by the site supervisor of the Service provider. In case of failure to resolve the issue within 24 Hours there will be ZERO Score Marking in Patient Feedback Review Sheet- Annexure-V.
- Nodal Officers- All the invoices, reports etc. needs to be certified/verified by the Nodal officers who will be Chief Medical Superintendent of the hospital concerned. In his absence, the MedicalSuperintendent or any Medical Officer as assigned by the Superintendent may sign the documents.
- Each of the Service Provider should have to submit the Invoice along with a monthly report Comprising of Annexure-VI and reasons of deficiency and non-compliances to the DoMH within 7(seven) working days of the next month.
- Members and Technical Experts from the Health & Family Welfare Department may visit the Service Provider concerned at any time with/without notice. Their opinions and recommendations will be considered during the renewal of the agreement.
- The designated hospital staff of respective center of the hospital shall fill the weekly review sheet mentioned in Annexure IV by marking the response in a scale of 0 or 10 (whether the services are complying to the standards or not) against EIGHT elements/criteria. The duly filled review sheet shall be signed by assigned hospital staff

(by whom sheet will be filled), counter signed by the CMS/ MS / Director of the Hospital or his representative and the assigned personnel of service provider. All monitoring reporting formats and notifications should be linked to the Control room MIS whenever it is installed and the cost of maintaining this module will be borne by the Authority.

- On monthly basis, the authorized representative assigned by the Authority shall receive all the reports and notifications and payments shall be reimbursed according to that as mentioned in the clause 1.7-Article-7 in Part-II-Draft Agreement and Schedule-B-Schedule for Payment in Part- III and Annexure-VI- Performance Linked Payment Calculation in Part-III
- An internal audit shall be conducted on random basis during each quarter for all schedules by the Authority. The auditor shall decide the compliance of each element using the service standards and requirements (Essential Monitoring Criteria-Annexure II) and record it as either acceptable (score 1) or unacceptable (score 0). Review elements comprise 10 elements (Annexure VII).
- A third party audit shall also be conducted on random basis after every six months to understand the community perception of dialysis services in the hospital. Random checks of critical parameters will be conducted by the third party. (Annexure-VIII).
- The recommendations of Third Party as well as Internal Audits will be communicated and the Service Provider will need to rectify the deficiency within 30 days failing which the payments of the Service Provider will not be released. If the deficiency is not rectified within 60 days the Service Provider will be issued a Termination notice and the Contract will be terminated within 30 days from the date of intimation of Termination notice. This is further clarified that HDU\_SP has to rectify the issues within 90 days from the initial intimation date or else the contract will be liable to be terminated.

## **1.12 ARTICLE 12 – COVENANTS OF THE HDU-SP AND THE SELECTED BIDDER**

### **A. Covenants of the HDU-SP:**

1. The HDU-SP agrees and undertakes to render Hemodialysis Units projects and other work and services as mentioned in Schedule A of Part-III of this Agreement and comply with other provisions of this Agreement with regularity throughout the Agreement Period.
2. The HDU-SP shall be obliged to provide the HDU services under this Agreement at the cost and responsibility of the HDU-SP by maintaining the all project facilities for HDU project in working condition and deploying the Manpower required.
3. Subject to the provisions of this Agreement, the HDU-SP shall be responsible to do all interiors after due approval of the design in respect thereof by the Authority, procure and maintain all medical and other general equipment as per the specification contained in Part-III under Annexure-I Specifications.
4. Develop suitable solution for Dialysis Helpline to communicate with its patients.
5. HDU-SP needs to set-up a local office in the assigned CLUSTER for storage of medicines, consumables and lab reagents. HDU should ensure 1 month buffer stock of medicines and consumables. HDU-SP will ensure that the HDUs are well-equipped



with medical equipment, instruments, consumables lab reagents, furniture, IEC material etc.

6. HDU-SP to ensure that each items is stored properly and as per standard norms to ensure usability of the same.
7. HDU-SP should be responsible for ensuring adherence to SOPs, Fire Safety Guidelines, AERB guidelines, Bio-Medical waste management guidelines etc.
8. HDU-SP shall provide all services free of cost to the people.
9. HDU-SP will be responsible for the safety & security of the Staff engaged for the purpose of HDU and for any related vicarious liabilities.
10. The HDU-SP shall operate the Hemodialysis Units and ensure that services are available as per Agreement to the Public/ Beneficiary without any charges being levied from the public/ Beneficiary. In the event of any repair or other factors affecting the Hemodialysis Units or the non-availability of any other Project Facility or Manpower deputed for any HDU project, the HDU-SP shall immediately inform the Authority about the same in writing and shall, at its cost and responsibility, be responsible to make adequate and sufficient arrangements for alternate HDU Project Facility or manpower, as the case may be, of similar nature to provide and maintain the services as stipulated in this Agreement.
11. The HDU-SP shall duly maintain such records including log books as the Authority may require and furnish the same to the Authority in such manner and in such form as may be prescribed by the Authority.
12. The HDU-SP agrees that it shall cooperate and shall be obliged to give all the requisite information and details to the Authority or any other designated representative of Authority for the purpose of verification of its claims.
13. The HDU-SP agrees and undertakes to render services incidental to the scope and conditions of work as contained in this Agreement without any extra charges or payment; Provided that the quantum of such extra work does not result in extra expenditure to the HDU-SP.
14. The HDU-SP agrees that the Selected Bidder {single entity or consortium members}, shall hold / collectively hold, as the case may be, at least 51% (fifty one per cent) of the subscribed and paid up equity of the HDU-SP at all times until the end of Agreement Period. Without prejudice to the above, the HDU-SP shall take prior approval of the Authority in case of any change in the ownership of any member of the Selected Bidder in the HDU-SP.
15. The HDU-SP acknowledges and agrees that each of the members, including the Lead Member, whose Technical Capacity and Financial Capacity is evaluated for the purposes of qualification under the RFP, shall hold at least 34% for Lead Member and minimum 20 % for other members of the consortium of the subscribed and paid up equity of the HDU-SP and all other Members shall hold at least 20 % of the subscribed and paid up equity of the HDU-SP for the entire term of this Agreement;

Provided that the Lead Member of the Consortium shall at all times hold equity share capital of the HDU-SP higher than the share capital held by any other member of

the Consortium in the HDU-SP.

16. The HDU-SP hereby covenants that it shall at all times during the Agreement Period maintain such displays, promotional material and/or messages as may be directed or approved by Authority free of cost.
17. The HDU-SP acknowledges and accepts that the technology and software back-ups that shall be financed, procured and/or developed by the HDU-SP during the Agreement Period shall be provided to the Authority, free of cost, in accordance with the provisions of this Agreement, for the purposes of using the said software for the operation of the Hemodialysis Units.
18. The HDU-SP agrees that it shall ensure and shall not contest that all rights and interests of the HDU-SP in and to the Project vest in the Authority during and after the Agreement Period without any further act or deed on the part of the HDU-SP or Authority.
19. The HDU-SP hereby covenants that it shall duly maintain the Project Facilities free and clear of all liens, claims, and Encumbrances and it shall not at any time create any charge, lien or Encumbrances whatsoever over the Project Facilities in favor of any other person on any facility provided by Authority. The HDU-SP shall maintain the Project Facilities in good condition.
20. HDU-SP hereby covenants that it or its Manpower shall not use the Project Facilities for any purpose other than for the purposes of this Agreement.
21. Subject to the provisions of Article 8 at all times, the HDU-SP shall at its costs, charges and expenses perform its obligations under this Agreement for execution and implementation of the Project and providing Project Facilities, in accordance with this Agreement, Applicable Laws and Applicable Permits.
22. The HDU-SP shall duly insure and maintain at all times adequate comprehensive insurance cover at its own cost in regard to the Project Facilities. The insurance should cover all Hemodialysis Units project facilities including EQUIPMENT therein shall be taken in the joint names of the HDU-SP and the Authority.
23. The HDU-SP hereby covenants to undertake IEC/IPC activities, promotion and advertisement of Hemodialysis Units to create mass awareness among the people it serves and thereby increase uptake of HDU services.
24. All major and minor maintenance, servicing and replacement of spares and equipment's in the unit shall be the responsibility of the HDU-SP.
25. The HDU-SP acknowledges and accepts that provisions as contained in Part-III is the performance indicator for the purposes of this Agreement and is also the essence of this Agreement. In case of breach of the said performance indicators as per Part-III, the HDU-SP shall be liable to pay penalty in accordance with Part-III.
26. The HDU-SP shall ensure that a chart marking availability of all drugs and medical consumables in the HDU is maintained and updated by its Manpower at all times.
27. The HDU-SP shall ensure that the staffing norms mentioned in the Schedules are adhered to and reported to Authority or any other agency appointed by the Authority in that behalf.

28. The HDU-SP agrees that Authority or its representative shall at all times have access to all the data pertaining to the Project and the Project Facilities.
29. The HDU-SP shall at all times provide to the representatives of the Authority, access to the Project Facilities to review the progress of the operation of the services under this Agreement and to ascertain compliance with any of the requirements of this Agreement;
30. Provided that non-inspection by the Authority of any Project Facilities shall not, in relation to such Project Facilities, (i) amount to any consent or approval by the Authority nor shall the same be deemed to be waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the HDU-SP from its obligations or liabilities under this Agreement in respect of execution and implementation of the Project.
31. The HDU-SP shall submit all the monthly reports as per provisions- of this Agreement and such other reports or documents as may be requested by the Authority from the HDU-SP from time to time.

#### B. Covenants of the Selected Bidder

1. The Selected Bidder, by joining as a Confirming Party to this Agreement undertakes and confirms that as the Selected Bidder it shall continue to be responsible and liable, jointly and severally with the HDU-SP, to the Authority for performance of all the obligations of the HDU-SP hereunder till all the terms and conditions of this Agreement and the RFP are fulfilled to the entire satisfaction of the Authority.
2. The Selected Bidder further agrees that it shall ensure that the HDU-SP abides by and complies with all the terms and conditions of the RFP and this Agreement and the Authority shall have the right to take such action as it may deem fit against the Selected Bidder for any failure or default of the HDU-SP in performance of its obligations under this Agreement.

### 1.13 ARTICLE 13 – COVENANTS OF THE AUTHORITY

1. The Authority shall be responsible for payment of the Fee mentioned in Article 7 of this Agreement
2. The Authority shall be responsible for promoting public awareness about Hemodialysis Units through various State agencies and departments on the uptake of HDU services are incorporated into existing campaigns of the State wherever appropriate.
3. The Authority shall provide appropriate assistance and facilitate in implementation of the Project.
4. The Authority shall be responsible for the monitoring and evaluation of the Project and Project Activities.
5. The Authority shall be responsible for all the functions as in Schedule-D-Services and Facilities as defined in Part-III.

6. The Authority shall provide space for setting up of Dialysis unit at free of cost.

### 1.14 ARTICLE 14 – PERFORMANCE SECURITY

1. To ensure due and satisfactory performance of its obligations under this Agreement, the HDU-SP has, before the execution of this Agreement, furnished a performance security in the form of an irrevocable bank guarantee (in the format specified in format 9 of RFP part I) from a Scheduled Bank details of which are given below:
  - (a) Name of issuing Bank—<<>>
  - (b) Amount of Bank Guarantee - <<>> only
  - (c) Date of issue—<<>>
  - (d) In favor of— Director General (Medical & Health) Uttar Pradesh - Lucknow
  - (e) Validity period—Five years and six months.
  - (f) Cashable and enforceable at Lucknow
  
2. The Performance Security shall be maintained and shall be available for the Authority to enforce in case of any failure or default on the part of the HDU-SP in performing its obligations under this Agreement or otherwise to meet any claim against the HDU-SP or any other reason including but not limited to recovery of penalties, excess payments made previously and non-performance (by the HDU-SP) that causes financial loss to the Authority.
  
3. The HDU-SP shall be liable to restore/replenish the Performance Security to the full amount in case of part encashment/invocation of the same by the Authority. This shall be done within 30 (thirty) days of any such part encashment/invocation. Failure of the HDU-SP to provide a valid Performance Security and/or restore/replenish and maintain the Performance Security in accordance with this Article 14 shall entitle the Authority to forthwith terminate this Agreement.

### 1.15 ARTICLE 15 – APPOINTMENT OF COMMITTEES, AGENCIES, ETC.

1. Authority at its discretion may constitute committees or appoint external agencies for the monitoring of performance, processing and verifying invoices/ claims, handling disbursement of funds, etc.
  
2. Authority may from time to time appoint and reconstitute appropriate committees and agencies, to monitor and coordinate the work and services of the HDU-SP and undertake various studies, investigation, inquiries, verifications, etc. as may be considered appropriate.

## 1.16 ARTICLE 16 - REPRESENTATIONS AND WARRANTIES

1. The HDU-SP represents and warrants that:
  - (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or registration;
  - (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
  - (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
  - (d) It has the requisite standing and capacity including to undertake the work under this Agreement;
  - (e) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
  - (f) all the information furnished in the Proposal is, and shall be, true and correct as on the Effective Date and the balance sheet and profit and loss account of the HDU-SP for its every accounting years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the HDU-SP;
  - (g) it shall furnish a copy of its audited accounts within 120 (one hundred twenty) days of the close of its every accounting year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the HDU-SP within thirty (30) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
  - (h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under 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;
  - (i) there are no actions, suits, proceedings, or investigations pending or, to the HDU-SP'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 HDU-SP under this Agreement or which individually or in the aggregate may result in any 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 Agreement;
  - (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any adverse effect or impairment of the HDU-SP's ability to perform its

- obligations and duties under this Agreement;
- (k) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
  - (l) No representation or warranty by the HDU-SP contained herein or in any other document furnished by it to the Authority, or to any Governmental Agency in relation to applicable permits 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;
  - (m) it warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the HDU-SP, to any person by way of fees, commission or otherwise for securing or entering into this Agreement or for influencing or attempting to influence any officer or employee of Authority in connection therewith; and
  - (n) It shall duly renew and maintain Performance Security at all times up till six months after the expiry of the Agreement Period in full force and effect in accordance with the provisions of this Agreement.

2. The HDU-SP undertakes to observe the highest standard of ethics during the performance of its obligations under this Agreement without indulging in any Corrupt, Fraudulent, Collusive or Coercive Practices. For the purposes of this provision, the terms set forth below shall have the meaning assigned to them as follows:

- (a) "Corrupt Practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any party in the procurement process or the execution of a contract;
- (b) "Fraudulent Practice" means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract;
- (c) "Collusive Practices" means a scheme or arrangement between two or more HDU-SPs, with or without the knowledge of Authority, designed to influence the action of any party in the procurement process or execution of the contract;
- (d) "Coercive Practices" means harming or threatening to harm, directly or indirectly, persons, or their property to influence their participation in a procurement process, or affect the execution of the contract;
- (e) "Undesirable practice" means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or

attempting to influence the bidding process; or (ii) having a Conflict of Interest; and

- (f) "Restrictive practice" means forming a cartel or arriving at any understanding or arrangement among applicants/ bidders with the objective of restricting or manipulating a full and fair competition in the bidding process.
3. The HDU-SP acknowledges that prior to the submission of the Proposal, the Selected Bidder had after a complete and careful examination made an independent evaluation of all the information provided by the Authority and had determined to the Selected Bidder's satisfaction the nature and extent of such difficulties, risks and issues as are likely to arise or may be faced by the HDU-SP in the course of performance of its obligations hereunder.
  4. The HDU-SP acknowledges and hereby accepts the risk of inadequacy, mistake or error in relating to any of the matters set forth above and hereby confirms that the Authority shall not be liable for the same in any manner whatsoever to the HDU-SP.
  5. The Selected Bidder confirms that it has incorporated the HDU-SP as SPV to execute the Project according to the terms and conditions of this Agreement and the Selected Bidder shall be liable for all the acts and omissions of the HDU-SP relating to the Project during the Agreement Period

## 1.17 ARTICLE 17 – FORCE MAJEURE

1. As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in the State of any or all of Non-Political Event, Indirect Political Event and Political Event respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "Affected Party") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has material adverse effect on the Affected Party.
2. Non-Political Event: A Non-Political Event shall mean one or more of the following acts or events:
  - (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion;

- (b) strikes or boycotts (other than those involving the HDU-SP or its respective employees/representatives, or attributable to any act or omission of any of them) interrupting HDU and/or any of the Project Facilities for a continuous period exceeding 7 (seven) days in an accounting year, and not being an Indirect Political Event;
  - (c) any judgment or order of any court of competent jurisdiction or statutory authority made against the HDU-SP in any proceedings for reasons other than (i) failure of the HDU-SP to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority; or
  - (d) any event or circumstances of a nature analogous to any of the foregoing.
3. Indirect Political Event: An Indirect Political Event shall mean one or more of the following acts or events:
- (a) An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
  - (b) Any Indirect Political Event that causes a Non-Political Event; or
  - (c) any event or circumstances of a nature analogous to any of the foregoing.
4. Political Event: A Political Event shall mean one or more of the following acts or events by or on account of any Government instrumentality:
- (a) Compulsory acquisition in national interest or expropriation of any Project Facilities or rights of the HDU-SP;
  - (b) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the HDU-SP to perform its obligations under this Agreement;

Provided that such delay, modification, denial, refusal or revocation did not result from the HDU-SP's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorization, no objection certificate, exemption, consent, approval or permit; and



- (c) any event or circumstance of a nature analogous to any of the foregoing.
5. Upon occurrence of a Force Majeure Event, the Affected Party shall by written notice report such occurrence to the other Party within 48 hours from such occurrence. Any notice pursuant thereto shall include full particulars of:
- (a) the nature and extent of each Force Majeure Event which is the subject matter for any claim for relief under this Article with the evidence in support thereof;
  - (b) The estimated duration and the effect or probable effect which such Force Majeure Event is having or shall have on the Affected Party's performance of its obligations under this Agreement;
  - (c) the measures which the Affected Party is taking or proposes to take for mitigating the impact of such Force Majeure Event; and
  - (d) Any other information relevant to the Affected Party's claim.
6. The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it has notified the other Party of the occurrence of the Force Majeure Event forthwith and in any event not later than 48 hours after the Affected Party knew, or ought reasonably to have known, of its occurrence.
7. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular reports containing information of the event and such other information as the other Party may reasonably request from the Affected Party.
8. After the Effective Date, if any Force Majeure Event occurs, the date set forth in the Schedule 2, at the sole discretion of Authority, may be extended by a period for which effect of such Force Majeure Events subsists.
9. If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, Authority may in its discretion terminate this Agreement by issuing a termination notice to the other Party without being liable in any manner whatsoever, and upon issue of such termination notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith;

Provided that before issuing such termination notice, Authority shall inform the HDU-SP and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period in

its sole discretion issue the termination notice.

10. The non-availability of the Manpower, HDUs and/or other Project Facilities due to repair etc. shall not be considered as Force Majeure and it shall be the responsibility of the HDU-SP to arrange for appropriate alternatives to maintain the services and work as stipulated in this Agreement. It shall be entirely the obligation of the HDU-SP to maintain the Manpower, HDUs and other Project Facilities required rendering the services and working under this Agreement.

## 1.18 ARTICLE - 18 TERMINATION

1. This Agreement shall terminate by efflux of time on the expiry of the Agreement Period.
2. Authority may terminate this Agreement for any of the following events of default ( " Event of Default " ) on the part of HDU-SP:

After giving opportunity of being heard to the Service Provider, the Authority after been seeking prior approval of Principal Secretary, Department of Medical Health & Family Welfare, Government of U.P may terminate/ cancel the agreement on the following grounds:

- Breach of any or all terms and conditions of agreement.
- Non-performance or unsatisfactory performance of work.
- The project reserves the right to terminate the contract without assigning any reason by giving a notice of three months. The Service Provider will have to serve a notice of three months, if he wishes to terminate the contract, failing which his performance security would be forfeited.
- The agreement with the HDU-SP concerned may be terminated on any of the following grounds : (i) Machine remaining out of order for more than 48 hours in a month (ii) Refusal of referred patients without valid reason (iii) Refusal of emergency patients (iv) Failure to provide appointment for referred patients for more than three times a month (v) Failure to deliver timely Dialysis on more than three occasions in a month (vi) Failure to follow Standard Operating Procedure (SOP) for performing the dialysis. (vii) charging any prices for the services provided, the specified charges mentioned herein (viii) Conducting unnecessary procedures for increasing bill amount (ix) Noncompliance to statutory requirements (x) Criminal indictment (xi) Engaging unqualified persons for conducting dialysis. (xii) Non-compliance of ethical dialysis practices
- The termination of the agreement may also be done for non-compliance of the following stipulations : (i) Reuse of Hollow Fibers should never exceed 10 times or with less than 80% of fiber bundles.; (ii) There should be effective dialysis for 4 hours at least in each case; (iii) During dialysis the patient should not be dialyzed unattended

and unsupervised; (iv) Universal norms for dialysis should be followed including viral screening, segregation etc.(v) Reuse of tubings not marked single use can be reused ONLY as per procedures in MoHFW Guidelines and ISN recommendations.(vi) Water Quality to be as per AAMI standard.

3. Save and except as otherwise provided and without prejudice to any other right or remedy which the Authority may have in respect thereof under this Agreement, upon the occurrence of any Event of Default by the HDU-SP, the Authority shall issue a notice to the HDU-SP to cure such Default and on the failure of the HDU-SP to cure such Default within 30 (thirty) days from the date of issue of such notice, the Authority shall be entitled to terminate this Agreement forthwith by a termination notice to the HDU-SP and the termination shall be effective from the date notified to the HDU-SP.
4. Authority shall be entitled to enforce the Performance Security and the Bank Guarantee and recover the amount due to it in respect of such claim, damages, rights or remedy without prejudice to its rights.
5. Notwithstanding anything to the contrary contained in this Agreement, termination of this Agreement shall be without prejudice to the rights of the Authority including its right to claim and recover damages and other rights and remedies which it may have in law or under this Agreement.
6. Notwithstanding anything contained in this Agreement, the Authority may terminate this Agreement if it is found after execution of this Agreement that Selected Bidder has directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, collusive practice, coercive practice, undesirable practice or restrictive practice in the Bidding process. In such circumstances, the Authority shall be entitled to forfeit and appropriate/invoke the Bid Security or Performance Security, as the case may be, without prejudice to any other right or remedy that may be available to the Authority under this Agreement.
7. The HDU-SP may by way of a written notice terminate this Agreement if the Authority defaults in performance of the Covenants mentioned in Clauses (1), (2) and (3) of Article 13 and such default continues for a period of sixty days.
8. Upon expiry or earlier termination of this Agreement, the HDU-SP shall:
  - (a) notify Authority forthwith about the location and particulars of all Project Facilities; and
  - (b) deliver forthwith the possession and control to Authority or any person designated by Authority of the HDU - SP and other Project Facilities including the HDU equipment and HDU software back-

upsthereof but excluding manpower in working and operable condition, free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by Authority and under Applicable Laws for fully and effectively divestingtheHDU-SPofalloftherightsandinterestsintheProject.

9. Notwithstanding anything contained in this Agreement, if it is found after execution of this Agreement that Selected Bidder was ineligible to participate in the Bidding process according to the provisions of RFPPart-I, Authority shall after giving fifteen days' notice to the HDU-SP, terminate this Agreement. In such event, Authority shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be.

## 1.19 ARTICLE 19 - DISPUTE RESOLUTION

### 1. Amicable Resolution:

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project, between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-clause (b) below.
- (b) In the event of any dispute between the Parties, either Party may call upon the Chief Secretary of the State of Uttar Pradesh to mediate and assist the Parties in arriving at an amicable settlement thereof. The Chief Secretary shall meet with the HDU-SP not later than 15 (fifteen) days of the date of such request to discuss and attempt to amicably resolve the Dispute.
- (c) If the dispute is not amicably resolved pursuant to the above as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the dispute shall be referred to adjudication by the arbitrators.

### 2. Arbitration:

- (a) Any Dispute, which is not resolved amicably as provided in Clause (1) of this Article 19 shall be finally decided by reference to arbitration by an arbitral tribunal of three arbitrators - one each to be appointed by the

Authority and the HDU-SP and the two arbitrators so appointed to appoint the third arbitrator who shall act as the presiding arbitrator. The arbitrations shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

- (b) The arbitrators shall issue a reasoned award.
- (c) The venue of such arbitrations shall be in Lucknow, Uttar Pradesh.
- (d) The Parties undertake to carry out any decision or award of the arbitrators (the "Award") without delay. Awards relating to any Disputes shall be final and binding on the Parties as from the date they are made.
- (e) The Parties agree that an Award may be enforced against the HDU-SP and/or Authority, as the case may be and their respective assets wherever situated.
- (f) This Agreement and rights and obligations of the Parties shall remain in full force and effect pending the award in any arbitration proceeding hereunder.

## **1.20 ARTICLE 20 - GOVERNING LAW AND JURISDICTION**

1. This Agreement shall be construed and interpreted in accordance with and governed by the law of India and the Courts at Lucknow, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

## **1.21 ARTICLE 21 – INDEMNITY**

1. Indemnity by the HDU-SP:
  - (a) The HDU-SP shall indemnify and hold the Authority harmless, from any and all action, claims, suits and/or legal proceedings initiated by any person, third party or otherwise, that may be initiated or raised against Authority whether that may be in the nature of criminal, civil, medico-legal proceedings, proceedings under the Consumer Protection Act, 1986 or any Applicable Law that may arise under this Agreement.
  - (b) The HDU-SP shall also indemnify and hold the Authority harmless from any and all actions, claims, liabilities, costs, damages and expenses of every kind and nature in respect of the sickness, injury or death of any person employed directly or indirectly by the HDU-SP and damage to or destruction of any property or equipment of the HDU-SP arising during or as a result of the performance or non-performance of this Agreement.

from any cause whatsoever provided that this Article shall not apply to injury, death, damage or destruction to the extent caused by the gross negligence, default or omission of the Authority or its employees.

2. Indemnity - Third Party:

The HDU-SP shall indemnify and hold the Authority harmless from any and all claims, liabilities, costs, damages, and expenses of every kind and nature in respect of the sickness, injury or death of any third party and the damage to or destruction of any property of any third party arising directly or indirectly as a result of any gross negligence, default or omission of the HDU-SP or its employees.

3. Non-Compliance with Applicable Laws:

The HDU-SP shall indemnify and hold the Authority harmless from any fines, penalties and similar charges which may be attributed to or imposed or assessed against the Authority by reason of the failure of the HDU-SP to comply fully with all Applicable Laws and Applicable Permits save to the extent such failure was caused by the gross negligence, default or omission of the Authority or its employees.

4. General Indemnity:

The HDU-SP shall indemnify and hold the Authority harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature howsoever incurred by the Authority arising whether directly or indirectly as a result of the breach by the HDU-SP of any of the HDU-SP's obligations under this Agreement save to the extent such claims, liabilities, costs, damages and expenses were caused by the gross negligence, default or omission of the Authority or its employees.

Notwithstanding the termination of this Agreement, the HDU-SP shall indemnify and hold the Authority harmless for and against any and all claims, liabilities, costs, damages and expenses of whatsoever nature incurred by the Authority during the subsistence of this Agreement.

5. Enforcement:

For the avoidance of doubt, nothing in this Article shall prevent or restrict a Party from enforcing any obligation owed to it under this Agreement.

6. Defense:

The Authority shall promptly notify the HDU-SP of any matter which may give rise to a right of the Authority to be indemnified under this Article 21.

The HDU-SP may at its own cost conduct negotiations for the settlement of any claim made against it, and any litigation that may arise therefrom in such reasonable manner as the Authority shall from time to time approve (such approval not to be unreasonably withheld).

The HDU-SP may not, however, conduct such negotiations or litigation before it has given the Authority such security as the Authority may reasonably require. This security shall be for an amount required by the Authority, which is its reasonable assessment of the amount for which it may become liable and which are the subject of the indemnities under this Article.

The Authority shall not make any admission which might be prejudicial to the HDU-SP unless the HDU-SP has failed to take over the conduct of the negotiations or litigation or provide security under this Article 20 within a reasonable time after having been so requested.

## 1.22 ARTICLE - 22 INCENTIVES

NOT APPLICABLE

## 1.23 ARTICLE - 23 MISCELLANEOUS

### 1. Priority of agreements and errors/discrepancies:

This Agreement, and all other agreements and documents forming part of this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part thereof shall, in the event of any conflict between them, be in the following order:

- (a) This Agreement read with all Schedules;
- (b) Letter of Intent;
- (c) Request for Proposal; and
- (d) all other agreements and documents executed by and between the Parties.

In case of any discrepancy or conflict between the provisions of the above documents, the provisions of the documents mentioned prior in the above order shall prevail over the provisions of the documents mentioned subsequently in the above order.

### 2. Waiver:

Waiver by either Party of any default by other Party in the observance and performance of any provision or obligation of or under this Agreement:

- (a) Shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of obligations under this Agreement;
- (b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this 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 Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as a waiver of such breach or acceptance of any variation or the relinquishment of any such right thereunder.

### 3. Entire Agreement:

This Agreement and together with the other contract documents and the Schedules constitute complete and exclusive statement of the terms of this Agreement between the Parties on the subject thereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by the Authority and executed by the person expressly authorized by a resolution of Authority in this behalf.

### 4. Notices:

Any notice or other communication to be given by one Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall be given at the respective addresses given in Article 22 (11) below, by letter delivered by registered post to the person designated or the purpose in writing by the concerned party from time to time.

### 5. Severability:

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner.

### 6. Assignment, etc.:

The HDU-SP shall not assign, sub-contract or transfer its rights and obligations



under this Agreement to any person, in any manner whatsoever.

7. Relationship of the Parties:

Nothing contained in this Agreement shall be construed or interpreted as constituting a joint venture, partnership or agency relationship between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. The Parties have entered into this Agreement on a principal to principal basis.

8. Language:

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

9. Exclusion of Implied Warranties etc.:

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

10. Counterparts:

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

11. Address for Correspondence:

For the Authority

Director General (Medical & Health Services, Uttar Pradesh), Swasthya Bhawan, Kaiserbagh, Lucknow

For the HDU-SP

Mr. <<>>  
<<Address>>

For the Selected Bidder

Mr. <<>>,  
<<Address>>

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN

SIGNED SEALED AND DELIVERED For and on behalf of Governor of Uttar Pradesh By:

Mr. <<>>(Name)
Officer of the rank of Dy. Secretary and above, Department of Medical, Health & Family Welfare,
Government of Uttar Pradesh(Designation)

SIGNED,SEALEDANDDELIVEREDForandonbehalfof (NameoftheHDU-SP) :<<>>: By:

\_\_\_\_\_(Signature)

Mr.<<>>\_\_\_\_\_(Name)
Authorized Signatory\_\_\_\_\_(Designation)

SIGNED,SEALEDANDDELIVEREDForandonbehalfof (NameoftheSelectedBidder) :<<>>By:

\_\_\_\_\_(Signature)

Mr.<<>>\_\_\_\_\_(Name)
Chief Executive Officer\_\_\_\_\_(Designation)

Inthepresenceof:

- 1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_