

DRAFT CONCESSION AGREEMENT

between

**KARNATAKA TOURISM INFRASTRUCTURE LIMITED
(First Party)**

and

_____ **(Concessionaire)**

for

**DEVELOPMENT AND OPERATION OF HERITAGE RESORT ALONG
WITH TOURISM FACILITIES AT BELUR-HALEBIDU HIGHWAY, M.
HUNSKERE IN KARNATAKA ON DESIGN-FINANCE-BUILD-
OPERATE-TRANSFER (DFBOT) BASIS**

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CONCESSION AGREEMENT

This Concession Agreement ("**Concession Agreement**" or "**Agreement**") mutually agreed and entered into on this the _____ day of _____, Two Thousand and _____ at Bengaluru,

BETWEEN

Karnataka Tourism Infrastructure Limited, having its office at _____, Bengaluru - 560 001 represented by its Managing Director, (hereinafter referred to as the "**KTIL**" or the "**Authority**") which expression shall unless repugnant to the context include the administrators, successors and assigns on the First Part.

AND

_____ [the Selected Bidder], a company incorporated under the Companies Act, 2013 having its office at _____ represented through its Authority Representative, Shri _____ (hereinafter referred to as the "**Concessionaire**") which expression shall unless repugnant to the context include the successors and permitted assigns, on the Other Part.

KTIL and Concessionaire are collectively referred to as "**Parties**" and individually as "**Party**".

WHEREAS,

KTIL intends to undertake development and operation of heritage resort and tourism facilities, admeasuring an area of about 8.5 acres located at Belur-Halebidu Highway, Hassan district, Karnataka, (hereinafter referred to as "**Project Site**") through private sector participation on Public Private Partnership (PPP) framework under Design-Finance-Build-Operate-Transfer (DFBOT) basis (the "**Project**").

- A. Pursuant thereto, KTIL through an open, transparent and competitive bid process invited proposals from interested parties for the Project by issuing Request for Proposal ("**RFP**") document dated __, 2024 containing inter-alia the minimum qualification criteria and the terms and conditions for implementing the Project.
- B. After evaluating the proposals received, the Authority accepted the proposal submitted by _____ [insert the name of the Selected Bidder], as the Selected Bidder (the "**Selected Bidder**") and issued Letter of Award ("**LOA**")

No. _____ dated _____ *[insert the number and date of issue of LOA]*. The Selected Bidder has duly acknowledged the same vide its Letter No. _____ dated _____ *[insert the letter number and date]*.

- C. The Selected Bidder/Consortium in accordance with the terms and conditions set forth in the RFP has/have incorporated a special purpose company (the “**SPV**”) in India, under the provisions of the Companies Act, 2013 to implement the Project (hereinafter referred to as the “**Concessionaire**”).
- D. _____ [Insert SPV name of the Selected Bidder] has requested the Authority through a letter bearing number _____ dated ____ to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for implementing the Project.
- E. The Authority acknowledges that as on the date of execution of this Agreement, the Concessionaire has submitted an irrevocable revolving bank guarantee for a value Rs. ____ (Rupees _____ Only)¹ payable by the Selected Bidder as Performance Security in terms of Clause 6.1 of this Agreement. A copy of the same is attached to this Agreement as Schedule-2.
- F. The Parties hereto are required to enter into an Agreement, being these presents, to record the terms, conditions and covenants set forth hereunder.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

¹ 5% of the Estimated Project Cost

ARTICLE 1 - DEFINITIONS AND INTERPRETATION

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:

“Accounting Year” shall mean the Financial Year commencing from the first day of April of any calendar year and ending on the 31st (thirty-first) day of March of the next calendar year;

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Clause 10.1.

“Agreement” means this Agreement, the schedules, annexures hereto and includes any amendments hereto made in accordance with the provisions hereof.

“Agreement Period” shall have the meaning ascribed thereto in Clause 3.2 of this Agreement.

“Annual Concession Fee” means the amounts payable by the Concessionaire to KTIL in accordance with Article 8 of this Agreement.

“Annual Concession Fee Security” shall have the meaning ascribed thereto in Clause 6.2 of this Agreement.

“Applicable Law” means 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 Parties in relation to the Project.

“Applicable Permits” means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained by the respective Parties under the Applicable Laws including those specified in Schedule-8, in connection with the construction if any, operation & maintenance of the Project Facilities as the case may be, during the subsistence of this Agreement.

“Appointed Date” means the date of this Agreement.

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

“Authority” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals.

“Authority Default” shall have the meaning set forth in Clause 11.2(f).

“Bank Rate” means the rate of interest specified by Reserve Bank of India from time to time in pursuance to Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate from the time being in effect.

“Bid” means the document in its entirety comprised in the bid submitted by the Selected Bidder in response to the RFP in accordance with the provision thereof;

“Change in Law” means the occurrence of any of the following after the date of Bid:

- a) The enactment of any new Indian law as applicable to the State;
- b) The repeal, modification or re-enactment of any existing Indian law as applicable to the State;
- c) The commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid; or
- d) A change in interpretation or applicability of any Indian law, as applicable to the State, by a judgement of court of record which has become final, conclusive and binding, as compared to such interpretation or application by court of record prior to the date of Bid.

“Commercial Operation Date” shall have the meaning ascribed thereto in Clause 6.8.3 of this Agreement.

“Completion Certificate” shall mean the certificate issued by KTIL certifying, inter alia, that:

- i. The Concessionaire has completed the construction of the Project Facilities as per the approved project implementation plan, and the same is safe for operations;
- ii. The Concessionaire has obtained all approval necessary to commence commercial operations of the Project Facilities.

“Construction Period” shall mean 2 (two) years from the date of approval of project implementation plan.

“Concession Agreement” shall mean the Concession Agreement referred to in Recital above, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Dispute Resolution Procedure” shall mean the procedure for resolution of Disputes set forth in Article 13;

“Drawings” shall mean all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the Approved project implementation plan.

“Debt Due” shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- a) the principal amount of the debt provided by the Lenders under the Financing Documents for financing the Total Project Cost (the “Principal”) but excluding any

part of the Principal that had fallen due for repayment [2 (two)] years prior to the Transfer Date;

- b) all accrued interest, financing fees and charges payable under the Financing documents on, or in respect of, the debt referred to in Sub- Clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date; (ii) any penal interest or charges payable under the Financing Documents to any Lender; and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on or after the Project COD, shall in no case exceed [50% (fifty per cent)] of the Total Project Cost.

“Due Date” means the due date for payment of Fee as set out in Article 8 of this Agreement.

“Effective Date” means the date on which the project implementation plan has been approved by the Review Committee and the financing arrangement for the Project has been made by the Concessionaire. It is also the date for commencement of construction of the Project Facilities or 3 (three) months from the Appointed Date, whichever is earlier.

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

“Encumbrance” means 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 Site or Project Facilities.

“Equity” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project

Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free loans advanced by any shareholder of the Company for meeting such equity component.

"Expiry" means expiry of this Agreement by efflux of time at the end of 30 (thirty) years from the Appointed Date or Termination Date, as the case may be.

"Expiry Date" means the date on which Expiry occurs.

"Financing Documents" means collectively the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, bonds and other debt instruments, security agreements and other documents relating to financing the Project.

"Financial Model" shall mean the financial model adopted by Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein.

"Financial Package" shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Documents, Subordinated Debt, if any.

"Financial Year" means the period commencing from April 1 of any given year to March 31 of the succeeding year.

"Force Majeure" or **"Force Majeure Event"** means an act, event, condition or occurrence as specified in Article 10.

"Good Industry Practice" means 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 & maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

"Government" means Government of Karnataka

"Government Agency" shall mean Government of India, Government of Karnataka or 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 Facilities 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.

“Government Instrumentality” shall mean any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over the Resort and the Project Infrastructure or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Independent Engineer” shall mean a firm, company or a body corporate, independent engineer or a department engineers appointed in accordance with Article 5 by KTEL for supervision and monitoring of compliance by the Concessionaire of its obligations related to construction of the Project Facilities.

“Lenders” means financial institutions, banks, funds and trustees for bond holders or debenture holders, who have provided financial assistance to the Concessionaire for financing any part of the Project.

“Mandatory Facilities” means the facilities that the Concessionaire shall at its own cost and expenses, develop undertake operations and maintenance of the facilities as set out in Schedule -1 of this Agreement.

“Material Adverse Effect” means 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” means 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. Material Breach shall mean and include the following:

- a. Failure by the Concessionaire to pay the Annual Concession Fee within the time stipulated as specified in this Agreement;
- b. Failure by the Concessionaire to procure the requisite permits, approvals & insurance in accordance with this Agreement;
- c. Failure by the Concessionaire to submit the Performance Security / Annual Concession Fee Security or to replenish the Performance Security / Annual Concession Fee Security upon appropriation in accordance with the terms and conditions of this Agreement;

- d. Failure by the Concessionaire to comply with any instructions or orders of the Authority made under this Agreement;
- e. The direct or indirect assignment of any rights, interest or obligations in this Agreement, by the Concessionaire in violation of any terms of this Agreement;
- f. Failure by the Concessionaire to observe or perform any of the Concessionaire's undertakings, obligations, rights, duties, covenants or any failure to abide by any of the provisions of this Agreement resulting in Material Adverse Effect on the Project and which such Party have failed to cure.

"NPV" shall have the meaning set forth in Clause 15.3;

"Operations Period" shall mean the period commencing from the Commercial Operation Date as per Clause 6.7.3 and ending on Expiry Date or Termination Date, as applicable.

"Performance Security" shall mean the Bank Guarantee submitted to KTIL by the Concessionaire for due performance of its obligations under this Agreement, in accordance with Clause 6.1.

"Person" shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, society, sole proprietorship, unincorporated organization, government or Government Agency or any other legal entity.

"Preliminary Notice" means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, inter alia, the underlying Event of Default.

"Project" means and includes construction and operations & maintenance and transfer of the Project Facilities in accordance with the terms and conditions of this Agreement.

"Project Facilities" means construction of Mandatory Facilities as set out in this Agreement and the additional facilities which the Concessionaire proposes to build, construct, renovate, provide, refurbish, modify, or procure within the Project Site, consistent with Good Industry Practice and as per the approved project implementation plan.

"Project Site" means the site belonging to KTIL admeasuring 8.5 acres; and more fully described in Schedule 1.

"Rights" shall have the meaning ascribed thereto in Article 3.1 of this Agreement.

"SBI PLR" means the medium term prime lending rate of the State Bank of India.

"Scheduled Project Completion Date" shall have the meaning ascribed thereto in Clause 6.5.1 of this Agreement.

"Selected Bidder" shall mean the Bidder selected by the Authority to award the Project following the completion of the Bidding Process (as defined under the RFP).

“Subordinated Debt” shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and
- b) all accrued interest on the debt referred to in Sub-Clause (a) above but restricted to the lesser of actual interest rate and a rate equal to [5% (five per cent)] above the Bank Rate in case of loans denominated in Indian Rupees and lesser of the actual interest rate and [6 (six) month] LIBOR (London Inter-Bank Offer Rate) plus [2% (two per cent)] in case of loans denominated in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire's shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.

“Substitution Agreement” shall have the meaning set forth in Clause 16.1.

“Tax” shall mean and includes all taxes including goods and service tax, fees, cesses, duties (including stamp duties, property tax), levies that may be payable by the Concessionaire for execution of this Agreement and during the Agreement Period under Applicable Law.

“Termination” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

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

“Termination Notice” means 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 by the Concessionaire in accordance with this Agreement and “Testing” and “Tested” shall be construed accordingly.

“Total Project Cost” shall mean the sum of Rs. 42.88 Crore (Rupees Forty-Two Crores Eighty-Eight Lakhs Only).

“Transfer Date” shall mean the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.

“Unforeseen Events” shall have the meaning as set forth in Clause 10.14.1.

"User Fee" means all charges, costs, fees, tariff and other amounts by whatever name called, collected by the Concessionaire from the users, pursuant to this Agreement, for usage of the Project Facilities.

1.2 Interpretation

In interpreting the conditions in this Concession Agreement, singular also means plural, male also means female or neuter, and the other way around. Headings have no significance. Words have their normal meaning under the language of this Concession Agreement unless specifically defined. The documents forming part of the Concession Agreement shall be interpreted in the following order of priority:

- a) This Concession Agreement along with Schedules as amended from time to time;
- b) Letter of Award (refer Schedule 12);
- c) Selected Bidder Bids i.e. technical proposal along with supporting Documents and Financial Proposal (refer Schedule 13);
- d) Bid Document with all Clarification/Corrigendum/Addendum to the Bid Document, if any (refer Schedule 14);

ARTICLE 2 - SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the **"Scope of the Project"**) shall mean and include, during the Agreement Period:

- a) Construction of Project Facilities comprising the Mandatory Facilities in accordance with the terms and conditions of this Agreement, and the approved project implementation plan;
- b) Operation & maintenance of the Project Facilities in accordance with the terms and conditions of this Agreement and the approved project implementation plan;
- c) Develop additional facilities as part of the Project Facilities in accordance with the provisions of the Agreement and the approved project implementation plan;
- d) Performance and fulfillment of all other obligations in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all obligations under this Agreement and
- e) Transfer of Project Site along with the Project Facilities in good operational conditions on the Expiry Date or the Termination Date as the case may be in accordance with the terms and conditions of this Agreement.

ARTICLE 3 – RIGHTS

3.1 Grant of Rights

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, KTIL hereby grants the following rights and authorizes the Concessionaire:

- i. to carry out surveys, investigation, study, design, engineer, procure, finance, develop, construct, operate & maintain the Project Facilities in accordance with this Agreement and for this purpose it may regulate the entry into and use of the same by third parties,
- ii. to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate User Fee from the users of the Project Facilities in the Project Site during the operation and maintenance period; and
- iii. to hand back the Project Site comprising the Project Facilities on the Expiry Date or the Termination Date as the case may be.

3.1.2 Subject to sub-clause 3.1.3, the Concessionaire shall have the right to further license / lease, the Project Facilities to such person/s as it may deem fit and to collect from such persons fees, license fees, user fees and maintenance charges, and other amounts during the Agreement Period. Before granting license to the licensee the Concessionaire shall submit to KTIL a template of such contractual document and obtain prior written approval of KTIL for such template. The approved template shall be used by the Concessionaire to enter contractual relationship with the licensee/occupier in respect of the Project Facilities. Provided that the tenure of such further licensees shall be co-terminus with the Agreement and a provision of this limitation shall be a part of the arrangement between the Concessionaire and such persons.

3.1.3 The Concessionaire shall not mortgage, assign, transfer or create any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement.

3.2 Agreement Period

The tenure of the Agreement shall be for a period of 30 (Thirty) years commencing from Appointed Date and ending on the Expiry Date (“the **Agreement Period**”).

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

3.3 Acceptance of Rights

In consideration of the rights, privileges and benefits conferred upon by KTIL and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Rights and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions of this Agreement.

3.4 Access rights to KTIL and others

The Concessionaire shall allow free access to the Project Site and Project Facilities at all times for the authorized representatives and vehicles of KTIL, Independent Engineer and for the persons and vehicles duly authorized by any Government Instrumentality to

- (a) inspect the Project Facilities and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.
- (b) allow access to and use of the Project Site for laying/ installing / maintaining electric lines or for such other public purposes as KTIL may specify. Provided that such access or use shall not result in a Material Adverse Effect and that KTIL shall, in the event of any physical damage to the Project Site / Project Facilities on account thereof, ensure that the Project Site / Project Facilities is promptly restored at its cost and expenses.

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur/ suffer any liability on account thereof.

ARTICLE 4 - PROJECT SITE

4.1 Handover of Project Site

- 4.1.1 Prior to the handover of Project Site to the Concessionaire, KTIL and the Concessionaire shall within 30 (thirty) days from the Appointed Date conduct joint inspection of the Project Site and agree to the exact area and inventory of the existing facilities therein and jointly prepare and sign a joint inspection report. The joint inspection report shall form part of Schedule 9.
- 4.1.2 KTIL shall, within 60 (sixty) days from the Appointed Date handover to the Concessionaire, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site, free from Encumbrance and encroachment, for the purpose of implementing the Project.
- 4.1.3 Upon handover of the Project Site, the Concessionaire shall have the right to enter upon, use and make at its own costs, charges and expenses such investigation necessary or appropriate to prepare the project implementation plan for construction of Project Facilities in the Project Site in accordance with the provisions of this Agreement.
- 4.1.4 The cost of stamp paper, Registration charges and other such in respect of this Concession Agreement shall be borne and paid exclusively by the Concessionaire.

4.2 Peaceful Possession

KTIL hereby warrants that:

- (a) The Project Site has been acquired through the due process of law and belongs to and is vested with KTIL and that KTIL has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement.
- (b) In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site and Project Facilities 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 or the Project Site and Project Facilities or any part thereof, KTIL 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.

- (a) The Project Site provided to the Concessionaire shall be for the purpose of developing, operating and maintaining the Project Facilities as per the approved project implementation plan, Applicable Laws and in accordance with the terms of this Agreement. The Project Site shall not be used by the Concessionaire for any other purpose and in manner except as per and in accordance with the terms of this Agreement.

ARTICLE 5 - INDEPENDENT ENGINEER

5.1 Procedure for Appointment of Independent Engineer

5.1.1 KTIL shall within 30 (thirty) days from the Appointed Date, appoint an independent engineer under this Agreement (the “**Independent Engineer**”) for initial period of 2 (two) years. On expiry of the aforesaid period, KTIL may in its discretion renew the appointment, or appoint another Independent Engineer for a term of 1 (one) year, and such procedure shall be repeated after expiry of each appointment.

5.1.2 In the event that the Independent Engineer is not appointed or its term is not extended, then KTIL shall perform the functions of the Independent Engineer through its departmental officials or its authorized representatives.

5.2 Duties and functions

The Independent Engineer shall submit to KTIL at least once in every 2 (two) months a report with respect to the compliances of the Concessionaire of its construction obligations as per the approved project implementation plan.

5.2.1 Remuneration to Independent Engineer

KTIL shall finalize the fees and other terms of appointment of the Independent Engineer. All fees, costs, charges and expenses payable to the Independent Engineer in accordance with the terms of its appointment (collectively “the **Remuneration**”) shall be borne 100 % by the Concessionaire. The Authority shall facilitate for the payments which is to be made to the Independent Engineer by the Concessionaire. In such regard, the Concessionaire shall deposit with the Authority in advance an amount equivalent to 6 (Six) months of remuneration payable to the Independent Engineer.

5.3 Termination of appointment

5.3.1 KTIL may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 5.1.

5.4 Replacement of the Independent Engineer

5.4.1 KTIL may replace the Independent Engineer in any of the following circumstances:

- (i) if KTIL has reason to believe that the Independent Engineer has not discharged its duties in a fair, appropriate and diligent manner;
- (ii) if, in accordance with the terms of its appointment the Independent Engineer resigns or notifies its intention not to continue as the Independent Engineer;
- (iii) any other circumstance which in the opinion of KTIL warrants replacement of the Independent Engineer.

5.5 Authorised signatories

KTIL shall require the Independent Engineer to designate and notify to KTIL and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the authorised signatories; provided that the Independent Engineer may, by notice in writing, substitute any of the authorised signatories by any of its employees.

5.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or guidelines of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure set out in Article 13.

ARTICLE 6 - OBLIGATIONS OF THE CONCESSIONAIRE

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:

6.1 Performance Security

6.1.1 The Concessionaire shall, for due and punctual performance of its obligations relating to the Project, submit to KTIL a performance security ("Performance Security") in the form of an irrevocable and unconditional Bank Guarantee from any nationalized or scheduled bank acceptable to KTIL for an amount **Rs. _____ (Rupees _____)** valid for the entire Agreement Period in the form as set forth in Schedule 2.

6.1.2 KTIL shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as damages from the Concessionaire for following reasons.

- i. Upon occurrence of a Concessionaire's event of default,

- ii. For recovery of any amount imposed as damages by KTIL for irregularities committed by the Concessionaire.
- iii. For recovery of any amount, which KTIL becomes liable to Government /Third party because of any default of the Concessionaire's or any of his servant/agent.
- iv. For recovery of any payment/fine/damages made by KTIL under the order/judgement of any court/consumer forum or law enforcing agency or any person working on his behalf due to any default of the Concessionaire's or any of his servant/agent.
- v. For recovery of any payment from Concessionaire's due to KTIL under this Agreement.

6.1.3 Upon such encashment and appropriation from the Performance Security, the Concessionaire's shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which KTIL shall be entitled to terminate this Agreement in accordance with Article 10.

6.1.4 If this Agreement expires or is Terminated due to any event other than a Concessionaire Event of Default, the Performance Security shall subject to KTIL's right to receive amounts from the Concessionaire, if any, under this Agreement, be duly discharged and released to the Concessionaire without any interest within 3 (three) months from the date of expiry of this Agreement or Termination.

6.2 Annual Concession Fee Security

The Concessionaire on or before 30 (thirty) days prior to the Scheduled Project Completion Date shall submit to the First Party, an irrevocable and unconditional Bank Guarantee from a Nationalised Bank, in the format prescribed at Schedule 3 acceptable to KTIL, for a sum of Rs. _____/- (Rupees _____ only)² (the "**Annual Concession Fee Security**"). The Annual Concession Fee Security shall be kept valid throughout the Agreement Period and a fresh Bank Guarantee is required to be furnished every year considering the escalation of the Annual Concession Fee.

6.2.1 In case of Concessionaire's defaults in payment of Annual Concession Fee for a particular year, the First Party shall, without prejudice to its other rights and remedies

² Insert amount equivalent to two times the quoted Annual Concession Fee

hereunder or in law, be entitled to encash and appropriate the relevant amount from the Annual Concession Fee Security as damages for such Concessionaire default. Upon such encashment and appropriation from the Annual Concession Fee Security, the Concessionaire's shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Annual Concession Fee Security, and in case of appropriation of the entire Annual Concession Fee Security provide an Annual Concession Fee Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Annual Concession Fee Security as aforesaid failing which the First Party shall be entitled to terminate this Agreement in accordance with Article 11.

- 6.2.3** The First Party shall, subject to the provisions hereof release the Annual Concession Fee Security forthwith upon expiry of 3 (three) months from the Expiry Date, subject to deductions towards any outstanding amount payable to the First Party by the Concessionaire in terms hereof.

6.3 Financing Arrangement

The Concessionaire shall at its own 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. Copy of the executed financing documents duly attested by the authorized signatories must be delivered to KTIL within 15 (fifteen) days of entering into such financing agreements by the Concessionaire.

- 6.3.1 KTIL shall not provide any financial assistance to the Concessionaire under this Agreement with respect to construction or operation & maintenance of the Project Facilities.

6.4 Submission of Project Implementation Plan and Approval

- 6.4.1 The Concessionaire shall within 45 (forty-five) days from the Appointed Date submit to KTIL, a project implementation plan ("**Project Implementation Plan**") setting out in reasonable detail the following necessary information:
- a. A detailed schedule of implementation for construction and operationalizing the Mandatory Facilities as set out in this Agreement along with Project Facilities including design and engineering, procurement of materials and equipment, installation etc;
 - b. In case financial assistance is obtained by the Concessionaire, the cost of construction as certified by the financial institutions.

- c. Methodology, standards, quality assurance procedures, periodicity proposed to be adopted with regard to construction of Project Facilities and operation & maintenance milestones.
- d. List of additional facilities proposed to be developed by the Concessionaire along with details of capacity and dimensions, area statements including Floor Space Index (FSI) or Floor Area Ratio (FAR) permissible and proposed FSI/FAR etc., of such facilities for better commercial utilization of the Project Site.
- e. Manpower deployment plan for the management and supervision of all Project activities. (This would include the designation of suitably qualified personnel for areas such as contract administration and supervision, construction management, safety, plant and equipment maintenance, procurement, materials management and quality control);
- f. Design specifications of Project Facilities;
- g. A detailed architectural drawing along with 3D views;
- h. A broad method statement for key items (Earth Works, Concrete Works, Structural Steel Works and Roads) setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans and safety management plan;
- i. Details of the quality assurance plan and quality control procedures;
- j. Format of the monthly report giving details of the physical progress in implementation of the Project and operations and maintenance activities undertaken (Monthly progress report).
- k. Provision for appropriate and adequate lighting and ventilation devices, rain water harvesting, utilization of waste water, water treatment plant, landscaping, appropriate security systems, including provision for fitting CC T.V. systems, waste management systems, cleaning systems etc. and details of management of waste generated within the Project Site.
- l. Location and details of the Alternate Facility.

6.4.2 KTIL may constitute a committee (the “**Review committee**”) for review and approval of the project implementation plan. The Review committee shall review the project implementation plan with applicable provisions of the Agreement and either approve or convey its comments/observations, if any within 30 (thirty) days from the date of receipt of the project implementation plan by the Concessionaire. On receipt of such comments/observation from KTIL, the Concessionaire shall within 15 (fifteen) days submit a revised project implementation plan to KTIL for its approval. After approval by

KTIL, the project implementation plan (“Approved Project Implementation Plan”) shall be signed by the Parties and appended to this Agreement as Schedule 10.

6.4.3 If the Concessionaire is unable to submit the project implementation plan within the period of 45 (forty five) days from the Appointed Date, it should in writing convey the reasons for non-submission of the same within the said period of 30 (thirty) days. Upon such request, KTIL may for valid reasons and for reasons beyond the control of Parties, waive the delay to submit the approved project implementation plan and extend the date for submission of project implementation plan but not later than for a further period of 30 (thirty) days, subject to payment of penalty amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the submission of the same to KTIL. In case the project implementation plan is not submitted within the extended period of 30 (thirty) days, KTIL shall, subject to the provisions of Clause 11.2, be entitled to terminate this Agreement. The said penalty amount should be submitted in the form of Demand Draft (DD) from any nationalized or scheduled bank in favour of The Managing Director, Karnataka Tourism Infrastructure Limited, payable in Bengaluru.

6.4.4 Notwithstanding any review or failure to review or the comments/observations of KTIL, the Concessionaire shall be solely responsible for the adequacy of the project implementation plan and shall not be relieved or absolved in any manner whatsoever of any of its obligations set forth in this Agreement.

6.5 Project Completion Period

6.5.1 The Concessionaire shall complete the construction of Project Facilities within 2 (two) years from the **Effective Date** (the “**Scheduled Project Completion Date / SPCD**”).

6.5.2 The Concessionaire shall commence operation & maintenance of the Projects Facilities within 15 (fifteen) days from the date of issue of Completion Certificate by KTIL and operate and maintain the same till the Expiry Date or the Termination Date as the case may be. This Clause shall apply mutatis mutandis as per Clause 6.5.1.

6.6 Construction of Project Facilities

6.6.1 The Concessionaire prior to commencement of construction of Project Facilities, the Concessionaire shall have:

- i. Obtained all Applicable Permits for the Project including licenses, consents, exemptions, permissions and approvals from the government agencies concerned necessary or desirable for construction of the Project Facilities and as required under Applicable Law.
- ii. Mobilized the requisite resources, personnel and organization necessary for the

same and designated and appointed suitable officers/ representatives as it may deem appropriate with responsibility to supervise implementation of the Project and for exchange of information with KTIL / Independent Engineer

- iii. Finalized such Drawings in consultation with KTIL / Independent Engineer as are necessary and obtain the approval of project implementation plan by KTIL;
- iv. Undertaken and performed all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

6.6.2 The Concessionaire shall commence construction of Project Facilities from the date of approval of project implementation plan and complete the same within 2 (two) years from such date. Except for reasons of a Force Majeure Event. The Project Site should be developed or utilized as per the Applicable Laws including the applicable town and country planning rules.

6.6.3 If the Concessionaire fails to complete the construction of Project Facilities within 2 (two) years from the Effective Date, unless such failure has occurred due to Force Majeure or for reasons solely attributable to KTIL, the Concessionaire should in writing convey the reasons for non-completion of the same within the said period of 2 (two) years. Upon such request, KTIL may waive the delay and extend the date for completion of construction of Project Facilities but not later than for a further period of 90 (ninety) days, subject to payment of penalty amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the submission of the same to KTIL. In case the construction of Project Facilities is not completed within the extended period of 90 (ninety) days, KTIL shall, subject to the provisions of Clause 11.2, be entitled to terminate this Agreement. The said penalty amount should be submitted in the form of Demand Draft (DD) from any nationalized or scheduled bank in favour of the Managing Director, Karnataka Tourism Infrastructure Limited, payable in Bengaluru.

6.6.4 The Concessionaire shall undertake construction of Project Facilities in accordance with approved project implementation plan.

6.7 After Completion of Construction

6.7.1 Upon completion of construction but prior to issue of the Completion Certificate, the Concessionaire shall clear of all construction equipment, surplus materials, debris and temporary installations. The Project Site and Project Facilities shall kept tidy and an aesthetically pleasing appearance to the satisfaction of KTIL/Independent Engineer.

6.7.2 The Concessionaire shall request KTIL to issue the Completion Certificate by submitting the following documents in two sets (both hard copy and CD form):

- i. Geo-technical and borehole reports, if any.
- ii. Building Plan including as-built drawings approved by the competent authority.
- iii. Blue print of the completed building along with the occupancy and Completion Certificate by the relevant authority.
- iv. Approval letter of concerned ESCOM/water supply authority etc.
- v. Interior & exterior photographs of the Project Site and Project Facilities.

6.7.3 The Concessionaire shall be entitled to operate the Project Facilities only after Completion Certificate is obtained whereupon the Concessionaire shall be entitled for collecting and appropriating User Fees. For avoidance of doubt, the date of issuance of Completion Certificate shall be the commercial operation date ("**Commercial Operation Date/COD**").

6.8 Monthly progress reports

The Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to KTIL a monthly construction report and monthly operation & maintenance report on progress of the construction and operation & maintenance of the project facilities. The Concessionaire shall also promptly give such other relevant information as may be required by KTIL.

6.9 Environmental and Safety Compliance

6.9.1 The Concessionaire shall obtain the necessary environmental safety related clearances from the competent authorities wherever applicable. The Concessionaire shall conform to the laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto, including rainwater harvesting, energy conservation and other such ecological/ sustainable solutions/mechanisms and conforming to Good Industry Practice for securing the safety of the users of the Project Facilities.

6.10 Operation and Maintenance Obligations

The Concessionaire shall operate, manage & maintain the Project Facilities entirely at its own cost as per the Good Industry Practice.

6.10.1 The Concessionaire shall ensure that the Project Facilities is commissioned and opened for the users within 15 (fifteen) days from the date of obtaining the Completion Certificate from KTIL. This Clause shall apply mutatis mutandis as per Clause 6.5 of this Agreement.

6.10.2 The Concessionaire shall, during the Agreement Period have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to or operate the Project Facilities, to deal with KTIL and be responsible for all necessary exchange of information required pursuant to this Agreement;

6.10.3 In case the Concessionaire has failed to operate & maintain the Project Facilities as per the Good Industry Practice, and such failure has not been remedied despite a notice to that effect issued by KTIL ("**notice to remedy**"), the Concessionaire shall be deemed to be in material breach of O&M obligations.

KTIL, acting reasonably and in accordance with the provisions of this Agreement, determines that due to persistent breach of its obligations by the Concessionaire, KTIL shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to terminate this Agreement. For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M obligations by the Concessionaire which has not been remedied by the Concessionaire despite a notice to remedy in respect thereof issued by KTIL;
- (ii) recurrence of a breach by the Concessionaire, during the pendency of notice to remedy by KTIL requiring the Concessionaire to remedy a breach, and
- (iii) repeated occurrence of a breach, notwithstanding that earlier breaches have been remedied pursuant to notice to remedy or otherwise.

6.10.4 KTIL's right to take remedial measures

In the event the Concessionaire does not maintain and/or repair the Project Facilities or any part thereof in conformity with the operation & maintenance requirements and fails to commence remedial works within 15 (fifteen) days of receipt of a notice in this behalf from KTIL, KTIL shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 100% (One Hundred per cent) of such cost shall be paid by the Concessionaire to KTIL as penalty.

6.11 Alterations, Modifications or Expansion

6.11.1 The Concessionaire may with the prior approval of KTIL and subject to any conditions, as may be specified by KTIL carry out necessary alterations/modifications/expansion to the Project Facilities or undertake new expansion in order to meet its obligation of providing the Project Facilities. Any such

alteration, modification or expansion shall be subject to Applicable Law and obtaining Applicable Permits for such alteration/modification/new expansion. Provided however that such alteration/modification/new expansion, shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Facilities or otherwise adversely affect the safety of the users of the Project Facilities.

- 6.11.2** In case of any such damages due to alterations/modifications/expansion to the Project Facilities, the Concessionaire shall bear all such costs related to such damages. In case the Concessionaire does not rectify the damages within the time specified by KTIL, KTIL may rectify the said damages and deduct the cost incurred in rectifying the damages from the Performance Security.

6.12 Provision for Parking

The Concessionaire shall provide, as part of the Project Facilities, a parking facility for the users, with ease of access.

6.13 General Obligations

Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expense:

- (a) During the Agreement Period protect the Project Site from any encroachments or Encumbrances, or illegal activities save and except as otherwise expressly set forth in this Agreement.
- (b) Ensure that the Project Site is not used for any of the activities listed out in Schedule 6.
- (c) Obtain Applicable Permits including as set out in Schedule 8 and keep in force in conformity with the Applicable Laws.
- (d) Comply with Applicable Law governing the operations of the project facility and such other laws as may be applicable with regard to Project Facilities at all times during the Agreement Period.
- (e) 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.
- (f) Maintaining a public relations unit to interface with and attend to suggestions from the users of Project Facilities, Government agencies, media and other agencies.
- (g) Pay all taxes including goods & service tax, property tax, duties (including stamp duties) and outgoings, utility charges relating to the execution of the

Agreement, construction of Project Facilities, Operation & Maintenance of Project Facilities.

- (h) Bear the cost towards power supply, supervision charges, electrical inspectorate charges, deposits of transformer if any, deposits for line /poles etc.
- (i) 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. The Concessionaire shall indemnify KTIL against any claims, damages, expenses or losses in this regard and in no case KTIL shall be treated as employer;
- (j) Be responsible for all the health, security, environment and safety aspects of the Project Facilities throughout the Agreement Period.
- (k) Ensure adequate marketing of the Project Facilities in co-ordination with various Government agencies, local authorities and other relevant stakeholders;
- (l) Pay all utility charges (including electricity consumption and water supply charges) relating to the Project Facilities.
- (m) Provide adequate lighting and ventilations devices, rain water harvesting, utilization of waste water, landscaping, appropriate security systems, including provision for fitting CC T.V. systems, waste management systems, cleaning systems etc.
- (n) The Concessionaire shall, subject to Applicable Laws, provisions of Applicable Permits and with the assistance of the Authority, undertake shifting of any utility, including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Project Site, if and only if such utility causes or shall cause a Material Adverse Effect on the construction, operation or maintenance of the Resort and/or the Project Infrastructure. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

6.14 Specific Obligations

- (a) The Concessionaire shall conduct proper due diligence and police verification while recruiting staff for the Project Facilities.
- (b) The Concessionaire shall ensure security in the Project Facilities by deploying sufficient security personnel as per Good Industry Practice.
- (c) All gold, silver, oil, minerals, precious stones, treasures, fossils, coins, articles of value or antiquity and structures and other relics or remains or things of geological or archeological interest discovered on the Project Site shall be the property of KTIL. The Concessionaire shall take reasonable precautions to prevent any person from removing or damaging any such article or thing. The Concessionaire shall immediately upon the discovery of such article or thing inform KTIL and follow the instructions for dealing therewith that may be issued by KTIL.
- (d) The Concessionaire shall ensure that there will not be any employment of children during the Agreement Period for the purpose of construction or operation and maintenance of the Project Facilities or any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful. An undertaking to this extent is required to be submitted by the Concessionaire at the time of signing this Agreement in the format provided at Schedule -4.
- (e) The Concessionaire shall ensure that there is no barrier and all necessary facilities are provided to the specially able persons. An undertaking to this extent is required to be submitted by the Concessionaire at the time of signing this Agreement in the format provided at Schedule -4.
- (f) The Concessionaire shall procure that all users in the Project Facilities receive quality services in accordance with the provisions of this Agreement and Good Industry Practices.
- (g) The Concessionaire shall ensure that all food and beverage items sold at the Project Facilities adhere to required standards of quality and hygiene as prescribed by the extant guidelines of Food Safety and Standards Authority of India and other relevant authorities.

6.15 Insurance

- (a) **During Construction**

The Concessionaire shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the construction for the Project Facilities, such insurance as are necessary including but not limited to the following:

- (i) Concessionaire's all risk insurance;
- (ii) comprehensive third party liability insurance including injury or death to personnel / representatives of Persons who may enter the Project Site;
- (iii) workmen's compensation insurance;
- (iv) 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) During O&M

The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, during the operation & maintenance, insurance against:

- (i) loss, damage or destruction of the Project Facilities at replacement value;
- (ii) the Concessionaire's general liability arising out of the Rights;
- (iii) liability to third parties;
- (iv) 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.

(c) Evidence of Insurance

The Concessionaire shall, from time to time, provide to KTIL copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Concessionaire in accordance with this Agreement.

(d) Validity of Insurance

The Concessionaire shall from time to time promptly pay insurance premium, keep the insurance policies in force and valid throughout the Agreement Period and furnish copies thereof to KTIL.

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, KTIL may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by KTIL thereof shall be reimbursed by the Concessionaire to

KTIL together with interest thereon at 5% over SBI PLR from the date the respective sums were incurred by KTIL, within 7 (seven) days from the receipt of claim in respect thereof made by KTIL.

(e) Application of Insurance Proceeds

Subject to the provisions of the Financing Documents and unless otherwise provided herein, the proceeds of all insurance policies received shall be promptly applied by the Concessionaire towards repair, construction, restoration or re-instatement of the Project Facilities or any part thereof which may have been damaged or destroyed. The Concessionaire may designate the Lenders as the loss payees under the insurance policies or assign the insurance policies in their favour as security for the financial assistance provided by them to the Project. The Concessionaire shall carry out such repair, construction, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, construction, restoration or re-instatement be as far as possible in the same condition as it were prior to such damage or destruction, normal wear and tear excepted.

6.16 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 10.3 and
- ii. KTIL Event of Default.

6.17 Others

The Concessionaire shall be at liberty to,

- (i) demolish existing structures within the Project Site subject to approvals (in writing) from KTIL, Construction Requirements, Applicable Laws and Applicable Permits; and
- (ii) the material obtained as a result of demolition under sub-clause(i) above shall be used, sold or disposed in accordance with Applicable Laws and Applicable Permits.

ARTICLE 7 - KTIL 'S OBLIGATIONS

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

7.1 Specific Obligations

7.1.1 KTIL shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from KTIL under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by KTIL, within fifteen days (15) days from receipt of request from the Concessionaire to make available such authorization.

7.1.2 KTIL shall subsequent to signing of joint inspection report by both the Parties handed over to the Concessionaire, on as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from Encumbrance and encroachment, for construction of Project Facilities;

7.1.3 KTIL shall upon satisfactory completion of construction of Project Facilities on Project Site and submission of necessary documents as specified in Clause 6.7.2, within 30 (thirty) days issue a certificate of completion ("**Completion Certificate**").

7.2 General Obligations

7.2.1 KTIL shall where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits.

7.2.2 Observe and comply with all its obligations set forth in this Agreement.

ARTICLE 8 - ANNUAL CONCESSION FEE PAYMENT TERMS

8.1 Annual Concession Fee

8.1.1 In consideration of the Rights hereby granted, the Concessionaire shall pay to the Authority an Annual Concession Fee of Rs._____/ - (Rupees_____Only)³ ("**Annual Concession Fee**") commencing from the Scheduled Project Completion Date and thereon for rest of the Agreement Period. . The First Year Annual Concession Fee should be paid on or before 30 (thirty) days prior to the Scheduled Project Completion Date. Subsequently, the Annual Concession Fee is payable to the Authority on or before 30 (thirty) days prior to the start of every year in advance throughout the Agreement Period. The Annual Concession Fee is exclusive of GST

³ Mention the Annual Concession Fee amount payable to the Authority and as provided by the Selected Bidder in its Financial Bid.

and all other applicable taxes and shall be payable by the Concessionaire at actual over and above the Annual Concession Fee. During the Agreement Period, commencing from the Scheduled Project Completion Date the Annual Concession Fee shall be increased by 5% (five percent) every year over the previous year's Annual Concession Fee.

8.1.2 The Concessionaire shall pay the Annual Concession Fee to the Authority notwithstanding the fact that, the Project facilities is completed or not within the specified period or the Concessionaire has not started the operation of the Project. In other words, the Concessionaire shall not be entitled to seek any reduction of Annual Concession Fee, claim, damages, compensation or any other consideration from the First Party on account of any reason.

8.1.3 Any delay in payment of the Annual Concession Fee shall attract an interest for the delayed period at the rate of Bank Rate plus 5% per annum on the outstanding amount, which shall be due from the date of such payment till the amount is realized by the First Party. In addition to the foregoing, any delay in payment of Annual Concession Fee beyond a period of 60 (sixty) days from the due date of such payment will be construed to be Material Breach under this Agreement.

8.1.4 In case of default of payment of the Annual Concession Fee by the Concessionaire during the Agreement Period, the First Party shall without prejudice to its other rights, deduct the said dues from the Annual Concession Fee Security. In such case the Annual Concession Fee Security shall be replenished to its original within 30 (thirty) days from date of appropriation of such payment by the First Party.

8.2 Mode of Payment

The Payment shall be made by way of demand draft drawn on any nationalized or scheduled bank in favour of The Managing Director, Karnataka Tourism Infrastructure Limited, payable at Bengaluru and shall be sent sufficiently in advance to the address specified in Clause 17.7 so as to ensure realisation/ encashment thereof on or before Due Date.

The Annual Concession Fee and any other payments to be made as per the terms of this Agreement shall be paid by way of non- refundable Demand Draft from a Nationalised Bank or a Scheduled Bank drawn in favour of "[_____]", payable at [_____] or through Real Time Gross Settlement (RTGS) payment to be made in [Name of the Bank] in favour of

[] bearing account number [] and IFSC []⁴.

ARTICLE 9 – SHAREHOLDING

9.1 Ownership Structure:

The Selected Bidder/Consortium has caused the Concessionaire to be incorporated as a special purpose company to Develop, Operate, Maintain and Transfer the Project/Project Facilities in accordance with this Agreement. The shareholding pattern of Developer/each member of the Consortium in the Concessionaire is [●].

9.2 Shareholding Commitments

9.2.1 The Concessionaire agrees that in case the Selected Bidder is a Consortium, the Lead Member shall subscribe to at least 26% (twenty-six per cent) or more of the paid up and subscribed equity of the SPV until the completion of 2 (two) years from the Commercial Operation Date and the other member of the Consortium shall hold at least 26% (twenty-six one per cent) of the subscribed and paid up equity of the SPV at all times until the completion of 2 (two) years from the Commercial Operation Date. The members of the Consortium shall collectively hold 51% (fifty-one percent) of the subscribed and paid up equity of the SPV at all times until the completion of 2 (two) years from the Commercial Operation Date. Any divestment thereafter shall be subject to the prior consent of the Authority (which shall not be unreasonably denied by the Authority) and at the option of the Authority, be accompanied by suitable no objection letters from the lenders. **OR**

9.2.2 The Concessionaire agrees that in case the Selected Bidder is a Single Business Entity, it shall hold at least 51% (Fifty-one percent) of subscribed and paid up equity share capital of the SPV to implement the Project at all times until the completion of 2 (two) years from the Commercial Operation Date. Any divestment thereafter shall be subject to the prior consent of the Authority (which shall not be unreasonably denied by the Authority) and at the option of the Authority, be accompanied by suitable no objection letters from the lenders.

9.2.3 The Bidder shall, in the case of a Consortium, include a Member who shall subscribe and continue to hold at least 5% (five per cent) of the subscribed and paid up equity of the SPV until the end of Concession Period, and has either by itself or through its Associate, experience of 5 (five) years or more in operation and maintenance (O&M) of Category 1 or Category 2 projects specified in the RFP Volume 1 document, which

⁴ Insert the wire transfer / account details as applicable

have an aggregate capital cost equal to the Estimated Project Cost as specified in the RFP Volume 1 document. In case the Applicant is not a Consortium, it shall be eligible only if it has equivalent experience of its own or through its Associates.

9.3 Constituent Documents

- 9.3.1 The Concessionaire shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Selected Bidder/Consortium.
- 9.3.2 In particular, the articles of association and the memorandum of association of the Concessionaire shall be amended within 3 (three) months of the Scheduled Project Completion Date to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The Concessionaire shall submit the amended articles of association and the memorandum of association to the Concessionaire as soon as may be reasonably possible.
- 9.3.3 Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Concessionaire and the articles of association and memorandum of association of the Concessionaire shall include a specific provision to this effect.

ARTICLE 10 - FORCE MAJEURE

10.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non Political Event, Indirect Political Event and Political Event, as defined in Clauses 10.2, 10.3 and 10.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event:

- a) is beyond the reasonable control of the Affected Party; and
- b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and
- c) has Material Adverse Effect on the Affected Party.

10.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionisation radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external;
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services for a continuous period of [24 (twenty four)] hours and an aggregate period exceeding [7 (seven)] days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 10.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas Contractor to deliver any critical equipment required for project and not available in India if such delay or failure is caused outside India by any event specified in Sub- Clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Project Site that could not reasonably have been expected to be discovered through an inspection of the Project Site; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

10.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of [24 (twenty four)] hours and exceeding an aggregate period of [7 (seven)] days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents operation of the Project by the Concessionaire for an aggregate period exceeding [7 (seven)] days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue the Development Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by an Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of any nature analogous to any of the foregoing.

10.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions and its effect, in financial terms, exceeds the sum.
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no-objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no-objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

10.5 Duty to report Force Majeure Event

10.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 10 with evidence in support thereof;
- (b) the estimated duration and effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

10.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than [7 (seven)] days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on performance of its obligations under this Agreement.

10.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required under Clause 10.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

10.6 Effect of Force Majeure Event on the Concession

10.6.1 If any Force Majeure Event occurs:

- (a) before the Commercial Operations Date, the Agreement period and the Construction Period shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after the Commercial Operations Date, whereupon the Concessionaire is unable to provide the Project Facilities and services despite making best efforts or it is directed by the Authority or any Government Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Agreement period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the services from the Project Facilities on account thereof.

10.7 Allocation of costs arising out of Force Majeure

10.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

10.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

10.7.3 For avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of development works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Revenues derived or collected by it from or on account of the Project, or debt repayment obligations.

10.7.4 Save and except as expressly provided in this Article, neither Party 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 or exercise of any right pursuant hereto.

10.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of [180 (one hundred and eighty)] days or more within a continuous period of [365 (three hundred and sixty five)] days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant [15

(fifteen)] days' time to the other Party to make a representation and may after the expiry of such [15 (fifteen)] day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

10.9 Termination Notice due to Force Majeure Event

In case of a Force Majeure Event, the Affected Party shall certify that this Concession Agreement has been frustrated and shall issue a Termination Notice setting out:

- (a) in sufficient detail the underlying Force Majeure Event;
- (b) an indicative Termination Date which shall be a date occurring not earlier than 60 (sixty) days from the date of occurrence of the Force Majeure Event;
- (c) 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
- (d) any other relevant information.

10.10 Obligation of Parties

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

- (a) The Performance Security and Annual Concession Fee Security, after deducting such amounts due and recoverable (if any) by KTIL is released to the Concessionaire; and
- (b) the Project Site along with the Project Facilities are handed back by the Concessionaire to the KTIL on the Termination Date free from all Encumbrance.

10.11 Termination Payment

10.11.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

10.11.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent)] of such unpaid claims shall be included in the computation of Debt Due; and

(b) 100% (one hundred per cent)] of the Equity.

10.11.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 11.2 (g) (ii) as if it were an Authority Default.

10.12 Dispute Resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure in accordance with Article 13; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

10.13 Excuse from Performance of Obligations

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

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

10.14 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.

ARTICLE 11 - EVENTS OF DEFAULT AND TERMINATION

11.1 Events of Default

Event of Default means either Concessionaire Event of Default or KTIL 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 a Force Majeure Event or KTIL Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Concessionaire:

- (i) Failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- (ii) Failure to submit the Annual Concession Fee Security on or before 30 days prior to the Scheduled Project Completion Date.
- (iii) The Performance Security / Annual Concession Fee Security has been encashed and appropriated by KTIL in accordance with this Agreement and the Concessionaire fails to replenish or provide fresh Performance Security / Annual Concession Fee Security within 60 (sixty) days;
- (iv) The Concessionaire has failed to make any Payment on due date thereof and more than 60 days have elapsed since such default;
- (v) The Concessionaire has failed to complete the construction within the stipulated time period in this Agreement;
- (vi) The Concessionaire is carrying out any prohibited activities as per Schedule 6;
- (vii) The Concessionaire has failed to submit the project implementation plan within the stipulated time period as specified in this Agreement;
- (viii) The Concessionaire failed to adhere to construction and/or O&M obligations towards the Project Facilities during the Agreement Period.
- (ix) The Concessionaire is in Material Breach of any of its other obligations under this Agreement on account of its own acts of omission or commission and the same has not been remedied for more than 60 (sixty) days;
- (x) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (xi) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;

- (xii) 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 KTIL, 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.
- (xiii) The Concessionaire has abandoned or manifests intention to abandon the construction of and /or operation & maintenance of the Project Facilities without the prior written consent of KTIL.
- (xiv) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xv) If the Concessionaire fails to pay the necessary insurance premiums in terms of this Agreement and thereby causes the insurance coverage to diminish, terminate or expire.
- (xvi) The Concessionaire has leased, mortgaged, assigned, transferred or created any lien or Encumbrance on the whole or any part of the Project Site or Project Facilities, save and except as expressly permitted by this Agreement.

(b) KTIL Event of Default

Any of the following events shall constitute an event of default by KTIL ("KTIL Event of Default"), when not caused by a Concessionaire Event of Default:

- (i) KTIL is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Concessionaire ;
- (ii)KTIL has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;

11.2 Termination due to Event of Default

(a) Termination due to Parties Event of Default

- (i) Without prejudice to any other right or remedy under this Agreement, upon the occurrence of Event of Default, the Affected Party shall be entitled to terminate this Agreement by issuing a Preliminary Notice to other Party.
- (ii) Within 30 days of receipt of Preliminary Notice, the other Party shall forward to the Affected Party its proposal to remedy/ cure the underlying Event of

Default (the "KTIL **Proposal to Rectify**"). In case of non-submission of the Proposal to rectify by the other Party within the period stipulated therefor, the Affected Party shall be entitled to terminate this Agreement by issuing Termination Notice.

- (iii) If the Proposal to Rectify is forwarded by the other Party to the Affected Party within the period stipulated therefor, the other Party shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the other Party fails to remedy/ cure the underlying Event of Default within such further period allowed, the Affected Party shall be entitled to terminate this Agreement by issuing Termination Notice.

(b) Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Clause 11.2 (a) 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 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) until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
 - (ii) the termination payment, if any, payable by KTIL in accordance with the following Clause 11.2 (g) is paid to the Concessionaire on the Termination Date and
 - (iii) the Project Facilities are handed over to KTIL by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to KTIL.
- (d) KTIL shall, send a copy of its notice of intention to issue a Termination Notice to inform the "Lender or Lenders' representative" and grant [15 (fifteen)] days to the "Lender or Lenders' representative", for stating the intention to substitute the

Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of "Lender or Lenders' representative", it shall, in its discretion, either withhold Termination for a period not exceeding [180 (one hundred and eighty)] days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling "Lender or Lenders' representative" to exercise right of substitution in accordance with the Substitution Agreement.

(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.

(f) Termination Payments

i. Upon Termination on account of a Concessionaire Default during the Operations Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(a) [90% (ninety per cent)] of Debt Due less Insurance Cover; and

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then [70% (seventy per cent)] of such unpaid claims shall be included in the computation of Debt Due.

For avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to the Scheduled Project Completion Date.

ii. Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(i) Debt Due;

(ii) 100% (one hundred per cent) of the Equity; and

11.3 Rights of KTIL on Termination

- (a) Upon Termination of this Agreement for any reason whatsoever, KTIL shall upon making the Termination Payment, if any, to the Concessionaire have the power and authority to:
 - (i) enter upon and take possession and control of the Project Facilities forthwith;
 - (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire from entering upon/ dealing with the Project Facilities;
- (b) Notwithstanding anything contained in this Agreement, KTIL 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 regularization 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 Facilities by the Concessionaire to KTIL shall be free from any such obligation.

11.4 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.

ARTICLE 12 - EXIT MANAGEMENT

12.1 Ownership

Without prejudice and subject to this Agreement, the ownership of the Project Facilities, including all improvements made therein by the Concessionaire, shall at all-time remain that of KTIL.

12.2 Concessionaire's Obligations

- (a) Upon the expiry of the Agreement Period by efflux of time and in the normal course, the Concessionaire shall on the Expiry Date, hand back vacant and peaceful possession of Project Facilities to KTIL free of cost and in good operable condition.
- (b) At least 12 months before the Expiry Date a joint inspection of the Project Facilities shall be undertaken by KTIL and the Concessionaire. KTIL shall,

within 45 (forty five) days of such inspection prepare and furnish to the Concessionaire a list of works, if any, to be carried out so as to keep the Project Facilities in good operational condition. The Concessionaire shall promptly undertake and complete such works at least 4 (four) months prior to the Expiry Date and also ensure that the Project Facilities continue to meet such requirements until the same are handed back to KTIL on the Expiry Date.

- (c) KTIL shall, within 45 (forty five) days of the joint inspection undertaken under Clause 12.2(b) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to KTIL along with the Project Facilities.
- (d) The Concessionaire hereby acknowledges KTIL's rights specified in Clause 11.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

ARTICLE 13 - DISPUTE RESOLUTION

13.1 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 be resolved amicably in accordance with the procedure set forth in Clause 13.1 (b) below.
- (b) Either Party may require such Dispute to be referred to the Managing Director, KTIL, and the Chief Executive Officer/Director 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 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 13.2 below.

13.2 Arbitration

- (a) **Procedure**

Subject to the provisions of Clause 13.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996.

(b) Place of Arbitration

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

(c) English 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 Provision of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

13.3 Performance during Dispute Resolution

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.

ARTICLE 14 - REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to KTIL 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, the outcome 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 KTIL 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 Facilities shall pass to and vest in KTIL on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or KTIL;
- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to KTIL 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 Project Development Rights.
- (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 Facilities, and the information provided by KTIL, 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 KTIL shall not be liable for the same in any manner whatsoever to the Concessionaire .

14.2 Representations and Warranties of KTIL

KTIL represents and warrants to the Concessionaire that:

- (a) KTIL has full power and authority to grant the Project Development Rights;
- (b) KTIL has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (c) This Agreement constitutes KTIL'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 KTIL in respect of the Project Site or the Project.

14.3 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.

ARTICLE 15 - CHANGE IN LAW

15.1 Increase in costs

15.1.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds [Rs. 25 lakhs (Rupees twenty-five lakh)] in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

15.1.2 Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that

would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 13. For avoidance of doubt, it is agreed that this Clause 15.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

15.2 Reduction in costs

15.2.1 If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds [Rs. 25 lakhs (Rupees twenty-five lakh)] in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable, but no later than [30 (thirty)] days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

15.2.2 Provided that if no agreement is reached within [90 (ninety)] days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within [15 (fifteen)] days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure in accordance with Article 13. For avoidance of doubt, it is agreed that this Clause 15.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

15.3 Protection of NPV

Pursuant to the provisions of Clauses 15.1 and 15.2 for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there

been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, Revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

15.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 15 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than [2 (two)] years from the close of such Accounting Year.

- 15.5 No claim in the event of recovery from users Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the users for and in respect of the services utilised by such users.

ARTICLE 16 – SUBSTITUTION AGREEMENT

16.1 Substitution Agreement

- (a) Lender or Lenders’ representative, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the “**Substitution Agreement**”) to be entered into amongst the Concessionaire, the Authority and the Lender or Lenders' representative, substantially in the form set forth in Schedule 11.
- (b) Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided

that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of [120 (one hundred and twenty)] days to the Concessionaire for curing such breach.

ARTICLE 17 – MISCELLANEOUS

17.1 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 KTIL.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Facilities except with prior consent in writing of KTIL, which consent KTIL shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in Clauses 17.1 (a) and 17.1 (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) assignment of Concessionaire's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.
 - (iii) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders / Lenders' Representative as nominee and for the benefit of the Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Lenders under the Financing Documents.

17.2 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at Bank Rate plus 5% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Clause 17.2 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

17.3 Governing Law and Jurisdiction

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

17.4 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.

17.5 Survival

Termination of this Agreement

- (a) shall not relieve the Concessionaire or KTIL of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and 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.

17.6 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 all the Parties hereto and evidenced in writing.

17.7 Notices

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

If to KTIL:

The Managing Director

Karnataka Tourism Infrastructure Limited

5th Floor, Indanan Bhavana,

Race Course Road,

Bengaluru - 560 001

If to the Concessionaire:

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 recognized 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.

17.8 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.

17.9 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.

17.10 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.

17.11 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.

17.12 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 Karnataka Tourism Infrastructure Limited (KTIL) by:

(Signature)

(Name)

(Designation)

For and on behalf of _____ (Concessionaire) by:

(Signature)

(Name)

(Designation)

In the presence of:

1)_____ 2)_____

SCHEDULES

SCHEDULE 1 – PROJECT SITE

Project Site Details and Mandatory Development Obligations:

The proposed heritage resort at Belur-Halebidu, shall be designed to highlight the architectural and cultural legacy of the region, offering guests an immersive experience in the destination's history and traditions with a focus on its famous Hoysala-era temples and monuments. The development shall contribute to the conservation of the region's historical significance and promote local heritage.





Fig: Site Pictures

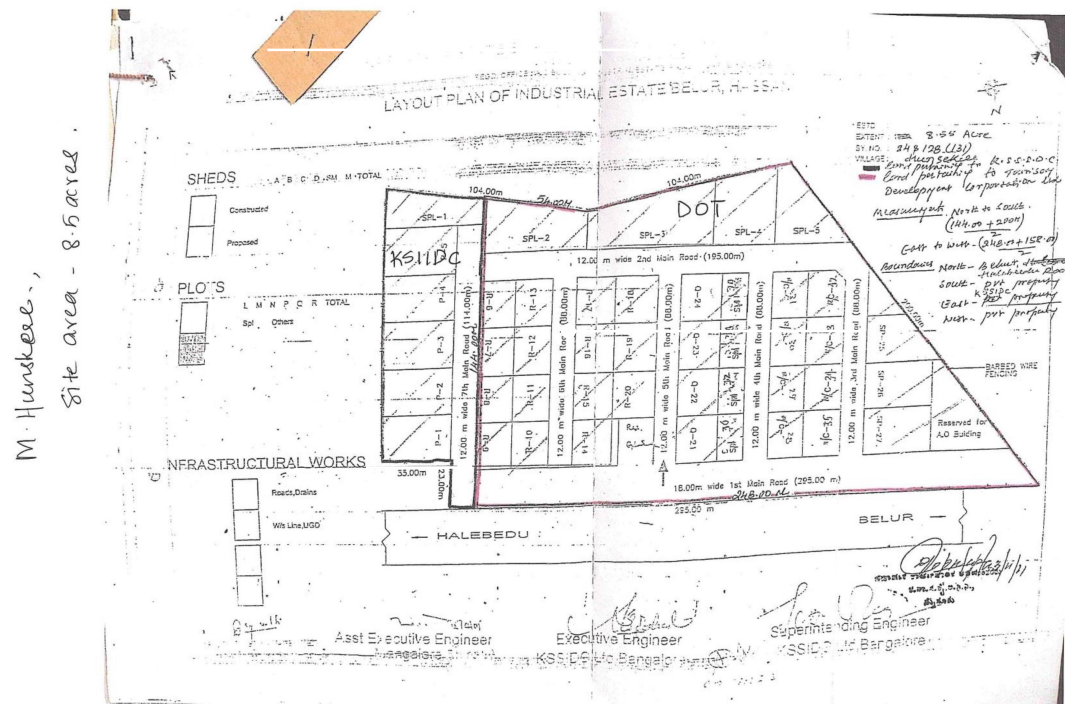


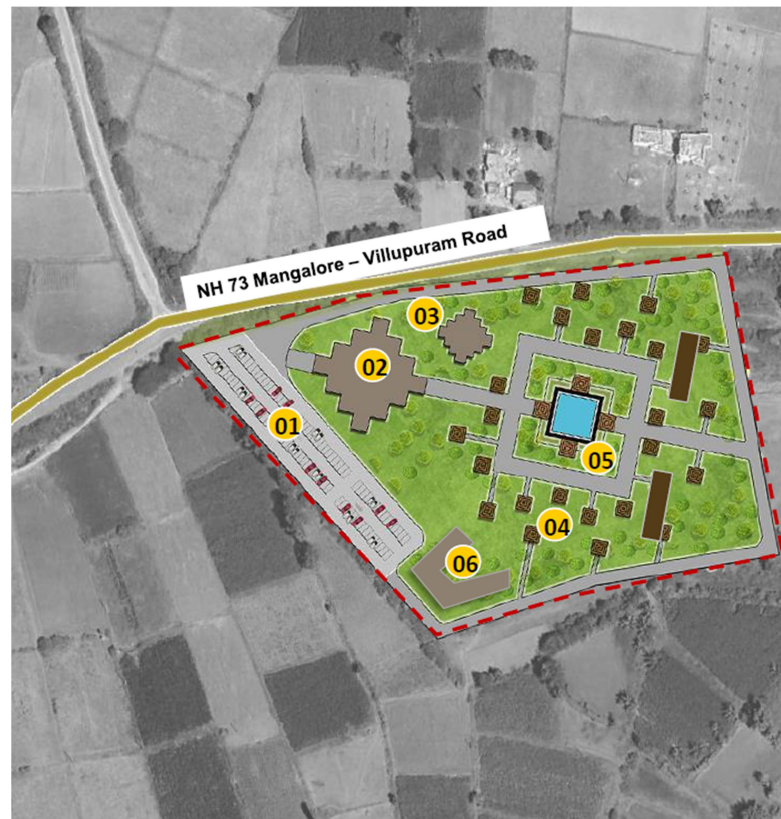
Fig: Revenue Map

Development of the Project

Development of the Project shall include development of the following components:

1. Mid Segment Resort - 40 Keys (proposed built up area 29,000 sqft)
2. Banquet Hall – 500 pax (proposed area 60,000 sqft)
3. Heritage Centre – area of 7,200 sqft. Depicting the cultural significance of the region
4. Project Infrastructure – Site Development, Infrastructure and Utilities

Description of Project



Project Area in acres	Total Project Cost in Rs.Cr
8.5	42.88

- 01- Parking-90 Cars
- 02- Hoysala Heritage Center
- 03- Restaurant
- 04- Cottages - 40
- 05- Spa
- 06 – Banquet Hall

- The Eco cottages shall be at least 4 (four) star rated by Ministry of Tourism, Government of India, with at least 40 number of Keys and shall have a built up area of at least 29,000 sq.ft.

Description of Ancillary Facilities

The Concessionaire shall construct the Ancillary Facilities described in this Annex-II to form part of the Project. The Ancillary Facilities shall include:

1. 24 x 7 Water and Power Supply
2. Parking

3. Service Yard
4. Sewage Treatment Plan
5. Solid Waste Management & Disposal Plan

The project concept plan is only illustrative. This Concept Plan is intended solely as a guideline and shall not be deemed to be mandatory for the development of the Project subject to provision of the mandatory components. The Concessionaire shall have the right to develop its own Project Concept Plan in accordance with the provisions of this Agreement. The Concessionaire shall also ensure that all necessary permissions / approvals / NOCs from relevant statutory authorities are obtained before commencing development and shall provide evidence of such approvals to the Authority as required.

Annexure 1 (Schedule 1)

Description of permissible facilities:

The Concessionaire may construct the permissible facilities described in this Annex-III to form part of the Project. The permissible facilities shall include:

1. Parking - Driver Dormitory & Restrooms
2. Landscape Gardens
3. Restaurant
4. Kitchen
5. Back office, service areas
6. Staff dormitory
7. Reception
8. Clubhouse

While undertaking the mandatory facilities, the Concessionaire may explore the above-mentioned list of permissible activities within the Project Site, during the Concession Period with the Authority. For exploring any of the above-mentioned activities, the Concessionaire is required to conduct their own site assessment, due diligence and techno-commercial feasibility and is subject to obtaining necessary approval(s) from statutory authorities and due approval from the Authority.

The following activities shall be strictly prohibited in the Project Site:

1. Construction of or use the Project Site as residential houses, sites, apartments, dwellings flats etc.
2. Any other buildings, which would/perceived to jeopardize the transfer of Project Assets at the end of the Concession Period from the Concessionaire to the Authority.
3. Setting up and operations of casinos or any other form of gambling activities
4. Rave parties, trafficking of children or women or other illegal activities.
5. Utilisation of the Project Site and Project Infrastructure as residential house, quarters or flats, schools, old aged home etc.
6. Prohibited Activities as per the prevailing Applicable Laws, rules and regulations

**Annexure 2
(Schedule 1)**

Specifications and Standards

1. Project
 - 1.1. The Project shall conform to the Specifications and Standards as specified in this Schedule-C and in this Agreement.
 - 1.2. The Specifications and Standards applicable to the design and construction of the Project shall conform with the National Building Code of India, relevant specifications and standards specified by the Bureau of Standards, other Applicable Laws and Good Industry Practice.
 - 1.3. The Project shall ensure that all interventions and facilities are designed and constructed to be fully accessible and inclusive for individuals of all ages and abilities, including persons with disabilities.
 - 1.4. In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:
 - (i) National Building Code
 - (ii) Local Building Byelaws and Statutory Regulations
 - (iii) Land Use Plan as prepared by Development Authority
 - (iv) All applicable regulations such as – ASI, NMA, NGT, WRD, Forest etc.
 - (v) Bureau of Indian Standards (BIS); and
 - (vi) International guidelines including [Griha/LEED/Green Globe]
 - (vii) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.
 - 1.5. The latest version of the specified codes and standards which were notified published at least 60 (sixty) days prior to the Bid Date in respect of this Agreement shall apply.

SCHEDULE 2 - PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE)⁵

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

Karnataka Tourism Infrastructure Limited, having its office at _____, Bengaluru - 560 001 represented by its Managing Director, (hereinafter referred to as the “KTIL”), which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement being entered into between KTIL and _____, a company incorporated under the provisions of the Companies Act, 1956/a society registered under the Societies Registration Act, 1860/ sole proprietorship firm registered under the Proprietorship Act, having its registered office/ permanent address at _____ (“the **Concession Agreement**”) the Company/Firm/Individual had been granted the Rights to implement the Project for development/ construction and operations, maintenance and transfer of the _____ [*name of the property*], hereinafter referred to as Project.
- B. In terms of Clause 6.1 of the Concession Agreement, the Company/Firm/Individual is required to furnish to KTIL, an unconditional and irrevocable bank guarantee for an amount of Rs. _____ /-(Rupees _____ Only) (*Equal to fee specified in Clause 6.1 of the Concession Agreement*), as security for due and punctual performance/discharge of its obligations under the Concession Agreement, substantially in the format annexed as Schedule 1 to the Concession Agreement.
- C. At the request of the Company/Firm/Individual, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Company of its obligations under the Concession Agreement.

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 _____ [*name of the Selected Bidder*] (hereinafter called “the Concessionaire”) of all its obligations under the Concession Agreement.
3. The Guarantor shall, without demur, pay to KTIL sums not exceeding in aggregate Rs. _____ /-(Rupees _____ Only) (*Equal to fee specified in Clause 6.1 of the Concession Agreement*), within five (5) calendar days of receipt of a written demand therefore from KTIL stating that the Company has failed to meet its performance 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 KTIL 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

⁵ To be issued by a Scheduled Bank in India and from Bengaluru branch only

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, KTIL 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 Company or postponement/non exercise/ delayed exercise of any of its rights by KTIL or any indulgence shown by KTIL 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 KTIL or any indulgence shown by KTIL 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 KTIL in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only) *(Equal to fee specified in Clause 6.1 of the Concession Agreement)*.
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.

SCHEDULE 3 - ANNUAL CONCESSION FEE SECURITY

(PROFORMA OF BANK GUARANTEE)⁶

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

The Karnataka Tourism Infrastructure Limited, having its office at _____, Bengaluru - 560 001 represented by its Managing Director, (hereinafter referred to as the “KTIL” or the “First Party”), which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Agreement being entered into between the First Party and the Concessionaire viz., _____, a company incorporated under the provisions of the Companies Act, 2013, having its registered office/ permanent address at _____ (the “**Concession Agreement**” or “**Agreement**”) the Company had been granted the Rights to implement the Project for Development and Operation of Heritage Resort along with Tourism Facilities at Belur-Halebidu Highway, M. Hunsikere in Karnataka on Design-Finance-Build-Operate-Transfer (DFBOT) Basis hereinafter referred to as Project.
- B. In terms of Clause 6.2 of the Concessionaire Deed, the Company is required to furnish to the First Party, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) (*Equal to two times Annual Concession Fee specified in Clause 6.2 of the Agreement*), as security for due payments of the Annual Concession Fee under the Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due payments of the Annual Concession Fee under the Agreement.

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 Agreement.
2. The Guarantor hereby irrevocably guarantees the due payments of the Annual Concession Fee by _____ [*name of the Selected Bidder*] (hereinafter called “the Concessionaire”) of all its obligations under the Agreement.
3. The Guarantor shall, without demur, pay to the First Party sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only) (*Equal to two times the Annual Concession Fee specified in Clause 6.2 of the Agreement*), within five (5) calendar days of receipt of a written demand therefore from the First Party stating that the Company has failed to meet its performance obligations under the 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 the First Party 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.

⁶ To be issued from a Nationalised Bank

4. In order to give effect to this Guarantee, the First Party 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 Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by the First Party or any indulgence shown by the First Party 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 the First Party or any indulgence shown by the First Party 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 the First Party in accordance with the provisions of the Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only) *(Equal to two times the Annual Concession Fees specified in Clause 6.2 of the Agreement)*.
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.

SCHEDULE 4 – LETTER OF UNDERTAKING

To,

The Managing Director

Karnataka Tourism Infrastructure Limited,

Bengaluru - 560 001

Dear Sir/Madam,

We _____, (“the **Selected Bidder or the Concessionaire**”) for Development and Operation of Heritage Resort along with Tourism Facilities at Belur-Halebidu Highway, M. Hunsikere in Karnataka on DBFOT Basis, do hereby declare and undertake as follows:

Pursuant to Clause 6.14 (d) of the Concession Agreement, we hereby undertake that we shall not employ any children during the Agreement Period for the purpose of construction or operation and maintenance of the Project Facilities or any work that deprives children of their childhood, interferes with their ability to attend regular school, and that is mentally, physically, socially or morally dangerous and harmful.

Pursuant to Article 6 of the Concession Agreement, we hereby undertake that the Project Facilities will be renovated /constructed in accordance with the relevant building bye-laws or notifications of the State/ Ministry of Urban Developments with regard to barrier free environment for specially abled persons.

We agree that, in the event of we failing to compile with the above conditions, KTEL shall be liable to terminate the Concession Agreement.

Date: _____ (Signature, name and designation of the Authorised Signatory)

Place: _____ Name and seal of the Bidder/ Lead Member

SCHEDULE 5 - SCOPE OF WORK OF INDEPENDENT ENGINEER

1. Role of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Independent Engineer is to:

- i) independently review, monitor, Project Facilities and where required by the Agreement, to approve activities associated with the design, drawings and construction of the Project Facilities to ensure compliance of Project Facilities with the Project requirements and with the Applicable Laws,
- ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections and site visits,
- iii) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- iv) review matters related to safety measures adopted by the Concessionaire for the Project.

2. Scope of Services

The services to be provided by the Independent Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Construction Period - Design and Planning

- a. In case the Concessionaire (i) proposes any deviation to the Drawings or (ii) submits alternative Drawings for any of the Project Facilities, the Independent Engineer shall review the same to ensure conformity with the design requirements,
- b. Review of the following submitted by the Concessionaire:
 - (i) Quality Assurance Plan; and
 - (ii) project implementation plan;

2.2 Construction Period

The Independent Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the project implementation plan. For this purpose the Independent Engineer shall undertake, inter alia, the following activities and where appropriate make suitable suggestions:

- (i) monitor the progress in implementation of the Project based on the reports submitted by the Concessionaire;
- (ii) review and approve the material testing and mix designs results and recommend special Tests, where required, for materials and/or completed works, require

removal/substitution of unsuitable materials and /or works and report deficiencies in respect of the same to KTIL;

- (iii) review and monitor the quality assurance and quality control procedures followed by the Concessionaire;
- (iv) review the manpower and equipment deployed by the Concessionaire;
- (v) monitor the construction works for conformity with the project implementation plan ;
- (vi) verify the 'As Built' drawings for each component of the works prepared by the Concessionaire and require removal of deficiencies found therein;
- (vii) review the safety measures implemented;
- (ix) require suspension of whole or any part of the construction works if in its reasonable opinion the same does not conform to the project implementation plan; and

2.4 Breach of Obligations

If during the course or upon review / inspection undertaken by the Independent Engineer or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Independent Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Independent Engineer may deem fit and in each case the same shall be recorded.

2.5 Meetings, Records and Reporting

- a. The Independent Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the construction and to participate in emergency or extraordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.
- b. The Independent Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
 - (i) Manpower deployed and other organizational arrangements of the Independent Engineer;
 - (ii) Reviews of documents submitted to it by the Concessionaire to meet Project requirements, such as Drawings, As Built drawings, schedules, plans and reports;
 - (iii) Inspections undertaken and notices/ instructions issued to the Concessionaire;
 - (iv) Review of compliance with Project Requirements;
 - (v) Emergency (including accidents);
 - (vi) Force Majeure Events;
 - (vii) Breaches and defaults by the Parties; and
 - (ix) Handback Requirements

SCHEDULE 6 - LIST OF PROHIBITED ACTIVITIES

The following activities shall be strictly prohibited in the Project Facilities:

1. Construction of or use the Project Site as residential houses, sites, apartments, dwellings flats etc.
2. Any other buildings, which would/perceived to jeopardize the transfer of Project Facilities at the end of the Term of this Agreement from the Concessionaire to KTIL.
3. Setting up and operations of casinos or any other form of gambling activities
4. Rave parties, trafficking of children or women or other illegal activities.
5. Utilisation of the Project Site and Project Facility as residential house, quarters or flats, schools, old aged home etc.
6. Prohibited Activities as per the prevailing Applicable Laws, rules and regulations

SCHEDULE 7 - REPORTING REQUIREMENTS

The reporting and information that generally need to be provided by the Concessionaire are given below. The requirements given below are indicative of the type of information to be provided. The format of such reports, recording requirements, software standards and number of copies required would be finalised in consultation with KTIL/Independent Engineer. All reports and records shall be in the English language.

1. Monthly Construction Report

During the Renovation Period, within 5 (five) days of the end of each calendar month or part thereof, the Concessionaire shall provide to KTIL a monthly report (Monthly Construction Report) containing the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications) and would, inter alia, include the following:

- (i) Listing of working drawings/sketches submitted
- (ii) Comments of KTIL, if any on the working drawings/sketches submitted
- (iii) Concessionaire's response to the comments on the Drawings/sketches
- (iv) Listing of the "As Built" drawings submitted
- (v) Progress of pre- construction activities - mobilization of plant and equipment, personnel, site office, utility relocation etc.
- (vi) Concessionaire's compliance inspection report, if any required
- (vii) Constraints in construction
- (viii) Project data and sectional completion details
- (ix) Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- (x) Change of Scope Notice issued by KTIL, if any, and status thereof
- (xi) All actual or potential deviations from the Implementation Plan
- (xii) Disagreements/ Disputes, if any and proposed measures to be taken
- (xiii) Maintenance activities carried out by the Concessionaire on the existing carriageway
- (xiv) Monthly weather report with any other significant event
- (xv) Injury to any construction personnel during construction, its severity, cause and remedial measure(s) taken to avoid recurrence
- (xvi) Brief report of any accident / incident within the Project Facilities, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence

- (xvii) Notes of meetings between the Concessionaire, KTIL and Independent Engineer highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by KTIL shall also be included in the monthly progress reports.

2. **Monthly O & M Report**

During the Agreement Period, within 5 days of the end of each calendar month or part thereof, the Concessionaire shall provide to KTIL a monthly report (Monthly O&M Report) which shall contain the following minimum information:

- (i) Details of major maintenance undertaken and expense incurred towards the same
- (ii) Inspections undertaken by the Concessionaire during the month and action taken/ proposed thereafter;
- (iii) O & M inspection compliance report
- (iv) Maintenance activities undertaken during the month ended,
- (v) Details of any Emergency and action taken

The format of the O&M Report would be finalised in consultation with KTIL/ Independent Engineer.

SCHEDULE 8 - INDICATIVE LIST OF APPLICABLE PERMITS

- 1.1 The Authority shall, as required under Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date:
- (a) Consent to establish and operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
 - (b) Consent to establish and operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
 - (c) CRZ Clearance as applicable;
 - (d) Environmental Clearance as applicable;
 - (e) Change in land use, if required
 - (f) Building Plan and construction approvals from the competent authority.
 - (g) Approved drawings, structural drawings, estimate and other relevant documents from the competent authorities as per their rules, regulations and guidelines.
 - (h) Approval/permits from fire safety authorities; and
 - (i) All trade licenses as applicable
- 1.2 The Concessionaire shall obtain all the other required Applicable Permits from the relevant local authorities, as per Applicable Laws, for construction and operation of the Project and Project Infrastructure.

SCHEDULE 9 – JOINT INSPECTION REPORT

SCHEDULE 10 – APPROVED PROJECT IMPLEMENTATION PLAN

SCHEDULE 11 - SUBSTITUTION AGREEMENT

(See Clause 16.1)

This SUBSTITUTION AGREEMENT is entered into on this the day of 20....

AMONGST

[The] represented by, Karnataka Tourism Infrastructure Limited and having its principal office(s) (hereinafter referred to as the "Authority" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

..... (insert name and particulars of Lenders' Representative) and having its registered office at, acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "Lender or Lenders' representative", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- i. The Authority has entered into a Concession Agreement dated with the Concessionaire (the "Concession Agreement") for the Project at inon design, finance, build, operate and transfer ("DBFOT") basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- ii. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the financing agreements.
- iii. Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- iv. In order to enable implementation of the Project including its financing, construction, development, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“Agreement” shall mean this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement; **“Board of Arbitrators”** shall have mean an arbitral tribunal comprising of one nominee arbitrator from the Authority, Concessionaire and Lenders' Representative;

“Financial Default” shall mean occurrence of a material breach of the terms and conditions of the financing agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of [3 (three) months];

“Indemnified Party” shall have the meaning ascribed thereto in Clause 7.2;

“Indemnifying Party” shall have the meaning ascribed thereto in Clause 7.2;

“Lender or Lenders’ representative” shall mean the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” shall mean a company, incorporated under the provisions of the Companies Act, 1956/2013, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Lenders, and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1;

“Parties” shall mean the parties to this Agreement collectively and **“Party”** shall mean any of the Parties to this Agreement individually; and

“Rules” shall have the meaning ascribed thereto in Clause 8.1.1.

1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Lenders.

1.2.2. References to clauses are, unless stated otherwise, references to clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall,

unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.4. The rules of interpretation stated in Clauses 1.2, of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ASSIGNMENT

2.1. Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the financing agreements.

3. SUBSTITUTION OF THE CONCESSIONAIRE

3.1. Rights of substitution

Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement. The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the "Lender or Lenders' representative" in accordance with this Agreement. For avoidance of doubt, the Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record, A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the "Lender or Lenders' representative" may, without prejudice to any of its rights or remedies under this Agreement or the financing agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the "Lender or Lenders' representative" has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked

upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within [180 (one hundred and eighty)] days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the “Lender or Lenders’ representative” and the Concessionaire, the Authority may extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days.

3.3. Substitution upon occurrence of Concessionaire Default

- 3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the “Lender or Lenders’ representative” of its intention to issue a Termination Notice and grant [15 (fifteen)] days’ time to the “Lender or Lenders’ representative” to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that “Lender or Lenders’ representative” makes a representation to the Authority within the period of [15 (fifteen)] days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the “Lender or Lenders’ representative” shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of [180 (one hundred and eighty)] days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of [180 (one hundred and eighty)] days; provided that upon written request from the “Lender or Lenders’ representative” and the Concessionaire, the Authority shall extend the aforesaid period of [180 (one hundred and eighty)] days by a period not exceeding [90 (ninety)] days; provided further that the “Lender or Lenders’ representative” may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

- 3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders’ Representative may, without prejudice to any of the other rights or remedies of the Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company’s assumption of the liabilities and obligations of the Concessionaire towards the Authority

under the Concession Agreement and towards the Lenders under the financing agreements.

- 3.4.2. To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that “Lender or Lenders’ representative” may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3. Upon selection of a Nominated Company, “Lender or Lenders’ representative” shall, request the Authority to:
- a. accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - b. endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Agreement period; and
 - c. enter into a Substitution Agreement with the “Lender or Lenders’ representative” and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within [15 (fifteen)] days from the date of proposal made by “Lender or Lenders’ representative”, give a reasoned order after hearing the “Lender or Lenders’ representative”. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within [15 (fifteen)] days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the “Lender or Lenders’ representative” may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than [75% (seventy five per cent)] of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. Selection to be binding

The decision of “Lender or Lenders’ representative” and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the “Lender or Lenders’ representative” or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of “Lender or Lenders’ representative” are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or “Lender or Lenders’ representative” from effecting or causing the transfer by substitution and endorsement of the Concession as requested by “Lender or Lenders’ representative”.

4. PROJECT AGREEMENTS

4.1. Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5. TERMINATION OF CONCESSION AGREEMENT

5.1. Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, “Lender or Lenders’ representative” may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 11 of the Concession Agreement.

5.2. Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the “Lender or Lenders’ representative” within the period of [180 (one hundred and eighty)] days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3. Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the “Lender or Lenders’ representative” is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement.

6. DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- a. Termination of the Agreement; or
- b. no sum remains to be advanced, or is outstanding to the Lenders, under the financing agreements.

7. INDEMNITY

7.1. General indemnity

7.1.1. The Concessionaire shall indemnify, defend and hold the Authority and "Lender or Lenders' representative" harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2. The Authority shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3. "Lender or Lenders' representative" shall indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the "Lender or Lenders' representative" to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by "Lender or Lenders' representative", its officers, servants and agents.

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within [15

(fifteen)] days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute resolution

8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and “Lender or Lenders’ representative”. Such arbitration shall be held in accordance with the Rules of Arbitration of the international Centre for Alternate Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2. The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- b. agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has may acquire in the future or which may be attributed to it in any jurisdiction; and

- d. consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5. Waiver

Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- a. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- b. shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- c. shall not affect the validity or enforceability of this Agreement in any manner. 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 thereunder nor time or other indulgence granted by a Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6. No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7. Survival

Termination of this Agreement:

- a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive 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. All

obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of [3 (three)] years following the date of such termination or expiry of this Agreement.

9.8. Severability

If for any reason whatever 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 will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12. Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall

be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13. Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

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

THE COMMON SEAL OF CONCESSIONAIRE	SIGNED, SEALED AND DELIVERED
has been affixed pursuant to the resolution	For and on behalf of
passed by the Board of Directors of the	LENDERS by the Lenders'
Concessionaire at its meeting held on the .. day	Representative
of 20 hereunto affixed in the presence of	(Signature)
..... ..,Director, who has signed these presents	(Name)
in token thereof and, Company	SIGNED, SEALED AND DELIVERED
Secretary / Authorised Officer who has	For and on behalf of THE AUTHORITY by
countersigned the same in token thereof:	(Signature)
(Signature)	(Name)
(Name)	(Designation)
(Designation)	(Address)
(Address)	(Fax No.)
(Fax No.)	(E-mail Address)
(E-mail Address)	(Designation)
	(Address)
	(Fax No.)
	(E-mail Address)

In the presence of:

- | | |
|----|----|
| 1. | 2. |
|----|----|

SCHEDULE 12 – LETTER OF AWARD

SCHEDULE 13 - FINANCIAL PROPOSAL OF THE CONCESSIONAIRE

**SCHEDULE 14 –BID DOCUMENTS WITH ALL CLARIFICATIONS / CORRIGENDUM /
ADDENDUM TO BID DOCUMENTS**

