



Republic of the Philippines
PROVINCE OF PAMPANGA
Provincial Capitol, City of San Fernando, Pampanga



SWISS CHALLENGE BIDDING FOR COMPARATIVE PROPOSALS FOR THE PAMPANGA DIALYSIS NETWORK

INSTRUCTIONS TO COMPARATIVE PROPONENTS

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1. GENERAL PROVISIONS

- a. These Instructions to Comparative Proponents (ICP) provide for the procedures and requirements for the Comparative Bidding Process in relation to the unsolicited proposal for the Pampanga Dialysis Network (the "Project") as approved by the Province of Pampanga (Province).
- b. The ICP will only be available to those who paid for the Tender Documents and will be invited to attend the Pre-Bid Conference. The ICP will be available on the stated date in the Section 1.3 Indicative Milestone Date. In addition, access to the physical data room and the template for Confidentiality Agreement will be available at the BAC Secretariat Office, Ground Floor, Provincial Capitol, City of San Fernando, Pampanga.
- c. The Province invites local and international companies to submit comparative proposals under a Swiss Challenge Bidding Process to operate and maintain the Project under a 5-year agreement.
- d. The Comparative Proponents of the Project is responsible for the general management and daily operation of the dialysis centers, including the deployment of administrative, clinical, and technical personnel and the provision of supplies of two (2) Dialysis Centers, strategically located as follows:
 - Dialysis Center I, within the premises of the Provincial Hospital, Diosdado P. Macapagal Memorial Hospital, Jose Abad Santos Avenue, Guagua, Pampanga, Pampanga; and
 - Dialysis Center II, Sampaloc, Apalit, Pampanga.
- e. The Project aims to render renal replacement therapy, to provide an efficient, adequate, and safe hemodialysis treatment and to promote low-cost effective dialysis packages for dialysis patients.
- f. The competitive bidding for the Project will be conducted in accordance with the Republic Act (RA) No. 11966, also known as the Public-Private Partnership (PPP) Code of the Philippines and Implementing Rules and Regulations (IRR).
- g. A Single-Stage Qualification and Bidding for this Project shall be conducted pursuant to and in accordance with Section 9 of the RA 11966.
- h. In the event that a comparative proponent submits a price proposal better than those submitted by the Original Proponent, the Original Proponent shall have the "right-to-match" the best offer or such proposal, in accordance with Section 10 (e) of the IRR of RA 11966.

1.1 Documents to be Provided to Comparative Proponents

- a. The Bidding Documents for the Project shall govern the preparation, submission and evaluation of Comparative Proposals, the “right-to-match” of the Original Proponent, and the selection and award of the Project to the Winning Proponent. They consist of the following documents:
 - i. Instructions to Comparative Proponents (ICP), including Bid Bulletins issued by the Private-Public Partnership – Pre-qualification/Qualification Bids and Awards Committee (PPP-PBAC) and documents incorporated herein by reference;
 - ii. Project Information Memorandum; and
 - iii. Draft Joint Venture Agreement.
- b. The draft Joint Venture Agreement shall be the principal document governing the contractual relationship between the Winning Proponent and in the implementation of the Project, including its termination and the effects thereof. Considering that the terms and conditions embodied in the draft JVA are the result of a successful negotiation between the Original Proponent and Province.

1.2 Addenda and Clarifications to the Bidding Process

- a. The PPP-PBAC reserves the right to amend, revise, modify, or clarify any section of the ICP at any stage of the Bidding Process. Such amendments, revisions, modifications, or clarifications, if any, shall be communicated in writing to all Proponents through Bid Bulletins issued by the PPP-PBAC. Upon the issuance of a Bid Bulletin, the same shall automatically be incorporated into and made an integral part of the ICP.

1.3 Indicative Milestone Dates

- a. Pursuant to the PPP Code and its IRR and in order to expedite and accelerate “Swiss Challenge” process, the Province shall undertake a simultaneous qualification instead of a pre-qualification of proponents. In simultaneous qualification, the publication of the invitation, following the requirements in Section 64 of the PPP Code and its IRR shall be for the submission of qualification requirements and bid proposals. The Comparative Proponents shall be required to submit their proposal in three envelopes; the first envelope - the Qualification Documents corresponding to the requirements so stated in Section 72 of the PPP Code and its IRR; the second envelope - the Technical Proposal; and the third envelope - the Financial Proposal. It is in this context that the milestone dates (see Table below) are listed as part of the ICP.

Table 1. Indicative Milestones

Milestone	Date
Publication of Invitation for Comparative	08-Aug-24
Issuance of availability of Tender Documents	16-Aug-24
Pre-bid Conference and One-on-One meetings	22-Aug-24
Release of approved JVA to Challengers	22-Aug-24
Submission of Comparative Proposal	14-Nov-24
Opening and Evaluation of Bids	14-Nov-24

The actual schedule may be changed by the PPP-PBAC at any time, without incurring any liability to the Comparative Proponents. Comparative Proponents shall be notified by the PPP-PBAC of any changes in the indicative milestone dates through Bid Bulletins.

1.4 Eligibility to Submit Bids

- a. As the Province adopts a single-stage qualification and bidding, Comparative Proponents shall submit simultaneously three envelopes, *i.e.*: the first envelope containing the Qualification Documents; the second envelope containing the Technical Proposal; and the third envelope containing the Financial Proposal. Comparative Proponents shall be considered eligible or qualified on the basis of Section 72 of the PPP Code and its IRR;

1.5 Responsibility of Comparative Proponents

- a. Notwithstanding any information given in the Bidding Documents, and any additional communications from the Province, or the PPP-PBAC, including supplemental notices and bid bulletins, it is the sole responsibility of each Proponent to:
 - i. be fully acquainted with the applicable rules, requirements, terms, and conditions of the Bidding as provided for in the PPP Code and its IRR;
 - ii. examine all of the Bidding Documents and verify the correctness, completeness, accuracy, and reliability of the information contained in these documents;
 - iii. familiarize itself with the Constitution and all the applicable laws and regulations of the Republic of the Philippines, whether national or local, which may affect the Bidding and the Project; and
- b. The Comparative Proponents, including any Consortium Member, Affiliate or Subcontractor, and the Winning Proponent shall not be entitled to and shall not make any claim against the Province, - its advisors, or any other associated party, whether on the basis of contract, quasi-delict or delict, for damages, extensions of time or payments on the grounds:

- i. of any misunderstanding or misapprehension in respect of the Invitation Documents, and/or Bidding Documents; or
 - ii. that incorrect or insufficient information relating to the Invitation Documents, and/or Bidding Documents, were given to them by the Province, its advisors, or any other associated party.
- c. By submitting its Comparative Bid Proposal, a Comparative Proponent shall be presumed to have fully examined and accepted all of the terms and conditions in all of the Invitation Documents and Bidding Documents.

1.6 Costs and Expenses of Participation

- a. Comparative Proponents shall bear all costs, losses, and damages associated with or resulting from their participation in the Bidding Process. The Province shall not be held responsible or liable in any way for any such costs or damages incurred by any Comparative Proponent (whether incurred by it directly or by its advisers, Subcontractors, Affiliates, or other persons), regardless of the results of the Bidding Process.
- b. Comparative proponents must pay a non-refundable fee of One Hundred Thousand Philippine Pesos, (Php 100,000.00), payable in cash or manager’s check drawable from any Land Bank of the Philippines and payable to the order of “Provincial Government of Pampanga” at the Provincial Treasurer’s Office and submit the following documentary requirements:
 - a. An expression of Interest;
 - b. A letter appointing an Authorized Representative to execute a non-disclosure; and
 - c. A duly executed Non-Disclosure Agreement.

1.7 Queries and Comments on Bidding Documents

- a. Comparative Proponents may send queries on any aspect of these Bidding Documents in writing, by personal delivery and by e-mail (through an attached Microsoft Word document) to the Head of PPP-PBAC, with copies by email to the PPP-PBAC Secretariat, the Province, and the Project email group at the following addresses and e-mail addresses:

PPP-PBAC Head for the Project

Attention:	ATTY. CHARLIE G. CHUA <i>Provincial Administrator, Chairperson, PPP-PBAC</i>
Address:	Office of the Provincial Administrator, 2/F Provincial Capitol, City of San Fernando, Pampanga
E-mail:	pampanga.admin@pampanga.gov.ph

PPP-PBAC Secretariat for the Project

Attention:	Head, PPP-PBAC Secretariat
Address:	BAC Secretariat Office, Ground Floor, Provincial Capitol, City of San Fernando, Pampanga
E-mail:	pppbac.procunit@gmail.com

- b. In case of a discrepancy, the copy personally submitted shall prevail.
- c. Proponents shall submit their queries and comments not later than the dates for submission of queries indicated in the milestones table mentioned in the previous sections.
- d. Proponents must use the template below (as applicable) for all its queries and comments. Electronic copies of questions must be sent either through word or excel format only.
- e. All queries must be properly identified by the Proponent’s Name and Date of query as follows:

Date:	[Insert date of submission of queries and comments]
Proponent Name:	[Insert name of Proponent]

- f. For queries and comments on the Bidding Documents:

Topic	Bidding Documents	Query/Comment	Proposed Rewording (if any)
1 .	[Indicate Section No./ Annex No.]		
2 .	[Indicate Section No./ Annex No.]		

- g. For queries and comments on the Instructions to Comparative Proponents and its Annexes:

Topic	Instructions to Comparative Proponents	Query/Comment	Proposed Rewording (if any)
1 .	[Indicate Section No./ Annex No.]		
2 .	[Indicate Section No./ Annex No.]		

- h. Queries on the Bidding Documents (excluding Joint Venture Agreement) must be concrete or clarificatory, and not purely hypothetical in nature.
- i. The PPP-PBAC shall decide which queries received on the dates specified above it shall respond to, and is under no obligation to respond to all queries received. Responses to queries and any modifications to the Bidding Documents may be made on a non-attributable basis and shall be in writing and provided to Proponents through Bid Bulletins issued by the PPP-PBAC, sent to all Proponents. Bid Bulletins issued by the PPP-PBAC shall be deemed to be incorporated in and made an integral part of these Instructions to Comparative Proponents and/or the relevant Bidding Documents.

1.8 Ownership of Documents

- a. All documents submitted by a Comparative Proponent to the PPP-PBAC pursuant to the ICP shall become the property of the Province and any information obtained by the Province from such documents may be reasonably used by it subject to the confidentiality clause in the ICP.

1.9 Language and Foreign Documents

- a. The Comparative Bid Proposal, and all correspondence and documents relating to the Bidding Documents and the Bidding Process, shall be prepared and written in the English language. Any printed literature or document furnished by a Proponent written in another foreign language shall be accompanied by an English translation, certified by the translator that the English translation is a complete and accurate translation of the original. The certification issued by the translator shall be authenticated by the Philippine Consular office having jurisdiction over the place where the certification is issued. Supporting materials, which are not translated into English, may not be considered. In case of conflict, the English translation shall prevail.
- b. All documents or certifications issued by foreign authorities or executed outside of the Philippines shall be authenticated before a Philippine consular official at the Philippine consulate having jurisdiction over the place of issue or execution; however, the PPP-PBAC shall accept photocopies of foreign documents even if they have not yet been notarized or authenticated, subject to the following conditions:
 - i. the foreign document must be submitted to the PPP-PBAC on the Comparative Proposals Submission Date, together with proof that such document had been submitted to and received by the relevant Philippine consulate.
 - ii. the notarized and/or authenticated foreign document must be submitted by the Winning Proponent to the PPP-PBAC within twenty (20) days from the Winning Proponent's official receipt of the Notice of Award; and
 - iii. the notarized and/or authenticated foreign document submitted to the PPP-PBAC must be identical to the photocopy of the foreign document submitted by the Comparative Proponent on the Comparative Proposals Submission Date.

- c. If the document was issued by a foreign authority, the Comparative Proponent should also submit a certified true copy of such document issued by such foreign authority, in addition to the authentication by the relevant Philippine consular official referred to in paragraph (b).
- d. If the document is a foreign law or regulation, the Comparative Proponent need only submit a copy of the applicable excerpt of such law or its translation with a citation of its source, without the need to submit a copy of the entire law, unless subsequently required by the PPP-PBAC. For this purpose, the Comparative Proponent should submit (a) a certified true copy of such excerpt issued by the competent government authority, or (b) a certification from the embassy or the consular office of the relevant foreign country in the Philippines that such excerpt is an accurate copy of the foreign law.
- e. For documents issued or executed outside of the Philippines, notarization made separately before a notary public, civil officer, or other person authorized under foreign law to administer oaths or to authenticate signatures shall be allowed, provided that the notarized documents must be authenticated before a Philippine consular official at the relevant Philippine consulate.
- f. For each instance in the ICP where authentication by a Philippine consular official is required, the form, including language, of the authentication shall be subject to the forms and rules applicable in the relevant Philippine consular office.

1.10 Waiver of Rights to Enjoin Project

- a. By participating in the Bidding Process, the Comparative Proponents thereby waive any right they may have to seek and obtain a writ of injunction or prohibition or restraining order against the Province, or the PPP-PBAC to prevent or restrain the holding of a bidding or any proceedings related thereto, the negotiation, award and execution of the contract to the Winning Proponent, and the carrying out of the awarded Joint Venture Agreement. Such waiver shall, however, be without prejudice to the right of a disqualified or losing Proponent to question the lawfulness of its disqualification or the rejection of its Bid Proposal by appropriate administrative or judicial processes not involving the issuance of a writ of injunction or prohibition or restraining order.

1.11 Pre-Bid Conference

- a. The PPP-PBAC shall conduct a Pre-Bid Conference in accordance with the schedule provided in the milestone table discussed in previous sections to clarify any part of the Bidding Documents and to answer any relevant questions from the Comparative Proponents. No provision, term, or condition in the Bidding Documents shall be modified by statements made at the Pre-Bid Conference unless these are made in writing and contained in a Bid Bulletin issued by the PPP-PBAC. The PPP-PBAC shall endeavor to provide clarifications and further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent, and competitive Swiss Challenge Bidding Process.

- b. In relation to the foregoing, the Comparative Proponents are: (a) requested to submit all queries in writing no later than the dates specified in the milestone table discussed in previous sections, and (b) required to submit in writing, within three (3) days from the Pre-Bid Conference, any further queries and clarifications that were raised during the Pre-Bid Conference but were not previously submitted in writing.

2. QUALIFICATIONS OF COMPARATIVE PROPOSALS

2.1 Legal Qualification Requirements

- a. The Comparative Proponent must be:
- i. a Filipino; or
 - ii. if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos; or
 - iii. if a consortium of local, foreign, or local and foreign firms, Filipinos must have at least sixty percent (60%) interest in said consortium, or
 - iv. if a cooperative, must be a duly registered with the Cooperative Development Authority (CDA).

2.2 Financial Qualification Requirements

- a. To be financially qualified to bid for the Project, the Comparative Proponent must meet the following financial qualification requirements:
- i. The estimated investment/project cost for the operation and management of the Project as proposed by the Province and agreed upon by the OP amounts to Ninety-Five Million Ninety-One Thousand Six Hundred Thirty-One and Twenty-Eight Centavos (Php 95,091,631.28) for five (5) year and two (2) Free-Standing Dialysis Facilities. This estimated investment/project cost includes the Medicines (EPO 400 IU and IV IRON), Manpower/Personnel Requirements, and Other Costs such as supplies consumables, repair and maintenance of the facility, utilities, security, waste disposal and office supplies.
 - ii. The Challenger or Prospective Bidder must propose a higher Province Revenue Share in the same route in favor of the Province compared to what was offered by the OP, which will function as a reserve price. The offer of the OP will be disclosed during the opening of the Financial Proposals.
 - iii. The Challenger or Prospective Bidder, in case of a single entity, or the Consortium Members (except any non-equity member), in case of a Consortium, must have a total or combined Net Worth of at least fifty percent (50%) of the Total Project Cost which is equivalent to Three Hundred Sixty-Four Million Nine Hundred Seventy-Eight Thousand Seven Hundred Sixty-Seven and 50/100 Pesos (Php 364,978,767.50) or its equivalent in foreign currency, based on the latest audited financial statements which must be or the financial year ending not earlier than 2024.

In case of a Consortium, the entity who will fulfill the financial qualification requirements must have at least fifty percent plus one (50%+1) equity interest in the Consortium ("Lead Member").

- iv. The Comparative Proponent shall provide a letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the Comparative Proponent or Lead Member is banking with them, and that it is in good financial standing and/or is qualified to obtain credit accommodations from such banks to finance the Project.
 - v. The Comparative Proponent and its parent company shall execute a notarized Joint and Several Undertaking ("JSU") to demonstrate their commitment to provide equity to finance the Project. If the Comparative Proponent is a Consortium, each Consortium Member and their respective parent companies shall execute the JSU.
- b. The entity, which fulfills this requirement, may be:
- i. If the Comparative Proponent is a partnership, corporation, or any other juridical entity, the Comparative Proponent itself, or its Affiliate; and
 - ii. If the Comparative Proponent is a Consortium, the Lead Member, or such Lead Member's Affiliate.
- c. Each entity that is proposed to meet the financial qualification requirements must also submit a Certification of Absence of Unsatisfactory Performance Record, but only in relation to the last two paragraphs of the definition of "Unsatisfactory Performance" which deal with:
- i. inclusion in a blacklist issued by the Government Procurement Policy Board (GPPB), Department of Public Works and Highways (DPWH), or the Construction Industry Authority of the Philippines of the Department of Trade and Industry (CIAP-DTI), by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website (www.worldbank.org/debarr), European Bank for Reconstruction and Development, Asian Development Bank, Inter-American Development Bank and African Development Bank Group, whether as an individual contractor, partnership, corporation or any other juridical entity, or as member of a joint venture or consortium;
 - ii. whether as an individual contractor, partnership, corporation, or any other juridical entity or as a member of a joint venture or consortium; and
 - iii. involvement in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practice or having Conflicts of Interest.

2.3 Experience or Track Record Qualification Requirements

- a. To qualify to bid for the Project, the Comparative Proponent must meet the Operations & Maintenance (O&M) Experience
 - i. The Comparative Proponent must have experience in the operation and maintenance of a Dialysis Network for at least ten (10) years.
 - ii. The entity, that fulfills this requirement, may be:
 - (1) If the Comparative Proponent is an individual, partnership, corporation, or any other juridical entity, the Comparative Proponent itself or its Affiliate or a nominated O&M company or joint venture companies;
 - (2) In case of a Consortium, any member of the Consortium or its Affiliate, or a nominated O&M company or joint venture companies; and
 - (3) The Comparative Proponent shall be allowed to propose not more than five (5) entities to meet the O&M Experience Requirement.
 - (4) The minimum performance standards and specifications for the operation and management of the Project for the Comparative Proponent are stipulated in the draft PPP contract/JVA.
 - iii. The entity, whose Operation & Maintenance Experience is being submitted in fulfillment of this requirement, should submit a certificate from the entity's officer, as per the format provided in **Annex QD-T10** to satisfactorily establish such a claim.
 - iv. The entity, whose Operation & Maintenance Experience is being submitted in fulfillment of this requirement, must certify that they have no Unsatisfactory Performance Record as per the format provided in **Annex QD-L4**.
 - v. In all cases, the Winning Proponent shall conform to the requirements of the PPP Code and the Revised IRR, and Department of Health (DOH) Administrative Order No. 2012-001 dated 26 January 2012 entitled New Rules and Regulations governing the Licensure and Regulation of Dialysis Facilities in the Philippines.
- b. Qualified Key Personnel
 - i. The Comparative Proponent, the Consortium Members, or their Affiliates or nominated Contractors must have, among their personnel, individuals with the required qualifications and experience described below for each dialysis centers.

Sr. No.	Experience Required	Minimum Years of Experience
1.	Operations/Unit Manager (one head count) - Responsible for the general/daily operation of the Dialysis Network based on the established procedures and protocols	10
2.	Physician on Duty (up to three) - Provide clinical support to the patients in the absence of the Nephrologists	10
3.	Head/Charge Nurse (up to two) - Responsibility includes ensuring that the protocols and procedures are properly adhered to	10
4.	Staff Renal Nurse (up to 24) - Responsible for patient care, monitoring of treatments, documents, etc.	10
5.	Dialysis Technician (up to 5) - Provides support to the clinical staff on machine operations, inventory management, dialyzer reprocessing, etc.	10
6.	Technical Support Technician (1-2) - Provides technical support for the machineries and systems	10

2.4 Qualification Documents

a. The Comparative Proponent must submit the following Qualification Documents, using the relevant forms in the Annexes:

- i. Form of Bid Letter using the form in **Annex QD-L1**
- ii. Business Structure (Using the form in **Annex QD-L2A** for partnership, corporation, or any other juridical entity, or **Annex QD-L2B** for Consortia). For Consortia, this document must show the Lead Member and all Consortium Members, such that the sum total of the equity interest of all Consortium Members must be one hundred percent (100%). The Business Structure must also indicate the entities which fulfill the Technical and Financial Qualification Requirements, and any Affiliates of these entities whose projects, experiences, or financial qualifications are being submitted to comply with the Qualification Requirements.
- iii. Required attachments: Proof of Affiliation, using form **Annex QD-L6**

b. Basic Information Sheet (Using form **Annex QD-L3**)

- i. To be submitted by all entities listed in all sections of the Business Structure (**Annex QD-L2A or QD-L2B**).
- ii. Required attachments:
 - (1) In case of a corporation created pursuant to the Corporation Code of the Philippines, a certified true copy of its latest General Information Sheet (GIS), stamped “received” by the SEC.
 - (2) In case of a foreign partnership, corporation or other juridical entity, the equivalent document (or a document providing similar information as required under a GIS) submitted to and acknowledged by the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity. The certification may come from either an appropriate government agency in a foreign country, or the entity’s corporate secretary or equivalent officer. If it comes from the entity’s corporate secretary or equivalent officer, the certification must be under oath and notarized.
 - (3) Certified True Copy of SEC Certificate of Incorporation, Articles of Incorporation, and By-Laws in case of corporations, or Certificate of Partnership and Articles of Partnership in case of partnerships, or in case of other juridical entity in Philippines (e.g., chartered government corporations), a certified copy of the document creating its juridical personality or in case of a foreign partnership, corporation or other juridical entity, the equivalent document, including Deeds of Trust, submitted to and acknowledged by the appropriate government agency in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.
- i. All certifications by the entity’s corporate secretary or equivalent officer must be under oath and notarized.
- ii. To be submitted by each of the Comparative Proponent, Consortium Member, their Affiliates and nominated entities identified in the Business Structure (**Annex QD-L2A or QD-L2B**).
- c. Notarized Certification of Absence of Unsatisfactory Performance Record- using the form in **Annex QD-L4**. Individually by each of the Comparative Proponent, Consortium Member, their Affiliates and nominated entities identified in the Business Structure (**Annex QD-L2A or QD-L2B**).
- d. Operation and Maintenance Experience (use form **Annex QD-T1**)
 - i To be submitted by the entity that fulfills the Operation and Maintenance Experience requirement in Section 2, as identified in the Business Structure (**Annex QD-L2A or Annex QD-L2B**).

- ii. Required attachment for each project:
 - (1) Certificate for Details of Eligible Projects for the Operation and Maintenance Experience, using the form in **Annex QD-T10**; and
 - (2) Operation and Maintenance Contractor's Notarized Statement of Willingness to Participate In, and Capacity to Undertake the Requirements of, the Project, using the form in **Annex QD-T11**; and
 - (3) If the project was completed by an Affiliate of the entity which fulfills the Development Experience requirement, evidence of such affiliation.

- e. Key Personnel using the form in **Annex QD-T12**:
 - i. To be submitted by the Comparative Proponent.
 - ii. More than one name can be submitted for each position; however, at least one must be submitted.

- f. Notarized Statement of Financial Qualification - using the form provided in **Annex QD-F1**.
 - i. To be submitted by the entity/entities, that fulfills the Financial Qualification requirement, as identified in the Business Structure (**Annex QD-L2A** or **Annex QD-L2B**).
 - ii. Required attachments:
 - (1) Certified True Copy of audited financial statements for the year ending December 31, 20XX, stamped "received" by the Bureau of Internal Revenue or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.
 - (2) A letter testimonial from a domestic universal/ commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the Comparative Proponent or Consortium Members, or their Affiliates, as the case may be, are banking with them, and that they are in good financial standing and/ or are qualified to obtain credit accommodations from such banks to finance the project.
 - (3) Notarized Joint and Several Undertaking using form **Annex QD-F2**.
 - (4) If the Comparative Proponent will use an Affiliate or an Affiliate of the Lead Member to comply with the Financial Qualification Requirements, attach evidence of such affiliation.

- g. Notarized Corporate Authorizations and Designation of Authorized Representative:
 - i. For partnership, corporations, or other juridical entities: Notarized Corporate Authorizations and Designation of Authorized Representative, using the form in **Annex QD-L5A** (to be submitted by the Comparative Proponent).
 - ii. For Consortia: Corporate Authorizations and Designation of Authorized Representative, using the form in **Annex QD-L5B** (to be submitted by each Consortium Member).
- h. Certificate for establishing relationship with Affiliates (using the form in **Annex QD-L6**)

2.5 One Proponent, One Submission

- a. Each Comparative Proponent may submit only one Comparative Proposal. A Comparative Proponent may not be a member of another Consortium, nor have an Affiliate which is a member of another Consortium. No Consortium Member may be a member of more than one Consortium, nor have an Affiliate that is a member of another Consortium.
- b. To ensure a level playing field and a competitive Bidding Process, there are restrictions on the extent of affiliation and ownership between Comparative Proponents and members of different Consortia.
- c. These restrictions do not limit the participation of proposed nominated entities, which may be proposed by more than one Comparative Proponent, provided such nominated entities are not: (i) Comparative Proponents, (ii) Consortium Members or (ii) Affiliates of any of the Comparative Proponents or Consortium Members.

3. COMPARATIVE PROPOSALS

- a. On the Comparative Proposals Submission Date, a Comparative Proponent must submit its Comparative Proposal consisting of the documents described in this Section.

3.1 Envelope 1 – Qualification Documents

- a. Envelope 1 should contain the following documents:
 - i. Bid Letter, using the form in **Annex QD-L1**;
 - ii. Business Structure in the form of **Annex QD-L2A** for partnership, corporation or any other juridical entity;
 - iii. Business Structure in the form of **Annex QD-L2B** for a consortium;
 - iv. Basic Information Sheet in the form of **Annex QD-L3**;

- v. Notarized Certification of Absence of Unsatisfactory Performance Record in the form of **Annex QD-L4**;
- vi. Notarized Corporate Authorizations and Designation of Authorized Representative (for corporations), using the form in **Annex QD-L5A**;
- vii. Authority to Corporate Authorizations and Designation of Authorized Representative (for consortium), using the form in **Annex QD-L5B**;
- viii. Certificate for establishing relationship with Affiliates in the form of **Annex QD-L6**;
- ix. Operation and Maintenance Experience in the form of **Annex QD-T1**;
- x. Certificate of Details of Eligible Projects for Operation & Maintenance Experience, using the form in **Annex QD-T10**;
- xi. Operation & Maintenance Contractor's Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project, using the form of **Annex QD-T11**;
- xii. Undertaking Regarding Key Personnel, using the form in **Annex QD-T13**;
- xiii. Notarized Statement of Financial Qualification in the form of **Annex QD-F1**; and
- xiv. Notarized Joint Several Undertaking, using the form in **Annex QD-F2**.

3.2 Envelope 2 – Technical Proposal

- a. Envelope 2 should contain the following documents:
 - i. Notarized Statement of Submission of Technical Proposal in the form of **Annex TP-1**;
 - ii. Organizational Chart as defined in **Annex TP-2**;
 - iii. Project Proposal as defined in **Annex TP-3**;
 - iv. Project Cost as defined in **Annex TP-4**;
 - v. The Bid Security, as described in **Section 4**, using the form in **Annex TP-5** without modification;

3.3 Envelope 3 – Financial Proposal

- a. Envelope 3 should contain the following documents:
 - i. The Bid Proposal using the form of **Annex FP-1**;

- ii. Financial Model (**Annex FP-2**) of the Comparative Proposal, which is an electronic working copy of the financial model contained/located on a flash drive, in editable Microsoft Excel format, with all relevant linkages to projected average rate per treatment, number of treatments per annum, Proponent's share and Province's Revenue Share per gross revenue, estimated project cost, sources of financing, sources of revenue, operating costs, project returns, etc. and attendant detailed assumptions and base data thereto. For the avoidance of doubt, it is clarified that no information contained in the financial model will be binding on the Grantor at any stage whatsoever. Non-submission of a working copy of the Financial Model may lead to the Financial Proposal being rated as "Fail".
- iii. Project Finance Plan using the form in **Annex FP-3**.
- iv. Bank's Letter of Financing Support using the form of **Annex A** of **Annex FP-3**.
- v. Joint and Several Undertaking using the form of **Annex B** of **Annex FP-3**.

3.4 Validity of Bids

Bid Proposal shall be valid for a reasonable period but in no case beyond one hundred eighty (180) calendar days from the bid submission date, subject to the provisions in this IRR. Bid securities shall be returned to the winning bidder and unsuccessful bidders as soon as the PPP Contract is signed by the winning bidder.

3.5 Withdrawal and/or Modification of Comparative Proposals

- a. The Comparative Proponents may withdraw and/or modify their Comparative Proposals prior to the deadline for the submission of Comparative Proposals on the Comparative Proposal Submission Date. The withdrawal and/or modification shall be done with prior written notice to the PPP-PBAC. No Comparative Proposal shall be modified or withdrawn after the deadline for submission of Comparative Proposals on the Comparative Proposal Submission Date. The modified Comparative Proposals received after the deadline for submission of Comparative Proposals on the Comparative Proposal Submission Date shall be considered late and will be returned unopened. Withdrawal of Comparative Proposals after the deadline for submission of Comparative Proposals on the Comparative Proposal Submission Date shall cause the forfeiture of the relevant Proponent's Bid Security and shall be subject to appropriate sanctions as prescribed in this IRR. A Comparative Proponents that withdraws its bid shall not be permitted to submit another bid, directly or indirectly, for the same contract.

3.6 Right to Reject Bids, Waive Minor Defects and Not to Proceed

- a. The Province reserves at all times the right not to proceed with the Swiss Challenge Bidding Process and the execution of the Joint Venture Agreement without prior notice or liability, and without any obligation to give any reason for not proceeding.

- b. The Province reserves the right to reject any or all Comparative Proposals without assigning any reason. The Province is not obliged to accept any Comparative Proposal or to give any reason for its decision.
- c. The Province reserves the right to waive any minor defects in the Comparative Proposals and accept the Most Responsive Bid, in accordance with the provisions of this IRR, the Code, and issuances released by the PPP Governing Board and the ICC. Waiving of defects should only be limited to nonconformities that do not constitute a material deviation, reservation, or omission.

3.7 Conflict of Interest

- a. Each Comparative Proponent may submit only one Comparative Proposal. To ensure a level playing field and a competitive bidding process, Comparative Proponents (in the case of Consortia, each Consortium Member), including their Affiliates, must not have any Conflict of Interest. Without limiting the generality of what would constitute a Conflict of Interest, any of the following will be considered a Conflict of Interest:
 - i. a Comparative Proponent, any Consortium Member, or any of their Affiliates (of either a Comparative Proponent or of the Consortium Member) is a member of another Consortium, or an Affiliate of another Proponent or of a member of another Consortium;
 - ii. a Comparative Proponent, any Consortium Member, or any of their Affiliates (of either a Proponent or of the Consortium Member) has an ownership interest of at least thirty-three and one third percent (33 1/3%) in any other Comparative Proponent;
 - iii. a member of the board of directors, partner, officer, employee or agent of a Comparative Proponent, any Consortium Member, or any of their Affiliates (of either the Proponent or any of its Consortium Members), is also directly involved in any capacity related to the Bidding Process for the Project for another Proponent, any Consortium Member of any other Proponent, or any of their Affiliates (of either the Proponent or any of its Consortium Members), within a period of two (2) years prior to the publication of the Invitation to Submit Comparative Proposals and one (1) year after the award of the Project;
 - iv. a Comparative Proponent engages in relation to the Bidding Process for the Project a professional advisor who also acts as a professional advisor of the Province or Public-Private Partnership Center for the Project, except when (a) prior written disclosure was made to by the professional advisor to its client-Comparative Proponent, Province and the Public-Private Partnership Center, (b) the professional advisor submits a Conflict Management Plan for this purpose, and (c) a written consent or clearance allowing the Comparative Proponent to engage the professional advisor is secured from the Province;
 - v. a Comparative Proponent, any of its Consortium Members, any of its proposed Subcontractors, or any Affiliate of any of these entities, has been directly engaged by

the Province as a consultant in the preparation of any documents, design, or technical specifications of the Project or in connection with the Bidding Process;

- vi. a Comparative Proponent, any of its Consortium Members, any of its proposed Subcontractors, or any Affiliate of any of these entities, engages in relation to the Bidding Process on the Project any legal, financial, or technical adviser of the Province on the Project, or anyone who is or was an employee of the Province less than one (1) year before his or her engagement by the Proponent, any of its Consortium Members, any of its nominated entities, or any Affiliate of any of these entities;
 - vii. a Comparative Proponent, any Consortium Member, or any of their Affiliates holds a concession from, or has a pending proposal with, any government entity to develop, construct, and/or operate another dialysis center/hospital project located within the island of Luzon in the Philippines;
 - viii. a Comparative Proponent, any Consortium Member, or any of their Affiliates has been engaged to render services for, or has an equity interest in, dialysis center/hospital project existing or to be developed within the island of Luzon in the Philippines.
- b. If at any time prior to the signing of the Joint Venture Agreement, any Comparative Proponent, Consortium Member, nominated entity, or any Affiliate of any of these entities, is found to have a Conflict of Interest as defined above, it shall be disqualified from further participating in the Bidding Process. If the Conflict of Interest involves another Comparative Proponent, then both Comparative Proponents shall be disqualified.

4. BID SECURITY

4.1 Form of Bid Security

- a. The Bid Security required to be submitted as part of the Comparative Bid Proposal may be in cash, certified check, manager's check, letter of credit, or bank draft/guarantee issued by a reputable local/foreign bank, or a surety bond callable on demand issued by the GSIS or an entity duly registered and recognized by the Office of the Insurance Commission in the aggregate amount of PHP Fourteen Million and Five Hundred Ninety-nine Thousand One Hundred Fifty and 70/100 Pesos (PHP 14,599,150.70). An irrevocable letter of credit should be in the form of **Annex TP-5** without modification.
- b. The Bid Security may be issued for the account of the Comparative Proponent or its Affiliate satisfying the financial qualification requirements, or in the case of a Consortium, for the account of the entity satisfying the financial qualification requirements or any Consortium Member.

4.2 Validity and Purpose

- a. The Bid Security shall remain valid for one hundred eighty (180) calendar days from the Comparative Proposals Submission Date. The Bid Security shall guarantee that a Comparative Proponent shall comply with all of the terms of these Instructions to

Comparative Proponents, and if declared the Winning Proponent, that it shall comply with all of the Post-Award Requirements, and execute the Joint Venture Agreement.

4.3 Forfeiture of Bid Security

- a. The Bid Security shall be forfeited in its entirety in favor of the Province upon the occurrence of any of the following events, regardless of whether these events are performed directly or indirectly by or for the Comparative Proponent (or in the case of a Consortium, a Consortium Member), any Affiliate or any nominated entity:
 - i. the Comparative Proponent withdraws its Bid Proposal at any time prior to one hundred eighty (180) calendar days after the Comparative Proposal Submission Date;
 - ii. the Proponent, any Consortium Member, any nominated entity or Affiliate of the Proponent, the Winning Proponent or any of the officers, employees, agents, or advisers of any of these entities (i) commits any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice, (ii) has a Conflict of Interest or (iii) violates the Lock-Up Rules, regardless of the stage of the Bidding Process when the violation existed, was committed, or discovered;
 - iii. the Comparative Proponent is disqualified or fails to post-qualify due to a material misrepresentation in any statement made or document submitted as part of its Comparative Proposal;
 - iv. the Winning Proponent fails to comply with the Post-Award Requirements within twenty (20) days from official receipt by the Winning Proponent of the Notice of Award; and
 - v. other events as described in this Instructions to Comparative Proponents and the PPP Code and its IRR as grounds for forfeiture of the Bid Security.

4.4 Return of Bid Security

- a. Within ten (10) days after the signing of the Joint Venture Agreement by Province, or one hundred eighty (180) days after the Comparative Proposals Submission Date, whichever comes earlier, the Bid Securities of all other Comparative Proponents, except for that of the Winning Proponent, whose Bid Securities have not been forfeited or previously returned will be returned without any interest.

5. SUBMISSION AND EVALUATION OF COMPARATIVE PROPOSALS

5.1 Form of Submissions

- a. The Comparative Proponent shall prepare and submit its Comparative Proposal in the following manner:

- i. For the documents comprising Envelope 1, as described in Section 3.1, the Comparative Proponent shall prepare and submit one (1) set of the original documents (the “**original set**”) and five (5) sets of clear photocopies of the documents (“**photocopies**”) (in color if any of the documents in the original set are in color) comprising the original set. The original set should be placed in a sealed envelope marked with the Comparative Proponent’s name, the name of the Project, and “Envelope 1 (Qualification Documents) - Original.” Each page of the original set should be marked as “Original,” initialed on the right margin of each page by the Comparative Proponent’s authorized representative as identified in the form in **Annex QD-L5A** or **Annex L5B**. Each of the three (3) sets of photocopies should be placed in a sealed envelope marked with the Comparative Proponent’s name, the name of the Project, and “Envelope 1 (Qualification Documents) – Copy 1...3.” The original set and each photocopy should contain a table of contents and should be paginated. Pagination should be consecutive and continuous (unbroken from one document to another) starting from the first page of the Envelope 1 documents up to the last page of the Envelope 1 documents.

- ii. For the documents comprising Envelope 2, as described in Section 3.2, the Comparative Proponent shall prepare and submit one (1) set of the original documents (the “**original set**”) and three (3) sets of clear photocopies of the documents (“**photocopies**”) (in color if any of the documents in the original set are in color) comprising the original set. The original set should be placed in a sealed envelope marked with the Comparative Proponent’s name, the name of the Project, and “Envelope 2 (Technical Proposal) - Original.” Each page of the original set should be marked as “Original,” initialed on the right margin of each page by the Comparative Proponent’s authorized representative as identified in the form in **Annex QD-L5A** or **Annex L5B**. Each of the three (3) sets of photocopies should be placed in a sealed envelope marked with the Comparative Proponent’s name, the name of the Project, and “Envelope 2 (Technical Proposal) – Copy 1...3.” The original set and each photocopy should contain a table of contents and should be paginated. Pagination should be consecutive and continuous (unbroken from one document to another) starting from the first page of the Envelope 2 documents up to the last page of the Envelope 2 documents.

- iii. For the documents comprising Envelope 3, as described in Section 3.3, the Comparative Proponent shall prepare only one (1) set of original documents. Envelope 3 shall be marked “Envelope 3 (Financial Proposal)”.

- iv. The Comparative Proponent shall submit five (5) flash drives, each containing electronic copies of all the documents comprising Envelopes 1 and 2, in Portable Document Format (.pdf), with the pages arranged in exactly the same sequence as the sequence in the original set of the documents enumerated in Sections 3.1 and 3.2 (Envelopes 1 and 2). Each electronic file of the documents in Envelopes 1 and 2 shall be scanned as separate documents and should have file names that correctly reflect the title of the document. Comparative Proponents are strongly advised to refrain from scanning the documents as one continuous electronic document. Each flash drive and its container (if any) shall be marked by the name of the Comparative Proponent, the

name of the Project, and marked “E-Copy No. 1...4”. All five (5) flash drives should be placed in one sealed envelope marked with the Comparative Proponent’s name, the name of the Project, and marked as “Envelope 4 – Flash Drives.”

- v. In the event of any conflict between the printed (paper) copies and the electronic copies, the printed (paper) original set shall prevail.
- vi. It shall place the **original sets of documents contained in Envelopes 1, 2, and 3**, in one outer sealed envelope or box marked as follows:

<p>PROVINCIAL GOVERNMENT OF PAMPANGA</p> <p>PAMPANGA DIALYSIS NETWORK</p> <p>COMPARATIVE PROPOSAL – ORIGINAL</p> <p>DO NOT OPEN BEFORE [indicate date and time of opening of bids]</p> <p>[STATE NAME AND ADDRESS OF PROPONENT]</p>

- vii. For each of the three (3) sets of photocopies, it shall place the envelopes marked “Envelope 1 - Copy 1...3” in one outer sealed envelope or box, which should be marked as follows:

<p>PROVINCIAL GOVERNMENT OF PAMPANGA</p> <p>PAMPANGA DIALYSIS NETWORK</p> <p>COMPARATIVE PROPOSAL – COPY [1...3]</p> <p>DO NOT OPEN BEFORE [indicate date and time of opening of bids]</p> <p>[STATE NAME AND ADDRESS OF PROPONENT]</p>

- viii. All four (4) outer envelopes containing the original set and the five (5) sets of photocopies described above, may be placed in one (1) sealed outer envelope or box, or otherwise packed together and sealed, and labeled as follows:

<p>PROVINCIAL GOVERNMENT OF PAMPANGA</p> <p>PAMPANGA DIALYSIS NETWORK</p> <p>COMPARATIVE PROPOSAL</p>

DO NOT OPEN BEFORE [indicate date and time of opening of bids]

[STATE NAME AND ADDRESS OF PROPONENT]

- ix. If Comparative Proposals are not sealed and marked as required, the PPP-PBAC shall assume no responsibility for the misplacement or premature opening of the Proposals.

5.2 Deadline and Place of Submission of Comparative Bid Proposals

- a. Comparative Proponents shall submit their Comparative Bid Proposals to:

Private-Public Partnership – Pre-qualification/Qualification, Bids and Awards Committee of

Province of Pampanga

for

Pampanga Dialysis Network

- b. The Comparative Bid Proposals must be submitted before 10:00 a.m. on the Comparative Proposals Submission Date, outside of which time the Comparative Proposals shall not be accepted by the PPP-PBAC and shall be returned unopened. The date and time of submission shall be recorded through the use of an official clock designated by the PPP-PBAC for that purpose. The official clock will be at the BAC Secretariat Office, Ground Floor, Provincial Capitol, City of San Fernando, Pampanga. Comparative Proponents are advised to synchronize their time with the official clock.
- c. Each set of Comparative Proposals submitted shall be numbered in the order received and stamped at the time of receipt. In addition, the receipt of Comparative Proposals shall be recorded in a register in the order of receipt specifying the date, time and name of the Comparative Proponent submitting the same.

5.3 Submission, Opening and Examination of Comparative Bid Proposals

- a. Immediately after the expiry of the time to submit Comparative Bid Proposals on the Comparative Proposals Submission Date, the PPP-PBAC will begin the opening proceedings by announcing the names of the Comparative Proponents who have submitted Comparative Proposals and other matters as the PPP-PBAC may consider appropriate.
- b. Comparative Proponents may send a representative to witness the opening proceedings. Comparative Proponents who do not send a representative to witness the opening of

Envelopes shall be deemed to have waived the opportunity to witness the opening of these envelopes.

- c. The PPP-PBAC shall then open the original set of Envelopes of each Comparative Proponent one at a time, in the order in which the Comparative Bid Proposals were received, in a public session.
- d. The PPP-PBAC shall examine the contents of Envelope 1 to determine the completeness of the documents as prescribed in Sections 2 and 3.1. If the contents of Envelope 1 are found to be incomplete, the PPP-PBAC shall disqualify the entire Comparative Proposal, and return the unopened Envelopes 2 and 3 to the Comparative Proponent concerned.
- e. The PPP-PBAC shall conduct a detailed evaluation of the Qualification Documents of Comparative Proponents whose Envelope 1 was not rejected over a period specified in the Milestone Dates to determine if it is responsive to the Legal, Technical and Financial Qualification Requirements.
- f. The PPP-PBAC shall examine the contents of Envelope 2 only from Comparative Proponents who are found to have complied with the Qualification Requirements of the Project as specified in Sections 2 and 5.1. The PPP-PBAC shall then determine the completeness of the documents inside Envelope 2 on the basis of the requirements set forth in ICP. If the contents of Envelope 2 are found to be incomplete, the PPP-PBAC shall disqualify the entire Comparative Proposal, and return the unopened Envelope 3 to the Comparative Proponent concerned.
- g. The PPP-PBAC shall conduct a detailed evaluation of the Technical Proposals of all the Comparative Proponents whose Comparative Proposals were not rejected, over a period specified in the Milestone Dates, in order to determine whether the Comparative Proponents have submitted the Technical Proposals which are responsive. In order to determine whether the Technical Proposals are responsive, the PPP-PBAC will evaluate such Technical Proposals in relation to the completeness and responsiveness of the documents required under Section 3.2.
- h. During the examination and evaluation of each Comparative Proponent's Envelopes 1 and 2, the PPP-PBAC may, at its discretion:
 - i. request the Comparative Proponents to submit clarifications to their Comparative Proposals;
 - ii. invite Comparative Proponents to a meeting(s) to provide clarifications and/or confirmations;
 - iii. invite Comparative Proponents to make a presentation on the Technical Proposal; or
 - iv. request Comparative Proponents to verify the submitted documents.

- i. The PPP-PBAC shall make all requests for clarifications, meetings, confirmations or verifications in writing. Clarifications by a Comparative Proponent shall be limited to providing explanations and/or supporting documents for information already included as part of its Comparative Proposal, but shall not add elements to or modify any aspect of its Comparative Proposal. Responses received from the relevant Comparative Proponent shall be included as part of its Comparative Proposal with a clear reference to the section of the Comparative Proposal for which the clarification/verification is provided
- j. The PPP-PBAC shall then open Envelope 3 of each Comparative Proponent that passed the Qualification Requirements and technical evaluation. The PPP-PBAC shall check that the Financial Proposal is responsive to the requirements prescribed in Section 3.3 and **Annex FP-1**.
- k. The PPP-PBAC shall rank the Bid Proposals from highest rank to lowest rank Bid wherein the highest rank Bid shall correspond to the largest Province's Revenue Share quoted by a Comparative Proponent and the lowest rank Bid shall correspond to the lowest Province's Revenue Share offered by a Comparative Proponent. Based on the ranking of Bid Proposals, PPP-PBAC shall determine the "Highest Comparative Proponent" i.e. the Comparative Proponent who is offering the largest Province's Revenue Share. The bid parameter shall be the Province's Highest Revenue Share which shall be expressed as a percentage with up to [two] decimal points.
- l. The PPP-PBAC shall declare the highest, responsive Comparative Bid submitted by a Qualified Proponent that is better than the offer of the Original Proponent.
- m. If no other Comparative Bid is determined to be better than the offer of the Original Proponent, the Project shall immediately be awarded to the Original Proponent.
- n. If no Comparative Bids are received by the PPP-PBAC after the time and date of the Comparative Bid Submission, the Project shall immediately be awarded to the Original Proponent.

6. RIGHT TO MATCH BY THE ORIGINAL PROPONENT

- a. The Original Proponent shall be required at the date of the first day of the publication of the "Invitation for Comparative Proposals" to submit a bid bond equal to the amount and in the form required of the Comparative Proponents, following the requirements of these Instructions to Comparative Proponents.
- b. In the event that the Bid Proposal of the Highest Comparative Proponent is better than that submitted by the Original Proponent, the Original Proponent shall have the right to match such proposal within thirty (30) working days from receipt of a notification from the Province of the result of the comparative bid.
- c. The PPP-PBAC shall evaluate the matching proposal of the Original Proponent against the highest, responsive bid of the Comparative Proponent. The PPP-PBAC shall declare the Winning Proponent on the basis of its evaluation.

7. CONFIDENTIALITY

- a. Information relating to the examination, evaluation, clarification, and comparison of bids and recommendations concerning the award of the Project shall not be disclosed to any of the Proponents or other persons not officially concerned with the Bidding Process; provided, that the Province, and the PPP-PBAC shall not have the obligation to keep any information submitted by a Comparative Proponent confidential after the signing of the Joint Venture Agreement by the Winning Proponent or the lapse of one hundred eighty (180) days after the Comparative Proposals Submission Date, whichever is later.
- b. The PPP-PBAC will not return either the original or the copies of any Comparative Proposals submitted by a Comparative Proponent, other than as specified in this Section.

8. NOTICE OF AWARD, POST-AWARD REQUIREMENTS & EXECUTION OF CONCESSION AGREEMENT

8.1 Notice of Award and Post-Award Requirements

- a. Within seven (7) calendar days from the PPP-PBAC recommendation, the Local Chief Executive shall decide on the award. Within three (3) calendar days from the approval of the award, the Local Chief Executive shall issue the Notice of Award to the Winning Proponent or Original Proponent, as the case may be. The Notice of Award shall prescribe that, within twenty (20) days from receipt of the Notice of Award, the Winning Proponent or Original Proponent, as the case may be, shall submit the following documents to the PPP-PBAC as conditions precedent for the execution and signing of the Joint Venture Agreement (“**Post-Award Requirements**”):
 - i. Notice of Award signed by the authorized representative of the Winning Proponent or Original Proponent, as the case may be.
 - ii. The Project Performance Security in the amount and in the form prescribed in the Joint Venture Agreement, to replace the Bid Security.
 - iii. Evidence of the formation of a special purpose corporation which will be the Concessionaire, consisting or certified true copies issued by the SEC of the certificate of incorporation, articles of incorporation and by-laws of the Concessionaire and the Registration Data Sheet or a photocopy of the page[s] showing entries in the Concessionaire’s stock and transfer book, certified true by the corporate secretary, wherein the shareholders of the Concessionaire and their respective percentage shareholdings should be the same as those provided in [Annex QD-L2A](#) or **Annex L2B**.
 - iv. Letters from reputable financial institutions expressing their willingness to provide sufficient credit facilities as required in the Winning Proponent’s Financial Proposals, and also indicating the terms and conditions for such facilities.

- v. In case of a Consortium, the agreement indicating that the Consortium Members are jointly and severally liable for the obligations of the Consortium under the Joint Venture Agreement.
- b. Failure to comply with the Post-Award Requirements within the prescribed twenty (20)-day period or within any extensions granted by the PPP-PBAC, shall result in the forfeiture of the Winning Proponent's or Original Proponent's, as the case may be, Bid Security and the withdrawal of the Notice of Award.
- c. Within five (5) days from the PPP-PBAC's receipt of the Post-Award Requirements, the Local Chief Executive shall determine and notify the Winning Proponent or Original Proponent, as the case may be, of its compliance with all of the Post-Award Requirements.
- d. The Winning Proponent will be disqualified, its Notice of Award will be withdrawn, and its Bid Security will be forfeited if, at any time after the issuance of the Notice of Award and prior to the signing and execution by the Province of the Joint Venture Agreement, the Winning Proponent is found to have violated the provisions of these Instructions to Comparative Proponents. The PPP-PBAC shall thereafter be free to consider the next highest qualifying Comparative Proposal.

8.2 Execution of Joint Venture Agreement

- a. Within seven (7) days from the receipt of notification of compliance with the Post-Award Requirements, the Winning Proponent or Original Proponent, as the case may be, through its special purpose corporation, shall execute the Joint Venture Agreement. Failure to do so shall be a ground for the forfeiture of the Bid Security and the withdrawal of the Notice of Award.

9. PROCESS TO BE FOLLOWED IF NO OR ONLY ONE COMPARATIVE PROPOSAL IS SUBMITTED OR THERE IS NO COMPLYING PROPOSAL

- a. If only one Comparative Proponent submits a Comparative Bid Proposal, the PPP-PBAC shall proceed to open and evaluate the same in accordance with the procedure in Section 5. If the sole Comparative Proponent passes the evaluation of its Qualification Documents, Technical Proposal and Financial Proposal, and are found to be complying, the PPP-PBAC shall declare the sole proponent to be the Highest Comparative Proponent. The PPP-PBAC shall proceed to the Right to Match Stage of the Original Proponent where it will now evaluate the Comparative Bid of the Highest Comparative Proponent against the Matching Proposal of the Original Proponent.
- b. If no Comparative Proposal or no complying Comparative Proposal is received by the Province, the PPP-PBAC shall recommend to the Local Chief Executive that the Original Proponent be issued a Notice of Award.

10. GENERAL CONDITIONS AND PROHIBITIONS

- a. By submitting its Bid Proposal, the Comparative Proponent acknowledges and agrees that:
 - i. it, including all Consortium Members and their Affiliates, the nominated entities, and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process;
 - ii. it, including all Consortium Members and their Affiliates, nominated entities, and their respective officers, employees, agents and advisers shall not commit any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice or Restrictive Practice;
 - iii. it, including all Consortium Members and their Affiliates, nominated entities, and their respective officers, employees, agents and advisers, shall not engage in any form of political or other lobbying with respect to the Project or attempt to influence the outcome of the Bidding Process; and
 - iv. it accepts all the terms and conditions of the Invitation Documents and Bidding Documents.

11. CORRUPT, FRAUDULENT, COLLUSIVE, COERCIVE, UNDESIRABLE, AND RESTRICTIVE PRACTICES

- a. If a Comparative Proponent, any Consortium Member, any proposed Subcontractor or Affiliate, or the Winning Proponent, as the case may be, is found to have, directly or indirectly or through an agent, engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice during the Bidding Process, or after the issuance of the Notice of Award or the execution of the Joint Venture Agreement, the PPP-PBAC/Province shall:
 - i. reject or disqualify the Bid Proposal of or withdraw the Notice of Award to such Proponent, without being liable in any manner whatsoever to the Proponent;
 - ii. forfeit and appropriate the Bid Security of such Proponent, without prejudice to any other right or remedy that may be available to the Province;
 - iii. seek to impose the maximum penalties for civil and criminal liability available under the applicable law on individuals and/or entities involved in such practices; and
 - iv. prohibit or disqualify individuals and/or entities involved in such practices from participating in any bidding of the Province from the date that they are found to have directly or indirectly engaged in any such practices.
- b. For purposes of this Section, “Corrupt Practice,” “Fraud,” “Collusion,” “Coercion,” “Undesirable Practice,” and “Restrictive Practice” are defined as follows:

- i. **"Corrupt Practice"** means any behaviour on the part of officials in the public or private sectors by which they improperly and unlawfully enrich themselves, others, or induce others to do so, by misusing the position in which they are placed, and includes the offering, giving, receiving, or soliciting of anything of value to influence the action of any such official in the Bidding or in contract execution; this also includes similar acts punishable under the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019);
- ii. **"Fraud"** means a misrepresentation of facts in order to influence the Bidding to the detriment of the government, and includes collusive practices among Proponents (prior to or after bid submission) designed to establish financial offers or prices at artificial, non-competitive levels and to deprive the government of the benefits of a free, transparent and open competition;
- iii. **"Collusion"** means a scheme or arrangement between two or more Comparative Proponents, with or without the knowledge of the government, designed to establish financial offers or prices at artificial, non-competitive levels;
- iv. **"Coercion"** means harming or threatening to harm, directly or indirectly, persons, or their property to influence their involvement in the Bidding, or affect the execution of the Joint Venture Agreement;
- v. **"Undesirable Practice"** means (i) establishing contact with any person connected with or employed or engaged by the Province with the objective of canvassing or **lobbying** or (ii) in any manner influencing or attempting to influence the Bidding; and
- vi. **"Restrictive Practice"** means any act, scheme, plan or agreement such as forming a group, clique, cartel, trust, syndicate, combine, pool and the like or arriving at any **understanding** or arrangement among Proponents, Consortium Members, Subcontractors, or the Affiliates of any of these entities, with the objective of restricting, subverting or manipulating a full and fair competition in the Bidding.

12. LOCK-UP RULES

12.1 Lock-Up Rules during the Bidding Process

- a. The following rules ("Bidding Process Lock-Up Rules") shall apply:
 - i. Corporation, Partnership or Other Juridical Entity
 - (1) For a Comparative Proponent that is a corporation, partnership or any other juridical entity, no restrictions shall be imposed on the ownership structure of such a Comparative Proponent. Provided that, the Comparative Proponent shall ensure its continued eligibility with respect to the individual Legal, Technical and Financial Qualification Requirements as provided in this document.
 - ii. Consortium

- (1) Once a Consortium is qualified to bid, the Consortium's Lead Member may not withdraw from the Consortium, nor reduce its equity interest in the Consortium as declared in the Consortium's Qualification Documents.
- (2) Except for the Lead Member, the other members of the Consortium may withdraw from the Consortium prior to the Comparative Proposals Submission Date. The Consortium Member proposed to meet Operation and Maintenance Experience under Technical Qualification Requirements that withdraws from the Consortium needs to be substituted by a new member such that the Consortium continues its eligibility with respect to all the relevant Technical Qualification Requirements as provided in this document. The other Consortium Members that withdraw from the Consortium may be substituted by new members, at the discretion of the remaining members of the Consortium. Any new members of the Consortium must comply with the Legal Qualification Requirements. Withdrawing Consortium Members shall be prohibited from joining any other Consortium that has been declared qualified to bid for the Project.
- (3) Any change in the composition of the Consortium must be approved by the PPP-PBAC.
- (4) A Comparative Proponent may submit to the PPP-PBAC only one (1) application for all changes in the composition of the Consortium. The application must be submitted to the PPP-PBAC at least thirty (30) days before the Comparative Proposals Submission Date. Together with such application, the Comparative Proponent should re-submit the entire Qualification Documents that should be revised to reflect the changes applied for.
- (5) If the proposed change is not approved by the PPP-PBAC, the applying Comparative Proponent may revert to the original Consortium composition or the shareholding structure of the Consortium, as provided in its Qualification Documents.
- (6) Subject to the above, in the event of a withdrawal, the Comparative Proponent must only inform the PPP-PBAC on the Comparative Proposals Submission Date.

12.2 Lock-Up Rules during the Contract Period

- a. No changes shall be allowed in the shareholder or equity structure of the Winning Proponent from the Comparative Proposals Submission Date until the signing of the Joint Venture Agreement.

12.3 Consequence of Violation of Lock-Up Rules

- a. Any violation of the Bidding Process Lock-Up Rules prior to the execution of the Joint Venture Agreement between the Winning Proponent and the Province shall be a ground for disqualification from the Bidding and forfeiture of the Bid Security.

- b. Any violation of the Concession Period Lock-Up Rules after the execution of the Joint Venture Agreement between the Winning Proponent and the Province shall be treated in accordance with the provisions of the Joint Venture Agreement.

13. GOVERNING LAW AND RULES

- a. The provisions of the PPP Code and its IRR and other applicable Philippine laws shall govern all matters not specifically covered by these Instructions to Proponents and other Bidding Documents.

14. DEFINITIONS

- a. The following terms used in these Instructions to Comparative Proponents, including all Annexes, shall have the following meanings. Other capitalized terms not otherwise defined in these Instructions to Comparative Proponents shall have the meanings provided in the Joint Venture Agreement. In case of conflict between the definition of a term as provided in these Instructions to Comparative Proponents and Joint Venture Agreement, the definition provided in these Instructions to Comparative Proponents shall govern.
 - i. **“Affiliate”** means a corporation or entity effectively controlled by or controlling the Comparative Proponent or associated with the Comparative Proponent under common ownership and Control.
 - ii. **“Annex QD”** or **“QD”** along with the relevant number refers to the relevant Qualification Document submitted by the Comparative Proponent as part of its Qualification Documents, and as numbered in the Instructions to Comparative Proponents.
 - iii. **“Bid Proposal”** means a valid offer to gratuitously provides significant benefits to the Province and carries lower risks for the Province in operating and maintaining the Pampanga Dialysis Network to be submitted by a Comparative Proponent as part of Envelope 3.
 - iv. **“Bid Letter”** is the document referred to in Section 5.2 that will be submitted as **part** of Envelope 2 – Technical Proposal, using the form in **Annex QD-L1**.
 - v. **“Bid Security”** means the instrument to be provided by the Proponent as part of its Comparative Proposal in accordance with Sections 5 and 6 of these Instructions to Comparative Proponents.
 - vi. **“Bidding Documents”** means the documents that are issued to Comparative Proponents, as enumerated in Sub-section 1.1 of these Instructions to Comparative Proponents.

- vii. **“Bidding Process” or “Bidding”** means the process beginning from the publication of the Invitation for Comparative Proposals until the signing of the Joint Venture Agreement constituting the Swiss Challenge Stage of the Unsolicited Proposal for the Project.
- viii. **“Comparative Proponent”** means any partnership, corporation, or Consortium which participates in the Bidding Process.
- ix. **“Comparative Proposal”** means the documents required to be submitted under Section 3.1 (Qualification Documents), the Technical Proposal under Section 3.2, and the Financial Proposal under Section 3.3 including the Bid Security and other documents required to be submitted pursuant to Section 2.4.
- x. **“Comparative Proposal Submission Date”** means the date when Comparative Proponents must submit their Comparative Proposals to the PPP-PBAC.
- xi. **“Control”** means, for purposes of defining an Affiliate, the power to direct or cause the direction of the management policies and actions of a body corporate whether through:
 - a. ownership, whether directly or indirectly, of at least fifty percent plus one share (50%+1) of the outstanding voting shares; or
 - b. ownership, whether directly or indirectly, of at least twenty percent (20%) of the outstanding voting shares and (a) possession of at least fifty percent plus one share (50%+1) of the voting rights through voting trust or other voting agreements; or (b) the ability to elect a majority of the members of the Affiliate’s board of directors; or (c) any legal agreement or arrangement.

For this purpose, the term “voting shares” includes partnership contribution, membership interests, units of participation, and other similar forms of ownership that are entitled to vote.
- xii. **“Eligible Projects”** shall mean projects including the operation and maintenance of a hospital and/or center.
- xiii. **“Facility Operator”** shall refer to the entity to be appointed by the Winning Proponent to undertake the Operations and Maintenance of the Project.
- xiv. **“First Envelope”** means the portion of the Comparative Bid containing the Comparative Proponent’s Qualification Documents and consists of the documents described in Section 3.1 of the ICP.
- xv. **“Grantor”** means the Province of Pampanga (Province);

- xvi. **“Instructions to Comparative Proponents”** or **“ICP”** means these Instructions to Comparative Proponents issued by the PPP-PBAC, as amended by bid bulletins that may subsequently be issued by the PPP-PBAC.
- xvii. **“Invitation Documents”** means the Invitation for Comparative Proposals, including its Annexes, the Project Background, and any supplemental notices and bid bulletins issued by the PPP-PBAC.
- xviii. **“Joint Venture Agreement”** means the contract entitled “Joint Venture Agreement for the Pampanga Dialysis Network” and its Annexes to be executed between the Province and the Winning Proponent.
- xix. **“Lock-up Period”** as defined in Sub-section 1.1 of the Joint Venture Agreement for the Pampanga Dialysis Network.
- xx. **“Notice of Award”** is a document referred to in Section 8 of these Instructions to Comparative Proponents.
- xxi. **“Original Proponent”** means the Private Sector Proponent who submitted the Unsolicited Proposal.
- xxii. **“Post-Award Requirements”** means the requirements that must be complied with by the Winning Proponent as a pre-condition to the execution of the Joint Venture Agreement, as described in Section 8 of these Instructions to Comparative Proponents.
- xxiii. **“Pre-Bid Conference”** is the conference referred to in Section 1 of these Instructions to Comparative Proponents.
- xxiv. **“Project”** shall refer to the Pampanga Dialysis Network which consists of two (2) Free-Standing Dialysis Networks located in the Municipality of Guagua, within the compound of Diosdado P. Macapagal Memorial Hospital, and in the Municipality of Apalit, as more particularly described in the draft Joint Venture Agreement.
- xxv. **“Project Performance Security”** is the security referred to in Section 8 of these Instructions to Comparative Proponents.
- xxvi. **“Public-Private Partnership Center”** means the Center which shall facilitate and optimize public-private partnerships in the country for the delivery of public infrastructure and other development services.
- xxvii. **“Qualification Documents”** means the documents submitted by the Comparative Proponent in compliance with the Qualification Requirements for the Project.
- xxviii. **“Qualification Requirements”** are the criteria that a Comparative Proponent must meet to qualify for the Project, as described in Section ___ of these Instructions to

- Comparative Proponents, and includes Legal Qualification Requirements, Technical Qualification Requirements, and Financial Qualification Requirements.
- xxix. **“Right to Match Stage”** means the stage upon which the Original Proponent is given the chance to provide a matching offer to the winning comparative proponent.
- xxx. **“PPP-PBAC”** means the Private-Public Partnership – Pre-qualification/Qualification – Bids and Awards Committee of the Province constituted under Executive Order No.10-2024 dated 23 May 2024 pursuant to the PPP Code and its IRR.
- xxxi. **“SEC”** means the Philippine Securities and Exchange Commission.
- xxxii. **“Second Envelope”** means the portion of the Comparative Bid containing the Comparative Proponent’s Technical Proposal and consists of the documents described in Section 3.2 of the ICP.
- xxxiii. **“Technical Proposal”** means the documents referred to in Section 3.2 of these Instructions to Comparative Proponents.
- xxxiv. **“Technical Qualification Requirements”** is defined in Section__ of these Instructions to Comparative Proponents.
- xxxv. **“Third Envelope”** means the portion of the Comparative Bid containing the Comparative Proponent’s Financial Proposal and consists of the documents described in Section 3.3 of the ICP.
- xxxvi. **“Unsatisfactory Performance”** means any of the following:
- a. in relation to any project or contract that was commenced or in the process of implementation within the last five (5) years prior to the Comparative Submission Date by any entity whose experience is proposed by the Bidder to meet any of the Technical Qualification Requirements:
 - i. the failure by such entity to satisfactorily perform any of its material obligations for such project or contract, as evidenced by the imposition of a judicial pronouncement or arbitration award;
 - ii. the expulsion by such entity from any such project or contract;
 - iii. the termination or suspension of any such project or contract due to such entity’s breach of its obligations; or
 - iv. the material violation of laws and/or regulations or international standards applicable to any such projects or contracts, including but not limited to environmental, health, safety, labor, and social welfare laws and regulations;

- b. for any entity whose experience or qualifications is proposed by the Bidder to meet any of the Technical Qualification Requirements or Financial Qualification Requirements, inclusion in a blacklist issued by any governmental agency of the Philippines or in the Debarred and Cross-Debarred Firms & Individuals list posted in the World Bank website (www.worldbank.org/debarr), whether as an individual contractor, partnership or corporation or as a member of a joint venture or consortium; or
 - c. for any entity whose experience is proposed by the Bidder to meet any of the Technical Qualification Requirements or Financial Qualification Requirements, involvement in any Prohibited Act or having a Conflict of Interest insofar as the current Project is concerned.
- xxxvii. **“Winning Proponent”** means the Comparative Proponent determined by the Technical Working Group and confirmed by the PPP-PBAC, as having passed and submitted the best complying Comparative Proposal.

ANNEXES

ANNEX QD - QUALIFICATION DOCUMENT FORMS

TABLE OF CONTENTS – QUALIFICATION DOCUMENTS

ANNEX REFERENCE	DOCUMENT	SUBMITTED (YES/NO)	PAGE NUMBER
Annex QD-L1	Form of Bid Letter		
Annex QD-L2A	Business Structure		
Annex QD-L2B	Business Structure (for a Comparative Proponent which is a Consortium)		
Annex QD-L3	Basic Information Sheet		
Annex QD-L4	Notarized Certification of Absence of Unsatisfactory Performance Record		
Annex QD-L5A	Notarized Corporate Authorizations and Designations of Authorized Representative (for corporation)		
Annex QD-L5B	Notarized Corporate Authorizations and Designations of Authorized Representative (for consortium)		
Annex QD-L6	Notarized Certificate of Affiliation		
Annex QD-T1	Operation and Maintenance Experience		
Annex QD-T2	Certificate for Details of Eligible Projects for O&M Experience		
Annex QD-T3	O&M Contractor's Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project		
Annex QD-T13	Undertaking Regarding Key Personnel		
Annex QD-F1	Notarized Statement of Financial Qualification		
Annex QD-F2	Notarized Joint and Several Undertaking		

Annex QD-L1: Form of Bid Letter

a. To be submitted by the *Comparative Proponent*.

[Letterhead]

Republic of the Philippines)

) S.S.

**Notarized Application to Submit Comparative Proposal for the
Pampanga Dialysis Network**

I, (*insert name*), (*insert citizenship*), of legal age with office address at (*insert address*), as the authorized representative of (*insert name of Comparative Proponent*), a (*partnership/corporation/other juridical entity or Consortium*) organized and existing under and by virtue of the laws of (*insert place of incorporation/registration*) [*or organized by agreement among its Consortium Members (in the case of an unincorporated Consortium)*], as indicated by the authorization certificate attached as [**Annex QD-L5A** (for partnership or corporation): Notarized Corporate Authorizations and Designation of Authorized Representative] or **Annex QD-L5B** (for a Consortium Prospective Comparative Proponent, to be submitted by each Consortium Member) after having been duly sworn according to law, hereby certify for and on behalf of (*name of Comparative Proponent*) that:

1. (*Name of Comparative Proponent*), a (*partnership/corporation/other juridical entity/Consortium*) with business address at (*insert address*) hereby declares, represents, and warrants that it has read and understood each and every section and page of the Instructions to Comparative Proponents for the Pampanga Dialysis Network (hereinafter referred to as the "Project"), its provisions, terms and conditions, and all amendments, supplements, or modifications thereto, as well as the decisions of the PPP-PBAC ; and accepts and agrees to be bound and fully abide by and comply with the terms and conditions of the Instructions to Comparative Proponents and all amendments, supplements, or modifications thereto, as well as the decisions of the PPP-PBAC .
2. In accordance with the Instructions to Prospective Bidders, *Name of Comparative Proponent* submits its Comparative Proposal for the financing, design, construction, operation and maintenance of the Dialysis Network.
3. Comparative Proponent's Proposal consists of the following components:
 - a. Envelope No. 1 - Qualification Documents
 - b. Envelope No. 2 - Technical Proposal
 - c. Envelope No. 3 - Financial Proposal
4. (*Name of Comparative Proponent*) confirms that all statements made and the information and documents provided in its Qualification Documents, Technical Proposal and Financial Proposal, including statements made by all Consortium

Members, their Affiliates, proposed contractors in any of the Qualification Documents, Technical Proposal and Financial Proposal are true and correct, and any misrepresentation or false statement made therein shall be a ground for its disqualification.

5. *(Name of Comparative Proponent)* authorizes the Province to conduct any inquiries or investigations to verify the statements, documents, and information submitted in its Comparative Proposal, and to seek clarification from its clients and bankers regarding any technical and financial aspects. *(Name of Comparative Proponent)* also permits third parties to supply information required to verify statements and information submitted in its Comparative Proposal.
6. *(Name of Comparative Proponent)* acknowledges the right of the Province to reject its Comparative Proposal without assigning any reason and to cancel the Bidding Process at any time, without incurring any liability, and accepts all the terms and conditions of the Instructions to Comparative Proponents and other Invitation Documents.
7. *(Name of Comparative Proponent)*, including the entities it has identified to comply with the Qualification Requirements under the Instructions to Comparative Proponents, have not at any time engaged in any Corrupt, Fraudulent, Coercive, Undesirable, or Restrictive Practices, nor have a Conflict of Interest.
8. *(Name of Comparative Proponent)* waives any right to and shall not seek or obtain any restraining order, writ of injunction or prohibition or any other form of coercive judicial, quasi-judicial or administrative writ, process or issuance against the Province to restrain, prevent, suspend, or in any manner forestall, hinder or render inconvenient the Bidding Process. *(Name of Comparative Proponent)* acknowledges that the Province is undertaking this Bidding Process in the performance of its functions to ensure the provision of a critical basic necessity and that, therefore, the Project is of paramount public interest and importance and that the Province will suffer serious and irreparable damage on account of any breach by *(Name of Comparative Proponent)* of these undertakings, and agree that the breach of these undertakings shall result in *(Name of Comparative Proponent)*'s automatic disqualification to bid for the Project.
9. In the event that *(Name of Comparative Proponent)* is declared as the Winning Proponent, *(Name of Comparative Proponent)* agrees to be bound by its Bid Proposal and confirms that it shall undertake the Project in accordance with its Bid Proposal, the Joint Venture Agreement, and the Invitation Documents.
10. In the event that *(Name of Comparative Proponent)* is declared as the Winning Proponent, *(Name of Comparative Proponent)* agrees to comply with the requirements of the Instructions to Comparative Proponents which it shall form to execute the final Joint Venture Agreement with the Province within the deadlines set in the Instructions to Comparative Proponents.
11. *(Name of Comparative Proponent)*, confirms that there is no litigation (including court,

arbitration and other proceedings) current or pending against us, which might have a material adverse effect on our ability to participate in the Bidding Process and undertake the Project, if awarded.

12. *(Name of Comparative Proponent)* undertakes that in case due to any change in facts or circumstances during the pendency of the process of participation in the Bidding Process impacting our qualification under the Instructions to Comparative Proponents, I/We would intimate the same immediately to you.
13. Unless otherwise defined in the relevant document, capitalized terms as used in all documents submitted as part of the Comparative Proposal shall have the meanings ascribed to them in the Project's Instructions to Comparative Proponents.

For and on behalf of *(Name of Comparative Proponent /Name of Consortium/List of Consortium Members)*

(Signature of Authorized Representative)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this () day of *(month and year)* at *(place)*, each affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

Doc. No.: _____

Page No.: _____

Book No.: _____

Series of 2019.

Annex QD-L2A: Business Structure

(for a Comparative Proponent which is a partnership or corporation)

1. Name of Comparative Proponent:

2. Contact Information of Comparative Proponent

a. Address	
b. Website	
c. Contact Person	
i. Telephone	
ii. E-mail	

3. Entity which fulfills the Operation and Maintenance Experience Requirement

a. Name of Entity	
b. Relationship to <i>Comparative Proponent</i>	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	
ii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of the Comparative Proponent, attach evidence of such affiliation.
- b. The Comparative Proponent is allowed to nominate not more than five (5) contractors.

4. Entity which fulfills the Financial Qualification Requirement

a. Name of Entity	
b. Relationship to <i>Comparative Proponent</i>	
c. Address	
d. Website	
e. Contact Person	
i. Telephone	

ii. E-mail	
------------	--

Note:

- a. If this requirement is fulfilled by an Affiliate of the Comparative Proponent, attach evidence of such affiliation.

For and on behalf of (partnership/corporation)

(Signature of Authorized Representative)

(Name,

Title

Date)

Annex QD-L2B: Business Structure
 (for a Comparative Proponent which is a Consortium)

Name of Consortium: _____

1. Consortium Members

	Lead Member	Other Member	Other Member	Other Member
Name				
Percentage Interest in the Consortium				
Type of Legal Entity (corporation/partnership/other juridical entity)				
Role in Consortium				

2. Contact Information of Consortium Members

a. Lead Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. E-mail	
a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. E-mail	
a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	

ii. E-mail	
a. Consortium Member	
b. Website	
c. Contact Person	
i. Telephone	
ii. E-mail	
a. Consortium Member	
b. Address	
c. Website	
d. Contact Person	
i. Telephone	
ii. E-mail	

3. Entity which fulfills the Operation and Maintenance Experience Requirement

a. Name of Entity	
b. Consortium Member to which this entity is related	
c. Relationship to Consortium Member	
d. Address	
e. Website	
f. Contact Person	
i. Telephone	
ii. E-mail	

Note:

- a. If this requirement is fulfilled by an Affiliate of a Consortium Member, please provide evidence of such affiliation.
- b. The Comparative Proponent is allowed to nominate not more than five (5) contractors.

4. Entity which fulfills the Financial Qualification Requirement

a. Name of Entity	
b. Consortium Member to which this entity is related	
c. Relationship to Consortium Member	
d. Address	

e. Website	
f. Contact Person	
i. Telephone	
ii. E-mail	

For and on behalf of (Name of Comparative Proponent/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)
(Name,
Title
Date)

Annex QD-L3: Basic Information Sheet

- a. To be submitted by all entities listed in all sections of the Business Structure (**Annex QD-L2A or QD-L2B**).
- b. Required attachment: For all entities submitting this form:
 1. Certified true copy of its latest General Information Sheet, stamped “received” by the SEC, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copies may be issued by either the SEC or its equivalent in a foreign country, or the entity’s corporate secretary or equivalent officer. If it is issued by the entity’s corporate secretary, the certification must be under oath and notarized. Further, if the foreign country does not require an equivalent document of the General Information Sheet, a notarized certification setting out the same or similar information executed by the corporate secretary or equivalent officer of the foreign entity will suffice.
 2. Certified true copy of its SEC Certificate of Incorporation, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the SEC Certificate of Incorporation, or the equivalent document for a foreign entity, must be issued by the SEC or its equivalent in a foreign country or the entity’s corporate secretary or equivalent officer. If it is issued by the entity’s corporate secretary or equivalent officer, the certification must be under oath and notarized.
 3. Certified true copy of its Articles of Incorporation and By-Laws, or for a foreign entity, the equivalent document submitted to and acknowledged by the appropriate government agency equivalent to the SEC in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certified true copy of the Articles of Incorporation and By-Laws may be issued either by the SEC or its equivalent in a foreign country, or by the entity’s corporate secretary or equivalent officer. If the certified true copies are issued by the entity’s corporate secretary or equivalent officer, the certification must be under oath and notarized.
 4. Certified true copy of the latest audited financial statements that must be for a fiscal period ending not earlier than 31 December 2017, or the last day of the entity’s fiscal year, whichever applies, stamped “received” by the Bureau of Internal Revenue or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign entity was registered for creation or recognition of its juridical personality or capacity. The certification may be issued by the Entity’s Authorized Representative or equivalent officer of the entity proposed to meet the net worth requirement, in which case the certification must be under oath and notarized.

1. Name of Entity	
2. Type of entity (please check one)	<input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Others: (please specify) _____
3. Consortium Member or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Subcontractor or not? (please check one)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Affiliate of an entity listed in QD- 1A or QD- 1B?	<input type="checkbox"/> Yes, Affiliate of _____ <input type="checkbox"/> No
6. Place of Incorporation or Registration	
7. Year of Incorporation or Registration	
8. Principal Purposes or Businesses	

Shareholder or Partner Information

Name of Shareholder or Partner	Nationality	Percentage total of shareholding or partnership interest

(Insert rows as necessary)

For and on behalf of (Name of Contractor)

For and on behalf of
(Name of *Comparative Proponent* /if
Consortium, Name of Consortium and
Lead Member)

(Signature of Authorized Representative)
(Name, Title and Date)

(Signature of Authorized Representative)
(Name, Title and Date)

Annex QD-L4: Notarized Certification of Absence of Unsatisfactory Performance Record

- a. To be accomplished individually by the authorized representative of each of the Comparative Proponent and the entities listed in all sections of the Business Structure (Annex QD-L2A or QD-L2B).

Bidder	
Entity which fulfills a Qualification Requirement	
Qualification Requirement	
Relationship to Bidder	

Republic of the Philippines)
) s.s.

Certification of Absence of Unsatisfactory Performance Record

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the *(position/designation)* of *(name of entity represented)*, a *(corporation/partnership)* organized and existing under and by virtue of the laws of *(place of incorporation/registration)* hereby certify, for and on behalf of *(name of entity represented)*, that *(name of entity represented)* does not have any record of Unsatisfactory Performance, as defined in Section 15 of the Instructions to Comparative Proponents.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

 (Name)
 (Designation)

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)*, issued at *(city)* on *(date)*.

Notary Public

Doc. No.: _____
 Page No.: _____
 Book No.: _____
 Series of 2024.

Annex QD-L5A: Notarized Corporate Authorizations and Designation of Authorized Representative (for corporation)

- a. To be submitted by a *Comparative Proponent* which is partnership or corporation

[Letterhead]

Republic of the Philippines)
) s.s.

I, (Corporate Secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am a (Filipino) citizen, of legal age and a resident of [*];
2. I am the duly elected (Corporate Secretary or equivalent officer) of (name of Comparative Proponent) (the “Comparative Proponent”), a (partnership/corporation) organized and existing under and by virtue of the laws of (the Philippines);
3. At a regular/special meeting of the Board of Directors/Partners of the Firm, held on (date) at (place), in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that (name of Comparative Proponent) (the “Comparative Proponent”) be, and is, authorized to participate in the Bidding Process for the operation and maintenance of the Pampanga Dialysis Network (hereinafter called the “Project”);

RESOLVED FURTHER, that (Name of Representative) be and is hereby appointed as the authorized representative of the *Comparative Proponent* during the Bidding Process, authorized to execute, sign, and receive any and all documents for, and otherwise act in the name of, the *Comparative Proponent*;

RESOLVED FURTHER, that (Name of Representative) be and is hereby authorized to sign the Certification of Absence of Unsatisfactory Performance Record (**Annex QD-L4**) for an on behalf of the *Comparative Proponent*.

RESOLVED, FINALLY, that any and all acts done and/or performed by (Name of Representative) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the *Comparative Proponent*;

5. That the above resolutions are in accordance with the records of the Comparative Proponent.

(Place, Date of Execution)

[Corporate Secretary or Equivalent
Officer]

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

Notary Public

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Annex QD-L5B: Notarized Corporate Authorizations and Designation of Authorized Representative (for consortium)

- a. For a *Comparative Proponent* which is an unincorporated Consortium, to be submitted by each Consortium Member

[Letterhead of Prospective Bidder]

Republic of the Philippines)
) s.s.

I, (Corporate Secretary or equivalent officer), after having been duly sworn according to law, hereby depose and state that:

1. I am a (Filipino) citizen, of legal age and a resident of [];
2. I am the duly elected (Corporate Secretary or equivalent officer) of [name of Consortium Member (the "Firm")], a corporation/partnership/other juridical entity organized and existing under and by virtue of the laws of (the Philippines);
3. At a regular/special meeting of the Board of Directors/Partners/Trustees of the Firm, held on date at place, in which meeting a quorum was present and acting throughout, the following Resolutions were unanimously passed and approved:

RESOLVED, AS IT IS HEREBY RESOLVED, that the Firm be, and is, authorized to participate, through a Consortium consisting of the following Members and their respective nationalities and percentage interests in the Consortium, in the Bidding Process for the financing, design, construction, operation and maintenance of the Pampanga Dialysis Network (hereinafter called the "Project").;

Name of Consortium Member	Nationality	% Interest

RESOLVED FURTHER, that the Firm shall maintain its percentage interest in the Consortium in accordance with the Instructions to Comparative Proponents and the Joint Venture Agreement, and thereafter shall comply with the requirements and restrictions on changes in ownership as stated in the Joint Venture Agreement;

RESOLVED FURTHER, that in the event the Firm is declared as Winning Proponent, the Firm will cooperate with the other Consortium Members to register a domestic corporation with the Philippine Securities and Exchange Commission and comply with all other requirements specified in the Instructions to Comparative Proponents and the Joint Venture Agreement;

RESOLVED FURTHER, that the Firm jointly and severally binds itself with the other Consortium Members listed above in undertaking the obligations of the Consortium in the Bid for the Project until the corporation formed by the Consortium signs the Joint Venture Agreement (if the Consortium is selected as the Winning Proponent) or until the termination of the Bidding Process (if the Consortium is not declared as the Winning Proponent).

RESOLVED FURTHER, that in the event the Consortium is declared as the Winning Proponent, it commits to fulfill all the requirements in the Instructions to Comparative Proponents, including the submission and completion of the requirements of the Notice of Award within twenty (20) days from the issuance of the Notice of Award, and the signing of the Joint Venture Agreement with Province and fulfillment of other requirements within five (5) days of being notified by Province that it has complied with the requirements of the Notice of Award.

RESOLVED FURTHER, that (Name of Firm's Representative) be and is hereby appointed as the authorized representative of the Firm, authorized to execute, sign, and receive documents for, and otherwise act in the name of, the Firm;

RESOLVED FURTHER, that the Firm in the exercise of its interest in the Consortium hereby:

- (a) Designates (Name of Lead Member of Consortium) as Lead Member of the Consortium with the authority to represent Consortium during the Bidding Process for the Project;
- (b) authorizes (Name of Authorized Representative of Lead Member of Consortium) as representative of the Consortium during the Bidding Process for the Project, and for such purpose shall have the authority to execute, sign and receive documents for, and otherwise act in the name of the Consortium.

RESOLVED, FINALLY, that any and all acts done and/or performed by (Name of Lead Member of Consortium) and (Name of Authorized Representative) under and by virtue of this resolution be, as they are hereby, confirmed and ratified.

4. These resolutions have not been revoked, amended or modified and remain valid and binding on the Firm;
5. That the above resolutions are in accordance with the records of the Firm.

Place, Date of Execution.

[Corporate Secretary or Equivalent Officer]

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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Annex QD-L6: Notarized Certificate of Affiliation

Note: If the experience required under the ICP belongs to an Affiliate of the entity, a certificate providing evidence of such Affiliate relationship may be issued by the corporate secretary or equivalent officer of the entity claiming affiliation, following the format below:

[Letterhead of Entity Claiming Affiliation]

Republic of the Philippines)
) s.s.

Notarized Certificate of Affiliation

I, We (*corporate secretary or equivalent officer*), after having been duly sworn according to law, hereby depose and state that (*name of Affiliate*) is an Affiliate of (*name of the Comparative Proponent /Consortium Member/ nominated entity*) as defined in the Instructions to Comparative Proponents.

A brief description of such affiliation is given below:

(*State the facts showing affiliation, and attach relevant documents which prove this, if available – e.g., shareholding in the Affiliate of the Comparative Proponent /Consortium Member/entity being nominated to satisfy the Technical/Financial Qualification Requirement; if control is exercised through a legal agreement, the provisions of such legal agreement evidencing such control, etc.*)

Place, Date of Execution.

[Corporate Secretary or equivalent officer]

SUBSCRIBED AND SWORN TO before me this (____) day of (*month and year*) at (*place*), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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Annex QD-T1: Operation and Maintenance Experience

- a. To be submitted by the entity which fulfills the Operation and Maintenance Experience requirement, as identified in the Business Structure (**Annex QD-L2A** or **Annex QD-L2B**), item 5.
- b. Required attachments for each project:
 - (i) Certificate of Project Completion or Ongoing Project from the Authorized Representative of the project owner or entity nominated to fulfil the qualification.
 - (ii) If the project was or is being undertaken by an Affiliate of the entity which fulfills the Operation and Maintenance Experience requirement, evidence of such affiliation.
- c. Entity which fulfills the Operation and Maintenance Experience Requirement, as identified in item 5 of the Business Plan (**Annex QD-L2A** or **QD-L2B**).

<i>Comparative Proponent:</i>	
Entity which fulfills the requirement:	
Relationship to <i>Comparative Proponent:</i>	<i>(Comparative Proponent/Consortium Member)</i>

Name of Project [#]	
Location	
Description	
Start Date of Operation Period	
End Date of Operation Period	
Nature of Involvement	
Client*	
Cost of Contract	
Name of Entity which Completed the Project**	

Please provide details of all the relevant projects

*Please attach a Certificate of Project Completion from the Authorized Representative of the project owner or entity nominated to fulfill the qualification, as per format provided in **Annex QD-T10**

Must be the Entity identified in par. (c) or its Affiliate. If an Affiliate, please attach a certificate of affiliation as per format provided in Annex **QD-L6

For and on behalf of (Name of Entity)

For and on behalf of (Name of *Comparative Proponent*/if Consortium, Name of Consortium and Lead Member)

(Signature of Authorized Representative)
(Name)
(Designation)

(Signature of Authorized Representative)
(Name)
(Designation)

Annex QD-T10: Certificate for Details of Eligible Projects for Operation & Maintenance Experience

Certificate from the Authorized Representative (Applicable for Operation and Maintenance Experience of a Dialysis Network)

This is to certify that (*Name of the Comparative Proponent /Member of Consortium/Affiliate*) has operated [or has been operating] the ____ (*name of the dialysis center/hospital*), from (*start of operation period*) to (*end of operation period*), during a Dialysis Network was established as mentioned below:

Year 1 ([most recent year]) :

Year 2 (.....) :

Year 3 (.....) :

Certified by:

Name of the Authorized Representative
(Signature):
Date:

Annex QD-T11: O&M Contractor’s Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project

- a. To be submitted by any O&M Contractor proposed by the *Comparative Proponent* to fulfil the Technical Requirements under the category of O&M Experience, as identified in the Business Plan (**Annex QD-L2A** or **Annex QD-L2B**), item 3.

<i>Comparative Proponent</i>	
Entity which fulfills the requirement:	
Relationship to <i>Comparative Proponent</i>	

Republic of the Philippines)
) s.s.

Notarized Statement of Willingness to Participate in, and Capacity to Undertake the Requirements of the Project

I, (*insert name*), (*insert citizenship*), of legal age, with office address at (*insert address*), as the (*insert position/designation*) of (*insert name of O&M Contractor*), a (*insert legal status such as corporation/partnership*) organized and existing under and by virtue of the laws of (*insert place of incorporation/registration*) hereby declare for and on behalf of (*name of O&M Contractor*) that:

1. (*Name of O&M Contractor*) is willing to participate, through the (*Name of Comparative Proponent*) in the bid for the Pampanga Dialysis Network in accordance with the Instructions to Comparative Proponents.
2. (*Name of O&M Contractor*) has the required experience and capacity to undertake the requirements for its services in the Project in accordance with the provisions of the Invitation Documents.
3. Based on my personal knowledge or authentic documents, the information provided in **Annex QD-T9** to **QD-T10** are true and correct.
4. If selected by (*Name of Comparative Proponent*), (*Name of O&M Contractor*) shall formally enter into a contract with the Comparative Proponent to perform the obligations and assume the attendant liabilities as O&M Contractor for the Pampanga Dialysis Network.

Date and Place of Execution.

For and on behalf of (Name of Entity)

(Signature of Authorized Representative)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this () day of (*month and year*) at (*place*), affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (*city*) on (*date*).

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Annex QD-T12: Undertaking regarding Key Personnel

Name of Comparative Proponent:

1. Proposed [KEY PERSONNEL DESIGNATION]

Name	
Employer	
Position	
Nationality	
Date of Birth	

a. Key Experience (add columns as necessary)

Employer			
Position			
Start Date			
End Date			
Description of Projects Undertaken			

b. Educational Background

College Degree:	School:	Year Graduated:
Graduate Studies:	School:	Year Graduated:
Professional License:	Year:	

For and on behalf of
 (Name of *Comparative Proponent* /if
 Consortium, Name of Consortium and Lead
 Member)

(Signature of Authorized Representative)

(Name, Title and Date)

Annex QD-F1: Notarized Statement of Financial Qualification

- a. To be submitted by the entity/ies which fulfill/s the Financial Qualification Requirement, as identified in the Business Structure (**Annex QD-L2A** or **Annex QD-L2B**).
- b. Required attachments:
 - (i) Certified True Copy of audited financial statements that must be for a fiscal period ending not earlier than 31 December 2021 or the last day of the entity’s fiscal year, whichever applies, stamped “received” by the Bureau of Internal Revenue or for foreign entities, the appropriate government agency equivalent to the Bureau of Internal Revenue in the foreign country where the foreign entity was registered for recognition or creation of its juridical personality or capacity.
 - (ii) A letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the *Comparative Proponent* or Consortium Members, or their Affiliates, as the case may be, are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the project.
 - (iii) A notarized Joint and Several Undertaking to demonstrate the commitment of the Comparative Proponent and Affiliates to provide equity to finance the Project using the form in **Annex QD-F2**.

<i>Comparative Proponent:</i>	
Entity/ies which fulfill/s the requirement:	
Relationship to <i>Comparative Proponent</i> :	

Republic of the Philippines)
) S.S.

Notarized Statement of Financial Qualification

I, *(insert name)*, *(insert citizenship)*, of legal age, with office address at *(insert address)*, as the *(insert position/designation)* of *(insert name of entity)*, a *(partnership/ corporation/other juridical entity)* organized and existing under and by virtue of the laws of *(insert place of incorporation/registration)*, after having been duly sworn according to law, hereby certify for and on behalf of *(name of entity)* that the information stated in this Notarized Statement of Financial Qualification is true and that the attached documents are genuine and true copies of the original.

1. The Financial Summary of (Name of Entity) for the financial year 2021 is as follows:

Financial Information	2021 (indicate last day of accounting year)
1. Total Assets	
2. Total Liabilities	
3.Total Net Worth	
4. Profits before Taxes	
5. Profits after Taxes	

2. The (Name of Entity) which is a *Comparative Proponent/Lead Member/Affiliate* is a customer in good standing in the following banks (provide the names of at least two banks):

Name of Bank		
Address		
Contact Person		

Date and Place of Execution.

For and on behalf of (Name of Comparative Proponent)

(Signature of Authorized Representative)

(Name)

(Designation)

SUBSCRIBED AND SWORN TO before me this () day of (month and year) at (place), each affiant exhibiting to me his/her (*proof of identity acceptable under Philippine notarial regulations*), issued at (city) on (date).

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Annex QD-F2: Joint and Several Undertaking

This Undertaking is entered into this [•] day of [•], in _____ City, Philippines, by and between:

[Comparative Proponent/ each of the Consortium Members]., a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at [•], represented herein by its [•], [•], and hereinafter referred to as the “[•]”; and

[Parent Company of the Comparative Proponent or of each of the Consortium Members], a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at [•], represented herein by its [•], [•], and hereinafter referred to as the “[•]”.

____, ____ and the ____ are also referred to individually in this Undertaking as a “**Party**” and collectively as the “**Parties**”.

[Note: Project Company to accede to this Undertaking after Notice of Award.]

WITNESSETH:

WHEREAS, Private Sector Proponent. submitted to the Province of Pampanga (“**Province of Pampanga**”) an unsolicited proposal for the operation and maintenance of the Pampanga Dialysis Network (the “**Project**”), under Republic Act No. 6947, as amended by Republic Act No. 11966, otherwise known as the “Public-Private Partnership Code of the Philippines”;

WHEREAS, the Province of Pampanga, after obtaining the necessary approval to conduct the Swiss Challenge process, published an invitation to Comparative Proponents for the Project;

WHEREAS, the Instruction to Comparative Proposals (the “ICP”) for the Swiss Challenge requires the execution of a Joint and Several Undertaking in the form annexed to the ICP as part of the Financial Qualification Requirements;

WHEREAS, [name of Comparative Proponent or Consortium] is a bidder for the Project;

NOW, THEREFORE, for and in consideration of the foregoing premises and subject to the terms and conditions hereinafter provided, the Parties hereby agree as follows:

Section 1 – Definition of Terms and Rules of Interpretation

1.1 **Definitions.** In this Undertaking:

“**Joint Venture Agreement**” means the agreement so titled to be entered into between the Government of the Republic of the Philippines, acting through the Province of Pampanga, as the Grantor and the Project Company as the Concessionaire for purposes of undertaking and implementing the Project in the event the Project is awarded to the Winning Proponent following invitation and evaluation of comparative proposals pursuant to the PPP Code and its IRR.

“**Debt**” means any loans or debt financing provided by a Lender, but excluding any subordinated and unsecured loans and any equity bridge loans.

“Equity” means all voting and non-voting shares of stock in the Project Company and all rights in respect of subordinated and unsecured loans including equity bridge loans provided to the Project Company.

“Implementation Phase” means a phase of the implementation, development and construction of the Project as described in the Implementation Schedule.

“Implementation Schedule” means the Project milestones and implementation schedule set out in the Joint Venture Agreement, as the same may from time to time be modified and supplemented in accordance with the Joint Venture Agreement.

“Lender” means a financial institution or other person providing or committing debt financing for the Project, including a guarantee provider, refinancing lender, hedge provider and their respective successors and assigns, but excluding the shareholders of the Project Company, their affiliates and other persons providing indebtedness to the Project Company on subordinated terms.

“Project Company” the special purpose company to be constituted under Philippine Laws by the Winning Proponent, and shall be the Concessionaire and party to the Joint Venture Agreement, and shall accede to this Undertaking as a Party thereto.

“Project Phase Cost” means the total cost of an Implementation Phase as set out in the Joint Venture Agreement, as may be adjusted in accordance with the Joint Venture Agreement.

1.2 Rules of Interpretation. In this Undertaking:

- (a) Headings are used merely to facilitate identification of the provisions and shall not be taken into consideration in the interpretation or the construction of this Undertaking.
- (b) Any instrument, document, agreement or contract referred to in this Undertaking means, unless the context otherwise requires, such instrument, document, agreement or contract as may be from time to time amended, modified, novated, substituted or supplemented.
- (c) Unless otherwise provided herein, reference to section, subsection or clause means the specified section, subsection or clause of this Undertaking.

Section 2 – Joint and Several Obligation

2.1 For purposes of ensuring the construction and completion of the Project under the terms of the Joint Venture Agreement, the Parties jointly and severally undertake to provide, directly or indirectly, Equity in the Project Company to the extent required to finance each Project Phase Cost as and when necessary in accordance with the Implementation Schedule.

2.2 In the event the Project Company is able to procure Debt to finance a Project Phase Cost, the obligation of the Parties under Section 2.1 shall be limited only to the extent necessary to comply with the Debt to Equity ratio for such Project Phase Cost as required under the Joint Venture Agreement. If the Project, or any Implementation

Phase, is operational and generating revenues, the obligation of the Parties under Section 2.1 shall be limited only to the extent necessary to cover any remaining portion of the relevant Project Phase Cost that is not to be financed by Debt and/or such revenues.

- 2.3 The obligations of the Parties under Section 2.1 and 2.2 shall be with respect to each Implementation Phase and shall terminate on the date of the issuance by the Grantor of the certificate of substantial completion for such Implementation Phase or the start date of operation of such Implementation Phase under the terms of the Joint Venture Agreement, whichever occurs earlier.
- 2.4 Each Party and the Project Company shall take any and all corporate and other actions required, including securing the necessary governmental approvals, to allow the Parties to provide the required Equity in the Project Company and comply with their obligations under this Undertaking.

Section 3 – Miscellaneous Provisions

- 3.1 **Governing Law.** The laws of the Republic of the Philippines shall be applied in interpreting and applying the terms and conditions of this Undertaking.
- 3.2 **Effectiveness.** This Undertaking shall take effect on the date the Joint Venture Agreement becomes effective according to its terms.

IN WITNESS WHEREOF, the Parties have set their hands on the date and at the place first stated above.

By:

By:

Name:
Designation:

Name:
Designation:

WITNESSED BY:

ANNEX TP - TECHNICAL PROPOSAL FORMS

TABLE OF CONTENTS – TECHNICAL PROPOSAL

ANNEX REFERENCE	DOCUMENT	SUBMITTED (YES/NO¹)	PAGE NUMBE R
Annex TP-1	Notarized Statement of Submission of Technical Proposal		
Annex TP-2	Organizational Chart for Operation and Maintenance		
Annex TP-3A	Project Proposal		
Annex TP-4	Project Cost		
Annex TP-5	Bid Security		
<i>Annex A of Annex TP-5</i>	<i>Demand for Sight Payment</i>		
Annex TP-7	Project Performance Security		
<i>Annex A of Annex TP-7</i>	<i>Form of Demand</i>		

¹ Indicate “Yes” if the document is submitted. Indicate “No” if the document is not submitted.

Annex TP-1: Notarized Statement for Submission of Technical Proposal

To be submitted by the Comparative Proponent

[Letterhead]

I, *(name)*, *(citizenship)*, of legal age, with office address at *(address)*, as the authorized representative of *(Comparative Proponent)*, a *[(corporation/partnership/other juridical entity or Consortium) (organized and existing under and by virtue of the laws of [place of incorporation/registration] or organized by agreement among its Consortium Members)]*, hereby:

1. Submit, for and on behalf of *(Name of Comparative Proponent)*, that Annexes required to be submitted as part of the Technical Proposal under this Instructions to Comparative Proponents, are being submitted herewith as mentioned below:

ANNEX REFERENCE	DOCUMENT	SUBMITTED (YES/NO²)	PAGE NUMBER
Annex TP-1	Notarized Statement of Submission of Technical Proposal		
Annex TP-2	Organizational Chart for Operation and Maintenance		
Annex TP-3	Project Proposal		
Annex TP-4	Project Cost		
Annex TP-5	Bid Security		
<i>Annex A of Annex TP-5</i>	Demand for Sight Payment		
Annex TP-7	Construction Performance Security		
<i>Annex A of Annex TP-7</i>	Form of Demand		

2. Agree that non-submission of any of the above Annexes may lead to the Technical Proposal being rated as “Fail”.
3. Agree that the PPP-PBAC reserves the right to reject our Technical Proposal if, in the view of PPP-PBAC, the Technical Proposal does not meet the requirements under the Instructions to Comparative Proponents. In such a scenario, the Technical Proposal of the *(Comparative Proponent)* may be rated as “Fail”.

² Indicate “Yes” if the document is submitted. Indicate “No” if the document is not submitted.

(Date and Place of Execution.)

For and on behalf of *(Name of Comparative Proponent/Name of Consortium and List of Consortium Members)*

By:

(Name, Designation and Signature of Authorized Representative)

SUBSCRIBED AND SWORN TO before me this [] day of *(month and year)* at *(place)*, affiant exhibiting to me his/her *(proof of identity acceptable under Philippine notarial regulations)* issued at *(city)* on *(date)*.

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Annex TP-2: Organizational Chart for Operation and Maintenance

ANNEX REFERENCE	ANNEX NAME	REQUIRED CONTENTS
Annex TP-2	Organizational Chart for Operation and Maintenance	A summary (not to exceed five pages) of the Proponent's proposed managerial, and technical organization structure, and its adequacy and suitability to undertake the Project.

Annex TP-3A: Project Proposal

ANNEX REFERENCE	ANNEX NAME	REQUIRED CONTENTS
Annex TP-3A	Project Proposal	A summary (not to exceed five pages) of the Proponent's proposed general obligations, treatment rate and management fee/ revenue sharing and other supplies and pharmaceutical products to undertake the Project.

Annex TP-4: Project Cost

ANNEX REFERENCE	ANNEX NAME	REQUIRED CONTENTS
Annex TP-4	Project Cost	1. The summary and breakdown of Project Cost (see Template below) submitted by the Comparative Proponent, inclusive of financing costs and all other costs necessary to operate and maintain the Project.

Project Components	Project Costs (in Php Millions)*			
	Phase 1	Phase 2	Phase 3	TOTAL
Medicine Costs (EPO 400 IU & IV Iron)	-	-	-	-
Manpower Costs	-	-	-	-
Medical Specialist I (Nephrologist)	-	-	-	-
Medical Officer III (Physician on Duty)	-	-	-	-
Nurse I and II	-	-	-	-
Administrative Assistant III	-	-	-	-
Social Welfare Officer I	-	-	-	-
Medical Equipment Technician III	-	-	-	-
Administrative Aide I and IV				
Other Cost				
Supplies and Consumables				
Repair and Maintenance of Facility				
Utilities (Power, Water, Telephone)				
Security, etc.				
Waste Disposal				
Office Supplies				
Total Project Cost before financing	-	-	-	-
Interest & Financing Fees	-	-	-	-
Total Project Cost	-	-	-	-

**Project implementation in phases as may be proposed by the Proponent*

Annex TP-5: Form of Bid Security

[Letterhead of Issuing Bank]

Province of Pampanga (Province)

Place:

Standby Letter of Credit No.

Date:

Dear Sirs:

We, [●], a corporation organized and existing under the laws of the Republic of the Philippines (the “**Issuer**”), hereby establish our Irrevocable Standby Letter of Credit No. [●] (the “**Letter of Credit**”) in your favor and for the account of [*insert name of Comparative Proponent/Lead Member/Affiliate who will fulfill the financial qualification requirements*] (the “**Bidder**”) relating to the obligations of the Bidder under the Instructions to Comparative Proponents for the operations, and maintenance of the **Pampanga Dialysis Network**, which shall be valid and effective until one hundred eighty (180) days after Comparative Proposal Submission Date. Capitalized terms used in this Letter of Credit shall have the meanings given to them in the Instructions to Comparative Proponents, except as otherwise expressly defined herein.

1. The maximum aggregate amount available under this Letter of Credit is Million Philippine Pesos (PhPxxx,000,000.00) (the “**Stated Amount**”).
2. Subject to the other provisions of this Letter of Credit, the Province of Pampanga (“**Province**”) is hereby irrevocably authorized to make one drawing for the entire Stated Amount under this Letter of Credit by presenting to the Issuer, at its address set forth above, a demand for payment from the Province in substantially the form attached as Annex A, duly completed, and that is in the form of a letter on the Province’s letterhead signed by any of its authorized signatories.
3. The Issuer shall be deemed to have honored a drawing hereunder if the Issuer deposits the amount of such drawing in the account (the “**Designated Account**”) designated by the Province in accordance with Annex A. Any such drawing made hereunder shall be free and clear of all interest and charges, and any sums due to the Issuer.
4. We hereby agree to honor the drawing hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Bidder might raise against the Province’s entitlement to payment, by transferring in immediately available funds to the Designated Account the amount specified in a demand for payment at the opening of business on the third Business Day succeeding the date of or the receipt of such demand. As used herein, the term “**Business Day**” means any day other than (i) a Saturday or Sunday or (ii) a day on which banking institutions in Metropolitan Manila, Philippines are authorized or obligated by law or executive order to remain closed.

5. If the demand for payment hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the third Business Day succeeding the date of our receipt of such demand) to the Province that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, the Province may attempt to correct the non-conforming demand and re-submit such demand in accordance with the terms and conditions hereof.
6. This Letter of Credit shall expire, unless otherwise extended in accordance with the provisions hereof, on the earliest of (i) 5 p.m. at the place of presentation one hundred eighty (180) days after Comparative Proposal Submission Date, not later than [●], (ii) the date on which we have honored a drawing in an amount equal to the Stated Amount, or (iii) the date when we receive a written notice from the Province that a replacement letter of credit, which is in full force and effect, has been substituted for this letter of credit (the “**Expiration Date**”).
7. All documents presented to the Issuer in connection with a drawing hereunder, as well as all notices and other communications to the Issuer in respect of this Letter of Credit, shall be in writing, and addressed and presented to the Issuer at its address set forth above. Such documents, notices, and communications shall make specific reference to this Letter of Credit by number. Such documents, notices, and other communications may be delivered or sent by courier to the Issuer at its address set forth above, or at such other address as the Issuer shall have specified in writing to the Province, or sent to the Issuer by fax to the following number:

Fax No. [●] (Answerback: [●]).
8. This Letter of Credit may not be cancelled or amended without the prior written consent of the Issuer and the Province.
9. This Letter of Credit sets forth our undertaking and our agreement with the Province and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein.
10. The Issuer hereby agrees that it shall have no recourse to the Province if the Bidder fails at any time to pay any amounts which may from time to time be due and payable by it to the Issuer in relation to this Letter of Credit.
11. References in this Letter of Credit to the Instructions to Comparative Proponents or any other document or instrument, except to the Annexes hereto, are for identification purposes only. The Instructions to Comparative Proponents and such other documents and instruments are not incorporated herein, nor are they made a part of this Letter of Credit.
12. This Letter of Credit is issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (“**ISP 98**”), the provisions of

which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. If this Letter of Credit should expire during an interruption of our business, the Issuer hereby agrees to honor any demand presented in accordance with this Letter of Credit within thirty (30) days after the resumption of our business.

13. To the extent that the provisions of this Letter of Credit are not governed by ISP 98, this Letter of Credit shall be governed by the laws of the Republic of the Philippines and construed in accordance with said laws, without regard to principles of conflicts of law.

Annex A of Annex TP-5: Demand for Payment

To: [Name of Issuer]

[Address]

Attn: [.]

Re: Irrevocable Standby Letter of Credit No. [.]

The undersigned, a duly authorized officer of the Province of Pampanga (“**Province**”), makes reference to the Instructions to Comparative Proponents for the operations, and maintenance of the **Pampanga Dialysis Network** (“**Project**”).

1. The Province hereby demands payment (the “**Drawing**”) under the Letter of Credit in the amount of [.] Philippine Pesos (PhP[.]) in order to satisfy liabilities of the Bidder under the Instructions to Comparative Proponents.
2. The amount of the Drawing does not exceed the Stated Amount.

Please wire transfer the amount of the Drawing to [account details to be inserted by the Province] (the “**Designated Account**”).

IN WITNESS WHEREOF, the Province has executed and delivered this certificate as of the [.] day of [.]

PROVINCIAL GOVERNMENT OF PAMPANGA

By: _____

Name:

Title:

Annex TP-7: Form of Construction Performance Security
(if in the form of an irrevocable stand-by letter of credit)

Construction Performance Security

To: Province of Pampanga (the "**Beneficiary**")

Irrevocable Standby Letter of Credit No. []

[Date]

At the request of the [Winning Proponent] (the "**Applicant**"), we, [*name of the bank*] (address of bank), a corporation organized and existing under the laws of the Republic of the Philippines (the "**Issuing Bank**") issue this irrevocable, standby letter of credit ("**Letter of Credit**") in your favor for [*insert value*] ("**Face Value**") effective from [*insert date of issuance*] on the following terms and conditions:

1. Definitions

Except as provided below, or to the extent that the context requires otherwise, words and expressions defined in the Agreement (as defined below) shall have the same meaning in this Letter of Credit:

"**Agreement**" refers to the Joint Venture Agreement included in the Bidding Documents for the Pampanga Dialysis Network, which shall be executed between the [*name of Winning Proponent*] and the Government of the Republic of the Philippines, acting through the Beneficiary.

"**Business Day**" means a day (other than Saturday and Sunday) on which commercial banks are open for general commercial business in Metropolitan Manila, Philippines.

"**Demand**" means a demand for a payment under this Letter of Credit in the form of the Annex to this Letter of Credit under Clause 5.

"**Expiry Date**" means the date provided in the Agreement.

2. Issuing Bank's Agreement

- (a) The Beneficiary may request drawing or drawings under this Letter of Credit by submitting to the Issuing Bank a duly completed Demand. All Demands must be received by the Issuing Bank, as stated in Clause 5, before close of banking hours on or before the Expiry Date.
- (b) Subject to the terms of this Letter of Credit, the Beneficiary may request partial and/or multiple drawings under this Letter of Credit by submitting a Demand in relation to each such drawing.
- (c) Subject to the terms of this Letter of Credit, the Issuing Bank unconditionally and irrevocably undertakes to the Beneficiary (or such other payee or payees

as the Beneficiary specifies in the Demand) that it will pay to the Beneficiary (or such other payee or payees) the amount demanded in that Demand upon the due presentation by the Beneficiary of the Demand to the Issuing Bank.

- (d) We hereby agree to honor each Demand hereunder made in compliance with this Letter of Credit notwithstanding any objection that the Applicant might raise against the Beneficiary's entitlement to payment at the opening of business on the first Business Day succeeding the date of the Demand.
- (e) The Face Value of this Letter of Credit shall be automatically reinstated upon the Issuing Bank's payment against any drawing made by the Beneficiary, by the amount so paid under this Letter of Credit.
- (f) The Letter of Credit shall not be discharged by any change in the Issuing Bank's constitution, the constitution of Beneficiary or that of the Applicant or change in applicable laws.
- (g) All charges, fees, commission and other costs associated with the opening, amendment and renewal or any other act related to this Letter of Credit shall be paid by the Applicant. Failure of the Applicant to make such payments shall not affect our obligation under this Letter of Credit and the Beneficiary shall be paid the money due to it under this Letter of Credit without any deduction.

3. Renewal and Expiry

- (a) This Letter of Credit shall be renewable at the option of the Issuing Bank, and the Issuing Bank shall exercise such option upon receipt of a written request from the Applicant seeking such renewal.
- (b) The Issuing Bank will be released from its obligations under this Letter of Credit on the Expiry Date.
- (c) On the Expiry Date, the obligations of the Issuing Bank under this Letter of Credit will cease with no further liability on the part of the Issuing Bank except for any Demand validly presented under the Letter of Credit that remains unpaid. For the avoidance of doubt, in the event that a Demand has been made on the Issuing Bank prior to the Expiry Date, the Issuing Bank's obligation to pay hereunder shall be deemed accrued notwithstanding that the due date for payment may fall after the Expiry Date.
- (d) When the Issuing Bank is no longer under any further obligations under this Letter of Credit, the Beneficiaries must return the original of this Letter of Credit to the Issuing Bank forthwith.

4. Payments

All payments under this Letter of Credit shall be made in Philippine Peso and for value on the due date to the account of the Beneficiary specified in the Demand.

5. Delivery of Demand

- (a) All Demands under this Letter of Credit shall be presented in full compliance with the terms and conditions hereof by hand delivery at the [*place*] office of the Issuing Bank (or such other address of the Issuing Bank as the Issuing Bank may from time to time notify the Beneficiary for this purpose). Any Demand presented after 11:00 am shall be deemed received on the next working day (other than a Saturday or Sunday).
- (b) If a Demand hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give prompt notice (but within the first Business Day succeeding the date of such Demand) to the Beneficiary that the Demand was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold the documents at your disposal or return the same to you. Upon being notified that a Demand was not effected in conformity with this Letter of Credit, the Beneficiary may attempt to correct any such non-conforming Demand and re-submit such Demand in accordance with the terms and conditions hereof.

[Alternate mechanism(s) for presentation of Demands to be agreed on a case-by-case basis with Issuing Bank and Beneficiary and this Clause will be amended accordingly.]

6. Amendment

- (a) Any amendment or cancellation of this Letter of Credit shall be operative only with the prior written consent of the Beneficiary.
- (b) This Letter of Credit sets forth our undertaking and our agreement with the Beneficiary and such undertaking and such agreement may not in any way be modified, amended, amplified, or limited by reference to any other document, instrument, or agreement referred to herein or their amendments.

7. Governing Law

This Letter of Credit is issued subject to the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (“**ISP 98**”), the provisions of which are incorporated into this Letter of Credit, except to the extent superseded by the express terms and conditions of this Letter of Credit. To the extent that the provisions of this Letter of Credit are not governed by ISP 98, this Letter of Credit shall be governed by the laws of the Republic of the Philippines.

8. Transferable Credit

- (a) This Letter of Credit is a transferable credit.
- (b) This Letter of Credit is transferable any number of times to such person as may be specified in a transfer request provided that (i) this Letter of Credit may only be transferred for the full amount of this Letter of Credit and not in part;

and (ii) transfer may only be made to a person or entity who has been appointed as a successor of the Beneficiary.

- (c) Transfer of the Letter of Credit to the successor of the Beneficiary shall be effective only by the presentation to the Issuing Bank of this Letter of Credit accompanied by a transfer request.
- (d) The Issuing Bank shall be obliged to effect the requested transfer unless the Issuing Bank, within ten (10) Business Days of receipt of the transfer request objected to the proposed transfer certifying that such transfer would or could reasonably be expected to result in it being in breach of a law or regulation applicable to it.
- (e) If the Issuing Bank objects pursuant to the above clause, it shall promptly notify the Beneficiary and it shall not effect the requested transfer.
- (f) If the Issuing Bank is obliged in accordance with Clause 9(d) above to effect the requested transfer, it shall forthwith effect the same to the designated successor of the Beneficiary by endorsing the transfer on the reverse of this Letter of Credit and the transfer shall be effective only on return of this Letter of Credit to the new Beneficiary.
- (g) Neither the Beneficiary nor the successor of the Beneficiary shall be liable to the Issuing Bank for any charges (including commissions, fees, costs and expenses) of the Issuing Bank payable in connection with the transfer. Such charges shall be for the account of the Applicant. The Issuing Bank shall be obliged to effect the transfer regardless of whether or not those charges have been paid by the Applicant.
- (h) No previous Beneficiary shall retain or have the right to make any Demand. All such rights shall be vested solely in the new Beneficiary.

Yours faithfully,

By:
[Issuing Bank]

Annex A of Annex TP-7: Form of Demand

To: [Issuing Bank]

Dear Sirs,

[Date]

Standby Letter of Credit no. [] (the "**Letter of Credit**") issued in favor of the Beneficiary pursuant to the terms of the Joint Venture Agreement dated [] (the "Agreement") between the Applicant and the Republic of the Philippines, through the Beneficiary.

We refer to the Letter of Credit. Terms defined in the Letter of Credit have the same meaning when used in this Demand.

1. We certify that a sum of [] is due and payable to the Beneficiary by the Applicant in accordance with the terms of the Agreement. We therefore demand payment of the sum of [*amount of security*].
2. Payment should be made to the following account:
Beneficiaries:
Account Number:
Bank details: Name and address of the Bank, SWIFT Number
3. This Demand is being made in accordance with the terms of the Letter of Credit and the Agreement.

Yours faithfully,

(Authorized Signatory)

For

[Beneficiary]

ANNEX FP - FINANCIAL PROPOSAL FORMS**TABLE OF CONTENTS – FINANCIAL PROPOSAL**

ANNEX REFERENCE	DOCUMENT
Annex FP-1	Bid Proposal
Annex FP-2	Financial Model
Annex FP-3	Project Finance Plan
<i>Annex A of Annex FP-3</i>	<i>Form of Bank's Letter of Financing Support</i>
<i>Annex B of Annex FP-3</i>	<i>Joint and Several Undertaking</i>

Annex FP-1: Bid Proposal

I, *(name)*, *(citizenship)*, of legal age, with office address at _____, as the authorized representative of *(name of Comparative Proponent)* (the "Comparative Proponent"), hereby declare that:

1. In accordance with the Bidding Documents for the Pampanga Dialysis Network, (the "Project"), the Comparative Proponent submits the following Bid Proposal:

Treatment Rate and Management Fee/Revenue Sharing	
Treatment Rate and Management Fee/Revenue Sharing (in the event PhilHealth increases the reimbursement rate)	

In case of a discrepancy between the Revenue Share in words and figures, the Revenue Share in words shall prevail.

For and on behalf of *(Name of Comparative Proponent/ Name of Consortium / List of Consortium Members)*

By:

(Name and Signature of Authorized Representative)

Date: []

Annex FP-2: Financial Model

Name of Project: Pampanga Dialysis Network

Name of Bidder: _____

Comparative Proponents must submit their Financial Model for the Project in electronic form, in Microsoft Excel format, showing all relevant traceable formulas, with amounts stated in Philippine Pesos and foreign currency where relevant (expressed in January 2024 prices).

1. Key Assumptions
2. Projected Income and Expenses
 - Average rate per treatment
 - Number of treatments per annum (Projected)
 - Proponent's share in gross revenue
 - Province's share in gross revenue
 - Other revenues
 - Total revenues

 - Operating and maintenance expenses
 - Other expenses
 - Total expenses

 - Net income
3. Projected Balance Sheet
 - Assets
 - Current assets
 - Non-current assets
 - Other assets
 - Total assets

 - Liabilities and stockholder's equity
 - Short-term debt
 - Other current liabilities

 - Other non-current liabilities
 - Total liabilities
 - Total stockholder's equity

 - Total liabilities and stockholder's equity

 - Debt / total capital ratio
4. Projected Cashflow Statement
 - Cashflow from operations

 - EBITDA/Operating Cash
 - Changes in working capital

- Adjustments for non-cash items
- Other operating cash inflows

- Net cashflow from operations

- Cashflow from investing

- Cash inflows from investing activities
- Capital expenditure
- Other cash outflows from investing activities

- Net cashflow from investing activities

- Cashflow from financing

- Interest expense
- Gross borrowing
- Gross debt repayment
- Equity contributions
- Payments to shareholders

- Net cashflow from financing activities

- Net cashflow

- Cash at beginning
- Cash at end

5. Rates of Return and Cost of Capital

- Project IRR and Weighted Average Cost of Capital
(please show calculations to derive the project IRR and breakdown of WACC in each year)

For and on behalf of (*Comparative Proponent/Lead Member*)

(*Electronic Signature of Authorized Representative*)

(*Name*)
(*Designation*)

Annex FP-3: Project Finance Plan

The financial plan provided by the Comparative Proponent will describe the sources of funds and the terms of financing for both debt and equity as applicable for implementing the Pampanga Dialysis Network. For the avoidance of doubt, shareholder loans will be treated as equity provided that they are subordinated to all other debt. The Comparative Proponent will provide details on the financing sources as outlined in the below Table 1. The financing should be in an amount sufficient to cover the estimated Project cost of Phase 1.

Financing will be in the form of equity and debt. At least thirty percent [30%] of the total financing, inclusive of contingencies, will be in the form of equity and the remainder in debt or subordinated debt.

Table 1: Sources of Fund

Items / Sources	Local Currency &/or Equivalent Total in Philippine Peso (PHP)
1.1 Total Project Cost Phase 1	
1.2 Equity	
Total Equity	
1.3 Debt Financing	
Total Debt	

SUPPORTING DOCUMENTATION

In support of the financing plan provided above, the following documentation is to be provided.

1. **Annex A** - Letter of Financing Support from financial institution/s verifying the amount of debt financing stated in **Annex FP-3**. The letter of Financing Support must substantially conform to the format attached as **Annex A of Annex FP-3** [Form of Letter of Financing Support].
2. **Annex B** – The Joint and Several Undertaking (JSU) must conform to the format of **Annex QD-F2** and shall be attached as **Annex B of Annex FP-3** as supporting documentation to **Annex FP-3**.

Note: If necessary, Comparative Proponents may provide for a separate document or annexes for their financial model and project finance plan.

Annex A of Annex FP-3: Form of Bank's Letter of Financing Support

[Bank's Letterhead]

[xx] Date 2019

MEMBERS OF THE PPP-PRE-QUALIFICATION/QUALIFICATION BIDS & AWARDS COMMITTEE (PPP-PBAC)

Provincial Government of Pampanga (Province)
Provincial Capitol, City of San Fernando, Pampanga

Attention: **HON. DENNIS "DELTA" G. PINEDA**
Local Chief Executive

Copy to: Name of Comparative Proponent
Address

Subject: **Letter of Financing Support**
Pampanga Dialysis Network

Dear Sirs,

We, **NAME OF BANK** (the "**Bank**"), refer to **NAME OF COMPARATIVE PROPONENT** ("**Comparative Proposal** for the Pampanga Dialysis Network (the "**Project**"). As **NAME OF COMPARATIVE PROPONENT** is the Comparative Proponent of the Project, we understand that **NAME OF COMPARATIVE PROPONENT** requires funds of up to (AMOUNT OF PROJECT) Philippines Peso for the Phase 1 of the Project, part of which will be raised pursuant to a debt facility of up to (AMOUNT OF FACILITY) Philippines Peso (the "**Financing**").

Based on our discussions with Comparative Proponent in relation to the Project, the Bank is highly interested in considering arranging and/or providing the Financing to **NAME OF THE COMPARATIVE PROPONENT**. Any commitment and subsequent offer of finance to **NAME OF THE COMPARATIVE PROPONENT** from the Bank will be subject to conditions customary for financings of this nature, including, without limitation, the Bank's due diligence evaluation on the Project, the issuance of internal approvals and the execution of financing documents in form and substance satisfactory to the Bank.

This letter is not intended to be a commitment or offer by us or any of our affiliates (together, the "**Bank Group**") to provide or arrange or underwrite any financing in connection with the Project. Nothing in this letter (including any act, omission or representation by or on our behalf) shall render any member of the Bank Group liable to you or any other person in any manner whatsoever.

You agree that (i) this letter is for the sole purposes of your consideration of the Project and (ii) the issuance of this letter and its contents are confidential and shall not be disclosed to any person or be reproduced, disseminated or quoted at any time and in any manner without our prior written consent.

This letter is given as of the date set out above. The Bank Group is under no obligation to update, revise or reaffirm statements made in this letter and subsequent developments or information may affect the statements set out in this letter.

This letter and any non-contractual obligations arising out of or in connection with it are governed by Philippines law.

[xx] Date 2019

NAME OF BANK

by:

Name of Authorized Representative

Position

NAME OF BANK

Annex B of Annex FP-3: Joint and Several Undertaking³

This Undertaking is entered into this [•] day of [•], in _____ City, Philippines, by and between:

[Comparative Proponent/ each of the Consortium Members], a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at [•], represented herein by its [•], [•], and hereinafter referred to as the “[•]”; and

[Parent Company of the Comparative Proponent or of each of the Consortium Members], a corporation organized and existing under the laws of the Republic of the Philippines, with principal office at [•], represented herein by its [•], [•], and hereinafter referred to as the “[•]”.

____, ____ and the ____ are also referred to individually in this Undertaking as a “**Party**” and collectively as the “**Parties**”.

[Note: Project Company to accede to this Undertaking after Notice of Award.]

WITNESSETH:

WHEREAS, Private Sector Proponent submitted to the Province of Pampanga (“**Province of Pampanga**”) an unsolicited proposal for the operation and maintenance of the Pampanga Dialysis Network (the “**Project**”), under Republic Act No. 6947, as amended by Republic Act No. 11966, otherwise known as the “Public-Private Partnership Code of the Philippines”;

WHEREAS, the Province of Pampanga, after obtaining the necessary approval to conduct the Swiss Challenge process, published an invitation to Comparative Proponents for the Project;

WHEREAS, the Instruction to Comparative Proposals (the “ICP”) for the Swiss Challenge requires the execution of a Joint and Several Undertaking in the form annexed to the ICP as part of the Financial Qualification Requirements;

WHEREAS, [name of Comparative Proponent or Consortium] is a bidder for the Project;

NOW, THEREFORE, for and in consideration of the foregoing premises and subject to the terms and conditions hereinafter provided, the Parties hereby agree as follows:

Section 1 – Definition of Terms and Rules of Interpretation

1.1 **Definitions.** In this Undertaking:

“**Joint Venture Agreement**” means the agreement so titled to be entered into between the Government of the Republic of the Philippines, acting through the Province of Pampanga, as the Grantor and the Project Company as the Concessionaire for purposes of undertaking and implementing the Project in the event the Project is awarded to the Winning Proponent following invitation and evaluation of comparative proposals pursuant to the PPP Code and its IRR.

³ The Joint and Several Undertaking must conform to the format of Annex QD-F2.

“Debt” means any loans or debt financing provided by a Lender, but excluding any subordinated and unsecured loans and any equity bridge loans.

“Equity” means all voting and non-voting shares of stock in the Project Company and all rights in respect of subordinated and unsecured loans including equity bridge loans provided to the Project Company.

“Implementation Phase” means a phase of the implementation, development and construction of the Project as described in the Implementation Schedule.

“Implementation Schedule” means the Project milestones and implementation schedule set out in the Concession Agreement, as the same may from time to time be modified and supplemented in accordance with the Concession Agreement.

“Lender” means a financial institution or other person providing or committing debt financing for the Project, including a guarantee provider, refinancing lender, hedge provider and their respective successors and assigns, but excluding the shareholders of the Project Company, their affiliates and other persons providing indebtedness to the Project Company on subordinated terms.

“Project Company” the special purpose company to be constituted under Philippine Laws by the Winning Proponent, and shall be the Concessionaire and party to the Concession Agreement, and shall accede to this Undertaking as a Party thereto.

“Project Phase Cost” means the total cost of an Implementation Phase as set out in the Concession Agreement, as may be adjusted in accordance with the Concession Agreement.

1.2 Rules of Interpretation. In this Undertaking:

- (a) Headings are used merely to facilitate identification of the provisions and shall not be taken into consideration in the interpretation or the construction of this Undertaking.
- (b) Any instrument, document, agreement or contract referred to in this Undertaking means, unless the context otherwise requires, such instrument, document, agreement or contract as may be from time to time amended, modified, novated, substituted or supplemented.
- (c) Unless otherwise provided herein, reference to section, subsection or clause means the specified section, subsection or clause of this Undertaking.

Section 2 – Joint and Several Obligation

2.1 For purposes of ensuring the construction and completion of the Project under the terms of the Concession Agreement, the Parties jointly and severally undertake to provide, directly or indirectly, Equity in the Project Company to the extent required to finance each Project Phase Cost as and when necessary in accordance with the Implementation Schedule.

2.2 In the event the Project Company is able to procure Debt to finance a Project Phase Cost, the obligation of the Parties under Section 2.1 shall be limited only to the extent

necessary to comply with the Debt to Equity ratio for such Project Phase Cost as required under the Concession Agreement. If the Project, or any Implementation Phase, is operational and generating revenues, the obligation of the Parties under Section 2.1 shall be limited only to the extent necessary to cover any remaining portion of the relevant Project Phase Cost that is not to be financed by Debt and/or such revenues.

- 2.3 The obligations of the Parties under Section 2.1 and 2.2 shall be with respect to each Implementation Phase and shall terminate on the date of the issuance by the Grantor of the certificate of substantial completion for such Implementation Phase or the start date of operation of such Implementation Phase under the terms of the Concession Agreement, whichever occurs earlier.
- 2.4 Each Party and the Project Company shall take any and all corporate and other actions required, including securing the necessary governmental approvals, to allow the Parties to provide the required Equity in the Project Company and comply with their obligations under this Undertaking.

Section 3 – Miscellaneous Provisions

- 1.1 **Governing Law.** The laws of the Republic of the Philippines shall be applied in interpreting and applying the terms and conditions of this Undertaking.
- 3.2 **Effectiveness.** This Undertaking shall take effect on the date the Concession Agreement becomes effective according to its terms.

IN WITNESS WHEREOF, the Parties have set their hands on the date and at the place first stated above.

By:

By:

Name:
Designation:

Name:
Designation:

WITNESSED BY:
