

DRAFT SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this theday of 20.....

AMONGST

1. **M/s. SIKARIA MEGA FOODPARK PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at CF-9, Sector – I, Salt Lake City, Kolkata – 700064, acting through Director **Shri Avinash Sikaria** (hereinafter referred to as “**Concessioneing Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors, permitted assigns and substitutes)

AND

2. (Industrial Entrepreneur), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes); and

AND

3. (Financial Institution/ Bank) having its Registered Office/Head Office at ----- hereinafter referred to as “**the Lender**”.

OR

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

WHEREAS:

- A. The Concessioneing Authority has entered into a Concession Agreement datedwith the Concessionaire (the Concession Agreement) to set up an industry in Tripura Mega Food park (“**the Project**”), and a copy of which is annexed

hereto and marked as Annex-A to form part of this Agreement.

- B. Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provision of this Agreement and the Concession Agreement.
- D. In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.
- E. With a view to facilitate financing of the Project by the Concessionaire, the Concessioning Authority and the Concessionaire have agreed to enter into Substitution Agreement being these presents with the Lender/s/Lenders' Representative.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE RESPECTIVE CONVENENTS AND AGREEMENT SETFORTH IN THIS AGREEMENT, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGE, AND INTENDING TO BE LEGALLY BOUND HEREBY THE PARTIES AGREE 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 hereafter respectively assigned to them.

"Agreement" means this agreement and includes any amendment or modification made to this agreement in accordance with the provisions hereof.

"Concession Agreement" means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"Financial Assistance" means the financial assistance set forth in Annex – I hereto, agreed to be provided by the Lender(s) to the Concessionaire for financing the Project.

“Financial Default” means occurrence of a material breach of the terms and Conditions of the Financing Documents or a continuous default in servicing debt there under by the Concessionaire for a minimum period of 3 (three) months.

“Lender(s)” means the financial institutions/banks whose name(s) and addresses are set out in Annex – I hereto and shall include the financial institutions/banks who may replace the same by way of a refinance/subrogation, as may be notified by the Lenders’ Representative to the Concessionaire, from time to time.

“Lenders’ Representative” means a person referred to as the Lender’s Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders and proposed to the Authority for assignment/ transfer of the Concession as provided in this Agreement.

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

“Residual Concession Period” means the period which shall be the remainder of the Concession Period computed from the date of issuance of Termination Notice in terms of the Concession Agreement.

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

“Selectee” means a Person proposed by the Lender/Lender’s Representative pursuant to this Agreement and approved by the Concessions Authority for substituting the Concessionaire for the residual Concession Period, in accordance with the provisions of this Agreement.

“Suspension Period” means the Termination Period as defined in the Concession Agreement at the end of which all formalities connected with substitution of the Concessionaire by the Selectee including handing over of Project Site/Project Facilities and Services, in accordance with this Agreement are completed and the substitution has become effective.

1.2 Interpretation

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

behalf of Senior Lenders.

- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

ARTICLE 2- ASSIGNMENT

2. Assignment of rights and title

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

ARTICLE 3- SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders shall be entitled to substitute the Concessionaire by a Selectee under and in accordance with the provisions of this Agreement and the Concession Agreement.

The Concessions Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Selectee selected by the Lenders/ Lender's Representative in accordance with this Agreement (For the avoidance of doubt, the Lenders/ Lender's Representative shall not be entitled to operate and maintain the Project/Project Facilities and Services either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

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

Upon issue of a Notice of Financial Default hereunder, the Lenders/Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Documents, substitute the Concessionaire by a Selectee in accordance with the provisions of this Agreement.

At any time after the Lenders/Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Concessions Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project/Project Facilities and Services, in accordance with the provisions of the Concession Agreement and upon receipt of such notice, the Concessions Authority shall undertake Suspension in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Selectee, and in the event such substitution is not completed within 180 (one hundred and eighty) Days from the date of such Suspension, the Concessions Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessions Authority may extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days. For the avoidance of doubt, the Concessions Authority expressly agree and undertake

to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders/Lenders' Representative at any time after 240 days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

Upon occurrence of a Concessionaire Default, the Concessions Authority shall by a notice inform the Lenders/Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) Days' time to the Lenders/Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Selectee.

In the event that the Lenders/Lenders' Representative makes a representation to the Concessions Authority within the period of 15 (fifteen) Days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Selectee, the Lenders/Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Selectee in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) Days from the date of such representation, and the Concessions Authority shall either withhold Termination and/or Suspend the rights of the Concessionaire for the aforesaid period of 180 (one hundred and eighty) Days; provided that upon written request from the Lenders/Lenders' Representative and the Concessionaire, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) Days by a period not exceeding 90 (ninety) Days.

3.4 Procedure for substitution

The Concessions Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Concessions Authority under Clause 3.3.2, as the case may be, the Lenders/Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders/ Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the transfer of the Project including the Concession to the Selectee upon such Selectees assumption of the liabilities and the obligations of the Concessionaire from towards the Concessions Authority under the Concession Agreement towards the Senior Lenders under the Financing Documents.

To be eligible for substitution in place of the Concessionaire, the Selectee shall be required to fulfill the eligibility criteria that were laid down by the Concessions Authority for shortlisting the bidders for award of the Concession; provided that the Lenders/Lenders' Representative may represent to the Concessions Authority that all or any of such criteria may be waived in the interest of the Project, and if the Concessions Authority

determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

Upon selection of a Selectee, the Lenders/Lenders' Representative shall request the Concessioneing Authority to:

- a. accede to transfer to the Selectee the rights and obligations including but not limited to construct, operate and maintain the Project in accordance with the Concession Agreement, of the Concessionaire under the Concession Agreement; and
- b. endorse and transfer the Concession, Concession Agreement to the Selectee on the same terms and conditions, for the residual Concession Period; and
- c. enter into the substitution Agreement with the Lenders/Lenders' Representative and the Selectee on the same terms as are contained in this Agreement.

If the Concessioneing Authority has any objection to the transfer of Concession in favour of the Selectee in accordance with this Agreement, it shall within 15(fifteen) Days from the date of proposal made by the Lenders/Lenders' Representative, give a reasoned order after hearing the Lenders/Lenders' Representative. If no such objection is raised by the Concessioneing Authority, the Selectee shall be deemed to have been accepted. The Concessioneing Authority thereupon shall transfer, endorse and novate the Concession Agreement within 15 (fifteen) Days of its acceptance/deemed acceptance of the Selectee; provided that in the event of such objection by the Concessioneing Authority, the Lenders' Representative may propose another Selectee whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Selectee in place of the Concessionaire.

3.5 Selection to be binding

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

ARTICLE 4- TRANSACTION DOCUMENTS

4.1 Substitution of Selectee in Transaction Documents

The Concessionaire shall ensure and procure that each Transaction Documents contains provisions that entitle the Selectee to step into such Transaction Documents, in its discretion, in place and substitution of the Concessionaire in the event of such Selectee assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

ARTICLE 5- TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders/Lenders' Representative may by a notice in writing require the Concessioneing Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Concessioneing Authority shall terminate the Concession in accordance with the Concession Agreement.

5.2 Termination when no Selectee is selected

In the event that no Selectee acceptable to the Concessioneing Authority is selected and recommended by the Lenders/Lenders' Representative within the period of 180 (one hundred and eighty) Days or any extension thereof as set forth in Clause 3.3.2, the Concessioneing Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The Concessioneing Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders/Lenders' Representative are entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon termination of the Concession Agreement. For Realisation of the Debt Dues, the Lenders/Lenders' Representative shall be entitled to make it claim from the escrow account, if any, in accordance with the provisions of Concession Agreement.

ARTICLE 6- DURATION OF THE AGREEMENT

6.1 Duration of the agreement

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

- a) Termination of the Agreement; or
- b) no sum remains to be advanced, or is outstanding to the Lenders/Lenders' Representative, under the Financing Documents.

ARTICLE 7- INDEMNITY

7.1 General indemnity

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

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

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

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

ARTICLE 8- DISPUTE RESOLUTION

1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in discussion with each other.
2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
3. The work under the Contract shall, however, continue during the proceedings and no payment due or payable to the concerned party shall be withheld (except to the extent disputed) on account of initiation, commencement or pendency of such proceedings.
4. The fees and expenses of conciliation if any, shall be borne equally by the parties.
5. In the event no amicable resolution or settlement is reached within a period of thirty (30) days of the date on which the dispute or the difference arose, such dispute or difference shall be referred to arbitration by either of the parties. The sole Arbitrator should be a Retired High Court Judge or a Retired Chief Secretary/Additional Chief Secretary/Principal Secretary/Secretary to the Government of Tripura. The provisions of the Arbitration and Conciliation Act, 1996 would apply for the arbitration proceedings. The Arbitral Award given by the Sole Arbitrator shall be a reasoned order.
6. The Contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts within the original jurisdiction of High Court at Calcutta.

ARTICLE 9- MISCELLANEOUS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Concessing Authority unconditionally and irrevocably:

- a. agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts and perform for commercial purposes;
- b. agrees that, should any proceedings be brought against it or its assets, property or revenue in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Concessing Authority with respect to its assets;
- c. waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or for which may be attributed to it in any jurisdiction; and
- d. consent generally in respect of the enforcement of any judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

9.3 Priority of agreements

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

9.4 Alteration of terms

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

9.5 Waiver

9.5.1 Waiver, including partial or conditional 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: a) shall not operate or be construed as a waiver of any other or subsequent

default hereof or of other provisions of or obligations under this Agreement; b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and c) shall not affect the validity or enforceability of this Agreement in any manner.

9.5.2 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 there under nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination shall:

- a. not relieve the Concessionaire or the Concessions Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof and
- b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, 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.

9.7.2 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

9.8 Severability

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

9.9 Successors and assigns

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

9.10 Notices

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

9.11 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

9.12 Authorised representative

Each of the Parties shall in writing within 30 (thirty) days of signing this Agreement designate their respective authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

9.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of, 20..... hereunto affixed in the presence ofDirector, who has signed

these presents in token thereof and, Company Secretary / Authorised Officer which has countersigned the same in token thereof:

SIGNED SEALED AND DELIVERED For and behalf of CONCESSIONING AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(email address)

SIGNED SEALED AND DELIVERED For and behalf of SENIOR LENDERS by the Lender's Representative by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(email address)