

**PROJECT DEVELOPMENT AND IMPLEMENTATION
AGREEMENT**

Between

Food Karnataka Limited

And

Table of Contents

Article	Contents	Page
1	Definitions & Interpretations	4
2	Development and implementation of the Project	13
3	Obligations of Developer	18
4	Obligations of FKL	28
5	Force Majeure	29
6	Events of Default and Termination	33
7	Dispute Resolution	39
8	Representations, Warranties and Disclaimer	41
9	Miscellaneous	43

Schedule

1	Details of Project Site	50
2	Performance Security	52
3	Project Development Plan	55
4	Construction Specifications & Performance Standards	56
5	Matter requiring of Approval of Nominee Directors	58
6	Scope of work of Independent Engineer	60

This **AGREEMENT** made on this the day of, Two Thousand and Nine at Bangalore,

AMONGST

Food Karnataka Limited, a Government of Karnataka Undertaking having its office at 'Khanija Bhavan', 4th Floor, East Wing, No.49, Race Course Road, Bangalore-560001, hereinafter referred to as "**FKL**" which expression shall unless repugnant to the context include the successors and assigns,

AND

_____ a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____, hereinafter referred to as "**Developer**" which expression shall unless repugnant to the context include the successors and permitted assigns,

WHEREAS,

- A. Government of Karnataka (GoK) has established the Food Karnataka Limited (FKL) with an objective to formulate exclusive policies for the agro food processing industries. FKL intends to develop a Spice Park in and has identified about 120 acres land bearing survey Nos. at Byadagi in Haveri District, Karnataka (more fully described in the site plan attached at Schedule 1) for the setting up of a Spice Park ('the Project').
- B. The aforesaid land has to be acquired under relevant land acquisition laws by the Government of Karnataka agency concerned and subsequently made available for development of the Project.
- C. With an objective to seek private sector participation in the development of the Project, FKL invited competitive proposals from interested parties, inter alia, to develop, design, engineer, finance, construct, market, operate & maintain and manage the same on the terms and conditions contained in this Agreement.

- D. Pursuant to the evaluation of the proposals that were received, FKL accepted the proposal submitted by _____ and a Letter of Acceptance (LoA) bearing No. _____ dated _____ was issued to the Developer.
- E. In accordance with the conditions set out in the Request for Proposal (RfP) document, the Successful Bidder has submitted its proposal agreeing to meet the cost of acquisition of land and pay to the concerned Government Agency such costs towards land acquisition including, development and administrative charges.
- F. FKL acknowledges that as on this day, the Developer has submitted an irrevocable revolving bank guarantee for a value of Rs. lakhs (Rupeeslakhs only) as Performance Security.
- G. The Consortium¹ has since promoted and incorporated the Developer as a company under the Companies Act, 1956 and has requested FKL to accept the Developer as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation of entering into the Project Development and State Support Agreement pursuant to the LOA for executing the Project.
- H. In pursuance to the above, FKL is executing this Agreement to authorise the Developer to develop, design, engineer, finance, construct, market, operate & maintain and manage the Project in accordance with terms, conditions and covenants hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH AND IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

ARTICLE 1
DEFINITIONS & INTERPRETATIONS

1.1 Definitions

In this Agreement, except to the extent that the subject or context otherwise requires, the following expressions shall have the following meanings:

¹ Would be suitably modified for a Single Entity

“Agreement” means this Project Development and State Support Agreement as of the date hereof as may be amended or supplemented or modified in accordance with the provisions hereto.

“Agreement Period” means the period for which the Developer will be granted rights in accordance with Article 2.7 and other terms and conditions set out in this Agreement for implementing the Project.

“Applicable Laws” means any statute, law, ordinance, notification, rule, judgment, order, decree, bye-law, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, by any Government Agency or instrumentality thereof having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter.

“Applicable Permits” means all clearances, permits, authorisations, permissions, consents, licenses, no-objections and approvals required to be obtained or maintained under or pursuant to Applicable Laws, in order to implement the Project during the subsistence of this Agreement.

“Appointed Date” means the date of this Agreement.

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

“Book Value” shall mean the value of the capital expenditure incurred on the Project as per the books of the Developer, net of depreciation charged on the basis of straight line method and amortized equally over the Agreement Period, duly verified and certified by an independent auditor/independent engineer in accordance with IGAAP (Indian Generally Accepted Accounting Principles)

“Contractor” means the contractor or contractors with whom the Developer has entered into or shall enter into appropriate agreements for the purpose of development and implementation of the Project.

“Consortium Members” shall mean M/s_____ (Lead Member), M/s_____ (Other Member) and M/s_____ (Other Member).

“Construction Requirements” shall mean the requirements as to construction of the Project Facilities set out in Schedule 4.

“Developer” means the company incorporated under the Companies Act, 1956 by the successful bidder for the purpose of development and implementation of the Project.

“Development Charges” means all charges, costs, fees, tariff, rentals, lease rentals and other amounts by whatever name called, payable to Developer by the Transferees and other Persons, pursuant to this Agreement, for the purpose of rendering of services by the Developer and utilisation of the Project Facilities by such Transferees and other Persons, at any time and from time to time in relation to the Project.

“Effective Date” means the date jointly certified by the Parties pursuant to Article 2.4.1 (ii).

“Encumbrance” means any encumbrance such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site.

“Financial Assistance” means the aggregate amount provided to the Developer by way of loan, lease finance, advances, guarantees, refinancing or otherwise by the Senior Lenders for the implementation of the Project and shall include all facilities and services relating thereto.

“Financial Closure” means the period of 6 (six) months from the Appointed Date during which all of the following have been achieved namely (i) the Financing Documents under which the Senior Lenders shall provide the Financial Assistance have become effective and the Developer has immediate access to such funding; and (ii) the Developer gets legally binding commitments from the Successful Bidder to subscribe to the equity share capital in accordance with the terms of the Shareholders Agreement.

“Financing Documents” means the documents evidencing Financial Assistance to be provided by the Senior Lenders to the Developer by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the total project cost.

“Spice Park” means an industrial park exclusively for the spice processing industry and offers tiny, medium and large scale entrepreneurs a range of facilities, such as, product development center, pilot plant with machinery for the spice processing industry, warehouse for incoming and finished goods, cold storage facility, an effluent treatment plant and water, electricity and diesel powered generator. The services provided by the park shall range from soil testing, nursery, farm machinery, fertilizers, crop protection, storage and processing to market linkages, farm credit and exports.

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Article 5.

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

“Government Agency” means any governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, central, state, or local, having jurisdiction over the performance of its obligations by the Parties under this or pursuant to this Agreement and in matter or matters related to the Project.

“Land Cost” means the cost towards acquisition of the Project Site payable by the Developer to the Government Agency concerned in accordance with the terms of this Agreement and Applicable Laws.

“Mandatory Facilities” means all facilities mandatorily required to be provided by the Developer including necessary infrastructure and common facilities such as cold

storage, warehousing, dry/wet processing, packaging, quality control laboratory, business centre, effluent treatment plan and such other facilities as set out in the Construction Requirements in Schedule 4.

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

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

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

“Performance Security” means the bank guarantee dated _____ from _____ for an amount of Rs. lakhs (Rupees lakhs only), copy of which is attached as Schedule 2.

“Person” unless specifically provided otherwise, shall mean any corporation, partnership, joint venture, trust or Government Agency as the context may admit.

“Project” means design, financing, development, procurement, engineering, construction, operation, maintenance, marketing and management of the Spice Park at, in accordance with the provisions of this Agreement.

“Project Development Plan” means the development plan, including the project cost estimates and schedule of implementation, to be submitted by Developer as required under Article 3.3

“Independent Engineer” means a company or a body corporate appointed in accordance with Article 4 for supervision and monitoring of Project Facility, more particularly to undertake, perform, and carry out the duties, responsibilities, services and activities set forth in Schedule 6.

“Project Facility” means the Mandatory Facilities and such other facilities that may be provided within the Project Site by the Developer in accordance with the Project Development Plan and Applicable Laws.

“Project Site” means the land admeasuring about 120 acres at bearing Survey Nos. _____ at Byadagi in Haveri District, Karnataka and more fully described in the site plan attached at Schedule 1.

Project Support or “State Support” means an interest free non-refundable financial assistance extended by FKL and includes all financials/funding for the purposes of the Project.

“SBI PLR” means the prime lending rate per annum for loans with 1(one) year maturity as fixed from time to time by the State Bank of India or any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties.

“Scheduled Project Completion Date” means the date not later than the second anniversary of the Effective Date, by which date the Developer completes the overall development of Spice Park in accordance with the provisions of this Agreement.

“Senior Lenders” means financial institutions, banks and multilateral lending agencies who have agreed to guarantee or provide finance to the Developer under any of the Financing Documents for meeting all or any part of the Total Project Cost and who hold *parri passu* charge on the assets, rights, title and interests of the Developer.

“Successful Bidder” means _____³

“Termination” means early termination of this Agreement, pursuant to Termination Notice or non-fulfilment of Condition Precedent or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

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

² Suitably to be modified if negative grant is offered by the successful bidder.

³ Name of the bidder (Single Entity or Consortium Members) who has been successful in the bid process

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

“Termination Payment” means the amount payable by either Party, as the case may be, under this Agreement upon Termination.

“Transferees” means either individually or collectively, as the context may admit or require the sub-lessees, licensees, tenants claiming through or under them, and any other Person, utilising the Project Facilities and Project Site under appropriate contractual arrangements with the Developer.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. references to Applicable Law shall include the laws, Acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- c. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- d. terms and words beginning with capital letter and defined in this Agreement shall have the meaning ascribed thereto herein, and terms and words defined in the Schedule and used therein shall have the meaning ascribed thereto in the Schedule;
- e. the headings are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

- f. the words "include" and "including" are to be construed without limitation;
- g. references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- h. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- i. any reference to day shall mean a reference to a calendar day;
- j. any reference to month shall mean a reference to a calendar month;
- k. reference to an individual shall include his legal representatives, successors, legal heirs, executor and administrator;
- l. the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- m. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- n. references to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- o. any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party, in this behalf and not otherwise; and

- p. unless otherwise stated, any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates.

1.3 Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done to 2 decimal places, with the third digit of 5 or above being rounded up and below 5 being rounded down.

1.4 Ambiguities and Discrepancies

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a. between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b. between the written description on the drawings and the specifications and standards, the latter shall prevail;
- c. between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail; and
- d. between any value written in numerals and that in words, the latter shall prevail.

1.5 Priority of Documents

The documents forming part of the bidding process leading to this Agreement shall be interpreted in the following descending order of priority:

- a. This Agreement
- b. Schedules to this Agreement
- c. Letter of Acceptance issued to the Successful Bidder
- d. Bid of the Successful Bidder
- e. Written clarifications issued to the bidders
- f. Written addendum to the RfP
- g. The RfP

ARTICLE 2

DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT

2.1 Developer's Rights

- a. Subject to and in accordance with the terms and conditions set forth in this Agreement, FKL hereby authorises the Developer to invest, design, engineer, construct, commission, operate, market, maintain and manage the Project during the Agreement Period.
- b. Upon the lease having been granted to the Developer by the Government Agency concerned, for the purpose of implementing the Project, Developer shall have the rights, powers, benefits, privileges, authorisations and entitlements, to utilise the Project Site for the purposes of the Project, hold, occupy, enter upon, use, transfer, market and allot portion or portions of Project Site to the Transferees by way of sub-lease, grant of licences, letting and sub-letting, establish the Project Facilities, undertake development, construction and improvement therein or thereon, as may be necessary or appropriate to manage the Spice Park and the right to demand, retain, appropriate and collect Development Charges from the users of the Project Facilities and Project Site in accordance with the provisions of this Agreement.
- c. Subject to the terms of this Agreement and other relevant provisions under Applicable Laws, the Developer shall have the right to enter into agreements with such Persons as it may deem necessary and appropriate, for performing its obligations under this Agreement.
- d. The Developer may create Encumbrance on the Project Site in favour of Senior Lenders, in part or whole, or any rights of the Developer therein and hereunder or transfer or part possession therewith in accordance with the terms of this Agreement. The Developer agrees that during the Agreement Period the second charge over the Project Site including the assets developed thereon shall be that of FKL.

- e. During the Agreement Period, the Developer shall have exclusive authority to develop and implement the Project in accordance with the provisions of this Agreement.

2.2 Acceptance by Developer

In consideration of the rights, privileges and benefits conferred upon and other good and valuable consideration expressed herein, the Developer hereby accepts and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

2.3 Transfer of Project Site

- a. Subject to the Developer making payment of the Land Cost, FKL shall assist the Developer in obtaining the Project Site on lease cum sale basis from the Government Agency concerned.
- b. Before the Transfer of Project Site, FKL and Developer shall conduct a joint survey of the Project Site; agree to the exact area of the Project Site to be made available to the Developer.
- c. The stamp duty and registration charges in respect of this Agreement including the costs, charges and expenses of attorneys/consultants of FKL shall be borne and paid wholly and exclusively by the Developer.

2.4 Conditions Precedent

- a. Save and except as may otherwise be expressly provided herein, the obligations of FKL under this Agreement shall be subject to the satisfaction in full of the conditions precedent ("Conditions Precedent").

The Successful Bidder shall have:-

Achieved Financial Closure and provided to FKL notarised true copies of the Financing Documents along with soft copies;

Caused to make the Developer all applications for obtaining necessary approvals for implementation of the Project.

Obtained due authorisation from the Government agency concerned for use of the Project Site for implementing the Project.

The obligation of the Successful Bidder under this Agreement shall be limited to the achievement of Clause (i) to(ii) above.

FKL shall assist the Developer in entering into a contractual arrangement for obtaining the Project Site.

2.4.1 Obligations to Satisfy Condition Precedent

The Parties shall make all reasonable efforts at its cost and expense to achieve the fulfillment of Condition Precedent within a period of 6 (six) months from the Appointed Date.

The later of the date, within such period, when the Parties fulfill the Conditions Precedent shall be the Effective Date, as jointly certified in writing by the Parties/their authorized representatives forthwith upon such fulfillment, hereupon the obligations of the Developer for implementation of the Project under this Agreement shall commence.

2.4.2 Non-fulfillment of Conditions Precedent

- i. In the event the Conditions Precedent have not been fulfilled within the stipulated time and either of the Parties has not waived, fully or partially, such conditions, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party, shall subsequently have any right or obligation under this Agreement. If the Agreement is terminated due to non-fulfillment of Condition Precedent by the Successful Bidder, FKL shall be entitled to forfeit the Performance Security. Further, FKL shall not be liable in any manner whatsoever to the Successful Bidder, Developer or Persons claiming through or under it.

2.5 Rights and Use of the Project Site

Pursuant to Article 2.3, the Developer shall have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigations and development activities (including but not limited to land filling, levelling, clearing, shifting of utilities, landscaping and related works including overcoming site constraints, if any) and any other activity as may be necessary or appropriate to implement the Project. In the event of termination of this Agreement due to non-fulfilment of Conditions Precedent, FKL shall have no liability to make any payment for the activities undertaken by the Developer in the Project Site.

Subject to the terms of this Agreement, the Developer shall have the right to develop, create, obtain, set up, construct as the context admits or requires, and operate and maintain the Project Facility by itself or through its Contractors.

The Developer shall be entitled to grant sub-lease, license, let out portion or portions of the Project Site in favour of Transferee in accordance with the provisions of this Agreement.

The Developer shall have the right to the use of the Project Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry into and use of the same by third parties.

FKL shall have the right, either directly or through its representatives, to enter the Project Site during working hours with prior intimation to the Developer so as to inspect the physical progress of the works undertaken by the Developer during development and implementation of the Project and to verify its books of accounts, bank transactions etc.

Developer shall ensure that the terms and conditions under which the Developer's rights to possess and use of the Project Site and Project Facilities are passed on to its sub-lessees, licensees, tenants, or by whatsoever name called, are not inconsistent or in derogation of any terms or provisions of this Agreement. Before entering into the first such sub lease deed/licence agreement/subletting agreements, the Developer shall submit to FKL a template of the sub lease deed/licence agreement/subletting agreements

and obtain prior written approval of FKL for such template. The approved template of the sub lease deed/licence agreement/subletting agreements shall be utilised by the Developer. Within 15 (fifteen) days of execution of the sub-lease agreement, attested true copy of the same shall be submitted by the Developer to FKL.

Developer shall not without the prior written approval of FKL use the Project Site for any purpose other than for the purpose of Spice Park and purposes incidental or ancillary thereto.

2.6 Term of Agreement

This Agreement shall be valid and binding on the Parties throughout the period commencing from the Appointed Date and ending with the earlier of :

- (i) expiry of 10 (ten) years from the Appointed Date or
- (ii) till such date the Developer has established 20 (twenty) Spice Processing Industries within the Project Site

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

ARTICLE 3 OBLIGATIONS OF DEVELOPER

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

3.1 Performance Security

- a. For due and punctual performance of its obligations under this Agreement, relating to the Project, the Developer has delivered to FKL, simultaneously with the execution of this Agreement, a bank guarantee from a scheduled bank acceptable to FKL, ("Performance Security) for a sum of Rs. 140 lakh /- (Rupees One hundred and Forty lakh only).
- b. The Performance Security shall be kept valid during the Agreement. Period. Provided that if the Agreement is terminated due to any event other than Developer Event of Default, the Performance Security, if subsisting as of the Termination Date shall, subject to FKL's right to receive amount, if any, due from the Developer under this Agreement, be duly discharged and released to the Developer.

3.2 Financing Arrangement

Developer shall at its cost; expenses and risk make such financing arrangement as would be necessary to develop and implement the Project and to meet all of its obligations under this Agreement, in a timely manner.

3.3 Project Development Plan

The Developer shall prepare a Project Development Plan in accordance with the business plan submitted along with its bid and also include therein the requirements set out in Schedule 3 and comply with the Project Development Plan at all times. While implementing the Project significant deviations from the Project Development Plan shall not be made by the Developer without prior written consent of FKL.

3.4 Project Implementation

- a. The Developer shall develop the Project Facility in accordance with the Project Development Plan and in accordance with Construction Requirements. The Project Development Plan shall comply with the National Building Code of India 2005 and minimum quality of construction as stipulated by Bureau of Indian Standards and Indian Road Congress as may be amended from time to time.
- b. The Developer shall adhere to the Construction Requirements and complete the construction works before the Scheduled Project Completion Date.
- c. The Developer shall utilize the Project Support provided by FKL only for the purpose of financing the Project and shall submit to FKL a comprehensive quarterly financial report duly attested by its statutory auditor.
- d. The Developer may undertake construction works by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability; but in either case, the Developer shall remain solely responsible to meet the Construction Requirements and O&M Requirements.
- e. The development of the Mandatory Facilities shall not exceed the Scheduled Project Completion Date.
- f. For this purpose, Developer shall undertake all necessary activities such as designing, planning, developing, financing, constructing, marketing, operating and maintaining the Project Facilities and the Project Site, including making allotment to the Transferees in the Project Site in accordance with the provisions of this Agreement and as per Good Industry Practice. In order to comply with the recommendations of Smt. Sarojini Mahishi Committee, the Developer shall make preferential allotment of the plots within the Project Site to women entrepreneurs of Karnataka and shall ensure that at least 80% of persons employed by it are Kannadigas and the entire Group C and D category employees are Kannadigas.
- g. For the purposes of determining whether the construction works are being undertaken in accordance with the Construction Requirements, the Developer shall with due diligence carry out all necessary and periodical Tests in accordance with the Construction Requirements. The Developer shall maintain proper record of such tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.
- h. The Developer shall appoint a statutory auditor in consultation with FKL and the statutory auditor so appointed shall not be removed without the prior

consent of FKL. All fees and expenses payable to the statutory auditor shall be borne by the Developer.

- i. The Developer shall adhere to Applicable Laws and obtain and maintain Applicable Permits required in connection with implementation of the Project.
- j. The Developer shall include suitable covenants in the contracts with the Transferees so as to ensure that they perform their obligations under this Agreement without in any way relieving the Developer of its liability in this behalf. However, the Developer shall be liable to comply with Applicable Laws and shall keep FKL indemnified from all liabilities and costs in case of default or breach by Developer and its Transferees.
- k. In terms with the provisions of this Agreement, the Developer shall make timely payment to FKL⁴.

3.5 Operation and Maintenance

- a. The Developer shall operate and maintain the Project Facility in accordance with Good Industry Practice and Applicable Laws.
- b. The Developer shall, by itself or through a Contractor possessing requisite technical, financial and managerial expertise/capability, operate and maintain the Project Facilities, but in either case, the Developer shall remain solely responsible to meet the requirements of the Project.
- c. The Developer shall:
 - (i) have requisite organization and designate and appoint suitable officers/ representatives as it may deem appropriate to supervise the Project Facilities, to deal with FKL and to be responsible for all necessary exchange of information required pursuant to this Agreement;
 - (ii) For the purposes of determining that the Project Facilities are being maintained in accordance with Good Industry Practice and Applicable Laws, the Developer shall with due diligence carry out all necessary and periodical Tests in accordance with the Applicable Laws. The Developer shall maintain proper record of such Tests and the remedial measures taken to cure the defects or deficiencies, if any, indicated by the Test results.

⁴ To be suitably modified in case of Project Support required by the Developer as per Financial Bid

- d. In the event the Developer has failed to operate and maintain the Project Facilities in accordance with Good Industry Practice and Applicable Laws, and such failure has not been remedied despite a notice to that effect issued by FKL (“Notice to Remedy”), the Developer shall be deemed to be in Material Breach of the Agreement.
- e. FKL, acting reasonably and in accordance with the provisions of this Agreement, determines that due to breach of its obligations by the Developer,
 - (i) the maintenance of the Project Facilities or any part thereof has deteriorated to a level which is below the acceptance level by FKL; and
 - (ii) there has been a serious or persistent breach in adhering to the requirement of the Project and thereby the Project Facilities or any part thereof are not safe for operations;
- f. Upon occurrence of Material Breach of requirements of the Project, FKL shall, without prejudice to and notwithstanding any other consequences provided under this Agreement, be entitled to terminate this Agreement. For avoidance of doubt, persistent breach shall mean:
 - (i) any breach of requirements of the Project by the Developer which has not been remedied by the Developer despite a Notice to Remedy in respect thereof issued by the FKL;
 - (ii) recurrence of a breach by the Developer, during the pendency of Notice to Remedy by the FKL requiring the Developer to remedy a breach, and
 - (iii) Repeated occurrence of a breach, notwithstanding that earlier breaches have been remedied pursuant to Notice to Remedy or otherwise.

3.6 Shareholding of the Developer⁵

- a. The Developer was incorporated on _____and its shareholding as on the Appointed Date is as follows:

Name of Consortium Members	Percentage Shareholding
Lead member	
Other Member	
Other Member	

⁵ If the Developer is a single entity, this clause needs to be suitably modified

- b. The Developer having been set up for the sole purpose to exercise the rights and observing and performing its obligations and liabilities under this Agreement, the Developer hereby undertakes and agrees to comply with the following conditions

The Consortium Members 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:

The Lead Member shall hold a minimum equity stake of 51% of the shareholding in the equity capital of the Developer during the Agreement Period. In the interim period, they may reduce the equity stake in exceptional circumstances and only after prior approval by FKL;

In the event of non-compliance of the above, the same shall constitute an event of default by Developer and FKL shall be entitled to terminate this Agreement in accordance with Article 6.

FKL reserves the right to appoint a maximum of two nominees (Nominee Directors) to the Board of Directors of the Developer. The Nominee Directors may continue to be on the Board of Directors of the Developer during the Agreement Period. The Developer shall ensure that the Nominee Directors be involved in all decision making process during development and implementation of the Project. For avoidance of doubt it is made clear that in particular all the decisions with reference to matters listed in the Schedule 5 shall be taken only in the meetings of the Board of Directors of the Developer which is attended and consented by at least one of the Nominee Directors. A copy of the proceedings of such meetings of the Board of Directors shall be sent to FKL within 15 (fifteen) days of the date of the meeting. The Developer shall bear all the expenses for travel, boarding and other incidental charges of the Nominee Directors for attending meetings. In the event of the Developer constituting any committee of the Board of Directors, it shall ensure that at least one Nominee Director is appointed as a member of such committee(s).

3.7 Insurance

At all times during the period of this Agreement, Developer shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, all insurances in respect of the Project Site and Project Facility in accordance with the Good Industry Practice.

3.8 Environmental Compliance

At all times, Developer shall ensure that the processes employed in the construction, operation and maintenance thereof, for the Project is in compliance to the Applicable Laws pertaining to environment, health and safety aspects including, policies and guidelines related thereto.

3.9 General Obligations

The Developer shall at its own cost and expense:

- a. procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- b. make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies FKL against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall FKL be treated as employer in this regard;
- c. make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- d. ensure that the Project Site remains free from all encroachments and take all steps necessary to remove encroachments, if any; and
- e. Pay all taxes, duties and outgoings, including utility charges relating to the Project.

3.10 Payment Obligations

In consideration of the grant of rights, the Developer seeks Project Support/ offers Negative Grant as mentioned below (Only one of Clause 3.10 a or 3.10 b would be retained):

a. Project Support

FKL agrees to pay a sum of Rs. _____as Project Support to the Developer to be disbursed in the following manner:

Payment Schedule

Installment	Project Support	Milestones
First	First installment of 25% subject to fulfilling the I Milestone	I Milestone- Construction of roads and utilities such as water supply, sewerage treatment plant, garbage treatment plant, overhead tank and electric substation.
Second	Second installment of 25% subject to fulfilling the II Milestone	II Milestone – Construction of specialised utilities such as warehousing, cold storage, weighbridge, quality control lab.
Third	Third installment of 25% subject to fulfilling the III Milestone	III Milestone – Establishment of 20 (twenty) industrial units of minimum 0.5 acres each.
Fourth	Fourth installment of 25% subject to fulfilling the IV Milestone	IV Milestone – Construction of social amenities such as, administrative building, auditorium, R & D centre, canteen, security and fire station.

Or

The Project Support shall be released by FKL to the Developer subject to written request from the Developer duly authorised by its Board of Directors. The written request shall also specify the account and bank to which the disbursement of the Project Support is to be credited. The request for instalment of Project Support shall be duly supported by a certificate of the statutory auditor certifying therein that the required milestone is achieved by the Developer and the Developer is entitled to seek drawdown of the Project Support in accordance with the provisions of this Agreement and the Financing Document.

OR

b. Negative Grant

The Developer acknowledges and agrees that as set forth in the Financial Bid, it shall pay Negative Grant to FKL in the following manner:

- i. On the Appointed Date, an amount of Rs._____-/- (Rupees_____only) (equal to ____% of the Negative Grant);
- ii. On the 1st Anniversary of the Effective Date, an amount of Rs._____-/- (Rupees_____only) (equal to ____% of the Negative Grant);
- iii. On the 2nd Anniversary of the Effective Date, an amount of Rs._____-/- (Rupees_____only) (equal to ____% of the Negative Grant);
- iv. On the 3rd Anniversary of the Effective Date, an amount of Rs._____-/- (Rupees_____only) (equal to ____% of the Negative Grant).

In the event that the returns (on a discounted cash flow basis) from sub-lease, licence and sub-letting of each acre of the developed Project Site exceeds 5 (five) times, the Land Cost, the Developer shall pay to FKL, an amount equal to 50% (fifty per cent) of the additional amount so received from the Transferee. For avoidance of doubt, if at the time of acquisition, the Developer has paid to the Government Agency, Land Cost of Rs.3 lakhs per acre, and the Developer receives (on a discounted cash flow basis) an amount more than Rs. 15 lakhs for each acre of developed land, the Developer shall then pay to FKL 50% of the sum received above Rs.15 lakhs.

All payments by the Developer to FKL shall be by means of demand draft in favour of FKL and drawn on a scheduled bank payable at Bangalore on or before the due date.

In the event of a delay of more than 15 (fifteen) days from the due date in payments to FKL interest on the amount due @ SBI PLR plus 2% (two percent) from the date due till final realisation.

3.11 No Breach of Obligations

The Developer and Successful Bidder shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a. Force Majeure Event, subject to Article 5.3;
- b. FKL Event of Default; Compliance with the directions of any Government Agency other than instructions issued as a consequence of a breach by the Developer;
- c. of any of its obligations hereunder; and
- d. Closure of the Project Facilities or part thereof with the approval of the FKL.

3.12 Maintenance Fund

- a. For the purpose of ensuring sufficient funds for the maintenance, replacement and repairs relating to the Project Facilities, the Developer shall, within 6 (six) months of the Effective Date, settle a trust (the Maintenance Fund) with a corpus of 2 % (two percentage) of the project cost in accordance with Financial Close or audited by an Independent Auditor appointed by FKL. The constitution and other relevant details of and documentation relation to the Maintenance Fund shall be finalised by the Developer in consultation with FKL.
- b. The monies in the Maintenance Fund shall only be utilised for the maintenance, repairs and replacement of the Project Facilities. Such fund shall be maintained during the Agreement Period. Upon the expiration of such period or the prior termination of this Agreement, such fund shall be transferred to and vest in the entity taking over the Project and until such

time as such entity is determined/located, such fund shall be held in trust by the FKL for and on behalf of such entity.

- c. The trustees of the Maintenance Fund shall include one representative each of the FKL, the Developer and the Transferees, with the representative of the FKL being the chairman of the board of trustees with a casting vote in case of a tie. Such trustees shall be responsible for the affairs and the administration of the Maintenance Fund.

ARTICLE 4
OBLIGATIONS OF FKL

- 4.1 In addition to and not in derogation or substitution of any of its other obligations under this Agreement, FKL shall have the following obligations:
- a. grant and/or assist the Developer in procuring all such approvals, permissions and authorisations which the Developer may require or is obliged to seek under this Agreement in connection with development of the Project and the performance of its obligations hereunder;
 - b. upon written request from the Developer, facilitate the Developer in obtaining necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Developer than those generally available to commercial customers receiving substantially equivalent facilities/utilities; and
 - c. FKL shall observe and comply with all its obligations set forth in this Agreement.
 - d. FKL shall appoint an Independent Engineer to monitor the progress of development of infrastructure facilities and other amenities in the Project Site during the Agreement Period, as per the scope of work set out in Schedule 6.

ARTICLE 5
FORCE MAJEURE

5.1 Force Majeure Event

5.1.1 For the purpose of this Agreement, Force Majeure Event means any of the Events, set out below including the impact/consequence thereof which is beyond the control of the Party claiming to be affected thereby (the “Affected Party”), causes Material Adverse Effect and prevents the Affected Party from performing or discharging its obligations under this Agreement; and the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

- a. earthquake, flood, inundation, landslide;
- b. storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c. fire caused by reasons not attributable to the Developer or any of the employees or agents of the Developer;
- d. acts of terrorism;
- e. strikes, boycotts, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Developer;
- f. war, hostilities (whether war be declared or not);
- g. invasion, act of foreign enemy, rebellion, riots, weapon conflict or military actions, civil war;
- h. ionising radiation, contamination by radio activity from nuclear fuel, any nuclear waste, radioactive toxic explosion;
- i. volcanic eruptions;

- j. action of authorities having Material Adverse Effect including but not limited to :
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project/ Project Facility or any part thereof;
 - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Developer in any proceedings which is non-collusive and duly prosecuted by the Developer;
 - iii. any unlawful, unauthorised or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than Developer's breach or failure in complying with the Project requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Developer.

5.2 Notice of Force Majeure Event

- a. As soon as practicable and in any case within 7 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Affected Party shall notify the other Party of the same setting out, inter alia, the following in reasonable detail:
 - i. the nature and extent of the Force Majeure Event;
 - ii. the estimated Force Majeure Period;
 - iii. the nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event;
 - iv. the measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby; and
 - v. any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.
- b. As soon as practicable and in any case within 5 days of notification by the Affected Party in accordance with the preceding Sub-article 5.2 (a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Facility in order to:

- i. assess the impact of the underlying Force Majeure Event;
 - ii. to determine the likely duration of Force Majeure Period; and
 - iii. to formulate damage mitigation measures and steps to be undertaken by the Parties for resumption of obligations, the performance of which shall have been affected by the underlying Force Majeure Event.
- c. The Affected Party shall during the Force Majeure Period provide to the other Party with regular (not less than fortnightly) reports concerning the matters set out in the preceding Sub-article 5.2(b) as also any information, details or document, which the Parties may reasonably require.

5.3 Performance of Obligations

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

- a. due notice of the Force Majeure Event has been given as required by the preceding Article 5.2;
- b. the excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. the Affected Party has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facility as a result of the Force Majeure Event and to restore the Project Facility, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- d. when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;

- e. the Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- f. any insurance proceeds received shall, subject to the provisions of Financing Documents, be entirely applied to repair, replace or re-instate the assets damaged on account of the Force Majeure Event, or in accordance with Good Industry Practice.

5.4 Liability for other losses, damages etc.

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

ARTICLE 6
EVENTS OF DEFAULT AND TERMINATION

6.1 Events of Default

Event of Default shall mean either Developer Event of Default or FKL Event of Default or both as the context may admit or require.

a. Developer Event of Default

Any of the following events shall constitute an Event of Default by the Developer ("Developer Event of Default") unless such event has occurred as a result of one or more reasons set out in Article 3.11.

- i. The Developer has failed to implement the Project in accordance with the provisions of this Agreement and such failure, in the reasonable estimation of FKL, is likely to delay achieving Scheduled Project Completion Date.
- ii. The Developer has failed to achieve the Scheduled Project Completion Date and more than 60 days elapsed since the Scheduled Project Completion Date.
- iii. The Developer does not adhere to the Construction Requirements as mentioned in Schedule 4 of the PDIA.
- iv. The Developer ceases to have any rights over the Project Site in accordance with the contractual arrangement entered into between the Developer and Government Agency concerned.
- v. The Developer utilizes the Project Site and the State Support for the purposes unrelated to Spice Processing Industries.
- vi. The Developer's failure to perform or discharge any of its obligations under this Agreement, which has or is likely to have a Material Adverse Effect.
- vii. The Developer has failed to make any payments due to FKL/Government Agency and more than 60 days have elapsed since such payment became due;
- viii. The Developer is in Material Breach of any of its obligations under this Agreement and the same has not been remedied for more than 120 days;

- ix. Any representation made or warranty given by the Developer under this Agreement is found to be false or misleading;
- x. A resolution has been passed by the shareholders of the Developer for voluntary winding up of the Developer;
- xi. Any petition for winding up of the Developer has been admitted and liquidator or provisional liquidator has been appointed or the Developer has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of FKL, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Developer under this Agreement;
- xii. A default has occurred under any of the Financing Documents and any of the lenders to the Project has recalled its Financial Assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xiii. The Developer has abandoned the Project for the consecutive period of 6 (six) months;
- xiv. The Developer has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- xv. The Developer has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Affect on the Project and such attachment has continued for a period exceeding 120 days.

b. FKL Event of Default

Following shall constitute an event of default by FKL ("FKL Event of Default"),

- i. Failed to make any payments due to the Developer and more than 60 days have elapsed since such payment became due⁶.

⁶ To be suitably modified based on the Financial Bid of the Developer

6.2 Termination due to Event of Default

a. Termination for Developer Event of Default

- i. Without prejudice to any other right or remedy which FKL may have in respect thereof under this Agreement, upon the occurrence of a Developer Event of Default, FKL shall be entitled to terminate this Agreement in the manner as set out under Article 6.2(a)(ii) and Article 6.2(a)(iii).
- ii. If FKL decides to terminate this Agreement pursuant to preceding (i), it shall in the first instance issue Preliminary Notice to the Developer. Within thirty (30) days of receipt of the Preliminary Notice, the Developer shall submit to FKL in sufficient detail, the manner in which it proposes to cure the underlying Event of Default (the “Developer’s Proposal to Rectify”). In case of non-submission of the Developer’s Proposal to rectify within the said period of 30 days, FKL shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If the Developer’s Proposal to Rectify is submitted within the period stipulated therefore, the Developer shall have further period of 30 days (“Cure Period”) to remedy/ cure the underlying Event of Default. If, however the Developer fails to remedy/cure the underlying Event of Default within such further period allowed, FKL shall be entitled to terminate this Agreement, by issue of Termination Notice.

b. Termination for FKL Event of Default

- i. Without prejudice to any other right or remedy which the Developer may have in respect thereof under this Agreement, upon the occurrence of FKL Event of Default, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Developer decides to terminate this Agreement pursuant to preceding (i) it shall in the first instance issue Preliminary Notice to FKL. Within 30 days of receipt of Preliminary Notice, FKL shall forward to the Developer its proposal to remedy/ cure the underlying Event of

Default (the "FKL Proposal to Rectify"). In case of non submission of FKL Proposal to rectify within the period stipulated therefore, Developer shall be entitled to terminate this Agreement by issuing Termination Notice.

- iii. If FKL Proposal to Rectify is forwarded to the Developer within the period stipulated therefore, FKL shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however FKL fails to remedy/ cure the underlying Event of Default within such further period allowed, the Developer shall be entitled to terminate this Agreement by issuing Termination Notice.

c. Termination Notice

If a Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding Sub article 6.2 (a) or 6.2(b), it shall issue Termination Notice setting out:

- i. in sufficient detail the underlying Event of Default;
- ii. the Termination Date which shall be a date occurring not earlier than 60 days from the date of Termination Notice;
- iii. the estimated Termination Payment including the details of computation thereof; and,
- iv. any other relevant information.

d. Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- i. until Termination the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facility;
- ii. the Project Facility and the Project Site are transferred back to FKL by the Developer on the Termination Date free from any Encumbrance along with any payment that may be due from the Developer to FKL

e. Withdrawal of Termination Notice

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

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

f. Termination Payments

Upon Termination of this Agreement on account of Developer Event of Default –

- a. FKL shall retain payments, if any, already received;
- b. Developer shall refund the Project Support already received by it with interest thereon @ SBI PLR + 5% from the date of receipt of each tranche of Project Support till final realisation by FKL.
- c. FKL shall also be entitled to forfeit and retain the Performance Security, if subsisting.

Upon Termination of this Agreement on account of FKL Event of Default, FKL shall be liable to return the Performance Security, if subsisting and Developer shall

- (a) be entitled to retain the Project Support already received by it; and
- (b) be eligible to seek the due and un-disbursed Project Support, if any.

6.3 No obligation of FKL on Termination

Notwithstanding anything contained in this Agreement, FKL shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation to the land owners, compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to

any person in the employment of or engaged by the Developer in connection with the Project..

6.4 Accrued Rights of Parties

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

ARTICLE 7 DISPUTE RESOLUTION

7.1 Amicable Resolution

- a. Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in Sub-article 7.1 (b) below.
- b. Either Party may require such Dispute to be referred to the Chief Executive Officers of FKL and Developer for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 7.2 below.

7.2 Arbitration

a. Procedure

Subject to the provisions of Article 7.1, any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration Act. The arbitration shall be by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration Act.

b. Place of Arbitration

The place of arbitration shall ordinarily be Bangalore but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

c. English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d. Enforcement of Award

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the provisions of the Arbitration Act subject to the rights of the aggrieved parties to secure relief from any higher forum.

e. Performance during Arbitration

Pending the submission of and/or decision on a dispute and until the arbitral award is published; the Parties shall continue to perform their respective obligations under this Agreement, without prejudice to a final adjustment in accordance with such award.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.1 Representations and Warranties of the Developer

The Developer represents and warrants to FKL that:

- a. it is duly organised, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d. it has the financial standing and capacity to undertake the Project;
- e. this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Developer's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g. there are no actions, suits, proceedings or investigations pending or to the Developer's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may constitute Developer Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i. it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. no representation or warranty by the Developer contained herein or in any other document furnished by it to FKL or to any Government Agency in

relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

- k. Without prejudice to any express provision contained in this Agreement, the Developer acknowledges that prior to the execution of this Agreement, the Developer has after a complete and careful examination made an independent evaluation of the Project Site, and the information provided by FKL, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Developer in the course of performance of its obligations hereunder.

The Developer also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that FKL shall not be liable for the same in any manner whatsoever to the Developer.

8.2 Representations and Warranties of FKL

FKL represents and warrants to the Developer that:

- a. FKL has full power and authority to enter into this Agreement and has taken all necessary action to authorise the execution, delivery and performance of this Agreement; and
- b. This Agreement constitutes FKL's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

8.3 Obligation to Notify Change

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

ARTICLE 9
MISCELLANEOUS

9.1 Assignment and Charges

- a. Subject to Sub-articles 9.1(b) and 9.1 (c) below, Developer shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder, save and except with prior consent of FKL.
- b. Except as provided in Sub-article 9.1(c) below, Developer shall not create nor permit to subsist any Encumbrance over the Project Site, except as envisaged under this Agreement.
- c. Restraint set forth in Sub-articles 9.1(a) and 9.1(b) above, shall not apply to:
 - i. liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Developer;
 - ii. Pledges/ hypothecation of goods/ moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders and working capital providers for the Project; or
 - iii. Assignment of Developer's liens/encumbrances, rights and benefits under the lease agreement between the Developer and the Government Agency concerned in relation to the Project Site.
- d. Senior Lenders may exercise the rights of step-in or substitution as provided in this Agreement. Provided that the person substituting the Developer shall be deemed to be the Developer under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Developer.

9.2 Lender's Step in Rights

- a. Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that (i) upon the Senior Lenders recalling and demanding the debt outstanding under the Financing Documents (following an event of default under the Financing Documents) or (ii) upon a Termination Notice being issued by FKL, the Senior Lenders shall, without prejudice to any other remedy available to them, propose to FKL to substitute FKL in place of the Successful Bidder. In the event, FKL refuses in writing, to accept such proposal, the Senior Lenders shall, after the written consent of

FKL, substitute the Successful Bidder by another company ("Proposed Company"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Company and the terms and conditions of the substitution.

- b. In case FKL agrees for substitution of the Successful Bidder by a Proposed Company, such substitution shall;
 - (i) be on terms and conditions of the PDSSA which are not less favourable to FKL than those prevailing at the time of substitution, and
 - (ii) be for the remaining Agreement Period only.
- c. In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Successful Bidder shall be deemed to have been transferred to and vested in the Proposed Company and the FKL and the Proposed Company shall take such steps and enter into such documents as may be necessary to give effect to the substitution.

9.3 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 9.3 shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

9.4 Governing Law and Jurisdiction

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

9.5 Waiver

- a. Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - ii. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - iii. Shall not affect the validity or enforceability of this Agreement in any manner.
- b. Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

9.6 Survival

Termination of this Agreement:

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

9.7 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by both the Parties hereto and evidenced in writing.

9.8 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to FKL:

'Khanija Bhavan', 4th Floor,
East Wing, No.49,
Race Course Road,
Bangalore-560001

Telefax: 080-51126904

[E-Mail: fkf@airtel-broadband.com](mailto:fkf@airtel-broadband.com)

If to the DEVELOPER:

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- a. in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address; and

- b. in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

9.9 Severability

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

9.10 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

9.11 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

9.12 Exclusion of Implied Warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties and any representation by any Party not contained in a binding legal agreement executed by the Parties.

9.13 Counterparts

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

9.14 General Liability and Indemnity

The Developer shall indemnify, defend and hold FKL harmless against any and all proceedings, actions and third party claims arising out of a breach by Developer and its Transferees of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by FKL of any of its obligations under this Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the day and year first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of FKL by:

(Signature):

(Name): _____

(Designation): _____

SIGNED SEALED AND DELIVERED

For and on behalf of Developer by

(Signature):

(Name): _____

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Agreement

Project Development and State Support

(Designation): _____

SIGNED SEALED AND DELIVERED

Witnesses:

1)

2)

SCHEDULE 1
Details of Project Site

The Site identified for setting up a Spice park is Located in Byadagi in Haveri District. The site located and is well connected to all talukas of District. One of the major advantages of the selected site is The extent of site is approximately 120 acres.

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Project Development and State Support

PLAN OF THE PROJECT SITE (Site plan to be enclosed)

SCHEDULE 2
PERFORMANCE SECURITY
(PROFORMA OF BANK GUARANTEE)⁷

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

In favour of

Spice Karnataka Limited, Government of Karnataka (FKL), having its office at
‘Khanija Bhavan’, 4th Floor, East Wing, No.49, Race Course Road, Bangalore-560001,
which expression shall, unless repugnant to the context or meaning thereof include
its administrators, successors or assigns.

WHEREAS

- A. By the Project Development and State Support Agreement being entered into
between FKL and _____⁸, a company incorporated under the provisions of
the Companies Act, 1956/, having its registered office/ permanent address at
_____(Hereinafter referred as “Developer”), has been granted the
leasehold rights to develop Spice Park at _____, hereinafter referred to as
Project.
- B. In terms of Article 3.1 of the Project Development and State Support Agreement,
the Developer is required to furnish to FKL, an unconditional and irrevocable
bank guarantee for an amount of Rs.140 Lakhs /- (Rupees One hundred and
Forty Only) as security for due and punctual performance/discharge of its
obligations under the Project Development and State Support Agreement.
- C. At the request of the Developer, the Guarantor has agreed to provide guarantee,
being these presents guaranteeing the due and punctual performance/discharge

⁷ To be issued by a Scheduled Bank in India

⁸ Name of Developer.

by the Company of its obligations under the Project Development and State Support Agreement relating to the Project.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS :

1. Capitalised terms used herein but not defined shall have the meaning assigned to them respectively in the Project Development and State Support Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ of all its obligations relating to the Project during the Agreement Period.
3. The Guarantor as primary obligator shall, without demur, pay to FKL sums not exceeding in aggregate Rs. 140 lakhs (Rupees One hundred and Forty lakhs only), within five (5) calendar days of receipt of a written demand therefore from FKL stating that the Developer has failed to meet its performance obligations under the Project Development and State Support Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Developer or validity of demand so made by FKL and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by any other Person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof.
4. In order to give effect to this Guarantee, FKL shall be entitled to treat the Guarantor as the principal debtor. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Project Development and State Support Agreement or other documents or by the extension of time for performance granted to the Company or postponement/non exercise/ delayed exercise of any of its rights by FKL or any indulgence shown by FKL to the Developer and the Guarantor shall not be relieved from its obligations under this Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise of any of its rights by FKL or any indulgence shown by FKL provided nothing contained herein shall enlarge the Guarantor's obligation hereunder.

5. This Guarantee shall be irrevocable and shall remain in full force and effect for a period of ten (10) years from the _____⁹ unless discharged/released earlier by FKL in accordance with the provisions of the Project Development and State Support Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 140 lakhs (Rupees One hundred and Forty lakhs Only).

6. This Guarantee shall not be affected by any change in the constitution or winding up of the Developer/the Guarantor or any absorption, merger or amalgamation of the Developer/the Guarantor with any other Person.

7. The Guarantor has power to issue this guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

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

SIGNED AND DELIVERED

by _____ Bank

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

⁹ Date of signing the Project Development and State Support Agreement

SCHEDULE 3
PROJECT DEVELOPMENT PLAN

SCHEDULE 4

CONSTRUCTION SPECIFICATIONS & PERFORMANCE STANDARDS

1. The Developer shall provide Mandatory Facilities like necessary infrastructure and common facilities such as cold storage, warehousing, dry/wet processing, packaging, quality control laboratory, business centre, effluent treatment plan and such other facilities.
2. The developer shall implement the Spice park project as per the scheme within two years from the date of signing the State Support Agreement.
3. The Developer shall provide at least 20 industrial plots for the purpose of setting up food processing industries.
4. The Developer is required to utilise the state support for the for purpose of establishing the Spice Park and the project site for the purpose of establishing industries related to food processing.
5. Construction Specifications & Performance Standards: The Developer shall construct the Project as per the following standards and specifications:
 - a. As per National Building Code of India 2005 and minimum quality of construction as stipulated by Bureau of Indian Standards and Indian Road Congress as may be amended from time to time.
 - b. As per International Standards, Best Industry Practices by applying state of the art construction technologies to the extent possible.
 - c. Developer is encouraged to develop 'Green Buildings' as per the guidelines laid down by the Indian Green Building Council, Bureau of Energy Efficiency (BEE), Gol and in the Leadership in Energy and Environmental Design (LEED-INDIA) Green Building Rating System for new construction with the objectives of efficient resource utilization, energy and water conservation/savings of the buildings proposed to be constructed on the Project Site and environmental protection.
 - d. Superior quality and aesthetic construction to minimize renovation, modernization, repairs & maintenance during the lifetime of the buildings.

- e. Construction of earthquake resistant buildings and structures at the Project Site.
 - f. Construction of buildings adhering to Fire safety and general safety standards stipulated by Fire services department and Bureau of Indian Standards.
 - g. Equipments/Construction required for safe segregation and disposal of municipal solid waste.
 - h. Construction and operation without hindering the operation of surrounding activities therein.
 - i. Compliance with Applicable Laws and Applicable Permits.
6. Operation Specifications & Performance Standards
- a. Carry out preventive, periodic and predictive maintenance of the Project Assets as per Best Industry Practices.
 - b. Carry out break-down maintenance of the Project Assets as required with least turn around time as possible.
 - c. Keep fire safety equipments in good working condition at all times in the Project Site.
 - d. Safe segregation and disposal of municipal solid waste generated by the Project
 - e. Compliance with Applicable Laws and Applicable Permits
 - f. Document, maintain and update the Operation & Maintenance Manual with all relevant details at required intervals of time.
 - g. Hand over the Operation & Maintenance Manual at the end of the Agreement Period to FKL or its nominated representative
 - h. Follow and abide by the service quality levels as would be agreed upon among the Developer and FKL.

SCHEDULE 5
MATTERS REQUIRING OF APPROVAL OF NOMINEE DIRECTORS

- (a) Authorization, issuance, allotment or redemption by the Developer of its shares, debentures, warrants or securities, or the grant of any option or right over its shares, approval of terms of public issue or making any call on or forfeiture of any share.
- (b) Sale of promoter's equity or creation of any third party rights in the Promoters equity.
- (c) Guarantee, if any, furnished by the Developer outside its ordinary course of business.
- (d) Modification, extension, renewal, refinancing or restructuring of debt, pledge or assignment of any of its assets as security for any indebtedness or obligations except for term loan / working capital loan from the lenders.
- (e) The entry of the Developer into new line of business, divestment of any business or a major reorganization of the business.
- (f) Any merger, consolidation or change of control of the Developer. Any amendment to the certificate of incorporation, Memorandum of Association or Articles of Association of the Developer that could affect the rights of FKL.
- (g) Distribution of profits to Directors of the Developer except normal sitting fees etc.,
- (h) Sale, transfer, exchange, licensing, assignment, sub-contracting or other disposition of any tangible or intangible assets of the Developer in the normal course of business.

- (i) Any related party transactions between the Developer and its Promoters, Directors or their affiliates, subsidiaries or other connected persons.
- (j) Creation of subsidiaries and affiliates Developer.
- (k) Approval of all matters pertaining to procurement of the capital assets, appointment of agencies for selling the processed produce, recruitment of key personnel and land allotment.

SCHEDULE 6

SCOPE OF WORK OF INDEPENDENT ENGINEER

1. Role of the Independent Engineer

The Independent Engineer is expected to play a positive and independent role in discharging its functions, thereby facilitating the smooth implementation and operation of the Project. Broadly, the role of the Independent Engineer is to:

- i) independently review, monitor and where required by the Agreement, to approve activities associated with the design and construction of the Project Facilities to ensure compliance by the Developer with the Project Requirements,
- ii) report to the Parties on the various physical, technical and financial aspects of the Project based on inspections, site visits and Tests,
- iii) assist the Parties in arriving at an amicable settlement of disputes, should the need arise, and
- iv) Review matters related to safety measures adopted by the Developer for the Project.

2. Scope of Services

The services to be provided by the Independent Engineer are listed below. In addition, the scope of services would also include such other functions as are required to be undertaken pursuant to specific provisions of the Agreement.

2.1 Implementation of the Project – Design and Planning

- a. The Developer must design and plan the Project Facilities in accordance with his Technical Proposal approved by FKL.
- b. In case the Developer (i) proposes any deviation to the Drawings or (ii) submits alternative Drawings for any of the Project Facilities, the Independent Engineer shall review the same to ensure conformity with the Design Requirements.

- c. Review of the following submitted by the Developer:
 - (i) Quality Assurance Plan;
 - (ii) Implementation Plan;
 - (iii) Condition Survey of the existing facilities on site and other construction in the Project area.

2.2 Implementation of the Project – Construction

- a. The Independent Engineer would monitor, in accordance with Good Industry Practice, the progress in implementation and ensure compliance with the Construction Requirements. For this purpose the Independent Engineer shall undertake, inter-alia, the following activities and where appropriate make suitable suggestions:
 - (i) monitor the progress in implementation of the Project based on the Implementation Plan submitted by the Developer;
 - (ii) review and approve the material testing and mix designs results and recommend special tests, where required, for materials and/or completed works, require removal/substitution of unsuitable materials and /or works and report deficiencies in respect of the same to FKL;
 - (iii) review and monitor the quality assurance and quality control procedures followed by the Developer;
 - (iv) review the manpower and equipment deployed by the Developer;
 - (v) monitor the Construction Works for conformity with the Project Requirements;
 - (vi) verify the 'As Built' drawings for each component of the works prepared by the Developer and require removal of deficiencies found therein;
 - (vii) review the safety measures implemented;
 - (ix) require, monitor and review the results of Tests to be carried out by the Developer in accordance with the Construction Requirements;
 - (x) require suspension of whole or any part of the Construction Works if in its reasonable opinion the same does not conform to the Construction Requirements;

- (xi) issue Completion Certificate in accordance with the applicable provisions of the Agreement; and
- (xii) review and assist in finalisation of the O&M Manual and first annual O&M Plan prepared by the Developer.

2.3 Operations Period

Review of operations of Project Facilities every 6 months to check compliance with the O&M Requirements.

2.4 Breach of Obligations

If during the course or upon review / inspection undertaken by the Independent Engineer or otherwise, it transpires that either of the Parties is in breach/ default of any of its obligations under the Agreement, the Independent Engineer shall, under intimation to the other Party, require the defaulting Party to remedy such breach/ default within such time and in such manner as the Independent Engineer may deem fit and in each case the same shall be recorded.

2.5 Meetings, Records and Reporting

- a. The Independent Engineer would be required to participate in the Project review meetings held from time to time by the Parties, which are ordinarily expected to be held once a month during the construction and once every two months during the operation as also to participate in emergency or extra-ordinary meetings of the Parties held to deal with any Emergency, Force Majeure Event or other exigencies.
- b. The Independent Engineer shall, in the ordinary course, maintain record of the activities undertaken by it in discharge of its functions and responsibilities. This would include records in respect of the following:
 - (i) Manpower deployed and other organizational arrangements of the Independent Engineer;

- (ii) Reviews of documents submitted to it by the Developer to meet Project Requirements, such as manuals, Drawings, As Built drawings, schedules, plans and reports;
 - (iii) Inspections undertaken and notices/ instructions issued to the Developer;
 - (iv) Review of compliance with Project Requirements;
 - (v) Tests;
 - (vi) Emergency (including accidents);
 - (vii) Force Majeure Events;
 - (viii) Breaches and defaults by the Parties; and
 - (ix) Handback Requirements
- c. The Independent Engineer would be required to submit the following reports to the Parties during the Concession Period:
- (i) Implementation Period
 - Monthly Progress Report (including details of slippages and remedial measures)
 - Report on Tests and report on notices Issued
 - Completion Certificate
 - Any supplemental or special report that may be considered necessary by the Independent Engineer (including Emergency, Force Majeure, and breach of obligations).
 - Any other report as may be reasonably required by FKL or as may be necessary to give effect to the provisions of the Agreement.
 - Independent Engineer shall report on compliance of requirements as in Schedule 4 in his monthly reports or as and when required.
