

## **LEASE DEED**

(As per Tourism Policy - 2016)

### **1. PARTIES:**

This lease deed is made on .....day of .....year..... between the Managing Director M.P. State Tourism Development Corporation Ltd; on behalf of the Department Of Tourism Government of Madhya Pradesh (hereinafter called as the 'Lessor' which expression shall, where the context so permits, include its successor in office.) of the First Part

AND

M/s..... (Firm Name and Address) through its Managing Director/ Partner/Proprietor/Power of attorney Shri/Smt..... S/o/D/o/W/o.....and having its registered office at..... (hereinafter called as the 'Lessee' which expression shall, where the context so permits, include its successors and permitted assigns) of the Second Part.

The Lessor and Lessee shall individually be referred to as 'Party' and collectively be referred to as 'Parties'.

WHEREAS the Government of Madhya Pradesh has formulated the MP State Tourism Policy from time to time whereby the State has set the goal to provide a comprehensive tourism experience to the tourists by creating tourism infrastructure with the assistance of the private sector.

AND WHEREAS the State has decided to provide lease over specified land/heritage property so that the same can be maintained and operated as a tourism project.

AND WHEREAS the Lessor has invited applications for establishing tourism project and the Lessee has submitted its bid and has been selected as successful bidder to establish and operate the said project on the government land.

### **2. PREMIUM:**

Witnessed in consideration of Rs. .... (In Words: Rupees ..... ) paid as upfront premium by the lessee, the receipt where of the lessor hereby acknowledges and of the rent hereinafter reserved and of the covenants on the part of the lessee hereinafter contained.

### **3. DEMISE:**

The lessor hereby demises to the lessee all that piece of land (including all structure existing there upon) admeasuring .....hectare or thereabouts situate at .....within the village/municipal limits of that town in the district of ..... which plot of land is more particularly described in the schedule hereunder written and with the boundaries thereof is for greater clarity delineated on the plan hereto annexed and thereon marked in.....colour. The structure existing on the land are identified and mentioned separately in the schedule attached.

#### 4. TERM:

In consideration of the premium and the annual lease rent, the lessor grants to the lessee a lease over the land mentioned in clause 3 of this deed for the term commencing from the date of this deed and ending on the 31st March..... (mention coming 90<sup>th</sup> year) subject to the following terms, leased for below mentioned tourism development purposes :-

1).....

2).....

#### 5. LEASE RENT/PERFORMANCE SECURITY AND TAXES ETC:

The Lessee shall pay the following amount through bank draft to the Lessor for the said land –

- (i) **Annual Lease Rent**, 1% of the upfront premium i.e INR.....plus taxes as applicable.

The first payment of such annual lease rent will fall due on the date of signing of lease deed. Thereafter, the payment of annual lease rent shall be due and payable during the lease period by the lessee to the lessor on 1<sup>st</sup> April every year.

In case there are any arrears of rent payable by the lessee to the lessor after 30<sup>th</sup> of the April of each year, the lessee shall be liable to pay simple interest @ 10 % per annum to the lessor on the such due amount from the date of it becoming due to the date of payment – in full or parts thereof, as applicable.

Without prejudice to the above, if the Lessee fails to pay the annual lease rent for 06 months from the due date, i.e. till 1st October of that year then the Lessor shall be at liberty to terminate the lease deed. However, the lessor may extend this time period, at the request of the lessee. In such cases, the lessee shall be required to pay the entire due amount along with interest in lump sum and the lessor would be in addition entitled to charge penalty @ 50% of the lease rental for the corresponding year.

- (ii) **Performance Security:** The lessee shall be required to deposit performance security in the form of an irrevocable and unconditional Bank Guarantee/ Fix Deposit Receipt (FDR) of INR..... Bank Guarantee/ / Fix Deposit Receipt shall be valid initially for 3 (three) year and thereafter kept valid & effective till the commissioning of the project by renewing its validity three (3) months prior to its expiry every year. (The Bank Guarantee / Fix Deposit Receipt should be issued from Nationalized Bank or Scheduled Bank).

- (iii) The lessee shall from time to time and at all times during the said term shall pay and discharge all rates, taxes, charges and assessments of every description which are now or may at any time hereafter during the said term be assessed, charged or imposed upon the said land hereby demised on the building to be erected thereupon or upon the land-lord or tenant in respect thereof.

- (iv) All sums, such as lease rent or any other amount due and payable by the lessee may be recovered by the lessor as arrears of land revenue, if the same is not paid on the due date.

## **6. RFP TERMS:**

The RFP/ Tender document shall be treated as a part of this deed. Any condition specified therein and not mentioned here shall also be binding on the parties. However, if there is any conflict between the provisions of the RFP/ tender document and this lease deed, then the provisions of this lease deed would prevail.

The conditions of the tender documents issued by the lessor and the documents submitted by the successful bidder will be the part of the lease deed and on non compliance of these conditions the lease deed shall be liable to be terminated.

## **7. PERIOD TO ESTABLISH THE PROJECT:**

The Lessee shall mandatorily establish, operate and maintain the project as under:-

S.N	Physical mile stone	financial expenditure as per project cost	Time lines from the date of possession
1	Site Development and obtaining permissions	%	Month
2	Start of construction	%	Year
3	Completion of construction	%	Year
4	Installation of equipments & systems	%	Year
5	Furnishing	%	Year
6	Trial run start date	100%	Year
7	Date of final start/Commissioning of project	-	Year

In case of non completion of the aforesaid specified work within the stipulated time frame the duration may be extended by the lessor twice upto 12 months each on justified grounds. Even after expiry of the extended duration if the project is not completed, the lease deed shall be liable to be terminated and all amount deposited shall stand forfeited without prejudice to the rights of the lessor to undertake any other action provided for in this lease deed.

## **8. BUILDING REGULATION:**

For erection, re-erection, or alteration of any building on the said land the lessee shall be subject to the applicable law and rules, bye-laws and orders lawfully made there under for the time being in force. The lessee shall also be bound to obtain

the approval of the competent authority on all plans for buildings or its alteration or extensions.

**9. PROPER MAINTENANCE:**

The lessee shall, at its own cost, during the term of the deed, keep the land and the buildings erected there on in a good and proper condition as per industry standards, subject to normal wear and tear and shall ensure that the property is safe and secure for tourists and its staff.

**10. PERMISSIBLE TRADE OR BUSINESS:**

During the period of lease, the lessee shall use the land and the buildings erected thereon, for the purpose for which the land has been leased. The lessee shall not, without the prior written permission of the lessor carry on, or permit to be carried on, over the premises any trade, business or activity for the regulation of which provision has for the time being been made by or under the law provided that such permission shall not exempt the lessee from fulfilling any requirements under the said law to which he shall always remain subject to.

**11. QUIET ENJOYMENT:**

The lessor covenants that the lessee paying the rent hereby reserved and performing and observing the conditions herein contained shall peaceably hold and enjoy the said land during the said term without any unlawful interruption or disturbance by the lessor or any person lawfully claiming under him.

**12. ADDITIONAL ACTIVITIES:**

Lessee shall be allowed to perform additional activities as may be permitted in the tourism policy and such activity shall be treated to be a part of the tourism project, along with the activity for which land/property is being allotted. The Lessee shall also be allowed to change the activity with another activity defined as tourism project under tourism policy with the prior written approval of the lessor for grant of such permission, the lessee shall be charged fees equal to 10% of the premium paid.

**13. AUTHORITY TO OPERATE:**

The lessee may with the prior permission of the lessor assign or authorise any person to operate a specific amenity within the site. However, the lessee shall be responsible for the conduct and behaviour of the assignee and shall ensure that the assignee complies with all terms and conditions mentioned herein. Defaults by the assignee shall be treated as defaults of the lessee.

**14. FINANCIAL LOAN FROM BANK & FINANCIAL INSTITUTIONS:**

Subject to the conditions prescribed in this Deed, the Lessee shall have all rights as provided in section 108(B)(j) of the Transfer of Property Act, 1882 in respect of the said Land only for the limited purpose of securing any loan from any Bank/

Financial Institution. The Lessee shall be bound to take prior consent of the Lessor before exercising its rights under this clause.

Provided that in the event the Bank/Financial institution auctions the said Land for recovery of dues, the auction purchaser shall step into the shoes of the present Lessee and shall be bound by the terms and conditions of this deed as if it were the original Lessee. Such auction purchaser shall enjoy the lease rights only for the remaining period of the Lease and such auction purchaser shall not re-transfer the said Land.

Provided also that the balance of consideration received by the bank/financial institution from the auction, after satisfaction of the dues of the bank/financial institution shall be paid to the lessor and the lessee shall have no right to claim the same. It shall be the duty of the lessee to ensure that a specific term securing the right and interest of the lessor as provided herein is categorically mentioned in the loan agreement executed between the lessee and the bank/financial institution.

Provided further that, in all circumstances the charge of the Lessor on the said Land shall be over and above all other charges that may be created on the said Land subsequent to the execution of this deed.

#### **15. SURRENDER:**

If the lessee does not use the land for the approved object or fails to obtain any approval or permission from the requisite competent authority, he/it may surrender such land to the lessor. In case of such surrender the lessee shall be refunded amount of premium deposited in the manner as under:-

- A. 1 year from the date of execution of lease deed - After deducting 10% of amount balance shall be refunded
- B. 1 to 2 year from the date of execution of lease deed - After deducting 20% of amount balance shall be refunded
- C. 2 to 3 year from the date of execution of lease deed - After deducting 30% of amount balance shall be refunded
- D. After a duration of 3 years - No amount shall be refunded, full amount shall be forfeited in the interest of the department.

#### **16. TRANSFER:**

16.1 Except as provided in this deed, the lessee shall not transfer/alienate or assign the said land or buildings erected there on to any third party in full or in part.

16.2 The Lessee may with prior permission of the lessor in writing transfer the lease to other entity by way of sale of lease rights, change in share holding pattern, stock transfer, merger, demerger, take over, recovery of loans etc provided;

(i) The project is commissioned and run successfully for 03 years after the commissioning date and

(ii) 75% of the investment of the project cost is made up and

(iii) Transfer charges equivalent to 10% of the premium paid by the lessee is paid along with the dues (lease rent etc) with interest (@ 10% per annum (simple interests) up to date.

## **17. RENEWAL:**

The lessor further covenants that it may, at the written request of lessee at least 6 months prior to the end of the term hereby granted, execute with the lessee at the lessee's cost, a renewed lease over the land for the term of thirty years and shall get it registered as per the then prevailing rules and subject to such conditions that the lessor may determine at that time.

Provided that the rent may be enhanced for the grant of every renewed lease and that every renewed lease shall contain such conditions herein contained as shall be applicable and such other conditions as may be thought at that time.

Provided further that the decision of the lessor about the rent to be fixed and the conditions to be imposed at each successive renewal shall be final.

## **18. EVENT OF DEFAULT:**

18.1 If the Lessee fails to pay any amount due, as per this deed on the due date, the same shall be considered as an event of default.

18.2 If the Lessee breaches any term or condition of this deed or fails to comply with any provision of law mentioned in any Act, Rule, Regulation of the State Government/Central Government/Local Bodies or any other competent authority, the same shall be an event of default.

18.3 In the event of any breach in term & condition of lease including but not limited to, occurrence of an event mentioned in clause 18.1 and 18.2 of this deed, the Lessor has the right to impose penalty upto 5% of the premium amount, without prejudice to the right of Lessor to take other any other action permissible by law or by this deed including, but not limited to termination of this deed, forfeiture of security deposit etc.

18.4 Unless expressly provided otherwise herein, if the lessee has defaulted on any count not specifically dealt with in the agreement in performance of any term or condition mentioned herein and such default has continued for a period of 60 days after notice given in writing thereof to the lessee by the lessor, the lessor may terminate the lease deed.

## **19. TERMINATION OF LEASE DEED:**

19.1 The lessor may terminate the lease on breach of any of the condition of this deed by giving 60 days prior written notice to the lessee. Upon termination of lease deed, the lessor shall have right to enter and take possession of the site and re-allot/ tender the site. All fixed capital assets and infrastructure at the site (developed and created by the lessee) shall be peacefully removed by the lessee at own cost within 3 month from the date of termination of lease.

19.2 In case the lessee does not clear the site as stipulated above, lessor will be free to get it removed at the cost of lessee.

## **20 FORCE MAJEURE**

Notwithstanding the provisions of this deed, neither Party shall be eligible for damages or termination for default against the non performing Party, if and to the extent that the delay in performance or other failure to perform its obligations under the contract is the result of an event of Force Majeure.

If a Force Majeure situation arises, the affected Party shall promptly notify the other Party in writing of such conditions and the cause thereof. Unless otherwise directed by the unaffected party in writing, the affected Party shall continue to perform its obligations under the deed as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event. In the event of occurrence of such FORCE MAJEURE event, the affected Party shall request in writing for extension of time schedule and the Parties shall renegotiate the time lines mentioned in clause 7 of this deed.

“Force Majeure” shall mean:

- (i) War (whether declared or undeclared), invasion, armed conflict or act of a foreign enemy in each case involving or directly affecting the Parties;
- (ii) Revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within India and directly affecting the Parties;
- (iii) Nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Parties;
- (iv) Strikes, working to rule, go-slows and/or lockouts directly affecting the Parties;
- (v) Civil unrest, protest by any section of the society preventing the execution of this project;
- (vi) Work stoppage pursuant to a court order or any Government departments;
- (vii) Non-receipt of requisite Government approvals and sanctions;
- (viii) Any effect of natural calamity, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon, tornado or any act of God within India and directly affecting the Parties;
- (ix) Any event or circumstances of a nature analogous to any events set forth above.

## **21 INDEMNITY**

**21.1** Each Party hereby undertakes and agrees to indemnify at all times and hold harmless the other Party from and against all actions, proceedings, claims, liabilities (including statutory liability), penalties, demands and costs, awards, damages, losses and/or expenses however arising directly or indirectly as a result of:

- (i) Any breach or non-performance by a Party or its undertakings, warranties, covenants, declarations or obligations under this deed; or
- (ii) Any act, neglect or default of the persons / agencies authorized by the Parties;
- (iii) Any claim by any other party against a Party, arising from sub-clause (i), or (ii) above.

**21.2** Each Party shall also fully indemnify and hold harmless that other Party against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party.

The indemnities under this clause are in addition to and without prejudice to the indemnities given elsewhere in this deed and all the indemnities provided herein shall survive the termination of this deed.

## **22. RE-ENTRY:**

In case the said rent or any part thereof shall at any time be in arrear and unpaid for three calendar months after the due date or the lessee is in breach or non-observance of any of the conditions mentioned in this deed, the lessor may enter upon the said land and repossess it as if this demise had not been made, within Three calendar months from the date of such re-entry, the lessee will be entitled to remove all buildings and fixtures which have been erected or affixed by him upon the said land.

Provided further that when any cause or right of re-entry arises under the foregoing proviso, it shall be lawful for the lessor, as the consideration for the non-exercise of the power of re-entry, to receive from the lessee a sum of money as the Managing Director may fix in compliance with the instructions issued by the state government from time to time and, if the lessee fails to pay, such sum within the time fixed by the Managing Director's order, to recover the same as an arrear of land revenue or exercise the right of re-entry under the foregoing provision or both.

## **23. APPEAL:**

23.1 If the lessor terminates/ cancels the lease deed, the lessee may within 30 days from the date of issuance of termination/ cancellation order, prefer an appeal before the Secretary, Department of Tourism Government of Madhya Pradesh challenging the termination/ cancellation order. In case of Secretary Tourism and Managing Director being the same person, some other Secretary shall be appointed by Govt. of Madhya Pradesh for this purpose. If no appeal is preferred within 30 days of issuance of termination/ cancellation order, the right of the lessee to challenge the termination/ cancellation order shall be closed.

23.2 If the lessee files an appeal as per clause 23.1, the Secretary shall after granting an opportunity of hearing to the lessee be competent to pass any orders that may be deemed necessary. The decision passed by the Secretary shall be final and binding on both parties. However the parties not satisfied with the decision may exercise the right available under Article 226 of the Constitution of India to approach the High Court under writ jurisdiction.

23.3 After the final order to terminate the lease deed is passed the lessee shall peacefully hand over the land mentioned in Schedule to the lessor and remove all assets created by him on the land within 90 days. After expiry of 90 days all the assets will be forfeited and possession will be taken over by the lessor.

## **24. DISPUTE RESOLUTION:**

24.1 In case of any dispute (except for cancellation of lease deed) the parties will attempt in good faith to resolve any dispute initially through negotiations. If the dispute cannot be settled amicably within 14 days from the date on which either



party has served written notice on the other of the dispute then the dispute shall be resolved as per clause 24.2 and 24.3.

24.2 In the event of a dispute between the parties which could not be amicably resolved the aggrieved party shall refer the dispute to be resolved by arbitration.

24.3 The arbitral proceedings shall be as per the provisions of Madhya Pradesh Madhyastham Abhikaran Adhiniyam 1983.

## **25. GENERAL CONDITIONS:**

25.1 All sums, such as due amount of premium, lease rent or any other charges imposed by the lessor may be recovered as an arrears of land revenue, if the same is not paid before the due date.

25.2 The lessee shall ensure that the site is continuously used for the purpose this deed is being made. In case for a period of one year, the lessee fails to operate the project for the purpose of this lease or the site is non operational for a period of one year, then the lease shall be terminated.

25.3 The lessee shall be bound to environment protection measure as per the prevailing laws within the allotted land area and shall not do anything adversely affecting the environment. The lessee shall be responsible for protection of the environment at the site. The lessee shall not undertake any activity that causes harm to the environment.

25.4 The lessee shall be responsible for any damage or loss caused at the site and if any loss or damage is caused to any person due to the activities of the lessee, the same shall be the responsibility and shall be borne by the lessee.

25.5 The lessee upon registration of this lease deed shall deposit the certified copy of the registered lease deed with the officer authorised by the lessor and keep the original.

25.6 The lessee shall not carry on or permit any person to carry on, any illegal trade or business on the said premises.

## **26. INTERPRETATION:**

It is agreed that the expressions “the lessor” and “the lessee” herein used shall, unless inconsistent with the context, include in the case of the former, his successors and assigns and in the case of the latter, his heirs, executors, administrators, representatives and assigns.

## **27. JURISDICTION:**

The sitting of all challenges arising out of the deed or its implementation shall be in Bhopal. The District court of Bhopal and High Court of Madhya Pradesh Principal seat at Jabalpur shall have Jurisdiction over matters arising out of arbitration.

**28. GOVERNING LAW:**

This deed is governed by and shall be construed in accordance with the laws of India.

**SCHEDULE**

Description of the properties under this lease deed is as under.

1. Land-

Patwari Halka No.- .....

Khasra No. - .....

Village- .....

Tehshil- .....

District- .....

Area (Rakba) in Hect.- .....

2. Boundaries of the land

In the East- .....

In the West- .....

In the North- .....

In the South- .....

3. Construction under the land in square feet

Building and all structure details be given

.....

.....

4. Khasra Map, Nakal and Station survey map of the land allotted above duly signed by both the parties.

IN WITNESS WHEREOF, the Parties herein above have set their hands entered into this deed the day and year first above written.

<p>Witness</p> <p>1----- ----- -----</p> <p>2----- ----- -----</p>	<p>For Lessor, MP State Tourism Development Corporation Limited through .....</p>
<p>1----- ----- -----</p> <p>2----- ----- -----</p>	<p>For lessee M/S..... .....through.....</p>

**Note: In case of discrepancy original / approved format shall be referred.**