

Development of Tourism Property at Jog

July 2008

Jog

*Jog Management Authority
Tourism Department A Block, 3rd Cross, Gopalagowda layout,
Shivamogga -577204
Phone: 08182 - 251444*

CONCESSION AGREEMENT

between

Jog Management Authority

and

(Concessionaire)

for

Development of Tourism Property at Jog

TABLE OF CONTENTS

ARTICLE	CONTENTS	PAGE
1	DEFINITIONS AND INTERPRETATION	
1.1	Definitions	4
1.2	Interpretation	10
2	CONCESSION	
2.1	Grant of Concession	11
2.2	Concession Period	11
2.3	Acceptance of Concession	11
3	PROJECT SITE	
3.1	Handover of Project Site	12
3.2	Rights and Use of the Project Site	12
3.3	Peaceful Possession	13
3.4	Applicable Permits	14
4	PROJECT ENGINEER	
4.1	Procedure for appointment	14
4.2	Payments to Project Engineer	14
4.3	Replacement of Project Engineer	15
5	CONCESSIONAIRE'S OBLIGATIONS	
5.1	Performance Security	15
5.2	Financing Arrangement	16
5.3	Development plan and drawings	16
5.4	Project Implementation	18
5.5	Operation and Maintenance	19
5.6	Insurance	20
5.7	Environmental Compliance	22
5.8	General Obligations	22
5.9	No breach of Obligations	23
6	JMA's OBLIGATIONS	
6.1	Specific Obligations	24
6.2	General Obligations	24
7	CONCESSION PAYMENT	
7.1	Payment Obligation	24
7.2	Mode of Payment	25
8	FORCE MAJEURE	
8.1	Force Majeure Event	25
8.2	Obligations of the Parties	26
8.3	Performance of Obligations	27
8.4	Termination due to Force Majeure Event	27
8.5	Liability for other losses, damages, etc	29

ARTICLE	CONTENTS	PAGE
9	EVENTS OF DEFAULT & TERMINATION	
9.1	Events of Default	29
9.2	Termination due to Event of Default	31
9.3	Rights of JMA on Termination	33
9.4	Accrued Rights of Parties	34
9.5	Lenders' Step-in Rights	34
10	HANDBACK OF PROJECT FACILITIES	
10.1	Ownership	35
10.2	Concessionaire's Obligations	35
10.3	JMA's Obligations	36
11	DISPUTE RESOLUTION	
11.1	Amicable Resolution	36
11.2	Arbitration	36
12	REPRESENTATIONS & WARRANTIES	
12.1	Representations & Warranties of the Concessionaire	37
12.2	Representations & Warranties of JMA	38
12.3	Obligation to Notify Change	38
13	MISCELLANEOUS	
13.1	Assignments & Charges	39
13.2	Interest & Right of Set off	40
13.3	Governing Law & Jurisdiction	40
13.4	Waiver	40
13.5	Survival	41
13.6	Amendments	41
13.7	Notices	41
13.8	Severability	42
13.9	No Partnership	42
13.10	Language	42
13.11	Exclusion of Implied Warranties etc.	42
13.12	Counterparts	43
	SCHEDULES	
1.	Details of Project Assets	44
2.	List of Mandatory and Additional Project Facilities	45
3.	Concession Payment	46
4.	Performance Security (Proforma of Bank Guarantee)	48
5.	Format for Letter of Authorisation	50
6.	Scope of work of Project Engineer	51
7.	Design Requirement	54
8.	Construction Requirement	55
9.	Handback Guarantee (Proforma of Bank Guarantee)	62
10.	Operation and Maintenance requirement	65

This Concession Agreement mutually agreed and entered into on the ____ day of _____ (Month), Two Thousand and Eight at Shimoga,

BETWEEN

Governor of Karnataka acting through the Deputy Commissioner & CEO, Jog Management Authority, Government of Karnataka, having his office at Tourism Department A Block, 3rd Cross, Gopalagowda layout, Shimoga -577204, hereinafter referred to as “the Concessing Authority” or “JMA” which expression shall unless repugnant to the context include the successors and assigns, on the one part

AND

_____, a company incorporated under provisions of the Companies Act, 1956, having its registered office at _____, hereinafter referred to as “Concessionaire” which expression shall unless repugnant to the context include the successors and permitted assigns, on the other part.

WHEREAS,

- A JMA is the owner of land admeasuring approximately 2.0 acre located at Jog (shown in the site plan at Schedule 1) (hereinafter referred to as ‘the Project Site ’).
- B In furtherance of JMAs’ larger objective to enhancing the tourist stay in Jog and unlock the commercial value of the Project Site, JMA decided to develop a 3 Star hotel facilities at the Project Site through private sector participation on a build, operate and transfer basis.
- C After a competitive bidding process, JMA has accepted the proposal submitted by the Concessionaire and awarded the Concession by its Letter of Acceptance (LoA) no. _____ dated _____ and the Concessionaire has acknowledged the same vide its letter no. _____ dated _____.
- D In partial consideration to the Concession having been granted, the Concessionaire has paid JMA an amount of Rs. _____/- (Rupees _____ Only) vide _____ as upfront payment. As provided in the tender document.

E In terms of the LoA the Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

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:

“Additional Facilities” means all facilities, services and all assets comprised therein which the Concessionaire may build, provide, develop, modify, demolish, alter or procure within the Project Site for the better commercial utilisation of the Project Site, consistent with Good Industry Practice and in accordance with its approved Development Plan and the terms of this Agreement.

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 8.1.

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

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

“Applicable Permits” shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the Project during the subsistence of this Agreement.

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

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

“Book Value” shall mean the value of the capital expenditure incurred on the Project as per the books of the Concessionaire, net of depreciation charged on the basis of straight line method and amortized equally over the Operations Period, duly verified and certified by an independent auditor in accordance with IGAAP (Indian Generally Accepted Accounting Principles)

“COD” or **“Commercial Operations Date”** shall mean the date on which the Concessionaire obtains the Completion Certificate.

“Completion Certificate” shall mean the certificate issued by Project Engineer certifying, inter alia, that the Concessionaire has provided the Project Facilities as per its approved Development Plan and the Construction Requirements.

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

“Concession Payment” means the amounts payable by the Concessionaire to JMA in accordance with Schedule 3.

“Concession Period” shall have the meaning ascribed to it in Article 2.2.

“Construction Requirements” shall mean the requirements as to construction of the Project Facilities set out in Schedule 2.

“Construction Works” shall mean all works and things required to be undertaken by the Concessionaire, in accordance with the Construction Requirements.

“Contractor” shall mean any Person with whom the Concessionaire has entered into/may enter into any of the Project Agreements.

“Design Requirements” shall mean the design requirements for the Project Facilities as set out in Schedule 7.

“Development Plan” shall mean the following details of the Project;

- (i) Site layout plan drawn to scale, clearly indicating the placement of all structures
- (ii) All floor-wise building plans including basements clearly indicating the usage of each room and the distinctive number assigned to each room
- (iii) Facilities planned on each floor along with the area statements of the same
- (iv) Key sections / sectional views
- (v) All elevations
- (vi) Services – Power Supply, Drainage, Water Supply etc.
- (vii) Landscape plans
- (viii) Environment management plan (waste disposal, rainwater harvesting, water recycling etc.)
- (ix) List of Minimum Project Facility to be constructed prior to issue of provisional Completion Certificate

“Drawings” shall mean all of the drawings, designs, calculations and documents pertaining to the Project in accordance with the approved Development Plan and Design Requirements.

“Due Date” means each date for making the Concession Payment as set out in Schedule 3.

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

“Expiry” means expiry of the Concession by efflux of time at the end of 30 years from the Appointed Date.

“Expiry Date” shall mean the date on which the Expiry of this Agreement occurs.

“Financing Documents” shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

“Financial Year” shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 8.

“Force Majeure Period” means, as determined by the Project Engineer if existing or mutually decided between the Parties, the period commencing from the date of occurrence of a Force Majeure Event and ending on (i) the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations the performance of which was excused in terms of Article 8.3 or (ii) the Termination Date, as applicable.

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

“GoK” shall mean the Government of Karnataka.

“Government Agency” shall mean any 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.

“Handback Requirements” shall have the meaning ascribed thereto in Article 10.

“Implementation Period” means the period beginning from the Appointed Date and ending on the COD.

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

“Mandatory Facilities” shall mean all facilities required to be developed and maintained by the Concessionaire and more specifically set out in Schedule 2.

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

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

“Minimum Project Facility” shall mean the Mandatory Facility and Additional Facility to be constructed prior to issue of Provisional Completion Certificate in accordance with the Technical Proposal.

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

“O&M Requirements” shall mean the requirements as to operation and maintenance of the Project Facilities as set forth in Schedule 10.

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

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

“Preliminary Notice” shall mean 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 design, financing, construction and operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

“Project Agreements” shall mean collectively this Agreement, contracts for engineering, procurement, construction, operation, maintenance and any other material contract (other than Financing Documents) entered into or may hereafter be entered into by the Concessionaire in connection with the Project.

“Project Site” means the area of 1.76 acres located at Jog (Near to the Jog falls).

“Project Engineer” shall mean a reputed Person being a firm, company or a body corporate appointed in accordance with Article 4 for supervision and monitoring of compliance by the Concessionaire with the Construction Requirements, more particularly to undertake, perform, carry out the duties, responsibilities, services and activities set forth in Schedule 6.

“Project Facilities” shall mean collectively the Mandatory Facilities and Additional Facilities which are required to be constructed, built, installed, erected or provided by the Concessionaire on the Project Site in accordance with its Development Plan and with the Construction Requirements.

“Project Requirements” shall mean collectively the Design Requirements, Construction Requirements, O&M Requirements, or any of them as the context may admit or require.

“Provisional Completion Certificate” shall mean the Provisional Certificate of Completion to be issued by the Project Engineer after the Minimum Project Facility has been developed and the Project Assets can be legally, safely and reliably placed in commercial operation.

“Rupees” or **“Rs”** refers to the lawful currency of the Republic of India.

“SBI PLR” means the prevailing medium term prime lending rate of the State Bank of India.

“Scheduled Project Completion Date” means 24 months from the Appointed Date.

“Tax” shall mean and includes all taxes, cesses, duties, levies that may be payable by the Concessionaire under Applicable Law.

“Technical Proposal” shall mean the successful bidder’s technical proposal, a copy of which has been set out in Schedule 7.

“Termination” shall mean 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 of this Agreement due to efflux of time in the normal course.

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

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

“Tests” shall mean the tests to be carried out in accordance with the Project Requirements and if not expressly specified in either of the said requirements, as instructed by the Project Engineer, in accordance with this Agreement.

1.2 Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies to, or is capable of being applied to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation;
- (f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;

- (g) any reference to any period commencing “from” a specified day or date and “till” or “until” a specified day or date shall include both such days or dates;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time (IST);
- (i) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- (j) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (k) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (l) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or by Project Engineer shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or Project Engineer in this behalf and not otherwise;
- (m) references to “Construction” include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental thereto;
- (n) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the “Damages”).

ARTICLE 2 CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and covenants set forth in this Agreement, the Concessions Authority hereby grants and authorises the Concessionaire to design, engineer, procure, finance, construct, operate and maintain the Project Facilities and to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement (the “**Concession**”).

2.2 Concession Period

The Concession hereby granted for a Period of Thirty (30) years from the Appointed Date (hereinafter referred to as the “**Concession Period**”).

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

2.3 Acceptance of Concession

In consideration of the Concessions Authority agreeing to permit the Concessionaire to collect, retain and appropriate all tariffs, revenues, incomes, other fees and any other amounts, and the rights, powers, benefits, privileges, entitlements and authorisations conferred upon by the Concessions Authority and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Concession and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

ARTICLE 3 PROJECT SITE

3.1 Handover of Project Site

- (a) JMA shall, within 15 days from the Appointed Date, handover to the Concessionaire on as-is-where-is basis, peaceful physical possession of the Project Site for the purpose of implementing the Project.

- (b) Upon the Project Site being handed over pursuant to the preceding sub-article (a), the Concessionaire shall have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights, Title and Use of the Project Site and Project Facility

- (a) The Concessionaire shall have the right to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties.
- (b) The Concessionaire shall have the right to further concession / license the Project Facilities or any part thereof to such Person/s as it may deem fit and to collect from such Persons concession fees, license fees, advertising fees (subject to payment of applicable advertisement tax), maintenance charges and other amounts during the Concession Period.

Provided that the tenure of such further concession/license shall not exceed the Expiry Date or Termination Date, as may be the case, and a provision of this limitation shall be a part of the arrangement between the Concessionaire and such Persons.

Provided further, that the Concessionaire shall at all times be solely responsible for all acts, deeds and things done by the Concessionaire during the Concession Period.

- (c) The Concessionaire shall have the right to charge tariffs/rents/fees/user charges from Persons for the usage of the Project Facility/ Project Site.
- (d) The Concessionaire shall not part with or create any Encumbrance on the whole or any part of the Project Site save and except as set forth and permitted under this Agreement.
- (e) The Concessionaire shall not without the prior written approval of JMA use the Project Site / Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- (f) The Project Site /Project Facilities shall and continue to be the property of JMA.

- (g) The Concessionaire shall allow access to and use of the Project Site for laying/installing/maintaining telegraph lines, electric lines or for such other public purposes as JMA may specify.

Provided that such access or use shall not result in a Material Adverse Effect and that JMA, shall, in the event of any physical damage to the Project Facility on account thereof, ensure that the Project Facilities are 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.

3.3 Peaceful Possession

The Concessioneing Authority hereby warrants that:

- (a) The Project Site :
- (i) belongs to and is vested in JMA and that JMA has full powers to hold, dispose of and deal with the same consistent, inter alia, with the provisions of this Agreement, and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or land acquisition of any Persons affected thereby.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Site / Project Facilities during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Project Site / 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 / Project Facilities or any part thereof, JMA shall, if called upon by the Concessionaire, defend such claims and proceedings and also keep the Concessionaire indemnified against any consequential loss or damages which the Concessionaire may suffer, on account of any such right, title, interest or charge.

3.4 Applicable Permits

The Concessionaire shall obtain and maintain all Applicable Permits in such sequence as is consistent with the requirements of the Project.

ARTICLE 4 PROJECT ENGINEER

4.1 Procedure for Appointment

- (a) JMA shall within 15 days hereof forward to the Concessionaire a list consisting of the names accompanied by their respective profile in brief of atleast three (3) Persons who are eligible and willing to act as Project Engineer for the Project.
- (b) Within 15 days of receipt of the panel forwarded by JMA, the Concessionaire shall appoint one of the Persons named in such panel as the Project Engineer. The Concessionaire shall, in consultation with JMA, finalise the fees and other terms of appointment of the Project Engineer. The scope of work of the Project Engineer shall include that set out in Schedule 6.
- (c) The term of the Project Engineer shall extend upto one year after the COD.

4.2 Payments to Project Engineer

- (a) All fees, costs, charges and expenses payable to the Project Engineer in accordance with the terms of its appointment (collectively "the Remuneration") shall be borne by the Concessionaire.
- (b) The Project Engineer shall, simultaneous with submitting to the Concessionaire its invoice for payment of the Remuneration (herein after referred to as "Project Engineer Invoice"), submit a copy of the same to JMA for its approval. Within 7 days of receipt of the Project Engineer Invoice, JMA shall respond in writing to the Concessionaire and the Project Engineer communicating either,
 - (i) JMA's consent for payment of the Remuneration ("JMA Consent"), or
 - (ii) JMA's non-approval of the Project Engineer Invoice, clearly stating the reason/s for such non-approval.

- (c) The Concessionaire shall make payment to the Project Engineer within ten working days of the receipt of JMA Consent. In case JMA does not respond, in the manner set out in 4.2 (b) above, then JMA Consent shall be deemed to have been granted and the Concessionaire shall pay the Project Engineer as specified herein above.

4.3 Replacement of the Project Engineer

- (a) The Parties, in consultation with each other, may replace the Project Engineer in any of the following circumstances:
- (i) if JMA or the Concessionaire has reason to believe that the Project Engineer has not discharged its duties in a fair, appropriate and diligent manner;
 - (ii) if, in accordance with the terms of its appointment the Project Engineer resigns or notifies its intention not to continue as the Project Engineer;
 - (iii) any other circumstance which in the opinion of the Parties warrants replacement of the Project Engineer.
- (b) Subject to the attendant circumstances and unless the Parties otherwise agree, the procedure laid down in Article 4.1 shall, as far as possible, be adhered to for replacement of the Project Engineer, and the replacement shall be so effected as to maintain continuity in the supervision and monitoring of the Project Facilities.

ARTICLE 5 CONCESSIONAIRE'S OBLIGATIONS

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:

5.1 Performance Security

- (a) The Concessionaire shall, for due and punctual performance of its obligations relating to the Implementation Period, deliver to JMA, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to JMA initially valid for a period of 36 months, in the form as set forth in **Schedule 4**, ("Performance Security") for a sum of Rs. _____/- (Rupees _____ only).

- (b) The Performance Security shall be returned to the Concessionaire 12 months after achievement of COD and the concessionaire shall ensure validity of the Performance Security during this period.

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

5.2 Financing Arrangement

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

5.3 Development Plan & Drawings

5.3.1 Development Plan

The Concessionaire shall, within Two (2) months of the Appointed Date, finalize the Development Plan in consultation with JMA. The Development Plan should be based on the concept submitted by the Concessionaire in the Technical Proposal and in conformity with the Project Requirements.

5.3.2 Drawings

(a) Preparation of Drawings

- (i) The Concessionaire shall, based on the approved Development Plan and Design Requirements prepare its own Drawings for providing the Project Facilities. Provided that, the Concessionaire shall in any event be solely responsible for the adequacy of the Drawings.
- (ii) All Drawings whether relating to the Mandatory Facilities or the Additional Facilities shall be subject to review by the Project Engineer as hereinafter provided in the succeeding sub-article (b).

(b) Review of Drawings

- (i) The Concessionaire shall promptly and in such sequence as is consistent with the Project Requirements, submit a copy each of the Drawings to the Project Engineer and JMA.
- (ii) By forwarding the Drawings to the Project Engineer and JMA pursuant to the preceding sub-article (i), the Concessionaire shall be deemed to have represented that it has verified and determined that the Drawings forwarded are in conformity with the Design Requirements.
- (iii) Within 15 days of receipt of the Drawings, Project Engineer shall review the same taking into account, inter alia, comments of JMA, if any, thereon, and convey its comments/observations to the Concessionaire on the conformity of Drawings with the approved Development Plan and Design Requirements. If the comments/observations of the Project Engineer indicate that the Drawings are not in conformity with the Development Plan/Design Requirements, such Drawings shall be revised by the Concessionaire to the extent necessary and resubmitted to Project Engineer for further review. The Project Engineer shall give its observations and comments, if any, within 15 (fifteen) days of receipt of such revised Drawings, which shall be taken into account by the Concessionaire while finalising the Drawings.
- (iv) If, within the period stipulated in the preceding sub-article (iii), the Project Engineer does not respond to the Drawings submitted to it by the Concessionaire, the Concessionaire shall be entitled to proceed with the Project on the basis of such Drawings submitted by it to the Project Engineer.
- (v) Notwithstanding any review or failure to review by or the comments/observations of the Project Engineer or JMA, the Concessionaire shall be solely responsible for the adequacy of the Drawings and their conformity with the Development Plan and Design Requirements, and shall not be relieved or absolved in any manner whatsoever of any of its obligations as set forth in this Agreement.
- (vi) The Concessionaire shall be responsible for delays caused by reason of any Drawings not being in conformity with the Development

Plan/Design Requirements, and shall not be entitled to seek any relief in that regard from JMA.

- (vii) The Concessionaire shall in consultation with the Project Engineer finalize an implementation schedule for the Project in accordance with the Development Plan.
- (viii) The Concessionaire shall furnish to JMA three copies of "as built" Drawings illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities reflecting the Project as actually designed, engineered and constructed

5.4 Project Implementation

(a) Construction Works

- (i) The Concessionaire is required to commence Construction Works only on or after the approval of the Development Plan by JMA.
- (ii) Unless otherwise permitted by JMA, no Construction Works shall begin until the Project Engineer is in place and has assumed charge. The Concessionaire shall immediately upon commencement of Construction Works notify the Project Engineer and JMA of the same.
- (iii) The Concessionaire shall adhere to the Project Requirements and achieve COD on or before the Scheduled Project Completion Date. If the Concessionaire fails to achieve COD on or before the Scheduled Project Completion Date for any reason other conditions constituting Force Majeure or for reasons attributable to JMA, the Concessionaire shall pay to JMA, damages calculated at the rate of 0.2% (Zero point two percent) of the Performance Security, for each day of delay.
- (iv) The Concessionaire may undertake Construction Works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Concessionaire shall remain solely responsible to meet the Project Requirements.
- (v) The Concessionaire shall, before commencement of Construction Works have requisite organisation and designate and appoint suitable officers / representatives as it may deem appropriate to supervise the Project, to deal with the Project Engineer/JMA and to be responsible

for all necessary exchange of information required pursuant to this Agreement;

- (v) For the purposes of determining whether the Construction Works are being undertaken in accordance with the Construction Requirements, the Concessionaire shall with due diligence carry out all necessary and periodical Tests in accordance with the instructions and under the supervision of the Project Engineer and the Construction Requirements. The Concessionaire shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- (vi) If the Tests are successful and it is ascertained that the Project Facilities can be safely and reliably opened for operation as the case may be, the Project Engineer shall issue the Completion Certificate in consultation with Deputy Commissioner & CEO, JMA.
- (vii) The Project Engineer may at the request of the Concessionaire issue a provisional certificate of completion (“Provisional Completion Certificate”) if the Tests for the Minimum Project Facilities are successful.
- (vii) The Project Engineer, may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, if in its reasonable opinion the same is being carried on in a manner that is not in conformity with the Project Requirements.
- (viii) The Project shall be deemed to be complete and ready for operations only when the Completion Certificate is issued by the Project Engineer in accordance with the provisions hereof.

Provided, if the issue of the Completion Certificate is delayed beyond 180 days of the Scheduled Project Completion Date, JMA shall, subject to the provisions of Article 5.9, be entitled to terminate this Agreement and to appropriate the Performance Security.

5.5 Operation and Maintenance

- (a) Upon achieving COD, the Concessionaire shall obtain the HRACC or equivalent agency certification declaring the Project Facilities as being 3 star or above category hotel/resort. To this extent, the Concessionaire shall submit

to JMA a copy of the said certificate within 10 days of receipt of such certificate. The Concessionaire shall, prior to its expiry, renew the certificate in a timely manner and furnish copy of the same to the JMA during the Concession Period.

- (b) The Concessionaire shall not except with the prior written approval of JMA, allow commercial usage of the Project Assest / Projet Facility or any part thereof prior to issue of Provisional Completion Certificate/Completion Certificate.
- (c) The Concessionaire shall, by itself or through an operator possessing requisite technical, financial and managerial expertise/capability, operate and maintain the Project Facilities, but in either case, the Concessionaire shall remain solely responsible to meet the O&M Requirements.
- (d) The Concessionaire shall, during the Concession Period, have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facilities, to deal with the JMA and to be responsible for all necessary exchange of information required pursuant to this Agreement;
- (e) In the event the Concessionaire has failed to operate and maintain the Project Facilities in accordance with O&M Requirements, and such failure has not been remedied despite a notice to that effect issued by the JMA (“Notice to remedy”), the Concessionaire shall be deemed to be in material breach of O&M Requirements.
- (f) JMA, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Concessionaire,
 - (i) the maintenance of the Project Facility or any part thereof has deteriorated to a level which is below the acceptance level by the JMA; and
 - (ii) there has been a serious or persistent breach in adhering to the O&M Requirements and thereby the Project Facility or any part thereof are not safe for operations;

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

For avoidance of doubt, persistent breach shall mean:

- (i) any breach of O&M Requirements by the Concessionaire which has not been remedied by the Concessionaire despite a Notice to Remedy in respect thereof issued by the JMA ;
 - (ii) recurrence of a breach by the Concessionaire, during the pendency of Notice to Remedy by the JMA 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.
- (g) No demolition (including the cutting of trees) would be allowed during the last 5 years of the Concession Period, unless specifically approved by JMA.

5.6 Insurance

(a) Implementation Period

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

- (i) builders' 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) Operations Period

The Concessionaire shall at its cost and expense, purchase and maintain by re-instatement or otherwise, for the Operations Period, insurance against:

- (i) loss, damage or destruction of the Project Facilities, at replacement value;
- (ii) the Concessionaire's general liability arising out of the Concession;

- (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 JMA 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 Concession Period, and furnish copies thereof to JMA. The insurance policy shall not be cancelled or terminated unless 60 days' clear notice of cancellation is provided to JMA in writing.

If at any time the Concessionaire fails to obtain or maintain in full force and effect any and all of the insurance required under this Agreement, JMA may at its option (but not being obliged to do so) obtain and maintain such insurance and all sums incurred by JMA thereof shall be reimbursed by the Concessionaire to JMA together with interest thereon at 5% over SBI PLR from the date the respective sums were incurred by JMA, within 7 days from the receipt of claim in respect thereof made by JMA.

(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, renovation, 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, renovation, restoration or re-instatement to the extent possible in such manner that the Project Facilities after such repair, renovation, 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.

(f) Un-insurable Risks

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

5.7 Environmental Compliance

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

5.8 General Obligations

The Concessionaire shall at its own cost and expense:

- (a) investigate, study, design, develop, operate and manage the Project Facilities in accordance with the provisions hereof;
- (b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the Concession Period;
- (c) comply with Applicable Law governing the operations of related to the Project at all times during the Concession Period as the case may be;
- (d) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated in the Project;
- (e) appoint, supervise, monitor and control as necessary, the activities of Contractors under the respective Project Agreements;
- (f) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies JMA against any claims, damages, expenses or losses in this regard and that in no case and for no purpose JMA shall be treated as employer in this regard;

- (g) make its own arrangements for construction materials and observe and fulfill the environmental and other requirements under the Applicable Law and Applicable Permits;
- (h) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (i) ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- (j) upon receipt of a request thereof, afford access to the Project Site /Project Facilities to the authorised representatives of JMA for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- (k) pay all Taxes (excluding property tax) and outgoings, including utility charges relating to the Project Facilities as applicable in the tenure of the Concession Period.

5.9 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 Article 8.3;
- (ii) JMA Event of Default;
- (iii) Compliance with the instructions of the Project Engineer/JMA or the directions of any Government Agency other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations as set forth in this Agreement;
- (iv) Closure of the Project Facilities or part thereof with the approval of JMA.

ARTICLE 6
JMA's OBLIGATIONS

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

6.1 Specific Obligations

- (a) JMA shall handover the peaceful possession of the Project Site on an as-is where-is condition to the Concessionaire within 15 days of Appointed Date.
- (b) JMA shall grant in a timely manner all such approvals, permissions and authorizations which the Concessionaire may require or is obliged to seek from JMA 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 JMA in the form as set out in Schedule 5, within fifteen days (15) days from receipt of request from the Concessionaire to make available such authorization.
- (c) JMA shall approve in timely manner the Development Plan submitted by the Concessionaire.

6.2 General Obligations

JMA shall:

- (a) where appropriate provide necessary assistance to the Concessionaire in securing Applicable Permits;
- (b) observe and comply with all its obligations set forth in this Agreement.

ARTICLE 7
CONCESSION PAYMENT

7.1 Payment Obligation

- (a) In consideration of the Concession hereby granted, the Concessionaire shall pay to JMA, Concession Payment on the Due Dates as set out in Schedule 3.

- (b) Any delay in making Concession Payment shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at the prevailing medium term prime lending rate of the State Bank of India plus 2% per annum from the relevant Due Date till the date of payment/ realization.

7.2 Mode of Payment

The Concession Payment shall be made by way of demand draft in favour of Deputy Commissioner & CEO, Jog Management Authority, payable at Shivamoga and shall be sent sufficiently in advance of the Due Date to the address specified in Article 13.7, so as to ensure realization/ encashment thereof on or before Due Date.

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure Event

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

- (a) earthquake, flood, inundation and landslide
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;
- (e) strikes, labour disruptions, riots or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire or the Contractor.
- (f) action of a Government Agency having Material Adverse Effect including but not limited to
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Site/Project Facility or any part thereof or of the Concessionaire’s or the Contractor’s rights in relation to the Project Facility.

- ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire, and
 - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Concessionaire's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire or the Contractor as the case may be is bound.
- (g) early termination of this Agreement by JMA for reasons of national emergency, national security or the national interest.
 - (h) any failure or delay of a Contractor caused by any of the events mentioned in (f) and (g) above, for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.
 - (i) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions, any failure or delay of a Contractor caused by the events mentioned in this sub clause for which no offsetting compensation is payable to the Concessionaire by or on behalf of the Contractor.

8.2 Obligations of the Parties

- (a) As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the Project Engineer and the other Party of the same setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

- (b) As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding sub-article 8.2 (a), the Parties along with the Project Engineer, if existing, shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facilities in order to:
 - i. assess the impact of the underlying Force Majeure Event,
 - ii. to determine the likely duration of Force Majeure Period and,
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- (c) The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding sub-article (b) as also any information, details or document, which the Parties may reasonably require.

8.3 Performance of Obligations

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

- (a) due notice of the Force Majeure Event has been given as required by the preceding Sub-article 8.2;
- (b) the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- (c) the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- (d) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party and the Project Engineer, if existing, a written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- (e) the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement;

- (f) any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

8.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Sub-articles 8.1(a) to 8.1(e) and 8.1 (i), continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- (ii) If the Force Majeure Event is an event described in 8.1 (f), 8.1 (g) or 8.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 8.1 (f), 8.1 (g) or 8.1 (h) subsists or is likely to subsist for a period exceeding 180 days.

Provided further, JMA may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Sub-articles 8.1(f), 8.1(g) or 8.1(h).

(b) Termination Notice

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

- i. in sufficient detail the underlying Force Majeure Event;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;

- iii. the estimated Termination Payment including the details of computation thereof and;
- iv any other relevant information.

(c) Obligation of Parties

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

- i. the Termination Payment, if any, payable by JMA in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date and
- ii. the Project Facilities are handed back to JMA by the Concessionaire on the Termination Date free from all Encumbrance.

(d) Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Concessionaire by JMA in accordance with the following:

- i. If Termination is due to a Force Majeure Event, described under Sub-articles 8.1(a) to 8.1(e), no Termination Payment shall be made by JMA to the Concessionaire but, the Concessionaire shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- ii. If Termination is due to the occurrence of any event described under Sub - articles 8.1(f) or 8.1(g) or 8.1 (h), JMA shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value

Provided JMA shall be entitled to deduct from the Termination Payment any amount due and recoverable by JMA from the Concessionaire as on the Termination Date.

- iii. If Termination is due to the occurrence of any event described under Sub - article 8.1(i), JMA shall, pay to the Concessionaire, Termination payment equal to 70% of the Book Value.

Provided JMA shall be entitled to deduct from the Termination Payment any amount due and recoverable by JMA from the Concessionaire as on the Termination Date.

8.5 Liability for other losses, damages etc.

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

ARTICLE 9 EVENTS OF DEFAULT AND TERMINATION

9.1 Events of Default

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

- (i) The Concessionaire has failed to make any Concession Payment on Due Date therefor and more than 30 days have elapsed since such default;
- (ii) The Project Facilities ceases to be classified as at least a three star category hotel and the Concessionaire has failed to remedy the same for more than 180 days;
- (iii) 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 or on account of any act of omission or commission of the Person to whom the Concessionaire has further concessioned/licensed the Project Facilities and the same has not been remedied for more than 60 days;
- (iii) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;

- (iv) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire or the firm has been dissolved;
- (v) 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 JMA, or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- (vi) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- (vii) The Concessionaire has abandoned the Project Facilities;
- (viii) If the Concessionaire fails to pay the necessary insurance premiums towards the Project Facilities and thereby causes the insurance coverage on the Project Facilities to diminish, terminate or expire;
- (ix) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (x) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect and such attachment has continued for a period exceeding 90 days;
- (xi) The Concessionaire formed for the purpose of the Project is changed by the Concessionaire without the consent of JMA.

(b) JMA Event of Default

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

- (i) JMA 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) JMA has unlawfully repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement.
- (iii) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby the Concession/ this Agreement becomes inoperable or takeover by any Government Agency of the Project/Project Facilities or any part thereof, thereby causing Material Adverse Effect.

- (iv) Any representation made or warranties given by the JMA under this Agreement has been found to be false or misleading.

9.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which JMA may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, JMA may terminate this Agreement by issuing Termination Notice.
- (ii) If JMA decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within 30 days of receipt of the Preliminary Notice, the Concessionaire shall submit to JMA in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the "Concessionaire's Proposal to Rectify"). In case of non submission of the Concessionaire's Proposal to Rectify within the said period of 30 days, JMA shall be entitled to terminate this Agreement by issuing Termination Notice, to appropriate the Performance Security, if existing and takeover the Project Facilities.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however the Concessionaire fails to remedy/cure the underlying Event of Default within such further period allowed, JMA shall be entitled to terminate this Agreement, to appropriate the Performance Security, if existing and takeover the Project Facilities.

(b) Termination for JMA Event of Default

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

stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.

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

(c) Termination Notice

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

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

(d) Obligation of Parties

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

- (i) until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities,
- (ii) the Termination Payment, if any, payable by JMA in accordance with the following sub-article (f) is paid to the Concessionaire on the Termination Date and
- (iii) the Project/ Project Facilities are handed over to JMA by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to JMA.

(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

Upon Termination of this Agreement on account of JMA Event of Default, the Concessionaire shall be entitled to receive Termination Payment equal to 120% of the book value of the capital investments made by the Concessionaire on the Project net of depreciation computed on straight line basis upto the Termination Date, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose.

9.3 Rights of JMA on Termination

(a) Upon Termination of this Agreement for any reason whatsoever, JMA 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 Project Site /Project Facilities forthwith;
- (ii) prohibit the Concessionaire and any person claiming through or under the Concessionaire including but not limited to any sub-concessionaire or sub-licensee, from entering upon/ dealing with the Project Site / Project Facilities;

(b) Notwithstanding anything contained in this Agreement, JMA shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire or parties to whom Project Facilities have been concessioned/licensed by the Concessionaire in connection with the Project, and the handback of the Project Site / Project Facilities by the Concessionaire to JMA shall be free from any such obligation.

9.4 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.

9.5 Lenders' Step in Rights

- (a) Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that (i) upon the Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents) or (ii) upon a Termination Notice being issued by JMA , the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to JMA the substitution of the Concessionaire by another concessionaire (“Proposed Concessionaire”). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Concessionaire and the terms and conditions of the substitution.
- (b) Upon receipt of the Lenders’ proposal pursuant to the preceding sub-article (a), JMA shall at its discretion have the right to accept substitution of the Concessionaire on such terms and conditions as it may deem fit. Provided that any such substitution shall;
- (i) be on terms and conditions of the Concession which are not less favourable to JMA than those prevailing at the time of substitution, and
 - (ii) be for the remaining period of Concession only.
- (c) In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Concessionaire shall be deemed to have been transferred to and vested in the Proposed Concessionaire and the JMA and the Proposed Concessionaire shall take such steps and enter into such documents as may be necessary to give effect to the substitution.

- (d) Upon the substitution of the Concessionaire becoming effective as aforesaid, the Concessionaire shall hand back the Project Facilities to JMA and upon instruction of JMA to the Proposed Concessionaire for the purpose of giving effect to this provision, JMA shall have all such rights as are provided in Article 8.3.

ARTICLE 10 HANDBACK OF PROJECT FACILITIES

10.1 Ownership

Without prejudice and subject to the Concession, the ownership of the Project Site and Project Facilities, including all improvements made therein by the Concessionaire, shall at all times remain that of the Concessions Authority.

10.2 Obligations of Parties

(a) Concessionaire's Obligations

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

corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

- v. At least 24 months prior to the expiry of the Concession Period, the Concessionaire shall, for due performance of its obligations relating to handback of the Project Facilities, submit to JMA a bank guarantee, in the form as set forth in Schedule 9 ("Handback Guarantee"), from a bank acceptable to JMA. The Handback Guarantee shall be kept valid for a period of thirty (30) months.

(b) JMA's Obligations

JMA shall, subject to JMA's right to deduct amounts towards;

- i. carrying out works/jobs listed in the Handbank Requirements, which have not been carried out by the Concessionaire,
- ii. purchase of items listed in the Handbank Requirements, which have not been handed back to JMA along with the Project Site, and
- iii. any outstanding dues, which may have accrued in respect of the Project Facilities during the Concession Period,

duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the expiry of the Concession Period.

**ARTICLE 11
DISPUTE RESOLUTION**

11.1 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 sub-article (b) below.
- (b) Either Party may require such Dispute to be referred to the Deputy Commissioner & CEO, Jog Management Authority and the Chief Executive Officer of the Concessionaire for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15

(fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 11.2 below.

11.2 Arbitration

(a) Procedure

Subject to the provisions of Article 11.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

(b) Place of Arbitration

The place of arbitration shall ordinarily be Shimoga 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.

(e) Performance during Arbitration

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

ARTICLE 12
REPRESENTATIONS AND WARRANTIES, DISCLAIMER

12.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to JMA 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 JMA of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Concessionaire in and to the Project Site/Project Facilities shall pass to and vest in JMA on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire or JMA ;

- (k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to JMA or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Concession.
- (m) Without prejudice to any express provision contained in this Agreement, the Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the Project Site , and the information provided by JMA , 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 JMA shall not be liable for the same in any manner whatsoever to the Concessionaire.

12.2 Representations and Warranties of JMA

JMA represents and warrants to the Concessionaire that:

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

12.3 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 13 MISCELLANEOUS

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

13.2 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 the prevailing medium term prime lending rate of the State Bank of India plus 2% 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 Article 13.2 shall neither be deemed or 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.

13.3 Governing Law and Jurisdiction

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

13.4 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.

13.5 Survival

Termination of this Agreement

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

13.6 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.

13.7 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, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

If to JMA:
Deputy Commissioner & CEO,
Jog Management Authority
Tourism Department A Block,
3rd Cross, Gopalagowda layout,
Shimoga -577204

If to the Concessionaire

Fax No.: _____

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

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

13.8 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.

13.9 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.

13.10 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.

13.11 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.

13.12 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 JMA by:

For and on behalf of Concessionaire:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

In the presence of:

SCHEDULE 1

DETAILS OF PROJECT SITE

SCHEDULE 2

LIST OF MANDATORY FACILITIES & ADDITIONAL FACILITIES

A. Mandatory Facilities

S.No.	Details of Mandatory Facilities
1	The Concessionaire shall install a signboard indicating that the property belongs to Jog Management Authority, Government of Karnataka and ensure that the signboard is maintained in good condition throughout the Concession Period
2	A Tourism Desk for JMA, Displaying information (Posters, Brochures, Booklets, CDs, etc) on the various tourist destinations in Karnataka for the Promotion of Tourism in Karnataka.
3	Boutique / Heritage Village displaying the local arts and handicrafts having a minimum area of 1800 sq.ft

B. Additional Facilities (*indicative in nature*)

S.No.	Details of Additional Facilities
1	Internet Parlour
2	Fitness Centers
3	Ayurvedic Spa / Therapy center
4	Coffee Shop
5	Banquet hall
6	Conference halls, Meeting Rooms
7	Cultural Performances such as folk dance, music, etc
8	Water Sports / Adventure Camps (Optional)

SCHEDULE 3

CONCESSION PAYMENT

Appointed Date - _____

Payment No.	Due Date <i>(actual dates to be inserted)</i>	Concession Payment in Figures (Rupees)	Concession Payment Amount in words (Rupees)
1	1 st anniversary of Appointed Date		
2	2 nd anniversary of Appointed Date		
3	3 rd anniversary of Appointed Date		
4	4 th anniversary of Appointed Date		
5	5 th anniversary of Appointed Date		
6	6 th anniversary of Appointed Date		
7	7 th anniversary of Appointed Date		
8	8 th anniversary of Appointed Date		
9	9 th anniversary of Appointed Date		
10	10 th anniversary of Appointed Date		
11	11 th anniversary of Appointed Date		
	12 th anniversary		

12	of Appointed Date		
13	13 th anniversary of Appointed Date		
14	14 th anniversary of Appointed Date		
15	15 th anniversary of Appointed Date		
16	16 th anniversary of Appointed Date		
17	17 th anniversary of Appointed Date		
18	18 th anniversary of Appointed Date		
19	19 th anniversary of Appointed Date		
20	20 th anniversary of Appointed Date		
21	21 st anniversary of Appointed Date		
22	22 nd anniversary of Appointed Date		
23	23 rd anniversary of Appointed Date		
24	24 th anniversary of Appointed Date		
25	25 th anniversary of Appointed Date		
26	26 th anniversary of Appointed Date		
27	27 th anniversary of Appointed Date		
	28 th anniversary		

28	of Appointed Date		
29	29 th anniversary of Appointed Date		
30	30 th anniversary of Appointed Date		

SCHEDULE 4

PERFORMANCE SECURITY (PROFORMA OF BANK GUARANTEE)¹

THIS DEED OF GUARANTEE executed on this the _____ day of _____ at _____ by _____ (*Name of the Bank*) having its Head/Registered office _____ 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

Deputy Commissioner & CEO, Jog Management Authority, Government of Karnataka, having its office at Tourism Department A Block, 3rd Cross, Gopalagowda layout, Shimoga -577204, hereinafter referred to as “JMA”, 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 JMA and _____², a company incorporated under the provisions of the Companies Act, 1956, having its registered office address at _____ hereinafter called “the Concessionaire”(“the Concession Agreement”), the Company has been granted the Concession to implement the project envisaging development of tourism facilities at _____, Jog, hereinafter referred to as Project.
- B. In terms of Article 5.1 of the Concession Agreement, the Concessionaire is required to furnish to JMA, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) as security for due and punctual performance/discharge of its obligations under the

¹ To be issued by a Scheduled Bank in India
² In case of Consortium both members would be included as Parties to the Agreement and collectively referred to as ‘the Concessionaire/Consortium’ as the context may require.

Concession Agreement, relating to the Project, substantially in the format annexed as Schedule 4 to the Concession Agreement.

- C. At the request of the Concessionaire, 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 relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS:

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Concession Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by the Concessionaire of all its obligations relating to the Project during the Concession Period.
3. The Guarantor shall, without demur, pay to JMA sums not exceeding in aggregate Rs. _____/- (Rupees _____ only), within five (5) calendar days of receipt of a written demand therefor from JMA stating that the Concessionaire 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 JMA and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, JMA shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by JMA or any indulgence shown by JMA 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 JMA or any indulgence shown by JMA 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 _____³ unless discharged/released earlier by JMA in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only).

³36 months from the date of signing 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 5

FORMAT FOR LETTER OF AUTHORISATION

To Whomsoever it may Concern

This is to confirm that the site located at _____Jog has been handed over to M/s _____ pursuant to the Concession Agreement dated _____, entered into between the Jog Management Authority and M/s _____.

In terms of the said Agreement, the Concessionaire is authorised to occupy the said site and carry out all activities authorised by the said Agreement, and for that purpose, to apply for and obtain all approvals, licenses and permits, required in connection with any construction on the Project Site , carry out new construction, and carry out operation and management and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Deputy Commissioner & CEO
Jog Management Authority

SCHEDULE 6

SCOPE OF WORK OF PROJECT ENGINEER

1 Role of the Project Engineer

The Project 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 Project Engineer is to:

- i) independently review, monitor and where required by the Agreement, to approve activities associated with the Design and Construction of the Project Facilities to ensure compliance by the Concessionaire with the approved Development Plan and Project Requirements,
- ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- 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 during the Implementation Period.

2 Scope of Services

The services to be provided by the Project 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 Implementation Period - Design and Planning

- (a) The Concessionaire must design and plan the Project Facilities in accordance with the approved Development Plan and Project Requirements.
- (b) In case the Concessionaire (i) proposes any deviation to the Drawings or (ii) submits alternative Drawings for any of the Project Facilities, the Project Engineer shall review the same to ensure conformity with the Development Plan and Project Requirements.
- (c) Review of the following submitted by the Concessionaire :
 - (i) Quality Assurance Plan;
 - (ii) Implementation Plan;

- (iii) Condition Survey of the existing facilities on site and other construction in the Project area.

2.2 Implementation Period - Construction

- (a) The Project Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Construction Requirements. For this purpose the Project 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 Implementation Plan 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 JMA;
 - (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 Requirements;
 - (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;
 - (viii) require, monitor and review the results of Tests to be carried out by the Concessionaire in accordance with the Construction Requirements;
 - (ix) require suspension of whole or any part of the Construction Works if in its reasonable opinion the same does not conform to the Construction Requirements;
 - (x) issue Provisional Completion Certificate / Completion Certificate in accordance with the applicable provisions of the Agreement; and

2.3 Breach of Obligations

If during the course or upon review / inspection undertaken by the Project Engineer or otherwise, it transpires that either of the Parties is in breach/default of any of its obligations under the Agreement, the Project 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 Project Engineer may deem fit and in each case the same shall be recorded.

2.4 Meetings, Records and Reporting

- (a) The Project 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 Implementation Period and once every two months during the Operations Period as also to participate in emergency or extra-ordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.
- (b) The Project 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 organisational arrangements of the Project Engineer;
 - (ii) Reviews of documents submitted to it by the Concessionaire to meet Project Requirements, such as manuals, 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) Tests;
 - (vi) Emergency (including accidents);
 - (vii) Force Majeure Events;
 - (viii) Breaches and defaults by the Parties; and
 - (ix) Handback Requirements
- (c) The Project Engineer would be required to submit the following reports to the Parties during the Concession Period:
- (i) Implementation Period
 - Monthly Progress Report (including details of slippages and remedial measures)
 - Report on Tests and report on notices Issued
 - Provisional Completion Certificate
 - Completion Certificate
 - (ii) Operations Period

- Any supplemental or special report that may be considered necessary by the Project Engineer (including Emergency, Force Majeure, and breach of obligations).
- Any other report as may be reasonably required by JMA or as may be necessary to give effect to the provisions of the Agreement.

SCHEDULE 7

DESIGN REQUIREMENTS

Enclose a copy of the Technical Proposal submitted by the Concessionaire.

SCHEDULE 8

CONSTRUCTION REQUIREMENTS

1. General

The Project Facilities shall be so constructed as to meet the requirements in respect thereof contained in the Design Requirements. In addition, the Concessionaire shall observe and meet the following requirements:

2. Layout

2.1 Access to site

Access to the site shall be provided such that vehicular entry/ exit from the site does not affect the flow of traffic/ cause congestion on the roads.

2.2 Set backs, coverage

The set backs required on all the sides of building/s and maximum plot coverage permissible shall be as per the prevailing local byelaws.

2.3 Landscaping

The Concessionaire shall provide adequate landscaped and green areas within the site. The Concessionaire shall be sensitive to the existing green cover on site and plan accordingly.

2.4 Drainage

2.4.1 Rain/Storm water shall be drained with a network of drains in the site and shall be finally disposed to the nearby storm water drain.

2.4.2 Sewage shall be disposed to the nearby sewer line. Inside the complex, a suitable arrangement for carrying the sewage shall be designed.

3. Construction Requirements

3.1 Floor area ratio, numbers of floors and height

The maximum FAR, maximum number of floors, maximum height of buildings permissible shall be as per the prevailing local building byelaws.

3.2 Codes and Standards

The codes and standards applicable for the design of the Project/Project Facilities are:

Building Works

- i. Central Public Works Department Specifications (CPWD): Vol I to VI;
- ii. Bureau of Indian Standards (BIS); and
- iii. National Building Codes (NBC)
- iv. CPWD Specifications for fire fighting and fire alarm systems

The above codes shall include policy circulars, guidelines and special publications, issued in respect thereof from time to time and shall incorporate all amendments and/or modifications to such codes and standards which are available to public.

3.3 Fire Fighting System

The Concessionaire shall design and implement a comprehensive fire fighting system in accordance with CPWD and NBC.

4. Architectural Requirements

The site must be sensitive to its surroundings and respect the architectural heritage of the City.

The appearance of the proposed building in terms of architectural style, massing, scale and height is critical and it is desired that the proposed building complex conforms to the to the existing architecture, mass, and scale of adjacent structures

The historic styles of Jog contain rich and varied building surface elements. However, it is desired that the style adopted for this Project be 'neo-traditional' with a blend of historical and modern styles and a focus on simplicity in building form and surface treatments.

5. Before Commencement of construction

5.1 Prior to commencement of any construction activity, the Concessionaire shall finalise an implementation plan for the Project (Implementation Plan) in consultation with the Project Engineer. The Implementation Plan shall, inter alia, include:

- (i) A detailed schedule of implementation for putting up and operationalising the Project Facilities cover all stages/ aspects of the Project implementation including design and engineering, procurement of materials and equipment, installation, construction and testing;
- (ii) Manpower deployment plan, including the designation of key personnel 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, environmental management, plant and equipment maintenance, procurement, materials management and quality control);
- (iii) A broad method statement for key items (Earth Works, Building Works, etc) setting out the methodology of construction, materials and construction equipment mobilisation/ utilisation plans, safety management plan and environmental management plan;
- (iv) Details of the quality assurance plan and quality control procedures; and
- (v) 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).

5.2 The Concessionaire shall, in consultation with the Project Engineer workout an appropriate schedule for submission of documents set out in 5.1 above to the Project Engineer for review.

5.3 Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall have:

- (i) Obtained all such Applicable Permits as are necessary to commence construction of such Project Facilities;

- (ii) Finalised the Development Plan and such Drawings as are necessary and the Implementation Schedule in consultation with the Project Engineer;
- (iii) Mobilised the requisite resources, personnel and organisation 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 the Project Engineer and JMA;
- (iv) Finalised in consultation with the Project Engineer a method statement setting out details of the actual methods that would be adopted by the Concessionaire for the construction of such Project Facilities including details of equipment and machinery that would be used, their locations, and arrangements for conveying and handling materials;
- (v) Finalised in consultation with the Project Engineer quality assurance and quality control procedures to cover all aspects of the work so as to ensure the desired quality. This would include establishment of a well-equipped functional laboratory.

6. During Construction

6.1 The Concessionaire shall:

- (i) Ensure that the construction/ rehabilitation of the Project Facilities is undertaken with minimal inconvenience to the traffic using the existing access road and provide detours wherever required;
- (ii) Take necessary precautions to minimize accidents and respond to Emergency as quickly as possible;
- (iii) Take precautions to avoid inconvenience to, damage to, destruction of or disturbance to any third party rights and properties;
- (iv) ensure adequate safety of personnel deployed at the Project Site which would include measures for the safety such as the provision and maintenance of barricades and illumination during night in consultation with the Project Engineer;
- (v) be in compliance with the Applicable Laws and Applicable Permits obtained for the Project including the clearances obtained by the JMA;
- (vi) Adhere to the Implementation Plan; and
- (vii) deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the Project Engineer/ JMA.

6.2 Positions and Levels

- (i) The Concessionaire shall be responsible for:
 - (a) the accurate setting-out in relation to original survey control points, lines and levels of reference;
 - (b) the correctness of the positions, levels, dimensions and alignment of all parts of the works;
 - (c) the provision of all necessary instruments, appliances and labour in connection with the foregoing responsibilities;
- (ii) If, at any time during execution of the works, any error is noticed in the position, levels, dimensions or alignment of any part of the Construction Works, the Concessionaire, on being asked to do so by the Project Engineer, shall at his own cost, rectify such errors to the satisfaction of the Project Engineer.
- (iii) The checking of any setting-out or of any line or level by the Project Engineer shall not in any way relieve the Concessionaire of his responsibility for the accuracy thereof and the Concessionaire shall carefully protect and preserve all benchmarks, sight rails, pegs and other materials used in setting-out the works.

6.3 Tests

- (i) Various quality control tests would be undertaken for the Project as per the standards prescribed by National Building Code and Bureau of Indian Standards. Where no testing methods are specified by the said standards, details of the tests to be carried out and specifications to be achieved for the respective Project Facilities/ Construction Works or part thereof shall be agreed upon with the Project Engineer prior to construction;
- (ii) The tests would be carried out at a location (place of manufacture, fabrication or preparation, at site or any specialised testing laboratory) that the Project Engineer may reasonably require, at the cost and expense of the Concessionaire.
- (iii) The Concessionaire shall provide such assistance, labour, electricity, fuels, stores, apparatus and instruments as are normally required for examining, measuring and testing any materials or plant and shall

supply samples of materials, as required by the Project Engineer to undertake Tests.

- 6.4 No part of the Construction Works shall be covered up or put out of view before the same has been examined by the Project Engineer.
- 6.5 The Project Engineer may from time to time require:
- (i) removal from the Project Site , within such time as may be specified in its instructions, any material, equipment, machinery or plant which, in its opinion, do not meet the standards specified in the Design Requirements;
 - (ii) Substitution/ replacement of such improper material, equipment, machinery or plant;
 - (iii) Re-execution, of any or part of the Construction Works which in the opinion of the Project Engineer do not meet the standards set out in the Design Requirements; and
 - (iv) the Concessionaire to make boreholes or to carry out exploratory excavation for the Project.
- 6.6 The Concessionaire shall mobilise adequate numbers of equipment, plants and machinery to ensure adherence to the Implementation Plan.

7. After Completion of Construction

Upon completion of construction but prior to issue of the Completion Certificate, the Project Site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the Project Engineer.

8. Reporting Requirements and Documents to be provided

- 8.1 During the Implementation Period, the Concessionaire shall submit to the Project Engineer/ the JMA, Monthly Progress Report (for each calendar month or part thereof) within the first 5 working days of the following month. The report shall review the progress made, identify slippages if any, and project the future activities to be undertaken (including rectifications), operations and maintenance activities undertaken and would, inter alia, include the following:
- (i) Listing of working drawings/sketches submitted
 - (ii) Comments of the Project Engineer, 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) Progress data with "S" curves, if applicable
- (ix) Project data and sectional completion details
- (x) Tests carried out, if any, and results thereof
- (xi) (Remedial measures taken by the Concessionaire following such tests, where required
- (xii) Suspension of construction, if any, its reasons, duration and the steps undertaken to resume construction
- (xiii) All actual or potential deviations from the Implementation Plan
- (xiv) Disagreements/ Disputes , if any and proposed measures to be taken
- (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 Site, injury/fatality, property damage, cause of accident and actions taken to avoid recurrence
- (xvii) Notes of meetings between the Concessionaire, the Project Engineer and JMA highlighting critical decisions taken or agreements reached. Minutes of the meeting issued by the JMA shall also be included in the monthly progress reports.

8.2 Prior to making the request for the issue of Completion Certificate, the Concessionaire shall submit to the JMA the following documents, free of costs:

- (i) Two hardcopies and two copies in electronic form (two Compact Discs) of the "As Built" drawings of the Project Facilities - detailed, accurately scaled and sequentially numbered, covering all relevant engineering features, which in relation to structures shall also include cross sections in each drawing; and
- (ii) copies of all geo-technical and borehole reports obtained by the Concessionaire, if any.

SCHEDULE 9

HANDBACK GUARANTEE (PROFORMA OF BANK GUARANTEE)

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

In favour of

Deputy Commissioner & CEO, Jog Management Authority, Government of Karnataka, having its office at Tourism Department A Block, 3rd Cross, Gopalagowda layout, Shimoga -577204, hereinafter referred to as “JMA ”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Concession Agreement entered into between JMA and M/s _____⁴, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at _____, (“the Concessionaire”) the Concessionaire had been granted the Concession to implement the project envisaging development of tourism facilities at _____ at _____, Jog, hereinafter referred to as the Project.
- B. In terms of Article 10.2 as the case may be, of the Concession Agreement, the Concessionaire is required to furnish to JMA , an unconditional and irrevocable bank guarantee for an amount of Rs. _____- (Rupees _____ Only⁵) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, relating to handback of the Project Facilities.
- C. At the request of the Concessionaire, the Guarantor has agreed to provide guarantee, being these presents, guaranteeing the due and punctual

⁴ In case of Consortium both members would be included as Parties to the Agreement and collectively referred to as ‘the Concessionaire/Consortium’ as the context may require.

⁵ the amount shall be equal to the Concession Payment to be paid by the Concessionaire for the particular year.

performance/discharge by the Concessionaire of its obligations under the Concession Agreement relating to handback of the Project Facilities.

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 the Concessionaire of all its obligations relating to handback of the Project Facilities.
3. The Guarantor shall, without demur, pay to JMA sums not exceeding in aggregate Rs. _____ (Rupees _____ only), within five (5) calendar days of receipt of a written demand therefor from JMA stating that the Concessionaire has failed to meet its performance obligations relating to handback of the Project Facilities. 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 JMA and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Concessionaire or any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, JMA shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Concessionaire or postponement/non exercise/ delayed exercise of any of its rights by JMA or any indulgence shown by JMA 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 JMA or any indulgence shown by JMA, 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 _____⁶unless discharged/released earlier by JMA in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____ (Rupees _____ only).

⁶ 30 months from the date of issue of the Handback Guarantee in accordance with Article 10.2 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 authorized 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 authorized official.

SCHEDULE 10

O&M REQUIRMENTS

The Concessionaire would have to maintain the Project Facilities as per a 3 star or above category hotel / resort.