

CONCESSION AGREEMENT

between

Department of Tourism

and

(Concessionaire)

for

**Refurbish, Operation & Maintenance and Transfer
of
Tourism Property at Talakadu**

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This Concession Agreement mutually agreed and entered into on this the _____ day of _____(Month), Two Thousand and Seven at Bangalore,

BETWEEN

Governor of Karnataka, represented by the Director, Department of Tourism, having its office at No. 49, II Floor, Khanija Bhavan, West Entrance, Race Course Road, Bangalore - 560 001, hereinafter referred to as “the Concessing Authority” or “DoT” which expression shall unless repugnant to the context include the successors and assigns, on the one part,

AND

_____, a company¹ 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. DoT is the owner of the tourism property having its office at having its office at No. 49, II Floor, Khanija Bhavan, West Entrance, Race Course Road, Bangalore - 560 001 on land admeasuring 2 (two) acres more fully described in Schedule 1, hereinafter referred to as Project Asset .
- B. DoT in furtherance of its larger objective of providing upgraded services to users, support tourism and unlock the value of the Project Asset, has decided to refurbish, operate, and maintain Project Asset through private participation.
- C. DoT, after a competitive bidding process has selected the Concessionaire and awarded the Concession for refurbishing, operating and maintaining the Project Asset vide its Letter of Acceptance no. _____dated _____and the Concessionaire has acknowledged the same vide its letter no. _____dated_____.
- D. In accordance with the requirements of the Request for Proposal document, the Concessionaire has remitted to DoT the upfront payment for a sum of Rs. _____ (Rupees _____only) vide demand draft No. _____ drawn on _____in favour Director, DoT.
- E. The Parties hereto are required to enter into the Concession Agreement being these presents to record the terms, conditions and covenants of the Concession.

¹ Suitable changes would be made to reflect the status of the Concessionaire in case the Concessionaire is a Proprietorship Firm or Partnership Firm

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 Project Facilities” means all facilities and assets comprised therein which the Concessionaire may build, provide or procure within the Project Asset for better commercial utilisation of the Project Asset, consistent with the Good Industry Practice and terms of this Agreement.

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

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

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

“Appointed Date” means the date of this Agreement.

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

“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)

“Commencement Date” means the date on which the Concessionaire obtains the Completion Certificate.

“Completion Certificate” means the certificate issued by DoT or any other independent body or authority mutually agreed upon by the Parties certifying , *inter alia*, that:

- (i) the Concessionaire has refurbished, operated and maintained the Project Asset and provided the Project Facilities;
- (ii) the Concessionaire has obtained Applicable Permits, necessary to commence commercial operations of the Project Asset and Project Facilities.

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

“Concession Payment” means the amounts payable by the Concessionaire to DoT in accordance with Article 6.

“Concession Period” shall have the meaning ascribed thereto in Article 2.2 of this Agreement.

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

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

“Expiry” means expiry of the Concession by efflux of time at the end of 20 (Twenty) years from the Appointed Date.

“Expiry Date” means the date on which Expiry occurs.

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

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

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

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

“**GoK**” means the Government of Karnataka.

“**Lenders**” means 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 Project Facilities**” means all facilities required mandatorily to be provided by the Concessionaire in the Project Asset and set out as such more specifically in Schedule 2.

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

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

“**Operations Period**” shall mean the period commencing from the Commencement Date to the expiry date. Provided in the event of Termination the Operations Period shall mean the period commencing from the Commencement Date to Termination Date.

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

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

“**Project**” means and includes the refurbish, operate & maintain and transfer of the Project Asset, provision of the Mandatory Project Facilities and operation and maintenance of the Project Asset/Project Facilities in accordance with the provisions of this Agreement.

“**Project Asset**” means the tourism property more fully described in Schedule 1.

“**Project Completion Period**” shall have the meaning ascribed thereto in Article 4.3.

“**Project Facilities**” means collectively the Mandatory Project Facilities and the Additional Project Facilities, inclusive of the moveables, fittings and fixtures.

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

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

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

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) 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;
- (h) 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;
- (i) 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;
- (j) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party in this behalf and not otherwise;
- (k) 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;

ARTICLE 2

CONCESSION

2.1 Grant of Concession

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concessing Authority hereby grants and authorises the Concessionaire to refurbish, operate, maintain and transfer the Project Asset, provide Mandatory Project Facilities and operate and maintain the Project Asset/Project Facilities, to exercise and/ or enjoy the rights, powers, benefits, privileges, authorisations and entitlements as set forth in this Agreement including the right to collect, retain and appropriate all tariffs, fees and charges for the facilities and services provided, and to handback the Project Asset and Project Facilities on the Expiry Date or the Termination Date as the case may be ("the Concession").

2.2 Concession Period

The Concession hereby granted is for a period of 20 (Twenty) years commencing from the Appointed Date and ending on the Expiry Date ("the Concession Period").

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

2.3 Acceptance of Concession

In consideration of the rights, privileges and benefits conferred upon by the Concessing 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 ASSET

3.1 Handover of Project Asset

- (a) DoT shall, within 15 days from the Appointed Date, handover to the Concessionaire on as-is-where-is basis, vacant and peaceful physical possession of the Project Asset free from Encumbrance, for the purpose of implementing the Project.
- (b) Upon the Project Asset 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 Asset as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights and Use of the Project Asset

- (a) The Concessionaire shall have the right to the use of the Project Asset 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 not part with or create any Encumbrance on the whole or any part of the Project Asset/Project Facilities save and except as set forth and permitted under this Agreement.
- (c) The Concessionaire shall not without the prior written approval of DoT use the Project Asset/Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary theret

3.3 Peaceful Possession

The Concessioneing Authority hereby warrants that:

- (a) The Project Asset is owned by the DoT and DoT enjoys absolute possession and ownership of the Project Asset. DoT has decided to carry out refurbishment, operation, and maintenance of the same through private participation.
- (b) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Asset during the Concession Period.

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

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:

4.1 Performance Security

The Concessionaire shall, for due and punctual performance of its obligations relating to the Project, deliver to DoT, simultaneously with the execution of this agreement, a revolving bank guarantee of Rs. 5,00,000 (Rs. Five Lakhs) for 15 (fifteen) months and to be effective throughout the Concession Period, from a scheduled bank acceptable to DoT, in the form as set forth in Schedule 4, ("Performance Security").

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 DoT's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

4.2 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.

4.3 Project Completion

The Concessionaire shall refurbish, operate, maintain and transfer the Project Asset, provide Mandatory Project Facilities as set out in Schedule 2, obtain Completion Certificate and commence operations of the Project Asset/Project Facilities on or before the expiry of twelve (12) months from the Appointed Date ("Project Completion Period").

4.4 Operation and Maintenance

- (a) The Concessionaire shall operate and maintain the Project Asset/Project Facilities and may provide Additional Project Facilities entirely at its cost for the better utilisation of the Project Asset/Project Facilities.
- (b) The Concessionaire shall erect a signboard, of a size not less than 2 ft. by 4 ft, adjacent to the main entrance to the Project Asset in a manner such that it is ordinarily visible to any person using such entrance. The signboard shall

prominently display the following text in black upper case letters on a white/yellow background:

“This property belongs to the Department of Tourism and has been handed over to M/s _____ for refurbishment, Operation and Maintenance from _____ (fill in Appointed Date) to _____ (fill in Expiry Date)”.

- (c) The Concessionaire shall ensure that the signboard is maintained in good condition throughout the Concession period.

4.5 Alterations, Modifications and Additional Project Facilities

- (a) The Concessionaire shall be at liberty to carry out necessary alterations or modifications to the Project Asset or undertake new construction in order to meet his obligation of providing the Mandatory Project Facilities and/or provide Additional Project Facilities and, subject to his adherence to Applicable Law and obtaining Applicable Permits for such alteration, modification or new construction. Provided however that such alteration, modification or new construction shall not at any time cause any damage or have a dangerous effect on either the stability of the Project Asset/Project Facilities or otherwise adversely affect the safety of the users of the Project Asset/Project Facilities.

Provided that, if in the opinion of the Concessionaire, the said alteration, modification or new construction requires demolition of any part or whole of the Project Asset/Project Facilities (including the cutting of trees), then such demolition shall be undertaken only after obtaining prior written approval from the DoT, which approval shall not be unreasonably withheld. For this purpose, the Concessionaire shall submit to DoT a proposal (hereinafter referred to as Modification Proposal) clearly describing such demolition and its impact on the structural stability of the Project Asset/Project Facilities, atleast sixty (60) days prior to carrying out such demolition whereupon the DoT shall act as per the procedure set out in Clause 5.1.

- (b) The Concessionaire would be required to obtain Applicable Permits and adhere to Applicable Laws for any demolition.
- (c) No demolition (including the cutting of trees) would be allowed during the last 2 years of the Concession Period, unless specifically approved by DoT.

4.6 Insurance

The Concessionaire shall at its cost and expense, purchase and maintain by due reinstatement or otherwise, during the Concession Period all insurances in respect of the Project Asset/Project Facilities in accordance with the Good Industry Practice. The

Concessionaire shall maintain a register of entry in order of premiums paid towards the Project Asset/Project Facilities and proof of payments made shall be submitted to DoT whenever requested for.

4.7 General Obligations

The Concessionaire shall at its own cost and expense:

- (a) investigate, study, design, refurbish, operate and maintain the Project Asset/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 restaurant and lodging properties at all times during the Concession Period;
- (d) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (e) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies DoT against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall DoT be treated as employer in this regard;
- (f) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits;
- (g) be responsible for all the health, security, environment and safety aspects of the Project at all times during the Concession Period.
- (h) ensure that the Project Asset/Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any;
- (i) upon receipt of a request thereof, afford access to the Project Asset/ Project Facilities to the authorised representatives of DoT for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- (j) pay all taxes, duties and outgoings, including utility charges relating to the Project Asset/Project Facilities.

ARTICLE 5

DoT's OBLIGATIONS

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

5.1 Specific Obligations

- (a) DoT shall grant in a timely manner all such approvals, permissions and authorisations which the Concessionaire may require or is obliged to seek from DoT under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided where authorisation for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/utilities is required, the same shall be provided by DoT 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 authorisation.
- (b) DoT shall respond in writing within a period of sixty (60) days from the date of receipt of a Modification Proposal, as specified under Clause 4.5, communicating its decision on such Modification Proposal.
- (c) In case DoT does not respond within sixty (60) days, as aforesaid, then such Modification Proposal would be deemed to have been approved by DoT. However, this shall not relieve the Concessionaire from his obligation of ensuring safety of the Project Asset/Project Facilities.
- (d) In the event that DoT does not approve a Modification Proposal or any part thereof, DoT shall, as part of its written response, clearly describe the reasons for such non-approval. In case the Concessionaire is not satisfied with such reasons, the Concessionaire shall have remedy under Article 10 of this Agreement.

5.2 General Obligations

DoT 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 6

CONCESSION PAYMENT

6.1 Concessionaire's Obligations

In consideration of the Concession hereby granted, the Concessionaire shall pay to DoT, Concession Payment on the Due Date as set out in Schedule 3.

Any delay in making any Concession Payment shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at 12% per annum from the relevant Due Date till the date of payment/ realisation.

6.2 Mode of Payment

The Concession Payment shall be made by way of cheque/ demand draft in favour of the Director, Department of Tourism, payable at Bangalore and shall be sent sufficiently in advance to the address specified in Article 12.7 so as to ensure realisation/ encashment thereof on or before Due Date.

ARTICLE 7

FORCE MAJEURE

7.1 Force Majeure Event

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

- (a) earthquake, flood, inundation and landslide;
- (b) storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- (c) fire caused by reasons not attributable to the Concessionaire or any of the employees, Contractors or agents appointed by the Concessionaire for purposes of the Project;
- (d) acts of terrorism;

- (e) strikes, riots, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire;
- (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 Asset/Project Facilities or any part thereof or of the Concessionaire's rights in relation to the Project Asset/Project Facilities;
 - (ii) any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire 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 breach or failure in providing with the Project Facilities, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Concessionaire may be bound;
- (g) early termination of this Agreement by the DoT for reasons of security of the Project Asset/Project Facilities, national emergency, national security or the national interest;
- (h) 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.

7.2 Notice of Force Majeure Event

- (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 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 7.2 (a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Asset/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.

7.3 Performance of Obligations

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

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

7.4 Termination due to Force Majeure Event

(a) Termination

- (i) If a Force Majeure Event, is an event described under Sub-articles 7.1(a) to 7.1(e) 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 7.1 (f), 7.1 (g) or 7.1 (h) and the Concessionaire having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Concessionaire shall be entitled to terminate this Agreement.

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

Provided further, the DoT may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Sub-articles 7.1(f), 7.1(g) or 7.1(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 the DoT in accordance with the following sub-article (d) is paid to the Concessionaire on the Termination Date and
- (ii) the Project Asset/Project Facilities are handed back to the DoT 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 the DoT in accordance with the following:

- (i) If Termination is due to a Force Majeure Event, described under Sub-articles 7.1(a) to 7.1(e), no Termination Payment shall be made by the DoT 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 7.1(f) or 7.1(g), the DoT shall pay to the Concessionaire Termination Payment equal to 100% of the Book Value as on Termination Date.

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

- (iii) If Termination is due to the occurrence of any event described under Sub-article 7.1 (h), the DoT shall pay to the Concessionaire, Termination payment equal to 70% of the Book Value as on Termination Date.

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

7.5 Liability for other losses, damages etc.

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

ARTICLE 8

EVENTS OF DEFAULT AND TERMINATION

8.1 Events of Default

Event of Default means either Concessionaire Event of Default or DoT 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 DoT 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 obtain Completion Certificate and commence operations of the Project Asset/Project Facilities before the expiry of the Project Completion Period;
- (ii) The Concessionaire has failed to make any Concession Payment on Due Date thereof and more than 30 days have elapsed since such default;
- (iii) The Concessionaire has not submitted the Handback Guarantee and has subsequently failed to remedy the same within a further period of 30 days;
- (iv) The Concessionaire is in Material Breach of any of its other obligations under this Agreement and the same has not been remedied for more than 60 days;
- (v) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- (vi) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire²;
- (vii) Any petition for winding up³ 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

² To be suitably modified for a Partnership Firm / Sole Proprietorship

³ To be suitably modified for a Partnership Firm/Sole Proprietorship

jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of DoT, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement.

- (viii) 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;
- (ix) The Concessionaire has abandoned the Project Asset/Project Facilities;
- (x) The Concessionaire has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- (xi) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 90 days.

(b) DoT Event of Default

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

- (i) DoT 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) DoT has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- (iii) DoT has unreasonably withheld or delayed grant of any approval or permission which the Concessionaire is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- (iv) Any governmental action not arising out of a breach, default or lapse on the part of the Concessionaire, whereby this Agreement becomes inoperable or takeover by any government agency of the Project Asset/Project Facilities or any part thereof, thereby causing Material Adverse Effect;
- (v) Any representation made or warranties given by the DoT under this Agreement has been found to be false or misleading.

8.2 Termination due to Event of Default

(a) Termination for Concessionaire Event of Default

- (i) Without prejudice to any other right or remedy which DoT may have in respect thereof under this Agreement, upon the occurrence of a Concessionaire Event of Default, DoT may terminate this Agreement in the manner as set out under Clause 8.2(a)(ii) and Clause 8.2(a)(iii).
- (ii) If DoT decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Concessionaire. Within thirty (30) days of receipt of the Preliminary Notice, the Concessionaire shall submit to DoT 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, DoT shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.
- (iii) If the Concessionaire's Proposal to Rectify is submitted within the period stipulated therefor, the Concessionaire shall have further period of 30 days 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, DoT shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security if subsisting.

(b) Termination for DoT 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 DoT 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 DoT. Within 30 days of receipt of Preliminary Notice, DoT shall forward to the Concessionaire its proposal to remedy/ cure the underlying Event of Default (the "DoT Proposal to Rectify"). In case of non submission of DoT Proposal to Rectify within the period stipulated therefor, Concessionaire shall be entitled to terminate this Agreement by issuing Termination Notice.
- (iii) If DoT Proposal to Rectify is forwarded to the Concessionaire within the period stipulated therefor, DoT shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however DoT 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; 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 DoT in accordance with the following sub-article(f) is paid to the Concessionaire on the Termination Date and
- (iii) the Project Asset/Project Facilities are handed over to DoT by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to DoT.

(e) Withdrawal of Termination Notice

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

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

(f) Termination Payments

- (i) Termination Payment on DoT Event of Default

Upon Termination of this Agreement on account of DoT Event of Default, the Concessionaire shall be entitled to receive from DoT, termination payment equal to 120% of the book value of the capital investments net of depreciation computed

on straight line basis as on Termination Date, made by the Concessionaire towards the Project Asset/Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose.

(ii) Termination Payment on Concessionaire Event of Default

Upon Termination of this Agreement on account of Concessionaire Event of Default, the Concessioneing Authority in addition to other conditions set out in this Agreement, shall be entitled to appropriate the Performance Security.

8.3 Rights of DoT on Termination

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

8.4 Accrued Rights of Parties

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

8.5 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 DoT,

the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to DoT the substitution of the Concessionaire by another suitable delux restaurant operating company ("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), DoT 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 DoT 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 DoT 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 to DoT or upon instruction of DoT to the Proposed

Concessionaire and for the purpose of giving effect to this provision, DoT shall have all such rights as are provided in Article 8.3.

ARTICLE 9

HANDBACK OF PROJECT ASSET/PROJECT FACILITIES

9.1 Ownership

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

9.2 Concessionaire's Obligations

- (a) Upon the expiry of the Concession Period by efflux of time and in the normal course, the Concessionaire shall on the Expiry Date, hand back vacant and peaceful possession of Project Asset/Project Facilities to DoT free of cost and in good operable condition.
- (b) At least 24 months prior to the Expiry Date, the Concessionaire shall, for due performance of its obligations relating to handback of Project Asset and Project Facilities, submit to DoT a bank guarantee, in the form as set forth in Schedule 6 ("Handback Guarantee"), from a scheduled bank acceptable to DoT for a sum of Rs. _____/- (Rs. _____ only) (Equal to Concession Payment for the last year of the Concession Period). The Handback Guarantee shall be kept valid for a period of thirty (30) months.
- (c) Atleast 12 months before the Expiry Date a joint inspection of the Project Asset/Project Facilities shall be undertaken by DoT and the Concessionaire. DoT shall, within 45 days of such inspection prepare and furnish to the Concessionaire a list of works/ jobs, if any, to be carried out so as to conform to at least the Mandatory Project Facilities requirements. The Concessionaire shall promptly undertake and complete such works/jobs at least three months prior to the Expiry Date and also ensure that the Project Asset and Project Facilities continue to meet such requirements until the same are handed back to DoT on the Expiry Date.
- (d) DoT shall, within 45 days of the joint inspection underaken under Clause 9.2(c) prepare and furnish to the Concessionaire a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to DoT along with the Project Asset/Project Facilities.
- (e) The Concessionaire hereby acknowledges DoT's rights specified in Article 8.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.

9.3 DoT's Obligations

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

- (i) carrying out works/jobs listed under Clause 9.2(c), which have not been carried out by the Concessionaire,
- (ii) purchase of items, which have not been handed back to DoT along with the Project Asset/Project Facilities in terms of Clause 9.2(d), and
- (iii) any outstanding dues, which may have accrued in respect of the Project during the Concession Period,
- (iv) duly discharge and release to the Concessionaire the Handback Guarantee within 3 months from the Expiry Date.

ARTICLE 10

DISPUTE RESOLUTION

10.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to 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 Director, Department of Tourism, 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 10.2 below.

10.2 Arbitration

(a) Procedure

Subject to the provisions of Article 10.1, any Dispute which is not resolved amicably shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the

Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 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 Bangalore 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 11

REPRESENTATIONS AND WARRANTIES, DISCLAIMER⁴

11.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to DoT 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;

⁴ To be suitably modified for a Partnership Firm/Sole Proprietorship

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

11.2 Representations and Warranties of DoT

DoT represents and warrants to the Concessionaire that:

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

11.3 Obligation to Notify Change

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

ARTICLE 12

MISCELLANEOUS

12.1 Assignment and Charges

- (a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of DoT.
- (b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Asset/Project Facilities except with prior consent in writing of DoT, which consent DoT 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.

12.2 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 12% 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 12.2 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.

12.3 Governing Law and Jurisdiction

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

12.4 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.

12.5 Survival

Termination of this Agreement

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

12.6 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.

12.7 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 DoT :

Director,

Department of Tourism,

2nd Floor, West Entrance, Khanija Bhavan

No. 49, Race Course Road,

Bangalore – 560 001

Fax No. (080) 22352626

If to the Concessionaire :

The Managing Director⁵,

----- Limited,

⁵ to be suitably modified for a firm

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.

12.8 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.

12.9 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.

12.10 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.

12.11 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

12.12 Counterparts

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

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

SIGNED SEALED AND DELIVERED

For and on behalf of DoT by:

For and on behalf of CONCESSIONAIRE by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of :

1)

2)

SCHEDULE 1

DETAILS OF PROJECT ASSET

Details of the Project Asset giving particulars of land area, survey nos., built-up areas and layout plan are set out below:

A General		
1	Details of land proposed to be handed over to the Concessionaire	2 acres
2	Copy of site plan, clearly marking the area proposed to be handed over to the private developer	Enclosed
B Building		
1	Building floor plans with dimensions (*)	Enclosed
2	Year of completion of construction	2006
1	Components of the Project Asset and area statement of the same	<p>The facility has 13 rooms, with kitchen facility, Pantry and store room facility. Each of the rooms have attached bathrooms.</p> <p>DoT has only constructed the facility and room that are developed in the facility have not been furnished since development.</p>

Note : (*) The Building floor plans drawings are indicative and are not as-built drawings, therefore the actual construction in scope / quality, may vary from the details indicated in these drawings

SCHEDULE 2

PROJECT FACILITIES

Project Facilities shall comprise of Mandatory Project Facilities and Additional Project Facilities. The Mandatory Facilities to be provided by Concessionaire is as set out below:

MANDATORY PROJECT FACILITIES

S.No.	Details of Facilities
1	The Concessionaire shall install a signboard within the Project Asset indicating that the property belongs Department of Tourism, and ensure that the signboard is maintained in good condition throughout the Concession Period
2	An outdoor backlit display system for providing advertising space of size 5ft X 10 ft available to DoT for promotion of Tourism
3	A Delux restaurant .
4	A Fast food vegetarian restaurant.
5	Shops and Kiosks to be utilised for tourist related activities like refreshments for fruit stall, ice cream parlour, arts and craft boutiques, etc

SCHEDULE 3

CONCESSION PAYMENT SCHEDULE

(Amounts in Rupees)

Payment No.	Due Date	Concession Payment	
		In Figures	In Words
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	12 th anniversary 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		

SCHEDULE 4

PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE)⁶

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

In favour of

Director, Department of Tourism, having its office at No.49, II Floor, Khanija Bhawan, West Entrance, Race Course Road, Bangalore – 560 001, hereinafter referred to as “DoT”, 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 DoT and _____, a company⁷ incorporated under the provisions of the Companies Act, 1956/firm/individual (“the Concessionaire”), having its registered office at _____ (“the Concession Agreement”), the Concessionaire has been granted the Concession to refurbish, operate and maintain DoT’s property at _____, Talakadu (hereinafter referred to as the Project)
- B. In terms of Article 4.1 of the Concession Agreement, the Concessionaire is required to furnish to DoT, an unconditional and irrevocable bank guarantee for an amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, 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 Concessionaire of its obligations under the Concession Agreement.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

⁶ To be issued by a Scheduled Bank in India

⁷ Suitable changes would be made to reflect the status of the Concessionaire in case the Concessionaire is a Proprietorship Firm or Partnership Firm

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 DoT sums not exceeding in aggregate Rs. 5,00,000/- (Rupees Five Lakhs Only), within five (5) calendar days of receipt of a written demand therefor from DoT stating that the Company has failed to meet its performance obligations under the Concession Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Concessionaire or validity of demand so made by DoT 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, DoT shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by DoT or any indulgence shown by DoT 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 DoT or any indulgence shown by DoT 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 _____⁸ unless discharged/released earlier by DoT in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire/the Guarantor or any absorption, merger or amalgamation of the Concessionaire/the Guarantor with any other Person.
7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

⁸ 15 months from the date of signing the Concession Agreement,

SIGNED AND DELIVERED

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

SCHEDULE 5

FORMAT FOR LETTER OF AUTHORISATION

(To be given on DoT letterhead)

To Whomsoever it may Concern

This is to confirm that the DoT's property located at Talakadu ("Project Asset") has been handed over to _____ (*Name of Concessionaire*) pursuant to the Concession Agreement dated _____, entered into between the Department of Tourism and _____ (*Name of Concessionaire*).

In terms of the said Agreement, the Concessionaire is authorised to occupy the Project Asset 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 Asset site, including demolition and reconstruction, or refurbishment, of the existing structures, carry out new construction, and carry out operation and management of the Project Asset and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Director
Department of Tourism

SCHEDULE 6

HANDBACK GUARANTEE

(PROFORMA OF BANK GUARANTEE)⁹

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

Director, Department of Tourism, having its office at No.49, II Floor, Khanija Bhawan, West Entrance, Race Course Road, Bangalore – 560 001, hereinafter referred to as “DoT”, 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 DoT and _____, a company¹⁰ incorporated under the provisions of the Companies Act, 1956 (“the Concessionaire”), having its registered office at _____ (“the Concession Agreement”), the Concessionaire had been granted the Concession to refurbish, operate and maintain DoT’s property at _____, Talakadu (hereinafter referred to as “the Project”).
- B. In terms of Article 9 of the Concession Agreement, the Concessionaire is required to furnish to DoT, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) (Equal to Concession Payment for the last year of the Concession Period) as security for due and punctual performance/discharge of its obligations under the Concession Agreement, substantially in the format annexed as Schedule 6 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 Concessionaire of its obligations under the Concession Agreement relating to handback of Project Asset/Project Facilities.

⁹ To be issued by a Scheduled Bank in India

¹⁰ Suitable changes would be made to reflect the status of the Concessionaire in case the Concessionaire is a Proprietorship Firm or Partnership Firm

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 Project Asset / Project Facilities under the Concession Agreement.
3. The Guarantor shall, without demur, pay to DoT sums not exceeding in aggregate Rs. _____/- (Rupees _____ Only) (Equal to Concession Payment for the last year of the Concession Period), within five (5) calendar days of receipt of a written demand therefor from DoT 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 DoT 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, DoT 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 DoT or any indulgence shown by DoT 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 DoT or any indulgence shown by DoT 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 _____¹¹unless discharged/released earlier by DoT in accordance with the provisions of the Concession Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____/- (Rupees _____ Only) (Equal to Concession Payment for the last year of the Concession Period).
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.

¹¹ 30 months from the date of issue of the Handback Guarantee in accordance with Clause 9.2(b) of the Concession Agreement

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.