13 General Terms for Hotel Management Agreement and Technical Service Agreements

Description

By Dagnachew Tesfaye

Management of a hotel business by itself requires expertise and good will. Major brands are eyeing the hotel industry of Ethiopia. These world renowned brands will share their trademark and good will by managing the hotel. They do so through Hotel Management Agreement (HMA) and Technical Service Agreement (TSA). The article briefly highlights thirteen general terms incorporated in HMA and TSA.

1. **Parties' intentions**
The parties intentions are mentioned in the agreement. The owner is developing (building and equipping) an economy hotel (the "Hotel") located in Ethiopia and is willing to use the Manager's experience, services, and know-how in accordance with the applicable Brand standards. The Manager wishes to perform this service in accordance with the applicable terms and conditions of a hotel Management Agreement and Technical Services Agreement.

2. **Brand**– Brand type shall be identified clearly. The Manager or sometimes called Operator may have different brands under its umbrella. So the brand that it is developing with the Owner should be clearly mentioned.

3.**Hotels Description**
The description of the hotel include the location, plot size, number of guest rooms, double ad twin, all day dining and/or lobby bar, some meeting spaces and a minimum number car parks. All these should be mentioned.

4. **Hotel Management**
Subject to the conclusion of a Hotel Management Agreement (the "HMA") between the Parties, the Hotel shall be managed by the Operator under its Brand according to the terms and conditions set out in the HMA. The HMA is a detailed contractual agreement with terms and conditions that govern the relationships of the Owner and the Operator.

5. **Hotel Design and Construction**
The Hotel shall be built in compliance with the Brand standards and with compliance local laws and regulations. For that purpose, the Parties shall enter into a Technical Services Agreement (the "TSA") through which the Operator shall provide the Owner with its Brands standards and various Hotel Consultancy Services.

6. **Development Fees**
Developmental Fees are two types. The first is technical assistance fee and the second is pre-opening fee. The Technical assistance fee includes IT fees. The payment of such fee shall be in percentage due between the signing date of the TSA and the Opening of the hotel. The second is the Pre-opening fee to be paid to the Operator for its service of preparation of the hotel for the public. Sometimes the

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later fee is waived by the Operator as a good gesture of managing the hotel for the Owner.

7. **Management Fee**

Management fee is divided into two types of fees i.e basic management fee and incentive fee. Basic management fee including Trademark fee is a percentage of the hotel Total Gross Revenue. The Owner and Operator shall agree on the percentage. The other fee i.e the Incentive fee depends on the Adjusted Gross Operating Profit (AGOP) percentage of the Hotel every year. AGOP means Gross Operating Profit minus Basic management fee. The more the profit, the more percentage the incentive fee will be.

8. **Mandatory Billable Services**
Mandatory billable services are fees payable to the Manager. These include Marketing fee in percentage of the hotel total Room Revenue and Distribution & Reservation Fee.

9. Taxation and Payment
Many of the HMA and TSA mention that all fees or royalties to be paid under the Agreement are quoted net of any taxes, levies, imports, duties, charges, fees or withholding taxes (including value added tax) of any nature now or hereafter imposed by any governmental, fiscal or other authority. In addition to the net fees, the Owner shall pay to the Manager, if applicable, all value added taxes or all sums due to the Manager according to the law and at the rate in effect, other than income taxes which the Manager is liable to pay. Such additional taxes shall be added, if appropriate, to the fees invoiced by the Manager to the Owner. If the tax treaty between the State of the Owner and the State of the Manager provides a withholding tax on certain fees paid by the Owner, which gives right to an equivalent tax credit for the Manager in its State, the Owner shall withhold at source the tax due, at the treaty rate, and provide the Manager with a tax certificate, in order for the Manager to obtain the right to use the tax credit in its State.

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All payment shall be made in USD, when it comes to Ethiopia.

10. **Contract Term Length**
Contract term is the duration of the management of the hotel by the Operator. There is Initial term years and Renewable terms. The initial terms may range from 10 years to 25 years and renewable may be for one or two terms of each five years.

11. FF&E Reserve Contribution
A cash reserve for Furniture, Fixtures and Equipment of the hotel shall be made for the purpose of replacing or repairing the FF&E. The Hotels' contribution to this cash reserve shall be from 1%- 4% of hotel total revenue each year for the duration of the HMA.

12. **Governing Law and Jurisdiction**
The Governing law for big brands is that of their home countries. Requesting and negotiating the Ethiopian Law be applicable is important. The governing language is usually English language. Dispute settlement shall follow normally arbitration under the arbitration rules of the selected entity. Arbitration may be preceded by mediation, as the later may settle the dispute in a short time without affecting the operation of the hotel.

13. **Other Contract terms**

Confidentiality is an important aspect in HMA and TSA. Each Party hereby undertakes for a period of one year from the date of the signature of the letter of intent (LoI) that it will keep confidential any information concerning the subject matter of this and any draft agreements mentioned herein which either Party may divulge or supply to the other and that it will use all reasonable endeavors to procure that their respective employees, agents and professional advisers observe the same obligation of confidentiality. An exception should be there where by such confidentiality undertaking will not apply to any information which (i) is for the time being in the public domain, (ii) is acquired through a third party on a non-confidential basis; or (iii) is required to be disclosed by law or pursuant to any requirement of any governmental, official or regulatory body.

Restricted Area is the area where by the Operator is prohibited from competitive operation of similar brand in the same locality is where the hotel is located. Commencing the execution of the Hotel Management Agreement till the end of the term or a certain number of years, Operator shall not operate another " (the "Brand")" within 2 or 3 kilometres radius measured from the center point of the lobby desk of the Hotel.

Performance Test is the test the Operator should meet every year guaranteeing profit of the hotel. If the Operator fails to achieve a certain percentage of profit for consecutive years of the budgeted GOP and of the (Revenue per available room (REVPAR) Index of the competitive benchmark to be defined, then (a) Owner has the right to terminate the agreement (b) Operator has a right to cure by paying the shortfall between budgeted and actual GOP

To sum up, a HMA and TSA are important documents that set a long term relationship between the Owner and Operator. Each contractual term should be well understood and balanced. Not only the above terms but also other negotiated terms will be included in the HMA and TSA. Our Law Office has participated in several of these agreements and would be glad to legally assist.

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dmethiol_admin