

SCHEDULE – N
TERMS OF REFERENCE FOR INDEPENDENT PANEL

(See Clause 25.2)

1. Scope

- 1.1 These Terms of Reference for the Independent Panel (the “**TOR**”) are being specified pursuant to the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for the Dialysis Centres at NIKDU , Dhaka Bangladesh and CMCH, Chittagong, Bangladesh on design, build, finance and operate (“**DBFO**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction of the Dialysis Facility.
2. Definitions and interpretation
 - 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
 - 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
 - 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.
3. Role and functions of the Independent Panel
 - 3.1 The role and functions of the Independent Panel shall include the following:
 - (a) conducting inspection and Tests of Equipment and issuing Completion/ Provisional Certificate in a manner as set forth in Paragraph 4;
 - (b) review the data and information provided by the Concessionaire in accordance with this Agreement;
 - (c) monitor the compliance of the Concessionaire with the terms of this Agreement;
 - (d) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (e) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (f) assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
 - (g) undertaking all other duties and functions in accordance with the Agreement.
 - 3.2 The Independent Panel shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Construction Period

4.1 Upon the receipt of the notification of the Concessionaire, the Independent Panel shall perform the following functions:

I. **Construction Period**

- a. Review and opine on the refurbishment plan submitted by the Concessionaire;
- b. Monitor and review the progress of the Construction Works;
- c. Review the Project and issue of Completion Certificate/Provisional Certificate;
- d. Review the Project plan including, machine specification, quality parameters, adequacy of infrastructure and related cost estimates;
- e. Basic design and planning review of the Dialysis Centres at NIKDU and CMCH;
- f. Assessment of reasonableness of Total Project Cost estimation (including potential scenarios of cost overruns);
- g. Review construction schedule including construction milestones and contractors' and subcontractors' execution plans;
- h. Review Project Agreement and opine on technical adequacy, consistency among the contracts and their suitability to achieve Project scope and cash flow projections;
- i. Review conformity with good engineering and construction standards and industry practices
- j. Review of contractors' experience and their ability to meet contractual requirements, and risk allocation;
- k. Performance testing and acceptance criteria for the Dialysis Centre and each of the individual machines;
- l. Monitor and review the progress of the Construction Works.
- m. Conduct an on-Site inspection to assess the quality of the work completed to date;
- n. Review the periodic progress report;
- o. Evaluate the actual quality control procedures implemented and advise if, in its opinion, the Quality Control/Quality Assurance program of the contractor is appropriate and adequate with respect to Site conditions and typical of industry practice;
- p. Review the status of the Project completion schedule and budget;
- q. Review other items listed in the Terms of Reference.
- r. Review and opine on:
 - (i) Safety assurance program;

- (ii) Quality of construction work, O&M plan and man-power availability;
 - (iii) Site conditions, including Site accessibility as well as adequacy of the available infrastructure;
 - (iv) Review of the commissioning and start-up plan including performance testing and acceptance criteria for the dialysis unit;
 - (v) compliance of Construction Work with permits and with IFC environmental guidelines;
 - (vi) That construction is in accordance with contract requirements.
- s. The Independent Panel shall inspect the Project Assets once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Works Report") setting forth an overview of the status, progress, quality and safety of the refurbishment works including the Equipment installed and conformity of Works with the Scope of the Project.
 - t. In a separate section of the Works Report, the Independent Panel shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the Project Assets. The Independent Panel shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
 - u. The Independent Panel will have responsibility for advising on any situation that might arise that could impact successful completion of the Project.
 - v. Completion formalities
 - (i) Conducting Tests on completion of construction;
 - (ii) Issuing Completion/Provisional Certificate,
 - (iii) Review the availability and conformity to legal licences and other provisions;
 - (iv) Building permit;
 - (v) Environmental permits;
 - (vi) Other required permits and licenses.

II. Operation Period

- a. Monitor the quality of services by the Concessionaire during the Operation Period;
- b. Review the quality and condition of Project Asset during the Operation Period;
- c. Review of the maintenance of the Dialysis Centre and Equipment in conformity with the provisions of the Agreement;
- d. Review whether the MIS system is being utilised to schedule the Patients;
- e. Review whether the treatment schedules for the General Unit are as per the previously agreed terms;

- f. Provide opinion on the useful life of Equipment and possibility for replacement of Equipment.
- 4.2 Upon reference from the Authority, the Independent Panel shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 15 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 5. Termination or expiry of the Concession Period
 - 5.1 At any time, not earlier than 90 (ninety) days prior to Termination or expiry of the Concession Period but not later than 15 (fifteen) days prior to such Termination or expiry, the Independent Panel shall, in the presence of a representative of the Concessionaire, inspect the Dialysis Centres for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 35.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Panel determines that the status of the Dialysis Facility is such that its repair and rectification would require a larger amount than the Performance Security, it shall make a report to the Authority in reasonable detail.
 - 5.1.1 The Independent Panel shall inspect the Dialysis Centres once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination or expiry of the Concession Period for determining the liability of the Concessionaire under Article 35, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Panel, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.
- 6. Determination of costs and time
 - 6.1 The Independent Panel shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
 - 6.2 The Independent Panel shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.
- 7. Assistance in Dispute resolution
 - 7.1 When called upon by either Party in the event of any Dispute, the Independent Panel shall mediate and assist the Parties in arriving at an amicable settlement.
 - 7.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Panel shall specify such meaning, scope and nature by issuing a reasoned written statement relying on Good Industry Practice and authentic literature.
- 8. Other duties and functions
 - The Independent Panel shall perform all other duties and functions specified in the Agreement.
- 9. Miscellaneous
 - 9.1 The Independent Panel shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 9.2 A copy of all communications, comments, instructions, Documents sent by the Independent Panel to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Panel thereon shall be furnished by the Independent Panel to the Authority forthwith.
- 9.3 The Independent Panel shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Panel, whereupon the Independent Panel shall send one of the copies to the Authority along with its comments thereon.
- 9.4 Upon completion of its assignment hereunder, the Independent Panel shall duly classify and list all communications, comments, instructions, Documents, results of Tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. 2 (two) copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.