**Tender Documents**

|  |
| --- |
| Order of the Ministry of Health of the Kyrgyz Republic dated [Date] |
|  |

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**DRAFT**

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT[[1]](#footnote-1)**

**on organization of dialysis services in Bishkek**

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**between**

**THE MINISTRY OF HEALTH OF THE KYRGYZ REPUBLIC**

**and**

**[Full Name of the Private Partner]**

**Bishkek, Kyrgyz Republic**

**[DATE]**

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**[…]**

**PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

**ON ORGANIZATION OF DIALYSIS SERVICES IN BISHKEK**

**PROVISIONS**

**THIS PUBLIC-PRIVATE PARTNERSHIP AGREEMENT on organization of dialysis services in Bishkek** (the "**Agreement**") is executed on [DATE] (the "**Execution Date**") in Bishkek, Kyrgyz Republic, by and between:

**Ministry of Health of the Kyrgyz Republic**, acting in accordance with Law No. 95 of the Kyrgyz Republic on Public-Private Partnership of July 22, 2019 and the Regulation on the Ministry of Health of the Kyrgyz Republic approved by the KR Government Resolution No. 118 of February 20, 2012, hereinafter referred to as the "**Public Partner**", represented by [NAME], [TITLE], on the one hand, and

**[Name of the Company]**, a legal entity organized and existing under the laws of [Name of the Country] and the charter hereinafter referred to as the "**Private Partner**", represented by [NAME], [TITLE], on the other hand.

The Public Partner and the Private Partner shall be hereinafter referred to jointly as the "**Parties**" and individually as the "**Party**".

**WHEREAS**

1. On [Date], the Public Partner, pursuant to Order No. 544 “Оn the implementation of public-private partnership mechanism in the health care sector of the Kyrgyz Republic”, initiated the public-private partnership project for the organization of dialysis services in Bishkek (the "**Project**");
2. On [Date], the tender commission formed by the Public Partner to conduct a tender for the Project published on the website of the Public-Private Partnership Center the tender documents approved by the Public Partner by Order No. [Number] dated [Date] (the "**Tender**");
3. On [Date], the tender commission, in accordance with Minutes No. [Number] of [Date], made a decision to announce the Private Partner the winning bidder and to execute the Agreement between the Public Partner and the Private Partner.
4. […]

**NOW, THEREFORE,** the Parties hereby agree as follows.

1. **TERMS AND INTERPRETATION OF AGREEMENT**

* 1. **Terms**

The following terms shall have the following meaning in this Agreement, unless expressly provided otherwise:

"**Acceptance Certificate**" means a certificate of acceptance of Facility into operation to be issued under Legislation upon completion of the Establishment of Facility and all other Conditions to Commissioning under this Agreement.

"**Acts of Public Partner**" mean regulatory acts such as orders, standards, regulations, instructions, rules and other ministerial acts (including the National Dialysis Standard) issued by the Public Partner or other public authorities of the KR that are relevant to the Project and binding on the Private Partner such as the acts listed in ***Annex 2***.

"**Additional Services**" has the meaning given in Clause 6.4.1.

"**Affected Party**"has the meaning given in Clause 19.2.1.

"**Agreement**" has the meaning given in the preamble of this Agreement.

"**Alternative Employment Plan**" has the meaning given in Clause 8.2.1.

“**ANS**” means Actual Number of Sessions in a month.

"**Applicable Permits**" mean licenses (including the License), certificates, authorizations, consents and any other permits listed in ***Annex 6***as may be necessary for the Private Partner and/or its Personnel to implement the Project.

"**Arbitration**" has the meaning given in Clause 22.3.1.

"**Bank Guarantee**" has the meaning given in Clause 14.

"**Bid Bond**" means a bank guarantee provided by the Private Partner in the course of the tender as provided by the Request for Proposals.

"**Change in Law**" means the adoption or change of Legislation after the date of this Agreement that leads to a Material Loss of the Private Partner.

"**Commissioning**" means the commissioning of the Facility and Equipment.

"**Commissioning Date**" means the date the Public Partner issues the Acceptance Certificate.

"**Compensation on Termination**" means the compensation payable to the Private Partner upon early termination of Agreement in the amount set out in ***Annex 15***.

"**Conditions to Commissioning**" has the meaning given in Clause 5.4.

"**Conditions to Effectiveness**" means the conditions precedent to entry into force of the Agreement set forth in Clauses 3.3 and 3.4.

"**Core Clinical Services**" means the delivery of treatment and pharmaceuticals to the Patients in the Facility.

"**Dialysis Services**" mean the services listed in ***Annex 3*** and required to be provided by the Private Partner to Patients for the purposes of performing the Obligations of Private Partner.

"**Dispute**" has the meaning given in Clause 22.2.

"**E&S Management System**" means the environmental and social management system of the Private Partner to be developed and maintained in accordance with Clause 12.1.

"**Effective Date**" has the meaning given in Clause 3.2.1

"**EHS Guidelines**" means:

1. World Bank Group Environmental, Health, and Safety (EHS) General Guidelines dated 20 April 2007;
2. EHS Guidelines for Health Care Facilities, as may be modified, amended, and updated from time to time, available at http://www.ifc.org/ehsguidelines.

"**Equipment**" has the meaning given in Clause 5.2.

"**Equity**" means the amount of funds contributed to the Private Partner by the shareholders or affiliates of the Private Partner for the purposes of the Project, including inter-company and shareholder loans, but not including retained earnings unless invested in Project assets.

"**Establishment of Facility**" has the meaning given in Clause 5.1.

"**Execution Date**" has the meaning given in the preamble of Agreement.

"**Facility**" has the meaning given in Clause 5.1.

"**Force Majeure Event**"means an event beyond the control of the Parties, which prevent them from complying with their obligations under this Agreement, including: war, revolution, rebellion, insurrection, riot, Labor Strike, usurped power, other civil unrest, sabotage or terrorism, natural disaster, fire, earthquake, flood, storm, hurricane, epidemics and epizootics; and other force majeure which neither Party can reasonably foresee or prevent. Force Majeure events shall not include, in particular, breach of obligations by counteragents, non-availability in the market of the goods necessary for performance or non-availability of funds.

"**GNP**" means the guaranteed number of Patients as defined in ***Annex 3***.

"**GNS**" means the guaranteed number of sessions as defined in ***Annex 3***.

"**Good Industry Practice"** means using standards, practices, methods and procedures conforming to applicable law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

"**Government Interference**" means any one or more of the following events:

1. requisition, nationalization or confiscation of the Project and/or the Private Partner (including of the shares of the Private Partner, the Facility and/or any or all Equipment and/or other Project Assets) by the Public Partner or other public authority of the KR;
2. any act or action or omission of the Public Partner or other public authority of the KR and/or public official, which discriminates against or disproportionally affects the Project and/or the Private Partner relative to similar projects in the KR and which has a material and adverse financial impact on the Project and/or the Private Partner; and
3. interference by the Public Partner and/or other public authority of the KR and/or public official in the business activity of the Private Partner which materially obstructs the performance by the Private Partner of its obligations under the Agreement.

"**IFC Fee**" has the meaning given in Clause 3.4.1.

"**IFC Performance Standards**" means the IFC Performance Standards on Environmental and Social Sustainability dated January 1, 2012 available at http://www.ifc.org/performancestandards.

"**IFC**" means International Finance Corporation.

"**Insurance**" has the meaning given in Clause 11.2.

“**Interruption**” means at least 8% of the Patients in any one or more units not served for seven (7) consecutive calendar days with fault attributable directly to the Private Partner.

"**Joint Action Plan**" has the meaning given in Clause 16.2.

"**Liaison Committee**" has the meaning given in Clause 16.1.

"**KR**" means the Kyrgyz Republic.

"**Labor Strike**" means temporary voluntary refusal of employees of the Private Partner or Third Party to perform work (fully or partially).

"**Legislation**" means the totality of all legal and regulatory acts effective in the KR and the Acts of Public Partner.

"**License**" means the license confirming the right of a private medical institution to engage in the private medical practice in the KR.

“**Line Infection**” means a blood stream infection event with a positive blood culture and in which the suspected source was reported as either the vascular access or unknown. A blood stream infection is considered a line infection when other causes (e.g. a wound infection) cannot be proven.

"**Losses**"means the following:

1. expenses, costs and other liabilities incurred by the Private Partner, including any fees, taxes or charges which may be imposed by any public authority of the KR; and/or
2. unrealized revenue of the Private Partner calculated on the basis of the Nominal Monthly Payment.

"**Material Losses**" means Losses exceeding [fifty per cent (50%) of the Nominal Monthly Payment].

"**Ministry of Economy**" means the Ministry of Economy of the KR.

"**Ministry of Finance**" means the Ministry of Finance of the KR.

"**Monthly Deduction**" means the amount of Penalty divided by three (3) and deducted from the three (3) Monthly Payments following the calculation of Penalty.

"**Monthly Payment**" means the amount payable by the Public Partner to the Private Partner for the provision of Dialysis Services calculated in the manner specified in ***Annex 5***.

"**National Dialysis Standard**" means national standards of provision of dialysis services in the KR, provided by Industry Standard "Haemodialysis Unit. General Safety Requirements" approved by the Public Partner's Order No. 78 of February 22, 2013 and Regulation on safety of technological processes of haemodialysis and filtration procedures, equipment, expendable materials, and quality of haemodialysis solutions/fluids, approved by the Public Partner's and Mandatory Health Insurance Fund's Order No. 294 "On Improvement of Access to Haemodialysis Services for Patients with Last Stage of Chronic Kidney Disease" of April 28, 2016.

"**Nominal Monthly Payment**" means the payment for a GNS in a calendar month as defined in ***Annex 5*** multiplied by the SP.

"**Notified Party**"has the meaning given in Clause 21.6.1.

"**Obligations of Private Partner**" means obligations of the Private Partner stipulated by this Agreement, including obligations provided by the Joint Action Plan.

"**Operation of Equipment**" has the meaning given in Clause 5.2.1.

"**Outstanding Debt**" means the aggregate of amounts outstanding under debt financing (excluding inter-company and shareholder loans) drawn and expended by the Private Partner for the purposes of the Project, as well as all interest, fees and expenses accrued or owing under the terms of the applicable debt instruments, in each case as of the Termination Date.

"**Patient List**" means the list of persons compiled and updated by the Public Partner from time to time under procedures established by the Public Partner and provided to the Private Partner for the purposes of providing the Dialysis Services to such persons.

"**Patients**" have the meaning given in Clause 3.1.

"**Penalty**" means the quarterly penalty as defined in ***Annex*** *4*.

"**Personnel**" means the persons engaged by the Private Partner to implement the Project and bound by employment and/or civil contracts with the Private Partner.

"**PPP Law**" means Law No. 95 of the Kyrgyz Republic "On Public-Private Partnership" of July 22, 2019.

"**PPP**" means public-private partnership.

"**Private Partner**" has the meaning given in the preamble of the Agreement.

"**Private Partner's Default**"means an event of default by the Private Partner, which may lead to the early termination of the Agreement in accordance with Clause 21.3.

"**Project Implementation Schedule**" means a schedule outlining stages and periods of implementation of Project by Private Partner specified in***Annex 17***.

"**Project Investments**" have the meaning given in Clause 13.

"**Project**" has the meaning given in the preamble of Agreement.

"**Public Dialysis Units**" mean dialysis units within public healthcare organizations managed by the Public Partner, offering, as of the Execution Date, dialysis services to Patients and subject to retrenchment and/or closure due to termination of dialysis services upon transfer of Patients to Private Partner.

"**Public Partner**" has the meaning given in the preamble of Agreement.

"**Public Partner's Default**" means an event of default by the Public Partner which may lead to the early termination of the Agreement in accordance with Clause 21.4.

"**Reorganisation**" shall mean any reorganisation of the Private Partner as defined by Article 92 of the Civil Code of the KR.

"**Rights to Equipment**" means the rights of the Private Partner to the Equipment including rights of ownership and/or use (lease) of the Equipment.

"**Rights to Facility**" mean the rights of the Private Partner to the Facility including rights of ownership and/or use (lease) of the Facility.

"**Shareholder of Private Partner**"means the owner(s) and/or participant(s) and/or shareholder(s) possessing participation interests and/or shares in Private Partner.

"**Session Price**" or "**SP**" has the meaning given in Clause 6.4.1.

"**Special Event**" has the meaning given in Clause 17.1.

"**State Support**" means the types of state financial and economic support to be provided by the Public Partner for the Project in accordance with the PPP Law as listed in ***Annex 14****.*

"**Technical Proposal**" means the technical proposal of the Private Partner submitted for the purposes of Tender and outlining the Private Partner's obligations with regard to implementation and other plans of the Project as specified in ***Annex 10***.

"**Technical Requirements**" mean the requirements of the Public Partner for Facility as listed in ***Annex 1***.

"**Tender**" has the meaning given in the preamble of Agreement.

"**Term of Agreement**" has the meaning given in Clause 3.2.1.

"**Terminating Party**"has the meaning given in Clause 21.6.1.

"**Termination Date**" means any of the following days, as appropriate:

1. the day when the term of the Agreement expires;
2. the day of signing the termination agreement or another day specified in such agreement;
3. the day specified in the Termination Notice, subject to the exception identified in Clause 21.8.6.

"**Termination Notice**"has the meaning given in Clause 21.6.1.

"**Third Parties**" have the meaning given in Clause 9.1.

**"Total Contract Value"** means the aggregate of all Monthly Payments calculated in accordance with ***Annex 5*** to this Agreement (including the annual indexation of the Session Price) over the course of the full ten-year term of the Agreement; provided, however, that in the event that such value is to be calculated prior to the expiration of the full ten-year term the Monthly Payment in respect of months occurring after the date of calculation shall be determined assuming that the value of ANS is less than the value of GNS in accordance with the formula set out in ***Annex 5*** hereto.

"**Transfer Date**" has the meaning given in Clause 21.7.3.

"**Transferred Assets**" means all exclusive and non-exclusive Rights to Facility, Rights to Equipment and all other Project-related assets, including intellectual property rights to relevant software, excluding financial assets (such as cash, cash equivalents and accounts receivable), and (to the extent these are transferable in accordance with Clause 9.3) contracts with Third Parties, in each case having the same scope of and subject to the same terms as the rights acquired and actually used by the Private Partner in connection with the Project.

* 1. **Interpretation of Agreement**

In this Agreement, the following rules of interpretation shall apply:

* + 1. headings are for convenience only and shall not affect the interpretation of this Agreement;
    2. each of the Annexes shall be an integral part of this Agreement and may be amended or modified from time to time by executing an addendum to such Annex or a new version of such Annex signed by both Parties;
    3. this Agreement consists of the main text of the Agreement and Annexes; a reference to Annex is to a relevant Annex of this Agreement; in the event of any discrepancy or controversy between the main text of the Agreement and Annexes, the main text shall prevail;
    4. the words "include", "including", "such as", "in particular" shall not limit the sense of the words following those terms;
    5. unless otherwise required by the context of this Agreement, words in the singular include the plural and vice versa;
    6. this Agreement is subdivided into Clauses; a reference to any Clause without indicating a document is a reference to a relevant Clause of this Agreement;
    7. a reference to any legal or regulatory act includes amendments and modifications made thereto from time to time;
    8. unless otherwise required by the context, "day" means calendar day, "month" means calendar month;
    9. if the date of expiration of a specified period falls on the day other than the business day, the next business day shall be considered as the date of expiration of a specified period;
    10. the word denoting persons shall include individuals, legal entities and their successors or assignees (unless otherwise provided in this Agreement).

1. **REPRESENTATIONS AND WARRANTIES OF PARTIES** 
   1. **Representations and warranties of Public Partner**

As of the Execution Date and during the Term of Agreement, the Public Partner represents and warrants to the Private Partner as follows:

* + 1. The Public Partner is a public executive agency operating in accordance with the Legislation, duly empowered and authorised to execute the Agreement and to perform the obligations contemplated therein; all approvals, permits and other authorizations that are necessary for the Public Partner to execute and perform this Agreement are obtained and maintained valid.
    2. The execution and performance of this Agreement shall not now or thereafter violate the provisions of any agreement or obligation to which the Public Partner is a party or of any legal or regulatory act or other act governing or pertaining to operations of the Public Partner.
    3. This Agreement represents a valid, binding and enforceable obligation of the Public Partner.
    4. The dispute resolution procedure contemplated in this Agreement is consistent with Legislation, valid, binding and enforceable in the courts of the KR.
    5. The Public Partner shall take all necessary steps required from it under budget legislation of KR for the purposes of timely performance of its payment obligations under Agreement.
  1. **Representations and warranties of Private Partner**

As of the Execution Date and during the Term of Agreement, the Private Partner represents and warrants to the Public Partner as follows:

* + 1. The Private Partner is a legal entity organized and operating in accordance with […] law.
    2. The Private Partner is duly empowered and authorized to execute the Agreement and to perform the obligations contemplated by the Agreement. All approvals, permits and other authorizations that are necessary for the Private Partner to execute and perform this Agreement are obtained and maintained valid.
    3. The execution and performance of this Agreement shall not now or thereafter violate the provisions of any agreement or obligation to which the Private Partner is a party or of any legal or regulatory act or other act governing or pertaining to operations of the Private Partner.
    4. This Agreement represents a valid, binding and enforceable obligation of the Private Partner.
    5. All documents and information provided by the Private Partner and/or any of its representatives or agents and/or as applicable, the Shareholder of the Private Partner and/or the Shareholder of Private Partner in the process of Tender, including but not limited to the documents and information provided upon submission of application for participation in Tender, and information in the Technical Proposal, are accurate and complete.
    6. The Private Partner and/or the Shareholder of Private Partner are not in the process of liquidation and/or insolvency (bankruptcy) or under threat of liquidation and/or insolvency (bankruptcy).
    7. The Private Partner and/or as applicable the Shareholder of Private Partner have no unpaid taxes, fees or other mandatory charges payable to the budget of KR at any level or non-budgetary fund.
  1. **Effects of breach of representations and warranties**

Each of the Parties may claim compensation for losses, expenses, costs and other liabilities incurred by it in accordance with Legislation as a result of any representation or warranty of the other Party set out in this Clause 2 being false, inaccurate or misleading as of the Execution Date.

1. **SUBJECT MATTER, ENTRY INTO FORCE AND TERM OF AGREEMENT**

[Please refer to the “Final Written Assignment” document]

1. **PRIMARY OBLIGATIONS OF PARTIES**

[Please refer to the “Final Written Assignment” document]

1. **FACILITY AND EQUIPMENT**

[Please refer to the “Final Written Assignment” document]

1. **PROVISION OF DIALYSIS AND OTHER SERVICES**

[Please refer to the “Final Written Assignment” document]

1. **APPLICABLE PERMITS** 
   1. **Obtaining of applicable permits**
      1. The Private Partner shall obtain all applicable licenses (including the License) and permits required by Legislation for Establishment of Facility, Operation of Equipment, employment and training of Personnel, provision of Dialysis Services, and performance of other Obligations of Private Partner (the "**Applicable Permits**"). The list of Applicable Permits is set forth in ***Annex 6****.* The Private Partner shall bear responsibility for timely renewal of all Applicable Permits during the Term of Agreement.
      2. The costs of applying for, obtaining and renewing all necessary Applicable Permits shall be borne by the Private Partner.
   2. **Assistance of Public Partner**

The Public Partner shall provide assistance to the Private Partner in obtaining and renewing Applicable Permits to the extent provided by the Legislation.

1. **PERSONNEL**

[leave it blank, for your information]

1. **THIRD PARTIES**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **INTELLECTUAL PROPERTY**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **INSURANCE**
   1. **Mandatory insurance**

The Private Partner shall at its own expense during the Term of Agreement perform the requirements of Legislation on mandatory insurance specified in ***Annex 11***.

* 1. **Insurance**

The Private Partner shall at its own expense acquire and maintain during the Term of Agreement the mandatory insurance and the types of additional insurance as set forth in ***Annex 11***(the "**Insurance**").

1. **ENVIRONMENTAL AND SOCIAL OBLIGATIONS**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **FINANCING OF PROJECT**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **BANK GUARANTEE**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **MONITORING AND REPORTING**

[Please refer to Article 16 of the PPP Law 2019 and Section 15 of the PPPA on Issyk-Kul Hotel]

1. **LIAISON COMMITTEE**

[Please refer to Section 16 of the PPPA on Issyk-Kul Hotel]

1. **SPECIAL EVENTS**
   1. **Definition of Special Event**

"**Special Event**" means any one or more of the following events:

1. non-execution of the Acceptance Certificate to the extent that the Private Partner has taken all necessary steps required from it under Agreement and Legislation for Commissioning and the execution of the Acceptance Certificate;
2. non-receipt, late receipt and/or delay in receipt and/or renewal of Applicable Permits to the extent that the Private Partner has taken all necessary steps required from it under Agreement and Legislation for obtaining such Applicable Permits;
3. Change in Law;
4. Government Interference;
5. failure of any public authority of the KR to register or acknowledge registration of the Private Partner's right of ownership or other rights of Private Partner in the Facility (if applicable) to the extent that the Private Partner has taken all necessary steps required from it under Agreement and Legislation for such registration.
   1. **Effects of Special Event**

[leave it blank, for your information]

* 1. **Steps of Parties to address Special Event**

[leave it blank, for your information]

* 1. **Compensation for Losses caused by Special Event**

[leave it blank, for your information]

* 1. **Favourable change in Legislation**

[leave it blank, for your information]

1. **LIABILITY OF PARTIES**

[Please refer to the in-class presentation on the PPP Agreement (Dialysis Services)]

1. **FORCE MAJEURE EVENTS**
   1. **Definition of Force Majeure Events**

Neither Party shall be considered in partial or full breach of this Agreement to the extent that performance of its respective obligations is prevented by a Force Majeure Event, provided such Party undertook all reasonable measures to mitigate the adverse effect of the Force Majeure Event.

If an event may be qualified as both a Force Majeure Event and a Special Event, for the purposes of this Agreement, it shall be deemed as a Force Majeure Event and shall be subject to the provisions pertaining to Force Majeure Events rather than those pertaining to Special Events.

* 1. **Steps to address Force Majeure Events**

[Please refer to Section 19 of the PPPA on Issyk-Kul Hotel]

1. **AMENDMENTS TO AGREEMENT**

The Parties may make amendments to the Agreement, including its Annexes by an agreement in writing, signed by both parties as an addendum to the Agreement.

1. **TERMINATION OF AGREEMENT**

* 1. **Termination of Agreement due to expiration of Term of Agreement**

The Agreement shall cease to be effective at 23:59 Bishkek time on the last day of the Term of Agreement. In such case, the Agreement shall cease to be effective without the need to sign any document by the Parties.

The Agreement may be terminated early prior to expiration of the Term:

1. by mutual consent of the Parties – in the manner provided in Clause 21.2;
2. for Private Partner's Default – in the manner provided in Clause 21.3;
3. for Public Partner's Default or due to a Special Event – in the manner provided in Clause 21.4.
4. due to a Force Majeure Event in accordance with Clause 21.5;
5. in accordance with Clause 17.5.3 in cases stipulated therein.
   1. **Early termination of Agreement by mutual consent of Parties**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Early termination of Agreement for Private Partner's Default**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Early termination of Agreement for Public Partner's Default or due to a Special Event**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Early termination of Agreement due to a Force Majeure Event**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Procedure for early termination of Agreement**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Compensation on Termination**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

* 1. **Steps of Parties during termination of Agreement**

[You may leave it blank or refer to Section 21 of the PPPA on Issyk-Kul Hotel]

1. **DISPUTE RESOLUTION**
   1. **Applicable law**

This Agreement shall be governed and construed in accordance with the Legislation.

* 1. **Good faith negotiations**

In the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including its interpretation, violation, termination or invalidity (the "**Dispute**"), the Parties shall attempt to resolve such Dispute through negotiations in good faith within [sixty (60)] calendar days from the date on which either Party has received written notice of the Dispute.

* 1. **Arbitration**

[Please include any arbitration clause at your discretion; you may refer to the websites of arbitration institutions in foreign countries]

1. **NOTICES** 
   1. Any notice or other communication required under this Agreement shall be given in writing in Russian and shall be delivered by registered mail, return receipt requested, or courier service to the addresses indicated below:

If to the Public Partner:

Kyrgyz Republic

Bishkek, 720040, 148 Moskovskaya Street

Attention: [name] [title]

If to the Private Partner:

Kyrgyz Republic

Bishkek, [index, address]

Attention: [name] [title]

* 1. The Parties shall notify each other of any changes in their addresses within five (5) business days from the date of such changes. In the absence of information on the changed address of the Party, all notices delivered to the previously notified addresses shall be deemed duly served.
  2. The notice shall become effective from the moment of its receipt and shall be deemed served: (i) if sent by courier – on the date of delivery of the Notice at respective address; or (ii) if sent by registered mail, return receipt requested, – on the date of receipt of the mail with the notice by the representative of the Party being notified.

* 1. The notice received on the day other than the business day or after the close of business shall be deemed served on the next business day.

1. **CONFIDENTIALITY**

The Parties shall maintain confidentiality of this Agreement including all Annexes thereto and other documents and/or information disclosed or provided by either Party under this Agreement. This obligation of confidentiality shall not apply to information that is:

1. disclosed by either Party to its consultants and financing parties provided that such personnel are bound by similar obligation of confidentiality;
2. disclosed to such parties and to such extent as may be necessary to perform the obligations under this Agreement;
3. generally available to the public;
4. required to be disclosed under the Legislation;
5. required to be disclosed for Arbitration;
6. required to be disclosed by court order or regulatory act of the authorized public agency of the KR.
7. **OTHER PROVISIONS**
   1. **Assignment by the Public Partner**

[leave it blank, for your information]

* 1. **Step-in rights**

[leave it blank, for your information]

* 1. **Representatives of Parties**

Invalidity of any provision of the Agreement shall not entail the invalidity of the entire Agreement, as if the Agreement could have been executed without the invalid provisions. The Parties shall within any reasonable period make revisions to the Agreement to replace the invalid or ineffective provision by the valid one.

* 1. **Language of Agreement and number of counterparts**

The Agreement shall be executed in Russian and English in [four (4)] original counterparts of equal legal force, with [two (2)] counterparts in each language given to the Public Partner, and [two (2)] counterparts in each language given to the Private Partner. In case of any discrepancy between the Russian and English versions of the Agreement, the [Russian/ English] version shall prevail.

1. **LIST OF ANNEXES TO AGREEMENT**

All Annexes to the Agreement constitute an integral part of the Agreement.

[It is not required to include annexes separately; they are for your information only]

|  |  |
| --- | --- |
|  | Technical Requirements for Facility |
|  | Acts of Public Partner |
|  | Scope of Dialysis Services |
|  | Patient Outcome Performance Penalties |
|  | Payment for Dialysis Services |
|  | Applicable Permits |
|  | Personnel |
|  | Forms of reports of Private Partner |
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|  | State Support |
|  | Compensation on Termination |
|  | Rules of revisions to scope of Dialysis Services |
|  | Project Implementation Schedule |

**SIGNATURES OF PARTIES**

|  |  |
| --- | --- |
| **Public Partner:**  Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [REPRESENTATIVE'S NAME, REPRESENTATIVE'S TITLE]  [Seal] | **Private Partner:**  Signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [REPRESENTATIVE'S NAME, REPRESENTATIVE'S TITLE]  [Seal] |

1. **The present draft PPP Agreement is part of the Tender Documents and was prepared exclusively in order to familiarize the Bidders with the terms and conditions of the agreement between the Public Partner and the Private Partner selected as the Winning Bidder. The draft PPP Agreement does not constitute the Public Partner’s offer to conclude a contract. The Public Partner reserves the right to unilaterally make amendments and additions to the draft PPP Agreement in the manner prescribed by the Legislation.** [↑](#footnote-ref-1)