



KARNATAKA STATE TOURISM DEVELOPMENT CORPORATION LIMITED (KSTDC)

INVITES

REQUEST FOR PROPOSALS (RFP No :- KSTDC/2017-18/YMC/IND19)

FOR SELECTION OF AN OPERATOR

To

OPERATE & MAINTAIN A RESTAURANT

AT YEDIYUR, KUNIGAL

TUMKUR DISTRICT, KARNATAKA

**Karnataka State Tourism Development Corporation Limited
Ground Floor, BMTc Yeshwanthpur TTMC (Bus Stand),
Yeshwanthpur Circle,
Bengaluru – 560022
Contact – (080) 4334 4334
Email: info@kstdc.co
Website: www.kstdc.co**

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SECTION 1. LETTER OF INVITATION

Indent No: **KSTDC/2017-18/YMC/IND19**

02-02-2018
Bengaluru, Karnataka

TENDER NOTIFICATION [Through e-Procurement Portal only]

SELECTION OF CONSULTANT FOR OPERATIONS AND MAINTENANCE OF A RESTAURANT AT YEDIYUR, KUNIGAL, TUMKUR DISTRICT, KARNATAKA

Karnataka State Tourism Development Corporation Limited (KSTDC) invites bids from Consultants (Independent Firm) to operate and maintain a Restaurant at Yedyur, Kunigal, Tumkur District, Karnataka. The proposed engagement would be for a period of five (5) years, which shall be extendable for another five years.

Interested Consultants may submit their Request for proposals (RFP) for providing the services for operations and maintenance of the restaurant and requisite EMD electronically through e-procurement platform at <https://www.eproc.karnataka.gov.in> Following shall be the calendar events of Tendering:

Date of Pre-Bid Meeting	09-02-2018, 15.00 hrs
Last date for receipt of pre-bid queries	10-02-2018, 15.00 hrs
Last date of receipt of Proposals	03-03-2018, 17.30 hrs
Date of opening of Technical Proposal	05-03-2018, 11.00 hrs
Date of Technical Presentation	Will be intimated later
Date of opening of Financial Proposal	Will be intimated to qualified consultants
Earnest Money Deposit	Rs.2,00,000/- (Rupees Two Lakhs only)

Postponement of Calendar of events (if any), subsequent notification, changes, amendments and selection/rejection of proposal shall be intimated only through e-Procurement portal and will not be published in newspapers. KSTDC reserves the right to accept or reject any or all the tenders received without assigning any reasons thereof.

More details on the Services are provided in the attached Terms of Reference (TOR).

1. The RFP shall include the following documents
 - a) Section 1:- Letter of Invitation
 - b) Section 2:- Information to Bidders
 - c) Technical Proposal- Standard Forms
 - d) Financial Proposal- Standard Forms
 - e) Terms of Reference
 - f) Power of Attorney

Sd/-
General Manager (Administration)
Karnataka State Tourism Development Corporation Limited
Bengaluru, Karnataka

SECTION 2. INFORMATION TO CONSULTANTS

1. INTRODUCTION

- 1.1. The Client named in the "Data Sheet" will select a firm, in accordance to the method of selection indicated in the Data Sheet.
- 1.2. Interested Consultants are invited to submit a Technical Proposal and a Financial Proposal, as specified in the Data Sheet (the "Proposal") for providing the Services required for the Assignment named in the Data Sheet. The Proposal will be the basis for contract negotiations and ultimately for entering into a contract with the Selected Consultant.
- 1.3. The Assignment shall be implemented in single phase as indicated in the Data Sheet.
- 1.4. The Consultants must familiarize themselves with local conditions and take them into account in preparing their Proposals. To obtain first-hand information on the Assignment and on the local conditions, Consultants are encouraged to pay a visit to the Restaurant before submitting a Proposal, and to attend a pre-proposal conference if one is specified in the Data Sheet. Attending the pre-proposal conference is optional. Any Consultant's representative shall contact the officials named in the Data Sheet to arrange for their visit or to obtain additional information on the pre-proposal conference. Consultants should ensure that these officials are advised of the visit in adequate time to allow them to make appropriate arrangements.
- 1.5. Please note that (i) the costs of preparing the proposal and of negotiating the contract, including a visit to the Restaurant, are not reimbursable as a direct cost of the Assignment; and (ii) the Client is not bound to accept any of the Proposals submitted.
- 1.6. The Client expects the Consultant to adopt fair business practices and at all times hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Client.
 - 1.6.1. Without limitation on the generality of this rule, Consultants shall not be hired under the circumstances set forth below:
 - a) A firm which has been engaged by the Client to provide services for a project, and any of their affiliates, shall be disqualified from providing services for the same project. Conversely, firms hired to provide services for the preparation or implementation of a project, and any of their affiliates, shall be disqualified from subsequently providing goods or works or services related to the initial assignment (other than a continuation of the firm's earlier services) for the same project.
 - b) Consultants or any of their affiliates shall not be hired for any assignment which, by its nature, may be in conflict with another assignment of the Bidders.
- 1.7. It is the Client's policy to require that the Consultant observe the highest standard of ethics during the execution of such contracts. In pursuance of this policy, the Client:
 - a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution; and
 - (ii) "fraudulent practice" means a misrepresentation of facts in order to influence a selection

process or the execution of a contract to the detriment of the Client and/ or GoK, and includes collusive practices among Consultants (prior to or after submission of proposals) designed to establish prices at artificial, noncompetitive levels and to deprive the Client and/ or GoK of the benefits of free and open competition.

- b) will reject a proposal for award if it determines that the firm recommended for award has engaged in corrupt or fraudulent activities in competing for the contract in question;
 - c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any contract by the Client if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a GoK-financed contract; and
- 1.8. Consultant shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by GoK in accordance with the above sub para 1.8 (d).
- 1.9. Consultant shall be aware of the provisions on fraud and corruption stated in the standard contract under the clauses indicated in the Data Sheet.

2. CLARIFICATION AND AMENDMENT OF RFP DOCUMENTS

- 2.1. Consultants may request a clarification of any item of the RFP document up to the date and time indicated in the Data Sheet, before the Proposal submission date. Any request for clarification must be sent in writing by electronic mail (e-mail) to the Client's e-mail address respectively, as indicated in the Data Sheet. The Client will respond to such requests and will upload the response (including an explanation of the query but without identifying the source of inquiry) in the e-procurement website of Govt. of Karnataka (www.eproc.karnataka.gov.in).
- 2.2. At any time before the submission of Proposals, the Client may, for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, modify the RFP documents by amendment. Any amendment shall be issued in writing through corrigenda/ addenda. Such Corrigenda/ Addenda shall be uploaded in the e-procurement website and will be binding on them. The Client may at its discretion extend the deadline for the submission of Proposals.

3. PREPARATION OF PROPOSAL

- 3.1. Consultants are requested to submit a Proposal (para 1.2) written in the language(s) specified in the Data Sheet.

Technical Proposal

- 3.2. In preparing the Technical Proposal, Consultants are expected to examine the documents comprising this RFP in detail. Material deficiencies in providing the information requested may result in rejection of a Proposal.
- 3.3. While preparing the Technical Proposal, Consultants must give particular attention to the following:
- (i) Accounts/ Reports to be submitted by the Consultant as part of this assignment must be in the language(s) specified in the Data Sheet. It is desirable that the firm's personnel have a working knowledge of the Client's official language Kannada.
- 3.4. The Technical Proposal should provide the following information using the attached Standard Forms (Section 3):

- (i) Undertaking that the Consultant is engaged in managing Restaurants for the past 5 years. (Section 3I).
- (ii) Undertaking by the Consultant that the Consultant has at least 2 operational Restaurants in India with a minimum 20 covers (Section 3I).
- (iii) Financial capacity of the Bidder including a certificate from independent/ statutory auditor in the prescribed format (Section 3J).
- (iv) A brief description of the Consultant's organization and an outline of recent experience on projects (Section 3B) of a similar nature. For each project, the outline should indicate, inter alia, the profiles and names of the key staff provided, duration of the assignment, contract amount, and firm's involvement.
- (v) Any comments or suggestions on the Terms of Reference and on the data, a list of services, and facilities to be provided by KSTDC (Section 3C).
- (vi) A description of the methodology and work plan for performing the assignment (Section 3D).
- (vii) Any additional information requested in the Data Sheet

3.5. The Technical Proposal shall not include any financial information.

Financial Proposal

- 3.6. In preparing the Financial Proposal, Consultants are expected to take into account the requirements and conditions of the RFP documents. The Financial Proposal should follow Standard Forms (Section 4). It lists all costs associated with the Assignment, including (a) remuneration for staff and (b) reimbursable such as subsistence (per diem, housing), transportation (national and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys; and training, if it is a major component of the assignment. If appropriate, these costs should be broken down by activity.
- 3.7. The Consultant should quote the revenue retained percentage (%) offer (upto 2 decimal places) in e-procurement portal for all the services sought by the Client in the Terms of Reference, including the service tax/GST. The breakup of cost shall be uploaded in the financial bid for all items of the RFP. Consultant shall express the price of their services in Percentage.
- 3.8. The Data Sheet indicates how long the proposals must remain valid after the submission date. The Client will make its best effort to complete negotiations within this period. If the Client wishes to extend the validity period of the proposals, the Bidders who do not agree have the right not to extend the validity of their proposals.

4. SUBMISSION, RECEIPT, AND OPENING OF PROPOSALS

- 4.1. Interested bidders shall login to <https://eproc.karnataka.gov.in/eportal/index.seam> and follow the procedures and guideline given there or call the e-proc help desk to get themselves registered in the portal. Upon registration, the bidders can login and participate in the tender.

4.2. Downloading of tender documents, submission of proposal all will be through Government of Karnataka e-Procurement website <https://eproc.karnataka.gov.in/eportal/index.seam> under login for Contractors. Consultants must get themselves registered, acquainted and trained on the procedure of participating in e-procurement.

4.3. EARNEST MONEY DEPOSIT

4.3.1. The Consultants are requested to submit Earnest Money Deposit (EMD) as indicated in the e-Procurement portal along with the Technical Bid.

4.3.2. The Consultant can pay the EMD in the e-Procurement portal using any of the following payment modes:

- Credit Card
- Direct Debit
- National Electronic Fund Transfer (NEFT)
- Over the Counter (OTC)

4.3.3. The supplier/consultant's bid will be evaluated only on confirmation of receipt of the payment of EMD in the Government of Karnataka central pooling account held at designated Bank. EMD amount will have to be submitted by the supplier/Consultant taking into account the following conditions:

- a) EMD will be accepted only in the form of electronic cash (and not through Demand Draft or Bank Guarantee) and will be maintained in the Government's central pooling account at designated Bank until the contract is closed.
- b) The entire EMD amount for a particular tender has to be paid in a single transaction. It is responsibility of Consultants to ensure that payment through NEFT reaches Payment to Government of Karnataka's designated Bank before Bid submission date and time, through online payment. In case of OTC Payment, the DD to be drawn in favour of e-Procurement, Government of Karnataka and submit to designated Bank before bid submission time and update the transaction reference in e-Procurement portal.
- c) For the details on e-Payment services refer to e-procurement portal for more details on the process.

4.3.4. The original Proposal (Technical Proposal and Financial Proposal; see para 2.1.2) shall be prepared as per RFP document.

4.3.5. An authorized representative of the Consultant shall digitally sign the Proposal in e-procurement. The representative's authorization is confirmed by a written power of attorney accompanying the Proposal.

4.3.6. The Consultant shall submit the bids separately i.e., Technical and Financial electronically online in Government of Karnataka e-Procurement portal.

4.3.7. Consultant has all the time to modify and correct or upload any relevant document in the portal before submission on e-Procurement portal.

4.3.8. The last date and time including hours, minutes and seconds for submission will be mentioned in the portal, the bid will disappear automatically immediately after the time of submission is elapsed.

4.3.9. After the deadline for submission of proposals, the Technical Proposal shall be opened by the evaluation committee and evaluation will be done. The bidders who are technically qualified will be intimated through e-procurement portal only and the Financial Proposal of qualified bidders will be opened in presence of the bidders who choose to attend.

REFUND OF EMD

4.3.10. Based on the instructions of Tender Accepting Authority (TAA) the EMD amount of the unsuccessful consultants will be refunded to the respective Bank accounts of the supplier/consultant registered in the e-Procurement system.

4.3.11. The earnest money deposit of unsuccessful Consultant will be returned after the award of proposal to the successful consultant.

4.3.12. The earnest money deposit of the successful Consultant will be discharged when the Consultant has furnished the required Performance Security and signed the Agreement.

4.3.13. The earnest money deposit may be forfeited:

- a) if the consultant withdraws the proposal after deadline for submission of proposals, during the period of proposal validity;
- b) if the Consultant does not accept the correction of the contract Price, pursuant to Clause 2.5.6;
or
- c) in the case of a successful Consultant, if the Consultant fails within the specified time limit to:
 - (i) furnish the required Security deposit; or
 - (ii) Sign the Agreement.
- d) In case of consultant submitting fake documents such as Annual financial turn over, work done certificate etc., relevant to the proposal.

5. PROPOSAL EVALUATION

General

5.1. From the time the proposals are opened to the time the contract is awarded, if any Consultant wishes to contact the Client on any matter related to its proposal, it should do so in writing at the address indicated in the Data Sheet. Any effort by the firm to influence the Client in the Client's proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the Consultant's proposal.

5.2. Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation, including its approval by competent Client is obtained

Evaluation of Technical Proposals

5.3. The evaluation committee appointed by the Client as a whole, and each of its members individually, evaluates the proposals on the basis of their responsiveness to the Terms of Reference, applying

the evaluation criteria, sub-criteria (typically not more than three per criteria) and point system specified in the Data Sheet. Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Data Sheet.

The Technical bids of only the firms satisfying the following criteria will be evaluated:

The Consultant, should be a legal entity under 'The Indian Companies Act or Limited Liability Partnership Act'. The Consultant should have the following threshold qualifications to be eligible for bidding:

i. Financial:

1. Average Annual turnover of Rs. 50 lakhs and above during the past three preceding financial years (2014-15, 2015-16 & 2016-17) as an Independent firm.

Note:

- a. The Financial Capacity of the parent/subsidiary/associate entities of the Bidder would not be considered for evaluation.
- b. The Bidder is required to upload a copy of the audited Annual Reports for the 3 (three) Financial years preceding the Proposal Due Date.
- c. The Bidder is required to submit a copy of Certificate from the Independent Auditor/ Statutory Auditor in the format prescribed at Appendix – 3.12 certifying the Financial Capacity of the Bidder.
- d. Financial Turnover and work done values of previous years (2014-15, 2015-16 & 2016-17) shall be given a weight of 10% per year to bring them to the price level of the financial Year in which the tenders are invited (2017-18).

ii. Technical:

1. Consultant should have minimum 5 years of experience in managing a Restaurant*
2. The Consultant should have minimum 2 Operational Restaurants* in India with minimum seating capacity of 20 guests at a time. The property should be either owned by the Consultant or operated on lease basis by the Consultant

*The Restaurant can be either owned property or property taken and operated on lease basis. In case of leased property, supporting documents regarding the same may be submitted.

Note:

- a. The consultant must upload the certificate of company registration/Partnership registration/ LLP.
- b. For Projects in which the firm has worked as a consortium member, the firm shall furnish documents to substantiate role of the firm in the Project. KSTDC reserves the right to request any further supporting document from the selected Consultant prior to signing of the Contract.

- c. The Consultant is required to submit the following supporting document for each of the projects quoted for eligibility and evaluation:
 - Self-certification from the Authorized signatory of the Firm

The client will carry out the technical evaluation of proposals of **only the consultant firms who satisfy the above criteria**, on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria and marking system specified in the Data Sheet. Each responsive proposal will be given a technical score (Ts). A proposal considered unsuitable shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in the Data Sheet.

Public Opening and Evaluation of Financial Proposals; Ranking

- 5.4. After the Evaluation of all the Technical Proposals are completed, the Client shall display in the e–Procurement Website the Name of those Consultants whose Proposals did not meet the minimum Qualifying Mark or were considered Non Responsive to the RFP and Terms of Reference, indicating that their Financial Proposals shall not be opened. The Client shall simultaneously display in the e – Procurement Website the Name of the Consultant that has secured the minimum Qualifying Mark.
- 5.5. The Financial Proposal shall be opened publicly in the presence of the Consultant' Representatives who choose to attend. The Name of the Consultant, and the proposed Prices shall be read aloud and recorded when the Financial Proposals are opened. The Client shall prepare Minutes of the Public Opening.
- 5.6. The Evaluation Committee shall determine whether the Financial Proposals are complete, (i.e. whether they have quoted all Items of the corresponding Technical Proposals, if not, the Client will cost them and add their cost to the initial price), correct any Computational Errors.
- 5.7. The Consultant quoting the best financial bid with respect to tendering authority i.e. lowest revenue retained percentage (upto 2 decimal places) will be invited for negotiations.
- 5.8. The ranking of the bids will be done on the basis of the process described in the Data Sheet. If there is a tie in ranking (i.e., same lowest revenue retained percentage), the Consultant with the highest average annual turnover in the three preceding financial years (2014-15, 2015-16 & 2016-17) either as an Independent firm or the Lead member in the case of consortium of firms shall be ranked as the successful bidder and shall be considered for negotiations/award

6. NEGOTIATIONS

- 6.1. Negotiations will be held at the address indicated in the Data Sheet. The aim is to reach agreement on all points and sign a contract.
- 6.2. Negotiations will include a discussion of the Technical Proposal, the proposed methodology (work plan), staffing and any suggestions made by the firm to improve the Terms of Reference. The Client and Consultant will then work out final Terms of Reference and bar charts indicating activities, logistics, and reporting. The agreed work plan and final Terms of Reference will then be incorporated in the “Description of Services” and form part of the contract. Special attention will be paid to getting

the most the Consultant can offer within the available budget and to clearly defining the inputs required from the Client to ensure satisfactory implementation of the Assignment.

- 6.3. Unless there are exceptional reasons, the financial negotiations will involve neither the remuneration rates for staff (no breakdown of fees) nor other proposed unit rates.
- 6.4. Having selected the Consultant on the basis of, among other things, an evaluation of proposed key professional staff, the Client expects to negotiate a contract on the basis of the experts named in the Proposal. Before contract negotiations, the Client will require assurances that the experts will be actually available. The Client will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or that such changes are critical to meet the objectives of the assignment. If this is not the case and if it is established that key staff was offered in the proposal without confirming their availability, the Consultant may be disqualified.
- 6.5. The negotiations will conclude with a review of the draft form of the contract. To complete negotiations the Client and the Consultant will initial the agreed contract.

7. AWARD OF CONTRACT

- 7.1. The contract will be awarded following negotiations. After negotiations are completed, the Client will Promptly notify other Bidders on the shortlist that they were unsuccessful and return the Financial Proposals of those Bidders who did not pass the technical evaluation (para 5.3)
- 7.2. The Selected Bidder shall for due performance and fulfillment of the terms of the Contract furnish to the Client, an unconditional and irrevocable Bank Guarantee as Performance Security not exceeding the amount mentioned in the Data Sheet. The Performance Security is required to be taken from a nationalized bank in favor of "Managing Director, Karnataka State Tourism Development Corporation Limited", payable at Bengaluru. The Performance Security should be payable on demand and be valid for a period equal to the term of the Contract, starting from the date of signing of the Contract with the Client.
- 7.3. The Bidders is expected to commence the Assignment on the date and at the location specified in the Data Sheet.

8. CONFIDENTIALITY

- 8.1. Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidders who submitted the proposals or to other persons not officially concerned with the process, until the winning Bidders has been notified that it has been awarded the contract.

9. PERFORMANCE SECURITY

- 9.1. Within 20 days of receipt of the Letter of Acceptance, the successful Consultant shall deliver to the Client a Performance Security in any of the forms given below for an amount of INR 10,00,000 (Ten lakhs only)
- 9.2. Banker's cheque /Demand draft,/Pay Order in favour of Managing Director, Karnataka State Tourism Development Corporation Limited, Government of Karnataka.

- 9.3. A bank guarantee in the form given in Schedule 4; or
- 9.4. Fixed deposit receipts (FDR) Pledged in the name of Managing Director, Karnataka State Tourism Development Corporation Limited, Government of Karnataka.
- 9.5. Performance Security shall be provided to the Client not later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and type of instrument acceptable to the Client. The Security deposit shall be valid until a date 180 days from the date of expiry of contract period.
- 9.6. The Performance Security shall be furnished from any Nationalized Banks/ Scheduled Commercial Banks approved by Reserve Bank of India.

DATA SHEET

Information to Bidders

a) Information corresponding to Clauses in Section 2 above

S. No.	Title	Details
1	Name of the Client	<p>The General Manager (Administration), Karnataka State Tourism Development Corporation Limited, Ground Floor, BMTC Yeshwanthpur TTMC (Bus Stand), Yeshwanthpur Circle, Bengaluru – 560022 Contact – (080) 4334 4334 Email: info@kstdc.co Website: www.kstdc.co</p> <p>Restaurant location: KSTDC Mayura Pavithra Yedyur, Kunigal, Tumkur Mob: 8970650115 (Contact Shri Ajith Kumar, AGM Hotels, KSTDC)</p>
2	Method of Selection	Least Cost Selection (LCS)
3	A technical and Financial Proposal are requested	Yes
4	Name of the Project	Operation and Maintenance of Mayura Pavithra Yedyur Restaurant of KSTDC for a period of 5 years (extendable by another 5 years based on mutual consent of both parties)
5	Objective of the Project	<p>Karnataka State Tourism Development Corporation, Government of Karnataka, set up in 1974, has been acting as a catalyst in placing Karnataka on the list of must-visit places in India. KSTDC provides accommodation and conveyance facilities for tourists visiting Karnataka. It conducts package tours throughout the State through its fleet of buses. It owns and operates hotels and guest houses throughout the State. KSTDC also operates The Golden Chariot, South India's first and only luxury train. Apart from this, KSTDC also undertakes infrastructure development projects as per requirement from Department of Tourism.</p> <p>KSTDC owns a property at Yedyur, at Bangalore – Mangalore NH 48, Kunigal, Tumkur District, Karnataka. It is envisioned that the selected consultant should provide the following:</p> <ul style="list-style-type: none">• Operations and maintenance of the Property for a period of 5 years (extendable by another 5 years based on mutual consent of both parties)• At the end of the contract period, hand over the property on as is where basis back to KSTDC. The contract

S. No.	Title	Details
		period shall not be extendable beyond the 10 year maximum contract period.
6	Description of the Project	Please refer Section V: Terms of Reference
7	The Assignment is phased	No
8	A pre-proposal conference will be held	Yes
9	Pre proposal conference time & date	Time & date as notified in the e-Procurement portal
10	A pre-proposal conference venue	Karnataka State Tourism Development Corporation Limited Ground Floor, BMTC Yeshwanthpur TTMC (Bus Stand), Yeshwanthpur Circle, Bengaluru – 560022
11	The Client envisages the need for continuity for downstream work:	No
12	Clarifications	Clarifications may be requested within 30-01-2018 through email on info@kstdc.co
13	Language of the Proposal	English
14	Maximum number of firms permissible for a consortium	Consortium not allowed
15	Name of the Consortium Partners:	Not Applicable
16	Reports which are part of the assignment must be written in the following language	English
17	Training is an important feature of this Assignment	No
18	Additional Information in the Technical Proposal includes	Nil
19	Validity of Proposals	180 days
20	The estimated number of Key Professional Staff Months required for the assignment	Based on the Scope of Work, the Consultant shall form a multi-disciplinary team for undertaking this assignment.
21	Date of commencement of Operation	3 months from date of Signing of the License Agreement

b) Evaluation criteria for Technical Proposal (Overall marks for proposal components)

Sl. No.	Description	Max. Marks
1	Experience of Consultant	20
2	Financial Capability of the Consultant	20

Sl. No.	Description	Max. Marks
3	Number of Restaurant Properties of the Consultant	20
5	Technical Presentation by the Consultant	40
TOTAL MARKS		100

c) Evaluation criteria for Technical Proposal (Break up of marks for proposal components)

1 Description of Evaluation Criteria		
1.	<p>Experience in operating a Restaurant for a minimum period of 5 years. The firm should have proven experience of such experience for the past five years. (2016-17,2015-16,2014-15,2013-14,2012-13)</p> <ul style="list-style-type: none"> ▪ Greater than 5 years but less than or equal to 7 years' experience in managing a Restaurant – 12 marks ▪ Greater than 7 years but less than or equal to 9 years' experience in managing a Restaurant – 16 marks ▪ More than 9 years' experience in managing a Restaurant - 20 marks 	20
2.	<p>Average Annual Turnover of Rs. 25 lakhs during the past three preceding Financial years. (2016-17,2015-16 & 2014-15)</p> <ul style="list-style-type: none"> ▪ Consultant has an average annual turnover greater than INR 25 lakhs but less than or equal to INR 50 lakhs from Restaurant Business during the past three preceding financial years. (2016-17,2015-16 & 2014-15) - 12 marks ▪ Consultant has an average annual turnover greater than INR 50 lakhs but less than or equal to INR 75 lakhs from Restaurant Business during the past three preceding financial years. (2016-17,2015-16 & 2014-15) - 16 marks ▪ Consultant has an average annual turnover greater than INR 75 lakhs from Restaurant Business during the past three preceding financial years. (2016-17,2015-16 & 2014-15) - 20 marks 	20
3.	<p>The Consultant should have minimum of 1 Operational Restaurant* in India</p> <ul style="list-style-type: none"> ▪ Consultant has at least 1 Operational Restaurant in India but a maximum of 2 Operational Restaurants - 12 marks 	20

1 Description of Evaluation Criteria		
	<ul style="list-style-type: none"> ▪ Consultant has greater than 2 but upto a maximum of 4 Operational Restaurants - 16 marks ▪ Consultant has greater than 4 Operational Restaurants in India - 20 marks <p>*The Restaurants can be either owned property or property taken and operated on lease basis. In case of leased property, supporting documents regarding the same must be submitted</p>	
4.	<p>The Consultant shall make a Technical Presentation to the Bid Evaluation Committee on the following items.</p> <ul style="list-style-type: none"> ▪ Detailed Presentation regarding the present properties owned / operated by the Consultant – 15 marks ▪ Understanding of the Project, Implementation and Reporting Plan, Operations & Maintenance plan, Marketing Plan for the proposed Yediyur property – 25 marks 	40
Total points		100

d) Evaluation criteria for Financial Proposal

1. Financial Proposals of only those bidders who have been technically qualified with a minimum score of 70 (seventy) shall be opened for evaluation.
2. Bidders shall submit their Financial Proposals in the format indicated in Section 4 of this Tender (the “Financial Proposal”) clearly indicating the **Proposed Revenue Percentage that the bidder intends to retain** in both figures and words, in Indian Rupees, and signed by the Bidder’s Authorized Representative. The amount of revenue not retained by the bidder shall be the share of revenue of the Client. **(Revenue Retained % = 1 – Revenue Share %)**
3. The amount to be shared by the Client shall not be taxed further i.e., the successful bidder must account for any taxes to be paid in its share of revenue retained.
4. In the event of any difference between figures and words, the amount indicated in words shall prevail. In the event of a difference between the arithmetic total and the total shown in the Financial Proposal, the higher of the 2 (two) shall prevail.

By way of Illustration: A bidder quotes that revenue percentage retained by the bidder shall be 60%, then the financial bid to be quoted is **60%**. The Revenue share in this case shall be $1 - 60\% = 40\%$

e) Actual Payment to Client

1. Actual revenue share to be paid by the Consultant to the Client shall depend on the actual revenue generated by the Consultant. It shall be equal to:

[(1 – 60%)] = 40%* Actual Total Revenue

By way of Illustration: A bidder quotes a revenue retained as 60.00% and the actual total revenue earned is INR 110 lakhs, the revenue share of the Client shall be:

Revenue Share of Client: (1- 60.00%) * INR 110 Lakhs = INR 44 Lakhs

Overall Evaluation Criteria for the Proposal

The Consultant must achieve a minimum of 70% marks overall, for it to be eligible for opening of Financial Proposal. The Consultant securing the lowest financial bid will be invited for negotiations.

f) Consultant's Organizational Set-Up

It is mandatory that the Consultant provide adequate numbers of key personnel for the Property. However, the cost of establishment of the office and its day to day management will have to be borne by the Consultant.

SECTION 3. TECHNICAL PROPOSAL - STANDARD FORMS

Section	Standard Forms
3A.	Technical Proposal submission form
3B.	Consultant's references
3C.	Comments and suggestions on the Terms of Reference and on data services, and facilities to be provided by the Client
3D.	Description of the methodology and work plan for performing the assignment.
3E.	Team composition and task assignments.
3F.	Format of Curriculum Vitae of proposed key professional staff.
3G.	Time schedule for professional personnel.
3H.	Activity (work) schedule.
3I.	Undertaking by the Consultant with respect to Restaurant Business
3J.	Financial Capacity of the Bidder

3A. TECHNICAL PROPOSAL SUBMISSION FORM

[Location, Date]

From: (Name of Consultant)

To,

The General Manager (Administration),
Karnataka State Tourism Development Corporation Limited
Ground Floor, BMTC Yeshwanthpur TTMC (Bus Stand),
Yeshwanthpur Circle,
Bengaluru – 560022
Contact – (080) 4334 4334
Email: info@kstdc.co

Dear Sir

Subject: Operations and Maintenance of KSTDC Mayura Pavithra Yedyur at Kunigal, Tumkur District, Karnataka

We, the undersigned, offer to provide the services for the above in accordance with your Request for Proposal dated [Date], and our Proposal. We are hereby submitting our Proposal which includes this Technical Proposal, and a Financial Proposal.

We hereby undertake as follows:

1. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. I/We shall make available any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
3. I/We certify that in the last three years, we or any of our Associate have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
4. I/We have examined and have no reservations to the RFP Documents, including any Addendum issued by KSTDC.
5. I/We do not have any conflict of interest in accordance with Clause 1.7.1 of the RFP Document;
6. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 1.8 of the RFP document, in respect of any tender or request for proposal

issued by or any Contract entered into with KSTDC or any other public sector enterprise or any government, Central or State; and

7. The Proposal is unconditional and unqualified
8. I/We agree to keep this offer valid for 180 (Hundred and Eighty) days from the Proposal Due Date specified in the RFP.
9. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Bidders in accordance with Clause 1.6 of the RFP document.

If negotiations are held during the period of validity of the proposal, i.e., before [Date] we undertake to negotiate on the basis of the proposed staff. Our proposal is binding upon us and subject to the modifications resulting from contract negotiations.

We understand you are not bound to accept any proposal you receive.

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of Consultant:

Address:

3B. CONSULTANT/ FIRM'S REFERENCES

Relevant Services carried out in the last five (5) years in Restaurant Business that best illustrate Qualifications

Using the format below, provide information on each reference assignment for which your Firm/ Entity, either as a single firm as a corporate entity or as one of the major companies within an association, was legally contracted.

Assignment Name:		Country:
Location within Country:		Key professional staff provided by your Firm/entity(profiles):
Name and address of Client:		No. of Staff:
Address:		No. of Staff-Months; duration of assignment:
Start Date (Month/Year):	Completion Date (Month/Year):	Approx. Value of Services (Rs):
Name of Associated Consultant, if any:		No. of Months of Key professional staff, provided by Associated Consultants:
Name of Senior Staff (Project Director/ Coordinator, Team Leader) involved and functions performed:		
Narrative Description of Project:		
Description of actual services provided by your staff:		

Consultant Name: _____

3C. COMMENTS AND SUGGESTIONS OF CONSULTANT/ FIRMS ON THE TERMS OF REFERENCE AND ON DATA, SERVICES, AND FACILITIES TO BE PROVIDED BY THE CLIENT

On the Terms of Reference:

- 1.
- 2.
- 3.
- 4.
- 5.

On the Data, Services, and Facilities to be provided by the Client

- 1.
- 2.
- 3.
- 4.
- 5.

Consultant's Name: _____

3D. DESCRIPTION OF THE METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

CONSULTANT'S NAME:

Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal divided into the following two chapters:

- a. *Understanding of the Project*
 - b. *Implementation and Reporting plan*
 - c. *Operations & Maintenance Plan*
 - d. *Marketing plan*
-
- a. *Understanding of the Project: In this chapter the consultant should explain their understanding of the objectives of the Assignment/job, approach to the Assignment/job, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. Agency should highlight the problems being addressed and their importance, and explain the technical approach the agency would adopt to address them.*
 - b. *Implementation and reporting plan: The consultant should in details showcase an implementation plan. Formats for monthly performance reports and yearly execution plan shall be shared by the consultant.*
 - c. *Marketing plan: The consultant should showcase a comprehensive marketing plan for the Restaurant Property. Support required from the KSTDC should also be clearly mentioned.*

3E. TEAM COMPOSITION AND TASK ASSIGNMENTS

Not Applicable to this RFP

3F. FORMAT OF CURRICULUM VITAE (CV) FOR PROPOSED KEY PROFESSIONAL STAFF

Not Applicable to this RFP

3G. TIME SCHEDULE FOR PROFESSIONAL PERSONNEL

Not Applicable to this RFP

3H. ACTIVITY (WORK) SCHEDULE

A. Field Investigation and Study Items:

Not applicable to this RFP

B. Completion and Submission of Reports

S. No.	Reports	Timeline
1	Quarterly Performance Report	

3I. UNDERTAKING BY BIDDER WITH RESPECT TO EXPERIENCE IN RESTAURANT BUSINESS

To

The Managing Director

Karnataka State Tourism Development Corporation Limited

Government of Karnataka

Ground Floor, BMTC Yeshwanthpur TTMC (Bus Stand),

Yeshwanthpur Circle, Bengaluru – 560022

Dear Sir/Madam,

Sub: Selection of an operator to 'Operate and Maintain the KSTDC Mayura Pavithra Yediyur Property – Undertaking by M/s [Name of the Bidder] regarding experience in Restaurant business.

I/ we do hereby undertake that M/s. _____ [Name of the Bidder] has Restaurants in India with _____ number of Restaurant properties of minimum seating capacity for 20 guests at a time. The firm is in the Restaurant business for at least _____ years as on the date of submission of this proposal.

I/we understand that any omission, commission or misstatement in facts provided by us will make our Proposal invalid at any time during the Bid Process and also after the appointment; the Authority reserves the right to take appropriate action accordingly.

Yours sincerely,

Authorized Signature:

Name and Title of Signatory:

Name of the Bidder:

3J FINANCIAL CAPACITY OF THE BIDDER

(On the Letterhead of the Bidder)

Name of the Bidder & type	Annual Turnover			Average Annual Turnover (Average for last 3 completed FYs)
	FY 2015-16	FY 2016-17	FY 2017-18	
Name of the firm – Company				

Instructions:

- i. Financial capacity of parent/ subsidiary company (s) of the Bidder would not be considered for evaluation.
- ii. Bidder shall attach copies of audited annual financial statements for the last 3 (three) completed financial years preceding the submission date (FY 2015-16, FY 2016-17 and FY 2017-18).
- iii. Bidder shall provide an Independent/ Statutory Auditor's certificate in the format provided below, clearly specifying the turnover of the Bidder.
- iv. Joint Venture is not permitted for the subject assignment.

Format for certificate from independent / Statutory/ Author of the bidder

(On the letter head of the independent Author/ Statutory Auditor)

Date:

We have verified the relevant records of M/s. _____ [*Name of the Bidder*], and certify that their annual turnover in the last 3 (three) financial years are as follows:

Annual Turnover			Average Annual Turnover
FY 2015-16	FY 2016-17	FY 2017-18	(Average for last 3 completed FYs)

This certificate is being issued to be produced before Managing Director, Karnataka State Tourism Development Corporation Limited, Karnataka, for the **“Selection of a Consultant to Operate and Maintain the restaurant Mayura Pavithra Yediyur, Tumkur District”**

1 SECTION IV. FINANCIAL PROPOSAL - STANDARD FORMS

Section	Standard Forms
4A.	Financial Proposal Submission Form
4B.	Summary of Costs
4C.	Breakdown of Costs

Selection of a Consultant to Operate and Maintain the KSTDC Mayura Pavithra Yediyur Property at Tumkur District in Karnataka

4A. FINANCIAL PROPOSAL SUBMISSION FORM

***Note:** *In case e-procurement portal does not give option to upload financial proposal forms as per the tender document, the bidders are advised to submit only the final revenue retained percentage (upto 2 decimal places) in e-procurement portal.*

From: (Name of Consultant)

To,

The General Manager, (Administration)
Karnataka State Tourism Development Corporation Limited
Ground Floor, BMTC Yeshwanthpur, TTMC (Bus Stand),
Yeshwanthpur Circle, Bengaluru – 560022
Contact – (080) 4334 4334

Dear Sir / Madam,

Subject: Operations and Maintenance of KSTDC Mayura Pavithra Yediyur property at Tumkur District, Karnataka.

We, the undersigned, offer to provide Consultancy Services for the above in accordance with your Request for Proposal dated [Date], and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal is for the Retained Revenue Percentage _____ (Percentage in Words and Figures] (including taxes) of the Actual Total Revenue.

In addition to the Revenue Share on the Actual Total Revenue, we shall also make timely fixed yearly payments as per conditions set in the Contract. Our Financial Proposal shall be binding upon us subject to the Modifications resulting from Contract Negotiations, up to expiration of the Validity Period of the Proposal, i.e., [Date].

We undertake that, in competing for (and, if the award to us, in executing) the above Contract, we will strictly observe the Laws against Fraud and Corruption in force in India namely "Prevention of Corruption Act 1988".

We understand you are not bound to accept any proposal you receive.

Yours sincerely,

Authorized Signature:
Name and Title of Signatory:
Name of Consultant:
Address:

Selection of a Consultant to Operate and Maintain the KSTDC Mayura Pavithra Yediyur Property at Tumkur District in Karnataka

4B. SUMMARY OF COSTS

Not Applicable to this RFP

Selection of a Consultant to Operate and Maintain the KSTDC Mayura Pavithra Yediyur Property at Tumkur District in Karnataka

4C. BREAKDOWN OF COSTS

Not Applicable to this RFP

SECTION 5. TERMS OF REFERENCE

5.1 ABOUT KARNATAKA STATE TOURISM DEVELOPMENT CORPORATION

Karnataka State Tourism Development Corporation, Government of Karnataka, set up in 1974, has been acting as a catalyst in placing Karnataka on the list of must-visit places in India. KSTDC provides accommodation and conveyance facilities for tourists visiting Karnataka. It conducts package tours throughout the State through its fleet of buses. It owns and operates hotels and guest houses throughout the State. KSTDC also operates The Golden Chariot, South India's first and only luxury train. Apart from this, KSTDC also undertakes infrastructure development projects as per requirement from Department of Tourism.

5.2 OBJECTIVES OF THE ASSIGNMENT

KSTDC owns a property at Yediyur in Tumkur District. The Property is located in ~ 6 acres of land. The Restaurant Property has a seating capacity of 70 pax. Parking facility is available within the area.

KSTDC intends to procure a Consultant who shall operate and manage the Restaurant Property for a period of 5 years (extendable by another 5 years based on mutual consent of both parties). The Consultant shall make the following payments to KSTDC for operating and managing the Restaurant Property.

- a. **Minimum Guaranteed Annual Payment** – This is the fixed amount to be paid for the ten year contract period as mentioned in the table below.

SI No	Year	Minimum Guaranteed Annual Payment
1	Year 1	Rs 1.00 Lacs
2	Year 2	Rs 1.10 Lacs
3	Year 3	Rs 1.21 Lacs
4	Year 4	Rs 1.33 Lacs
5	Year 5	Rs 1.46 Lacs
6	Year 6	Rs 1.60 Lacs
7	Year 7	Rs 1.76 Lacs
8	Year 8	Rs 1.94 Lacs
9	Year 9	Rs 2.13 Lacs
10	Year 10	Rs 2.34 Lacs

b. **Revenue Share Payment**

Revenue Share is the percentage of Actual Total Revenue that shall be shared by the Consultant with the KSTDC. **Revenue Share % = 1 – Revenue Retained %**. Actual Total Revenue shall be defined as all the proceedings from Restaurant.

Selection of a Consultant to Operate and maintain Yedyur Property at Kunigal, Tumkur District, Karnataka

“ Actual Total Revenue” for purposes of this Agreement shall exclude and be arrived at after deducting all indirect taxes such as GST and such other taxes, cesses, duties that are applicable on provision of services by whatever name called levied by the central or local authorities, nor or in future.

5.3 Contents of Reports

5.3.1. Quarterly Performance Report

This report should give income details including but not limited to F&B Sales, parking, venue bookings etc. at the Restaurant property.

5.3.2. Payment Schedule

- a) Consultant must submit a bank guarantee for a lump sum amount of INR 10,00,000 (Ten ten lakhs only) before commencement of operation of the Restaurant
- b) Payments for the first year Minimum Guaranteed Annual payment shall be made by the Consultant one month in advance of commencement of operation of the Restaurant property and for the subsequent years it shall be made within the anniversary date of the first payment date of minimum guaranteed annual payment.
- c) Payments for the variable component (revenue share) shall be made by the Consultant for a financial year within one month of finalization of audited financial statements for the property.

5.4 ROLES & RESPONSIBILITIES OF CLIENT AND CONSULTANT

5.4.1 Obligations/roles/responsibilities of the Client

- d) To approve quarterly performance reports submitted by the Consultant
- e) To promote the restaurant property through brochures/creatives/other promotional content by displaying them at tourist locations, airports, and ‘Tourism and Travel’ Marts in India and abroad.
- f) To ensure that the Consultants abides by Client guidelines and rules and regulations of Government of Karnataka and Government of India.

5.4.2 Obligations/roles/responsibilities of the Consultant

- a) To perform the list of activities as per the Terms of Contract
- b) To remit minimum guaranteed annual payment and revenue share of Client as per conditions set in the contract
- c) To provide quarterly performance reports to Client
- d) To advise Client for approval of quarterly performance reports submitted by the Consultant
- e) To maintain all the records such as monthly reports, yearly execution plan etc.
- f) To abide by all rules and regulations of Government of Karnataka and Government of India and terms of Contract
- g) To pay directly all fixed and variable charges towards electricity consumption as per meters readings to the concerned agency within stipulated timelines of the agency.
- h) To co-brand the restaurant property as a joint brand of KSTDC and the Consultant
- i) On completion of tenure of the contract, handover the property back to the client on an as-is where-is basis

Contract between Client & Consultant

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Selection of a Consultant to Operate and maintain Yediyur Property at Kunigal, Tumkur District, Karnataka

This Management Agreement mutually agreed and executed at Bengaluru on this _____ day of month _____, Two Thousand and Eighteen.

BETWEEN

Karnataka State Tourism Development Corporation Limited, a Company incorporated under the Companies Act, 1956 having its registered office at _____ hereinafter referred to as “**the Licensor**” or “KSTDC”, which expression shall unless repugnant to the context include the successors and assigns, on one part

AND

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

WHEREAS,

- A. Karnataka State Tourism Development Corporation Limited has decided to appoint a Licensee to maintain and operate the Yediyur Restaurant Property
- B. The Licensee shall operate and maintain the facility for a period of 5 (five) years extendable by another 5 years from the date of signing of the contract.

Selection of a Consultant to Operate and maintain Yedyur Property at Kunigal, Tumkur District, Karnataka

- C. After a competitive bidding process, the Licensee has been selected to operate the facility for a period of ten (10) years and accordingly, a Letter of Intent No. _____ dated _____ has been issued to the Licensee. The Licensee has duly acknowledged the letter of intent vide its Letter No. _____ dated _____
- D. In pursuance thereof the Parties hereto are required to enter into a Management Agreement, which presents to record the terms, conditions and covenants of the License.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them hereunder:

“Agreement” means this Agreement, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement and applicable to the Project/ the Licensee.

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Licensee under Applicable Law, in connection with the renovation, operation and maintenance of 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 any amendment to or any re-enactment thereof as in force from time to time.

“Annual Revenue” means revenues, in Indian Rupees, generated from operating the Yedyur Property during the period of ten years from the Appointed Date or any subsequent periods of twelve months starting from the anniversary dates of the Appointed Date, suitably adjusted for Deductions and duly certified by Statutory Auditor.

Revenue in foreign exchange would be suitably converted to Indian Rupees as per generally accepted accounting principles in India and approved by the Statutory Auditor of the Licensee.

“Commencement Date” means the date on which the Licensee obtains the Completion Certificate.

“Completion Certificate” means the certificate issued by any government or other independent body as may be mutually agreed upon between the Parties certifying, inter alia, such as:

- (i) the Licensee has refurbished the Project Asset and provided all the Mandatory Facilities;
- (ii) the Licensee has obtained all approvals necessary to commence commercial operations of the Project.

“Deductions” shall mean goods and services tax or any other tax or cess payable by the Licensee under Applicable Law on the revenues from items indicated in Annual Revenue.

“Due Date” means each date for making the Licensee Payment as set out in **Schedule 3**.

“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, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Asset/ Project Facilities.

“Expiry” means expiry of the License by efflux of time at the end of 10 (ten) years from the Appointed Date. The License shall not be extended beyond 10 years from the Appointed Date.

“Expiry Date” means the date on which Expiry occurs.

“Financing Documents” means collectively the documents evidencing Lenders’ commitment to finance the Project.

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in **Article 7**.

“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 of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof of any of them of a project similar to that of the Project.

“GoK” means the Government of Karnataka.

“Government Agency” means any Government Department, a State or Central Government, Local Authority or Board or Body or Corporation, commission, bureau, agency, authority, instrumentality established by or under any law and owned and controlled by the Government, court or other judicial or administrative body, central, state, or local, having jurisdiction over the Licensee, the Project Asset or any portion thereof, or the performance of all or any of the services or obligations of the Licensee under or pursuant to this Agreement.

Selection of a Consultant to Operate and maintain Yediyur Property at Kunigal, Tumkur District, Karnataka

“**Guest**” includes customers, clients, and guests to the Project Asset by whatever name called visiting at Project Asset.

“**KSTDC**” means Karnataka State Tourism Development Corporation Limited.

“**Lenders**” means public financial institutions, scheduled banks, insurance companies, registered mutual funds and trustees for bond holders or debenture holders, who have provided funds to the Licensee for financing any part of the Project.

“**License**” shall have the meaning ascribed thereto in Article 2.1 of this Agreement.

“**Licensee Entry**” shall have the meaning ascribed thereto in Article 5.3 (a) of this Agreement.

“**Licensee Personnel**” includes employees, workers, suppliers, contractors of the Licensee by whatever name called visiting or using the Project Asset.

“**License Payment**” means the amounts payable by the Licensee to KSTDC on the Due Dates in accordance with Article 6.

“**License Period**” shall have the meaning ascribed thereto in Article 2.2 of this Agreement.

“**Mandatory Facilities**” means all facilities required mandatorily to be provided in the Project Asset and set out as such more specifically in Schedule 2A.

“**Material Adverse Effect**” means a material adverse effect on (a) the ability of the Licensee 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.

“**Precautionary Notice**” means a notice in writing issued by KSTDC to Licensee in accordance with Article 5.3

“**Preliminary Notice**” means the notice of intended Termination by the Party entitled to terminate this Agreement to the other Party setting out, *inter alia*, the underlying Event of Default.

“**Project**” means and includes the refurbishing of the Project Asset, provision of the Mandatory Facilities, operation, maintenance of the Project Asset/ Project Facilities in accordance with the provisions of this Agreement and specifically in accordance with Schedule 2A and such Additional Facilities as are provided by the Licensee.

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“Project Asset” means Yedyur Restaurant Property and the land appurtenant thereto more fully described in Schedule 1 to this Agreement.

“Project Facilities” means collectively the Mandatory Facilities and the Additional Facilities.

“Special Auditor” means a reputed firm of Chartered Accountants or reputed accounting firm duly licensed to practice in India and appointed by KSTDC, from time to time for this Project.

“Statutory Auditor” means a reputed firm of Chartered Accountants duly licensed to practice in India acting as statutory auditors of the Licensee.

“Termination” means early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement but shall not, unless the context otherwise requires, include Expiry.

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

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

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 to, or is capable of being applied to any transactions entered into hereunder;
- b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or bylaws which have the force of law;
- 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, organizations or other entities (whether or not having a separate legal entity);
- d) 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;
- e) the words "include" and "including" are to be construed without limitation;
- f) any reference to day, month or year shall mean a reference to a calendar day, calendar month or calendar year respectively;
- g) the Schedules to this Agreement form an integral part of this Agreement as though they were expressly set out in the body of this Agreement;
- h) any reference at any time to any agreement, deed, instrument, license or document of any

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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;

- i) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- j) any agreement, consent, approval, authorization, 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 authorized representative of such Party in this behalf and not otherwise;
- k) 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;

ARTICLE 2: LICENSE

2.1 Grant of License

Subject to and in accordance with the terms and conditions set forth in this Agreement and in consideration of the payment as provided in this Agreement, the Licensor hereby grants and authorizes the Licensee, to refurbish, operate and maintain the Project Asset/ Project Facilities, to provide Mandatory Facilities and Additional Facilities, to exercise and/ or enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement, including the right to collect, retain and appropriate all tariffs, fees and charges for the facilities and services provided, and to hand back the Project Asset and Project Facilities on the Expiry Date or the Termination Date as the case may be (“the License”).

2.2 License Period

The License hereby granted is for a period of Ten (10) years commencing from the Appointed Date and ending on the Expiry Date (“the License Period”).

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

2.3 Acceptance of License

In consideration of the rights, privileges and benefits conferred upon by the Licensor and including the right to collect, retain and appropriate all tariffs, fees and charges for the facilities and services provided and other good and valuable consideration expressed herein, the Licensee hereby accepts the License and agrees and undertakes to perform/discharge all of its obligations in accordance with the provisions hereof.

ARTICLE 3: PROJECT ASSET

3.1 Handover of Project Asset

- a) KSTDC shall, within 15 days from the Appointed Date, handover to the Licensee on as-is- where-is basis, vacant and peaceful physical possession of the Project Asset free from Encumbrance, for

the purpose of operating and maintaining the Project Asset.

- b) Upon the Project Asset being handed over, pursuant to the preceding sub-article (a), the Licensee shall have the right to enter upon, occupy and use the same for the purpose of enjoying its rights or carrying out its obligations and to make at its costs, charges and expenses such investigation, development and improvements in the Project Asset as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement.

3.2 Rights and Use of the Project Asset

- a) The Licensee shall have the right to the use of the Project Asset 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.
- b) The Licensee shall not part with or create any Encumbrance on the whole or any part of the Project Asset/ Project Facilities save and except as set forth and permitted under this Agreement.
- c) The Licensee shall not without the prior written approval of KSTDC use the Project Asset/ Project Facilities for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.
- d) The Parties shall, within 15 days from the Appointed Date or any other period mutually agreed upon, finalize a mechanism, including the Authorized Access Road, Licensee Entry, process of issue of authorized identification documents, nomination of Licensee Representative etc., for enabling movement of the Licensee/ Guests/ Licensee Personnel, within the Project Asset and the Authorized Access Road (via the, the Licensee Entry) at all times during the License Period.

3.3 Peaceful Possession

The Licensor hereby warrants that:

- a) KSTDC enjoys absolute possession of the Project Asset and is vested with the right to grant the License.
- b) The Licensee shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession and enjoyment of the Project Asset during the License Period.

ARTICLE 4: LICENSEE'S OBLIGATIONS

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

4.1 Performance Security

- a) The Licensee shall, for due and punctual performance of its obligations relating to the Project, deliver to KSTDC, simultaneously with the execution of this Agreement, an irrevocable bank guarantee from a scheduled bank acceptable to KSTDC, in the form as set forth in Schedule 4,

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("Performance Security") for a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only¹)

- b) The Performance Security shall be kept valid for a period of One Twenty six (126) months from the Appointed Date.
- c) Performance Security shall be forfeited by KSTDC if there is any breach of the terms and conditions of this agreement by the licensee.

Provided that if the Agreement is terminated due to any event other than a Licensee Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to KSTDC's right to receive amounts, if any, due from the Licensee under this Agreement, be duly discharged and released to the Licensee.

4.2 Financing Arrangement

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

4.3 Project Completion

The Licensee shall provide Mandatory Facilities, at their option provide the Additional Facilities and obtain Completion Certificate and commence operations of the Project Asset/ Project Facilities on or before the expiry of Three (3) months from the Appointed Date.

4.4 Alterations, Modifications and Additional Facilities

- a) The Licensee shall carry out necessary alterations or modifications to the Project Asset or undertake new construction in order to meet his obligation of providing the Mandatory Facilities and/ or provide Additional Facilities and, subject to obtaining approval from KSTDC with respect to the alterations or modifications to the Project Asset and his adherence to Applicable Law and obtaining Applicable Permits for such alteration, modification or new construction. Provided however that such alteration, modification or new construction, shall not at any time cause any damage or have a dangerous effect on either the stability of whole or part of Project Asset/ Project Facilities or otherwise adversely affect the safety of the users of the Project Asset/ Project Facilities.

The said alteration, modification or new construction shall be undertaken only after obtaining prior written approval from KSTDC. For this purpose, the Licensee shall submit to KSTDC a proposal (hereinafter referred to as Modification Proposal) clearly describing the alteration, modification, additional facilities and its impact on the structural stability of the Project Asset/ Project Facilities, at least sixty (60) days prior to carrying out such activities whereupon the KSTDC shall act as per the procedure set out in Clause 5.1(b).

- b) The Licensee shall be required to obtain Applicable Permits and adhere to Applicable Laws for demolition of any part of the Project Asset.

¹ Amount equal to (Minimum Guaranteed Annual payment of first year at the time of signing of agreement and thereafter, whenever renewed, for an amount equal to License Payment (Sum of Minimum Guaranteed Annual Payment and Revenue share payment) of Previous year

- c) The Licensee shall not use explosives or other detonators during the process of demolition or other excavation work in the Project Asset.

4.5 Operation and Maintenance

- a) The Licensee shall operate, manage and maintain the Project Asset and at their option operate, manage and maintain the Additional Facilities, until the Project Asset/ Project Facilities are handed back to KSTDC in accordance with the provisions of this Agreement.
- b) The Licensee, shall be co-branded as a project of KSTDC and the licensee on all correspondence, documents, advertisements, promotion materials related to the Project. All the letters of the name/s of the Restaurant as referred above shall be written/ presented/ displayed in fonts of equal size.
- c) The Licensee shall ensure that the management of the Project Asset does not cause any damage or deterioration to the Project Asset.
- d) The Licensee shall be fully responsible to provide all facilities, equipment/machinery, services for developing and running the created facilities on the specified Project Asset.
- e) The Licensee shall not create any nuisance or pollute the surroundings and other properties adjunct to the Project Asset.
- f) The Licensee shall strictly follow the safety code and also the instructions issued by the authorities in this behalf. The Licensee shall be responsible for the safety of his workmen, guests, etc., and shall be liable for prosecution in case of any accident, injury, etc., and the Licensor shall not assume any liability whatsoever in this behalf.
- g) All operations of the Project Asset shall be carried out in accordance with Good Industry Practices.
- h) On providing Mandatory Facilities and Additional Facilities work, the Licensee shall remove all rubbish, kilns, vats, tanks, materials and temporary structure of any kind or used for the purpose or connected with the Project Asset
- i) The Licensee shall employ eco-friendly best practices for management of Project Asset in order to avoid adverse environmental impact.
- j) The Licensee shall ensure that the Licensee Personnel should not have at any stage any claim for employment in KSTDC.
- k) The Licensee shall during the Concession Period, install suitable mechanisms to capture moving images ("Video Information") of Guests/ Licensee Personal at entry point/s in the Restaurant Property. Video Information shall be preserved by the Licensee on a suitable storage media. The Video Information for each day shall be stored at least for a period of 21 days.

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- l) Notwithstanding anything contained elsewhere in this Agreement, the Licensee shall on receipt of the Precautionary Notice, adhere to the measures provided in Schedule 6.
- m) The Licensee shall, at least a week before appointment/ re-appointment of any agency for gate keeping/ security of the Project Asset/ Project Facilities, duly inform Licensor, details of such agency. Licensor shall within one (1) week of receipt of such notice from Licensee, provide any suggestions/ observations to the same, which shall be duly followed by the Licensee. In the event, no such suggestions/ observations are received by the Licensee within the said period, the agency proposed shall be deemed to have been approved by the Licensor.
- n) The Licensee shall operate the Yediyur Property as per industry standards. The Licensee shall allocate required professional skills and personnel and technical resources for operating the proposed property throughout the term of the Contract.
- o) The Licensee shall not indulge in any nefarious activity while operating the proposed Yediyur Property.
- p) The Licensee shall ensure clearance of all rubbish and waste generated from restaurant and ensure safe, quick and scientific disposal of all such materials and will also coordinate with concerned civic agencies for responsible disposal of garbage outside the Yediyur property premises.
- q) Provisions of the Prevention of Food Adulteration Act, 1954, and any law relating to hygiene/ and quality shall be binding.
- r) Licensee is entitled to set the tariff terms for the facility and services and also entitled to change such rate whenever it deems fit. However, at the end of each year the Consultant will provide a detailed breakup of the Annual revenue.
- s) Take all reasonable precautions for the prevention of accidents on or about the facility and provide all reasonable assistance and emergency medical aid to accident victims.

4.6 Insurance

The Licensee shall at its cost and expense, purchase and maintain by due re-instatement or otherwise, during the License Period all insurances in respect of the Project Asset/ Project Facilities in accordance with the Good Industry Practice. The Licensee shall maintain a register of entry in order of premiums paid towards the Project Asset/ Project Facilities and proof of payments made shall be submitted to KSTDC whenever requested for.

4.7 Book of Accounts

The Licensee shall keep and maintain all necessary statutory records and financial books of accounts to prepare true, accurate and regular account of Annual Revenue and obtain necessary certificate from the Statutory Auditor.

The statement of Annual Revenue shall be approved by the Board of Directors / Partners of the Licensee within two months from the anniversary of the Appointed Date.

4.8 General Obligations

The Licensee shall at its own cost and expense:

- a) investigate, study, design, refurbish, operate and maintain the Project Asset/ Project Facilities in accordance with the provisions hereof;
- b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times during the License Period;
- c) throughout performance of this Agreement, comply with all laws, rules, regulations and statutory requirements of Government of India, State Government and other Statutory bodies as far as such bodies have jurisdiction over the business or affairs of the Licensee.
- d) 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;
- e) 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 KSTDC against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall KSTDC be treated as employer in this regard;
- f) make its own arrangements for appliances, equipment, materials, machinery and other supplies to operate and maintain the Project Asset, and in doing so, shall observe and fulfill the environmental and other requirements under Applicable Laws and shall obtain Applicable Permits for the purpose;
- g) be responsible for all the health, security, environment and safety aspects of the Project at all times during the License Period.
- h) ensure that the Project Asset/ Project Facilities remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- i) upon receipt of a request thereof, afford access to the Project Asset/ Project Facilities to the authorized representatives of KSTDC for the purpose of ascertaining compliance with the terms, covenants and conditions of this Agreement.
- j) pay all taxes, duties and outgoings, including utility charges relating to the Project Asset/ Project Facilities.
- k) make available for inspection to KSTDC, the Special Auditor or any agency appointed by KSTDC, all records, books of account, statements and any other additional information or explanation, related to the Project, for ascertaining the Annual Revenue and Deductions.
- l) ensure that documentary evidence from appropriate collecting authority are available for the purpose of calculation of goods and services tax or any other taxes and cess for the purpose of calculation of Deductions.
- m) maintain the Project Asset in a tidy and orderly manner; Carryout regular maintenance and repair of building, equipment etc.
- n) Licensee shall not claim in its own name on the plea of having effect any improvements/ modifications upon the Project Asset or upon the facilities. All facilities, including Additional Facilities created in the Project Asset are deemed to have been created under the License hereby granted.
- o) Except as provided under this agreement, Licensee shall not, at any time, assign, mortgage, charge, grant sub-licenses or otherwise deal with possession or control of the license hereby granted.

ARTICLE 5: LICENSOR'S OBLIGATIONS

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

5.1 Specific Obligations

- a) KSTDC shall grant in a timely manner all such approvals, permissions and authorization which the Licensee may require or is obliged to seek from KSTDC under this Agreement, in connection with implementation of the Project and the performance of its obligations. Provided, where authorization for availment of utilities such as power, water, sewerage, telecommunications or any other incidental services/ utilities is required, the same shall be provided by KSTDC in the form as set out in Schedule 5.
- b) KSTDC shall respond in writing within a period of sixty (60) days from the date of receipt of a Modification Proposal, as specified under **Clause 4.4**, communicating its decision on such Modification Proposal.
- c) In case, KSTDC does not respond within sixty (60) days, as aforesaid, then such Modification Proposal would be deemed to have been approved by KSTDC. However, this shall not relieve the Licensee from his obligation of ensuring safety of the Project Asset/ Project Facilities.
- d) In the event that KSTDC does not approve a Modification Proposal or any part thereof, KSTDC shall, as part of its written response, clearly describe the reasons for such non-approval. In case the Licensee is not satisfied with the response of KSTDC, the Licensee shall have remedy under **Article 10** of this Agreement.

5.2 Property Tax

KSTDC shall make the payment to the local authorities with respect to Property Tax of Yediyur property.

5.3 Operations and Management

- a) The Licensor shall at all times during the period of this Agreement make available to the Licensee, provide, free of any fees/ charges, an exclusive entry ("Licensee Entry") to the Project Asset for use by the Licensee, Guests and Licensee Personnel. In case of any change in such Authorized Access Road or Licensee Entry, the Licensor shall duly notify the same to the Licensee.
- b) The Licensee may permit entry to visitors/guests other than Licensee Personnel and Restaurant Guests through the Licensee Entry.
- c) At any time during the period of this Agreement if Licensor is of the opinion that, certain measures as set-out in Schedule 6 would need to be observed, the Licensor may issue a Precautionary Notice to the Licensee. The Precautionary Notice shall specifically contain the period for which compliance to Schedule 6 is necessary.

5.4 General Obligations

KSTDC shall:

- a) where appropriate provide necessary assistance to the Licensee in securing Applicable Permits;
- b) Observe and comply with all its other obligations set forth in this Agreement.

ARTICLE 6: LICENSE PAYMENT

6.1 Licensee's Obligations

- a) Subject to the provisions of this Agreement and in consideration of the Licensee having been granted the License pursuant to this Agreement, the Licensee agrees and undertakes to pay to KSTDC, License Payment/ comprising the following:
 - i. Minimum Guaranteed Annual payment to be made on or before the Due Date as set out in **Schedule 3** ("Fixed Payment"); and
 - ii. ___% of Revenue Share to be paid on Annual Revenue on or before Due Dates as set out in **Schedule 3** ("Revenue Share Payment")
- b) At the time of making the License Payment specified in sub-clause 6.1(a)(ii) above, the Licensee shall submit to KSTDC, audited and approved Annual Revenue statement, prepared by the Licensee's Statutory Auditor and duly approved by the Board of Directors of the Licensee.
- c) Any delay in making any License Payment shall, without prejudice to any other consequences under this Agreement, entail payment of interest on the amount in default at 12% per annum from the relevant Due Date till the date of payment/ realization.

6.2 Mode of Payment

The License Payment shall be made by way of A/c Payee cheque/ demand draft in favour of KSTDC, payable at Bangalore and shall be sent sufficiently in advance to the address specified in **Article 12.7** so as to allow for realisation/ encashment thereof on or before Due Date.

ARTICLE 7: FORCE MAJEURE

7.1 Force Majeure Event

Any of the following events which is beyond the control of the Party claiming to be affected thereby ("Affected Party") and which the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence, and prevents the Affected Party from performing or discharging its obligations under this Agreement, shall constitute Force Majeure Event.

- a) Earthquake, flood, inundation and landslide;
- b) Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c) fire caused by reasons not attributable to the Licensee or any of the employees, Contractors or agents appointed by the Licensee for purposes of the Project;
- d) acts of terrorism

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- e) strikes, riots, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Licensee;
- f) action of a Government Agency having Material Adverse Effect including but not limited to,
 - i. acts of expropriation, compulsory acquisition or takeover by any Government Agency of the Project Asset or any part thereof or of the Licensee's rights in relation to the Project Asset;
 - ii. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Licensee in any proceedings which is non- collusive and duly prosecuted by the Licensee, and
 - 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 Licensee's breach or failure in providing with the Project Facilities, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the Licensee may be bound;
- g) early determination of this Agreement by the Licensor for reasons of security of the project asset, national emergency, national security or the national interest;
- h) War, hostilities (whether declared or not), invasion, act of foreign enemy, rebellion, weapon conflict or military actions, civil war, ionising radiation, contamination by radioactivity from nuclear fuel, any nuclear waste, radioactive toxic explosion, volcanic eruptions.

7.2 Obligations of the Parties

- 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 the 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 7.2 (a), the Parties shall meet and hold discussions in good faith and where necessary conduct physical inspection/survey of the Project Asset 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 (b) as also any information, details or document, which the Parties may reasonably require.

7.3 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 Sub- article 7.2;
- 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 Facilities as a result of the Force Majeure Event and to restore the Project Facilities, 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, a 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;
- 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.

7.4 Termination due to Force Majeure Event

a) Termination

- i. If a Force Majeure Event, is an event described under Sub-articles 7.1(a) to 7.1(e) continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 days, be entitled to terminate this Agreement.
- ii. If the Force Majeure Event is an event described in 7.1 (f), 7.1 (g) or 7.1 (h) and the Licensee having exhausted the remedies available to him under the Applicable Laws, has been unable to secure the remedy, the Licensee shall be entitled to terminate this Agreement.

Provided that the Parties may by mutual agreement, decide to continue this Agreement on revised terms or to terminate this Agreement, if the event described in 7.1 (f), 7.1 (g) or 7.1 (h) subsists or is likely to subsist for a period exceeding 180 days.

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Provided further, The Licensor may at its sole discretion have the option to terminate this Agreement any time after the occurrence of any event described under Sub-articles 7.1(f), 7.1(g) or 7.1(h)

b) Termination Notice

If either Party, having become entitled to do so, decides to terminate this Agreement pursuant to the preceding sub-article (a)(i) or (a)(ii), it shall issue Termination Notice setting out ;

- i. in sufficient detail the underlying Force Majeure Event;
- 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.

c) 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. the Termination Payment, if any, payable by The Licensor in accordance with the following sub-article (d) is paid to the Licensee on the Termination Date and
- ii. the Project Asset is handed back to The Licensor by the Licensee on the Termination Date free from all Encumbrance.

d) Termination Payment

Upon Termination of this Agreement due to a Force Majeure Event, Termination Payment shall be made to the Licensee by the Licensor in accordance with the following:

- i. If Termination is due to a Force Majeure Event, described under Sub-articles 7.1(a) to 7.1(e), 7.1(g), 7.1(h) no Termination Payment shall be made by the Licensor to the Licensee but, the Licensee shall be entitled to receive and appropriate the proceeds of any amounts under insurance policies.
- ii. If Termination is due to the occurrence of any event described under Sub- articles 7.1(f) or 7.1(g), the Licensor shall pay to the Licensee Termination Payment equal to 100% of the Book Value of the investment made by the Licensee as on the date of Termination.

Provided, the Licensor shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Licensor from the Licensee as on the Termination Date.

7.5 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 8: EVENTS OF DEFAULT AND TERMINATION

8.1 Events of Default

Event of Default means either Licensee Event of Default or KSTDC Event of Default or both as the context may admit or require.

a) Licensee Event of Default

Any of the following events shall constitute an event of default by the Licensee ("Licensee Event of Default") unless such event has occurred as a result of a Force Majeure Event or KSTDC Event of Default or any governmental action for reasons other than any breach, default or lapse on the part of the Licensee:

- i. The Licensee has failed to commence operations of the Project Asset/ Project Facilities before the expiry of 6 months of the Appointed Date;
- ii. The Licensee has failed to make any License Payment on Due Date thereof and more than 30 days have elapsed since such default;
- iii. The Licensee has failed to submit or provide information on the Annual Revenue as required under the provisions of this Agreement;
- iv. Subsequent to receipt of Precautionary Notice, the Licensee fails to observe measures indicated in Schedule 6 and a period of 15 days has expired from the date of receipt of such notice by the Licensee.
- v. The Licensee has not submitted the Handback Guarantee as hereinafter defined in accordance with Article 9.2(b) and has subsequently failed to remedy the same within a further period of 30 days;
- vi. The Licensee is in Material Breach of any of its other obligations under this Agreement and the same has not been remedied for more than 60 days;
- vii. Any representation made or warranty given by the Licensee under this Agreement is found to be false or misleading;
- viii. A resolution for voluntary winding up has been passed by the shareholders of the Licensee;
- ix. Any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee 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 KSTDC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Agreement.
- x. A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- xi. The Licensee has abandoned the Project Asset/ Project Facilities;
- xii. The Licensee has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;

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- xiii. The Licensee has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 days.
- xiv. If the Licensee, in the judgment of KSTDC has engaged in corrupt or fraudulent practices in competing for or in executing the Agreement.
For the purpose of this clause:

“Corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the selection process or in contract execution.

“Fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of KSTDC, and includes collusive practice among Consultants (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive KSTDC of the benefits of free and open competition.

b) KSTDC Event of Default

Any of the following events shall constitute an event of default by KSTDC (“KSTDC Event of Default”), when not caused by a Licensee Event of Default:

- i. KSTDC is in Material Breach of any of its obligations under this Agreement and has failed to cure such breach within 60 (sixty) days of receipt of notice thereof issued by the Licensee;
- ii. KSTDC has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement;
- iii. KSTDC has unreasonably withheld or delayed grant of any approval or permission which the Licensee is obliged to seek under this Agreement, and thereby caused or likely to cause Material Adverse Effect;
- iv. Any governmental action not arising out of a breach, default or lapse on the part of the Licensee, whereby this Agreement becomes inoperable or takeover by any government agency of the Project Asset/Project Facilities or any part thereof, thereby causing Material Adverse Effect;
- v. Any representation made or warranties given by the KSTDC under this Agreement has been found to be false or misleading.

8.2 Termination due to Event of Default

a) Termination for Licensee Event of Default

- i. Without prejudice to any other right or remedy which KSTDC may have in respect thereof under this Agreement, upon the occurrence of a Licensee Event of Default, KSTDC may terminate this Agreement in the manner as set out under Clause 8.2(a)(ii) and Clause 8.2(a)(iii).
- ii. If KSTDC decides to terminate this Agreement pursuant to preceding clause (i), it shall in the first instance issue Preliminary Notice to the Licensee. Within thirty (30) days of receipt of the Preliminary Notice, the Licensee shall submit to KSTDC in sufficient detail, the manner

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in which it proposes to cure the underlying Event of Default (the "Licensee's Proposal to Rectify"). In case of non-submission of the Licensee's Proposal to Rectify within the said period of 30 days, KSTDC shall be entitled to terminate this Agreement by issuing Termination Notice, and to appropriate the Performance Security, if subsisting.

- iii. If the Licensee's Proposal to Rectify is submitted within the period stipulated therefor, the Licensee shall have further period of 30 days from the date of approval of the licensee's proposal to remedy/ cure the underlying Event of Default. If, however the Licensee fails to remedy/ cure the underlying Event of Default within such further period allowed, KSTDC shall be entitled to terminate this Agreement, by issue of Termination Notice and to appropriate the Performance Security if subsisting.

b) Termination for KSTDC Event of Default

- i. Without prejudice to any other right or remedy which the Licensee may have in respect thereof under this Agreement, upon the occurrence of KSTDC Event of Default, the Licensee shall be entitled to terminate this Agreement by issuing Termination Notice.
- ii. If the Licensee decides to terminate this Agreement pursuant to preceding clause (i) it shall in the first instance issue Preliminary Notice to KSTDC. Within 30 days of receipt of Preliminary Notice, KSTDC shall forward to the Licensee its proposal to remedy/ cure the underlying Event of Default (the "KSTDC Proposal to Rectify"). In case of non-submission of KSTDC Proposal to rectify within the period stipulated therefor, Licensee shall be entitled to terminate this Agreement by issuing Termination Notice.
- iii. If KSTDC Proposal to Rectify is forwarded to the Licensee within the period stipulated therefor, KSTDC shall have further period of 30 days to remedy/ cure the underlying Event of Default. If, however KSTDC fails to remedy/ cure the underlying Event of Default within such further period allowed, the Licensee 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 (a) or (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 Facilities,

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- ii. the termination payment, if any, payable by KSTDC in accordance with the following sub-article (f) is paid to the Licensee on the Termination Date and
- iii. the Project Asset/ Project Facilities are handed over to KSTDC by the Licensee on the Termination Date free from any Encumbrance along with any payment that may be due by the Licensee to KSTDC.

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 KSTDC Event of Default, the Licensee shall be entitled to receive from KSTDC, termination payment equal to 120% of the book value of the capital expenditure incurred by the Licensee net of depreciation computed on straight line basis as on Termination Date, made by the Licensee towards the Project Asset/Project Facilities, as determined by an independent firm of chartered accountants mutually agreed upon and appointed by the Parties for the purpose.

8.3 Rights of KSTDC on Termination

- a) Upon Termination of this Agreement for any reason whatsoever, KSTDC shall upon making the Termination Payment, if any, to the Licensee have the power and authority to:
 - i. enter upon and take possession and control of the Project Asset/Project Facilities forthwith;
 - ii. prohibit the Licensee and any person claiming through or under the Licensee from entering upon/ dealing with the Project Asset;
- b) Notwithstanding anything contained in this Agreement, KSTDC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the Project, and the handback of the Project Asset/ Project Facilities by the Licensee to KSTDC shall be free from any such obligation.

8.4 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.

8.5 Lender's Step-in Rights

- a) Notwithstanding anything to the contrary contained in this Agreement, the Parties hereby agree that:
- i. upon the 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 KSTDC,

the Lenders shall, without prejudice to any other remedy available to them, have the option to propose to KSTDC the substitution of the Licensee by another suitable Restaurant operating company ("Proposed Licensee"). Any such proposal shall contain in sufficient detail all the relevant information about the Proposed Licensee and the terms and conditions of the substitution.

- b) Upon receipt of the Lenders' proposal pursuant to the preceding sub-article (a), KSTDC shall at its discretion have the right to accept substitution of the Licensee on such terms and conditions as it may deem fit.

Provided that any such substitution shall,

- i. be on terms and conditions of the License which are not less favorable to KSTDC than those prevailing at the time of substitution, and
 - ii. be for the remaining period of License only.
- c) In the event of substitution as aforesaid, all the rights, privileges and the benefits of the Licensee shall be deemed to have been transferred to and vested in the Proposed Licensee and the KSTDC and the Proposed Licensee shall take such steps and enter into such documents as may be necessary to give effect to the substitution.
- d) Upon the Substitution of the Licensee becoming effective as aforesaid, the Licensee shall hand back the Project Facilities to KSTDC or upon instruction of KSTDC to the Proposed Licensee and for the purpose of giving effect to this provision, KSTDC shall have all such rights as are provided in Article 8.3.

ARTICLE 9: HANDBACK OF PROJECT ASSET/ PROJECT FACILITIES

9.1 Ownership

Without prejudice and subject to the License, the Project Asset and the Project Facilities, including all improvements made therein by the Licensee, shall at all times belong to the Licensor.

Provided that the movable assets added to the Project Facilities by the Licensee shall be the property of Licensee and the Licensee shall be entitled to retain and evacuate such movable assets from the Project Asset.

9.2 Licensee's Obligations

- a) Upon the expiry of the License Period by efflux of time and in the normal course, the Licensee shall on the Expiry Date, hand back vacant and peaceful possession of Project Asset/ Project Facilities to KSTDC free of cost and in good operable condition.
- b) At least 12 months prior to the Expiry Date, the Licensee shall, for due performance of its obligations relating to handback of Project Asset and Project Facilities, submit to KSTDC a bank guarantee, in the form as set forth in Schedule 6 ("Handback Guarantee"), from a scheduled bank acceptable to KSTDC for a sum of Rs. _____/- (Rs. _____ only) (Equal to sum of Minimum Guaranteed Annual payment and Revenue Share payment, for the Ninth year of the License Period). The Handback Guarantee shall be kept valid for a period of thirty (30) months.
- c) At least 12 months before the Expiry Date a joint inspection of the Project Asset/ Project Facilities shall be undertaken by KSTDC and the Licensee. KSTDC shall, within 45 days of such inspection prepare and furnish to the Licensee a list of works/ jobs, if any, to be carried out so as to conform to at least the Mandatory Facilities requirements. The Licensee shall promptly undertake and complete such works/ jobs at least three months prior to the Expiry Date and also ensure that the Project Asset and Project Facilities continue to meet such requirements until the same are handed back to KSTDC on the Expiry Date.
- d) KSTDC shall, within 45 days of the joint inspection undertaken under Clause 9.2(c) prepare and furnish to the Licensee a list of items, if any, with corresponding distinctive descriptions, which are to be compulsorily handed back to KSTDC along with the Project Asset.
- e) The Licensee hereby acknowledges KSTDC's rights specified in Article 8.3 enforceable against it upon Termination and its corresponding obligations arising therefrom. The Licensee undertakes to comply with and discharge promptly all such obligations.

9.3 KSTDC's Obligations

KSTDC shall, subject to KSTDC's right to deduct amounts towards;

- a) carrying out works/ jobs listed under Clause 9.2 (c), which have not been carried out by the Licensee,
- b) purchase of items, which have not been handed back to KSTDC along with the Project Asset in terms of Clause 9.2 (d), and
- c) any outstanding dues, which may have accrued in respect of the Project during the License Period,
- d) duly discharge and release to the Licensee the Handback Guarantee within 3 months from the Expiry Date.

ARTICLE 10: DISPUTE RESOLUTION

10.1 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

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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 (b) below.

- b) Either Party may require such Dispute to be referred to the Managing Director, KSTDC, and the Chief Executive Officer of the Licensee 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.
- c) All such disputes that have not been satisfactorily resolved under 10.1 b, shall be referred to Secretary, Department of Tourism.
- d) All such disputes that have not been satisfactorily resolved under 10.1 c, it may refer the Dispute to arbitration in accordance with the provisions of Article 10.2 below.

10.2 Arbitration

a) Procedure

Subject to the provisions of Article 10.1, 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 be Bengaluru 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 Provision 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 11: REPRESENTATIONS AND WARRANTIES, DISCLAIMER

11.1 Representations and Warranties of the Licensee

The Licensee represents and warrants to KSTDC 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 authorize 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 Licensee'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 Licensee'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 Licensee 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) subject to receipt by the Licensee from KSTDC of any amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Licensee in and to the Project Asset/ Project Facilities shall pass to and vest in KSTDC on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Licensee or KSTDC;
- k) no representation or warranty by the Licensee contained herein or in any other document furnished by it to KSTDC 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;
- l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Licensee to any person to procure the License. The Licensee undertakes not to engage in any of the said or similar act during the currency of the agreement and relative to this Agreement.
- m) Without prejudice to any express provision contained in this Agreement, the Licensee acknowledges that prior to the execution of this Agreement, the Licensee has after a complete and careful examination made an independent evaluation of the Project Asset, and the information provided by KSTDC, 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 Licensee in the course of performance of its obligations hereunder.

- n) The Licensee 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 KSTDC shall not be liable for the same in any manner whatsoever to the Licensee.

11.2 Representations and Warranties of KSTDC

KSTDC represents and warrants to the Licensee that:

- a) KSTDC has full power and authority to grant the License;
- b) KSTDC has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- c) This Agreement constitutes KSTDC's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- d) There are no suits or other legal proceedings pending or threatened against KSTDC in respect of the Project Asset or the Project.
- e) No director or official or employee of the Licensor shall in any way be personally bound or liable for the acts or obligations of the Licensor under this agreement or answerable for any default or omission in the observance or performance of any of the act, matters or things or conditions which are herein contained.

11.3 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 12: MISCELLANEOUS

12.1 Assignment and Charges

- a) The Licensee shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of KSTDC.
- b) The Licensee shall neither create nor permit to subsist any Encumbrance over the Project Asset/ Project Facilities except with prior consent in writing of KSTDC, which consent KSTDC shall be entitled to decline without assigning any reason whatsoever.
- c) Restraint set forth in sub-articles (a) and (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 Licensee;
 - 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;
 - iii. Assignment of Licensee's rights and benefits under this Agreement to or in favour of the Lenders as security for financial assistance provided by them.

12.2 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

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receive the same. Such sum shall until payment thereof carry interest at 12% per annum from the due date for payment thereof until the same is paid to or otherwise realized 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 12.2 shall be neither 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.

12.3 Governing Law and Jurisdiction

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

12.4 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.

12.5 Survival

Termination of this agreement

- a) shall not relieve the Licensee or KSTDC 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.

12.6 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 all the Parties hereto and evidenced in writing by way of supplementary agreement.

12.7 Notices

All notices under this Agreement shall be in writing and in the English Language. 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 delivered by hand, sent by registered post or transmitted by cable, telefax or recognized international courier, mail, and delivered or transmitted to the Parties at their respective addresses set forth below:

If to KSTDC: General Manager (Administration),

Karnataka State Tourism Development Corporation Limited,
Ground Floor, BMTC Yeshwanthpur
TTMC (Bus Stand),
Yeshwanthpur Circle,
Bengaluru – 560022
Contact – (080) 4334 4334
Email: info@kstdc.co

Fax No. -----

If to the Licensee:

-----,

Fax No. -----

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 recognized international courier or by mail (registered, return receipt requested) at that address, and
- b) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

12.8 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

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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.

12.9 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.

12.10 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.

12.11 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

12.12 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.

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

SIGNED SEALED AND DELIVERED

For and on behalf of KSTDC by:
LICENSEE by:

For and on behalf of

(Signature)

(Signature)

(Name)

(Designation)

In the presence of:

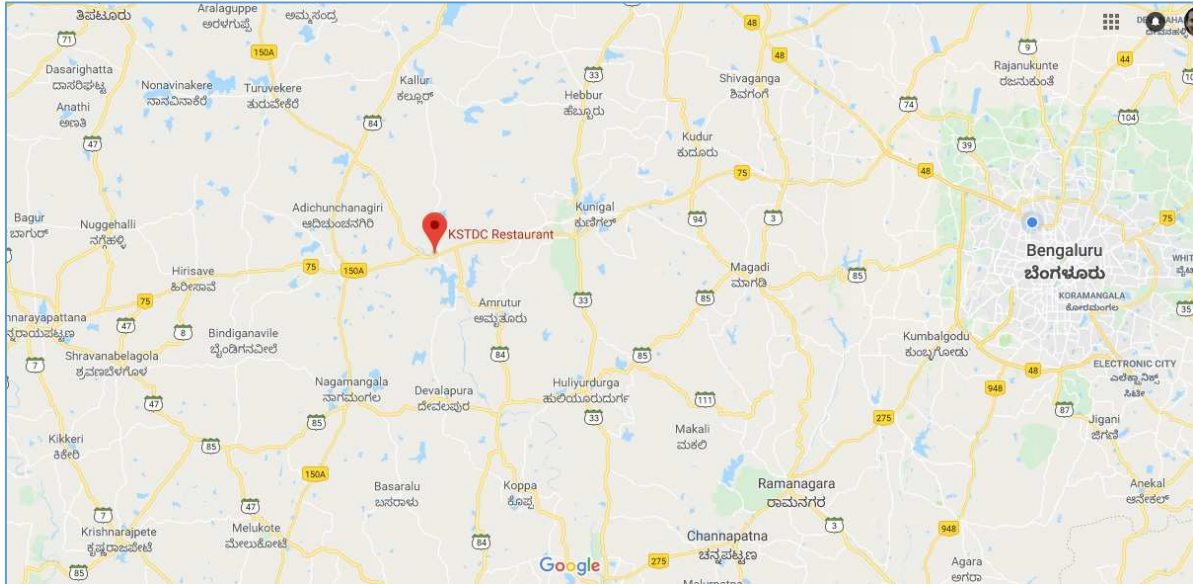
1)

2)

Selection of a Consultant to Operate and maintain Yedyur Property at Kunigal, Tumkur District, Karnataka

SCHEDULE 1: DETAILS OF Yedyur Restaurant Property

KSTDC owns a Property at Yedyur located near Sidhalingeshwara Samudhaya Bhavana and opposite Sri Maramma Temple. The Property is located in ~ 6 acres land. The Restaurant has a seating capacity of 70 pax. The property has parking facility as well. Located at Mangalore – Bangalore highway, it is ideally located for carrying out a thriving business.



SCHEDULE 2: MANDATORY FACILITIES

Yediyur Property shall be operated and maintained properly with necessary amenities during the tenure of this Agreement. The list of facilities but not limited that should be available is as follows:

- a) Good quality cutlery
- b) Kitchen and Washing (Clean, hygienic, well equipped and well maintained kitchen and pantry with proper and adequate cold storage facilities. Cooking utensils should also be of good quality and well kept)
- c) Proper arrangements for storing perishable items of food such as cold storage etc.
- d) Dish washer or 3 tier system for washing utensils should be applied
- e) Pest control from time-to-time
- f) Dry and wet garbage disposal system
- g) First Aid box
- h) Staff facilities (Separate Ladies and Gents cloakrooms, provision of lockers etc.)
- i) Toilets with adequate supply of soap, toilet paper and running water
- j) Facilities for the physically challenged and segregation of smoking and non-smoking area
- k) Parking facility

SCHEDULE 3: LICENSE PAYMENT SCHEDULE

A. Minimum Guaranteed Annual payment _____

(Amount in Rupees)

SI No	Year	Minimum Guaranteed Annual Payment
1	Year 1	Rs 1.00 Lacs
2	Year 2	Rs 1.10 Lacs
3	Year 3	Rs 1.21 Lacs
4	Year 4	Rs 1.33 Lacs
5	Year 5	Rs 1.46 Lacs
6	Year 6	Rs 1.60 Lacs
7	Year 7	Rs 1.76 Lacs
8	Year 8	Rs 1.94 Lacs
9	Year 9	Rs 2.13 Lacs
10	Year 10	Rs 2.34 Lacs

B. Revenue Share Payment Amount: _% of the Annual Revenue

SI. No.	Revenue Retained percentage upto 2 decimal places
Year 1 – Year 10	

Note

- Consultant must submit a bank guarantee for a lump sum amount of INR 10,00,000 (Ten lakhs only) before commencement of operation of the restaurant property.
- Payments for the first year Minimum Guaranteed Annual payment shall be made by the Consultant one month in advance of commencement of operation of the restaurant property and for the subsequent years it shall be made within the anniversary date of the first payment date of minimum guaranteed annual payment.
- Payments for the variable component (revenue share) shall be made by the Consultant for a financial year within one month of finalization of audited financial statements for the property.

SCHEDULE 4: PERFORMANCE SECURITY

(PROFORMA OF BANK GUARANTEE¹)

THIS DEED OF GUARANTEE executed on this _____ 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

Karnataka State Tourism Development Corporation Limited., represented by the Managing Director, having its office at _____, Bangalore - _____ (Pin code), hereinafter referred to as “KSTDC”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Management Agreement being entered into between KSTDC and _____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office/ permanent address at _____ (“the Management Agreement”), the Company has been granted the License to implement the project envisaging operations and maintenance of Yediyur Restaurant Property.
- B. In terms of Article 4.1 of the Management Agreement, the Company is required to furnish to KSTDC, an unconditional and irrevocable bank guarantee for an amount of Rs. 10,00,000/- (Rupees Ten Lakh Only as security for due and punctual performance/ discharge of its obligations under the Management Agreement, relating to achieving commercial operations of Yediyur Restaurant Property, substantially in the format annexed as Schedule 4 to the License Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the License Agreement relating to achieving commercial operations of Yediyur Restaurant Property.

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 Management Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s.

¹ To be issued by a Scheduled Bank in India

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_____ (hereinafter called "the Licensee") of all its obligations relating to achieving commercial operations of Property during the Agreement Period.

3. The Guarantor shall, without demur, pay to KSTDC sums not exceeding in aggregate Rs. 10,00,000/- (Rupees Ten Lakh Only, within five (5) calendar days of receipt of a written demand from KSTDC stating that the Company has failed to meet its performance obligations under the Management Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Licensee or validity of demand so made by KSTDC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Licensee or 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, KSTDC 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 License 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 KSTDC or any indulgence shown by KSTDC to the Licensee 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 KSTDC or any indulgence shown by KSTDC 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 until¹_____ unless discharged/ released earlier by KSTDC in accordance with the provisions of the Management Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. 10,00,000/- (Rupees Ten Lakh Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Licensee/ the Guarantor or any absorption, merger or amalgamation of the Licensee/ 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.

¹ 126 months from the date of signing the Agreement

SCHEDULE 5: FORMAT FOR LETTER OF AUTHORISATION

(To be given on KSTDC letterhead)

TO WHOMSOEVER IT MAY CONCERN

This is to confirm that Yediyur Property has been handed over to _____ (*Name of Licensee*) pursuant to the Management Agreement dated _____, entered into between the Karnataka State Tourism Development Corporation Limited and _____ (*Name of Licensee*).

In terms of the said Agreement, the Licensee is authorized to occupy the said Restaurant and carry out all activities authorized by the said Agreement, and for that purpose, to apply for and obtain all approvals, licenses and permits, required in connection with operation of Yediyur Property, including reconstruction, or renovation, of the existing structures, and carry out operation and management of the said restaurant and to avail the utilities such as power, water, telecommunication and any other incidental utilities or services required in connection therewith.

Yours faithfully,

Managing Director

Karnataka State Tourism Development Corporation Limited

SCHEDULE 6: HANDBACK GUARANTEE

(PERFORMA OF BANK GUARANTEE)

THIS DEED OF GUARANTEE executed on this _____ 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

Karnataka State Tourism Development Corporation Limited., represented by the Managing Director, having its office at _____, Bangalore - _____ (Pin code), hereinafter referred to as “KSTDC”, which expression shall, unless repugnant to the context or meaning thereof include its administrators, successors or assigns.

WHEREAS

- A. By the Management Agreement being entered into between KSTDC and _____, a company incorporated under the provisions of the Companies Act, 1956, having its registered office/ permanent address at _____ (“the Management Agreement”), the Company has been granted the License to implement the project envisaging operations and maintenance of Yediyur Restaurant Property.
- B. In terms of Article 9 of the Management Agreement, the Company is required to furnish to KSTDC, an unconditional and irrevocable bank guarantee for an amount of Rs. _____/- (Rupees _____ Only) (Equal to the License payment for the ninth year, sum of Minimum Guaranteed Annual payment and Revenue share Payment of the ninth year) as security for due and punctual performance/ discharge of its obligations under the Management Agreement, relating to achieving commercial operations of Yediyur Property, substantially in the format annexed as Schedule 6 to the License Agreement.
- C. At the request of the Company, the Guarantor has agreed to provide guarantee, being these presents guaranteeing the due and punctual performance/discharge by the Company of its obligations under the License Agreement relating to achieving commercial operations of Yediyur Property.

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 Management Agreement.
2. The Guarantor hereby irrevocably guarantees the due and punctual performance by M/s. _____ (hereinafter called “the Licensee”) of all its obligations relating to handback of Project Assets/ Project facilities of Yediyur Property under the Management Agreement.

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3. The Guarantor shall, without demur, pay to KSTDC sums not exceeding in aggregate Rs. _____ /- (Rupees _____ Only) (Equal to the License payment for the ninth year, sum of Minimum Guaranteed Annual payment and Revenue share Payment of the ninth year), within ten (10) calendar days of receipt of a written demand from KSTDC stating that the Company has failed to meet its performance obligations under the Management Agreement. The Guarantor shall not go into the veracity of any breach or failure on the part of the Licensee or validity of demand so made by KSTDC and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Licensee or 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, KSTDC 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 License 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 KSTDC or any indulgence shown by KSTDC to the Licensee 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 KSTDC or any indulgence shown by KSTDC 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 until¹ _____ unless discharged/ released earlier by KSTDC in accordance with the provisions of the Management Agreement. The Guarantor's liability in aggregate be limited to a sum of Rs. _____ /- (Rupees _____ Only).
6. This Guarantee shall not be affected by any change in the constitution or winding up of the Licensee/ the Guarantor or any absorption, merger or amalgamation of the Licensee/ 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 authorized 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.

¹ 30 months from the date of issue of the Handback Guarantee in accordance with Clause 9.2(b) of the License Agreement