



दिल्ली DELHI

N 254209

This CONCESSION AGREEMENT made on this
Thousand and Eleven at Dehradun,

40 day of March, Two

महानिदेशक
चिकित्सा स्था. एवं प. क.
उत्तराखण्ड

BETWEEN

Directorate of Medical Health & Family Welfare, Government of Uttarakhand, acting through its Director General and having its registered office at 107, Chander Nagar, Dehradun - 248 001, hereinafter referred to as "the Concessioneing Authority" or "DOMH&FW" which expression shall unless repugnant to the context include the successors and assigns, on the one part



AND

Fortis Healthcare Limited, a company incorporated under the provision of the Companies Act, 1956, acting through its General Manager- Growth & Business Planning and having its registered office at Escorts Heart Institute & Research Centre Limited, Okhla Road, New Delhi 170025, hereinafter referred to as "Concessionaire" which expression shall unless repugnant to the context include the successors and permitted assigns, on the other part.



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 In Favour of
 Branch No. 5 ...

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 For the health care Ltd
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WHEREAS,

- A. DOMH&FW with an objective to provide health facilities to the citizens of Uttarakhand, decided to appoint Private Partner for Build, Operate and Transfer of Cardiology Centre at Pt Deen Dayal Upadhaya (Deen Dayal Upadhaya (Coronation)) Hospital, Dehradun, Uttarakhand.
- B. The Deen Dayal Upadhaya (Coronation) Hospital has been rebuilt recently and adequate space has been earmarked for this project, as per the site plan. A space measuring approximately 2,500 sq meters is available in the second floor of the new building for the project. Copy of the site plan is attached as Annexure A.
- C. Pursuant thereto, after evaluating the aforesaid proposals, DOMH&FW accepted the proposal submitted by the Concessionaire and issued Letter of Acceptance No. 27/P/PPP/04/2009/4362 dated February 15, 2011 to the Concessionaire requesting the Concessionaire to execute the Concession Agreement, which the Concessionaire has acknowledged by its Letter No. Nil dated February 18, 2011.
- D. The Parties hereto are required to enter into the Concession Agreement, being these presents, to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

DEFINITIONS AND INTERPRETATION

ARTICLE 1

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 7.1.

“Agreement” shall mean this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” shall mean all laws in force and effect, as of the date hereof, and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/the Concessionaire.

“Applicable Permits” shall mean all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the Concessionaire under




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Applicable Law, in connection with the Project during the subsistence of this Agreement.

“Appointed Date” shall mean the date of this Agreement.

“Arbitration Act” shall mean the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Book Value” means the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP.

“Change in Law” shall have the meaning ascribed thereto in Clause 7.6.

“COD” or “Commercial Operations Date” shall mean the date commencing on completion of Implementation Period and on which the Project Facility is operational.

“Concession” shall have the meaning ascribed thereto in Clause 2.1 of this Agreement.

“Concession Period” shall have the meaning ascribed thereto in Clause 2.2.

“Defects Liability Period” means a period of twelve (12) months commencing on Taking over Date.

“Emergency” shall mean a condition or situation that is likely to endanger the safety of the individuals on or about the Project Facility including the safety of the users thereof or which poses an immediate threat of material damage to the Project.

“Encumbrance” shall mean any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility .

“Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence as specified in Article 7.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.



“Government Agency” shall mean Government of India, any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Concessionaire, the Project Site or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Implementation Period” shall mean a period of 9 months starting from the handover date as explained in Article 3.1 (a).

“Material Adverse Effect” shall mean a material adverse effect on (a) the ability of the Concessionaire to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facility as set forth in Schedule 3.

“Operations Period” shall mean the period commencing from COD and ending at the expiry of the Concession /Termination.

“Parties” shall mean the parties to this Agreement and **“Party”** shall mean either of them, as the context may admit or require.

“Performance Security” shall mean the guarantee for performance of its obligations to be procured by the Concessionaire in accordance with Clause 4.1.

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, government or Government Agency or any other legal entity.

“Termination” shall mean early termination of the Concession, pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“Termination Date” shall mean the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“Tests” shall mean the tests to be carried out in accordance with the O&M Requirements and if not expressly specified in either of the said requirements in accordance with this Agreement.




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“User Charges” shall mean charges collected from the patients by the Concessionaire.

1.2 Interpretation

In this Agreement, unless the context otherwise requires

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- (g) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST).
- (i) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- (m) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages")



2.1. Grant of Concession

- a. Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessing Authority hereby grants and authorizes the Concessionaire to Build, operate and Transfer a Cardiology Centre at Pt. Deen Dayal Upadhaya (Coronation) Hospital, Dehradun, Uttarakhand and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement. (the "Concession").
- b. The Government of Uttarakhand would provide a space of 2,500 Square meters in the Deen Dayal Upadhaya (Coronation) Hospital, Dehradun for setting up the proposed cardiac centre. In addition DOMH&FW will also provide reasonable space in the premises for DG Set, Gas Manifold, HSD day storage, Transformer and other support utilities.

2.2 Concession Period

The Concession hereby granted is for a period of Ten (10) years from the Appointed Date (hereinafter referred to as the "Concession Period")

Provided, in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.

2.3 Acceptance of Concessionaire

- a) In consideration of the Concessionaire agreeing to receive User Charges and any other amounts, and the rights, privileges and benefits conferred upon by the DOMH&FW and other good and valuable consideration expressed herein, the DOMH&FW hereby agrees to permit Concessionaire to perform/discharge all of its obligations in accordance with the provisions hereof.
- b) The Concessionaire agrees to offer twenty (25) of beds for in-patients at government stipulated user charges. Out of the offered number of beds to government, the BPL patients would be provided service at no cost to BPL Patients, but the charges would be payable by DOMH&FW as per Schedule 1 & 2 of this Agreement.



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3.1 Handover of the Cardiology Centre

- (a) DOMH&FW shall, within of 15 days from the Appointed Date, handover to the Concessionaire, vacant and peaceful physical possession of the site at Deen Dayal Upadhyaya (Coronation) Hospital, Dehradun, Uttarakhand
- (b) Upon the site being handed over pursuant to the preceding Clause (a), the Concessionaire shall, subject to the provisions of Article 5, have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the space as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site

- (a) The Concessionaire shall have the right to the use of provided space in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the same by third parties.

Provided further that the Concessionaire shall have right to collect revenues, if any, arising out of operating the Cardiology Centre during the Concession Period.

- (b) The space provided including the Project Facility developed thereon belongs to DOMH&FW and shall continue to be the property of DOMH&FW.
- (c) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site, save and except as set forth and permitted under this Agreement.
- (d) The Concessionaire shall not without the prior written approval of DOMH&FW use the Project Facility for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (e) The Concessionaire shall have the right to collect User Charges as set out in Schedule 1 & 2.
- (f) The DOMH&FW shall allow access to and use of the Project Site for laying/ installing/ maintaining telegraph lines, electric lines, water piping or for such other public purposes as Concessionaire may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that Concessionaire shall, in the event of any physical damage to the Project Site/ Project Facility/ on account thereof, ensure that the Project Site/ Project Facility is promptly restored at its cost and expenses.



3.3 Peaceful Possession

DOMH&FW, as Concession Authority, hereby warrants that:

- (a) The Project Site together with the necessary right of way/ way-leaves
 - (i) has been acquired through the due process of law
 - (ii) belongs to and is vested in DOMH&FW and that DOMH&FW has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site or part thereof until expiry of the Concession Period/ completion of Handback Requirements. In the event, the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have any interest in/charge on the Project Site or any part thereof, DOMH&FW shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable Permits

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project. The DOMH&FW shall provide all necessary support in obtaining the permits and licences required to operate the Project Facility.

Concessionaire's Obligations

ARTICLE 4

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:




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4.1 Performance Security

- (a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to DOMH&FW, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled nationalized bank acceptable to DOMH&FW, in the form as set forth in Schedule 4, ("Performance Security") for a sum of Rs. 30,00,000/- (Rupees Thirty Lakhs only)
- (b) The Performance Security shall be kept valid for throughout the Concession Period from the Appointed Date.

Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to DOMH&FW's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

4.2 Forfeiture of Performance Security

The Performance Guarantee shall be forfeited and en-cashed in the following cases:

- (a) If the Concessionaire withdraws from the Project midway during the project term
- (b) If during the project term, there is any incident of gross professional negligence which is duly established, leading to death/or serious complication to any patient by the attending doctors and/or other technical staff of the Concessionaire.
- (c) If during the Concession Period, the Concessionaire is found to charge the patient in excess of what has been agreed, which would be less than the MRP.
- (d) Any other act or acts of the Concessionaire which renders the project un-operational and DOMH&FW establishes sufficient reasons to forfeit the Performance Guarantee.

4.3 Financing Arrangement

The Concessionaire shall at its cost, expenses and risk make such financing arrangement as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

4.4 Project Implementation

- (a) Unless otherwise permitted by DOMH&FW, no Construction Works shall be carried out in the Project site



- (b) All the works related to installation of equipments, electrical works, construction and other works required to be undertaken for commencement of commercial operations of the Project by the Concessionaire shall be completed on or before the expiry of Implementation Period.
- (c) The Concessionaire shall make arrangements for adequate and timely supply of electricity, water, and other utilities required for operation of Cardiology Centre and DOMH&FW shall provide necessary support for the same.
- (d) The concessionaire shall make arrangement for air-conditioning and electrical cabling of the same.
- (e) During Implementation Period and Operating Period, the Concessionaire shall be responsible for keeping unauthorized persons off Project Site, and authorized persons shall be limited to the patients, patients' attendant (maximum one per patient), employees of the Concessionaire and persons authorized by DOMH&FW.
- (f) The Concessionaire shall, before commencement of operation ensure to have requisite organization and designate and appoint suitable medical professional as it may deem appropriate to supervise the Project, to deal with the DOMH&FW and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (g) For the purposes of determining that the Cardiology Centre is in completely working condition, the Concessionaire shall with due diligence carry out all necessary Tests in accordance with and as per the instructions of the cardiologists and such Tests shall be carried out under the supervision of the cardiologists. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (h) If the Tests are successful and the Cardiology Centre can be safely and reliably opened for operation.

4.5 Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the Cardiology Centre in accordance with the O&M Requirements in terms of Schedule 3.
- (b) The Concessionaire may undertake maintenance of the Project Facility through its authorised engineers/ contractors at the Cardiology Centre and would not allow any unauthorized firm/personnel to have access to the Cardiology Centre.
- (c) The Concessionaire shall, during the Operations Period :
 - (i) shall have requisite organization and designate and appoint suitable medical and non medical staff as it may deem



appropriate to supervise the Project Facility, to deal with the DOMH&FW and to be responsible for all necessary exchange of information required pursuant to this Agreement;

- (ii) shall, for the purposes of determining that the Project Facility is being maintained in accordance with the project requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with and as per the instructions of the equipment supplier and such Tests shall be carried out under the supervision of the cardiologists. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (d) In the event the Concessionaire has failed to operate and maintain the Project Facility in accordance with the project objectives, and such failure has not been remedied despite a notice to that effect issued by the DOMH&FW ("Notice to Remedy"), DOMH&FW may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facility at the risk and cost of the Concessionaire. The Concessionaire shall reimburse one and half times the costs incurred by DOMH&FW on account of such repair and maintenance within fifteen (15) days of receipt of DOMH&FW's claim thereof.
- (e) The Concessionaire shall be deemed to be in material breach of O&M requirements, if DOMH&FW, acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Concessionaire,
- (i) the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the O&M Requirements;
- (ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof is not safe for operations;

For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the DOMH&FW;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the DOMH&FW requiring the Concessionaire to remedy a breach, and
- (iii) Repeated occurrence of a breach notwithstanding that earlier breach has been remedied pursuant to Notice to Remedy or otherwise.



Upon occurrence of Material Breach of O&M Requirements, DOMH&FW shall, without prejudice to and notwithstanding any other consequences provided thereof under this Agreement, be entitled to terminate this Agreement.

4.6 Service Levels

- a) The Concessionaire would ensure at least 98% uptime of machines (maximum down time of 5 days in a year). The machines will imply important diagnostic and life saving medical equipments.
- b) The Concessionaire would ensure that minimum stipulated medical and non medical staff is always present at the cardiac centre without fail.
- c) The Concessionaire would purchase and maintain adequate inventory of all consumables/medicines. A "zero stock out" situation has to be maintained during the entire concession period.
- d) DOMH&FW would impose, in consultation with Concessionaire, other measurable service levels from time to time to achieve maximum level of patient care.

4.7 Insurance

- (a) The Concessionaire shall, in accordance to Good Industry Practice, at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period, such insurance as are necessary including but not limited to the following:
 - (i) comprehensive third party liability insurance including injury or death to Concessionaire's personnel / representatives, workmen's compensation insurance;
 - (ii) any other insurance that may be necessary to protect the Concessionaire, its employees and its assets against loss, damage, destruction, business interruption or loss of profit including insurance against all Force Majeure Events that are insurable.
- (b) **Evidence of Insurance**

The Concessionaire shall maintain a register of entry in order of premium paid towards the Project Facility and proof of payments made shall be submitted to DOMH&FW whenever requested for.
- (c) **Validity of Insurance**

The Concessionaire shall, from time to time, promptly pay insurance premium, keep the insurance policies in force and valid throughout the Concession Period. The insurance policy shall not be cancelled or



terminated unless 60 days' clear notice of cancellation is provided to DOMH&FW in writing.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, DOMH&FW would not be liable for any claims of damages from Concessionaire's employees/representatives in the event of any untoward happenings.

(d) **Un-insurable Risks**

If during the Concession Period, any risk which has been previously insured becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained/ re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

4.8 Environmental Compliance

The Concessionaire shall, ensure that all aspects of the Project Facility during the Concession Period and processes employed in the construction (if applicable), operation and maintenance thereof shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

4.9 Sub-license of Project Facility

The Concessionaire shall not enter into License Agreement/s for the occupation and use of Project Facility with any other party.

4.10 Concession Payment

(a) The DOMH&FW agrees to make to Concessionaire payment in accordance with Schedule 1 & 2 ("Payment of Government Support to Concessionaire").

(b) The Concession payment shall be paid within 10 days of the succeeding month.

4.11 General Obligations

The Concessionaire shall at its own cost and expense:

(a) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;

(b) comply with Applicable Law governing the operations of the Project Facility, as the case may be, at all times during the Concession Period;



- (c) ensure and procure that each Project Agreement contains provisions that would entitle DOMH&FW or a nominee of DOMH&FW to step into the same at DOMH&FW's discretion, in place and substitution of the Concessionaire, pursuant to the provisions of this Agreement ;
- (d) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project ;
- (e) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies DOMH&FW against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall DOMH&FW be treated as employer in this regard;
- (f) be responsible for all the health, security, environment and safety aspects of the Project Site/ Project Facility, as the case may be, at all times during the Concession Period;
- (g) ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (h) upon receipt of a request thereof, afford access to the Project Facility to the authorised representatives of DOMH&FW for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement and to any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project Facility and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- (i) pay all taxes, duties and outgoings, including utility charges relating to the Project Facility, as applicable throughout the Concession Period.
- (j) keep on the Project Site two complete sets of this Agreement, approvals given by the DOMH&FW and any other communication given or issued under provisions hereof for inspection, verification and use by the DOMH&FW or any authority authorised by law to inspect the same or any of them.
- (k) provide and maintain all necessary accommodation and welfare facilities for its staff and labour as per policy of the Concessionaire. The Concessionaire shall not permit any of its employees to maintain any temporary or permanent living quarters within the structure forming a part of the Construction Works.
- (l) take precautions to ensure the health and safety of its staff and labour.
- (m) employ adequate number of appropriately qualified, skilled and experienced persons in order to execute the contract. The DOMH&FW may require the Concessionaire to remove any person employed on the Project who in the opinion of DOMH&FW:
 - (i) persists in any misconduct,
 - (ii) is incompetent or negligent in the performance of his duties,
 - (iii) fails to conform with any provisions of the Agreement, or



- (iv) persists in any conduct which is prejudicial to safety, health, or the protection of the environment

The Concessionaire shall in such cases appoint suitable replacement/s.

- (a) Take reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its staff and to preserve peace and protection of persons and property in the neighborhood of the project site against such conduct.

4.12 No Breach of Obligations

The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- (i) Force Majeure Event, subject to Clause 7;
(ii) DOMH&FW Event of Default;
(iii) Compliance with the instructions of the DOMH&FW or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder;

4.13 Access and Assured Availability of the Project Facilities

The Concessionaire shall, at all times during the Concession Period, allow access to and usage of Project Facilities to DOMH&FW / Person nominated by DOMH&FW.

4.14 Erection of Sign Board

- (a) The Concessionaire shall erect a signboard, of a size not less than 2 ft. by 4 ft, adjacent to the main entrance to the Project Site in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall prominently display the following text in black upper case letters on a white/yellow background:

“This facility is under Public Private Partnership (PPP) between Directorate of Medical Health & Family Welfare, Government of Uttarakhand and Fortis Healthcare Limited under Build, Operate and Transfer (BOT) mode from _____ (*Insert the in Appointed Date*) to _____ (*Insert the Expiry Date*)”.

- (b) The Concessionaire shall clearly display all user charges for Government and private beds indicating that there is no user charge to be paid by the BPL patients.
(c) The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.



In addition to and not in derogation or substitution of any of its other obligations under this Agreement, DOMH&FW shall have the following obligations:

5.1 Specific Obligations

- (a) DOMH&FW shall handover the possession of the Project Site to the Concessionaire in accordance with the Agreement;
- (b) Prior to handover of the Project Site to the Concessionaire, DOMH&FW shall remove all articles etc

5.2 General Obligations

DOMH&FW shall:

- (a) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent facilities/utilities;
- (b) Observe and comply with all its obligations set forth in this Agreement.

5.3 Monitoring and Assessment

- (a) DOMH&FW, in consultation with Government of Uttarakhand, shall set up a program monitoring mechanism including an Expert Committee comprising of domain experts from government, medical colleges, hospitals, to periodically monitor the project deliverables.
- (b) The expert committee would be chaired by a representative, not below the rank of Additional Secretary, from the department of Health, Government of Uttarakhand
- (c) The other members of the expert committee would be as under:
 - i. Representative of DOMH&FW not below the rank of Additional Director
 - ii. Two super specialist doctors from medical college/ hospital, at least one would be a Cardiologist.
 - iii. Representative of the Concessionaire.
- (d) Since the outputs in terms of number and quality of procedures, number of OPD patients, patient care, patient safety, hygiene etc are the prime deliverables of the entire project, the expert committee



would evaluate the efforts and outputs of these activities by the concessionaire.

- (e) The expert committee shall submit its unanimous report to the government regarding the achievement of projects deliverables in accordance with this Agreement- low, moderate, satisfactory, excellent etc with specific recommendation(s) on continuance /discontinuance /restructuring of the project. The findings of the expert committee would be considered to be final and binding.
- (f) If the project deliverables are found to be moderate or low, the expert committee would direct DOMH&FW to plan corrective action(s) with the concessionaire and implement the same to achieve desired outputs within sixty (60) days.
- (g) The expert committee shall evaluate project deliverables on a three monthly basis based on visit to the facility, review of auditors' reports, reports provided by concessionaire, information received from general public including project stakeholders etc.
- (h) DOMH&FW shall facilitate the expert committee in information gathering, conducting facility visit, meetings, interviews etc.

Levy and Collection of User Charges and Other Charges

ARTICLE 6

6.1 User Charges

- (a) Subject to the provisions of this Agreement and Applicable Law, in consideration of the Concessionaire accepting the Concession and undertaking to perform and discharge its obligations in accordance with the terms and conditions set forth in this Agreement, the Concessionaire shall receive the User Charges from the patients in accordance with Schedule 1 & 2.

6.2 Advertisement / Hoarding

The Concessionaire shall not permit/ allow advertisement/ hoarding or other commercial activity in the project site.

6.3 Payment of government support to Concessionaire

The DOMH&FW would pay government support in accordance with Schedule 2 of this agreement.




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7.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor;
- (f) action of a Government Agency having Material Adverse Effect including but not limited to
 - (i) acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Facility or any part thereof or of the Concessionaire's or the Concessioneing Authority rights under any of the Project Agreements.
 - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Concessioneing Authority in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - (iii) any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) early termination of this Agreement by DOMH&FW for reasons of national emergency, national security or the national interest.
- (h) any failure or delay of a Concessionaire caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire or the Concessioneing Authority on behalf of the either of the Parties.
- (i) war, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub-clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.




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7.2 Obligations of the Parties

- (a) As soon as practicable and in any case within seven (7) days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
- (i) the nature and extent of the Force Majeure Event;
 - (ii) the estimated duration of the Force Majeure Event;
 - (iii) the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - (iv) the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - (v) any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- (b) As soon as practicable and in any case within five (5) days of notification by the Affected Party in accordance with the preceding Clause 8.2 (a), the Parties along, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:
- (i) assess the impact of the underlying Force Majeure Event,
 - (ii) to determine the likely duration of Force Majeure Event and,
 - (iii) to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the duration of Force Majeure event provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding clause (b) as also any information, details or document, which the Parties may reasonably require.

7.3 Performance of Obligations

If the Affected Party is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- (a) due notice of the Force Majeure Event has been given as required by the preceding Clause 7.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event



- and to restore the Project Facility , in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;
- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

7.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Clauses 7.1(a) to 7.1(e) and 7.1(i), continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in 7.1 (f), 7.1 (g) or 7.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 7.1 (f), 7.1 (g) or 7.1 (h) subsists or is likely to subsist for a period exceeding 180 days, then either Party shall be entitled to terminate this Agreement.

Provided further, DOMH&FW may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Clauses 7.1(f), 7.1(g) or 7.1(h).




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(b) **Termination Notice**

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding clause 7.4(a) (i) or (a) (ii), it shall issue Termination Notice setting out ;

- (i) in sufficient detail the underlying Force Majeure Event;
- (ii) the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- (iii) the estimated Termination Payment including the details of computation thereof and;
- (iv) any other relevant information.

(c) **Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that;

- (i) The Project Facility is handed back to DOMH&FW by the Concessionaire on the Termination Date free from all Encumbrances.

7.5 Liability for other losses, damages etc.

Save and except as expressly provided in this Article, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event.

7.6 Change in Law

- (a) Change in Law shall mean the occurrence or coming into force of any of the following, after the Appointed Date:

- (i) the enactment of any new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) a change in the interpretation or application of any Indian law by a court of record.

Provided that Change in Law shall not include:

- (i) coming into effect, after the Appointed Date, of any provision or statute which is already in place as of the Appointed Date,
- (ii) any new law or any change in the existing law under the active consideration of or in the contemplation of any government as of the Appointed Date which is a matter of public knowledge,
- (iii) any change in the rates of the Central Taxes.



- (b) Subject to Change in Law resulting in Material Adverse Effect and subject to the Concessionaire taking necessary measures to mitigate the impact or likely impact of Change in Law on the Project, if as a consequence of a Change in Law, the Concessionaire is obliged to incur additional Costs, DOMH&FW shall not reimburse any such costs
- (c) Upon occurrence of a Change in Law, the Concessionaire may, notify DOMH&FW of the following:
- (i) the nature and the impact of Change in Law on the Project
 - (ii) in sufficient detail, the estimate of the additional Cost likely to be incurred by the Concessionaire on account of Change in Law
 - (iii) the measures, which the Concessionaire has taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost

Events of Default and Termination

ARTICLE 8

8.1 Events of Default

Event of Default shall mean either Concessionaire Event of Default or DOMH&FW Event of Default or both as the context may admit or require.

(a) Concessionaire Event of Default

Any of the following events shall constitute an Event of Default by the Concessionaire ("Concessionaire Event of Default") unless such event has occurred as a result of one or more reasons set out in Clause 7;

- (i) At any time during the Concession Period, the Concessionaire fails to adhere to the O&M Requirements and has failed to remedy the same within 60 days of receipt of notice from DOMH&FW;
- (ii) The Concessionaire is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 60 days after the receipt of notice from DOMH&FW;
- (iii) If the concessionaire fails to achieve the project outputs -as evaluated by the expert committee (refer 5.3 c) and fails to implement corrective action and show improvements in the project outputs within sixty (60) days given by DOMH&FW (refer 5.3 d) in pursuant to this agreement.
- (iv) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;



- (v) A resolution has been passed by the shareholders of the Concessionaire for voluntary winding up/ dissolution of the Concessionaire;
- (vi) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of DOMH&FW, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (vii) The Concessionaire has abandoned the Project Facility ;
- (viii) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (ix) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days

(b) **DOMH&FW Event of Default**

Any of the following events shall constitute an event of default by DOMH&FW ("DOMH&FW Event of Default"), when not caused by a Concessionaire Event of Default or a Force Majeure Event:

- (i) DOMH&FW is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 days of receipt of notice thereof issued by the Concessionaire;
- (ii) DOMH&FW having executed the same is in breach of any of its obligations thereunder and such breach has not been cured within 30 days from the date of written notice thereof given by the Concessionaire
- (iii) DOMH&FW has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iv) DOMH&FW has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (v) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any government agency of the Project/ Project Facilities or any part thereof, thereby causing Material Adverse Effect.



- (vi) Any representation made or warranties given by the DOMH&FW under this Agreement has been found to be false or misleading.

8.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Provided that upon the occurrence of a Concessionaire Event of Default as specified under Clause 8.1, DOMH&FW may immediately terminate this Agreement by issue of Termination Notice in the manner set out under Clause 8.2(c).
- (ii) If DOMH&FW decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to DOMH&FW in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non-submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, DOMH&FW shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days ("Cure Period") to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/ cure the underlying Event of Default within such further period allowed, DOMH&FW shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate Performance Security, if subsisting.

(b) Termination for DOMH&FW Event of Default

- (i) Without prejudice to any other right or remedy which the Concessionaire may have in respect thereof under this Agreement, upon the occurrence of DOMH&FW Event of Default, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (ii) If the Concessionaire decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to DOMH&FW. Within 30 days of receipt of Preliminary Notice, DOMH&FW shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "DOMH&FW Proposal to Rectify"). In case of non submission of DOMH&FW Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If DOMH&FW Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor,



DOMH&FW shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however DOMH&FW fails to remedy/ cure the underlying Event of Default within such further period allowed, the Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

(c) **Termination Notice**

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub clause (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;
- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice;
- (iii) the estimated termination payment including the details of computation thereof; and,
- (iv) any other relevant information.

(d) **Obligation of Parties**

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- (i) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility,
- (ii) the termination payment, if any, payable by DOMH&FW is paid to the Concessionaire on the Termination Date and
- (iii) the Project Facility is handed back to DOMH&FW by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to DOMH&FW.

(e) **Withdrawal of Termination Notice**

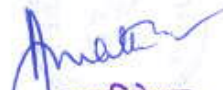
Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

Provided that the Party in breach shall compensate the other Party for any direct costs/ consequences occasioned by the Event of Default which caused the issue of Termination Notice.

8.3 Rights of DOMH&FW on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, DOMH&FW shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:




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- (i) enter upon and take possession and control of the Project Site / Project Facility forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Site /Project Facility;
- (b) Notwithstanding anything contained in this Agreement, DOMH&FW shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project, and the handback of the Project Facility by the Concessionaire to DOMH&FW shall be free from any such obligation.

8.4 Accrued Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

8.5 Termination Payments

- i. Upon Termination of this Agreement on account of DOMH&FW Event of Default, the Concessionaire shall be entitled to revoke the Performance Security, if subsisting, and receive from DOMH&FW, termination payment equal to 120% of the Book Value.
- ii. Upon Termination of this Agreement on account of Concessionaire Event of Default, the DOMH&FW shall be entitled to revoke the Performance Security, if subsisting, and takeover possession of the Project Facility from the Concessionaire.

Handback Requirements

ARTICLE 9

9.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Site, and the Project Facility, including all improvements made therein by the Concessionaire, shall at all times remain that of DOMH&FW.




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9.2 Obligations of Parties

(a) Concessionaire's Obligations

- (i) The Concessionaire shall on the date of expiry of the Concession Period, hand back vacant and peaceful possession of the Project Facility to DOMH&FW free of cost and in good operable condition.
- (ii) At least 12 months before the expected expiry of the Concession Period a joint inspection of the Project Facility shall be undertaken by DOMH&FW and Concessionaire. DOMH&FW shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of jobs ("Project Facility Handback Requirements"), if any, to be carried out so as to conform to the O&M Requirements. The Concessionaire shall promptly undertake and complete such jobs at least 3 months prior to the expected expiry of the Concession Period and ensure that the Project Facility continues to meet such requirements until the same are handed back to DOMH&FW.
- (iii) DOMH&FW shall, within 15 days of the joint inspection undertaken under preceding clause (ii) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to DOMH&FW along with the Project Facility.
- (iv) The Concessionaire hereby acknowledges DOMH&FW's rights specified in Clause 9.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

9.3 DOMH&FW's Obligations

DOMH&FW shall, subject to DOMH&FW's right to deduct amounts towards:

- (i) carrying out works/jobs listed, which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to DOMH&FW along with the Project Facility.
- (iii) DOMH&FW shall discharge and release the Performance Guarantee furnished by the Concessionaire if and when applicable.

Dispute Resolution

ARTICLE 10

10.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to




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be resolved amicably in accordance with the procedure set forth in sub-clause (b) below.

- (b) Either Party may require such Dispute to be referred to the Director General, DOMH&FW and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.2 below.

10.2 Arbitration

(a) Procedure

Subject to the provisions of Clause 10.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 30 days of receipt of such intimation if the other party fails to appoint its arbitrator or if two arbitrators appointed by each party fail to appoint the third arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with The Arbitration and Conciliation Act 1996

(b) Place of Arbitration

The place of arbitration shall ordinarily be Dehradun but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

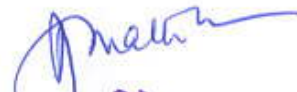
(c) Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

(d) Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration and Reconciliation Act 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.




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(e) **Performance during Arbitration**

Pending the submission of and/or decision on a dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

11.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to DOMH&FW that :

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- (d) it has the financial standing and capacity to undertake the Project;
- (e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (g) there are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, of which may constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- (j) subject to receipt by the Concessionaire from DOMH&FW of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the



Concessionaire in and to the Project Site/Project Facility shall pass to and vest in DOMH&FW on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or DOMH&FW;

- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to DOMH&FW or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by DOMH&FW, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that DOMH&FW shall not be liable for the same in any manner whatsoever to the Concessionaire.

11.2 Representations and Warranties of DOMH&FW

DOMH&FW represents and warrants to the Concessionaire that:

- (a) DOMH&FW has full power and authority to grant the Concession;
- (b) DOMH&FW has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes DOMH&FW's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (d) There are no suits or other legal proceedings pending or threatened against in respect of the Project, Project Site or Project Facility.
- (e) DOMH&FW would not commit any act of omission that may affect Concessionaire's performance of its obligations in terms of this Agreement.

11.3 Obligation to Notify Change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.




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12.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of DOMH&FW.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site/ Project Facility, except with prior consent in writing of DOMH&FW, which consent DOMH&FW shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
- (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire;
 - (ii) Pledges/hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project;
 - (iii) assignment of Concessionaire's rights and benefits under this Agreement and other Project Agreements to or in favour of the Lenders as security for financial assistance provided by them.

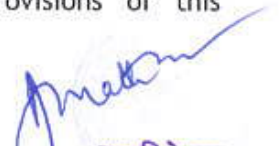
12.2 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Dehradun shall have jurisdiction over all matters arising out of or relating to this Agreement.

12.3 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.




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12.4 Survival

Termination of this Agreement:

- (a) shall not relieve the Concessionaire or DOMH&FW of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party, prior to the effectiveness of such Termination or arising out of such Termination.

12.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by both the Parties hereto and evidenced in writing.

12.6 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, forfeiture of Performance Security, breach of any term of this Agreement, non fulfilment of general obligations and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to DOMH&FW:

The Director General
Directorate of Medical Health & Family Welfare
107, Chander Nagar, Dehradun - 248 001
Phone No. : 0135 2720877
Fax No : 0135 2729897

If to the Concessionaire:

The General Manager: Growth & Business Planning,
Fortis Healthcare Limited
Escorts Heart Institute & Research Centre Limited
Okhla Road
New Delhi 110 025
Phone No. : 011 26825000
Fax No : 011 41628435



Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address, and
- (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

12.7 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

12.8 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

12.9 Language

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

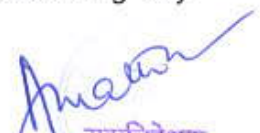
12.10 Exclusion of Implied Warranties etc.

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

12.11 Signage

- i. The Concessionaire shall provide illuminated signages within the Project Site so which shall display information to the visitors regarding the user charges mentioned in Schedule 1 including any revision by the Government from time to time.




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- ii. The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession Period.

12.12 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of DOMH&FW by:


(Signature)


(Name)

DR ASHA MATHUR

(Designation)

DIRECTOR GENERAL

For and on behalf of CONCESSIONAIRE by:


(Signature)

(Name)

(Rajeev Dua)


(Designation)

General manager


In the presence of :

1) Dr Asha Singh


2)


LOVESH KUMAR




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- a) There would be no consultation charge for OPD patients of all categories from 8 a.m. till 2 p.m. each day. After 2 p.m. the Concessionaire is allowed to collect Rs 300.00 per patient as registration charges which shall be valid for three (3) visits.
- b) The IPD charges for patients of government beds would be Rs 125.00 per day. The bed charges per day for Heart Command Centre would be Rs 2,000.00 for patients of government beds. This may be increased by 10% every three (3) years. Any increase in IPD charges or bed charges shall be done in consultation with and approval of the Chief Medical Officer (CMS) of Deen Dayal Upadhyaya (Deen Dayal Upadhaya (Coronation)) Hospital, Dehradun.
- c) The diagnostic charges for all patients (OPD, IPD government and IPD private beds) would be as under. These may be increased by 10% every three (3) years.

1	TEE	2,000
2	THE	1,500
3	Peripheral Vascular Doppler Study	2,000
4	Foetal Echocardiography	2,000
5	Carotid Doppler Study	2,000
6	Internal Mammary artery flow Study	2,000
7	TMT	1,500
8	PFT	1,000
9	Holter Monitoring	1,500
10	ECG	150
11	X-Ray	200

- d) The charges for surgical procedures for patients of government beds would be as under. These may be increased by 10% every three (3) years.

1	RF Ablation	45,000
2	Ventilator Charge	2,000
3	External Pacemaker	10,000
4	Coronary Angiography	8,400
5	EP Study	7,000
6	BMV	24,500
7	Ballon Pulmonary Valvuloplasty	24,500
8	Ballon Aortic Valvuloplasty	35,000
9	ASD Closure	1,05,000
10	PDA Closure	87,500

- e) The charges for ABP and IABP monitoring would be Rs 500.00 and Rs 3,000.00 respectively for patients of government beds. These may be increased by 10% every three (3) years.



- a. The charges for diagnostic, IPD bed charges, surgical procedures, consumables and medicines shall be collected by the Concessionaire from all the patients.
- b. The Chikitsa Prabandhan Samiti of Deen Dayal Upadhaya (Coronation) Hospital (CPS) and Concessionaire would maintain proper records of (i) number and type of diagnostic procedures and surgical procedures conducted, (ii) bed occupancy for government and private beds, (iii) consumables and medicines given to patients on payment during the month.
- c. At the end of the month CPS and Concessionaire would reconcile accounts and determine exact amount of diagnostic/ surgical procedures, consumables, medicines used by the Concessionaire and tally with user charges collected and average occupancy of government beds.
- d. During reconciliation if any difference is found between the records maintained by CPS and the Concessionaire, the CPS shall review the records maintained by the Concessionaire. In case any discrepancies is found in the records maintained by the Concessionaire, the Chief Medical Officer (CMS) of Deen Dayal Upadhaya (Deen Dayal Upadhaya (Coronation)) Hospital, Dehradun, shall release the payment to the Concessionaire or receive the payment from the Concessionaire as the case may be based on the records maintained by CPS.
- e. The DOMH&FW would not guarantee any minimum amount or procedures and is not liable for any payment if the facility is not utilized to optimum level.
- f. The DOMH&FW would pay Rs. 99,200/- (Ninety nine thousand two hundred only) per month per Government bed to the Concessionaire, the government grant per month based on following formula:

Rs. 99,200/- (Ninety nine thousand two hundred only) per government bed per month X number of government beds (25 in this Agreement) X occupancy rate of government bed on that particular month.

The amount of Rs. 99,200/- (Ninety nine thousand two hundred only) per month per Government bed payable by DOMH&FW to the Concessionaire shall remain constant throughout the Concession Period. This payment is based on the bid outcome and would be settled on monthly basis.





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- g. The occupancy would be recorded every day at 12.00 midnight and simple average would be taken for all days to arrive at monthly occupancy rate.
- h. In case of BPL patients, the DOMH&FW would pay to the Concessionaire the actual cost of performing a diagnostic & surgical procedure and purchase cost of consumables & medicines. This means that the Concessionaire would not make any profit in any service rendered to BPL patients.
- i. The cost of each diagnostic & surgical procedure and purchase cost of consumables/medicines would be declared by the Concessionaire to DOMH&FW periodically. Any cost which seems unreasonable would be rejected by DOMH&FW. This point is very important for the Concessionaire and any dispute/ disagreement on this would go against the performance of Concessionaire.

Mechanism of Payment

- a. DOMH&FW shall, within one month from the date of receipt of the Statement, Pay to the Concessionaire as per the Schedule 1 & 2 of this Agreement.
- b. The amount payable to the Concessionaire shall be verified and approved by the Chief Medical Officer (CMS) of Deen Dayal Upadhyaya (Deen Dayal Upadhaya (Coronation)) Hospital, Dehradun, Uttarakhand within 7 days of receipt of such statement before it is being sent to DOMH&FW.
- c. DOMH&FW shall before releasing the payment to the Concessionaire, deduct applicable taxes based on Applicable Laws.
- d. The payment shall be made to the Concessionaire on or before the fifteenth day of calendar month succeeding the calendar month for which the amount is due.
- e. Any delay in making any payment by either Parties in accordance with this Agreement shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at prevailing SBI PLR per annum calculated for the duration of delay.
- f. All payments to the Concessionaire shall be made by way of cheque/ demand draft. All payments shall be made in favour of "Fortis Health Care Limited" payable at Dehradun.




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1. General

- 1.1 The Concessionaire shall comply with the BOT Requirements set out in this Schedule. In doing so, the Concessionaire shall ensure that the Project Facilities are maintained to the standards and specifications as set out in the operating manual and other relevant standards.
- 1.2 The Concessionaire shall take appropriate measures to minimize patient waiting time.
- 1.3 During the Concession Period, the Concessionaire shall ensure that :
- (i) Project Facility is kept free from undue deterioration and undue wear;
 - (ii) applicable and adequate safety measures are taken;
 - (iii) minimum delay is caused to the patients
 - (iv) any situation which has arisen or likely to arise on account of any accident or other emergency is responded to as quickly as possible and its adverse effects controlled/minimised;
 - (v) disturbance or damage or destruction to property of third party by operations of the Project Facility is controlled/minimised;
 - (vi) members of the public are treated with due courtesy and consideration by its employees/ agents;
 - (vii) a complaint register to record grievances of any member of the public in relation to the operations of the Cardiology Centre is duly maintained;
 - (viii) the personnel assigned by the Concessionaire have the requisite qualifications and experience and are given the training necessary to enable the Concessionaire meet the O & M Requirements.
- 1.4 The services will be available during extended hours, Sundays, holidays etc.
- 1.5 The Concessionaire would be required to Build, Operate and Transfer the Cardiac Centre at Pt. Deen Dayal Upadhaya (Coronation) Hospital, Dehradun with minimum fifty (50) beds.
- 1.6 The power will be provided by the government and the recurring cost will be borne by the private partner.
- 1.7 Procurement, installation and operation of centre for Invasive Cardiology, Heart Command and Diagnosis by the Concessionaire.
- 1.8 Maintenance and Operation of the facility by the Concessionaire.



- 1.9 Performing all the cardiac procedures - OPD, IPD, Diagnosis and Surgery.
- 1.10 Recruitment, manage and training of medical and non-medical staff for the centre.
- 1.11 Procurement of consumables and inventory management
- 1.12 Maintaining quality of consumables and service
- 1.13 Building and maintaining a data base of all cases and sharing the same with stakeholders. A suitable database and application software to be installed by the private operator. The system would monitor incoming patients, source of referral, time taken to provide service, billing etc. The system would also maintain patient records.
- 1.14 Collection of user charges by the Concessionaire.
- 1.15 Ensuring a minimum agreed up-time of the facilities
- 1.16 Responding to emergency cases including in odd hours.
- 1.17 The Concessionaire would invest in all the machinery, air conditioning, hospital beds, heart command centre, laboratories etc. The minimum indicative list is indicated below:




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EQUIPMENT LIST: CARDIAC SURGERY AND ICU CTVS

S. NO.	DESCRIPTION	QTY
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OPERATING ROOMS

1	OT TABLE	1
2	OT LIGHT	1
3	PENDANT	1
4	HEART LUNG MACHINE	1
5	ANAESTHESIA MC. WITH VENTILATOR	1
6	FIBREOPTIC LARYNGOSCOPE	2
7	CAUTERY	1
8	BLANKET ROLL	1
9	BLOOD WARMER	1
10	SYRINGE PUMPS	5
11	SUCTION MC.	1
12	SURGICAL INSTRUMENTS SET	2
13	MONITORS - REGULAR	1
14	MONITORS - SLAVE	1
15	DEFIB	1
16	MAYO TROLLEY	1
17	INSTRUMENT TROLLEY	1
18	CRASH CART	1
19	IABP	1

POST OPERATIVE RECOVERY-8 BEDS

1	MONITORS	4
2	MONITORS	4
3	VENTILATOR AND HUMIDIFIER	2
4	SUCTION MC.	1
5	DEFIB	1
6	CRASH CART	1
7	SYRINGE PUMPS	10
8	NEBULISER	1
9	ACT MC.	1
10	PRESSURE INFUSION BAGS	4
11	PATIENT WARMING SYSTEM	1
12	VIBRATOR PHYSIO	1
13	ECG	1



Equipment List- Invasive and CCU		
S.No.	Equipment	Qty
A	Heart Station	
1	Echocardiograph with TEE and Stress Echo package	1
2	PFT Machine	1
3	TMT	1
4	Holter Recorder and Analyser (3 recorders)	1
6	Defibrillator	1
8	ECG machines	1
B	Heart Command Centre-10 beds	
1	Central Monitoring System	
	High end bedside monitors (6 channel)	4
	Low end bedside monitors (4 channel)	6
2	Syringe pump	10
3	Ventilators	3
4	IABP	1
5	Pacemaker	2
6	Pulse Oxymeter	2
7	Defibrillator	1
8	ECG machine	1
9	Blood Gas Analyser	1
10	Mobile X-ray	1
C	Cath Lab	
1	Cath Lab	1
2	ACT machine	1



S.No.	Description	Numbers
Investigations		
1	X- Ray (300MA) & Developer	1
2	Mobile- X- Ray	1
3	Mobile Echocardiograph	1
4	HCC	10
5	Central Monitoring station	1
6	Syringe Pumps	20
7	Ventilators	2
8	IABP	2
9	Defrib with external Pacer	1
10	ECG machine	1
11	Blood Gas Analyser	1
12	External Pacemaker	2
13	Patient Bed & Accessories	15
14	Bed Pan Washer	1
15	Almirah, Racks, Refrigerator	1
16	General Care Beds	40
17	Server/ Computer, Printers/ Software	1
18	Photocopier & Fax	1
19	Storage Equipment, Racks etc.	1
20	CSSD Equipment	1
21	Housekeeping Equipment	1
22	Kitchen Equipment	1
23	Vehicles (MCCU, Ambulances)	1
24	Mingograph & accessories	1
25	External Pacer with overdrive facility	4
26	RF Ablation Machine	1
27	Ventilator portable	1
28	ECG machine with TEE	1
29	Defrib with external Pacer	1
30	Ambulatory BP Monitor	1



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- 1.18 The Concessionaire would install only brand new machines. No refurbished machines would be accepted.
- 1.19 The capacity/type of equipments etc shown above is indicative only. The actual capacity needs to be worked out by the Concessionaire.
- 1.20 The Concessionaire would recruit and manage all the required personnel including Cardiologists, Technicians, nurses, ward boys and other support staff. All the personnel required to operate the facility would be on the rolls of the Private Partner and all salary, perks etc will be paid by the Concessionaire.
- 1.21 The following minimum number of personnel with minimum qualification and experience would require to be provided by the Concessionaire.

Human Resource requirement for proposed Cardiac Care Centre

Description	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5
Interventional Cardiologist	2	3	3	4	4
Non Invasive Cardiologist	1	1	1	1	1
Senior Resident	3	3	3	3	3
Staff Nurse	21	21	21	21	21
Heart Station Technician	2	2	2	2	2
Cath Lab Nurse	2	2	2	2	2
Cath Lab Technician	2	2	2	2	2

Surgery Team

Sr Cardiac Surgeon	1	1	1	1	1
Jr Cardiac Surgeon	2	2	3	3	3
Cardiac Anaesthesist	2	2	3	3	3
Jr Anaesthesist	1	1	1	1	1
Purfunionist	2	2	2	2	2
Intensivits	3	3	3	3	3
OT Technician	1	1	1	1	1
OT Nurse	2	2	2	2	2

Qualification

S No	Description	Minimum qualifications
1	Cardiologists	DM in Cardiology/DNB
2	Cardiac Surgeon	M.ch (CTVS)
2	Technician	Inter (Science with Biology) and Diploma (Lab Technology)
3	Nurses	BSc (Nursing) or Diploma (General Nursing)



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- 1.22 The Team proposed above will be valid for at least 3 years. It is understood that there could be some changes in the team composition during the tenure of the contract. Any such changes during the contract period shall be informed to DoMH&FW and the Concessionaire has to satisfy DoMH&FW that the new team or team member is of the same quality as offered in the Agreement.
- 1.23 The user charges for government beds (refer 2.3 b Article 2) would be as stipulated in this Agreement. The cost of consumables would be charged at actual from the patients. There would be no collection of user charge and consumable charge from BPL patients, but the DoMH&FW will pay the Concessionaire as per Schedule 1 & 2 of this Agreement.
- 1.24 The Concessionaire would purchase and maintain adequate inventory of all consumables. A "zero stock out" situation has to be maintained during the entire concession period. It is expected that the Concessionaire would procure consumables in bulk, at best price from the market.
- 1.25 The Concessionaire would procure only the best quality consumables. The quality of consumable would be subjected to periodic inspection by the representatives of DoMH&FW.
- 1.26 The Concessionaire would charge the patients for consumable at a rate which would be at least 15% less than the prevailing MRP.



(Proforma of Bank Guarantee)

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (Name of the Bank) having its Head/Registered office at _____ hereinafter referred to as "the Guarantor" which expression shall unless it be repugnant to the subject or context thereof include successors and assigns;

In favour of

Directorate of Medical Health & Family Welfare, Government of Uttarakhand, represented by Director General and having its office at 107 Chander Nagar, Dehradun - 248 001, hereinafter referred to as "DOMH&FW", which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between DOMH&FW and Fortis Healthcare Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office/ permanent address at Escorts Heart Institute & Research Centre Limited, Okhla Road, New Delhi 170025 ("the Concessionaire"), the Concessionaire has been granted the Concession to Build, Operate and Transfer the Cardiac Centre at Deen Dayal Upadhaya (Coronation) Hospital, Dehradun for a period of 10 years (hereinafter referred to as "the Project").
- B. In terms of Clause 4.1 of the Concession Agreement, the Concessionaire is required to furnish to DOMH&FW, an unconditional and irrevocable bank guarantee for an amount of Rs. 30,00,000.00 (Rupees Thirty Lakhs only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to Project by the Concessionaire.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide bank guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Concessionaire of its obligations relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by Fortis Healthcare Limited (hereinafter called "the Concessionaire") of all its obligations relating to the Project and in connection with achieving the project objectives by the Concessionaire in accordance with the Concession Agreement.




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3. The Guarantor shall, without demur, pay to DOMH&FW sums not exceeding in aggregate Rs.30,00,000.00 (Rupees Thirty Lakhs only), within seven (7) calender days of receipt of a written demand therefor from DOMH&FW stating that the Concessionaire has failed to meet its obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by DOMH&FW and shall pay the amount specified in the demand, notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, DOMH&FW shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by DOMH&FW or any indulgence shown by DOMH&FW to the Concessionaire and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by DOMH&FW or any indulgence shown by DOMH&FW , provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.
5. This Guarantee shall be irrevocable and shall remain in full force and effect until unless discharged/ released earlier by DOMH&FW in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 30,00,000.00 (Rs Thirty Lakhs only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED

by

_____ Bank
by the hand of Shri _____
its _____ and authorised official.



[Handwritten Signature]

(To be given on DOMH&FW letterhead)

To Whomsoever It May Concern

This is to confirm that to pursuant to the Concession Agreement dated _____, entered into between the DOMH&FW and Fortis Healthcare Limited ("the Concessionaire"), the Concessionaire has been authorized to Build, Operate and Transfer the Cardiology Centre at Deen Dayal Upadhaya (Coronation) Hospital, Dehradun for a period of 10 years in Uttarakhand and for that purpose, to apply for and obtain all approvals, licenses and permits required therein and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,


Director General

