



ৰাষ্ট্ৰীয় স্বাস্থ্য অভিযান, অসম
NATIONAL HEALTH MISSION, ASSAM

(National Competitive Bidding)

REQUEST FOR PROPOSAL (RFP)
(ONLINE)

FOR ENGAGEMENT OF SUPER SPECIALTY HOSPITAL TO CARRYING OUT
KIDNEY TRANSPLANT IN CHILDREN BELOW THE AGE OF 14 YEARS

November- 2021

Issued by:

The Mission Director

National Health Mission. Assam

Saikia Commercial Complex, Shreenagar Path G S Road, Guwahati-781005, Assam

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Disclaimer

This Request for Proposal (RFP) is not an agreement and is neither an offer nor invitation by NHM Assam to the prospective Applicants or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Proposals pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Employer in relation to the Work. Such assumptions, assessments and statements do not purport to contain all the information that each Applicant may require. This RFP may not be appropriate for all persons, and it is not possible for NHM Assam to consider the objectives, technical expertise and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, may not be complete, accurate, adequate or correct. Each Applicant should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Applicants is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. NHM Assam accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on the law expressed herein.

NHM Assam make no representation or warranty and shall have no liability to any person including any Applicant under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, reliability or completeness of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in the Selection Process.

NHM Assam also accepts no liability of any nature whether resulting from negligence or otherwise however caused or arising from reliance of any Applicant upon the statements contained in this RFP.

NHM Assam may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumption contained in this RFP.

The issue of this RFP does not imply that NHM Assam is bound to select an Applicant or to appoint the Selected Applicant, as the case may be, for the Work and that NHM Assam reserves the right to reject all or any of the Proposals without assigning any reasons whatsoever.

The Applicant shall bear all its costs associated with or relating to the preparation and submission of its Proposal including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by NHM Assam or any other costs incurred in connection with or relating to its Proposal. All such costs and expenses will remain with the Applicant and NHM Assam shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by an Applicant in preparation or submission of the Proposal, regardless of the conduct or outcome of the Selection Process.

Glossary

Agreement	As defined in Schedule-2
Contract Price	As defined in Clause 6.1.2 of Schedule-2
Applicable Laws	As defined in Schedule-2
Applicant	As defined in Clause 2.1.1
Associate	As defined in Clause 2.3.3
Authorized Representative	As defined in Clause 2.13.3
Bid Security	As defined in Clause 2.20.1
Conditions of Eligibility	As defined in Clause 2.2.1
Conflict of Interest	As defined in Clause 3.2 of Schedule-2
Consultant	As defined in Clause 1.2
CV	Curriculum Vitae
Documents	As defined in Clause 2.12
Effective Date	As defined in Clause 2.1 of Schedule-2
Employer	As defined in Clause 1.2.1
Financial Proposal	As defined in Clause 2.15.1
Form of Agreement	Form of Agreement as in Schedule-2
INR, Re, Rs.	Indian Rupee(s)
Key Personnel	As defined in Clause 2.1.4
Lead Member	As defined in Clause 2.1.1
LOA	Letter of Award
Official Website	As defined in Clause 1.11.2
Personnel	As defined in Clause 1.1.1(m) of Schedule-2
Prohibited Practices	As defined in Clause 4.1
Proposal	As defined in Clause 1.2
Proposal Due Date or PDD	As defined in Clauses 1.5 and 1.8

RFP	As defined in Disclaimer
Selected Applicant	As defined in Clause1.6
Selection Process	As defined in Clause1.6
Statutory Auditor	An Auditor appointed under Applicable
Laws Technical Proposal	As defined in 2.14
Terms of Reference(TOR)	As defined in Schedule1

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed there to here in.

Contents

Disclaimer	2
Glossary	3
1. INTRODUCTION	9
1.1. Background.....	9
1.2. Request for Proposal	9
1.3. Due diligence by Applicants.....	9
1.4. Sale of RFP Document	9
1.5. Validity of the Proposal	10
1.6. Brief description of the Selection Process.....	10
1.7. Currency conversion rate and payment	10
1.8. Schedule of Selection Process	10
1.9. Pre-Proposal visit to NHM Assam.....	11
1.10. Communications & Submission of Bids.....	11
2. INSTRUCTIONS TO APPLICANTS.....	12
GENERAL.....	12
2.1. Scope of Proposal	12
2.2. Conditions of Eligibility of Applicants.....	13
2.3. Conflict of Interest.....	14
2.4. Number of Proposals.....	14
2.5. Cost of Proposal.....	14
2.6. Site visit and verification of information	14
2.7. Acknowledgement by Applicant.....	15
2.8. Right to reject any orall Proposals.....	15
B. DOCUMENTS.....	15
2.9. Contents of the RFP.....	15
2.10. Clarifications	16
2.11. Amendment of RFP.....	17
C. PREPARATION AND SUBMISSION OF PROPOSAL.....	17

	6
2.12. Language.....	17
2.13. Format and signing of Proposal	17
2.14. Technical Proposal	18
2.15. Financial Proposal.....	19
2.16. Submission of Proposal.....	19
2.17. Proposal Due Date	21
2.18. Late Proposals.....	21
2.19. Modification/ substitution/ withdrawal of Proposals	21
2.20. Bid Security	21
D. EVALUATION PROCESS.....	22
2.21. Evaluation of Proposals	22
2.22. Confidentiality.....	23
2.23. Clarifications	23
E. APPOINTMENT OF CONSULTANT	24
2.24. Negotiations.....	24
2.25. Substitution of Key Personnel	24
2.26. Award of Consultancy	24
2.27. Execution of Agreement	24
2.28. Commencement of assignment.....	24
2.29. Proprietary data.....	25
3. CRITERIA FOR EVALUATION	25
3.1. Evaluation of Technical Proposals.....	25
3.2. Short-listing of Applicants	25
3.3. Evaluation of Financial Proposal	26
3.4. Final evaluation	26
4. FRAUD AND CORRUPT PRACTICES	26
5. MISCELLANEOUS	28
Schedule–1	30
TERMS OF REFERENCE(TOR).....	30
A. BACKGROUND	30
B. OBJECTIVE.....	30
C. SCOPE OF SERVICES.....	30
D. PERIOD OF CONTRACT	30

	7
E. CONTRACT PRICE & PAYMENT	30
SCHEDULE-2.....	31
AGREEMENT	31
1. GENERAL.....	32
2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT.....	35
2.1 Effectiveness of Agreement.....	35
2.2 Commencement of Services	35
2.3 Termination of Agreement for failure to commence Services	35
2.4 Expiration of Agreement.....	36
2.5 Entire Agreement.....	36
2.6 Modification of Agreement.....	36
2.7 Force Majeure.....	36
2.8 Suspension of Agreement	37
2.9 Termination of Agreement	38
3. OBLIGATIONS OF THE CONSULTANT	40
3.1 General	40
3.2 Conflict of Interest	40
3.3 Confidentiality.....	42
3.4 Liability of the Consultant	42
4. CONSULTANT’S PERSONNEL	43
4.1 GENERAL.....	43
5. OBLIGATIONS OF THE EMPLOYER.....	43
6. PAYMENT TO THE CONSULTANT	44
6.1 Contract Price.....	44
6.2 Currency of Payment.....	44
6.3 Mode of billing and payment.....	44
7. LIQUIDATED DAMAGES AND PENALTIES	45
7.1 Performance Security.....	45
7.2 Encashment and appropriation of Performance Security.....	45
7.3 Penalty for deficiency in Services	45
8. FAIRNESS AND GOOD FAITH	45
9. SETTLEMENT OF DISPUTES.....	46

	8
Annex – 1(to Agreement)	48
TERMS OF REFERENCE(TOR).....	48
1. BACKGROUND.....	48
2. OBJECTIVE.....	48
3 . SCOPE OF SERVICES	48
4. PERIOD OF CONTRACT.....	48
5. CONTRACT PRICE & PAYMENT	48
Annex – 2(to Agreement)	49
Bank Guarantee for Performance Security.....	49
APPENDIX-1	51
TECHNICAL PROPOSAL.....	51
Form-1 Letter of Proposal	52
Form – 2 Particulars of the Applicant.....	55
Form – 3 Statement of Legal Capacity.....	57
Form – 4 Power of Attorney	58
Form-5 Financial Capacity of Applicant	59
Form- 6 Particulars of Key Personnel	60
Form-7 Proposed Methodology and Work Plan.....	61
Form-8 Abstract of Kidney Transplants performed by the Applicant	62
Form-9 Curriculum Vitae (CV) of Key Personnel	63
Form-10 Certification of number of BMT beds	64
Form-11 Certification of NABL &NABH Accreditation	65
Form-12 Certification of Infection Control Committee	66
APPENDIX–2.....	68
FINANCIAL PROPOSAL	68

1. INTRODUCTION

1.1. Background

The Department of Health & Family Welfare, Government of Assam has launched an unique Healthcare Initiative that aims at extending financial assistance for specialized treatment of children below 14 years age afflicted with some serious ailments, with priority given to children belonging to BPL families. Some of these children may need referral to suitable higher facilities outside the state for specialized treatment, while others may be treated at super specialty institutions within the state itself. For both the groups, financial assistance will be offered under the “Sneha Sparsha Scheme”. Kidney Transplant is among the identified conditions under the scheme for which treatment shall be financed by the Government of Assam. The Government of Assam therefore seeks to enter into an Agreement with Super Specialty Hospitals in India to carry out Kidney Transplant in children below the age of 14 years from the state of Assam.

1.2. Request for Proposal

1.2.1. Mission Director, National Health Mission, Assam (hereinafter referred to as “Employer”) invites proposals from Super Specialty Hospitals in India (hereinafter referred to as “Consultant”) meeting the minimum eligibility criteria as laid hereinafter for entering into an Agreement with Government of Assam for carrying out Kidney Transplant in Children below 14 years of age from the state of Assam.

The Employer intends to select the Consultant through a competitive bidding process in accordance with procedure set out herein.

1.3. Due diligence by Applicants

Applicants are encouraged to inform themselves fully about the assignment and the local conditions before submitting the Proposal by paying a visit to the Office of Mission Director, National Health Mission (NHM) Assam.

1.4. Availability of RFP Document

RFP document shall be available online in the e-Tender portal i.e., <http://assamtenders.gov.in> and the interested parties are requested to read the document after downloading the same from the portal. The Applicants are required to pay **RFP processing fee** of Rs.2,000/- (Rupees two thousand only) in the form of a demand draft or banker’s cheque drawn on any Scheduled Commercial Bank in India in favour of “State Health Society, Assam” and payable at Guwahati. The Applicant may also choose to pay the processing fee online through the e-Tender portal. Non-payment of processing fee of Rs.2000/- (Rupees two thousand only) by the Applicant in the prescribed manner shall render the proposal liable for rejection by the Employer.

1.5. Validity of the Proposal

The Proposal shall be valid for a period of not less than 120 days from the Proposal Due Date (the “PDD”).

1.6. Brief description of the Selection Process

The Employer has adopted a two-stage selection process (collectively the “Selection Process”) in evaluating the Proposals comprising technical and financial bids to be submitted online in the e-Tender portal. In addition, the Applicant is also required to submit the hardcopies of the technical proposal in a separate sealed envelope called “Cover-A” in the office of the Employer within due date and time for submission. In the first stage, a technical evaluation will be carried out as specified in Clause 3.1. Based on this technical evaluation, a list of qualified Applicants shall be prepared as specified in Clause 3.2. In the second stage, financial bids shall be opened as specified in Clause 3.3. Proposals will finally be ranked according to their financial quote as per financial proposal starting with the lowest financial quote as specified in Clause 3.4. The first ranked Applicant shall be selected for negotiation (the “Selected Applicant”) while the second ranked Applicant will be kept in reserve.

NHM officials, representative of Director of Medical Education and Guwahati Medical College & Hospital shall be involved in the selection process of the Consultant.

1.7. Bid Currency

1.7.1. The Consultant is required to quote the price (in the financial proposal) only in Indian Rupees (INR). The price quoted in any other currency shall be liable for rejection. All payments to the Consultant shall be made in INR in accordance with the provisions of this RFP.

1.8. Schedule of Selection Process

The Employer would endeavour to adhere to the following schedule:

S.No	Event Description	Date
1	Date of issue of RFP	16/11/2021
2	Proposal Due Date or PDD (for Online & “Cover-A” submission)	06/12/2021 (up to 02:00 pm)

3	Opening of Technical Proposals (online)	On Proposal Due Date (03.00 pm)
6	Opening of Financial Proposals (online)	To be intimated later
7	Letter of Award (LOA)	Within 21 days of opening of Financial Proposals
8	Submission of Performance Security	Within 10 days of receipt of LOA
9	Signing of Agreement	Within 14 days of LOA
10	Validity of Applications	120 days of Proposal Due Date

1.9. Pre-Proposal visit to NHM Assam

1.9.1 Prospective applicants may visit the Office of Mission Director, NHM Assam at any time prior to PDD on any working day from 11.00 am to 5.00 pm.

1.10. Communications & Submission of Bids

1.10.1. The Applicant should have valid Digital Signature Certificate (DSC) and have to register in the portal <http://assamtenders.gov.in>. The documents should be submitted on-line in the portal <http://assamtenders.gov.in>. The hardcopy of technical proposal only along with EMD, Processing Fee(nonrefundable) and Court Fee Stamp of Rs 8.25/IPO of Rs 10/- should be submitted in a sealed envelope in the of the Mission Director, National Health Mission, Assam, Saikia Commercial Complex, Shrinagar Path, Christian Basti, G S Road, Guwahati-781005, Assam on or before the last date and time of submission of the tender.

1.10.2. The scanned copy of the same should also be uploaded in the portal <http://assamtenders.gov.in>. In case of non-submission of the hardcopy of the proposal the same shall not be considered for further scrutiny. Only those applications complete in all respects will be accepted for further scrutiny.

1.10.3. The Financial proposal shall be submitted only online in the prescribed format. Submission of Financial proposal in hardcopy shall render the proposal liable for cancellation. The format for financial proposal is given in Appendix-II only for reference.

1.11.4 All communications, including the envelopes, should contain the following information, to be marked at the top in bold letters:
“RFP for selection of Super specialty Hospital (Consultant) for carrying out Kidney Transplant in children below 14 years age”.

2. INSTRUCTIONS TO APPLICANTS

A. GENERAL

2.1. Scope of Proposal

2.1.1. Detailed description of the objectives, scope of services and other requirements relating to the work are specified in this RFP. In case an applicant firm possesses the requisite experience and capabilities required for undertaking the work, it may participate in the Selection Process. The term applicant (the "Applicant") means a Super Specialty Hospital or an individual firm. Joint Venture or Consortium applicants are not allowed to participate. The manner in which the Proposal is required to be submitted, evaluated and accepted is explained in this RFP.

2.1.2. Applicants are advised that the selection of Consultant shall be on the basis of an evaluation by the Employer through the Selection Process specified in this RFP. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the Employer's decisions are without any right of appeal whatsoever.

2.1.3. The Applicant shall submit its Proposal in the form and manner specified in this RFP. The Technical proposal shall be submitted in the form at **Appendix-I** and the Financial Proposal shall be submitted in the form at **Appendix-II**. Upon selection, the Applicant shall be required to enter into an agreement with the Employer in the form specified at **Schedule-2**.

2.1.4. Key Personnel

The Consultant's Team shall consist of the following key personnel (the "Key Personnel") who shall discharge their respective responsibilities:

- a) Specialists consisting of Paediatric Urologist/ Pediatric Nephrologist, Kidney transplant surgeon and Intensives.
- b) Specialists in other fields needed for medical care of patients undergoing Kidney Transplantation.
- c) Nursing Staff
- d) Technicians

2.2. Conditions of Eligibility of Applicants

- 2.2.1. Applicants must read carefully the minimum conditions of eligibility (the “Conditions of Eligibility”) provided herein. Proposals of only those Applicants who satisfy the Conditions of Eligibility will be considered for evaluation.
- 2.2.2. To be eligible for evaluation of its Proposal, the Applicant shall fulfill the following:
- (A) The Applicant shall have, over the past five financial years (FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20) performed at least 100 (hundred) successful Kidney Transplants in their Super Specialty Hospitals.
 - (B) The Average Annual Turnover of the Applicant from its Hospital operations during the last three financial years (FY 2017-18, FY 2018-19 and FY 2019-20) shall not be less than Rs 100.00 Crores.
 - (C) The Applicant shall have in its roll at least one (1) trained Paediatrician and one Urologist Hematologist, to take care of complications, if any.
 - (D) The Applicant shall have in its roll Technicians and Nursing Staff capable of undertaking Kidney Transplant procedures.
 - (E) The Applicant shall have at least six (6) dedicated Kidney Transplant beds.
 - (F) The applicant shall have NABL and NABH Accreditation.
 - (G) The applicant shall have an Infection Control Committee in place.
- 2.2.3. The Applicant shall enclose with its proposal details of Kidney Transplants performed during the last five financial years (FY 2015-16, FY 2016-17, FY 2017-18, FY 2018-19 and FY 2019-20) in the prescribed format (Appendix-1, Form-8)
- 2.2.4. The Applicant shall enclose with its Proposal, certificate(s) from its Statutory Auditors stating its annual turnover from hospital operations during each of the past three financial years (FY 2017-18, FY 2018-19 and FY 2019-20) in the prescribed format (Appendix-1, Form-5). In the event the Applicant does not have a Statutory Auditor, it shall provide the requisite certificate(s) from the firm of Chartered Accountants that ordinarily audits the annual accounts of the Applicant.
- 2.2.5. The Applicant shall enclose with its proposal particulars of key personnel in the prescribed format (Appendix-1, Form-6) and the CVs of Specialists in the prescribed format (Appendix-1, Form-9)
- 2.2.6. The applicant shall enclose with its proposal a certificate stating the number of dedicated Kidney Transplant beds available in their facility (Appendix-1, Form-10)
- 2.2.7. The applicant shall enclose with its proposal a certificate stating that their facility has National Accreditation Board for Testing and Calibration Laboratories (NABL) and National Accreditation Board for Hospitals & Healthcare Providers (NABH) accreditation. (Appendix-1, Form-11)
- 2.2.8. The applicant shall certify that their facility has an Infection Control Committee in Place (Appendix-1, Form-12).

- 2.2.9. The Applicant should submit a Power of Attorney as per the prescribed format (Appendix-1, Form-4) provided, however, that such Power of Attorney would not be required if the Application is signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.
- 2.2.10. Any entity which has been barred by the Central Government, any State Government, a statutory authority or a public sector undertaking, as the case may be, from participating in any project, and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.
- 2.2.11. While submitting a Proposal, the Applicant should attach clearly marked and referenced continuation sheets in the event that the space provided in the specified forms in the Appendices is insufficient. Alternatively, Applicants may format the specified forms making provision for incorporation of the requested information.

2.3. Conflict of Interest

- 2.3.1 The Employer requires that the Consultant provides professional service and at all times hold the Employer's interest is paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the Employer.

2.4. Number of Proposals

No Applicant or its Associate shall submit more than one Application. An Applicant applying individually or as an Associate shall not be entitled to submit another application either individually or as a member of any consortium, as the case may be.

2.5. Cost of Proposal

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiations, visits to the Employer's office. The Employer shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

2.6. Site visit and verification of information

Applicants are encouraged to submit their respective Proposals after visiting the Office of Mission Director, NHM Assam and ascertaining for themselves the scope of work/service or any other matter considered relevant by them.

2.7. Acknowledgement by Applicant

2.7.1. It shall be deemed that by submitting the Proposal, the Applicant has

- (a) made a complete and careful examination of the RFP.
- (b) received all relevant information requested from the Employer.
- (c) acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Employer or relating to any of the matters referred to in Clause 2.6 above.
- (d) satisfied itself about all matters, things and information, including matters referred to in Clause 2.6 herein above, necessary and required for submitting an informed Application and performance of all of its obligations thereunder.
- (e) acknowledged that it does not have a Conflict of Interest; and agreed to be bound by the undertaking provided by it under and in terms hereof.

2.7.2. The Employer shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP or the Selection Process, including any error or mistake there in or in any information or data given by the Employer.

2.8. Right to reject any or all Proposals

2.8.1. Notwithstanding anything contained in this RFP, the Employer reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.8.2. Without prejudice to the generality of Clause 2.8.1, the Employer reserves the right to reject any Proposal if:

- (a) at any time, a material misrepresentation is made or discovered, or
- (b) the Applicant does not provide, within the time specified by the Authority, the supplemental information sought by the Employer for evaluation of the Proposal.

Misrepresentation/ improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been opened and the best ranking Applicant gets disqualified / rejected, then the Authority reserves the right to consider the next best Applicant or take any other measure as may be deemed fit in the sole discretion of the Employer, including annulment of the Selection Process.

B. DOCUMENTS

2.9. Contents of the RFP

2.9.1. This RFP comprises the Disclaimer set forth herein above, the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause 2.11:

Request for Proposal

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Miscellaneous

Schedules

- 1 Terms of Reference
- 2 Form of Agreement with Annex-1 (Terms of Reference) and Annex-2 (Bank Guarantee for Performance Security)

Appendix-I: Technical Proposal

- Form 1: Letter of Proposal
- Form 2: Particulars of the Applicant
- Form 3: Statement of Legal Capacity
- Form 4: Power of Attorney
- Form 5: Financial Capacity of Applicant
- Form 6: Particulars of Key Personnel
- Form 7: Proposed Methodology and Work Plan
- Form 8: Abstract of Kidney Transplants performed by the Applicant
- Form 9: Curriculum Vitae of Key Personnel
- Form 10: Certification of number of BMT beds
- Form 11: Certification of NABL and NABH accreditation
- Form 12: Certification of Infection Control Committee

Appendix-II: Financial Proposal

To be submitted online only in the prescribed format

2.10. Clarifications

- 2.10.1. Applicants requiring any clarification on the RFP may send their queries to the Employer in writing before the date mentioned in the Schedule of Selection Process at Clause 1.8. The envelopes shall clearly bear the following identification:

“RFP for selection of Super specialty Hospital (Consultant) for carrying out Kidney Transplant in children below 14 years age”.

The Employer shall endeavor to respond to the queries within the period specified therein but not later than 7 (seven) days prior to the Proposal Due Date. The responses will be posted in the e-Tender portal.

- 2.10.2. The Employer reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause 2.10 shall be construed as obliging the Employer to respond to any question or to provide any clarification.

2.11. Amendment of RFP

- 2.11.1. At any time prior to the deadline for submission of Proposal, the Employer may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the RFP document by the issuance of Addendum/Amendment/Corrigendum and posting it on the e-Tender portal.
- 2.11.2. In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, the Employer may, in its sole discretion, extend the Proposal DueDate.

C. PREPARATION AND SUBMISSION OF PROPOSAL

2.12. Language

The Proposal with all accompanying documents (the “Documents”) and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this RFP. No supporting document or printed literature shall be submitted with the Proposal unless specifically asked for and in case any of these Documents is in another language, it must be accompanied by an accurate translation of the relevant passages in English, in which case, for all purposes of interpretation of the Proposal, the translation in English shall prevail.

2.13. Format and signing of Proposal

- 2.13.1 The Applicant shall provide all the information sought under this RFP. The Employer would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.13.2 The Applicant shall prepare the Proposal (w.r.t.the documents required to be submitted

along therewith pursuant to this RFP) duly typed or written in indelible ink and signed by the authorized signatory of the Applicant who shall initial each page, in blue ink. In case of printed and published Documents, only the cover shall be initialed. All the alterations, omissions, additions, or any other amendments made to the Proposal shall be initialed by the person(s) signing the Proposal. The proposals (technical & financial) duly prepared should be scanned and submitted online in the e-Tender portal. In addition, the applicant should also submit the hardcopy of the technical bid within due date of submission.

2.13.3 The Proposals must be properly signed by the “Authorised Representative” as detailed below:

- (a) by the proprietor, in case of a proprietary firm;or
- (b) by a partner, in case of a partnership firm and/or a limited liability partnership;or
- (c) by a duly authorized person holding the Power of Attorney, in case of a Limited Company or a corporation;or

2.13.4 A copy of the Power of Attorney certified under the hands of a partner or director of the Applicant and notarized by a notary public in the form specified in Appendix-I (Form-4) shall accompany the Proposal.

2.13.5 Applicants should note the Proposal Due Date, as specified in Clause 1.8, for submission of Proposals. Except as specifically provided in this RFP, no supplementary material will be entertained by the Employer, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause 2.17.1. Applicants will ordinarily not be asked to provide additional material information or documents subsequent to the date of submission, and unsolicited material if submitted will be summarily rejected. For the avoidance of doubt, the Employer reserves the right to seek clarifications under and in accordance with the provisions of Clause 2.23.

2.14. Technical Proposal

2.14.1. Applicants shall submit (online & hardcopy) the technical proposal in the formats at Appendix-I (the “Technical Proposal”).

2.14.2. While submitting the Technical Proposal, the Applicant shall, in particular, ensure that:

- (a) Stamp Duty Fee of Rs 8.25 or IPO of Rs 10.00
- (b) The Bid Security & Processing Fees provided;
- (c) All forms are submitted in the prescribed formats and signed by the prescribed signatories;
- (d) Power of Attorney, if applicable, is executed as per Applicable Laws;

2.14.3. Failure to comply with the requirements spelt out in this Clause 2.14 shall make the Proposal liable to be rejected.

2.14.4. The Technical Proposal shall not include any financial information relating to the Financial

Proposal.

- 2.14.5. The Employer reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the RFP. Any such verification or the lack of such verification by the Employer to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of the Employer there under.
- 2.14.6 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of theeligibilities conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by the Employer without the Employer being liable in any manner whatsoever to the Selected Applicant or Consultant, as the case maybe.
- 2.14.7 In such an event, the Employer shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to the Employer for, *inter alia*, time, cost and effort of the Employer, without prejudice to any other right or remedy that may be available to the Employer.

2.15. Financial Proposal/BOQ

- 2.15.1. Applicants shall submit the financial proposal online in electronic format (only). The format for the financial Proposal (price bid) is given at Appendix-II (the “Financial Proposal”) for reference. The price per patient (per case) has to be quoted both in figures and words, in Indian Rupees. In the event of any difference between figures and words, the amount indicated in words shall prevail.
- 2.15.2. While submitting the Financial Proposal, the Applicant shall ensure the following:
- (i) All the costs associated with the assignment shall be included in the Financial Proposal. The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to berejected.
 - (ii) The Financial Proposal shall take into account all expenses. GST shall be paid at applicable rate by the employer. All payments shall be subject to deduction of taxes at source as per ApplicableLaws.
 - (iii) The assignment period shall be a period of 3 years, which can be increased or

reduced by the Employer at its discretion

- 2.15.3. That the fees/charges per patient shall be firm and valid throughout the assignment. The accepted fees/ charges shall be payable within 30 days to be reckoned from the date of discharge of the patient from hospital after satisfactorily carrying out the Kidney Transplant.
- 2.15.4. Format for Financial Proposal (or BoQ) shall be available in the e-Tender portal <http://assamtenders.gov.in>. The applicant can download the format and save it in its computer without changing filename otherwise price bid will not get uploaded.

2.16. Submission of Proposal

- 2.16.1. The Applicants shall submit both the Proposals (Technical & Financial) online in the e-Tender portal i.e., <http://assamtenders.gov.in>. Each page of the technical proposal shall be numbered serially with an index and initialed by the Authorized Representative of the Applicant as per the terms of the RFP. The Bidder shall ensure that there are no changes caused in the content of the downloaded document.
- 2.16.2. The Applicant shall also submit the hardcopy of the technical proposal along with (a) Stamp Duty Fee of Rs 8.25/IPO of Rs 10.00 (b) processing fee and EMD instruments (BC/DD) in original (if not paid online) in a sealed Cover/envelop by the due date of submission. which will bear the address of the Employer, RFP Number, Title of the RFPs indicated at Clauses 1.11.4 and the name and address of the Applicant.
- 2.16.3. The Proposal shall be in the Forms specified in this RFP. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided.
- 2.16.4. The amount quoted shall be firm subject to provision of clause 2.15.3 throughout the period of performance of the assignment up to discharge of all obligations of the Consultant under the Agreement.

2.17. Proposal Due Date

- 2.17.1. Proposals (both Technical & Financial) should be submitted online at or before 1400 hrs on the Proposal Due Date specified at Clause 1.8 and the hardcopy of the technical proposal (only) at the address provided in Clause 1.11 in the manner and form as detailed in this RFP.
- 2.17.2. The Employer may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum/Corrigendum in accordance with Clause 2.11 uniformly for all Applicants.

2.18. Late Proposals

Proposals received by the Employer after the specified time on Proposal Due Date shall not be eligible for consideration and shall be summarily rejected.

2.19. Modification/ substitution/ withdrawal of Proposals

2.19.1. The proposals submitted online within due date and time of submission are final and binding, no further addition, deletion, substitution or modification after due date for submission is possible.

2.19.2. Any additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the Employer, shall be disregarded.

2.20. Bid Security

2.20.1. The Applicant shall furnish as part of its Proposal, a Bid Security of Rs. 5,00,000/- (Rupees five lakh only) in the form of a Demand Draft/Banker's Cheque/Bank Guarantee (irrevocable) issued by one of the Nationalized/ Scheduled Banks in India in favour of "State Health Society, Assam "payable at Guwahati (the "Bid Security"). The Bid Security will be returned to unsuccessful Applicants within 30 (thirty) days from date of finalization of order. The Bid Security of the selected Applicant shall be returned, upon the Applicant signing the Agreement and completing the first task (Kidney Transplant) assigned to it. Bid Security in form of bank guarantee shall have a minimum validity of 150 days from the due date of submission of Bid.

2.20.2. Any Bid not accompanied by the Bid Security shall be rejected by the Employer as non-responsive.

2.20.3. The Employer shall not be liable to pay any interest on the Bid Security and the same shall be interest free.

2.20.4. The Applicant, by submitting its Application pursuant to this RFP, shall be deemed to have acknowledged that without prejudice to the Employer's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by the Employer as the mutually agreed pre-estimated compensation and damage payable to the Employer for, *inter alia*, the time, cost and effort of the Authority in regard to the RFP including the consideration and evaluation of the Proposal under the following conditions:

- (a) If an Applicant submits a non-responsive Proposal.
- (b) If an Applicant engages in any of the Prohibited Practices specified in Section 4 of this RFP;
- (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this RFP and as extended by the Applicant from time to time.

- (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause 2.24.1.
- (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses 2.27 and 2.28 respectively;or
- (f) If the Applicant is found to have a Conflict of Interest as specified in Clause2.3.

B. EVALUATION PROCESS

2.21. Evaluation of Proposals

- 2.21.1. The Employer shall open the Proposals online at the specified time on the Proposal Due Date.
- 2.21.2. The hardcopy of the proposal shall also be opened at the specified time on Proposal due date and interested Applicants may choose to participate.
- 2.21.3. Prior to evaluation of Proposals, the Employer will determine whether each Proposal is responsive to the requirements of the RFP. The Employer may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive onlyif:
- (a) the Technical Proposal is received in the form specified at Appendix-I;
 - (b) it is received by the Proposal Due Date including any extension thereof pursuant to Clause2.17;
 - (c) it is accompanied by the Bid Security as specified in Clause2.20.1.
 - (d) Hardcopy of the technical bid is submitted along with Processing Ree of Rs 2,000/- and Stamp Duty Fee of Rs 8.25/-/ IPO of Rs 10/-.
 - (e) it is accompanied by the Power of Attorney as specified in Clause2.2.9;
 - (f) it contains all the information (complete in all respects) as requested in theRFP;
 - (g) it does not contain any condition or qualification;and
 - (h) it is not non-responsive in terms here of.
- 2.21.4. The Employer reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Employer in respect of such Proposals.
- 2.21.5. The Employer shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause 1.6 and the criteria set out in Section 3 of this RFP.

- 2.21.6. After the technical evaluation, the Employer shall prepare a list of pre-qualified and shortlisted Applicants in terms of Clause 3.2 for opening of their Financial Proposals. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses 3.3 and 3.4.
- 2.21.7. Applicants are advised that Selection will be entirely at the discretion of the Employer. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.
- 2.21.8. Any information contained in the Proposal shall not in any way be construed as binding on the Employer, its agents, successors or assigns, but shall be binding against the Applicant if the Work is subsequently awarded to it.

2.22. Confidentiality

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising the Employer in relation to matters arising out of, or concerning the Selection Process. The Employer will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. The Employer may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the Employer.

2.23. Clarifications

- 2.23.1. To facilitate evaluation of Proposals, the Employer may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s) shall be provided within the time specified by the Employer for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.
- 2.23.2. If an Applicant does not provide clarifications sought under Clause 2.23.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, the Employer may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the Authority.

C. APPOINTMENT OF CONSULTANT

2.24. Negotiations

2.24.1. The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this RFP. Issues such as deployment of Key Personnel, understanding of the RFP, methodology and quality of the work plan shall be discussed during negotiations. In case the Selected Applicant fails to reconfirm its commitment, the Employer reserves the right to designate the next ranked Applicant as the Selected Applicant and invite it for negotiations.

2.25. Substitution of Key Personnel

2.25.1. The Employer expects all the Key Personnel to be available during implementation of the Agreement. The Employer will not consider substitution of Key Personnel except for reasons of any incapacity or due to health.

2.26. Award of Consultancy

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by the Authority to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, the Employer may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by the Authority on account of failure of the Selected Applicant to acknowledge the LOA, and the next ranking Applicant may be considered.

2.27. Execution of Agreement

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the period prescribed in Clause 1.8. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

2.28. Commencement of assignment

The Consultant shall commence the within 7 (seven) days of the date of the Agreement or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause 2.28 or commence the assignment as specified herein, the Employer may invite the second ranked Applicant for negotiations. In such an event, the Bid Security of the first ranked Applicant shall be forfeited and appropriated in accordance with the provisions of Clause 2.20.4.

2.29. Proprietary data

Subject to the provisions of Clause 2.22, all documents and other information provided by the Employer or submitted by an Applicant to the Employer shall remain or become the property of the Employer. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. The Employer will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Consultant to the Employer in relation to the Work shall be the property of the Employer.

3. CRITERIA FOR EVALUATION

3.1. Evaluation of Technical Proposals

3.1.1. In the first stage, the Technical Proposal will be evaluated on the basis of Applicant's experience in the field of work, understanding of TOR and the qualification & experience of Key Personnel. Only those Applicants whose Technical Proposals score 70 marks or more out of 100 shall qualify for further consideration and shall be ranked from highest to the lowest on the basis of their technical score.

3.1.2. The scoring criteria to be used for evaluation shall be as follows:

Sl. No.	Parameters	Maximum Marks	Criteria
1	Experience of performing Kidney Transplants by the Applicant	50	Number of Kidney Transplants performed successfully during the last five financial years
2	Annual Turnover of the Applicant from Hospital operations	20	Annual Turnover (Rs in Crores) in each of the last three financial years
3	Qualifications and experience of Specialists performing Kidney Transplants	30	- Number of Specialists/Support Staff - Qualifications of Specialists/Support Staff - Experience of Specialists/Support Staff
	Grand Total	100	

Note:

While awarding marks for the number of Kidney Transplants, the Applicant that has undertaken the highest number of Transplants shall be entitled to the maximum score and all other competing Applicants shall be entitled to a proportionate score.

3.2. Short-listing of Applicants

The Applicants scoring 70 or more marks in Technical evaluation shall be pre-qualified and short-listed for financial evaluation in the second stage.

3.3. Evaluation of Financial Proposal

- 3.3.1. In the second stage, the financial evaluation will be carried out as per this Clause 3.3.
- 3.3.2. For financial evaluation, the cost indicated in the Financial Proposal (Appendix-II) will be considered.
- 3.3.3. The Employer will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services.

3.4. Final evaluation

- 3.4.1. The qualified Applicants shall be ranked according to their financial quote as per Financial Proposal starting with lowest quoted amount.
- 3.4.2. The Selected Applicant shall be the first ranked Applicant, having the Lowest Financial quote. The second ranked Applicant having the Second Lowest Financial Quote shall be kept in reserve and may be invited for negotiations in case the first ranked Applicant withdraws or fails to comply with the requirements specified in Clauses 2.24, 2.28 and 2.29, as the case maybe.

4. FRAUD AND CORRUPT PRACTICES

- 4.1. The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this RFP, the Employer shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices") in the Selection Process. In such an event, the Employer shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to the Employer for, *inter alia*, time, cost and effort of the Employer, in regard to the RFP, including consideration and evaluation of such Applicant's Proposal.
- 4.2. Without prejudice to the rights of the Employer under Clause 4.1 herein above and the rights

and remedies which the Employer may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender or RFP issued by the Employer during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by the Employer to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case maybe.

4.3. For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Employer who is or has been associated in any manner, directly or indirectly with the Selection Process or the LOA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Employer/Government, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) save as provided herein, engaging in any manner whatsoever, whether during the Selection Process or after the issue of the LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical consultant/ adviser of the Employer /Government in relation to any matter concerning the Project;
- (b) “fraudulent practice” means a misrepresentation or omission of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “coercive practice” means impairing or harming or threatening to impair or harm, directly or indirectly, any persons or property to influence any person’s participation or action in the Selection Process.
- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Employer /Government with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

5. MISCELLANEOUS

- 5.1. The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Guwahati shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the SelectionProcess.
- 5.2. The Employer, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
 - (b) consult with any Applicant in order to receive clarification or further information;
 - (c) retain any information and/or evidence submitted to the Employer by, on behalf of and/or in relation to any Applicant; and/or
 - (d) independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 5.3. It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the Employer/ Government, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 5.4. All documents and other information supplied by the Employer or submitted by an Applicant shall remain or become, as the case may be, the property of the Employer. The Employer will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 5.5. The Employer reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

SCHEDULE -1
(See Clause 1.1.3)

Selection of Super Specialty Hospital for carrying out
Kidney Transplant in children below the age of 14 years from the
state of Assam

TERMS OF REFERENCE (TOR)

Schedule – 1

TERMS OF REFERENCE (TOR)

A. BACKGROUND

The Department of Health & Family Welfare, Government of Assam has launched a unique Healthcare Initiative that aims at extending financial assistance for specialized treatment of children below 12 years age afflicted with some serious ailments, with priority given to children belonging to BPL families. Some of these children may need referral to suitable higher facilities outside the state for specialized treatment, while others may be treated at super specialty institutions within the state itself. For both the groups, financial assistance will be offered under the “Sneha Sparsha Scheme”. Kidney Transplant is among the identified conditions under the scheme for which treatment shall be financed by the Government of Assam. The Government of Assam therefore seeks to enter into an Agreement with Super Specialty Hospitals in India to carry out Kidney Transplant in children below the age of 14 years from the state of Assam.

B. OBJECTIVE

The objective of this RFP is to select Super Specialty Hospital (s) in India meeting the laid down qualification criteria for carrying out Kidney Transplants in children below the age of 14 years, through an open competitive bidding process.

C. SCOPE OF SERVICES

The Consultant (i.e., the selected Super Specialty Hospital) shall perform Kidney Transplants in children below the age of 14 years from the state of Assam under the “Sneha Sparsha Scheme” of the Government of Assam. The selected Consultant shall render the following services:

- a) Provide services of Specialists including Nephrologists, Pediatricians, Pediatric Surgeons and Urologist.
- b) Provide Blood Bank/Laboratory Facilities for HLA
- c) Carry out all investigations prior to Kidney Transplant.
- d) Carry out Kidney Transplants in state-of-the-art Operation Theatre.
- e) Provide post-operative medical care in the hospital for the period needed for each individual patient.
- f) Provide healthy diet to the patient during the entire hospitalization period.
- g) Provide all prescribed medicine and consumables during the procedure and for initial 3 months.
- h) Provide food and lodging to at least two attendants accompanying the patient.

D. PERIOD OF CONTRACT

The selected Consultant shall provide the above service for a period of 3 (three) years from the date of signing the Agreement.

E. CONTRACT PRICE & PAYMENT

The contract price shall cover the total cost of services indicated under Paragraph 3 above for each Kidney Transplant and payable within 30 days from the date of discharge of the patient from the hospital and on receipt of bill.

SCHEDULE -2

(See Clause 2.1.3)

AGREEMENT

FOR

Services of Super Specialty Hospital for carrying out
Kidney Transplant in children below the age of 14 years from
the state of Assam

AGREEMENT

This AGREEMENT (hereinafter called the “Agreement”) is made on the _____ day of the month of _____, 2021 between, on the one hand, the Mission Director, National Health Mission, Assam (hereinafter called the “Employer” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, _____ (hereinafter called the “Consultant” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The Mission Director, National Health Mission, Assam (the ‘Employer’) had invited proposals from Super Specialty Hospitals including the successful Applicant----- (hereinafter referred as ‘Consultant’) to carry out Kidney Transplant in children below 14 years age from the state of Assam.
 - (B) The Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Employer that it had the required professional skills, and in the said proposal the Consultant also agreed to provide the Services to the Employer on the terms and conditions as set forth in the RFP and this Agreement;
 - (C) The Employer, on acceptance of the aforesaid proposal of the Consultant, awarded the Work to the Consultant vide its Letter of Award (the “LOA”); and
 - (D) In pursuance of the LOA, the parties have agreed to enter into this Agreement.
- NOW, THEREFORE, the parties hereto hereby agree as follows:

1. GENERAL

1.1. Definitions and Interpretation

- 1.1.1. The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:
- a) “Agreement” means this Agreement, together with all the Annexes;
 - b) “Applicable Laws” means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
 - (d) “Confidential Information” shall have the meaning set forth in Clause 3.3;
 - (e) “Conflict of Interest” shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
 - (f) “Dispute” shall have the meaning set forth in Clause 9.2.1;
 - (g) “Effective Date” means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
 - (h) “Government” means the Government of Assam
 - (i) “INR, Re. or Rs.” means Indian Rupees;

- (j) “Member”, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and “Members” means all of these entities;
- (k) “Party” means the Employer or the Consultant, as the case may be, and Parties means both of them;
- (l) “Personnel” means persons hired by the Consultant as employees and assigned to the performance of the Services or any part thereof;
- (m) “Resident Personnel” means such persons who at the time of being so hired had their domicile inside India;
- (n) “RFP” means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted;
- (o) “Services” means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference here to; and
- (p) “Third Party” means any person or entity other than the Government, the Employer, the Consultant.

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2. The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral parts of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- a) Agreement;
- b) Annexes of Agreement;
- c) RFP;
- d) Proposal; and
- e) Letter of Award.

1.2. Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Employer and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3. Rights and obligations

The mutual rights and obligations of the Employer and the Consultant shall be as set forth in the Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the Employer shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Guwahati shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5. Language

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

1.6. Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7. Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by facsimile or e-mail or by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.10 or to such other person as the Consultant may from time to time designate by notice to the Employer.
- (b) in the case of the Employer, be given by facsimile or e-mail or by letter delivered by hand and be addressed to the Employer with a copy delivered to the Employer Representative set out below in Clause 1.10 or to such other person as the Employer may from time to time designate by notice to the Consultant.

And

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

1.8. Location

The Services shall be performed at the Super Specialty Hospital of the Consultant in accordance with the provisions of RFP and at such locations as are incidental thereto.

1.9. Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights

and obligations towards the Employer under this Agreement, including without limitation the receiving of instructions and payments from the Employer.

1.10. Authorized Representatives

1.10.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Employer or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.10.

1.10.2. The Employer may, from time to time, designate one of its officials as the Employer Representative. Unless otherwise notified, the Employer Representative shall be:

Name:
Designation:
Mobile:
Email:

1.10.3. The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

Name:
Designation:
Mobile:
Email:

1.11. Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the Employer shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it. GST shall be paid at applicable rate by the employer.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1. Effectiveness of Agreement

This Agreement shall come into force and effect on the date of this Agreement (the "Effective Date").

2.2. Commencement of Services

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

2.3. Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the Employer may, by not less than 2 (two) weeks' notice to the Consultant, declare

this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

2.4. Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire after 3 years from the Effective Date. Upon Termination, the Employer shall make payments of all amounts due to the Consultant hereunder.

2.5. Entire Agreement

- 2.5.1. This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP shall continue to subsist and shall be deemed to form part of this Agreement.
- 2.5.2. Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP shall apply.

2.6. Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification made by the other Party.

2.7. Force Majeure

2.7.1. Definition

- a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or Party's employees, nor (ii) any event which diligent

Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

- c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2. No breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3. Measures to be taken

- a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- c) The Parties shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

2.7.4. Extension of time

Any period within which a Party shall, pursuant to this Agreement, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

2.7.5. Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8. Suspension of Agreement

The Employer may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not

exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

2.9. Termination of Agreement

2.9.1. By the Employer

The Employer may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently granted in writing;
- b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its Creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- d) the Consultant submits to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Consultant knows to be false;
- e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- g) the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

2.9.2. By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the Employer, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- a) the Employer fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- b) the Employer is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the Employer of the Consultant's notice specifying such breach;

- c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- d) the Employer fails to comply with any final decision reached as a result of Arbitration pursuant to Clause 9 hereof.

2.9.3. Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

2.9.4. Cessation of Services

Upon termination of this Agreement by notice of either Party to the other, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum.

2.9.5. Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Employer shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Employer):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement.

2.9.6. Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONSULTANT

3.1. General

3.1.1. Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the Employer, and shall at all times support and safeguard the Employer's legitimate interests in any dealings with Third Parties.

3.1.2. Terms of Reference

The scope of services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Consultant shall undertake the services in conformity with the time schedule stated therein.

3.1.3. Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that Personnel and agents of the Consultant comply with the Applicable Laws.

3.2. Conflict of Interest

The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.1. Prohibition of conflicting activities

Neither the Consultant nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

- a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that its Personnel and agents, similarly shall not receive any such additional remuneration.

- 3.2.5** The Consultant and its Personnel shall observe the highest standards of ethics and shall not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the "Prohibited Practices"). Notwithstanding anything to the contrary contained in this Agreement, the Employer shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the Employer shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the Employer towards, *inter alia*, the time, cost and effort of the Employer, without prejudice to the Employer's any other rights or remedy hereunder or in law.
- 3.2.6** Without prejudice to the rights of the Employer under Clause 3.2.5 above and the other rights and remedies which the Employer may have under this Agreement, if the Consultant is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the Employer to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.
- 3.2.7** For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) "corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Employer who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Employer, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the Employer in relation to any matter concerning the Project;
 - (b) "fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
 - (c) "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Employer under this Agreement;

- (d) “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Employer with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest;and
- (e) “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3. Confidentiality

The Consultant and its Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the Employer to the Consultant and its Personnel; any information provided by or relating to the Employer and its technology, technical processes, business affairs or finances or any information relating to the Employer’s employees, officers or other professionals or suppliers, customers, or contractors of the Employer; and any other information which the Consultant is under an obligation to keep confidential in relation to the Work, the Services or this Agreement (“Confidential Information”), without the prior written consent of the Employer.

Notwithstanding the aforesaid, the Consultant and its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, or becomes a part of the public knowledge from a source other than the Consultant
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant and its Personnel shall give the Employer, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment;and
- (iv) is provided to the professional advisers, agents, auditors or representatives of the Consultant and its Personnel, as is reasonable under the circumstances; provided, however, that the Consultant and its Personnel, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

3.4. Liability of the Consultant

3.4.1. The Consultant’s liability under this Agreement shall be determined by the Applicable Laws

and the provisions hereof.

3.4.2. Consultant's liability towards the Employer

The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Employer for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3. The Parties hereto agree that in case of negligence or willful misconduct on the part of the Consultant or on the part of any person acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the Employer, shall not be liable:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.

3.4.4. This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to the Agreement Value.

4. CONSULTANT'S PERSONNEL

4.1. General

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

5. OBLIGATIONS OF THE EMPLOYER

5.1. Assistance of Government.

If required, the Employer shall make efforts to ensure that the Government issues to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2. Change in Applicable Law

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to taxes and duties which increases or decreases the cost or reimbursable expenses incurred by the Consultant in performing the Services, by an amount exceeding 2% (two per cent) of the Agreement Value specified in Clause 6.1.2, then the amount payable to the Consultant under this Agreement

shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the aforesaid Agreement Value.

5.3. Payment

In consideration of the Services performed by the Consultant under this Agreement, the Employer shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6. PAYMENT TO THE CONSULTANT

6.1. Contract Price

6.1.1 Except as may be otherwise agreed under clause 2.6, the payments under the Agreement shall not exceed the contract price specified herein (the "Contract Price"). The Parties agree that the Contract Price is Rs. _(Rupees) per patient is firm. The accepted contract price shall be payable within 30 days from the date of discharge of patient from hospital after performing the Kidney Transplant satisfactorily.

6.1.2 In case the Employer desires to engage additional services of the Consultant not covered under the scope of work, the terms and conditions shall be negotiated and agreed between the Employer and the Consultant.

6.2 Currency of Payment

All payments shall be made in Indian Rupees.

6.3 Mode of billing and payment

The Contract Price shall be payable within 30 days from the date of discharge of patient from hospital after performing the Kidney Transplant satisfactorily.

7 LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1 The Employer shall retain by way of performance security (the “PerformanceSecurity”), 5% (five per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement.
- 7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause 7.1.1 above, furnish a Bank Guarantee initially for an amount of Rs 10,00,000/- (Rupees ten lakhs), within a period of 10 (ten) days from the date of receipt of Letter of Acceptance (LOA), substantially in the form specified at Annex-1 of this Agreement. The consultant shall pay the additional Performance Security once 5% of the cumulative amount (fees) paid or due and payable to the consultant exceeds Rs 10,00,000/- during the currency of the contract. The performance security shall remain valid till three months beyond the contract period.

7.2 Encashment and appropriation of Performance Security

The Employer shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement.

7.3 Penalty for deficiency in Services

Warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on Work or on the reputation of the Employer, other penal action including debarment for a specified period may also be initiated as per policy of the Employer.

8 FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9 SETTLEMENT OF DISPUTES

9.1 Amicable Settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2 Dispute Resolution

- 9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.
- 9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon Chairperson Executive Committee, State Health Society, Assam for amicable settlement, and upon such reference, the said person shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be Guwahati and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be Sole Arbitrator to be appointed by Mission Director, National Health Mission, Assam.
- 9.4.3 The arbitrator shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the Employer agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and the Employer agree that an Award may be enforced against the Consultant and/or the Employer, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED
behalf of
Consultant:

SIGNED, SEALED AND DELIVERED For and on
behalf of
Employer:

(Signature)(Signature)
(Name)(Name)
(Designation)(Designation)
(Address)(Address)

In the presence of:
1.

2

Annex – 1 (to Agreement)

TERMS OF REFERENCE (TOR)

1. BACKGROUND

The Department of Health & Family Welfare, Government of Assam has launched a unique Healthcare Initiative that aims at extending financial assistance for specialized treatment of children below 14 years age afflicted with some serious ailments, with priority given to children belonging to BPL families. Some of these children may need referral to suitable higher facilities outside the state for specialized treatment, while others may be treated at super specialty institutions within the state itself. For both the groups, financial assistance will be offered under the “Sneha Sparsha Scheme”. KidneyTransplant is among the identified conditions under the scheme for which treatment shall be financed by the Government of Assam. The Government of Assam therefore seeks to enter into an Agreement with Super Specialty Hospitals in India to carry out KidneyTransplant in children below the age of 14 years from the state of Assam.

2. OBJECTIVE

The objective of this RFP is to select Super Specialty Hospital (s) in India meeting the laid down qualification criteria for carrying out KidneyTransplants in children below the age of 14 years, through an open competitive bidding process.

3 . SCOPE OF SERVICES

The Consultant (i.e., the selected Super Specialty Hospital) shall perform Kidney Transplants in children below the age of 14 years from the state of Assam under the “Sneha Sparsha Scheme” of the Government of Assam. The selected Consultant shall render the following services:

- a) Provide services of Specialists including Nephrologists, Pediatricians, Pediatric Surgeons, Urologist.
- b) Provide Blood Bank/Laboratory Facilities for HLA.
- c) Carry out all investigations prior to KidneyTransplant.
- d) Carry out KidneyTransplants in state-of-the-art OperationTheatre.
- e) Provide post-operative medical care in the hospital for the period needed for each individual patient.
- f) Provide healthy diet to the patient during the entire hospitalization period
- g) Provide all prescribed medicine and consumables during the procedure and for initial 3 months.
- h) Provide food and lodging to at least two attendants accompanying the patient.

4. PERIOD OF CONTRACT

The selected Consultant shall provide the above service for a period of 3 (three) years from the date of signing the Agreement.

5. CONTRACT PRICE & PAYMENT

The contract price shall cover the total cost of services indicated under Paragraph 3 above for each KidneyTransplant and payable within 30 days from the date of discharge of the patient from the hospital and on receipt of bill.

Annex – 2 (to Agreement)

Bank Guarantee for Performance Security

(Refer Clause 7.1.2 of Agreement)
 FORMAT FOR BANK GUARANTEE FOR PERFORMANCE SECURITY
 UNCONDITIONAL AND IRREVOCABLE BANK GUARANTEE

BankGuaranteeNo. _____ Dated _____

_____(Name of theBank)

(hereinafter referred to as the “Bank”)

Beneficiary of Bank Guarantee

Mission Director
 National Health Mission, Assam
 Guwahati - 781005

Context of Bank Guarantee

Performance Security in pursuance of Clause 7.1.2 of the Contract Agreement dated _____ (hereinafter referred to as the “Agreement”), executed between the Mission Director, National Health Mission, Assam (hereinafter referred to as the “Employer”) and _____ (hereinafter referred to as “Consultant”) for carrying out Kidney Transplant in children below the age of 14 years from Assam (hereinafter referred to as the “Work or Services”), however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage or adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee.

Operative part of the Bank Guarantee

At the request of the Consultant, we _____, _____ (name and address of the bank), (hereinafter referred to as the “Bank”), do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Employer i.e. the beneficiary on behalf of the Consultant, upto a total sum of Rs. _____ (Rupees _____ only), such sum being payable by us to the Employer immediately upon receipt of first written demand from the Employer.

We unconditionally and irrevocably undertake to pay to the Employer on an immediate basis, upon receipt of first written demand from the Employer and without any cavil or argument or delaying tactics or reference by us to Consultant and without any need for the Employer to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform the Services as per requirements on the part of the Consultant or to show ground or reasons for the demand or the sum specified therein, the entire sum or sums within the limits of Rs. _____ (Rupees _____ only).

We hereby waive the necessity of the Employer to demand the said amount from the Consultant first prior to serving a Demand Notice upon us for the encashment of this Bank Guarantee amount.

We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Employer that the Employer shall, be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Consultant, which are recoverable by the Employer by invocation of this Guarantee.

This Guarantee will not be discharged due to the change in constitution of the Bank or the Consultant. We undertake not to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Employer.

We unconditionally and irrevocably undertake to pay to the Employer any amounts demanded not exceeding Rs. _____ (Rupees _____ only) notwithstanding any disputes raised by Consultant or anyone else in any suit or proceedings before any arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Employer, shall be valid discharge of our liability for payment under this Guarantee and the Consultant shall have no claim against us for making such payment.

This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____.

Notwithstanding any clause contained herein:

Our liability under this Bank Guarantee shall not exceed Indian Rs. _____ Lakh (Rupees _____ Lakh only).

This unconditional and irrevocable Bank Guarantee shall be effectively valid from _____ to _____.

We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Employer services upon us a written claim or demand on or before _____.

Authorized Signatory
For Bank

Notes:

1. *The Bank Guarantee should contain the name, designation and Code number of the Officer(s) signing the Guarantee.*
2. *The address, telephone no. and other details of the Head office of the Bank as well as the issuing Branch should be mentioned on the covering letter of the issuing Branch.*

APPENDIX -1

TECHNICAL PROPOSAL

APPENDIX-I
(See Clause 2.1.3)
TECHNICAL PROPOSAL

Form-1 Letter of Proposal

(On Applicant's letter head)

(RFP Date and Reference)

To

Mission Director
National Health Mission
Saikia Commercial Complex
Shreenagar Path, G S Road
Guwahati - 781005, Assam

Subject: Engagement of Super Specialty Hospital for carrying out Kidney Transplant in children below 14 years of age.

Dear Sir,

With reference to your RFP Document dated, I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Consultant for carrying out Kidney Transplant in children below the age of 14 years from the state of Assam.

The proposal is unconditional and unqualified.

2. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
3. This statement is made for the express purpose of appointment as the Consultant for the subject assignment.
4. I/We shall make available to the Employer any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
5. I/We acknowledge the right of the Employer to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/We declare that:
 - (a) I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by the Employer;

- (b) I/We do not have any conflict of interest in accordance with Clause 2.3 of the RFP Document;
 - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any Government, Central or State; and
 - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RFP, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
8. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause 2.8 of the RFP document.
 9. I/We declare that we/any member of the consortium, are/is not a Member of a/any other Consortium applying for Selection as a Consultant.
 10. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which would cast a doubt on our ability to undertake the Work or which relates to a grave offence that outrages the moral sense of the community.
 11. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
 12. I/We further certify that no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
 13. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Authority and/ or the Government of Assam in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above-mentioned Project.
 14. The Bid Security of Rs. 5, 00,000/- (Rupees five lakh only) in the form of a Demand Draft is attached, in accordance with the RFP document.
 15. I/We agree and understand that the proposal is subject to the provisions of the RFP document. In no case, shall I/we have any claim or right of whatsoever nature if the Work is not awarded to me/us or our proposal is not opened or rejected.
 16. I/We agree to keep this offer valid for 90 (ninety) days from the Proposal Due Date specified in the RFP.
 17. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form 4.
 18. In the event of my/our firm/ consortium being selected as the Consultant, I/we agree to enter into an Agreement in accordance with the format Schedule - 2 of the RFP. We agree not to seek any changes in the aforesaid form and agree to abide by the same.

19. I/We have studied the RFP and all other documents carefully. I/ We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by the Employer or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Work.
20. The Financial Proposal is being submitted in a separate cover. This Technical Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
21. I/We agree and undertake to abide by all the terms and conditions of the RFP Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the RFP Document.

Yours faithfully,

(Signature, name and designation of the authorized signatory) (Name and seal of the Applicant / Lead Member)

APPENDIX-I

Form – 2. Particulars of the Applicant

1.1	Title of Work: Carrying out Kidney Transplant in children below the age of 14 years from the state of Assam
1.2	Whether the Applicant is a sole Entity?
1.3	<p>State the following:</p> <p>Name of Institution or Firm:</p> <p>Legal status: <i>(e.g. incorporated private company)</i></p> <p>Incorporation documents <i>(to be enclosed at the end)</i>: (e.g. Certificate of Incorporation, Memorandum/Articles of Association etc)</p> <p>Registered address:</p> <p>Year of Incorporation:</p> <p>Year of commencement of business:</p> <p>Principal place of business:</p> <p>Detailed profile, description of the institution including details of its main business:</p> <p>Name, designation, address, phone number, e-mail of the authorized signatory of the Applicant:</p>
1.4	<p>If the Applicant is a Lead Member of a Consortium, state the following for each of the member firms:</p> <p>(i) Name of the firm:</p> <p>(ii) Legal status:</p> <p>(iii) Registered address & principal place of business:</p>
1.5	<p>For the Applicant (in case of a Consortium, for each Member), state the following:</p> <p>(i) In case of non Indian Firm, does the Firm have business presence in India?</p>

	<p><i>State Yes or No</i></p> <p>If yes, provide the office addresses in India</p> <p>(ii) Has the Applicant or any Member (in case of a Consortium) been penalized by any organization for poor quality of service or breach of contract in the last fiveyears?</p> <p><i>State Yes or No</i></p> <p>(iii) Has the Applicant/Consortium Member ever failed to complete any work awarded to it by any public authority/entity in the last five years?</p> <p><i>State Yes or No</i></p> <p>(iv) Has the Applicant or any Member of the Consortium been blacklisted by any Government Department/Public Sector Undertaking in the last fiveyears?</p> <p><i>State Yes or No</i></p> <p>(v) Has the Applicant suffered bankruptcy/insolvency in the last fiveyears?</p> <p><i>State Yes or No</i></p> <p>Note: If answer to any of the questions at (ii) to (v) is yes, the Applicant is not eligible for this assignment.</p> <p>(vi) Date on which the Consortium was incorporated.....</p> <p>(vii) Number of applications submitted in last one year in response to RFP by other State Governments for similar works.....</p>
	<p>Signature, Name and Designation of the authorized Signatory:</p> <p>For & behalf of</p>

APPENDIX - 1

Form – 3 Statement of Legal Capacity

(To be forwarded on the letter head of the Applicant)

Reference:

Date

To

The Mission Director
National Health Mission, Assam
Saikia Commercial Complex
Shreenagar Path, G S Road
Guwahati-781005

Subject:Engagement of Super Specialty Hospital for carrying out Kidney Transplant in children below the age of 14 years from the state of Assam.

I/We hereby confirm that we, the Applicant satisfy the terms and conditions laid down in the RFP document.

I/We have agreed that (*Insert individual's name*) will act as our Authorized Representative/ will act as the Authorized Representative on our behalf and has been duly authorized to submit our Proposal. Further, the authorized signatory is vested with requisite powers to furnish such proposal and all other documents, information or communication and authenticate the same.

Yours faithfully,

(Signature, name and designation of the authorized signatory)
For and on behalf of.....

**Please strike outwhichever is not applicable*

APPENDIX -1

Form – 4. Power of Attorney

Know all men by these presents, we,..... (*name of Firm and address of the registered office*) do hereby constitute, nominate, appoint and authorize Mr. /Ms.....
son/daughter/wife of.....and presently residing at
 , who is presently employed with us and holding the position of.....
 as our true and lawful attorney(hereinafter referred to as the “Authorized Representative”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal to Mission Director, National Health Mission, Assam (the Employer)for selection as Consultant for carrying out Kidney Transplant in children below the age of 14 years from the state of Assam, including but not limited to signing and submission of all applications, proposals and other documents and writings and providing information/ responses to the Employer, representing us in all matters before the Employer, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with the Employer in all matters in connection with or relating to arising out of our Proposal for the said Work and/or upon award thereof to us till the entering into the Agreement with theEmployer.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done byour said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done byus.

IN WITNESS WHEREOF WE, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THISDAY OF , 20**

For
 (Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarised Accepted

(Signature, name, designation and address of the Attorney)

Notes:

1. *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants (s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 50 (fifty) and duly notarized by a notarypublic.*

Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.

APPENDIX - I

Form-5 Financial Capacity of Applicant

(Refer Clause 2.2.2 (B))

S. No.	Financial Year	Annual Turnover (Rs. In Crores)
1.	2017-2018	
2.	2018-2019	
3.	2019-2020	
TOTAL		
<p>Certificate from the Statutory Auditor</p> <p>This is to certify that..... (name of the Applicant) has achieved annual sales turnover shown against the respective years from its hospital & allied operations.</p> <p><u>Name of the Audit Firm, Seal of the Audit Firm & Date:</u></p> <p style="text-align: center;">(Signature, name and designation of the authorized signatory)</p>		

In case the Applicant does not have a statutory auditor, it shall provide the certificate from its chartered accountant that ordinarily audits the annual accounts of the Applicant.

Note: Please do not attach any printed Annual Financial Statement.

APPENDIX - I

Form- 6: Particulars of Key Personnel

SL.	Name of Key Personnel	Designation	Academic Qualification	Present Employment		Total years of experience	Number of Kidney Transplants Performed	Other experience
				Name of Institution	Employed Since			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
1								
2								
3								
4								
5								
6								
7								
8								

Note:

Particulars of all employees including Nephrologists, Paediatricians, Paediatric Surgeons, Urologist Technicians and Nursing staff should be included.

APPENDIX - I

Form-7 Proposed Methodology and Work Plan

The proposed methodology and work plan shall be described as follows:

1. Understanding of TOR (not more than two pages)

The Applicant shall clearly state its understanding of the TOR and also highlight its important aspects. The Applicant may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

2. Methodology and Work Plan (not more than three pages)

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. In case the Applicant is a consortium, it should specify how the expertise of each firm is proposed to be utilized for this assignment.

Note: Marks will be deducted for writing lengthy and out of context responses.

APPENDIX - I

Form-8: Abstract of Kidney Transplants performed by the Applicant

(Refer Clause 3.1)

SL	FINANCIAL YEAR	NAME OF THE HOSPITAL/HOSPITALS	NUMBER OF KIDNEY TRANSPLANTS DONE IN THE HOSPITAL/HOSPITALS	SUCCESS RATE (%)	AVERAGE TIME OF HOSPITALIZATION OF APATIENT (Days)
1	2015-16				
2	2016-17				
3	2017-18				
4	2018-19				
5	2019-20				

Note:

The Applicant should provide details of only those operations that have been undertaken by it under its own name.

Certificate from the Applicant

This is to certify that the information contained in table above is true and correct.

Name of the Applicant:

Signature of the Applicant:

Date:

Seal of Applicant:

APPENDIX - I

Form-9 Curriculum Vitae (CV) of Key Personnel

- 1. Name of Personnel:
- 2. Designation
- 3. Date of Birth:
- 4. Nationality:
- 5. Educational Qualifications:
- 6. Employment Record:

(Starting with present position, list in reverse order every employment held.)

- 7. Details of experience:

Name of Institution	Description of responsibilities
---------------------	---------------------------------

- 8. Details of the current assignment :

Certification:

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications and my experience.

Place.....

(Signature and name of the Key Personnel)

(Signature, name & seal of the Authorized Signatory of the Applicant)

Notes:

- 1. Use separate form for each Key Personnel (Specialistsonly)
- 2. Each page of the CV shall be signed in ink by both the Personnel concerned and by the Authorized Representative of the Applicant firm along with the seal of thefirm.

APPENDIX - I

Form-10 Certification of number of Kidney Transplant beds

To

The Mission Director
National Health Mission, Assam
Saikia Commercial
Complex Shreenagar
Path, G S Road Guwahati-
781005

Subject: Certification of number of dedicated Kidney Transplant beds in the Super Specialty Hospital

Sir,

I/We hereby confirm that we, the Applicant (along with other members in case of consortium, constitution of which has been described in the Proposal*), have ... numbers of dedicated Kidney Transplant Beds in our facility.

Yours faithfully,

(Signature, name and designation of the authorized signatory)
For and on behalf of.....

APPENDIX - I

Form-11 Certification of NABL & NABH Accreditation

To

The Mission Director
National Health Mission, Assam
Saikia Commercial
Complex Shreenagar
Path, G S Road Guwahati-
781005

Subject: Certification of NABL & NABH Accreditation of the Super Specialty Hospital

Sir,

I/We hereby confirm that we, the Applicant's Health Institution (along with other members in case of consortium, constitution of which has been described in the Proposal*), have NABL& NABH Accreditation. The relevant attested copies certifying the same is enclosed.

Yours faithfully,

(Signature, name and designation of the authorized signatory)
For and on behalf of.....

APPENDIX - I

Form-12 Certification of Infection Control Committee

To

The Mission Director
National Health Mission, Assam
Saikia Commercial Complex
Shreenagar Path, G S Road
Guwahati-781005

Subject: Certification of Infection Control Committee at the Super Specialty Hospital

Sir,

I/We hereby confirm that we, the Applicant's Health Institution (along with other members in case of consortium, have an Infection Control Committee in place. The list of members and the key functions of the committee are attached with this letter.

Yours faithfully,

(Signature, name and designation of the authorized signatory)
For and on behalf of.....

APPENDIX -2
FINANCIAL PROPOSAL

APPENDIX – 2

FINANCIAL PROPOSAL /BOQ

(To be submitted online only)

Medical Procedure	Fees per Case without GST (in Rs)	GST	Fee Per Case with GST (in Rs)	Fee per Case with tax(in Words)
Kidney Transplant performed for children below the age of 14 years.				

Note:

- a) Format for Financial Proposal (or BoQ) shall be available in the e-Tender portal <http://assamtenders.gov.in>. The applicant can download the format and save it in its computer without changing filename otherwise price bid will not get uploaded.
- b) The Applicant should fill in the details in the same file and upload the same back to the website. Hard Copy of Price bid will not be accepted. This sample BOQ is for reference only.
- c) This price quoted here shall remain valid for 120 days from the due date of submission or a higher period as mutually agreed.
- d) GST shall be paid at applicable rate by the Employer.