

# **REQUEST FOR PROPOSAL**

**October 2010**

**DEVELOPMENT OF SPICE PARK,  
HAVERI DISTRICT, KARNATAKA**

## **FOOD KARNATAKA LIMITED**

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## GLOSSARY

<b>Bank Guarantee</b>	As defined in Clause 2.20.1
<b>Bid(s)</b>	As defined in the Disclaimer
<b>Bidders</b>	As defined in Clause 1.2.2
<b>Bidding Documents</b>	As defined in Clause 1.1.8
<b>Bid Due Date</b>	As defined in Clause 1.2.2
<b>Bidding Process</b>	As defined in Clause 1.2.1
<b>Bid Security</b>	As defined in Clause 1.2.4
<b>Rights</b>	As defined in Clause 1.1.6
<b>Project Development and Implementation Agreement</b>	As defined in Clause 1.1.3
<b>Selected Bidder</b>	As defined in Clause 1.1.3
<b>Conflict of Interest</b>	As defined in Clause 2.1.14
<b>Demand Draft</b>	As defined in Clause 2.20.2
<b>Estimated Project Cost</b>	As defined in Clause 1.1.5
<b>Government</b>	Government of Karnataka
<b>Premium/ Project Support</b>	As defined in Clause 1.2.7
<b>LOA</b>	As defined in Clause 3.3.5
<b>Member</b>	Member of a Consortium
<b>PPP</b>	Public Private Partnership
<b>Project</b>	As defined in Clause 1.1.1
<b>Project Information Memorandum</b>	As defined in Disclaimer
<b>Re. or Rs. or INR</b>	Indian Rupee
<b>RFP or Request for Proposals</b>	As defined in the Disclaimer
<b>Technical Bid (Business Plan)</b>	As defined in Disclaimer

The words and expressions beginning with capital letters and defined in this document shall, unless the context otherwise requires, have the meaning ascribed thereto herein shall, unless the context otherwise requires, have the meaning ascribed thereto therein.

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## DISCLAIMER

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form by or on behalf of Food Karnataka Limited (FKL), Government of Karnataka (GoK) or any of their employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by FKL to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in preparing their Business Plan (“**Technical Bid**”) and making their financial offers pursuant to this RFP (the “**Financial Bid**”). This RFP includes statements, which reflect various assumptions and assessments arrived at by FKL in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RFP may not be appropriate for all persons, and it is not possible for FKL, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP, especially the Project Information Memorandum (“**PIM**”), may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which depends upon interpretation of law. The information given is not an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. FKL accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

FKL, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Applicant or Bidder under any law, statute, rules

or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way in this Bid Stage.

FKL also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RFP. FKL may in its absolute discretion, but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that FKL is bound to select a Bidder or to appoint the Selected Bidder, as the case may be, for the Project and FKL reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by FKL or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and FKL shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## 1 INTRODUCTION

### 1.1. Background

1.1.1. Spice processing is a dynamic and emergent sector and plays a vital role in contributing towards the economy of the country. Karnataka State plays major role in spice production and exports. Spices like vanilla, cinnamon, tamarind, chilli and ginger are exported from the State of Karnataka, which is also a major contributor in total Indian production. There is huge potential for exports of quality spices from Karnataka; however the existing infrastructure for the same is not sufficient.

Government of Karnataka (GoK) in its Budget 2008–09 has announced setting up of a Spice Park at Haveri district, Karnataka, to promote Spice industry and to provide necessary infrastructure by rejuvenating the plantation sector, by improving the quality of spice products produced, encouraging export of high end value added spices and to ensure good returns to the spice growing community.

1.1.2. GoK has established the Food Karnataka Limited (FKL) with an objective to formulate exclusive policies for the agro food processing industries, to set up an agro export zones with private sector participation and to undertake various activities to position Karnataka as the ideal location for investors in India's Food Industry. FKL shall provide management, capacity building, coordination and monitory support in setting up of the Spice Park in Karnataka.

GoK intends to develop the Spice Park at Haveri District, Karnataka on Public Private Partnership (PPP) framework wherein a private developer is required to develop, design, finance, construct and operate the Spice Park with state of the art infrastructure facilities with a minimum 20 (twenty) number of spice processing units at the Spice Park. FKL intends to select suitable private developers through a competitive bid process to develop the Spice Park at Haveri District, Karnataka (herein referred to as the "Project").

Haveri district is in the centre of Karnataka with equal distance from Bidar in the far north to Kollegal in the far south. The major spices produced in Haveri District are dry chillies, ginger, garlic, Vanilla and cardamom and is well known for its Red Byadgi Chillies. More than 38000 hectares of land is used for dry chillies production alone in the District of Haveri and there is a production of around 57,000 tons of chillies. Karnataka Industrial Development Board (KIADB), has identified around 120 acres of land in Byadgi in Haveri District (Project Site). The Project Site is suitable for setting up of a Spice Park.

### 1.1.3. Eligibility

#### 1.1.3 A Terms of Eligibility

- (a) The Bidders/Applicants for pre-qualification may be a single Business Entity or a group of Business Entities (the “**Consortium**”), coming together to implement the Project. However, no Bidder applying individually or as a member of a Consortium, as the case may be, can be member of another Bidders’ Consortium. The term Bidder used herein would apply to both a single Business Entity and a Consortium.
- (b) A Business Entity shall be a company incorporated under the Companies Act, 1956 and if it is a foreign company, under an equivalent law abroad.
- (c) A Bidder shall not have a conflict of interest (the “Conflict of Interest”) as set out in Clause 2.1.14.
- (d) The Bidder who applies as Consortium, special conditions set out under Clause 1.1.2B provided below shall be applicable.
- (e) A Bidder shall be liable for disqualification if any legal, financial or technical adviser of FKL in relation to the Project is engaged by the Bidders in any manner for matters related to or incidental to the Project.

### 1.1.3 B Special conditions of Consortium

Where the Bidder is a Consortium, it should comply with the following additional requirements:

- (a) Number of members in a Consortium should be limited to 3 (three).
- (b) Subject to the provisions of clause (a) above, the Bid should contain the information required for each member of the Consortium;
- (c) Members of the Consortium shall nominate one member as the lead member (the “**Lead Member**”), who shall have an equity share as set out in Clause 2.3. The nomination(s) shall be supported by a Power of Attorney, as per the format at Appendix–III, signed by all the other members of the Consortium;
- (d) The Bid should include a brief description of the roles and responsibilities of individual members, particularly with reference to financial, technical and O&M obligations;
- (e) An individual Bidder cannot at the same time be a member of a Consortium bidding for the Project. Further, a member of a particular Bidders’ Consortium cannot be a member of any other Bidders’ Consortium applying for bidding;
- (f) The parties to a Consortium, shall form an appropriate Special Purpose Vehicle (the “**SPV**”), incorporated under the Indian Companies Act, 1956, to execute the Project Development and Implementation Agreement in respect of the Project if awarded to such Consortium; and
- (g) Members of the Consortium shall enter into a binding Joint Bidding Agreement (the “**Joint Bidding Agreement**”) for the purpose of making and submitting Bid. The Joint Bidding Agreement shall, interalia:
  - (i) convey the intent to form an SPV with shareholding/ ownership equity commitment(s) in accordance with this RFP, which would enter into the

Project Development and Implementation Agreement and subsequently carry out all the responsibilities in terms of the Project Development and Implementation Agreement,

- (ii) clearly outline the proposed roles and responsibilities of each member at each stage;
- (iii) commit the minimum equity stake to be held by each member; and
- (iv) Include a statement to the effect that all members of the Consortium shall, till such time they incorporate an SPV and provide the specified Performance Security, be liable jointly and severally for execution of the Project in accordance with the terms of the Project Development and Implementation Agreement.

(Note: A copy of the Joint Bidding Agreement as per the format provided in Appendix IX should be submitted along with the Bid. The Joint Bidding Agreement entered into between the members of the Consortium should be specific to Project and should fulfill the above requirements, failing which the Bid shall be considered non-responsive).

- (h) While Qualification is open to persons from any country, the following provisions shall be applicable:
  - I. Where, on the date of the Bid, not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital in an Applicant or any of the constituents of a Consortium is held by persons resident outside India or where an Applicant or any of the constituents of a Consortium is controlled by persons resident outside India; or
  - II. If at any subsequent stage after the date of the Application, there is an Acquisition of not less than 15% (fifteen percent) of the aggregate issued, subscribed and paid up equity share capital or control (by persons resident out side India) in or of the Applicant or any of the constituents of a Consortium;

then the Qualification of such Applicant or in the event described in sub clause (ii) above, the continued Qualification of the Applicant shall be subject to approval of the FKL from national security and public interest perspective. The decision of FKL/GoK in this behalf shall be final and conclusive and binding on the Applicant. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, FKL/GoK shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, or any substitute thereof, as in force on the date of such Acquisition.

The Applicant shall promptly inform FKL of any change in its Shareholding, as above, and failure to do so shall render the Applicant liable for disqualification from the Bidding Process.

### 1.1.3 C Party Entering into Project Development and Implementation Agreement

If the Selected Bidder is a single Business Entity, then such Entity may choose to form an appropriate Special Purpose Vehicle (the “SPV”), incorporated under the Indian Companies Act, 1956. In such case, the single Business Entity shall be required to set up a 100% subsidiary company for implementing the Project. Such SPV shall be bound by the conditions of minimum shareholding of the Selected Bidder similar to the conditions applicable to Lead Member of a Consortium as set out in the Project Development and Implementation Agreement.

If the Selected Bidder is a Consortium, the Consortium shall establish a SPV in accordance with the conditions set out under Clause 1.1.2 B (c) and Clause 2.3.

The Selected Bidder, shall be responsible for design, engineering, financing, procurement, construction, operation and maintenance of the Project under and in accordance with the provisions of the Project Development and Implementation Agreement (the “**Project Development and Implementation**

**Agreement**") to be entered into between the Selected Bidder and FKL in the form provided by FKL as part of the Bidding Documents pursuant hereto.

- 1.1.4. The scope of work will broadly include development of the Spice Park, operate and maintain the facilities of the Spice Park under a long term Public Private Partnership (PPP) framework.
- 1.1.5. The estimated cost of the Project (the "**Estimated Project Cost**") is Rs. 28.60 crores (Rupees Twenty Eight crore and Sixty lakh only). The assessment of actual costs, however, will have to be made by the Bidders.
- 1.1.6. The Project Development and Implementation Agreement sets forth the detailed terms and conditions for the grant of rights for undertaking the Project including the scope of the Selected Bidder's services and obligations (the "**Rights**") enclosed as Volume Two of this document.
- 1.1.7. The statements and explanations contained in this RFP are intended to provide a proper understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Selected Bidder set forth in the Project Development and Implementation Agreement or FKL's rights to amend, alter, change, supplement or clarify the scope of work, the Rights to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by FKL.
- 1.1.8. FKL shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by FKL pursuant to this RFP (collectively the "**Bidding Documents**"), as modified, altered, amended and clarified from time to time by FKL, and all Bids shall be prepared and submitted in accordance with such terms.

## 1.2. Brief Description of Bidding Process

1.2.1. FKL has adopted a single stage process (referred to as the "**Bidding Process**") for selection of the Bidder for award of the Project.

1.2.2. In the Bid Stage, the Applicants, including their successors, (the "**Bidders**") are requested to submit their Bids in accordance with the Bidding documents. The Bid shall be valid for a period of not less than 180 days from the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2.3. The Bidding Documents include the draft Project Development and Implementation Agreement and Project Information Memorandum prepared by the consultants of FKL for the Project. Subject to the provisions of Clause 2.1.3, the aforesaid documents and any addenda issued subsequent to this RFP Document, but before the Bid Due Date, will be deemed to form part of the Bidding Documents.

1.2.4. A Bidder is required to deposit, along with its Bid, a bid security for the Project as mentioned in Clause 2.1.7 for which the Bidder is submitting its Bid (the "**Bid Security**"). The Bidders will have an option to provide Bid Security in the form of a demand draft or a bank guarantee acceptable to FKL, and in such event, the validity period of the demand draft or bank guarantee, as the case may be, shall not be less than 180 (One hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between FKL and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

1.2.4A FKL intends to follow a Single stage process for selection of the Selected Bidder(s) for the Project. Bidders would need to submit the following documents in two sets and in separate sealed envelopes as part of their Bid submission:

- a. Documents mentioned in Clause 2.11.2 – "**Key Submissions**".
- b. Documents as mentioned in Clause 2.11.2 – "**Qualification Submission**", relating to experience and financial capacity of the Bidder.

- c. Technical Bid/ Business Plan as mentioned in Clause 2.11.2 –“**Technical Bid**”.
- d. Financial Offer as mentioned in Clause 2.11.2 “**Financial Bid**”.

1.2.4 B The evaluation of the Bid submissions would be carried out in four stages.

- a. The first stage would involve a test of responsiveness based on the Key Submissions. Those Bids found to be substantially responsive would be evaluated in the next stage i.e. the Qualification Stage.
- b. In the Qualification Stage, the information of the Bidders relating to their qualification would be evaluated as per Clause 3.2 B of the RFP. Qualified Bidders only would be considered for the evaluation in the next stage.
- c. In the third stage, the Technical Bid/ Business Plan of the Bidders would be assessed and marked as per Appendix VII of RFP document. Bidders scoring 50 marks and above would qualify for the evaluation in the next stage (“Technically Qualified Bidders”).
- d. The Financial Bid of only the Technically Qualified Bidders would be opened to identify the Preferred Bidder.

1.2.4 C Financial Bid shall either be a Premium offered by the Bidder to FKL or a Project Support sought from FKL. The Technically Qualified Bidder offering the highest Premium, and in the event that no Technically Qualified Bidder offers a Premium, then to the Technically Qualified Bidder seeking the lowest Project Support as per Appendix VIII shall be declared as the Preferred Bidder. Upon acceptance of the Financial Bid of the Preferred Bidder with or without negotiations, FKL shall declare the Preferred Bidder as the Selected Bidder and the selected Bidder would have to enter into a Project Development and Implementation Agreement and carry out its responsibilities as stipulated therein.

1.2.5. Not used.

1.2.6. During the Bid Stage, Bidders are invited to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the Rights including implementation of the Project.

1.2.7. Bids are invited for the Project on the basis of the lowest Project Support to be received from FKL during construction period/highest Premium provided for the Project by FKL. In addition, the Selected Bidder has to pay to the (concerned) Government agency (KIADB/Revenue Department) the cost of land acquisition of the Project Site. The Selected Bidder is required to submit the Performance Security as provided in the Project Development and Implementation Agreement. The Selected Bidder will be granted leasehold rights over the Project Site as per the prevailing norms of the government agency granting land, subsequently the title of the land would be transferred to the Selected Bidder by means of Deed of Sale as indicated in the Project Development and Implementation Agreement. The Financial Bid shall constitute the sole criteria for evaluation of Bids. 1.2.8 The Selected Bidder will be entitled to levy user fee from users of the Project.

1.2.8. Further and other details of the process to be followed at the Bid Stage and the terms thereof are spelt out in this RFP.

1.2.9. Any queries or request for additional information concerning this RFP shall be submitted in writing or by fax and e-mail to the officer designated in Clause 2.11.5 below. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: RFP for Development of Spice Park in Haveri District, Karnataka".

### 1.3. Schedule of Bidding Process

FKL shall endeavor to adhere to the following schedule:

Event Description	Date
1. Last date for receiving queries	08.11.2010
2. Pre-Bid meeting	15.11.2010
3. FKL response to queries latest by	22.11.2010
4. Bid Due Date	13.12.2010 upto 4 PM
5. Opening of Bids	14. 12.2010 at 11 AM

## 2 INSTRUCTIONS TO BIDDERS

### A. GENERAL

#### 2.1. General terms of Bidding

- 2.1.1. A Bidder is eligible to submit only one Bid for the Project. A Bidder bidding individually or as a member of a Consortium shall not be entitled to submit another bid either individually or as a member of any Consortium, as the case may be.
- 2.1.2. Unless the context otherwise requires, the terms not defined in this RFP, but defined in the Project Development and Implementation Agreement for the Project shall have the meaning assigned thereto in the Project Development and Implementation Agreement.
- 2.1.3. **The Project Information Memorandum** for the Project is being provided only as a preliminary reference document by way of assistance to the Bidders who are expected to carry out their own surveys, investigations and other detailed examination before submitting their Bids. Nothing contained in the Project Information Memorandum shall be binding on FKL nor confer any right on the Bidders, and FKL shall have no liability whatsoever in relation to or arising out of any or all contents of the Project Information Memorandum.
- 2.1.4. Notwithstanding anything to the contrary contained in this RFP, the detailed terms specified in the draft Project Development and Implementation Agreement shall have overriding effect; provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Project Development and Implementation Agreement.
- 2.1.5. The Financial Bid should be furnished in the format at **Appendix VIII**, clearly indicating the Bid amount in both figures and words, in Indian Rupees, and signed by the Bidder's authorized signatory. In the event of any difference

between figures and words, the amount indicated in words shall be taken into account.

2.1.6. The Financial Bid shall consist either a lowest Project Support required form FKL or a highest Premium offered to FKL to be quoted by the Bidder, as per the terms and conditions of this RFP and the provisions of the Project Development and Implementation Agreement.

2.1.7. The Bidder shall deposit a Bid Security of Rs 29.00 Lakh (Rupees Twenty nine lakh only) for the Project in accordance with the provisions of this RFP. The Bidder has the option to provide the Bid Security either as a Demand Draft or in the form of a Bank Guarantee, acceptable to FKL, as per format at **Appendix – II**.

2.1.8. The validity period of the Bank Guarantee or Demand Draft, as the case may be, shall not be less than 180 (One hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days, and may be extended by the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the Bid Security. The Bid Security shall be returned to the unsuccessful Bidders within a period of eight (8) weeks from the date of announcement of the Successful Bidder.

2.1.9. The Bidder should submit a Power of Attorney as per the format at **Appendix – III**, authorizing the signatory of the Bid to commit the Bidder.

2.1.10. In case the Bidder is a Consortium, the Members thereof should furnish a Power of Attorney in favor of the Lead Member in the format at Appendix – IV.

2.1.11. Any condition or qualification or any other stipulation contained in the Bid submission shall render the Bid submission liable to rejection as a non-responsive Bid submission.

2.1.12. The Bid submission and all communications in relation to or concerning the Bidding Documents and the Bid submission shall be in English language.

2.1.13. The Bidding Documents including this RFP and all attached documents are and shall remain the property of FKL and are transmitted to the Bidders solely for the purpose of preparation and the submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. FKL will not return any Bid or any information provided along therewith.

2.1.14. A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the FKL shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the FKL and not by way of penalty for, inter alia, the time, cost and effort of the Authority, including consideration of such Bidder's Bid submission (the "Damages"), without prejudice to any other right or remedy that may be available to the FKL under the Bidding Documents and/ or the Project Development and Implementation Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

- i. the Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest; provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five per cent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five per cent) of the subscribed and paid up equity share capital thereof; provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in section 4A of the Companies Act, 1956. For the purposes of this Clause 2.1.14, indirect shareholding held through one or more intermediate persons shall be computed as follows: (aa) where any

intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject Person") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and (bb) subject always to sub-clause (aa) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis; provided, however, that no such shareholding shall be reckoned under this sub-clause (bb) if the shareholding of such person in the intermediary is less than 26% of the subscribed and paid up equity shareholding of such intermediary; or

- ii. a constituent of such Bidder is also a constituent of another Bidder; or
- iii. such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or
- iv. such Bidder has the same legal representative for purposes of this Bid as any other Bidder; or
- v. such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/parties, that puts either or both of them in a position to have access to each others' information about, or to influence the Bid of either or each other; or
- vi. such Bidder or any Associate thereof has participated as a consultant to the FKL in the preparation of any documents, design or technical specifications of the Project.

Explanation:

In case a Bidder is a Consortium, then the term Bidder as used in this Clause 2.1.14, shall include each Member of such Consortium.

For purposes of this RFP, Associate means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.1.15. This RFP is not transferable.

2.1.16. Any grants of Rights pursuant to this RFP shall be subject to the terms of Bidding Documents.

**2.2. Not used**

**2.3. Change in Ownership**

2.3.1. By submitting the Bid, the Bidder shall be deemed to have acknowledged that the bidding Consortium has the Technical Capacity and Financial Capacity to undertake the Project. The Bidder acknowledges and agrees that in case of a Consortium, the Consortium Members shall hold 100% of the equity stake in the Developer<sup>1</sup> until Scheduled Project Completion Date. Subsequently, in the event, any of the Consortium Members intend to give up its/their shareholding in the Developer company, such shareholder(s) shall be permitted to do so provided:

(a) The Lead Member shall hold a minimum equity stake of 51% of the shareholding in the equity capital of the Developer for at least 10 years from

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<sup>1</sup> "Developer" means the company incorporated under the Companies Act, 1956 by the successful bidder for the purpose of development and implementation of the Project.

the Appointed Date. In the interim period, they may reduce the equity stake in exceptional circumstances and only after prior approval by FKL; OR

(b) The Developer has established atleast 20 (twenty) Spice Processing Industries of site area at least one (1) acre each within the Project Site.

2.3.2. By submitting the Bid, the Bidder shall also be deemed to have acknowledged and agreed that in the event of a change in control of a Consortium Member or an Associate whose Technical Capacity and/ or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, the Bidder shall inform FKL forthwith along with all relevant particulars about the same and FKL may, in its sole discretion, disqualify the Bidder or withdraw the LOA from the Selected Bidder, as the case may be. In the event such change in control occurs after signing of the Project Development and Implementation Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Project Development and Implementation Agreement, be deemed to be a breach thereof, and the Project Development and Implementation Agreement shall be liable to be terminated without FKL being liable in any manner whatsoever to the Selected Bidder. In such an event, notwithstanding anything to the contrary contained in the Project Development and Implementation Agreement, FKL shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to FKL for, interalia, time, cost and effort of FKL, without prejudice to any other right or remedy that may be available to FKL hereunder or otherwise.

#### 2.4. Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. FKL will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

## 2.5. Site visit and verification of information

2.5.1. Bidders are encouraged to submit their respective Bids after visiting the Project Site and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

2.5.2. It shall be deemed that by submitting a Bid, the Bidder has:

- (a) Made a complete and careful examination of the Bidding Documents;
- (b) Received all relevant information requested from FKL;
- (c) Acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of FKL relating to any of the matters referred to in Clause 2.5.1 above;
- (d) Satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Project in accordance with the Bidding Documents and performance of all of its obligations there under;
- (e) Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from FKL, or a ground for termination of the Project Development and Implementation Agreement; and
- (f) Agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3. FKL shall not be liable for any omission, mistake or error on the part of the Bidder in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to RFP, the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by FKL.

## 2.6. Right to accept and to reject any or all Bids

2.6.1. Notwithstanding anything contained in this RFP, FKL reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons there for.

2.6.2. FKL reserves the right to reject any Bid and appropriate the Bid Security if:

- a. At any time, a material misrepresentation is made or uncovered, or
- b. The Bidder does not provide, within the time specified by FKL, the supplemental information sought by FKL for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium shall be disqualified / rejected. If such disqualification / rejection occur after the Bids have been opened and the highest Bidder gets disqualified / rejected, then FKL reserves the right to:

- (i) invite the remaining Bidders to submit Bids in accordance with Clause 3.3.3 and 3.3.4; or
- (ii) Take any such measure as may be deemed fit in the sole discretion of FKL, including annulment of the Bidding Process.

2.6.3. In case it is found during the evaluation or at any time before signing of the Project Development and Implementation Agreement or after its execution and during the period of subsistence thereof including the Rights thereby granted by FKL, that one or more of the qualification conditions have not been met by the Bidder or the Bidder has made material misrepresentation or has given any

materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Selected Bidder either by issue of the LOA or entering into of the Project Development and Implementation Agreement, and if the Bidder has already been issued the LOA or has entered into the Project Development and Implementation Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by FKL to the Bidder, without FKL being liable in any manner whatsoever to the Bidder or Selected Bidder, as the case may be. In such an event, FKL shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to FKL for, inter alia, time, cost and effort of FKL, without prejudice to any other right or remedy that may be available to FKL.

2.6.4. FKL reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP or the Bidding Documents. Failure of FKL to undertake such verification shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of FKL there under.

## **B. DOCUMENTS**

### **2.7. Contents of the RFP**

2.7.1. This RFP comprises the Disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

#### **Invitation for Bids**

- Section 1. Introduction
- Section 2. Instructions to Bidders
- Section 3. Evaluation of Bids
- Section 4. Fraud and Corrupt Practices
- Section 5. Pre-Bid Conference
- Section 6. Miscellaneous

## Appendices

### Key Submissions

- I. Letter of Application
- II. Bank Guarantee for Bid Security
- III. Power of Attorney for signing of Bid
- IV. Power of Attorney for Lead Member of Consortium
- v. Joint Bidding Agreement

### Qualification

- V. Technical Capacity
- VI. Financial Capacity

### Technical Bid

- VII. Technical Bid

### Financial bid

- VIII. Financial Bid

2.7.2. The draft Project Development and implementation Agreement (Volume Two) to be provided by FKL as part of the Bid Documents shall be deemed to be part of this RFP.

## 2.8. Clarifications

2.8.1. Bidders requiring any clarification on the RFP may notify FKL in writing or by fax and e-mail in accordance with Clause 1.2.10. They should send in their queries before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. FKL shall endeavor to respond to the queries within the period specified therein, but no later than 15 (fifteen) days prior to the Bid Due Date. The responses will be sent by fax or e-mail. FKL will forward all the queries and its responses thereto, to all Bidders without identifying the source of queries.

2.8.2. FKL shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, FKL reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring FKL to respond to any question or to provide any clarification.

2.8.3. FKL may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by FKL shall be deemed to be part of the Bidding Documents. Verbal clarifications and information given by FKL or its employees or representatives shall not in any way or manner be binding on FKL.

## 2.9. Amendment of RFP

2.9.1. At any time prior to the deadline for submission of Bids, FKL may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify the RFP by the issuance of Addenda.

2.9.2. Any Addendum thus issued will be sent in writing to all the Bidders who have purchased RFP document.

2.9.3. In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, FKL may, at its own discretion, extend the Bid Due Date.

## C. PREPARATION AND SUBMISSION OF BIDS

### 2.10. Format and Signing of Bid

2.10.1. The Bidder shall provide all the information sought under this RFP. FKL will evaluate only those Bids that are received in the required formats and complete in all respects.

2.10.2. The Bid shall be typed or written in indelible ink and signed by the authorized signatory of the Bidder who shall also initial each page. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid.

## 2.11. Sealing and Marking of Bids

2.11.1. The Bidder shall submit the Bid submission in the format specified in Clause 2.11.2, and seal it in envelopes.

2.11.2. The documents accompanying the Bid submission shall be placed in separate envelopes and marked as indicated below. The Bid submission shall include:

Envelope 1: **“Key Submissions”**

- a) Bid Security in the prescribed format (Appendix – II);
- b) Power of Attorney for signing of Bid in the prescribed format (Appendix – III);
- c) If applicable, the Power of Attorney for Lead Member of Consortium in the prescribed format (Appendix – IV); and
- d) A copy of the Project Development and Implementation Agreement with each page initialed by the person signing the Bid in pursuance of the Power of Attorney referred to in Clause (b) hereinabove.

Envelope 2: **“Qualification Submission”**

- a) Technical Capacity (Appendix – V),
- b) Financial Capacity (Appendix – VI),

Envelope 3: **“Technical Bid”**

Technical Bid / Business Plan addressing the technical details as mentioned in Appendix VII of this RFP Document.

**Envelope 4: "Financial Bid"**

Financial Bid, consisting of the Bidders financial offer for the project in prescribed format as per Appendix VIII of this document.

2.11.3. Bidder should submit a true copy of Bid documents, as specified in Clause 2.11.2 above, placed in the manner as set out therein and each envelope shall be sealed in hard bound cover and marked separately. Each page thereof shall be initialed by the authorised signatory. This copy of the documents shall be placed in a separate envelope and marked "Copy of Documents".

2.11.4. The four envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed. Each of the four envelopes shall clearly bear the following identification:

"Bid for Development of Spice Park in Haveri District, Karnataka"

and shall clearly indicate the name and address of the Bidder. In addition, the Bid Due Date should be indicated on the right hand top corner of each of the envelopes.

2.11.5. Each of the envelopes shall be addressed to:

**ATTN. OF:** Special Officer

**ADDRESS:** Food Karnataka Limited  
(A Govt. of Karnataka Undertaking  
'Khanija Bhavan', 4<sup>th</sup> Floor, East Wing,  
No.49, Race Course Road,  
Bangalore – 560001

**PHONE NO:** 080-22258131/2/3

**FAX NO:** 080-41126904

**E-MAIL ADDRESS:** [fkf@ksiidc.com](mailto:fkf@ksiidc.com) & [ksiidc@airtelmail.com](mailto:ksiidc@airtelmail.com)  
Website:<http://www.ksiidc.com>(link food  
karnataka ltd) and  
<http://www.ksiidc.com/fkl.html>

2.11.6. If the envelopes are not sealed and marked as instructed above, FKL assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted.

2.11.7. Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

## **2.12. Bid Due Date**

2.12.1. Bids should be submitted before 1700 hours IST on the Bid Due Date at the address provided in Clause 2.11.5 in the manner and form as detailed in this RFP. Proposals submitted by either facsimile transmission will not be acceptable.

2.12.2. FKL may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

## **2.13. Late Bids**

Bids received by FKL after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

## **2.14. Contents of the Bid**

2.14.1. The Bid submission shall be made in four envelopes as set out in Clause 2.11.2. The Financial Bid shall be furnished in the format at Appendix - VIII. The Bidder shall specify (in Indian Rupees) the lowest Project Support required or a highest Premium offered by him, to undertake the Project in accordance with this RFP and the provisions of the Project Development and implementation Agreement.

2.14.2. The Project will be awarded to the Bidder quoting the highest Premium, and in the event that no Bidder offers a Premium, then to the Bidder seeking the lowest Project Support.

2.14.3. The opening of Bids and acceptance thereof shall be substantially in accordance with this RFP.

2.14.4. The draft Project Development and implementation Agreement and its schedules shall be deemed to be part of the Bid.

### **2.15. Modifications/ Substitution/ Withdrawal of Bids**

2.15.1. The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by FKL prior to Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.15.2. The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.15.3. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by FKL, shall be disregarded.

### **2.16. Rejection of Bids**

2.16.1. FKL reserves the right to accept or reject all or any of the Bids without assigning any reason whatsoever. It is not obligatory for FKL to accept any Bid or to give any reasons for their decision.

2.16.2. FKL reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

### **2.17. Validity of Bids**

The Bids shall remain valid for a period not less than 180 days from the Bid Due

Date. FKL reserves the right to reject any Bid, which does not meet this requirement.

## 2.18. Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising FKL in relation to or matters arising out of, or concerning the Bidding Process. FKL will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. FKL may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or FKL.

## 2.19. Correspondence with the Bidder

FKL shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

### D. BID SECURITY

## 2.20. Bid Security

2.20.1. The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 2.1.7 and 2.1.8 hereinabove in the form of a bank guarantee issued by a Scheduled Bank in India, in favor of FKL in the format at Appendix - II (the “**Bank Guarantee**”) and having a validity period of not less than 180 (One hundred and eighty) months from the Bid Due Date, as may be extended by the Bidder from time to time. In case the Bank Guarantee is issued by a foreign bank outside India, confirmation of the same by any nationalized bank in India is required. For the avoidance of doubt, Scheduled Bank shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

- 2.20.2. Bid Security can also be in the form of a demand draft issued by a Scheduled Bank in India, drawn in favor of Managing Director, Food Karnataka Limited and payable at Bangalore (the “**Demand Draft**”). FKL shall not be liable to pay any interest on the Bid Security deposit so made and the same shall be interest free.
- 2.20.3. Any Bid not accompanied by the Bid Security shall be rejected by FKL as non responsive.
- 2.20.4. Same as provided in Clause 1.2.4, the Bid Security of unsuccessful Bidders will be returned by FKL, without any interest, within a period of eight (8) weeks from the date of announcement of the Successful Bidder or when the Bidding process is cancelled by FKL. Where Bid Security has been paid by deposit, the refund thereof shall be in the form of an account payee demand draft in favor of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to FKL give the name and address of the person in whose favor the said demand draft shall be drawn by FKL for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.
- 2.20.5. The Selected Bidder’s Bid Security will be returned, without any interest, upon the Bidder signing the Project Development and Implementation Agreement and furnishing the Performance Security in accordance with the provisions thereof, However, the Selected Bidder would be required to keep extended the validity of the Bid Security upto the date of such signing and submission of Performance Security. The FKL may, at the Selected Bidder’s option, adjust the amount of Bid Security in the amount of Performance Security to be provided by him in accordance with the provisions of the Project Development and Implementation Agreement.
- 2.20.6. FKL shall be entitled to forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation / damages to FKL in any of the events specified in Clause 2.20.7 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that FKL will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the Bid validity period. No relaxation of any kind on Bid Security shall be given to any Bidder.

- 2.20.7. The Bid Security shall be forfeited and appropriated by FKL as mutually agreed genuine pre-estimated compensation and damages payable to FKL for, interalia, time, cost and effort of FKL without prejudice to any other right or remedy that may be available to FKL hereunder or otherwise, under the following conditions:
- a) If a Bidder submits a non-responsive Bid submission;
  - b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RFP;
  - c) If a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by the Bidder from time to time;
  - d) In the case of Selected Bidder, if it fails within the specified time limit –
    - i) To sign the Project Development and implementation Agreement and/or
    - ii) To furnish the Performance Security within the period prescribed there for in the Project Development and implementation Agreement; or
  - e) In case the Selected Bidder, having signed the Project Development and Implementation Agreement, commits any breach thereof prior to furnishing the Performance Security.

### 3 EVALUATION OF BIDS

#### 3.1. Opening and Evaluation of Bids

3.1.1. FKL shall open the Bids as per Clause 1.3, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2. FKL will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Section 3.

3.1.3. To facilitate evaluation of Bids, FKL may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Bid.

#### 3.2. Tests of responsiveness & Evaluation of Technical & Financial Bid

##### A Tests of responsiveness

3.2.1. Prior to evaluation of Bids, FKL shall determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:

- (a) It is received as per the format at Appendix – I;
- (b) It is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;
- (c) it is signed, sealed, bound and marked as stipulated in Clauses 2.10 and Clause 2.11;
- (d) It is accompanied by the Bid Security as specified in Clause 2.1.7;
- (e) It is accompanied by the Power(s) of Attorney as specified in Clauses 2.1.9 and 2.1.10, as the case may be;
- (f) It contains all the information (complete in all respects) as requested in this RFP and/or Bidding Documents (in formats same as those specified);
- (g) It does not contain any condition or qualification; and
- (h) It is not non-responsive in terms hereof.
- (i) Bank Draft of Rs.10,000/ – (Rupees Ten Thousand Only) towards the cost of the RFP document in favour of The Special Officer, Food Karnataka Limited.

## B Qualification

3.2.2. Only those Bidders, whose Bids are responsive as specified in Clause 3.2.1 above, shall be considered for Technical and Financial Capacity evaluation under this, Bids of firms/consortia who do not meet these criteria shall be rejected.

For the purpose of ascertaining qualification, the Technical experience and Financial Capacity of one Group Business Entity can also be submitted. In case of a Consortium, the members of the Consortium can submit the experience and financial Capacity of any of their respective Group Business Entity. Group Business Entity shall mean;

- i. A company in which the Associate applying for the Project, either on its own or as a part of a Consortium, directly holds not less than 26% of the paid up equity of such company.
- ii. A company which directly holds not less than 26% of the paid up equity of the Business Entity applying for the Project, either on its own or as a part of a Consortium.

3.2.3. The Bidders' competence is proposed to be established by following parameters:

- (a) Technical Capacity; and
- (b) Financial Capacity

In case of a Consortium, the combined Technical Capacity and Financial Capacity of those Members, who have an equity share of at least 10% each in such Consortium, should satisfy the above conditions of eligibility.

### 3.2.4. Technical Capacity

For the purpose of establishing the Technical Capacity of the Bidder, a single entity or a Consortium as the case may be, should possess Eligible Experience in the Eligible Projects in the preceding 5 (five) financial years from the Bid Due Date.

### 3.2.5. Eligible Projects

The Eligible Projects for the purpose of computing Eligible Experience have been segregated into the following four categories:

#### Category 1 Projects:

Project experience on Eligible Projects in agri SEZ's, Food Parks, industrial estates, agri processing industries industrial parks and logistics parks.

#### Category 2 Projects:

Project experience on Eligible Projects in core sector that include highways, power, telecom, ports, airports, railways, metro rail, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.

The projects falling in Category 1 and Category 2 as stated above would be considered Eligible Project provided they satisfy the following criteria:

- i. It should have been undertaken as a PPP project on BOT, BOLT, BOO, BOOT or other similar basis for providing its output or services to a public sector entity or for providing non-discriminatory access to users in pursuance of its charter, concession or contract, as the case may be. For the avoidance of doubt, a project which constitutes a natural monopoly such as an airport or port should normally be included in this category even if it is not based on a long-term agreement with a public entity;
- ii. the entity claiming experience should have held, in the company owning the Eligible Project, a minimum of 26% equity during the period for which Eligible Experience is being claimed;
- iii. the capital cost of the project should be more than 25% (twenty five percent) of the Estimated Project Cost for which the bidder is submitting its bid; and
- iv. the entity claiming experience should, during the past 5 (five) financial years preceding the Bid Due Date, have (i) commenced the construction work of the project and paid for it, and /or (ii) collected and

appropriated the revenues of such project after commencement of commercial operation.

**Category 3 Projects:**

Construction experience on Eligible Projects in agri SEZ's, Spice Parks, industrial estates, agri processing industries industrial parks and logistics parks.

**Category 4 Projects:**

Construction experience on Eligible Projects in core sector that includes highways, power, telecom, ports, airports, railways, metro rail, petroleum and natural gas, pipelines, irrigation, water supply, sewerage and real estate development.

The projects falling in Category 3 and Category 4 as stated above would be considered Eligible Project provided they satisfy the following criteria:

- i. Bidders should have paid for execution of its construction works or received payments from its client(s) for construction works executed, fully or partially, during the 5 (five) financial years immediately preceding the Bid Due Date and only the payments (gross) actually made or received, as the case may be, during such 5 (five) financial years shall qualify for purposes of computing the Experience Score. However, payments/receipts less than 25% (Twenty five percent) of the Estimated Project Cost shall not be reckoned as payments/receipts for Eligible Projects. For the avoidance of doubt, construction works shall not include supply of goods or equipment except when such goods or equipment form part of a turn-key construction contract/EPC contract for the project. Further, the cost of land shall not be included in works.

3.2.6. The Applicants shall quote experience in respect of a particular Eligible Project under any one category (Category 1 or 2 or 3 or 4) only, even though the Applicants (either individually or along with a member of the Consortium) may have played multiple roles in the cited project. Double counting for a particular Eligible Project shall not be permitted in any form.

### 3.2.7. Eligible Experience

Bidders' experience shall be measured and stated in terms of a score known as the Experience Score. The Experience Score for a given category would be calculated as follows:

*Project costs or certified payments/receipts\**

$$\frac{\text{-----}}{10,000,000} \times \text{Applicable factor in the table below}$$

*\*as detailed in Clause 3.2.9*

**Table: Factors for Experience across categories**

Category	FACTOR
Category 1 Project	1.25
Category 2 Project	0.75
Category 3 Project	1.00
Category 4 Project	0.50

3.2.8. In case the Bidders have experience across different categories, the score for each category would be computed as above and then aggregated to arrive at its total Experience Score.

### 3.2.9. Threshold Technical Capacity

Technical Capacity: For demonstrating technical capacity and experience (the "Technical Capacity"), the Bidder shall, over the past 5 (five) financial years preceding the Bid Due Date, have:

- i. Paid for or received payments for construction of Eligible Project[s]; and/or

- ii. paid for development of Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.5; and/ or
- iii. collected and appropriated revenues from Eligible Project(s) in Category 1 and/or Category 2 specified in Clause 3.2.5, such that the sum total of the above is more than [Rs.60 crore (Rs. Sixty crore)] (the “Threshold Technical Capability”).

[Provided that at least 10% of the Threshold Technical Capacity shall be from the Eligible Projects in Category 1 and/or Category 3 specified in Clause 3.2.5.]

### 3.2.10. Details of Experience

- (a) The Bidders should furnish the details of Eligible Experience for the past 5 (five) years preceding the Bid Due date.
- (b) The Bidders must provide the necessary information relating to Technical Capacity as per format at Appendix-V.
- (c) The Bidders should furnish the required information and evidence in support of its claim of Technical Capacity, as per format of Appendix -VA.

### 3.2.11. Financial Capacity

The Bidders shall have a Threshold Net Worth or either of Threshold Net Cash Accruals or Threshold Average Turnover for being qualified for the Financial Capacity.

- i. Networth:

Networth should be atleast Rs.7.0 crores (Rupees Seven crores only), or

- ii. Net Cash Accruals:

The aggregate net cash accruals of the Applicant for the last 2 financial years shall be at least Rs. 8.5 crores (Rupees Eight crores and fifty lakhs only) , or

- iii. Turnover:

The Average Turnover of the Applicant for the last 2 financial years shall be at least Rs. 40 Crores (Rupees Forty Crores only).

### 3.2.12. Financial information for purposes of evaluation

The Bid must be accompanied by the Audited Annual Reports of the Bidders (of each member in case of a Consortium) for the last 3 (three) financial years, preceding the year in which the Bid is made.

In case the annual accounts for the latest financial year are not audited and therefore the Bidders could not make it available, the Bidders shall give an undertaking to the same effect and the statutory auditor shall certify the same. In such a case, the Bidders shall provide the Audited Annual Reports for three years preceding the year for which the Audited Annual Report is not being provided.

### 3.2.13. Determination of Bid Capacity

The Experience Scores arrived from the Bidder's Eligible Projects as per clause 3.2.5 is aggregated to arrive at the 'Aggregate Experience Score'. For the purpose of calculation of Aggregate Experience Score, each Eligible Project shall be counted only once.

Bidders having an Aggregate Experience Score higher than the Threshold Technical Capacity and having the requisite Financial Capacity in terms of Net Worth and Turnover would be short-listed for submission of Bids.

## C. Technical Evaluation Process

3.2.14. The Business Plan shall be evaluated for preliminary examination for completeness:

- (a) The Business Plan shall first be scrutinized to determine completeness and to assess whether any conceptual errors have been made.
- (b) FKL may request for presentation from the Bidders on their Business Plan. FKL may constitute a technical committee for the purpose of evaluation of

presentation on the Business Plan by the Bidders. FKL at its sole discretion may decide the members of the technical committee.

- (c) The technical evaluation committee shall, be based on the preliminary examination and/or presentation, determine the substantial responsiveness of the Business Plans. Business Plans without any material omissions, errors or incompleteness shall be considered responsive.
- (d) Evaluation of the Business Plans would be done in accordance with the criteria provided in Appendix VII.
- (e) Bidders scoring 50 marks and above would only be considered for the next stage of evaluation.

#### **D. Financial Bid**

The Financial Bid shall consist of either the lowest Project Support payable by FKL to the Developer or highest Negative Grant payable by the Developer to FKL. However, the Project Support payable by FKL to the Developer shall not exceed Rs. 4 (Four) crores.

FKL reserves the right to reject any Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by FKL in respect of such Bid.

### **3.3. Selection of Bidder**

3.3.1. The Financial Bid of all the Bidders who pass the Technical evaluation will be opened in the presence of the Bidders' representatives who choose to attend. The Bidders' representatives who are present shall be required to sign and record their attendance.

The Bidder quoting the lowest Project Support, to be received from FKL or highest Premium (payment to be paid to FKL), as per the format prescribed in Appendix VIII, shall be declared as the Preferred Bidder.

FKL may either choose to accept the Financial Bid of the Preferred Bidder or invite him for negotiations.

Upon acceptance of the Financial Bid of the Preferred Bidder with or without negotiations, FKL shall declare the Preferred Bidder as the Selected Bidder.

- 3.3.2. In the event that two or more Bidders quote the same amount of lowest Project Support/highest Premium (the "**Tie Bidders**"), FKL shall identify the Selected Bidder based on highest technical score obtained by the Tie Bidders.
- 3.3.3. In the event that the Bidder withdraws its Financial Bid or is not selected for any reason in the first instance (the "first round of bidding"), the FKL may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Financial Bid of the aforesaid Bidder quoting lowest Project Support/highest Premium (the "Second round of bidding"). If in the second round of bidding, only one Bidder matches the Bidder quoting lowest Project Support/highest Premium, it shall be the Selected Bidder.
- 3.3.4. In the event that no Bidder offers to match the Bidder quoting lowest Project Support/highest Premium in the second round of bidding as specified in 3.3.3, the FKL may, in its discretion, invite fresh Financial Bids (the "third round of bidding") from all Bidders except the Bidder quoting lowest Project Support/highest Premium of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Financial Bids, they shall be eligible for submission of fresh Financial Bids provided, however, that in such third round of bidding only such Financial Bids shall be eligible for consideration which are lowest Project Support/highest Premium than the Financial Bid of the second Bidder quoting lowest Project Support/highest Premium in the first round of bidding.
- 3.3.5. After selection, a Letter of Award (the "**LOA**") shall be issued, in duplicate, by FKL to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly

signed by the Selected Bidder is not received by the stipulated date, FKL may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as mutually agreed genuine pre-estimated loss and damage suffered by FKL on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

3.3.6. After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall execute the Project Development and implementation Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation in the Project Development and Implementation Agreement.

3.3.7. The Selected Bidder shall pay the Project Development Fees of Rs. 36 lakhs (Rupees Thirty Six lakhs only) in the form of a Demand Draft, drawn from any scheduled bank in India, in favour of Food Karnataka Limited in two installments as follows:

- a) Rs.21 lakhs (Rupees Twenty one lakhs only) on or before signing the Project Development and Implementation Agreement.
- b) Rs.15 lakhs (Rupees Fourteen lakhs and thirty thousand only) before signing the lease cum sale agreement with the Government Agency.

3.3.7A Letter of Acceptance and execution of Agreement

The Successful Bidder shall execute the Project Development and Implementation Agreement for the Project, within four (4) weeks of the receipt of LOA, form and incorporate Special Purpose Vehicle under the Companies Act, 1956 or within such further time as FKL may agree to in its sole discretion.

### 3.4. Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time FKL makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain from contacting by any means, FKL and/ or their employees/ representatives on

matters related to the Bids under consideration.

### 3.5. Requirements of Consortium

If the Selected Bidder is a Consortium, then the Lead Member of such Consortium shall, before signing of the Agreement, submit to FKL:

- a. A detailed inter-se agreement between the Consortium Members incorporating the provisions of the Joint Bidding Agreement submitted as part of the Bid submission, and
- b. A power of attorney from Other Members authorizing the Lead Member of such Consortium to sign the Agreement with FKL.

### 3.6. Performance Security

3.6.1. The Selected Bidder shall furnish Performance Security for Rs 140.00 lakh (Rupees One hundred and forty lakh only) by way of an irrevocable Bank Guarantee as required under the Project Development and implementation Agreement.

3.6.2. Failure of the Selected Bidder to comply with the requirements of Clause 3.3.6 shall constitute sufficient grounds for the annulment of the LOA, and forfeiture of the Bid Security. In such an event, FKL reserves the right to take any such measure as may be deemed fit in the sole discretion of FKL, including annulment of the bidding process.

## 4 FRAUD AND CORRUPT PRACTICES

- 4.1. The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Project Development and Implementation Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Project Development and Implementation Agreement, FKL shall reject a Bid, withdraw the LOA, or terminate the Project Development and Implementation Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Selected Bidder, as the case may be, if it determines that the Bidder or Selected Bidder, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, FKL shall forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to FKL towards, inter alia, time, cost and effort of FKL, without prejudice to any other right or remedy that may be available to FKL hereunder or otherwise.
- 4.2. Without prejudice to the rights of FKL under Clause 4.1 hereinabove and the rights and remedies which FKL may have under the LOA or the Project Development and Implementation Agreement, if a Bidder or Selected Bidder, as the case may be, is found by FKL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issue of the LOA or the execution of the Project Development and Implementation Agreement, such Bidder or Selected Bidder shall not be eligible to participate in any tender or RFP issued by FKL during a period of 2 (two) years from the date such Bidder or Selected Bidder, as the case may be, is found by FKL to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

- 4.3. For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**Corrupt Practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of FKL who is or has been associated in any manner, directly or indirectly with the Bidding Process or the LOA or has dealt with matters concerning the Project Development and Implementation Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of FKL, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Project Development and Implementation Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Project Development and Implementation Agreement, who at any time has been or is a legal, financial or technical adviser of FKL in relation to any matter concerning the Project;
  - (b) “**Fraudulent Practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
  - (c) “**Coercive Practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bidding Process;
  - (d) “**Undesirable Practice**” means (i) establishing contact with any person connected with or employed or engaged by FKL with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

- (e) “**Restrictive Practice**” means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

## 5 PRE-BID CONFERENCE

- 5.1. Pre-Bid conferences of the Bidders shall be convened at the designated date, time and place. A maximum of three representatives of each Bidder shall be allowed to participate.
- 5.2. During the course of Pre-Bid conferences, the Bidders will be free to seek clarifications and make suggestions for consideration of FKL. FKL shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

## 6 MISCELLANEOUS

- 6.1. The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bangalore shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.
- 6.2. FKL, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;
- (a) Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
  - (b) Consult with any Bidder in order to receive clarification or further information;
  - (c) Retain any information and/ or evidence submitted to FKL by, on behalf of, and/ or in relation to any Bidder; and/ or
  - (d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.
- 6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases FKL, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection herewith and waives any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.

APPENDIX - I

Letter of Bid

Dated:

Special Officer,  
Food Karnataka Limited,  
Government of Karnataka,  
'Khanija Bhavan', 4<sup>th</sup> Floor,  
East Wing, No.49  
Race Course Road  
Bangalore - 560001

**Sub:** Bid for Development of Spice Park in Haveri District, Karnataka

Dear Sir,

With reference to your RFP document dated \_\_\_\_\_, I/we, having examined the Bidding Documents and understood their contents, hereby submit my/our Bid for the aforesaid Project. The Bid is unconditional and unqualified.

- 1 All information provided in the Bid and in the Appendices is true and correct.
- 2 This statement is made for the express purpose of qualifying as a Bidder for the development, construction, operation and maintenance of the aforesaid Project.
- 3 I/ We shall make available to FKL any additional information it may find necessary or require to supplement or authenticate the Bid.
- 4 I/ We acknowledge the right of FKL to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

- 5 We certify that in the last three years, we/ any of the Consortium Members have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
- 6 I/ We declare that:
- (a) I/ We have examined and have no reservations to the Bidding Documents, including any Addendum issued by FKL;
  - (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.14 and 2.1.15 of the RFP document;
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with FKL or any other public sector enterprise or any government, Central or State; and
  - (d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Clause 4 of the RFP, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
- 7 I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.6 of the RFP document.
- 8 I/ We believe that we/ our Consortium/ proposed Consortium satisfy(ies) the Net Worth criteria and meet(s) the requirements as specified in the RFP document and are/ is qualified to submit a Bid in accordance with the RFP document

- 9 I/ We declare that we/ any Member of the Consortium are/ is not a Member of a/ any other Consortium submitting a Bid for the Project.
- 10 I/ We certify that in regard to matters other than security and integrity of the country, we have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory FKL which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
- 11 I/ We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
- 12 I/ We further certify that no investigation by a regulatory FKL is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ employees.
- 13 NOT USED
- 14 I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate FKL of the same immediately.
- 15 I/We acknowledge that our Company/Consortium/ proposed Consortium has disclosed all the required information and furnished details which is sufficient to demonstrate our Bid Capacity on the basis of Technical Capacity and Financial Capacity of those of its Members and the members of the Consortium shall hold 100% of the equity stake in the Developer until Scheduled Project Completion Date. Subsequently, in the event, any of the Consortium Members intend to give up its/their shareholding in the Developer company, such shareholder(s) shall be permitted to do so provided:

- (a) The Lead Member shall hold a minimum equity stake of 51% of the shareholding in the equity capital of the Developer for at least 10 years from the Appointed Date or until expiry of the Lease cum Sale Agreement, whichever is later. In the interim period, they may reduce the equity stake in exceptional circumstances and only after prior approval by FKL; or
- (b) The Developer has established atleast 20 (twenty) Spice Processing Industries within the Project Site;
- 16 I/We acknowledge and agree that in the event of a change in control of a Group Business Entity whose Technical experience and/ or Financial Capacity was taken into consideration for the purposes of qualification under and in accordance with the RFP, I/We shall inform FKL forthwith along with all relevant particulars and FKL may, in its sole discretion, disqualify our Consortium or withdraw the Letter of Award, as the case may be. I/We further acknowledge and agree that in the event such change in control occurs after signing of the Project Development and Implementation Agreement but prior to Financial Close of the Project, it would, notwithstanding anything to the contrary contained in the Agreement, be deemed a breach thereof, and the Project Development and Implementation Agreement shall be liable to be terminated without FKL being liable to us in any manner whatsoever.
- 17 I/ We understand that the Selected Bidder shall either be an existing Company incorporated under the Indian Companies Act, 1956, or shall incorporate itself as such prior to execution of the Project Development and Implementation Agreement.
- 18 I/We hereby irrevocably waive any right which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by FKL in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Project and the terms and implementation thereof.
- 19 In the event of my/ our being declared as the Selected Bidder, I/We agree to

enter into a Project Development and Implementation Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

- 20 I/We have studied all the Bidding Documents carefully and also surveyed the project site. We understand that except to the extent as expressly set forth in the Project Development and Implementation Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by FKL or in respect of any matter arising out of or concerning or relating to the Bidding Process including the award of Project.
- 21 The lowest Project Support/highest Premium has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP; draft Project Development and Implementation Agreement, our own estimates of costs and revenues and after a careful assessment of the site and all the conditions that may affect the Bid.
- 22 I/We offer a Bid Security of Rs. 29 lakhs (Rupees Twenty nine lakh only) to FKL in accordance with the RFP Document.
- 23 The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable) is attached.
- 24 I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project is not awarded to me/us or our Bid is not opened.
- 25 I/We agree to keep this offer valid for 180 (One hundred and eighty) days from the Bid Due Date specified in the RFP.
- 26 I/We agree and undertake to abide by all the terms and conditions of the RFP document.

In witness thereof, I/we submit this Bid under and in accordance with the terms

of the RFP document.

Yours faithfully,

Date: (Signature of the Authorized signatory)  
Place: (Name and designation of the of the Authorized signatory)  
Name and seal of Bidder/Lead Member

## APPENDIX – II

## Bank Guarantee for Bid Security

B.G. No.

Dated:

- 1 In consideration of you, \_\_\_\_\_, having its office at \_\_\_\_\_, (hereinafter referred to as the “FKL”, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns) having agreed to receive the Bid of \_\_\_\_\_ [a Company registered under provision of the Companies Act, 1956] and having its registered office at \_\_\_\_\_ [and acting on behalf of its Consortium] (hereinafter referred to as the “Bidder” which expression shall unless it be repugnant to the subject or context thereof include its/their executors administrators, successors and assigns), for the Development, Construction, Operation and Maintenance of Spice Park at Haveri District, Karnataka (hereinafter referred to as “the Project”) pursuant to the RFP Document dated \_\_\_\_\_ issued in respect of the Project and other related documents (hereinafter collectively referred to as “Bidding Documents”), we [Name of the Bank] having our registered office at \_\_\_\_\_ and one of its branches at \_\_\_\_\_ (hereinafter referred to as the “Bank”), at the request of the Bidder, do hereby in terms of Clause 2.1.7 read with Clause 2.1.8 of the RFP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RFP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to FKL an amount of Rs. 29.0 lakh (Rupees Twenty nine lakh only) as bid security (hereinafter referred to as the “Bid Security”) as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.
- 2 Any such written demand made by FKL stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

- 3 We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of FKL is disputed by the Bidder or not merely on the first demand from FKL stating that the amount claimed is due to FKL by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding 29.0 lakh (Rupees Twenty nine lakh only).
- 4 This Guarantee shall be irrevocable and remain in full force for a period of 180 (One hundred and eighty) days from the Bid Due Date inclusive of a claim period of 60 (sixty) days or for such extended period as may be mutually agreed between FKL and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.
- 5 We, the Bank, further agree that FKL shall be the sole judge to decide as to whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, inter alia, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of FKL that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between FKL and the Bidder or any dispute pending before any Court, Tribunal, Arbitrator or any other FKL.
- 6 The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.
- 7 In order to give full effect to this Guarantee, FKL shall be entitled to treat the

Bank as the principal debtor. FKL shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to FKL, and the Bank shall not be released from its liability under these presents by any exercise by FKL of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of FKL or any indulgence by FKL to the said Bidder or by any change in the constitution of FKL or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

- 8 Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
- 9 We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch that shall be deemed to have been duly authorized to receive the said notice of claim.
- 10 It shall not be necessary for FKL to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which FKL may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealized.

- 11 We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of FKL in writing.
- 12 The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and delivered by \_\_\_\_\_ Bank  
By the hand of Mr. /Ms \_\_\_\_\_, its  
\_\_\_\_\_ and authorized official.

(Signature of the Authorized Signatory)  
(Official Seal)

## APPENDIX – III

## Power of Attorney for signing of Bid

Know all men by these presents, We, \_\_\_\_\_ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr. / Ms (Name), son/daughter/wife of \_\_\_\_\_ and presently residing at \_\_\_\_\_, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of \_\_\_\_\_], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for the Development, Construction, Maintenance and Operation of Spice Park in Haveri District, Karnataka being developed by the Food Karnataka Limited, Government of Karnataka (the "FKL") including but not limited to signing and submission of all applications, bids and other documents and writings, participate in Bidders' and other conferences and providing information / responses to FKL, representing us in all matters before FKL, signing and execution of all contracts including the Project Development and Implementation Agreement and undertakings consequent to acceptance of our bid, and generally dealing with FKL in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Project Development and Implementation Agreement with FKL.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, \_\_\_\_\_, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

For\_\_\_\_\_

(Signature)

(Name, Title and Address)

Witnesses:

1  
2

Accepted

[Notarized]

(Signature)

(Name, Title and Address  
of the Attorney)

*Notes:*

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

**APPENDIX – IV**

**Power of Attorney for Lead Member of Consortium**

Whereas the Food Karnataka Limited, Government of Karnataka (“FKL”) has invited bids from interested parties for the Development of Spice Park in Haveri District, Karnataka (“the Project”).

Whereas, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ (collectively the “Consortium”) being Members of the Consortium are interested in bidding for the Project in accordance with the terms and conditions of the Request for Proposal and other connected documents in respect of the Project, and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and FKL to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium’s bid for the Project and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

We, \_\_\_\_\_ having our registered office at \_\_\_\_\_, M/s. \_\_\_\_\_, having our registered office at \_\_\_\_\_, and M/s. \_\_\_\_\_, having our registered office at \_\_\_\_\_, [the respective names and addresses of the registered office] (hereinafter collectively referred to as the “Principals”) do hereby irrevocably designate, nominate, constitute, appoint and authorize M/s \_\_\_\_\_, having its registered office at \_\_\_\_\_, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the “Attorney”) and hereby irrevocably authorize the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Contract, during the execution of the Project, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Project, including but not limited to signing and submission of all applications, bids and other documents and writings,

participate in Bidders’ and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with FKL, and/ or any other Government Agency or any person, in all matters in connection with or relating to or arising out of the Consortium’s bid for the Project and/ or upon award thereof till the Project Development and Implementation Agreement is entered into with FKL.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF WE THE PRINCIPALS ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2010.

For \_\_\_\_\_ (Name & Title)

For \_\_\_\_\_ (Name & Title)

For \_\_\_\_\_ (Name & Title)

Witnesses:

1

2

(Executants)

(To be executed by all the Members of the Consortium)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executants and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*

- *Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favor of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued.*

**APPENDIX - V**

**Technical Capacity of the Bidder**

Bidder type #	Project Name	Category \$	Experience (Equivalent Rs. crore)		
			Payment received/ made for construction of Eligible Projects	Payment made for construction of BOT/ PPP Projects	Revenues appropriated from BOT/PPP Projects
Single entity Bidders/ Lead Member	a				
	b				
	c				
	d				
Consortium Member 1	1a				
	1b				
	1c				
	1d				
Consortium Member 2	2a				
	2b				
	2c				
	2d				
Consortium Member 3	3a				
	3b				
	3c				
	3d				
<b>Aggregate Experience Score =</b>					

@ Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate specified in Clause 3.2.2 and/ or by a project company eligible under Clause 3.2.5(b).

# A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidders and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity would need to be filled by the Lead Member.

\$ Refer Clause 3.2.4.

Add more rows if necessary.

£ Divide the amount in the Experience column by one crore and then multiply the product by applicable factor set out in the Table as mentioned in the clause 3.2.8.

## APPENDIX –VA

## Details of Eligible Projects

Project Code:

Member Code:

Item	Refer Instruction	Particulars of the Project
Title & nature of the project		
Category	5	
Year-wise payments received/ made or revenues appropriated	6	
Entity for which the project was constructed/ developed	7	
Location		
Project cost/ revenues/ payments	8	
Date of commencement of project/ contract		
Date of completion/ commissioning	9	
Equity shareholding (with period during which equity was held)	10	

## Instructions:

1. Bidders are expected to provide information in respect of Eligible Projects in this Appendix. The projects cited must comply with the eligibility criteria specified in Clause 3.2.3, 3.2.4 and 3.2.5 of the RFP, as the case may be. Information provided in this section is intended to serve as a back up for information provided in the Bid. Bidders should also refer to the Instructions below.

2. For a single entity Bidders, the Project Codes would be a, b, c, d etc. In case the Bidders is a Consortium then for Member 1, the Project Codes would be 1a, 1b, 1c, 1d etc., for Member 2 the Project Codes shall be 2a, 2b, 2c, 2d etc., and so on.
3. A separate sheet should be filled for each of the Eligible Project[s].
4. Member Code shall indicate NA for Not Applicable in case of a single entity Bidders. For other Members, the following abbreviations are suggested viz. LM means Lead member and OM means Other Member.
5. Refer Clause 3.2.5 of the RFP for category number.
6. The total payments received/ made or revenues appropriated for each Eligible Project are to be provided here. The figures to be provided here should indicate the break-up for the past 10 (ten) financial years. Year 1 refers to the financial year immediately preceding the Bid Due Date; Year 2 refers to the year before Year 1, Year 3 refers to the year before Year 2, and so on.
7. In case of Categories 1 and 2 projects, particulars such as name, address and contact details of owner/ Authority/ Agency (i.e. concession grant or, counter party to PPA, etc.) may be provided. In case of Categories 3 and 4 projects, similar particulars of the client need to be provided.
8. For Categories 1 and 2, project costs incurred or revenues appropriated, as the case may be, should be provided. In case of Categories 3 and 4, payments received should be provided.
9. For Categories 1 and 2, the date of commissioning of the project, upon completion, should be indicated. In case of Categories 3 and 4, date of completion of construction should be indicated.
10. For Categories 1 and 2, the equity shareholding of the Bidders, in the company owning the Eligible Project, held continuously during the period for which Eligible Experience is claimed, needs to be given.

11. Experience for any activity relating to an Eligible Project shall not be claimed by two or more members of the Consortium. In other words, no double counting by a consortium in respect of the same experience shall be permitted in any manner whatsoever.
12. Certificate from the client or the Bidders' statutory auditor must be furnished as per format below.
13. If the Bidders is claiming experience under Categories 1 & 2, it should provide a certificate from its statutory auditor in the format below:

### Certificate from the Statutory Auditor regarding BOT projects

This is to certify that \_\_\_\_\_(name of the Bidders) is/ was an equity shareholder in \_\_\_\_\_(title of the project company) and holds/ held Rs. \*\*\* cr. of equity (which constitutes \_\_\_% of the total paid up and subscribed equity capital) of the project company from \_\_\_\_\_ (date) to \_\_\_\_\_ (date).The project was completed and commissioned on \_\_\_\_\_ (date of commissioning of the project).

We further certify that the total Estimated Project Cost as on the date of commissioning was Rs. \*\*\*\* cr., of which Rs. \*\*\*\* cr. of capital expenditure was incurred during the past ten financial years as per year-wise details noted below:

\* \* \*

We also certify that the annual revenues collected and appropriated by the Bidders during the past ten financial years were Rs. \*\*\*\* cr. as per year-wise details noted below:

\* \* \*

#### Authorised Signatory

Name:

Designation: Signature of the Authorised Signatory and date

£ In case the project is owned by the Bidders company, this language may be suitably modified to read: "It is certified that \_\_\_\_\_ (name of Bidders) constructed and/ or owned the \_\_\_\_\_ (name of project) from \_\_\_\_\_ (date) to \_\_\_\_\_ (date)."

14.If the Bidders is claiming experience under Category 3 & 4, it should provide a certificate from its statutory auditors or the client in the format given below:

**Certificate from the Statutory Auditor/ Client regarding construction works**

This is to certify that \_\_\_\_\_ (name of the Bidders) was engaged by \_\_\_\_\_ (title of the project company) to execute \_\_\_\_\_ (name of project) for \_\_\_\_\_ (nature of project). The construction of the project commenced on \_\_\_\_\_ (date) and the project was commissioned on \_\_\_\_\_ (date). It is certified that \_\_\_\_\_ (name of the Bidders) received Rs. \*\*\* cr. by way of payment for the aforesaid construction.

We further certify that the total estimated cost of construction of the project is Rs. \*\*\*\* cr., of which Rs. \*\*\*\* cr. was paid to the Bidders by the project company during the past ten financial years as per year-wise details noted below:

\* \* \*

[It is further certified that the payments indicated above are restricted to the share of the Bidders who undertook these works as a partner or a member of joint venture/ Consortium.]

Authorised Signatory

Name:

Designation: Signature of the Authorised Signatory and date.

15.It may be noted that in the absence of any detail in the above certificates, the information would be considered inadequate and could lead to exclusion of the relevant project in computation of Experience Score.

## APPENDIX -VI

## Financial Capacity of the Bidders

(In Rs. crore)

Bidder type *	Member Code**	Turn over		Net Cash Accruals		Net Worth***
		Year 1	Year 2	Year 1	Year 2	Year 1
Single entity Bidders						
Consortium Member 1						
Consortium Member 2						
Consortium Member 3						
TOTAL						

**Name & address of Bidders' Bankers:**

\* A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidders and ignore the rows titled Consortium Members. In case of a Consortium, row titled Single entity Bidders may be ignored.

\*\* For Member Code, see instruction 4 of Appendix-VA.

\*\*\* The Bidders should provide details of its own Financial Capacity or of a Business Entity Associate specified in Clause 3.2.2.

**Instructions:**

1. The Bidders/ its constituent Consortium members shall attach copies of the balance sheets, financial statements and Annual Reports for 3 (three) years preceding the Bid Due Date. The financial statements shall:
  - a) reflect the financial situation of the Bidders and its Associates where the Bidders is relying on its Associate's financials;
  - b) be audited by a statutory auditor;
  - c) be complete, including all notes to the financial statements; and
  - d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
2. Net Cash Accruals shall mean Profit after Tax + Depreciation.
3. Net Worth shall mean (Subscribed and Paid-up Equity + Reserves) less (Revaluation reserves + miscellaneous expenditure not written off + accrued liabilities).
4. Turnover means the total revenue generated in the previous year.
5. Year 1 will be the latest completed financial year, preceding the bidding. Year 2 shall be the year immediately preceding Year 1 and so on.
6. In the case of a Consortium, a copy of the Joint. Bidding Agreement shall be submitted in accordance with Clause 1.1.2B (f) of the RFP document.
7. The Bidders shall also provide the name and address of the Bankers to the Bidders.
8. The Bidders shall provide an Auditor's Certificate specifying the net worth of the Bidders and also specifying the methodology adopted for calculating such net worth.
9. In case the annual accounts for the latest financial year are not audited and therefore the Bidder could not make it available, the Bidder shall give an undertaking to that effect and the statutory auditor shall certify the same. In such a case, the Bidder may provide the unaudited Annual Accounts (with Schedules) for the latest financial year. In any case, the Audited Annual Financial Statements for three years preceding the latest financial year would have to be provided, failing which the Proposal will be rejected as non-responsive.

## APPENDIX – VII

## Business Plan

The Business Plan shall be submitted in a report format, which would cover including the aspects indicate below. Bidders may elaborate their Business Plans in addition to the following:

Sl.No	Sections	Chapters / Contents	Marks
A	Project conceptualization & planning	Positioning of Spice Park , Haveri District, Karnataka Clients / Users to be targeted Risk identification & mitigation strategies	10
B	Marketing strategy	Promotion strategy Pricing strategy Marketing plan	15
C	Project construction plan	Phasing of development	20
D	Financial plan	Capitalization of the SPV including details related to: authorised and paid up capital. Project Cost Means of financing. Revenue Model Itemized projections and Ten year projections a) Profit & loss statement b) Balance sheet	25

		c) Cash flow statement d) Financing plan	
E	Operational plan	Organization structure Service quality Service provision through sub concessions Infrastructure up- gradation plan	15
F	Statutory & Other Obligations	Master Planning for Spice Park area Environmental Planning and management	15
		Total:	100

**APPENDIX – VIII**  
**Financial Bid**

(To be enclosed in a separate cover)

(On the Letterhead of the Bidder<sup>2</sup> )

Date:

-----,  
Food Karnataka Limited,  
Government of Karnataka,  
'Khanija Bhavan', 4th Floor,  
East Wing, No.49,  
Race Course Road,  
Bangalore 560001

**Re:** Development of Spice Park in Haveri District, Karnataka

Sir,

Having gone through this RFP document and the Project Development and Implementation Agreement and having fully understood the scope of work for the Project as set out in this RFP; we are pleased to inform that we would offer the following for the Project:

**Project Support payable by FKL to Developer**

Project Support= Rs      in figures      (Rupees      in words      -----)

<sup>2</sup> In case of a Consortium – On the letter head of the Lead member

OR<sup>3</sup>

**Premium payable by Developer to FKL**

Premium = Rs        in figures        (Rupees        in words        \_\_\_\_\_)

In addition to the above, the Bidder agrees to pay to the concerned GoK agency the cost towards acquisition of land for the Project.

.....  
Name of the Bidder

.....  
Signature of the Authorized Person

.....  
Name of the Authorized Person

Note:

- To be signed by the Lead Member(s) in case of a Consortium.

-----  
(Name and designation of the Authorized Person)

Note:

-----  
<sup>3</sup>Strike out which ever is not applicable.

**APPENDIX IX**  
**Joint Bidding Agreement**

-----<sup>4</sup>

And

-----<sup>5</sup>

And

-----<sup>6</sup>

---

<sup>4</sup> Name of the Lead Member

<sup>5</sup> Name of the Other Member 1

<sup>6</sup> Name of the Other Member 2

This Joint Bidding Agreement (“Agreement”) is entered on this \_\_\_\_\_day of \_\_\_\_\_, 2010, by and between:

\_\_\_\_\_<sup>7</sup>, a company incorporated in India under the Companies Act, \_\_\_\_\_ and having its registered office at \_\_\_\_\_( hereinafter referred to as ‘\_\_\_’), of the FIRST Part;

And

\_\_\_\_\_<sup>8</sup>, a company incorporated in India under the Companies Act, \_\_\_\_\_ and having its registered office at \_\_\_\_\_( hereinafter referred to as ‘\_\_\_’), of the SECOND Part;

And

\_\_\_\_\_<sup>9</sup>, a company incorporated in India under the Companies Act, \_\_\_\_\_ and having its registered office at \_\_\_\_\_( hereinafter referred to as ‘\_\_\_’), of the THIRD Part;

\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are hereinafter individually referred to as “the Party” and collectively “the Parties”. \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ shall be deemed to mean and include their respective successors and permitted assigns.

WHEREAS:

- a. Food Karnataka Limited, (FKL) issued the Request for Proposal Document (“RFP Document”) inviting applications from interested parties for the Development of Spice Park in Haveri District, Karnataka (hereinafter referred to as the “Project”) through Notice Inviting Tender dated \_\_\_\_\_.

<sup>7</sup> Name of the Lead Member Company

<sup>8</sup> Name of the Other Member 1

<sup>9</sup> Name of the Other Member 2

- b. The Parties hereby intends to submit the bid for the Project as a Consortium by exclusively collaborating with each other and if declared as the selected bidder by FKL, take up the implementation of the Project in terms of the Project Development and Implementation Agreement.
- c. \_\_\_\_\_<sup>10</sup> shall be designated as the lead member (the “Lead Member”) of the Consortium and \_\_\_\_\_ and \_\_\_\_\_ as the other members of the Consortium (the “Other Member”).
- d. The Parties desire by means of this Agreement to exclusively establish the Consortium and define the terms and conditions of their collaboration relating to the Project.

NOW, THEREFORE, THE PARTIES HERETO AGREE AND STATE THEIR INTENT AS FOLLOWS:

#### 1.0 PURPOSE

The above recitals form an integral part of this Agreement. This Agreement is being entered into by the Parties to suitably complement and supplement the technical, financial capacities of each other for the submission of the bid in terms with the RFP document, in the name of the Consortium and upon the bid being accepted and the letter of acceptance (“LOA”) being issued in favour of the Consortium naming the Consortium as the Selected bidder for the Project by FKL to implement the same through a special purpose vehicle (“SPV”) to be incorporated by the Consortium in terms of the RFP Document and draft Project Development and Implementation Agreement.

#### 2.0 CO-OPERATION IN GOOD FAITH

The Parties hereby agree to co-operate and act in good faith, fairness and equity as between themselves. The intention of the Parties in entering into this Agreement is to synergies and exploit each other’s experience & expertise in the respective fields for mutual benefit. The Parties shall assist each other and

<sup>10</sup> Name of the Lead Member Company

utilize their expertise, experience and knowledge as may be necessary, for the successful implementation and completion of the Project.

The Parties therefore undertake to extend the fullest co-operation to each other and furnish all the information, documents whatsoever required by FKL, for and to ensure successful submission of the Bid.

### 3.0 PROJECT EXECUTION PLAN

3.1 Upon the Consortium being awarded the Project, the Parties shall incorporate a special purpose vehicle being a company within the meaning of the Companies Act, 1956 (the "SPV"), which shall enter into the project agreement(s) including the Project Development and Implementation Agreement (the "Project Development and Implementation Agreement") with FKL and the Consortium shall take up the responsibilities for the execution of the Project in terms of the Project Development and Implementation Agreement.

3.2 All internal expenses shall be borne by the respective Parties. However, it is clarified that the Parties shall share all costs including but not limited to all pre bid costs, costs towards the guarantees, securities etc. in a mutually agreed proportion.

3.3 \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ as the three Consortium members shall be liable jointly and severally for execution of the Project in accordance with the terms of the Project Development and Implementation Agreement/RFP Documents.

### 4.0 ROLES AND RESPONSIBILITIES OF CONSORTIUM MEMBERS AND SPV

4.1 The Consortium Members shall be jointly responsible for the execution of construction works for the Project.

4.2 \_\_\_\_\_<sup>11</sup> shall be responsible for activities and assistance to the SPV in Financial Closure & Overall Project management.

---

<sup>11</sup> Name of the Other Member

4.3 Operations & Maintenance Works: The SPV shall be responsible for the operations and maintenance works for the Project.

#### 5.0 EQUITY CONTRIBUTIONS AND DEBT TIE-UP

##### 5.1 Equity Contributions in the SPV by the Parties

The Bidder acknowledges and agrees that in case of a Consortium, the Consortium Members shall hold 100% of the equity stake in the SPV<sup>12</sup> until Scheduled Project Completion Date.

- (a) The Lead Member shall hold a minimum equity stake of 51% of the shareholding in the equity capital of the Developer for at least 10 years from the Appointed Date. Any variations shall be subject to conditions in the RFP Document/Project Development and Implementation Agreement or as may be made with prior written consent of FKL.

#### 6.0 EXCLUSIVITY

6.1 The Parties represent and warrant that other than this Consortium, neither Party is directly or indirectly participating in the bidding of this Project, either as a sole bidder or in association with any other person.

6.2 The Parties shall co-operate throughout the duration of this Agreement on an exclusive basis.

6.3 The provisions of this Clause 6 shall survive the termination/expiry of this Agreement.

#### 7.0 CONFIDENTIALITY

---

<sup>12</sup> "SPV" means the company incorporated under the Companies Act, 1956 by the successful bidder for the purpose of development and implementation of the Project.

- 7.1 Parties agree and undertake that any and all information including but not limited to technical data, specifications, financial & business related details etc. (hereinafter referred to as “Confidential Information”) that may be disclosed by one Party (hereinafter referred to as “Disclosing Party”) to the other Party (hereinafter referred to as “Receiving Party”), shall be maintained as strictly confidential by the Receiving Party and shall not be disclosed by the Receiving Party to any person, firm or corporation without the prior written consent of the Disclosing Party.
- 7.2 The provisions of Clause 7.1 shall not apply to the Confidential Information which;
- i. at the time of the disclosure by the Receiving Party, is in the public domain provided that the Confidential Information shall not be deemed to be generally available to the public by reason only that it is known to only a few of those people to whom it might be of commercial interest and a combination of two or more items of the Confidential Information shall not be deemed to be generally available to the public by reason only of each of separate item being so available; or
  - ii. after such disclosure becomes generally available to the public other than by reasons of breach of this Agreement;
  - iii. was lawfully in the Receiving Party’s possession prior to such disclosure, as evidenced by its written records; or
  - iv. becomes available to the Receiving Party on a non-confidential basis from a source other than from the Disclosing Party, provided that such source is not to the Receiving Party’s knowledge bound by a confidentiality agreement or other legal or fiduciary obligation of secrecy to the Disclosing Party; or
  - v. is explicitly approved for release by a written authorization of the Disclosing Party; or

- vi. is required to be disclosed by the Receiving Party to a court of competent jurisdiction or any appropriately empowered governmental agency. As soon as any such authority makes such a demand/order, then, in good faith, the Receiving Party shall inform the Disclosing Party by giving an immediate notice.
- vii. The Parties further agree that this Agreement shall also be treated as Confidential Information.
- viii. The provisions of this Clause 7.0 shall survive the termination/expiry of this Agreement.

## 8.0 MUTUAL COVENANTS

The Parties shall fully cooperate with each other with respect to the Property and act at all times in such a way as to further the common interests of the Parties. Without limiting the foregoing:

- 8.1 In no event shall the Parties consider this Agreement to be, or in any way act as though it were, a corporation, partnership or any other form of entity having any independent legal personality whatsoever.
- 8.2 Neither Party shall be deemed to be a representative, an agent or an employee of the other Party for any purpose whatsoever.
- 8.3 Neither Party shall be liable to the other for any indirect and/ or consequential damages as well as loss of production, loss of overheads or profits in any manner or form arising from the execution of this Agreement, irrespective of whether such liability may be based on contract, tort (including negligence) or otherwise.
- 8.4 The Parties undertake to indemnify, defend and hold the other Party/ Parties harmless against any and all proceedings, actions and, third party claims for loss, damage and expense of whatever kind and nature arising out of the execution of the Project or arising out of a breach by such Party of any of its

obligations under this Agreement /Project Development and Implementation Agreement.

8.5 This Agreement is personal to the Parties hereto and neither Party shall assign their respective rights, benefits and obligations hereunder except as otherwise expressly prior agreed to in writing by the other Party.

#### 9.0 REPRESENTATIONS AND WARRANTIES

Each of the Parties hereby represents and warrants that:

9.1 Each is a legal entity duly organized and validly existing under the laws of the jurisdiction in which incorporated and has the corporate power and /or authority to carry on its business and/or perform its functions;

9.2 Each has all the necessary power and authority to execute and deliver this Agreement. The execution and delivery of this Agreement has been duly and validly authorized and no proceedings on their part are pending to authorize execution of this Agreement;

9.3 The execution and delivery of this Agreement does not and will not; (i) contravene any provisions of the respective Memorandum and Articles of Association; (ii) result in a default, breach or contravention of any conditions or provisions of any material document or obligation to which it is a party; or (iii) violate any law, order, writ, judgment, injunction, decree, statute, ordinance, rule or regulation applicable to it;

9.4 Each Party has all the necessary consents, licenses and approvals in connection with the entry into and performance of its obligations under this Agreement or shall procure the same in due course when required;

9.5 The recitals to this Agreement are true and accurate in so far as the recitals relate to the Parties;

- 9.6 The Parties hereto confirm the enforceability of these presents inter-se;
- 9.7 This Agreement is personal to the Parties hereto and none of them shall assign their respective rights, benefits and obligations hereunder except as otherwise expressly agreed in writing by the Parties;
- 9.8 Each Party has read and understood the RFP Document and each Party confirms that it is qualified and eligible to be a Member of the Consortium and that it has not been barred by FKL from participating in bidding for the Project; and
- 9.9 Nothing in this Agreement grants a right for any Party to use the name, trademark or logo script or the name of any Affiliate thereof.

10.0 NOTICES

- 10.1 Any notice or other communication to be given under this Agreement shall be given in writing by personal delivery or facsimile transmission as follows or as may be communicated in writing by either Party to the other from time to time:

If to \_\_\_\_\_(Lead Member)

-----  
-----

If to \_\_\_\_\_(Other Member 1)

-----  
-----

If to \_\_\_\_\_(Other Member 2)

-----  
-----

11.0 PRECEDENCE OF RFP DOCUMENT

11.1 The Parties agree and undertake to comply with all the requirements as per the RFP Document. In case of any conflict between the provisions of the RFP Document and this Agreement, the provisions of the RFP Document shall prevail. The Parties further agree that to the extent such provisions of the RFP Document, as are required to be included in this Agreement but not included herein, the same shall be deemed to be incorporated and forming a part of this Agreement .

#### 12.0 ENTIRE AGREEMENT

12.1 This Agreement shall constitute the entire agreement and understanding between the Parties hereto with respect to the subject matter and supersedes all prior agreement and understanding between the Parties for the Project, whether express or implied. No amendment to this Agreement shall be valid and binding on the Parties unless the same is in writing and duly signed by authorized signatory of the respective Parties. \_\_\_\_, \_\_\_\_ and \_\_\_agree and undertake to amend the Agreement to the extent the provisions/requirements of the RFP Document need to be incorporated in the Agreement for the purpose of successful submission of the Bid.

#### 13.0 GOVERNING LAW & COMPETENT JURISDICTION

13.1 This Agreement shall be subject to and construed in accordance with the laws of India. Subject to Clause 14 below of this Agreement, the Parties hereby submit for all purposes in connection with this Agreement to the exclusive jurisdiction of the courts in India. This Clause 13 shall survive the expiry of this Agreement.

#### 14.0 DISPUTE RESOLUTION

14.1 The arbitration proceedings shall be governed by the Arbitration and Conciliation Act of 1996 or any statutory modification or re-enactment thereof for the time being in force (the "Arbitration Act"). Either Party to the dispute shall be entitled to apply to the appropriate court in \_\_\_\_\_, India for

interlocutory relief in respect of or during the course of the arbitration. The arbitration shall be held at \_\_\_\_\_in the following manner:

- a) All proceedings in any such arbitration shall be conducted in English.
- b) There shall be three (3) arbitrators, all of whom shall be fluent in English. Within fifteen (15) days of the reference of the dispute to arbitration, the Party raising the dispute and making the reference to arbitration shall appoint one arbitrator and the other Party shall appoint the other arbitrator. The third arbitrator shall be appointed by the two (2) appointed arbitrators within thirty (30) days of the appointment of the last arbitrator.
- c) The arbitration award made by all or a majority of the arbitrators shall be final and binding on the Parties and the Parties agree to be bound thereby and to act accordingly.
- d) The provisions of this Clause shall survive the termination of the Agreement.

## 15.0 VALIDITY OF THE AGREEMENT

15.1 This Agreement all the provisions hereof shall automatically be terminated on the date of the occurrence of the earliest of any one of the following events:

- a. The Bid of the Consortium being rejected by Agreement;
- b. Any Party is declared as insolvent by a court of competent jurisdiction; or
- c. The Project being cancelled by FKL;
- d. Upon the setting up of the SPV and entering into the shareholders agreement between the Consortium members.

15.2 The validity of the Agreement may be suitably extended by such period(s) as may be mutually agreed between the Parties in writing.

IN WITNESS WHEREOF the Parties have caused the execution of this Agreement by their duly authorized representatives on the day and year first set forth above.

SIGNED AND DELIVERED :

For and on behalf of

-----

-----

Witness:

-----

Name

-----

Signature

SIGNED AND DELIVERED :

For and on behalf of

-----

-----

Witness:

-----

Name

-----

Signature

SIGNED AND DELIVERED :

For and on behalf of

-----

-----

Witness:

-----

-----

Name

Signature